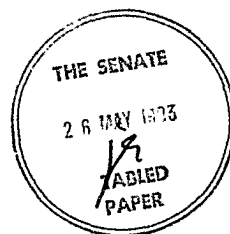


DEPARTMENT OF THE SENATE
PAPER No.
DATE PRESENTED 629
26 MAY 1993
Mary Evans

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE STANDING COMMITTEE ON
REGULATIONS AND ORDINANCES

NINETY-FOURTH REPORT
ANNUAL REPORT 1991-92



MAY 1993

© Commonwealth of Australia 1993

CONTENTS

	Page
Members of the Committee	v
Principles of the Committee	vii
Chapter 1	Overview and Statistics
	Introduction 1
	Membership 2
	Independent Legal Adviser 2
	Committee Staff 2
	Statistics 2
	Ministerial Undertakings 3
	Other Committee Activities 3
Chapter 2	Issues and Roles
	Senator Giles, 18 December 1991 Senate Weekly Hansard p.4852 5
	Senator Giles, 25 June 1992 Senate Weekly Hansard p.4542 11
Chapter 3	Guidelines on the Application of the Principles of the Committee
	Introduction 17
	Principle (a) Is delegated legislation in accordance with the statute? 17
	Principle (b) Does delegated legislation trespass unduly on personal rights and liberties? 25
	Principle (c) Does delegated legislation make rights unduly dependent on administrative decisions which are not subject to independent review of their merits? 31
	Principle (d) Does delegated legislation contain matters more appropriate for parliamentary enactment? 35

Chapter 4	Ministerial Undertakings Implemented	37
Chapter 5	Ministerial Undertakings Not Yet Implemented	45
Chapter 6	Political Broadcasts Regulations: Statement by Senator Giles	51
Chapter 7	Child Care Centre Fee Relief Eligibility Guidelines: Statement by Senator Giles	57
Chapter 8	Freedom of Information (Miscellaneous Provisions) Regulations: Statement by Senator Giles	61
Chapter 9	Complaints (Australian Federal Police) Regulations: Statement by Senator Giles	63
Chapter 10	Condolence Motion for Former Senator Ian Wood	67
Appendix 1	Classification of Legislative Instruments under the Heading “Miscellaneous” in Paragraph 1.8	75
Appendix 2	Disallowable Instruments tabled in the Senate 1991-92	77
Appendix 3	Alphabetical Index of Legislation and Delegated Legislation with Paragraph References 1991-1992	81

**SENATE STANDING COMMITTEE ON
REGULATIONS AND ORDINANCES**

MEMBERS OF THE COMMITTEE

JULY 1991 - JUNE 1992

Senator Patricia Giles (Chair)
Senator Bronwyn Bishop (Deputy Chairman)
Senator Mal Colston
Senator Bill O'Chee
Senator Kay Patterson
Senator Olive Zakharov

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.**

CHAPTER 1

OVERVIEW AND STATISTICS

Introduction

1.1 The Standing Committee on Regulations and Ordinances was established in 1932 and, apart from certain committees dealing with internal parliamentary matters, is the oldest Senate committee. Its functions, which are set out in the Standing Orders, are to scrutinise all disallowable instruments of delegated legislation to ensure their compliance with non-partisan principles of personal rights and parliamentary propriety.

1.2 The Committee engages in technical legislative scrutiny; it does not examine the policy merits of delegated legislation. Rather, it applies parliamentary standards to ensure the highest possible quality of delegated legislation, supported by its power to recommend to the Senate that a particular instrument, or a discrete provision in an instrument, be disallowed. However, this power is rarely used, as Ministers almost invariably agree to amend delegated legislation or to take other action to meet its concerns.

1.3 The general requirements of personal rights and parliamentary proprieties under which the Committee operates are refined by the Standing Orders into four Principles. In accordance with these Principles, 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.

1.4 The above Principles have only been amended once since 1932. This was in 1979, to reflect the establishment of the Administrative Appeals Tribunal, the first Commonwealth tribunal intended to review the merits of a comprehensive range of administrative decisions. This illustrates both the continuity and the flexibility of the Committee.

Membership

1.5 The Committee has six members, with a government Chair and a non-government Deputy Chairman. During the year there were no changes in the members, who are listed at the start of this and every other report of the Committee.

Independent Legal Adviser

1.6 The Committee is advised by an independent legal adviser, who reads and reports on every instrument of delegated legislation, comments on all correspondence received from Ministers, writes special reports and attends meetings of the Committee when required. Since 1982 the independent legal adviser has been Emeritus Professor Douglas Whalan of the Law Faculty of the Australian National University.

Committee Staff

1.7 The Committee secretariat, together with that of the other legislative scrutiny committee, the Standing Committee for the Scrutiny of Bills, has a smaller staff than other Senate committees engaged in the continuous review of an activity of the executive. The secretariat consists of a Secretary, a research officer, and two administrative officers.

Statistics

1.8 During the year the Committee scrutinised 1562 instruments. The following Table sets out the numbers and broad categories of these instruments.

TABLE

Statutory Rules	531
Public Service and Defence Determinations	449
Civil Aviation Orders	150
Education instruments	98
Primary Industries and Energy instruments	78
Community Services and Health instruments	66
Customs and excise instruments	33
Remuneration Tribunal Determinations	33
Superannuation instruments	30
Parliamentary Presiding Officers' Determinations	11
Miscellaneous instruments (details of which are in Appendix 1)	83
	<hr/>
	1562

Ministerial Undertakings

1.9 During the year Ministers and other law makers undertook to amend or review 54 different instruments or parent Acts to meet the concerns of the Committee. This number only includes undertakings to amend existing legislation. It does not include dozens of other undertakings to improve Explanatory Statements, include provisions for numbering and citation, or take administrative action. Details of undertakings are given in Chapter 3.

Other Committee Activities

1.10 On 16 May 1991 the Committee tabled its *Eighty-Ninth Report*, a Report on scrutiny by the Committee of regulations made under the *Sex Discrimination Act 1984*. This was a report on a matter which took seven years to finalise to the Committee's satisfaction.

1.11 On 12 December 1991 the Committee tabled its *Ninetieth Report*, the Annual Report for 1990-91. This was a general report on the work of the Committee during that period.

1.12 On 24 June 1992 the Committee tabled its *Ninety-First Report*, a Report on scrutiny by the Committee of delegated legislation made under Acts providing superannuation for Commonwealth employees. This was a report illustrating the importance of delegated legislation in contemporary Australian public administration.

1.13 As usual, the Chair made a detailed statement to the Senate at the end of each Sittings during the year. Senator Giles did this on 18 December 1991 and 25 June 1992. (See Chapter 2)

1.14 On 1 April 1992 Senator Giles made a statement to the Senate on regulations made following passage of the *Political Broadcasts and Political Disclosures Act 1991*. (See Chapter 6)

1.15 On 28 May 1992 Senator Giles made a statement to the Senate on the *Child Care Centre Fee Relief Eligibility Guidelines*. (See Chapter 7)

1.16 On 28 May 1992 Senator Giles made a statement to the Senate on certain regulations made under the *Freedom of Information Act 1982*. (See Chapter 8)

1.17 On 23 June 1992 Senator Giles made a statement to the Senate on certain regulations made under the *Complaints (Australian Federal Police) Act 1981*. (See Chapter 9)

1.18 On 25 February 1992 present and former members of the Committee spoke to the condolence motion for former Senator Ian Wood, a Chairman of the Committee for 22 years. (See Chapter 10)

CHAPTER 2

ISSUES AND ROLES

2.1 At the end of each sittings during the reporting year the Chair made a detailed statement to the Senate on the work of the Committee. The following are extracts from those statements.

Senator Giles, 18 December 1991, Senate Weekly Hansard, p.4852

2.2 “The work of the Committee during the present sittings involved the scrutiny of the usual large number of instruments of delegated legislation tabled in the Senate and subject to disallowance. Such delegated legislation was made under the authority of scores of parent Acts administered through every Department of State. It was made by the Governor-General, by Ministers, by officials, by statutory authorities and by courts and tribunals. Virtually every legislative scheme relies on delegated legislation to fill in administrative details of its operation, without which public administration would not be possible.

2.3 “The Committee acts on behalf of the Senate itself to scrutinise each of these instruments to ensure that they conform to the high standards of parliamentary propriety and personal liberties which the Parliament applies to Acts. Where the Committee detects what appears to be a defect in delegated legislation it writes to the Minister asking that the instrument be amended or other action taken. In cases of a serious breach of propriety or liberties, the Committee reports to the Senate and places a protective notice of disallowance upon the instrument, in case the Committee should wish to recommend such action. However, this final sanction is rarely invoked. Almost invariably the Minister agrees to take action, often including amendment, to meet the concerns of the Committee.

2.4 “During these sittings Ministers and other law makers have undertaken to amend 23 instruments or parent Acts to satisfy the Committee. This does not include undertakings to take administrative action or to provide numbering and citation for instruments. This illustrates the high level of cooperation which the Committee receives from Ministers in its non-partisan operations.

2.5 “During the sittings the Committee scrutinised 778 instruments, which is historically a high number. Of these, only 263 were from the Statutory Rules series, which are generally of a higher quality than other series. The rest of the instruments were the usual heterogeneous collection of ordinances, declarations, determinations, directions, rules, orders, plans, deeds, guidelines, notices, exemptions, licences, standards, codes of conduct, specifications and approvals.

2.6 “Each one of these instruments was scrutinised by the Committee under its four Principles, or terms of reference, which are provided for in the Standing Orders. The Committee detected prima facie defects in 94 out of the 778 instruments which it scrutinised. These defects are described below under each of the four Principles.

Principle (a)

Is delegated legislation in accordance with the statute?

