

THE SENATE



STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

SEVENTY-FIRST REPORT

DEPARTMENT OF THE SENATE	
REPORT No.	407
DATE PRESENTED	11 MAR 1982
<i>W. Bradshaw</i> Clerk of the Senate	

50TH ANNIVERSARY OF THE COMMITTEE

- . Origin and Functions of the Committee
- . Legislation considered June 1981 to February 1982
 - . Members of the Committee 1932-1982
 - . List of Reports Nos 1 to 70
 - . Index to First to Seventieth Reports
 - . Appendices I to III

11 MARCH 1982

SENATE STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

MEMBERS OF THE COMMITTEE

Senator A.W.R. Lewis (Chairman)
Senator M.C. Tate (Deputy Chairman)
Senator N.T. Bonner
Senator J. Coates
Senator D.J. Foreman
Senator A.J. Missen
Senator M.S. Walters

PRINCIPLES OF THE COMMITTEE

(Adopted 1932; Amended 1979)

The Committee scrutinises delegated legislation to ensure:

- (a) that it is in accordance with the statute;
- (b) that it does not trespass unduly on personal rights and liberties;
- (c) that it does not unduly make the rights and liberties of citizens dependent upon administrative decisions which are not subject to review of their merits by a judicial or other independent tribunal; and
- (d) that it does not contain matter more appropriate for Parliamentary enactment.

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STANDING COMMITTEE ON REGULATIONS AND ORDINANCES
SEVENTY-FIRST REPORT

1. The Standing Committee on Regulations and Ordinances has the honour to present its Seventy-first Report to the Senate. This Report marks the fiftieth anniversary of the Committee's establishment on 11 March 1932. In addition to its general report, which acquaints the Senate with the Committee's consideration of legislation since the Seventieth Report was presented to the Senate on 11 June 1981, the Committee considered it might be appropriate to give an account of its origin and functions. The Committee has also taken the opportunity in this Report to update the list of members of the Committee, Reports and the Index, last presented to the Senate in the Sixty-seventh Report which was tabled on 29 August 1979.

SECTION 1: ORIGIN AND FUNCTIONS OF THE COMMITTEE

2. The Senate has for long taken a considerable interest in the effective scrutiny of delegated legislation made under general regulation-making provisions of Acts of the Parliament. Indeed, it is fair to say that the Australian Senate is the world path-finder in the area of parliamentary control of executive acts under delegated authority.
3. As early as 1929, the quite natural desire of the executive to go about its business with minimal interference from the elected representatives of the people was challenged by the Senate, which recognised that extensive recourse to regulation-making power could usurp the legislative authority of the Parliament. Accordingly, the Senate resolved to establish a select committee which included in its terms of reference a requirement to examine and report on the executive power, enshrined

in legislation, to make regulations and other instruments governing the rights and liberties of the ordinary citizen.

4. Following consideration of the Committee's Report, the Senate resolved that parliamentary scrutiny of acts of the executive - well-intentioned though they might be - was imperative. The Senate therefore agreed, in 1932, to incorporate within its Standing Orders a mechanism for the appointment of a standing committee to examine all delegated legislation subject to disallowance by the Parliament.

5. It is to be noted that the standing committee was named the Standing Committee on Regulations and Ordinances. This title reflected the practice at the time that delegated legislation subject to disallowance was normally either a regulation or an ordinance: disparate instruments of executive authority were relatively unknown. With the growth of governmental activity, however, the variety of instruments which are subject to disallowance has increased. The Committee considered it necessary to examine these instruments and, following negotiations between the Committee and Ministers, welcome modifications to various instruments were made to accord with the Committee's suggestions. In 1979, the Committee's practice of examining instruments other than regulations and ordinances was formally recognised by amendment to the Standing Order under which it is established. The Standing Order now reads:

36A. - (1.) A Standing Committee, to be called the Standing Committee on Regulations and Ordinances, shall be appointed at the commencement of each Parliament.

(2) The Committee shall consist of seven Senators chosen in the following manner:

- (a) The Leader of the Government in the Senate shall, within four sitting days after the commencement of each Parliament, nominate, in writing, addressed to the President, four Senators to be members of the Committee.
- (b) The Leader of the Opposition in the Senate shall, within four sitting days after the commencement of each Parliament, nominate, in writing, addressed to the President, three Senators to be members of the Committee.
- (c) Any vacancy arising in the Committee shall be filled after the Leader of the Government or the Leader of the Opposition, as the case may be, has nominated, in writing, addressed to the President, some Senator to fill the vacancy.

(3.) The Committee shall have power to send for persons, papers and records, and to sit during Recess; and the Quorum of such Committee shall be four unless otherwise ordered by the Senate.

(4.) All regulations, ordinances and other instruments, made under the authority of Acts of the Parliament*, which are subject to disallowance or disapproval by the Senate and which are of a legislative character, shall stand referred to such Committee for consideration and, if necessary, report thereon. Any action necessary, arising from a report of the Committee, shall be taken in the Senate on Motion after Notice.

- 6. It is also noteworthy that the Standing Order does not set down firm guidelines governing the Committee's operation. However, the Committee adopted four principles suggested by the Select Committee which recommended its establishment, which, while slightly modified to

* A list of all types of instruments, and the relevant Acts under which they are made, is at Appendix I.

take account of legislative provision for review of the merits of administrative decisions, have remained unchanged in substance to the present day. These principles appear on the first page of each Report the Committee makes to the Senate.

7. As the principles indicate, the Committee has always been concerned to ensure that the policy aspects of delegated legislation do not intrude upon its primary task of protecting the individual. To that end, the Committee's evaluation of delegated legislation has never touched upon the merits of the parent legislation passed by the Parliament. The Committee's continuing concern, rather, is to achieve a balance between necessary executive functions, on the one hand, and the individual rights and liberties of citizens, on the other. Throughout its history, therefore, the Committee has concentrated on those provisions which have given administrators discretionary, unacceptable control over the day-to-day concerns of the people or which have attempted to remove personal liberties such as the right to refuse to give evidence on the grounds of self-incrimination, the right to require that the onus of proof be upon the prosecution rather than the defence, and the right to privacy - particularly in the area of searching premises without warrant and seizure of property.
8. The Committee has worked quietly but effectively for so long because of the sanction it has over executive decision-making. The ultimate power of the Parliament over delegated legislation lies in its capacity, provided for in the Acts Interpretation Act, to disallow most instruments. The Committee - and the Senate itself - have an admirable record of judicious use of this power, in that any motion for disallowance which has been moved on the Committee's behalf has been accepted by the Senate despite the will of the Government concerned. As a result, Ministers are wary of showing any intransigence

in the private negotiations undertaken by the Committee. The Committee therefore has an outstanding record of considerable influence upon executive actions.

9. Nevertheless, the Committee has continually sought ways to enhance its scrutinising function. It therefore took the initiative in 1979 to arrange a conference of Westminster-style parliaments which had established similar delegated legislation committees. This conference - the Commonwealth Conference of Delegated Legislation Committees - took place in September-October 1980, and representatives attended from the parliaments of Britain; Canada - both federal and provincial legislatures; African nations such as Zambia and Ghana; India; Papua New Guinea and all the Australian States. It was clear from the conference that, while various legislatures have their own methods of dealing with delegated legislation, the commitment to ensure Parliamentary control of executive actions is a common feature of the legislatures represented. As the carefully-thought-out papers produced, and the stimulating discussion which ensued, indicated, parliaments throughout the Commonwealth will not readily relinquish powers they already hold. It also became apparent that each legislature had much to learn from other legislatures working within nominally the same Westminster-based parliamentary system.
10. Since that meeting, the Senate Standing Committee has been giving consideration to matters, raised in the course of the conference, which are of great significance to its own operations.
11. For example, it is now examining the more extensive use of the affirmative resolution procedure in relation to delegated legislation. This procedure is already available within the Federal system to give Parliamentary approval to certain executive acts before they come into operation. Examples include proposals to proceed with various stages of the New Parliament House. However,

the affirmative resolution procedure is rarely used in relation to "normal" delegated legislation, and the Committee is now examining the desirability of extending its use to some of these instruments.

12. A second point taken up by the Committee is the examination of delegated legislation in draft form before it is made. Already, the Committee has achieved some measure of success in persuading Ministers - who, after all, do not like the embarrassment of Parliamentary disapproval of their executive acts - to give the Committee the opportunity of considering their proposed executive acts in draft before they come into effect. This development in the Committee's procedures is at an experimental stage, and no firm views as to its efficacy have yet been determined.

13. Another problem, which up to the present the Committee has found it virtually impossible to resolve, is the difficulty involved, for both the Committee itself and the executive, in giving effect to the Committee's suggestions without the requirement to make a new instrument. At present, for convenience, the Committee generally accepts a Government's undertaking to make the required amendment at a later time, without proceeding to disallowance. However, substantial delays in giving effect to the Committee's recommendations have caused the Committee concern. The Committee is therefore examining the advantages of formally recommending amendments to delegated legislation, to be made immediately by the Parliament. This would obviate the necessity of recommending disallowance of the entire instrument, for want of agreement on one small but significant section, and should prevent the delays in the Government's making new instruments, at a much later time, to accord with the Committee's proposals. There are, however, significant disadvantages to this procedure, most notably the extension of Parliament's legislative authority to amend executive rules made under powers delegated to government by Parliament.

14. The last proposal emanating from the conference discussions, to which the Committee is giving its attention, is the most important power, provided under statute in Tasmania, that, when the Parliament is not sitting, the Tasmanian legislature's Subordinate Legislation Committee's recommendations concerning delegated legislation must be accepted or the operation of the instrument is suspended. This proposal would have advantages for both government and the parliament. Clearly, it would be of great advantage to government to know that delegated legislation of which it was unsure would be scrutinised immediately by the Committee. For the Committee's part, such a procedure would ensure that objectionable legislation would be subjected to immediate examination, and parliamentary control over the operation of such legislation would be maximised.
15. Given the significance of the issues involved, the Committee has not yet reached conclusions on the merits of the individual proposals. Recently, it has received the considered views of the Attorney-General in relation to all the matters raised at the conference, and will continue its evaluation of the applicability of the procedures to its operations, taking the Attorney-General's comments into account.
16. Another matter, which has concerned the Committee over a substantial period, is the blunt weapon, referred to ruefully at paragraph 33 of its Seventieth Report, it has available to it to disallow Regulations in order to censure departments for delay in conferring a benefit upon individuals. Further, it is difficult for the Committee to recommend disallowance of an instrument which, while conferring benefits upon certain individuals, also has the effect of penalising others under the same provision.
17. The Attorney-General, in his letter to the Committee, has suggested the possibility of extending the power of either House of the Parliament to disallow a part of a Regulation

(as he puts it, "necessarily a self-contained part"). The Committee commends this forward-thinking approach to the problem, and will consider the Attorney-General's proposal as part of its review of the Committee's existing procedures.

18. Apart from these somewhat revolutionary concepts - in the Australian federal context - certain advances in the Senate's scrutiny of delegated legislation have been achieved since the Commonwealth Conference on Delegated Legislation Committees was held. On 26 May 1981, the Attorney-General announced that the Government had agreed to amend the Acts Interpretation Act - the statutory authority for the Parliament's control of delegated legislation - to accord with the Committee's recommendations. (See Appendix III to Report.) The measures agreed to, recommended in reports dating as far back as 1974, though seemingly of a machinery nature, will nonetheless have the effect of further asserting the Parliament's right to scrutinise and control executive actions under parent Acts.

SECTION 2: LEGISLATION CONSIDERED JUNE 1981 TO FEBRUARY 1982

MATTERS ARISING FROM PREVIOUS REPORT

(a) Defence Force Regulations (Statutory Rules 1980 No. 95)

19. The Committee reported to the Senate that it had written to the Minister for Defence requesting consideration of the insertion of a review provision where applicants are aggrieved by a decision of the Minister authorising payment to an applicant where he is satisfied that the applicant was the owner of unclaimed property which has been sold. It further reported its concern that advice sought by the Department of Defence from the Attorney-General's Department had not been forthcoming.
20. On 22 September 1981, the Minister Assisting the Minister for Defence advised that a Government decision, made since the Regulations and the Committee's comments,

to establish the office of the Defence Force Ombudsman should ensure that a sufficient mechanism exists for review of decisions taken pursuant to the Regulations. The Minister indicated that, if the Committee were not satisfied with this procedure, he would pursue the question of review by the Administrative Appeals Tribunal.

21. The Committee considers that an appeal to the Ombudsman provides a practical solution to the matters of concern to it, but will keep the procedure under review and seek a formal amendment at a later time if the current arrangements are not satisfactory.

(b) A.C.T. Traffic (Amendment) Ordinance (No. 9 of 1981)

22. The Committee reported that the Minister had given undertakings that a general Ordinance, incorporating a code covering the law relating to parades, processions and assemblies, generally, in the Australian Capital Territory would be made prior to Anzac Day 1982, and that the Traffic (Amendment) Ordinance would not operate in 1982. The Minister also agreed to submit the draft general Ordinance to both the Committee and the A.C.T. House of Assembly prior to its coming into operation.
23. Preparation of the Ordinance is at an advanced stage, and the Committee has already held detailed discussions with officers of the Department of the Capital Territory and the Attorney-General's Department. The Committee understands that the draft Ordinance has been made available to the A.C.T. House of Assembly. In addition to its preliminary consultations in relation to the draft Ordinance, the Committee will examine the Ordinance, in accordance with its normal practice, after it has been made.