2.7 “This Principle covers every aspect of parliamentary propriety. It is not merely a narrow legal check of technical validity. Nevertheless, the first requirement under this Principle is that delegated legislation should not have any technical or other defects apparent on its face. In this context an instrument will be defective if its drafting, presentation and access is less than that of an Act. In one instrument a commencement provision was left blank. In another a provision referred to an activity prohibited by paragraph (a) but there was no such paragraph. Another contained two provisions with the same number. One set of regulations contained 10 separate cross-reference errors. Two more instruments provided for review of non-existing provisions. One instrument was ineffective because it was tabled without a Schedule. Another had wrong attachments, another missing attachments. One regulation included blocks of ages numbered ‘25 to 30’, ‘30 to 35’, ‘35 to 40’ and so on. One instrument mentioned two Australian towns, each with five separate entries in the Australia Post Postcode, without indicating to which State the provision referred. One substituted copy of an instrument corrected an error in the first copy, but itself made another error. A number of instruments included spelling errors, including one in an international treaty. Another misspelt the name of a large Australian regional city. One instrument gave the wrong date for a consolidation. On the other hand, another instrument amended the principal instrument for the 344th time, but with a consolidation.

2.8 “It is a breach of parliamentary propriety if changes in taxes, levies, fees, charges or allowances are not explained. One instrument doubled an allowance paid to public servants, another doubled a particular fee. Another substituted an allowance with an identical sum. The same instrument increased one allowance for public servants from \$382.78 to \$382.79 and another from \$382.79 to \$382.80. Here the Committee was concerned that the public servants might be left without a penny to spend.

2.9 “Delegated legislation must effect an intention evident on its face or advised in the Explanatory Statement. One instrument prescribed a levy of 0.25 cents per unit. However, the Explanatory Statement twice advised that the purpose of the instrument was to prescribe 0.0025 cents and that the maximum permissible amount of levy under the parent Act was 0.0025 cents. Another Explanatory Statement advised that the purpose of the instrument was to allocate States Grants money to one State and one Territory, whereas the instrument allocated money to three States and two Territories. Another advised that the intention of the instrument was to allocate a stated sum of States Grants money, but the instrument allocated a different sum. Another Explanatory Statement advised that the

instrument was intended to provide only for officers of the Department to be authorised officers, although the instrument itself provided for any person at all.

2.10 “Delegated legislation often provides for public officials to delegate powers granted to them by that delegated legislation. Such delegation must be appropriate in all the circumstances. In one instrument, important powers could be exercised as delegates by certain senior officers, who were carefully and properly limited by rank. However, the power to appoint such officers could be delegated to any person at all. In another case a statutory authority could determine conditions to which certain standards were subject. This was virtually the same as determining the standards themselves. In another instrument one class of persons, for whom no qualifications or experience were prescribed, could appoint another class of persons for whom there were such requirements. In addition, the first class of persons could delegate most of their powers.

2.11 “The general scheme of delegated legislation may be so unusual on its face that the Committee will write to the Minister. In one instrument the Explanatory Statement advised that the instrument repealed regulations dealing with an international organisation of which Australia had ceased to be a member in 1980. Conversely, another instrument effected arrangements under an international treaty signed four years before. In another case, two separate but related series of delegated legislation had not been synchronised.

2.12 “The *Acts Interpretation Act 1901* provides that delegated legislation which operates retrospectively to the prejudice of any person other than the Commonwealth is of no effect. Many instruments of delegated legislation do operate retrospectively and in every case the Committee requires an assurance that no member of the public is adversely affected. In one case the Minister was unable to give such an assurance but advised that the parent Act expressly provided for such prejudice. The Committee then asked for a special Report from its Legal Adviser, Emeritus Professor Douglas Whalan, who concluded that, on balance, the Act could be said to have this effect. In another case there was apparent prejudicial retrospectivity affecting livelihood. In another there was possible prejudice because an instrument was expressed to commence on the date of another which may have commenced earlier.

2.13 “Every instrument of delegated legislation should be accompanied by an Explanatory Statement giving the background to the instrument and explaining its provisions. One instrument did not have an Explanatory Statement, although it dealt with the recovery of public money. Another Explanatory Statement did not advise that one of the purposes of the instrument was to implement undertakings given by the Minister to the Committee. Another Explanatory Statement gave incorrect references to provisions in the parent Act. Other Explanatory Statements were similarly brief, incomplete or inaccurate. In a related area, some instruments had no numbering or citation, without which delegated legislation may be confusing and imprecise.

2.14 “The Committee questioned other instruments which may have breached parliamentary propriety. One of these was so uncertain and subjective in its effect that it may have been defective. Another provided for notices which may have been legislative or partly legislative in effect and yet were not subject to disallowance by either House of the Parliament.

Principle (b)

Does delegated legislation trespass unduly on personal rights and liberties?

2.15 “The Committee interprets this principle in a broad and expanding fashion to ensure that delegated legislation does not operate adversely on any aspect of personal rights or liberties.

2.16 “From time to time delegated legislation fills in details of the administration of elections. Such details must provide full safeguards both for those standing for election and for those voting. One instrument provided that any voter may request a secret ballot. However, there was no requirement for voters to be informed of this right, although there was extensive provisions for them to be informed of other, seemingly less important, rights. Another provision required a voter to place the number ‘1’ in a box to indicate his or her preference. Nevertheless, another provision merely required the voter to indicate an intention, which appeared to indicate that a tick or a cross, a ‘yes’ or an ‘aye’ might be a valid vote. Another provision required only that the winner of an election be notified. There was no requirement for the losing candidates or even for the general body of voters to be informed, even though other information, such as a list of candidates, had to be publicly notified.

2.17 “The Committee looks closely at any offence provisions. Every sittings delegated legislation includes a number of strict liability offences, each one of which is questioned by the Committee. One such strict liability offence related to duties of employers. Another instrument replaced general offence provisions with specific penalties for each offence. This was an appropriate change, particularly as most offences, which had previously been strict liability, were now provided with a defence of reasonable excuse. Nevertheless, some provisions were still strict liability. Furthermore, there seemed to be no obvious reason why some of these provided for such liability, as they included offences for which a reasonable excuse would seem suitable. For instance, one strict liability offence did not take account of adverse weather conditions which would make it impossible to comply with the provision. Another instrument provided for vicarious liability, with adverse mandatory consequences affecting a person's livelihood flowing from such liability. This vicarious liability was imposed on the owner of a boat used previously to commit an offence, even if the offence had been committed when the boat had a previous owner. One instrument dealing with drug trafficking and the confiscation of the proceeds of drug trafficking seemed to provide for strict enforcement measures, although these may have been justifiable given the nature of the subject matter.

2.18 “Discriminatory legislation is a breach of personal rights and the Committee insists on a full explanation of such provisions. One instrument provided that the working age for males is up to 65 years while for females it is up to 60 years. Another expressly provided for factors such as nationality, sex, age and marital status to be taken into account when making decisions. Another included provisions which may have disadvantaged Australian companies in favour of foreign companies.

2.19 “Delegated legislation must not unreasonably affect a person's livelihood. The Committee not only ensures that decisions by public officials affecting livelihood are subject to appropriate review, but also that mandatory provisions do not operate adversely. One instrument appeared to provide that if a cheque from an applicant for an extension of a commercial privilege was dishonoured, then that privilege would automatically terminate. Another provided for methods of labelling which raised concerns about unnecessary costs imposed upon smaller producers. Numbers of recent instruments have provided for the facsimile transmission of mandatory information to public officials in place of existing manual methods. This is an appropriate change which should assist users. However, such changes should not prejudice smaller businesses who may wish to continue to use existing methods. The Committee questioned one instrument which provided for transmission of a form by post but for amendments of the form by facsimile.

2.20 “The right to privacy is an important aspect of personal liberties. Delegated legislation must not intrude on this right. The Committee suggested that exemptions from the provisions of the *Privacy Act 1988* should be expressed more clearly. Again, the Committee questioned another instrument which omitted two of the 11 Information Privacy Principles provided by that Act. Conversely, the Committee raised a provision which seemed to exclude the public from important provisions of the *Freedom of Information Act 1982* for a period of five years.

2.21 “The Committee was concerned at a number of other provisions. One doubled a fee with no explanation. Another operated with prejudicial retrospectivity. Both of these breached personal rights as well as parliamentary propriety. Another instrument appeared to provide for a person to elect under its provisions before the provisions came into effect. On a lighter note, one instrument provided for ‘sentencing’. The Committee was immediately alert to the need for appropriate safeguards. However, the Explanatory Statement explained that sentencing in this case was the archival process of classifying records according to the period for which each record is to be kept.

Principle (c)

Does delegated legislation make rights unduly dependent on administrative decisions which are not subject to independent review of their merits?

2.22 “Many instruments of delegated legislation grant discretions to Ministers or public officials. Such discretions should be drafted as narrowly as possible, include objective criteria to limit and guide the exercise of the power, and in appropriate cases provide a right of review of the merits of the decision to an

independent, external tribunal, which usually would be the Administrative Appeals Tribunal.

2.23 “During the sittings one instrument gave a discretion to a public official to withdraw an infringement notice, with no apparent right of review. The Committee raised this with the Minister even though there were criteria provided to guide and limit the exercise of the power. The same instrument also provided a discretion to extend the time available for payment of a fine, again with no obvious right of review. Another discretion with no apparent review was to cancel certain numbers allocated to private individuals, with consequential adverse commercial implications. In another class of case the Committee questioned discretions granted to an electoral official to admit or reject votes and to declare an election void. In another case the Committee asked for an assurance that there was AAT review of conditions attached to a decision, as well as to the decision itself. In one case the Committee was dissatisfied with an instrument which, while it provided for AAT review, did not provide for the applicant to state a case before the decision was made. The Committee also followed the progress of the review provisions of principal regulations and associated specialist review regulations which had been first made and then amended some 41 times in the 24 months to the end of the present sittings.

Principle (d)

Does delegated legislation contain matters more appropriate for parliamentary enactment?

2.24 “This Principle is not often raised by the Committee. Nevertheless, it is an important element of parliamentary propriety. The only instrument which may have been defective under this Principle provided for decisions to be made by officials on the grounds of nationality, sex, age and marital status. As well as being a possible breach of personal liberties, the Committee considered that such unusual provisions could be more suited for inclusion in an Act.