(c) Substantive Territory Legislation

24. Following its consideration of the A.C.T. Health Commission (Amendment) Ordinance, contained in Ordinance No. 6 of 1981, the Committee reported to the Senate that it was considering the most appropriate means of drawing the Senate's attention to matters which, while not necessarily warranting disallowance under the Committee's principles, are nonetheless of such significance as to merit substantive discussion in the Senate.
25. At present, the Committee is considering papers prepared at its request by the former Deputy-Chairman, the Hon. J.L. Cavanagh, and its Legal Adviser, and is awaiting the Attorney-General's comment on the question. It will make a further report to the Senate at a later time.

(d) Defence Determination No. 11 of 1981

26. The Committee expressed concern at the undue delay in extending payment of Education Allowance to a member of the Defence Force who, on posting, either places his child at a school in an area where he reasonably expects to be next posted and is not so posted, or leaves his child at a school in the old locality with the reasonable expectation of returning there on his next posting and is not so posted.
27. Subsequently, the Minister advised the Committee that the Determination as made did not cover the situation it was intended to cover. The Minister and the Department of Defence took the view that, despite the retrospectivity involved - for which the Committee had previously criticised the Department - a new determination should be made, on the ground that the interests of an individual member of the Defence Force should not be prejudiced by administrative error. The Committee agreed with this view, and Determination No. 48 of 1981 was made on 15 October 1981 to overcome the problem. The Determination was

considered by the Committee in the normal way. The Committee appreciated the courtesy of the Minister Assisting the Minister for Defence, and Departmental officers, in this matter.

28. Further, the Committee takes the opportunity to commend the Ministers, and the Department of Defence, for their general attitude to the Committee. Quite clearly, the Ministers and departmental officers have taken notice of some of the Committee's more trenchant criticisms, over a period of time, of delays in conferring benefits upon members of the Defence Forces. The Department appears, on the one hand, to be making efforts to ensure that delays are minimised and, on the other, to give the Committee detailed explanations - even when, as in this case, some embarrassment is involved - of the reasons for delay or oversight in relation to the Determinations made.

FAMILY LAW (INSTITUTE OF FAMILY STUDIES) REGULATIONS

29. The Committee, in considering the Family Law (Institute of Family Studies) Regulations, contained in Statutory Rules 1981 No. 59, noted that a requirement that the Institute report to Parliament was contained in the Regulations, rather than in the Family Law Act. The Committee therefore requested the Attorney-General to consider including the reporting requirement in proposed amendments to the Act.
30. On 25 August 1981, the Attorney-General advised that he agreed that it would be desirable to include the reporting requirement in the Act, rather than in subordinate legislation, and undertook to include the provision in an amending Bill. The appropriate provision is contained in the Family Law Amendment Bill 1981, presented to the Senate on 20 October 1981.
31. The Committee appreciates the expeditious fulfilment of the Attorney-General's commitment.

STATES (TAX SHARING AND HEALTH GRANTS) REGULATIONS

32. As indicated to the Senate on 27 October and 11 November 1981, the Committee was concerned with two aspects of these Regulations (Statutory Rules 1981 No. 99). The first related to whether the Regulations accorded with the intention of the legislation under which they were made, while the second concerned the absence of notification of rights to persons who may be eligible for services without charge as hospital patients.
33. Following consultations with the Minister, the Committee was satisfied that the Regulations accorded with the intention of the legislation, and that practical, and possibly legal, difficulties stood in the way of adopting the Committee's suggestion in relation to the notification of rights.
34. When withdrawing the notice of disallowance of these Regulations, the Committee indicated its concern that the agreement between the Commonwealth and the States, to which the parent legislation has given effect, may itself be inadequate in regard to the notification of rights of persons, and has expressed this view to the Minister for Health.

TERTIARY EDUCATION COMMISSION REGULATIONS (AMENDMENT)

35. The Committee, in considering these Regulations (Statutory Rules 1981 No. 134), noted that Regulation 8, which deleted the College of Nursing, Australia, from the list of tertiary institutions for the purposes of the Commonwealth Tertiary Education Commission Act 1977, was retrospective in operation to 22 June 1977. No explanation of the retrospectivity was included in the Explanatory Statement attached to the Regulations. The Committee therefore sought advice from the Minister for Education on the reasons for the delay in making the Regulations.

36. The Minister advised that the College of Nursing was amalgamated with the Lincoln Institute of Health Sciences with effect from 1 January 1977. The Lincoln Institute is a college of advanced education for the purposes of the Tertiary Education Commission Act, and provision of Commonwealth financial assistance for the advanced education activities which were formerly the responsibility of the College of Nursing had been included in grants for the Lincoln Institute. The Minister indicated that the delay in deleting reference to the College of Nursing following amalgamation was the result of an administrative oversight.
37. In the light of the Minister's explanation, the Committee decided to take no further action in relation to the Regulations, but draws the retrospective provision to the attention of the Senate in accordance with the undertaking given in the Committee's Twenty-fifth Report.

REMUNERATION TRIBUNALS (MISCELLANEOUS PROVISIONS) REGULATIONS
(AMENDMENT)

38. The Committee considered these Regulations, contained in Statutory Rules 1981 No. 140, together with a letter from the Minister for Administrative Services explaining their retrospective operation to 28 March 1980. The Committee noted that the matter of payment to the Port Conciliators covered by the Regulations was brought to the attention of the Minister's Department on the date chosen for implementation of the allowance, and also noted the Minister's view that individual office-holders should not be penalised for the delays inherent in the process of consideration.
39. Following further consultations with the Minister, the Committee accepted that, in the circumstances, the date of operation of the Regulations was justified.

NATIONAL PARKS AND WILDLIFE REGULATIONS (AMENDMENT)

40. As reported to the Senate on 11 November 1981, when withdrawing the notice of motion to disallow the National Parks and Wildlife Regulations (Amendment) contained in Statutory Rules 1981 No. 197, the Committee had been concerned to ensure that a right of review of decisions of the Director of National Parks and Wildlife be inserted in the Regulations. As previously reported to the Senate (70th Report, paras 21-22), a similar right of review of certain decisions of the Great Barrier Reef Marine Park Authority was inserted in the Capricornia Section Zoning Plan.
41. Following consultations with the Committee, the Minister advised that a right of review to the Administrative Appeals Tribunal would be inserted in the Regulations.

MONEY LENDERS (AMENDMENT) ORDINANCE

42. The effect of this Ordinance is to exempt building and credit societies from provisions of the Money Lenders Ordinance governing contracts for loans at an interest rate above 12 per centum per annum, with retrospective effect to 1 December 1980.
43. As indicated to the Senate when the notice of motion for the disallowance of this Ordinance was withdrawn on 26 November 1981, the Committee was concerned with a number of aspects. Firstly, the operation of the Ordinance was made retrospective to 1 December 1980. Secondly, the Committee entertained doubts as to the adequacy of the Explanatory Statement initially provided with the Ordinance. Thirdly, it was concerned at the delays which had occurred in making the Ordinance. Finally, the Committee was concerned about the selective operation of the Ordinance, in that the legal rights of borrowers from building and credit societies were being diminished, while the rights of borrowers from other institutions were not similarly affected.

44. Following detailed explanations from the Attorney-General and, in particular, having regard to the consequences which could result from the disallowance of the Ordinance, the Committee decided not to proceed with the notice of disallowance. However, the Committee remains concerned about two aspects of the making of the Ordinance.
45. Firstly, the Committee remains dissatisfied regarding the Explanatory Statement accompanying the Ordinance. After close examination, the Committee deduced that the effect of the Ordinance was to exempt, from 1 December 1980, building and credit societies from the effects of the increase in interest rates above 12 percent on contracts taken out between that time and the making of the Ordinance. However, the purpose of the Ordinance, as stated in the explanation provided, was:
- "... to remove the need for the duplication of the regulation of [building and credit] societies."
- While the retrospective operation of the Ordinance was referred to in the Statement, there appeared to the Committee to be no immediately obvious connection between the retrospectivity and the stated purpose of the Ordinance.
46. Secondly, the Committee was concerned about the administrative delays in making the Ordinance, which came into effect on 3 September 1981. The Attorney-General advised the Committee that the problem giving rise to the making of the Ordinance was drawn to his Department's attention on 22 January 1981, and that a draft Ordinance was sent to the A.C.T. House of Assembly on 19 May. The House of Assembly did not deal with the Ordinance until 27 July, and its views were not made known to the Attorney-General until 17 August 1981. While the Committee appreciates that the House of Assembly's consideration was outside the Attorney-General's control, in view of the seriousness of the consequences for building and credit societies of delays in making the Ordinance the Committee considers that the time taken initially in making the draft instrument was inordinately long.

47. The Committee raised both these matters with the Attorney-General, who expressed his regret at the delay in making the Ordinance, and indicated his view that the Committee's criticism of the Explanatory Statement was not justified. However, the Committee now reports in greater detail on the disquiet which gave rise to the statement made in the Senate.

ADMINISTRATIVE DECISIONS (JUDICIAL REVIEW) REGULATIONS

48. These Regulations, contained in Statutory Rules 1981 No. 274, continue in force a limitation, imposed in the Schedule to the Administrative Decisions (Judicial Review) Act, on the rights of certain individuals to receive reasons for decisions on promotions, transfers and appeals in the Australian Public Service.
49. The Committee was advised by the Acting Attorney-General that the Government was considering the issue of giving reasons for promotion and transfer decisions within the context of the new procedures contained in the Public Service Acts Amendment Bill 1981. A notice of disallowance given by the Committee on 24 November 1981 remains on the Senate Notice Paper, pending further advice of Government decisions on the issues involved.

EXPLANATORY STATEMENTS

50. In pursuing its work of examining delegated legislation on behalf of the Senate, the Committee is dependent upon Explanatory Statements, provided with the instruments, for the reasons for making the legislation, and the effects it might have, in the same way as the Senate itself is dependent upon Ministers' Second Reading speeches and Explanatory Memoranda on parent legislation.
51. During this past year, the Committee has noted some deficiencies in the Statements, ranging from what the Committee regarded as inadequacies in stating the purpose of

the instrument, adverted to in paragraph 45 above, through omissions of reasons for provisions - necessitating otherwise avoidable correspondence with Ministers, as evidenced in paragraph 35 above - to inadequate descriptions of features of provisions (for example, the Student Assistance Regulations contained in Statutory Rules 1981 No. 341, which by Sub-regulation 2(c) expanded eligibility criteria for "independent student" status, thus conferring a significant benefit on certain persons).

52. In view of the fact that matters of concern to the Committee, and the principles under which it operates, are well understood to those involved in the preparation of delegated legislation, it appears to the Committee that more comprehensive and detailed statements, where appropriate, would assist it in its operations, thereby lessening the burden on both the Committee and Ministers.

UNIFORM COMPANIES LEGISLATION

53. For some time, the Committee has been corresponding with the Chairman of the Queensland Subordinate Legislation Committee concerning the amendment of State Companies Acts by regulation, rather than by parent Act ("Henry VIII Clauses").
54. A further problem of concern to both Committees, and indeed to all Australian Delegated Legislation Committees, is their relative impotence in considering Regulations made under the uniform Companies legislation, in that any suggestions for change, made under the Committees' principles, would need to be considered further by the Ministerial Council which must agree to such changes. Thus, the pressure on Committees to agree to the Regulations without comment is great indeed.
55. Two encouraging developments in relation to both the "Henry VIII Clause" problem for the States, and the consideration of Regulations, may now be reported. Firstly,

this Committee wrote to the Minister for Business and Consumer Affairs, forwarding copies of correspondence between the Senate and Queensland Committees. Following consideration of the correspondence, the Minister agreed to refer the "Henry VIII Clause" problem to the Ministerial Council. This Committee awaits his reply before commenting further on this aspect.

56. So far as Regulations are concerned, the Minister paid the Committee the courtesy of referring to it the most recent Companies Regulations in draft form. The Committee examined the draft Regulations and reported to the Minister that, as at present drafted, they did not offend against its principles. While such initial examination would not preclude the Committee's taking action upon the final Regulations, if the need should arise, the early examination of the Regulations in draft has ensured that the constraints identified in paragraph 54 above have been obviated in this case.

UNDERTAKINGS BY MINISTERS

57. The Committee expresses its appreciation of the co-operation extended to it by Ministers and their Departments. For the information of the Senate, a report of progress made in the fulfilment of outstanding undertakings listed in the Committee's 66th, 69th and 70th Reports is attached as Appendix II. Also appended is a summary of recommendations of the Committee, other than recommendations for amendment or review of particular pieces of delegated legislation, and action taken or foreshadowed in relation to them.