Future Issues

2.25 “The most important future development in Commonwealth delegated legislation is the Administrative Review Council Report on Rule Making by Commonwealth Agencies, which is expected to be presented to the Minister this month. The Committee has already reported to the Senate on the Terms of Reference of the inquiry, on the Committee's submission to the inquiry and on the Interim Report by the ARC. It was very pleasing that the ARC accepted all of the main points put to it by the Committee. If the final Report is along the same lines and is implemented, then Commonwealth delegated legislation will be made within a single series, include all legislation properly so called, be properly drafted and presented, and have appropriate access. The Chair of the Committee has reported to the Senate several times that the implementation of these points would represent the greatest reform of delegated legislation since the passage of the *Acts Interpretation Act 1901*. Earlier this month members of the Committee had the opportunity of discussing these issues with members of the ARC at a dinner held

here in Parliament House. These gatherings, which have become regular affairs held every two years, are an opportunity for the legislative scrutiny Committees to meet informally with the ARC, the peak Commonwealth body concerned with review of administrative decisions. The Committee will, of course, report in detail to the Senate when the final Report is available.

2.26 “During the sittings there was another significant development in the operations of the Committee. From time to time the Committee asks Ministers whether senior officials of the Department could attend meetings to assist in its deliberation on particular instruments. This was done recently in respect of a sensitive instrument; the Committee asking the Minister for Justice and Consumer Affairs, Senator the Hon Michael Tate, to nominate a senior official to attend a meeting. The Minister not only sent a Senior Executive Service officer from the Department, but also a member of his personal staff. It is not known whether this has ever been done before, but certainly it is an innovation for present members of the Committee. This is a good example of the willingness of Ministers to cooperate with the Committee to ensure that delegated legislation is of the highest quality.

2.27 “Finally, the Committee was pleased to note a generous description of its work. Opening a public seminar on delegated legislation the Acting Secretary of the Attorney-General's Department, Mr Norman Reaburn, observed that the operations of the Committee were ‘vital to maintaining the integrity of the law of this country’. That was a gratifying comment from such a senior official.

2.28 “The Committee is grateful for the continuing support it has received from all Senators during the past sittings.”

Senator Giles, 25 June 1992, Senate Weekly Hansard, p.4542

2.29 “During the present sittings the Committee scrutinised the usual large number of disallowable legislative instruments tabled in the Senate. This delegated legislation provided the administrative details of programs set out in broad policy in parent Acts which authorise such subordinate legislation.

2.30 “The Senate has authorised the Committee to scrutinise each of these instruments to detect and remedy possible breaches of parliamentary propriety and personal rights. The Committee writes to the Minister or other law maker in respect of any apparent defects, asking that the instrument be amended or an explanation provided. If the breach appears particularly serious then the Chair of the Committee gives notice of a motion of disallowance in respect of the instrument. This allows the Senate, if it wishes, to take the ultimate step of disallowance. However, this step is rarely necessary, as Ministers almost invariably take action which satisfies the Committee.

2.31 “As usual, during these sittings Ministers and other have given undertakings to amend dozens of provisions in different instruments to meet the concerns of the Committee. The Committee is grateful for this high level of cooperation which it receives from Ministers in its non-partisan operations.

2.32 “During the sittings the Committee scrutinised 784 instruments, which is average for recent sittings. Of these, 270 were statutory rules, which are generally better drafted and presented than other series of delegated legislation. The other 514 instruments were the usual heterogeneous collection of scores of different series.

2.33 “Each of the 784 instruments was scrutinised by the Committee under its four Principles, or terms of reference, which are included in the Standing Orders. There were 65 prima facie defects in these 784 instruments. The defects are described below under each of the four Principles.

Principle (a)

Is delegated legislation in accordance with the statute?

2.34 “This Principle does not involve mere technical invalidity. Rather, together with the fourth Principle of the Committee, it covers every aspect of parliamentary propriety. However, the Committee is concerned that every instrument should operate validly in accordance with its parent Act or umbrella legislation covering regulations and other legislative instruments. Several instruments during these sittings appeared themselves to delegate legislative power invalidly. Another attempted to incorporate instruments issued by an international organisation ‘from time to time’ with no apparent authorisation in the parent Act. Several instruments appeared to operate retrospectively to the prejudice of a person other than the Commonwealth, with consequent invalidity under s.48(2) of the *Acts Interpretation Act 1901*. This provision operates even if, as in one case, such prejudicial retrospectivity was only for one day. There were other breaches of the *Acts Interpretation Act*. Several sets of regulations appeared to have been re-made while required to be tabled, consequently being of no effect under s.48A of that Act. Other regulations may have been re-made while subject to disallowance, in breach of s.48B of the Act. One instrument validly revoked an earlier instrument but did not effect its obvious intention to make a fresh one. The operative words of another referred to attached ‘Tables’ as ‘Parts’, and so appeared ineffective. Another had no operative words at all. Another referred incorrectly to entries in a Table. Another referred to the Union of Soviet Socialist Republics and the Ukrainian and Byelorussian Soviet Socialist Republics, which no longer exist. The Committee also inquired about the status of an instrument which purported to amend an instrument disallowed by the Senate.

2.35 “The Committee is also concerned that the drafting, presentation and access of delegated legislation should be of a standard not less than that of Acts, even if drafting deficiencies do not affect validity. During these sittings two sets of regulations with the same name were in force at the same time. Another instrument connected a series of paragraphs with ‘and’ rather than ‘or’, which resulted in an absurdity; another referred to a repealed Act; another referred incorrectly to the parent Act; another referred to provisions of the parent Act which did not exist; others had incorrect cross references; another had the wrong title; others had no citation or numbering; and another had wrong references to Schedules. Several instruments used vague and uncertain expressions; while others used outdated expressions such as ‘dietmaid’ and ‘housemaid’.

2.36 “As a result of action by the Committee, each instrument of delegated legislation is now accompanied by an Explanatory Statement or other explanatory material, which sets out its background, legislative authority and details of its provisions. During these sittings one Explanatory Statement had a wrong heading; another referred incorrectly to the title of its parent Act; another referred incorrectly to provisions in the parent Act; and another had attachments missing. The contents of some Explanatory Statements were also defective. One did not explain major changes in a levy; several did not mention that the purpose of the instrument was to implement undertakings given to the Committee; several gave wrong advice; several gave misleading advice; and others gave incomplete advice.

2.37 “Apart from possible invalidity resulting from unauthorised subdelegation it is a breach of parliamentary propriety if legislative instruments confer legislative authority without provision for tabling and disallowance. In one case Notes and General Notes in the body of an instrument appeared to include legislative powers. These Notes also conferred discretions on public officials. In another case legislative power could be exercised merely by notice in the *Gazette*.

Principle (b)

Does delegated legislation trespass unduly on personal rights and liberties?

2.38 “As with all its Principles, the Committee interprets its responsibilities to protect rights and liberties in a broad fashion. Thus, delegated legislation should not include inappropriate criteria for action by Commonwealth officials. For instance, criteria to decide whether a person was a ‘fit and proper person’ included a conviction for any Commonwealth, State or Territory law; and a similar conviction of an associate, widely defined to include a spouse, employer, employee, or an officer of a company in which the person holds shares. These criteria were not limited to the present, but extended back in time. The same instrument referred to an offence allegedly committed. Another instrument provided that an appointment to a statutory body was ‘at the pleasure of the Minister’.

2.39 “Obligations or duties imposed on individuals should be clear and unambiguous. Thus, one mandatory provision appeared to be impossible to meet. Notes in the body of an instrument mentioned an element of compulsion which did not appear to be authorised by either the parent Act or the legislation made under it. In another instrument a person was required to ‘show’ that a state of affairs existed but did not indicate to whom this was to be done. Another penal provision used the scientific, rather than the common, names of fish and crustaceans.

2.40 “It may be a breach of personal rights if the Commonwealth imposes unreasonable conditions on those dealing with it. For instance, participation in one program was conditional upon a person giving a wide indemnity to the Commonwealth, including an indemnity from suit for incidents involving motor vehicles. Another appeared to give an unreasonable length of time to public officials to delay mandatory action. Another provision reduced fees if public officials did not meet deadlines, but expressly excluded the Commonwealth from any liability for loss suffered. In addition, the reduced fees applied for some breach of duties, but not

others. The Committee was also concerned at provisions which enabled the Commonwealth to garnishee wages and salaries and accounts at banks and financial institutions. In another instrument, the Commonwealth required a sponsor to be responsible for the financial liabilities of the person sponsored, and for compliance by the person with all legislation and employment awards.

2.41 “The Merit Protection and Review Agency is a statutory authority charged with ensuring that actions and decisions in respect of a Commonwealth employee are fair and equitable. The Committee was concerned that two instruments only partly implemented an MPRA recommendation.

2.42 “If delegated legislation confers benefits on individuals then it is essential that they be made aware of such benefits. One instrument provided that if a person failed to vote in an election then that person could either pay an administrative penalty of \$20 or have the matter dealt with in a court, where the penalty was \$50 plus costs. However, the form sent out to those persons affected did not advise that if the \$20 was paid, then all liability was discharged, no further proceedings in respect of the matter could be brought, and the person was not regarded as having been convicted of an offence.

Principle (c)

Does delegated legislation make rights unduly dependent on administrative decisions which are not subject to independent review of their merits?

2.43 “The Committee ensures that administrative discretions included in delegated legislation are narrow in scope, provided with objective criteria to guide and limit their exercise, and in appropriate cases provide external review of the merits of a decision by an independent body such as the Administrative Appeals Tribunal.

2.44 “The criterion for the exercise of one discretion was that it should be ‘in the public interest’. In another case the criteria were included in a Note which legally did not form part of the instrument.