Quentin Lewis

SECTION 3: MEMBERSHIP OF THE COMMITTEE 1932-1981

Note: Prior to 1966 the Committee was appointed at the beginning of each session. Since 1966 it has been appointed at the beginning of each Parliament, which is determined by the duration of the House of Representatives. Where a session or a Parliament was terminated, the Committee is assumed to have remained in existence until the day before the opening of the following session of Parliament. In the case of a dissolution of the Senate, the Committee terminates at the dissolution. Where members were appointed to successive Committees, the period between the end of one Committee and the appointment of the next is not shown.

The following Senators have served as Chairmen of the Committee:

Colebatch, Sir Hal P. 4.5.32 to 20.3.33
 Brennan, T.C. 1.6.33 to 22.10.34
 Payne, H.J.M. 29.11.34 to 23.9.35
 Duncan-Hughes, J.G. 2.10.35 to 8.12.37
 McLeay, G. 8.12.37 to 17.11.38
 Collett, H.B. 17.11.38 to 17.5.39
 Wilson, K.C. 17.5.39 to 30.5.40
 McLachlan, A.J. 21.6.40 to 10.12.40
 Spicer, J.A. 10.12.40 to 22.9.43
 Large, W.J. 14.10.43 to 26.3.47
 Nash, R.H. 26.3.47 to 11.5.50
 Tate, J.P. 11.5.50 to 30.6.53
 Wood, I.A.C. 23.9.53 to 26.2.73
 Devitt, D.M. 15.3.73 to 11.11.75
 Wood, I.A.C. 26.2.76 to 30.6.78
 Missen, A.J. 24.8.78 to 24.11.80
 Lewis, A.W.R. 4.12.80 to -

The following Senators have served as members of the Committee:

Abbott, M. 26.9.35 to 29.6.37
 Armstrong, J.I. 27.9.38 to 19.11.40
 Arnold, J.J. 7.11.46 to 30.6.65
 Ashley, W. 2.12.37 to 27.9.38
 Aylett, W.E. 29.9.43 to 5.11.46
 Barnes, J. 17.3.32 to 25.11.32
 Bishop, R. 26.8.65 to 24.11.69
 Bonner, N.T. 17.8.78 to -
 Brennan, T.C. 17.3.32 to 22.10.34
 Brown, G. 26.9.35 to 29.11.37
 Brown, W.W.C. 7.3.73 to 21.8.75
 28.10.75 to 18.8.76
 Button, J.N. 18.7.74 to 11.11.75
 Byrne, C.B. 20.6.51 to 5.9.57

Nash, R.H. 29.9.43 to 12.12.51

O'Halloran, M.R. 24.11.32 to 30.6.35
O'Sullivan, N. 22.10.47 to 21.2.50

Payne, H.J.M. 26.5.33 to 23.9.35
Prowse, E.W. 15.8.62 to 26.8.65

Rae, A. 17.3.32 to 30.6.35
Rae, P.E. 15.9.71 to 26.2.73
Rankin, A.J.M. 22.10.47 to 21.2.50
Ryan, S.M. 24.2.76 to 17.8.78

Sandford, C.W. 15.3.62 to 11.4.62
Scott, D.B. 18.7.74 to 24.9.74
Seward, H.S. 16.9.53 to 23.7.58
Spicer, J.A. 28.11.40 to 22.9.43

Tangney, D.M. 29.9.43 to 22.10.47
Tate, J.P. 23.2.50 to 30.6.53
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3	General Report. Various regulations containing retrospective provisions contrary to Acts Interpretation Act. Telephone Regulations - reversal of onus of proof. Regulations not tabled within prescribed time.	31.10.35	S1 of 1934-35 Reprinted in 188 of 1969
4	General Report. The Committee's principles and methods of operation. Effects of previous Reports. Acts Interpretation Bill 1937. Trade Diversion Policy and regulations. Bound volumes of regulations. Effect of the Committee.	23.6.38	S1 of 1937-38 Reprinted in 188 of 1969
5	General Report. Advances to Settlers Regulations - ministerial powers. Numbering of Territory regulations. Norfolk Island Ordinances - provisions for disallowance. Legislation under the National Security Act and scrutiny thereof.	17.9.42	S1 of 1940-42 Reprinted in 188 of 1969
6	General Report. Review of National Security Legislation. Legal Adviser. Re-establishment and Employment Act - amendment by regulation. Norfolk Island Ordinances - provisions for disallowance.	30.4.47	S1 of 1946-47 Reprinted in 188 of 1969

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12	General Report. A.C.T. Companies Regulations - retrospectivity. Estate Duty Regulations - retrospectivity and delay in promulgation. Public Service Regulations - amount of expenditure provided.	20.5.57	S2 of 1957 Reprinted in 188 of 1969
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17	Public Service Regulations - retrospectivity and delay in promulgation.	5.10.61	S1 of 1961 Reprinted in 188 of 1969
18	Customs (Prohibited Imports) Regulations - ministerial discretion relating to prohibition of imports.	14.11.62	S1 of 1962 Reprinted in 188 of 1969
19	General Report. Customs (Prohibited Imports) Regulations - effect of 18th Report. Broadcasting and Television Regulations - powers of Broadcasting Control Board. Marriage Regulations - power to require information. A.C.T. Dental and Medical Practitioners Registration Regulations - liberty of the subject. A.C.T. Lake Burley Griffin (Temporary Control) Ordinance - ministerial powers. Territory legislation. Retrospectivity of regulations.	21.5.64	S2 of 1964 Reprinted in 188 of 1969
20	Christmas Island Tuberculosis Ordinance - liberty of the subject.	22.9.65	223 of 1964-65 Reprinted in 188 of 1969
21	Air Navigation (Buildings Control) Regulations - property rights of individuals.	3.5.66	293 of 1964-65-66 Reprinted in 188 of 1969

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22	A.C.T. Advisory Council Ordinance - independence of members from ministerial control.	29.9.66	329 of 1964-65-66 Reprinted in 188 of 1969
23	A.C.T. Freehold Land (Subdivision and Use) Ordinance - property rights of individuals and ministerial discretion.	5.10.67	147 of 1967 Reprinted in 188 of 1969
24	A.C.T. City Area Leases Ordinance - ministerial discretion relating to leases.	5.10.67	148 of 1967 Reprinted in 188 of 1969
25	Retrospectivity and delay in promulgation of regulations.	28.11.68	243 of 1968 Reprinted in 188 of 1969
26	General Report. Principles and Procedure of the Committee. Various Norfolk Island Ordinances - liberty of the subject. A.C.T. Companies (Life Insurance Holding Companies) Ordinance - defence to prosecutions. A.C.T. Sewerage Rates Ordinance - ministerial discretion regarding levy of rates. Retrospectivity of financial regulations. Effect of some previous reports.	23.9.69	186 of 1969 Reprinted in 188 of 1969
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39	Certain regulations rendered invalid by a judgment of the High Court. Committee's attitude to questions of vires.	23.3.72	24 of 1972
40	Naval Financial Regulations - administrative discretion, unclear drafting.	31.8.72	126 of 1972
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42	Retrospectivity of regulations relating to the Defence Services.	24.10.72	217 of 1972
43	General Report. Retrospective scrutiny of regulations and ordinances. Air Force Regulations and Public Service Regulations - administrative discretion relating to pay. Various A.C.T. Ordinances - administrative discretion and liberty of the subject. Certain Norfolk Island Ordinances - liberty of the subject. Conciliation and Arbitration Regulations - ministerial discretion relating to legal aid. Native Members of the Forces (Torres Strait Islands) Regulations - administrative discretion relating to allowances. Meat Export Control (Licences) Regulations - information required. Appendix on the operation of the Committee.	27.10.72	220 of 1972

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45	Members of the Committee 1932-73. List of reports. Index to First to Forty-fourth Reports.	7.7.73	101 of 1973
46	A.C.T. Landlord and Tenant Ordinance - powers of Rent Controller.	23.10.73	238 of 1973
47	General Report. Honey Industry (Election of Board) Regulations - powers of returning officers. Naval Reserve Cadets Regulations - discharge of cadets. Matrimonial Causes Rules - disallowance by the Senate. Navigation (Courts of Marine Inquiry) Regulations - alteration of questions before courts. Northern Territory Supreme Court Legal Assistance Rules - report to court by police. Various regulations under the Customs Act - powers of Delegation. Banking (Foreign Exchange) Regulations - power of courts to order forfeiture. Regulations under the Customs Act - administrative discretions. Defence Forces Financial Regulations - retrospectivity. Regulations providing allowances of members of statutory authorities - retrospectivity. A.C.T. Prices Regulation Ordinance - liberty of the subject. A.C.T. Police (Disciplinary Provisions) Ordinance - reappointment of successful appellants. A.C.T. Companies Ordinance - power to exempt companies from Ordinance. A.C.T. Consumer Affairs Ordinance - immunity of officers from legal proceedings. Christmas Island Police Force Ordinance - search warrants. Acceptance of Ministerial undertakings by the Committee.	3.12.73	290 of 1973

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50	General Report. Work of the Committee. Undertakings given by Ministers. Papua New Guinea (Staffing Assistance) (Terms and Conditions of Employment) Regulations - rights of appeal. Papua New Guinea (Staffing Assistance) (Superannuation) Regulations - benefits of officers. Apple and Pear (Conditions of Export) Regulations - rights of licensees. Conciliation and Arbitration Regulations - particulars of charges. Student Assistance Regulations - rights of appeal. Commonwealth Scholarships and Awards Regulations - retrospectivity; Scholarships Act. Superannuation (Prescribed Rates of Interest) Regulations - rights of provident fund contributors. Defence Force Financial Regulations - retrospectivity. A.C.T. Pyramid Selling Ordinance - liability of officers of company. A.C.T. Seaweed Protection Ordinance - offences. A.C.T. Motor Traffic Ordinance - exemption of vehicles from Ordinance. A.C.T. Unclaimed Monies Ordinance - delegation of powers. A.C.T. Legislative Assembly (Election) Regulations - registration of political parties. Christmas Island Importation of Dogs and Cats Ordinance - forfeiture and destruction of prohibited imports. Notices of motion for disallowance not disposed of when House of Representatives dissolved. Effect of previous reports. Appendix on the operation of the Committee.	11.12.74	271 of 1974

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51	General Report. Postal Services Regulations and Postal By-laws - powers of officers to open mail. Postal By-laws - compensation for lost articles. Telecommunications (General) By-laws - immunity of Commission from legal proceedings. Census Regulations - information required. Apple and Pear (Conditions of Export) Regulations - rights of licensees. Customs (Prohibited Exports) Regulations - export of historical items. Patents Regulations - fees. A.C.T. Motor Traffic Ordinance - reversal of onus of proof. Canberra Hospitals (Charges) Regulations - fees for compensation patients. A.C.T. Liquor Ordinance - rights of licensees. A.C.T. Lake Burley Griffin Ordinance - power to close Lake.	4.3.76	4 of 1976
52	Cocos (Keeling) Islands Lands Acquisition Ordinance - power to compulsorily acquire land.	18.3.76	5 of 1976
53	A.C.T. Misrepresentation Ordinance - misrepresentation in contracts; reversal of the onus of proof; matter more appropriate for Parliamentary enactment.	4.5.76	63 of 1976
54	A.C.T. Manufacturers' Warranties Ordinance - matter more appropriate for Parliamentary enactment.	4.5.76	64 of 1976
55	A.C.T. ordinances containing substantive legislation.	27.5.76	126 of 1976
56	Various retrospective regulations.	2.11.76	277 of 1976
57	General Report. Family Law Regulations - offences; court orders; sequestration. Defence Force Regulations - delegation of powers. Australian Rifle Club	3.12.76	353 of 1976

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58	Undertakings by Ministers to amend regulations and ordinances.	11.10.77	215 of 1977
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60	Defence Force (Salaries) Regulations - remuneration of officers.	13.4.78	17 of 1978

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61	General Report. Remuneration Tribunals (Members' Fees and Allowances) Regulations - remuneration of the tribunals. National Parks and Wildlife Regulations - powers of officers. Naval Financial Regulations and Air Force Regulations - administrative discretion. Defence Force (Salaries) Regulations - Sixtieth Report. Federal Court of Australia Regulations - remission of fees. Australian National Railways General By-law - offences; powers and immunities of Commission; onus of proof. A.C.T. Physiotherapists Registration Ordinance - witnesses' fees.	8.6.78	18 of 1978
62	Undertakings by Ministers to amend regulations and ordinances. Standing Order 36A: matters referred to the Committee.	28.9.78	203 of 1978
63	Historic Shipwrecks Regulations - offences. Superannuation (Allocation of Previous Fund) Regulations - rights of contributors. Superannuation (Additional Pension) Regulations - retrospectivity.	24.10.78	275 of 1978
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67	<p>Members of the Committee 1932-1979. List of Reports. Index to First to Sixty-sixth Reports.</p>	29.8.79	179 of 1979
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69	<p>General Report. Australian Federal Police (Discipline) Regulations - rights of members accused of offences. Census Regulations - matters contained in census. Overseas Students Charge Collection Regulations - exemptions from charge. Australian Military Regulations - compensation for damage to property. Retrospective legislation. A.C.T. Motor Traffic Ordinance - enforcement of wearing of seat belts by children. A.C.T. Court of Petty Sessions Ordinance - appeals by the Crown. A.C.T. Flammable Liquids Ordinance - onus of proof. A.C.T. Consumer Affairs Ordinance - disclosure of information to courts. Christmas Island Census and Statistics Ordinance - powers of entry and search. Form of Summonses. Conference of Delegated Legislation Committees.</p> <p>Appendices:</p> <ol style="list-style-type: none"> 1. Outstanding undertakings by Ministers. 2. List of recommendations contained in Reports. 	15.9.80	155 of 1980
70	<p>General Report. Matters arising from previous Report. Audit (Exempt Accounts) Regulations - exemption of accounts from audit. A.C.T. Nature Conservation Ordinance - offences and penalties; powers of entry and search; admissibility of evidence. Customs (Prohibited Imports) Regulations - right of review. Great Barrier Reef Marine Park - Capricornia Section Zoning Plan - right of review. Defence Force Regulations - right of review. A.C.T. Traffic (Amendment) Ordinance. A.C.T. Health Commission (Amendment) Ordinance - matters of substantive nature to be reported to Senate. Retrospective legislation. Consideration of draft delegated legislation. Undertakings by Ministers. Retirement of Deputy Chairman.</p> <p>Appendices:</p> <ol style="list-style-type: none"> 1. Outstanding undertakings by Ministers. 2. List of recommendations contained in Reports. 	11.6.81	138 of 1981