2.45 “Some instruments included discretions for which AAT review appeared to be essential. For instance, under one instrument exemptions from a provision could be granted up to 1 July 1998. In another, there was review of some discretions but not others which were similar; in another, an official could accept or reject the recommendation of an expert statutory authority making decisions limited by detailed criteria; and in another, there was a discretion to impose sanctions on a person.

2.46 “One instrument provided a right of review of a decision under an offence provision. The Committee asked whether this was for the decision to bring a prosecution or to convict, receiving the answer that the review provision was a mistake.

2.47 “Sometimes the Committee accepts internal review procedures. However, the Committee questioned one instrument which provided for internal review by the Minister of a decision by the Secretary where the powers of both could be delegated.

Principle (d)

Does delegated legislation contain matters more appropriate for parliamentary enactment?

2.48 “This Principle is rarely invoked by the Committee. However, it complements the first Principle of the Committee to cover all aspects of parliamentary propriety.

Other developments

2.49 “The major Administrative Review Council Report on Rule Making by Commonwealth Agencies was tabled in the Senate on 7 May 1992. The Committee will present a separate report on the implications for the Senate and the Committee of the important changes which it proposes. The Committee, together with its sister legislative scrutiny committee, the Scrutiny of Bills Committee, was briefed on the report by a Deputy Secretary of the Attorney-General's Department, together with other senior officials. The Committee is grateful to Ms Jean Baker, head of the Office of Legislative Drafting, for organising this briefing.

2.50 “In the course of its duties the Committee met with other statutory officers and officials. These included the Commonwealth Ombudsman and other officials from his office, the Chair of the Australian Accounting Standards Board, and officials from the Attorney-General's Department and the Department of Industrial Relations. The Committee is grateful for this cooperation.

2.51 “During the sittings the Chair of the Committee, Senator Patricia Giles, made a number of statements to the Senate on matters of particular interest. These included statements on delegated legislation and political broadcasts, child care, freedom of information, and complaints against the Australian Federal Police. These statements were in addition to the short statements given whenever the Chair gives a notice of motion of disallowance and the incorporation of Committee correspondence in Hansard whenever such a notice is removed.

2.52 “The Committee has scrutinised the 42 amendments of the **Migration Regulations** made since the principal regulations at the end of 1989, together with additional instruments comprising the **Migration (Review) Regulations** and other instruments made under the *Migration Act 1958*. The Minister has kept the Committee closely informed of a major review of these regulations, which the Committee will report upon when it is completed.

2.53 “On a lighter note, the Committee received an instrument which set out the ciphers that are to identify various meat products. One of these was ‘Whether Mutton’, which the Committee suspected should be ‘Wether Mutton’. Whatever the weather, the Committee did not query whether this whether should be wether or whether it should be whether, just as long as it was not substituted kangaroo.

2.54 **“The Committee acknowledges the support that it has received from all Senators during the past sittings.”**

CHAPTER 3

GUIDELINES ON THE APPLICATION OF THE PRINCIPLES OF THE COMMITTEE

Introduction

3.1 Standing Order 23(3) sets out the four Principles under which the Committee scrutinises every disallowable instrument of delegated legislation. These Principles are set out at the start of this and every other Report of the Committee. The Committee interprets the Principles in a broad and expanding fashion, to cover any possible defect affecting personal rights or parliamentary proprieties. This Chapter illustrates aspects of delegated legislation which the Committee has raised with Ministers and other law makers during the reporting period.

PRINCIPLE (A)

IS DELEGATED LEGISLATION IN ACCORDANCE WITH THE STATUTE?

Technical validity and effect

3.2 Delegated legislation must be legally valid and must comply with its parent Act and with other relevant Acts such as the *Acts Interpretation Act 1901*. Determination BIT2/1991 under s.4D(1)(a) of the *National Health Act 1953* purported to revoke an earlier determination made under the same provision. However, the given date of the revoked instrument was incorrect. The Minister advised that in the opinion of the Attorney-General's Department a mere false description does not invalidate an instrument if there is sufficient certainty as to its object. Four Approvals of Forms under the *Health Insurance Act 1973*, made on 31 May 1990, approved new forms but did not revoke the existing forms. Two later approvals made on 20 June 1990 then revoked all existing approvals of two of the forms except for those made on 31 May 1990. The Minister advised that more than one form could validly exist at a given time, and the three weeks from 31 May to 20 June 1990 was intended to allow a smooth changeover to the new forms. Earlier approvals of the remaining two forms had inadvertently not been revoked; this had now been corrected.

3.3 Fisheries Notice No. ORF 15 was not signed. This was in contrast to 11 other similar fisheries notices tabled on the same day. Therefore, there was a presumption that it had never been signed and was of no effect. The Minister advised that the notice had now been revoked. Public Service Determination 1991/102 provided for an entry to operate as a Table when it could only operate as

a Part. Therefore, the entry was of no effect. The Minister undertook to amend the instrument. The **Civil Aviation Regulations (Amendment), Statutory Rules 1991 No.410**, incorporated a reference to the ICAO Technical Instructions as in force from time to time. This appeared to be invalid under s.49A of the Acts Interpretation Act under which only the provisions of an Act or regulations may be incorporated as in force from time to time. However, the Minister advised that such incorporation was expressly authorised by the parent Act.

3.4 The Explanatory Statement for the **Complaints (Australian Federal Police) Regulations (Amendment), Statutory Rules 1992 No.58**, advised that an existing regulation with similar effect to the present regulation was invalidly made. The Explanatory Statement gave no details of the invalidity but the Committee assumed that it was because the previous regulation, made in 1985, lacked the authority which was expressly inserted in the parent Act in 1987. The Minister confirmed this. The **Family Law Regulations (Amendment), Statutory Rules 1991 No.447**, inserted a new schedule into the principal regulations. These regulations, which were to operate from 1 April 1992, were disallowed by the Senate on policy grounds on 3 March 1992. However, the **Family Law Regulations (Amendment), Statutory Rules 1992 No.33**, purported to repeal and substitute one item in the now ineffective Schedule, also to operate from 1 April 1992. The Minister confirmed that this amendment was also ineffective.

Delay in making delegated legislation

3.5 It may be a breach of parliamentary propriety if executive lawmakers delay making necessary or obvious legislation. The **International Coffee Organization (Privileges and Immunities) Regulations (Repeal)**, the **International Cocoa Organization (Privileges and Immunities) Regulations (Repeal)**, and the **International Tin Council (Privileges and Immunities) Regulations (Repeal)**, **Statutory Rules 1991 Nos.259, 260 and 261**, all repealed principal regulations because Australia had ceased to be a member of the relevant organisation or because the relevant organisation no longer existed. From the Explanatory Statement it appeared that these regulations could have been made at any time respectively after dates in 1989, 1980 and 1990. The Committee questioned the delay from 1980. The Minister advised that this was an oversight. The **Extradition (Hellenic Republic) Regulations, Statutory Rules 1991 No.94**, implemented a treaty signed in 1987, four years before the regulations were made. The Minister advised that the regulations were made immediately Greece had informed Australia that it had ratified the treaty.

Drafting deficiencies

3.6 The standard of drafting of delegated legislation should be not less than that of Acts. The **Occupational Superannuation Standards Regulations (Amendment), Statutory Rules 1991 No.149**, included tables consisting of blocks of years of age of superannuation contributors. However, all of the blocks duplicated ages included in other blocks. The Minister undertook to amend the regulations. The **Air Navigation (Charges) Regulations (Amendment), Statutory Rules 1991**

No.237, misspelt the name of a large and important Australian regional city and included other possibly confusing references to place names. The Minister undertook to amend the regulations. **Public Interest Determinations Nos.4 and 5 (PID) under s.72 of the *Privacy Act 1988*** effectively exempted the Australian Federal Police from compliance with certain of the Information Privacy Principles. However, it did not state which IPP were exempted. The Privacy Commissioner undertook to include this in future determinations. **Fisheries Notices Nos. NPF 13 and 14** referred to equipment defined in another notice. However, there were several different definitions of equipment in the other notice. The Minister undertook to amend the notices. **The Rules under the *Federal Court of Australia Act 1976*, Statutory Rules 1990 No.414**, commenced generally on 1 January 1991 and a heading to a rule referred to a new schedule of fees to operate after that date. However, the actual schedule itself referred to 1990. The Chief Justice undertook to amend the rules.

Failure to implement legislative intention

3.7 The Committee questions delegated legislation which fails to implement the legislative intention expressed in the Explanatory Statement or evident from the instrument itself. **The Laying Chicken Levy Regulations (Amendment), Statutory Rules 1991 No.101**, prescribed levy at 0.25 cents. However, both the Explanatory Statement and an attachment advised that the proposed levy was 0.0025 cents. The Minister advised that the instrument was correct and the references to 0.0025 cents were wrong. In Determination No. TAFE 21/91 under s.10 of the ***States Grants (TAFE Assistance) Act 1988***, the amount expressed to be the total of grants for the A.C.T. was \$300,000 greater than the sum of the entries for the A.C.T. The Minister undertook to amend the instrument. **Public Service Determination 1991/102** incorrectly presented a variation in travelling allowance as a variation in meals supplement. The Minister undertook to amend the instrument. **The Long Service Leave (Commonwealth Employees) Regulations (Amendment), Statutory Rules 1992 No.56**, referred to a body as a company while the Explanatory Statement several times referred to the same body as a corporation. The Minister advised that the instrument was correct.

3.8 The Explanatory Statement for **Fisheries Notice No.NPF 9** advised that a particular provision prohibited the use of specified equipment for taking prawns. However, the provision did not implement this intention. This was important because five other notices referred to the provision, as did a later provision of the same instrument. The Minister undertook to amend the notice.

3.9 **The Extradition (Aviation) Regulations, Statutory Rules 1992 No.67**, made on 11 March 1992, referred to the Union of Soviet Socialist Republics and to the Byelorussian and Ukrainian Soviet Socialist Republics. Other delegated legislation expressly accommodated the changes in eastern Europe. The Committee assumed that the present references involved state succession to treaties. The Minister confirmed this.

Legislative instruments not subject to appropriate scrutiny

3.10 If an Act or delegated legislation provides for legislative instruments the Committee believes that such instruments should be subject to appropriate parliamentary scrutiny. Section 95 of the *Privacy Act 1988* provided for a statutory authority, with the approval of the Privacy Commissioner, to issue guidelines for the protection of privacy in the conduct of medical research. The Committee suggested that this power was legislative. The guidelines effectively provided a waiver from provisions of the Act, some bodies were legally bound to comply with them, and they were drafted as legislation. The Minister undertook to amend the Act to provide for tabling and disallowance. The *Occupational Health and Safety (Commonwealth Employment) Regulations, Statutory Rules 1991 No.266*, provided that certain notices must be in an approved form. These notices, which were not included in the regulations, provided for important matters such as taking possession of plant, and issuing prohibition and improvement requirements. In contrast, another notice, which appeared to be less important, was prescribed in a schedule. The Minister undertook to amend the regulations. The *South East Fishery (Individual Transferable Quota) Management Plan 1991* provided that the Minister could vary the total catch for any species. Any variation was required to be gazetted but was not subject to tabling or disallowance. This power appeared to be legislative. The Minister advised that the power would not be exercised pending a new plan which would revoke the present provisions. The new plan would fully take into account the Committee's concerns and, of course, would itself be subject to disallowance.

3.11 Sometimes the Committee may decide that tabling and disallowance is not necessary even though a power appears to be legislative. The *National Measurement Regulations (Amendment), Statutory Rules 1991 No.146*, delegated a power to determine conditions under which a reference standard may be ascertained. There was no provision for tabling or disallowance. The Committee asked the Minister whether this was because of the technical nature of the conditions. The Minister advised that there had been drafting difficulties and that the power was really administrative. In respect of *Overseas Defence Determination 1991/61*, the Committee sought assurances about the Middle East Naval Sanctions Allowance, which was payable in an area to be declared by the Chief of the Defence Force. The Minister explained that normally the area would be expressly defined but it was not possible to do so in this case. Instances of this approach were rare and it would not be used when alternative means were available.

Invalid or inappropriate retrospectivity

3.12 Subsection 48(2) of the Acts Interpretation Act provides that delegated legislation may only operate retrospectively if it does not adversely affect any person, apart from the Commonwealth. Where delegated legislation is expressed to operate retrospectively, the Explanatory Statement should advise that no person is thereby prejudiced. In the absence of such advice the Committee asked for appropriate assurances from Ministers in respect of the *Television Licence Fees Regulations (Amendment), Statutory Rules 1991 No.79*; the *Complaints (Australian Federal Police) Regulations (Amendment), Statutory Rules 1992 No.58*; and

Determination No.1991-92/24 under s.10F of the *Aged or Disabled Persons Care Act 1954*. On the other hand, in respect of the Superannuation (PSS) Approved Authority Declarations No.1, Statutory Rules 1990 No.411, and the Superannuation (CSS) Approved Authority Declaration No.3, Statutory Rules 1990 No.412, the Minister advised that while individuals apart from the Commonwealth were prejudicially affected by the retrospectivity, the parent Acts expressly provided for this.

Failure to provide explanatory material

3.13 The efforts of the Committee have resulted in Ministers accepting that every instrument of delegated legislation should be accompanied by explanatory material to assist the Parliament and the Committee. A Notice under s.1237(3) of the *Social Security Act 1991* did not have an Explanatory Statement. However, the Minister undertook to provide one for future notices. The Explanatory Statements for the Primary Industries Levies and Charges (Apple and Pear) Regulations (Amendment), Statutory Rules 1991 No.403, and the Primary Industries Levies and Charges (Horticultural Export Charge) Regulations (Amendment), Statutory Rules 1991 No.404, both referred to Attachments which were missing. The Minister undertook to provide the Attachments. The Child Care Centre Fee Relief Eligibility Guidelines were not accompanied by an Explanatory Statement, which the Committee suggested may have been an oversight. The Minister then provided one.

Failure to provide for citation or numbering

3.14 As with the provision of explanatory material, the Committee has succeeded in convincing Ministers that every instrument of delegated legislation should include a suitable system of citation or numbering. Without such a system delegated legislation may be imprecise and confusing. Ministers undertook to provide numbering and citation for the following: six Approvals of Forms under the *Health Insurance Act 1973*; a Determination under s.13(1)(a) and (c) of the *Nursing Homes Assistance Act 1954*; a Determination under s.4 of the *Overseas Student (Refunds) Act 1990*; two Revocations of Determination of Particulars under s.23DC(2)(c) of the *Health Insurance Act 1973*; a Notice under s.1237(3) of the *Social Security Act 1991*; and an Exemption under r.308 of the Civil Aviation Regulations.

Failure to acknowledge the role of the Committee

3.15 Many instruments of delegated legislation are made to implement undertakings given to the Committee to amend an earlier instrument to meet its concerns. In such cases the Explanatory Statement should explain that the changes were made at the instigation of the Committee. This is so that the Parliament will be better informed of the types of issues raised by the Committee. Neither the Industrial Chemicals (Notification and Assessment) Regulations (Amendment), Statutory Rules 1992 No.29, nor Fisheries Notice No. ECF 2 did this. However, the Ministers advised that it would be done in future cases.

Cross reference errors

3.16 Individual provisions of delegated legislation often refer to provisions of an Act or other instrument or to other provisions of the same instrument. The following instruments included from one to nine errors in these cross references, which in some cases would have affected validity: **Australian Sports Drug Agency Regulations, Statutory Rules 1991 No.19; Fisheries Notices Nos. NPF 11, 12 and 13; Primary Industries Levies and Charges Collection (Avocado) Regulations, Statutory Rules 1991 No.207; Australian Horticultural Corporation (Dried Fruits Export Control) Regulations, Statutory Rules 1991 No.199; Air Navigation Regulations (Amendment), Statutory Rules 1991 No.193; Fisheries Notice No. ECF 1; Occupational Health and Safety (Commonwealth Employment) Regulations, Statutory Rules 1991 No.266; South East Fishery (Individual Transferable Quota) Management Plan 1991; Civil Aviation Regulations (Amendment), Statutory Rules 1991 No.487; Fisheries Management Regulations, Statutory Rules 1992 No.20; Fisheries Levy (Northern Fish Trawl Fishery) Regulations (Amendment), Statutory Rules 1992 No.13.** The relevant Ministers undertook to amend all of these instruments.

Failure to explain increases in fees, charges or allowances

3.17 An unexpected or unusual increase in fees, charges or allowances by delegated legislation may breach parliamentary propriety. In such cases the Explanatory Statement should advise the absolute or percentage amount of increase and the basis upon which it was made. The **Fisheries Levy (Northern Prawn Fishery) Regulations (Amendment), Statutory Rules 1991 No.371**, did not include an explanation for a major change in the levy. The Committee asked whether the change was due to government decision, full or partial cost recovery, revenue raising, CPI increases or some other reason, and whether it reflected productivity savings and administrative efficiencies. The Minister advised that the levy was intended to recover 90% of direct management costs. The **Migration Regulations (Amendment), Statutory Rules 1991 No.230**, appeared to double application fees for two entry permits to \$750, without explanation. Among other possible explanations, the Committee asked whether this was intended to deter frivolous applications. The Minister advised that this may be a side effect but that the main intention was full cost recovery. **Public Service Determination 1991/154** increased the allowance for car washing in Athens from \$A111 to \$A220, with no explanation. The Minister advised that it had been four years since the last change and the increase reflected currency changes and an increase in the price of car washing. In respect of the **Trade Marks Regulations (Amendment), Statutory Rules 1991 No.64**, and the **Design Regulations (Amendment), Statutory Rules 1991 No.65**, the Minister advised that unexplained increases were based on full cost recovery. However, they were less than the CPI, reflecting increased productivity and efficiency in the Department.

3.18 It is also necessary for the Explanatory Statement to explain the basis upon which initial fees or charges are made in a first set of principal regulations. The **Fishing Levy Regulations, Statutory Rules 1992 No.59**, did not include such information. The Minister advised that part of the levy was paid into a statutory

fund and the rest was a general contribution by the industry to fisheries management costs which could not economically or equitably be attributed to specific fisheries which are subject to individual levies.

3.19 There were slightly different problems with **Public Service Determination 1991/24**, which increased an amount from \$382.78 to \$382.79 and another from \$382.79 to \$382.80. The Minister advised that this was intended, as part of pay calculations for public servants. However, the omission and substitution of the same amount in another provision was an error.

Inappropriate levels of delegation

3.20 Delegated legislation often provides that powers given to Ministers or other public officials may be delegated. It is a breach of parliamentary propriety if such delegation is not limited to appropriate classes or levels of decision makers. The **Explosives Regulations, Statutory Rules 1991 No.329**, provided that the Minister or a competent authority could appoint authorised persons for specified purposes. There were limits on whom the Minister could appoint as a competent authority, but no limits at all on who could be appointed as an authorised person. Also, there were no qualifications or experience required for such appointment. Authorised persons had substantial powers, including the power to appoint supervisors, for whom qualifications were prescribed. The Minister advised that operational considerations made it difficult to require qualifications and experience, and gave examples. The Minister also undertook to review the regulations. The **Australian Sports Drug Agency Regulations, Statutory Rules 1991 No.19**, provided for delegation to any employee of the agency, no matter how junior. Here also the Minister advised of practical reasons for this, with examples, together with administrative measures to restrict delegation.

3.21 On the other hand, the **Customs (Prohibited Exports) Regulations (Amendment), Statutory Rules 1991 No.288**, provided for delegation of considerable powers to any person at all, even though the Explanatory Statement advised that the intention was to limit delegation to officers of the Department. The Committee raised this matter even though there was provision for AAT review of any decisions made by a delegate. The Minister undertook to amend the regulations.