SECTION 5: INDEX TO THE FIRST TO SEVENTIETH REPORTS, INCLUSIVE

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2. Particular Ordinances and Regulations of Territories are entered under the name of the Territory.

3. References are as follows: Report no./paragraph no.

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*zoning plans, marine park	Great Barrier Reef Marine Park Act s33	
amendments of schemes (Minister for Business and Consumer Affairs, grants to States, prices of petroleum products)	States Grants (Petroleum Products) Act s7A	
*plans of management	National Parks and Wildlife Conservation Act s12	4
suspension of member of commission	Aboriginal Development Commission Act s17	4
principles (Minister for Primary Industry, industry quotas)	Dairy Industry Stabiliz- ation Act s11A	4

NOTES

This list does not include matters subject to approval or affirmation by either House of the Parliament, under, for example, Australian Capital Territory Representation (House of Representatives) Act s17, Commonwealth Electoral Act s24, Parliament Act s5, States Grants (Petroleum Products) Act s4.

- * Instruments at present examined by the Committee.
- 1 Instruments published as statutory rules pursuant to the Statutory Rules Publication Act.
- 2 Some Acts make special and unusual provisions relating to regulations, for example, Environment Protection (Nuclear Codes) Act s12, Health Insurance Act s4(6), National Health Act s55C, Representation Act s13, Quarantine Act s87.
- 3 These provisions have either not been used at all, or used very infrequently.
- 4 These are recent provisions, enacted after 1975.
- 5 This ordinance has been repealed, but an undertaking has been given to replace in part its disallowance provisions.

26 November 1981

APPENDIX II

REPORT ON UNDERTAKINGS BY MINISTERS TO AMEND OR
REVIEW DELEGATED LEGISLATION

A Listed in the 66th Report (June 1979)

- 1 Postal Services Regulations: provisions allowing the opening of mail by officers: undertaking given 5 November 1975. This undertaking was delayed by the consideration of the opening of mail by the Law Reform Commission and the Royal Commission on Drugs. The responsible Minister agreed in February 1979 not to await the reports of those bodies and to proceed with the promised amendments. In April 1980 the Minister reported that difficulties had been encountered in preparing the amendments. These difficulties were the subject of a hearing of various officers on 17 April 1980. The officers considered that there were no substantial difficulties preventing the speedy enactment of the amendments, with minor modifications. The Committee reported this conclusion to the Minister on 28 April 1980. In August 1980 the Minister advised that the amendments would proceed. Following further correspondence with the Committee, the Minister advised on 25 January 1982 that the proposed regulations had now been drafted and were being printed for submission to the Executive Council.
- 2 Regulations under the Customs Act: rights of appeal against administrative acts: undertaking given 16 March 1976. This matter is partly still under consideration by the Administrative Review Council. In August 1979 the Council reported that it had sent to the Government the Report on the Customs (Import Licensing) Regulations, and in November 1979 reported that it would be 'well into 1980' before the remaining matters were concluded. A further letter from the Council advised that considerable delays had occurred in concluding the reference. The Minister for Business and Consumer Affairs indicated that further consideration of the Council's Report on Review of Import Controls and Customs By-laws Decisions would be deferred until the Industries Assistance Commission has reported on the Customs by-law system. The Council's Annual Report for 1980-81 indicates that a working party on the remaining matters has been established in conjunction with the Department of Business and Consumer Affairs and the Attorney-General's Department, and the Council anticipates that a report will be completed during the coming year. (See also Part C of Appendix II: Customs (Prohibited Imports) Regulations.)

- 3 A.C.T. Sale of Motor Vehicles Ordinance: powers of registrar to determine disputes: undertaking given 20 October 1977. In January 1981 the responsible Minister reported that draft amendments had been received by the Department, following completion of a review of the ordinance, but that further discussions with officers of the Attorney-General's Department were required. The Minister advised the Committee on 9 January 1982 that the proposed amendments to the Ordinance have been prepared and that he expected that the draft Ordinance would be considered by the House of Assembly on 8 February 1982.

B Listed in the 69th Report (September 1980)

- 1 A.C.T. Poisons and Narcotic Drugs Ordinance: offences and penalties: undertaking given 19 July 1979. The responsible Minister undertook to amend some provisions of the ordinance and review others. The Minister has now advised that omnibus legislation in preparation as a result of the implementation of recommendations of the Williams Report will reflect matters raised by the Committee. The Minister has also given a commitment that a draft of the proposed ordinance will be made available to the Committee.
- 2 A.C.T. Fuels Control Ordinance: powers of entry and search: undertaking given 9 October 1979. The Committee agreed that the amendments might be postponed pending a review of the Ordinance by the Department of the Capital Territory and the A.C.T. House of Assembly. The Minister advised on 28 October 1980 that drafting instructions had been sent to the Attorney-General's Department. On 9 January 1982 the Minister advised that the Fuels (Amendment) Ordinance was considered and approved by the A.C.T. House of Assembly on 30 November 1981. The undertaking was fulfilled by the Fuels Control (Amendment) Ordinance, contained in A.C.T. Ordinance No. 5 of 1982.
- 3 Norfolk Island Regulations: power of Parliament to disallow regulations not made by the local responsible executive: undertaking given 9 October 1978. In May 1980 the responsible Minister advised that the amendments were being drafted and on 29 May 1981 the present Minister for Home Affairs and Environment advised that a draft Bill had been sent to Norfolk Island with a view to its introduction into the Legislative Assembly. In a letter dated 3 March 1982, the Minister advised that consultations with the Assembly were continuing.
- 4 Cocos (Keeling) Islands Immigration Ordinance: entry of persons into the Territory: right of appeal: undertaking given 1 June 1979. In September 1980 the then Minister for Home Affairs advised that the ordinance would be redrafted in the light of the recommendations of the Administrative Review Council. A further letter from the

present Minister for Home Affairs and Environment indicated that complex policy issues have been identified, necessitating further consultations with the Attorney-General's Department. On 3 March 1982, he further advised that the Department is examining suitable guidelines for the exercise of necessary discretionary powers, and appeal procedures recommended by the Administrative Review Council. The Department is also examining the alternative solution of extending the Migration Act 1958 to the Islands. The issue of self-determination, to be worked out in conjunction with the United Nations and the residents of the Islands, is also pending.