3.22 **Defence Determination 1991/45** provided that the Chief of the Defence Force could delegate all of his or her powers in any future determination to any person at all. The Committee accepted that there would be cases where a wide power of delegation was necessary, but questioned such a blanket provision. The Minister advised that all discretions were limited in subject matter and included clear criteria. Also, dissatisfied members could approach the Defence Force Ombudsman. The Department would carefully examine the discretions in all future determinations to ensure that they included these safeguards. The Australian Defence Force recognised that the level of decision making should be appropriate.

Possible duplication of resources

3.23 Delegated legislation should be made in an economical way. The Committee is concerned at any possible waste of resources. The **National Health Regulations (Amendment), Statutory Rules 1991 Nos.40 and 41**, were made on the same day, on the recommendation of the same Minister, under the same provision of the same parent Act, received consecutive numbers in the Statutory Rules series, were accompanied by the same Explanatory Statement, inserted provisions following consecutive paragraphs in the same principal regulations, and dealt with the same subject matter, which was prescribing two hospital facilities in Canberra suburbs. On its face this appeared to be a duplication of time and resources. The Committee accepts that there may be cases where it is appropriate for consecutive sets of regulations to be made under the same Act. Such cases are, for instance, where separate substantial amendments to different provisions are developed in more than one area of a Department. However, this did not appear to be such a case. The Minister explained that two sets were necessary because required formalities in respect of one of the facilities may not have been completed in time for consideration by the Executive Council. In such a case the defective set could have been withdrawn at short notice.

Access, presentation and publication

3.24 The standards of access, presentation and publication of delegated legislation should not be less than those of Acts. The **Health Insurance Regulations (Amendment), Statutory Rules 1991 No.82**, provided for additional provisions numbered as regulations 2ADAAA, 2ADAAB and 2ADAAC. The Committee suggested that it might now be appropriate to ask for priority to be given to a renumbering and reprint of the regulations. The Minister agreed to do this.

3.25 The Committee compliments Ministers on good quality delegated legislation. The **Prescribed Goods (General) Orders as amended (Amendment), Export Control Orders No.3 of 1991**, had a high standard of presentation, with loose-leaf replacement of amendments so that users always have an up to date copy of the principal instrument. This standard of presentation and access is equalled by few other series of delegated legislation. However, the Committee suggested that the date at the start of the consolidation should be the latest date of the consolidation, as with reprints of Acts and regulations, rather than the date that the principal instrument was first made. The Minister undertook to provide for this. The **Road Vehicle (National Standards) Determinations Nos.1 and 2 of 1991** were well presented, being set out and organised in a way which should be helpful to users. For instance, the changes made by each amendment were highlighted. However, the spaces provided for the details of the dates and citations of amendments were blank. The Committee sought and obtained an assurance from the Minister that these details were included in copies provided to the public. The **Patents Regulations, Statutory Rules 1991 No.71**, were also well presented. For instance, where there was a reference to a provision of the parent Act or a cross reference to another regulation, the regulations included in brackets a short summary of the other provision. However, there were three different prints of the

regulations. The first was defective in a minor way and was replaced by another with a pink substitution slip on the cover. This second copy inadvertently omitted a provision, which omission was noticed by both the Committee and the drafters. Therefore, a third print had both a substitution slip and a corrigendum slip on the cover.

Archaic drafting expressions

3.26 Delegated legislation should conform to contemporary drafting standards. **Public Service Determination 1990/190** used such terms as *Diet Maid, Housemaid, Storeman, Yardman, Seamstress, Kitchenman and Kitchenmaid*, both of the latter being paid the same. The Committee understood from earlier correspondence that such expressions would be replaced. The Minister advised that this would be done in the next three months. **Public Service Determinations 1991/68 and 1991/73** used expressions such as *Dog Patrolman, Mint Tradesman, Fireman and Master*. The Minister advised that all such classifications had been changed and only transitional provisions remained, which would themselves be removed.

PRINCIPLE (B)

DOES DELEGATED LEGISLATION TRESPASS UNDULY ON PERSONAL RIGHTS AND LIBERTIES?

Unreasonable burdens on business

3.27 Delegated legislation should not impose unreasonable burdens on business, particularly small business. The **Customs Regulations (Amendment), Statutory Rules 1991 No.228**, provided for the electronic transmission of information from importers to the Australian Customs Service. The Committee accepted that removal of the need for paper entries would simplify the administration of the Act and regulations and in most cases assist users. However, the Committee asked about importers who because of small or infrequent volume do not want the expense of acquiring the necessary electronic equipment. The Minister advised that the manual entry option had been preserved, with clearance normally on the day of lodgment. The **Australian Meat and Live-stock Order No.L10/91** required a form giving details of live-stock exported to be posted to the Australian Meat and Live-stock Corporation by the first working day after departure. However, where the numbers or the destination of the consignment changed, then this information must be sent by facsimile. The Explanatory Statement advised that such information was only required for statistical purposes. The Committee was concerned that this might impose additional costs on primary producers. The Minister replied that the statistics were needed quickly and that all active exporters owned facsimile machines.

3.28 The **Bass Strait Scallop Fishery Preliminary Management Plan (No.4 of 1991), Plan of Management No.BSS 1**, provided that where a levy was paid with a cheque which was dishonoured, any renewal of a licence depending on that cheque

was void. This provision seemed reasonable. However, the Committee sought and received an assurance from the Minister that it was possible for the drawer of the cheque to tender payment again, hopefully with a cheque which would be honoured. The **Therapeutic Goods Regulations (Amendment), Statutory Rules 1992 No.19**, provided for public officials to complete evaluations of certain products within 175 and 255 days, excluding Saturdays, Sundays and public service holidays. The Committee was concerned at the length of these periods. Also, the regulations provided that if these periods were not met then the Commonwealth would not be liable for any loss, although the valuation fee would be reduced by 25%. The Committee asked whether any other compensation was payable to manufacturers who suffer because public officials do not comply with the requirements of Commonwealth legislation. The Minister replied that the periods and compensation had been recommended by Professor Peter Baume in his "Report on the Future of Drug Evaluation in Australia". **Determination No.1991-92/12 under s.10GI of the Aged or Disabled Persons Care Act 1954** required hostel proprietors who received money from the Commonwealth to indemnify the Commonwealth against any liability in respect of the provision of community aged care. The indemnity was expressed in wide terms, including the cost of defending or settling any claim, including those relating to vehicles. The Minister advised that it was only intended that the Commonwealth should not be liable for the actions of a proprietor.

3.29 The Trade Practices (Consumer Product Information Standards)(Cosmetics) Regulations, Statutory Rules 1991 No.327, required manufacturers to provide information on the ingredients used in cosmetic products. The Committee received a representation from an industry group about the regulations providing for listing in a general way rather than incorporating a recognised nomenclature standard. The Minister advised that more detailed specifications had been considered at length and discussed with suppliers and consumers. However, the simpler option was preferred. The standard overseas nomenclature could still be used on a voluntary basis. The Minister also undertook to monitor the regulations for the first 12 months of their operation and review them if there were problems.

Strict liability and vicarious liability

3.30 The Committee looks carefully at all offence provisions to make sure that they are fair. In particular, the Committee requires detailed explanation for any provision for strict or vicarious liability. The **Civil Aviation Regulations (Amendment), Statutory Rules 1991 No.147**, replaced the general offence provisions of the principal regulations with specific penalties for each offence. This was appropriate as the punishment was now more equal to the offence. Some of these offence provisions included a defence of reasonable excuse, whereas others did not. The Minister advised that the parent Act provided a general defence of not being a party to, or knowingly concerned in, an act or omission. Also, the Act provided that weather conditions or other unavoidable causes were a defence. The specific defence provisions in the regulations were provided only for offences which expressly required compliance with directions, licences or conditions. The **Training Guarantee (Outstanding Trainer) Regulations, Statutory Rules 1991 No.309**, included a strict

liability offence of failing to provide information to a public official. The Minister undertook to amend the regulations to provide a defence of reasonable excuse. the **Bass Strait Scallop Fishery Preliminary Management Plan (No.4 of 1991)**, included several vicarious liability offences, one of which was acceptable because it was restricted to cases where a person was actually acting on behalf of another. However, another vicarious offence applied to a second or subsequent conviction in relation to the use of a boat to which a fishing unit was assigned. This could result in injustice. Thus, an offence could be committed by an employee of a person who was not the owner at the time of the first offence. In such a case the present owner would also be guilty even if he or she did not know of the first offence, which may have occurred years previously. Penalties for the offence were severe and mandatory. The Minister advised that normally he would amend the plan, but that it was about to be replaced.

3.31 **Fisheries Notice No.BSS 4** delayed the start of the Bass Strait scallop fishing season from 1 April 1991 to 13 July 1991. The notice was signed on 15 June 1991. Therefore, it appeared that any person who fished between 1 April and 15 June would have been acting illegally. The Minister advised that the only people who could fish during that time were relevant licence holders who had been exempted from liability by an earlier instrument.

Notification of rights

3.32 Delegated legislation should provide not only for appropriate safeguards for people which it affects, but also for full notification of those rights. The **Australian Capital Territory (Electoral)(Modifications of the Commonwealth Electoral Act 1918) Regulations, Statutory Rules 1991 No.397**, provided that a person who did not reply to a "please explain" notice for apparently failing to vote, or whose explanation for not voting was not accepted, could elect either to pay \$20 to the Electoral Commissioner or to have the matter determined by a Magistrate's court, where the maximum penalty was \$50 plus costs. These provisions were set out in a form. However, the form did not include notification that if the elector paid the \$20, not only did that discharge any liability and ensure that no further proceedings could be brought, but also that the elector is not to be regarded as having been convicted of an offence. The Committee had raised this matter in respect of the previous A.C.T. elections and the Minister had undertaken to provide for future forms to include this information. The Minister advised that notification of these safeguards had been omitted inadvertently. However, an appropriate notice in bold type would be attached to the prescribed form. The position was similar with the **Fisheries Management Regulations, Statutory Rules 1992 No.20**, which did not provide for notification of safeguards similar to those for electors in the A.C.T. In this case the administrative penalty was \$200 while the possible penalty imposed by a court was \$1,000. The Minister undertook to amend the regulations and in the meantime to advise any persons affected.

3.33 **The Occupational Health and Safety (Commonwealth Employment) Regulations, Statutory Rules 1991 No.266**, provided that an eligible voter may request a secret ballot. However, there was no requirement for voters to be notified

directly of this right. The Committee suggested that it might be reasonable to include information about this right in mandatory notices about the election date and nominations. The Minister undertook to amend the regulations to do this, but pointed out that voters were indirectly notified of the right.

Unreasonable powers given to public officials

3.34 The Committee ensures that personal rights are not adversely affected by arbitrary grants of power to officials or authorities. The **Migration Regulations (Amendment), Statutory Rules 1991 No.201**, provided for a "risk factor" relating to the possibility that an applicant for a visitor's visa may overstay. The first component of the risk factor related to the individual applicant. However, the second related to class characteristics, including nationality, age, sex, marital status, occupation and place of application. The Minister advised that there was concern about the cost of visitors who overstayed their visa. The present provisions were only included after careful and personal consideration by the Minister. Numerous drafting changes were made in the course of this consideration. The risk factor was only one consideration to be taken into account in assessing the individual merits of an application; it is not in itself a determining factor. The various classes of risk factor and the statistics required by the regulations would be made public and regularly reviewed; any consequent changes would also be made public. The Minister was confident that the new regulations balanced the interests of individual visa applicants and the Australian community.

3.35 The **Guidelines HSB 3/1992 under s.82F of the National Health Act 1953** provided that appointments to a statutory authority, the Private Health Insurance Administration Council, should be at the pleasure of the Minister. The Committee considered that the professional reputation of an appointee to this important body would suffer if he or she was removed without objective reasons. The Minister undertook to amend the instrument to provide for removal only for proven misbehaviour, physical or mental capacity, bankruptcy or imprisonment. The **Training Guarantee (Outstanding Trainer) Regulations, Statutory Rules 1991 No.309**, provided that an official could revoke a person's status under the regulations without according the person a right to state a case. Admittedly, such a decision could be reviewed by the AAT, which was an important safeguard. Nevertheless, the Committee considered that this right should be provided. The Minister undertook to amend the regulations. The **Defence Determination 1991/22** provided that a member of the Australian Army Individual Emergency Reserve was entitled, on joining, to be paid \$1,000. However, if the member left the AAIER within five years then payment would be pro rata for the time served. The Committee asked whether the Commonwealth would take legal action against the member to recover any money that was not repaid. The Minister advised that legal action was one possible way of recovering the money. However, a member could complain to the Defence Force Ombudsman if he or she thought that recovery action was unreasonable.

Removal of existing rights

3.36 The Committee questions any provision which may remove or dilute existing rights. The **Superannuation (PSS) Approved Authority Declaration No.1, Statutory Rules 1990 No.411**, and the **Superannuation (CSS) Approved Authority Declaration No.3, Statutory Rules 1990 No.412**, provided for certain authorities to come within provisions of the parent Acts. The Committee sought and obtained an assurance from the Minister that these instruments, which operated retrospectively, did not deprive employees of those authorities of their right to elect to join either of the two Commonwealth superannuation schemes.

Safeguards on rights of entry upon private premises

3.37 The right of public officials to enter private or business premises should be restricted by appropriate safeguards. The **Electricity (Amendment) Ordinance 1991, Territory of Christmas Island Ordinance No.2 of 1991**, provided that entry by officials onto private property must be authorised by the Administrator and must be at reasonable times. However, the ordinance did not include the usual provision in Commonwealth delegated legislation, largely introduced as a result of the efforts of the Committee, that officials authorised to enter private premises should be required to produce photographic identity cards. The Minister undertook to amend the ordinance to provide for this. In the meantime, such officials would be directed to produce photographic identity.

3.38 The **Australian Sports Drug Agency Regulations, Statutory Rules 1991 No.19**, included the usual provisions requiring officials administering the regulations to carry and produce photographic identity. However, one provision merely required a card with the signature of an official. The Minister advised that this provision related to chaperones, who were recruited at short notice on a "one off" basis to assist with the collection of samples. It would be administratively difficult to arrange for cards with photographs for these temporary officials.

Balance between individual rights and public interest

3.39 Some delegated legislation may protect the personal rights of individuals at the expense of the broader public interest. The **Complaints (Australian Federal Police) Regulations (Amendment), Statutory Rules 1992 No.58**, provided that the standard of proof in proceedings before the Federal Police Disciplinary Tribunal was to be beyond reasonable doubt, which is the same as required in criminal cases. The Committee asked why this standard was chosen, rather than the civil standard of the balance of probabilities. The Minister advised that penalties under those proceedings might have practical consequences as severe as any criminal sentence short of imprisonment and that breaches of AFP discipline which also involve criminality are investigated as a crime. The Committee eventually accepted this advice, even though it had received written and oral advice from the Commonwealth Ombudsman that the floating civil standard was more appropriate. The reason for this was the balance of interest between safeguards for individual police officers and protection for the general public. On the one hand, the criminal standard of proof

gave a high level of protection to affected police officers, but lesser protection to broader interests. On the other hand, the civil standard of proof would reduce the safeguards for individual officers although it would ensure considerable protection for the broader public interest. In this situation, where reasonable people may differ on sensitive issues of personal and other rights, the Committee decided to accept the regulations.

The right to privacy

3.40 The Committee examines closely any instruments which may affect the right to privacy. The **Air Navigation Regulations (Amendment), Statutory Rules 1991 No.193**, required that effect be given to some Information Privacy Principles but not others. The Minister advised that of the two IPP omitted, one imposed a test of relevancy and reasonableness on the collection of information. However, in this case the parent Act gave express authority for the collection of the information. The other IPP required an agency to keep a record of personal information, which must be available to the Privacy Commissioner and to members of the public. These records would serve no useful purpose in relation to the present information, which related to potential employment as a member of a uniformed security force. In respect of **Public Interest Determination No.3A (PID 3A)** under the **Privacy Act 1988** (remade following comments by the Committee) the Committee sought and obtained an assurance from the Privacy Commissioner that where an individual exercised a right to comment on a proposal by the Director of Public Prosecutions to release to an agency information about that person, that the comments would be given to the agency. The **Australian Sports Drug Agency Regulations, Statutory Rules 1991 No.19**, provided that the identity of a competitor selected to provide a sample must not be disclosed until the competitor has been asked to provide a sample. The Committee asked whether this meant that the name of the athlete could be revealed once a request had been made. The Minister advised that the intention of the provision was that competitors selected for testing would not be warned and take action to avoid giving a sample. As far as privacy was concerned, officials of the agency could only disclose information for the purposes of the Act. This requirement was taken seriously, as reflected in the penalty of two years imprisonment for unauthorised disclosure. Unfortunately it was not possible to impose these standards on other sports officials. However, procedures following a request for a sample were set out in the Act.

Discriminatory provisions

3.41 The Committee questions any provision which appears to be discriminatory. The **Migration Regulations (Amendment), Statutory Rules 1991 No.285**, defined "working age" as up to 65 years for men but only 60 years for women. The Minister advised that these were the ages at which people became eligible for the age pension.

Excessive fees

3.42 The Committee queries any fee, charge or penalty which appears unreasonably high. The **Administrative Appeals Tribunal Regulations (Amendment), Statutory Rules 1991 No.450**, increased application fees for review by the AAT. The reasons for the increase were not explained in the Explanatory Statement. In the present case a \$200 filing fee was first imposed in February 1987, increased to \$240 six months later and in June 1989 increased again to \$300. The sum of the present fees was \$500. This rate of increase was considerably above the CPI and may have had the effect of dissuading people from exercising their rights. The Minister advised that as the regulations were disallowed by the Senate on policy grounds on 3 March 1992 that he assumed that the Committee would not wish to discuss the circumstances in which they were made. However, the Minister noted comments by the Committee that the disallowed regulations did not provide for fees to be waived, and undertook to amend the principal regulations to provide for this.

Lengthy deprivation of rights

3.43 The exercise of personal rights should not be subject to excessive delay. The **Freedom of Information (Miscellaneous Provisions) Regulations (Amendment), Statutory Rules 1991 No.321**, provided that conclusive exemption certificates, which exclude public disclosure of certain documents, remain in force for five years. The Committee questioned this length of time, which may have been excessive, particularly for internal working documents. The Minister advised that the Standing Committee on Legal and Constitution Affairs in its 1987 "Report on the Operation and Administration of the Freedom of Information Legislation" recommended that certificates remain in force for two years. The government response to this recommendation was that although it accepted that certificates should not remain in force indefinitely, two years was too short. The Senate then disallowed the regulations on policy grounds, so that certificates were again in force indefinitely. The Committee then asked the Minister whether it was intended to make new regulations, as the government had earlier agreed that the indefinite period was inappropriate. The Minister advised that this was still the position of the government and there would be consultations with other agencies about the best way to resolve the matter.

PRINCIPLE (C)

DOES DELEGATED LEGISLATION MAKE RIGHTS UNDULY DEPENDANT ON ADMINISTRATIVE DECISIONS WHICH ARE NOT SUBJECT TO INDEPENDENT REVIEW OF THEIR MERITS?

Review of decisions with commercial and livelihood implications

3.44 Instruments of delegated legislation often provide for discretions which affect business operations or which may affect the ability of a person to practise a trade or profession. In such cases, the Committee believes that discretions should

be limited and guided by objective criteria and subject to external review of their merits by an independent body such as the AAT.