- 5 Overseas Students Charge Collection Regulations: question of appeals to be reviewed by the Administrative Review Council: undertaking given 17 May 1980. The Council is at present considering these Regulations in the context of its examination of the Migration Act 1958 and Regulations. Its Annual Report for 1980-81 indicates that some delay has arisen because it has taken longer than expected to obtain the views of the Department of Immigration and Ethnic Affairs. In correspondence with the Committee, the Chairman of the Council advised that the difficulties it was experiencing were likely to be overcome and that a draft report on the first part of the reference was likely to be available early in 1982.
 - 6 A.C.T. Flammable Liquids Ordinance: onus of proof: undertaking given 6 May 1980. The undertaking was fulfilled by the Flammable Liquids (Amendment) Ordinance 1981, contained in Australian Capital Territory Ordinance No. 34 of 1981.
- C Listed in the 70th Report (June 1981)
- 1 A.C.T. Consumer Affairs Ordinance: Disclosure to a court of information gained under the Ordinance: undertaking given on 30 October 1980. The undertaking was fulfilled by the Consumer Affairs (Amendment) Ordinance 1981, contained in A.C.T. Ordinance No. 26 of 1981.
 - 2 A.C.T. Nature Conservation Ordinance: powers of conservator; powers of entry, search, and seizure; Parliamentary scrutiny of Regulations: undertakings given 26 November 1980, 25 February 1981. The Minister has advised the Committee that an amending Ordinance is at present being drafted.
 - 3 Customs (Prohibited Imports) Regulations: right of review: undertaking given 18 March 1981. This undertaking was fulfilled by Statutory Rules 1982 No. 44. The Minister has advised the Committee that it is the intention to include in subsequent amending Regulations further rights of review of certain decisions under these Regulations.
 - 4 A.C.T. Traffic (Amendment) Ordinance: repeal: code covering law relating to parades, processions and assemblies: undertakings given 13 May 1981: preparation of an Ordinance relating to a code for public assemblies is at an advanced stage.

APPENDIX III

RECOMMENDATIONS CONTAINED IN REPORTS
(OTHER THAN THOSE FOR AMENDMENT OR REVIEW
OF PARTICULAR REGULATIONS AND ORDINANCES)

- 1 The Acts Interpretation Act should be amended to remove the uncertainty about the position of a notice of motion for disallowance remaining on the Senate notice paper at the end of a Parliament when the House of Representatives is dissolved but the Parliament is not prorogued (50th Report, December 1974).
- 2 A statutory provision to the same effect as section 12 (6) of the Seat of Government (Administration) Act should be applied to instruments made under Acts of the Parliament, so that the disallowance of a repealing instrument would revive the repealed provisions, and so that the present doubtful position with regard to the effect of disallowance and repeal would be clarified (66th Report, June 1979).
- 3 All statutes providing for the disallowance of statutory instruments should be amended so as to incorporate the provisions in the Acts Interpretation Act relating to the voiding of instruments not tabled in time, the 'automatic' disallowance if a notice of motion is not resolved within a limited time, the opportunity for renewal of a notice of motion unresolved at the end of a session, and the prohibition upon the making of an instrument the same in substance as a disallowed instrument within six months (68th Report, November 1979).

In a Ministerial Statement to the Senate on 26 May 1981, the Attorney-General advised that amendments to the Acts Interpretation Act would be prepared to give effect to the substance of these recommendations.

- 4 The Senate Standing Committee on Constitutional and Legal Affairs should investigate the matter of statutory provisions imposing the burden of proof upon defendants in criminal cases (66th Report, June 1979).

The Constitutional and Legal Affairs Committee was asked to consider this matter at its convenience, and on 9 September 1980 the Senate agreed to a motion by the Chairman of that Committee that the matter be referred to the Committee. In its 70th Report the Regulations and Ordinances Committee indicated to the Senate that it had suggested to the

Attorney-General and the Chairman of the Australian Law Reform Commission that copies of correspondence with the Committee relating to admissibility of evidence improperly obtained might appropriately be referred to the Constitutional and Legal Affairs Committee for examination in the context of this inquiry. Both the Attorney-General and the Chairman of the Law Reform Commission agreed to make their letters available, and the correspondence was referred to the Committee on 17 August 1981.

- 5 The Senate Standing Committee on Constitutional and Legal Affairs should investigate the matter of the alteration of important entitlements by regulation (68th Report, November 1979).

The Committee has been asked to consider this matter at its convenience.

EXTRACT FROM THE MINUTES OF PROCEEDINGS OF THE JOINT COMMITTEE ON

STATUTORY INSTRUMENTS



DIE MARTIS 23^o FEBRUARII 1982

DEPARTMENT OF THE SENATE	
PAPER No.	
DATE PRESENTED	408
11 MAR 1982	
<i>Bradshaw</i>	
Clerk of the Senate	

Present:

L. Airedale
E. Cathcart
V. Dilhorne

Mr Richard Alexander
Mr Nicholas Baker
Mr Bob Cryer
Mr Christopher Murphy

Mr D Rippenal QC and Mr T R F Skemp CB in attendance.

Mr Bob Cryer, in the Chair.

The Order of Adjournment is read.

The proceedings of Tuesday 16th February are read.

The Committee deliberate.

A draft Report is laid before the Committee by the Chairman.

Resolved, That the Report be the Twelfth Report of the Committee.

Ordered, That the Chairman do make the Report to the House of Commons and that the Earl Cathcart do make the Report to the House of Lords.

Resolved, That the Committee send their congratulations and good wishes to the Standing Committee on Regulations and Ordinances of the Australian Senate on the occasion of its 50th Anniversary on 11th March 1982. - (Mr Christopher Murphy.)

Ordered, That the Committee be adjourned.