3.45 The Television Licence Fees Regulations (Amendment), Statutory Rules 1991 No.79, provided for a broadly expressed discretion with commercial consequences. The **Child Care Centre Fee Relief Eligibility Guidelines** provided for discretions with financial consequences, with the only apparent safeguard being a right to re-apply at any time. In both these cases the Committee asked the Minister whether advice on review could be obtained from the Attorney-General's Department or the Administrative Review Council. In the former case, the Minister advised that the Attorney-General's Department recommended AAT review, and undertook to amend the regulations to provide retrospective review rights. In the latter case, the Minister advised that the ARC recommended AAT review for nine separate discretions in the parent Act and in the guidelines, including one where the review process should provide Social Security Appeals Tribunal review with a subsequent right of review by the AAT. The Minister undertook to amend the legislation.

3.46 The Civil Aviation Regulations (Amendment), Statutory Rules 1991 No.487, included two separate provisions for review of a discretion with commercial consequences. While the Committee had no problem with this approach, it asked the reason for it. The Minister advised that it was an abundance of caution. On the other hand, review rights provided in the parent Act may extend to instruments made under that Act. Both the **Therapeutic Goods (Manufacturing Principles) Determination No.1 of 1991** and the **Therapeutic Goods Regulations (Amendment), Statutory Rules 1992 No.19,** provided for discretions with commercial and livelihood implications, with no criteria. The Minister advised that in one case the discretion would not result in any disputes requiring resolution by an administrative or judicial body, while in the other cases the parent Act provided for AAT review. The **Great Barrier Reef Marine Park Regulations (Amendment), Statutory Rules 1991 No.296,** expressly provided for review of discretions to exempt persons from a mandatory provision. However, there was no express provision for review of a discretion to impose conditions on an exemption. The Committee sought and obtained an assurance that such a review was provided by the parent Act. **Determinations Nos.1991-92/12 and 1991-92/24 under section 10GI and 10F of the Aged or Disabled Persons Care Act 1954,** provided for three statutory bodies to exercise discretions. Clear criteria were provided. The Secretary was then provided with an open-ended discretion to reject recommendations of these expert bodies. In one case there was a right of review from the Secretary to the Minister, although both the Minister and the Secretary were defined as any officer of the department authorised in writing. The Minister undertook to amend the Act and the determinations to provide for AAT review of decisions relating to two of the bodies. The third body distributed a set amount of money and the position of the ARC was that such decisions were not appropriate for review. However, provisions relating to the third body would be amended to clarify its procedures.

3.47 The Civil Aviation Orders amendment of section 40.3.5, provided for the Civil Aviation Authority to exercise a discretion in relation to the grant of a pilot's licence. The **Marine Orders Part 6, Marine Qualifications - Radio, Marine Order**

No.3 of 1992, provided for the Minister or authorised officials to decide on the recognition of overseas qualifications. In both these cases the Minister confirmed that AAT review existed under the parent Act or the principal instrument.

3.48 **The Marine Orders No.2 of 1992, Part 26 Equipment - Communication, Issue 2; and Marine Orders No.4 of 1992, Part 26 Equipment - Communication, Issue 1: Amendment**, expressly provided for AAT review of some decisions, including an offence provision, but not others. However, apart from the offence provision, all appeared to be reviewable under the parent Act. The Minister undertook to amend the instruments to recognise that this review was available. The provision for review of the offence provision was an error.

3.49 **The South East Fishery (Individual Transferable Quota) Management Plan 1991** provided for a discretion with commercial implications. The discretion was limited by criteria and subject to AAT review. However, the Committee questioned one of the criteria which was broad and subjective and which was not included in a similar provision in another management plan. The Minister advised that only minor decisions were contemplated under the provision. If major changes were required then the Minister undertook to amend the plan.

3.50 The Committee often requires background information to complete its scrutiny. **The Hostel Variable Funding Guidelines No.2 under the Aged or Disabled Persons Homes Act 1954** provided for discretions relating to the value of land and equipment. The Minister advised that disputes were referred to the Australian Valuation Office for assessment. The Committee asked for further information on the total amount of money involved, the number of successful and unsuccessful applications and the amounts involved in each and the number of referrals to the AVO. **The Insurance Acquisitions and Takeovers (Notices) Regulations, Statutory Rules 1992 No.68**, provided for the Minister to exercise certain discretions. It was not clear if this was a case where review was appropriate, so the Committee asked for advice on the circumstances in which the discretion would be exercised. **The Trade Marks Regulations (Amendment), Statutory Rules 1991 No.454**, provided for the Registrar to exercise discretions in relation to certain applications. The Committee received a brief reply to its queries on this matter. The Committee then pointed out that the reply should have discussed any review rights in the parent Act or in the principal regulations and whether an adverse exercise of the discretion would preclude or unduly delay a fresh application. **The Southern Shark Fishery Management Plan (Amendment), Plan of Management No.30 (No.1 of 1992)**, did not provide for any new discretions. However, the Committee pointed out that the original plan was more than four years old and asked whether the plan as amended provided the same comprehensive rights of review as more recent plans. The Minister advised that the plan would be amended to provide such rights.

3.51 Sometimes the Committee is persuaded that a discretion does not require review of the merits of its exercise. **The Civil Aviation Regulations (Amendment), Statutory Rules 1991 No.409**, provided for a discretion which did not appear to be included in extensive review rights in either the parent Act or the regulations. The Committee accepted the Minister's advice that the discretion involved technical

safety matters and was not suitable for review. The **Income Tax Regulations (Amendment), Statutory Rules 1991 No.240**, provided for a discretion with the Commissioner to cancel an investment body remitter number, although reasons had to be given for any cancellation. The Minister advised that this was intended to be a mandatory duty rather than a discretion. Cancellation only occurred after it was no longer possible for a taxpayer legally to use the number. The **VHF High Band Frequency Plan (148 to 174 Mhz), Statutory Rules 1991 No.354**, and the **VHF Mid Band Frequency Plan (70 to 87.5 Mhz), Statutory Rules 1991 No.355**, provided for apparent discretions with no criteria, apart from criteria in a Note which was not part of the plans, and with no indication of who was to exercise the discretions. General Notes also appeared to provide for discretions. The Minister advised that the parent Act provided for review of discretions and undertook to amend the General Notes to indicate that the putative discretions were merely a guide to general decision making under that Act. The **Civil Aviation Regulations (Amendment), Statutory Rules 1991 No.157**, provided discretions to withdraw an infringement notice and to extend the time for payment of a fine. The Minister advised that the provisions reflected Commonwealth criminal law policy that decisions relating to prosecutions should not be subject to administrative review of their merits. The **Ministerial Guidelines 1991 under s.44 of the Student Assistance Act 1973**, provided for discretions relating to the repayment of money to the Commonwealth. Some of these discretions were limited by criteria, while others were not; some were subject to internal review, while others were not; and some may have come within the review provisions of the parent Act. The Minister advised that external review of all recovery decisions could only be provided by amendment of the parent Act. The Committee then asked the Minister if he would ask the Administrative Review Council whether such amendment would be appropriate. The Minister replied that he would prefer not to do so.

Review of decisions affecting personal rights

3.52 The Committee also ensures that instruments provide appropriate criteria and review rights for discretions which affect personal rights apart from rights to carry on a business or practise a trade or profession. The **Notice under s.1237(3) of the Social Security Act 1991**, provided for the Secretary to exercise wide and subjective powers to waive certain debts owed to the Commonwealth. However, the Minister advised that under the parent Act these discretions were reviewable by the Social Security Appeals Tribunal and then by the Administrative Appeals Tribunal. The **Occupational Health and Safety (Commonwealth Employment) Regulations, Statutory Rules 1991 No.266**, provided for circumstances under which a returning officer may disallow a vote or declare an election void. The regulations provided some criteria for the exercise of these discretions, although one of the criteria was itself subjective. The Minister agreed to amend the regulations to provide for AAT review.

3.53 Sometimes the Committee accepts review by bodies other than the AAT. **Public Service Determination 1991/37** provided for discretions relating to rehabilitation programs. There were no criteria, apart from a requirement to consult a Commonwealth agency. **Public Service Determination 1991/39** provided

for discretions relating to study leave. The Minister advised that in both cases there was a right to complain to the Merit Protection and Review Agency, an independent, statutory body. In addition, in respect of the latter instrument, the Minister undertook to amend the Public Service Regulations to provide for internal review. Defence Determination 1991/22 provided for a discretionary payment to a member of the Australian Army Individual Emergency Reserve, subject to broad criteria. The Minister advised that there was a right to complain to the Defence Force Ombudsman. Public Service Determination 1990/190 provided for a number of discretions of different levels of significance. The Minister advised that the discretions reflected provisions in relevant industrial awards. Any person who was dissatisfied could approach the Australian Industrial Relations Commission to review an award. Also, the Minister undertook to amend the determination to remove one of the discretions which was redundant. The Australian Broadcasting Corporation (Election of staff-elected Director) Regulations, Statutory Rules 1991 No.32, provided discretions with the Minister and the returning officer. The Minister advised that the discretions had been drafted after extensive consultations with the Australian Electoral Commission. Also, the regulations provided for a form of internal review by a disputes committee.

PRINCIPLE (D)

DOES DELEGATED LEGISLATION CONTAIN MATTERS MORE APPROPRIATE FOR PARLIAMENTARY ENACTMENT?

3.54 This is a Principle not often raised by the Committee. Nevertheless, it is a breach of parliamentary propriety if matters which should be subject to all the safeguards of the parliamentary passage of a Bill are provided for by delegated legislation. The Migration Regulations (Amendment), Statutory Rules 1991 No.201, provided for "risk factors", relating to the possibility that a person may overstay a visitor's visa, based on specified class characteristics including nationality, age, sex, marital status, occupation and place of occupation. This provision, as well as possibly breaching personal rights, may also have been more appropriate for inclusion in the parent Act. However, the Committee accepted the Minister's detailed advice, as discussed in paragraph 3.34.

CHAPTER 4

MINISTERIAL UNDERTAKINGS IMPLEMENTED

4.1 Ministerial undertakings to amend legislation to meet the concerns of the Committee were implemented during the reporting period by the following instruments. Some of the undertakings were given during previous reporting periods but were not implemented until the present reporting year.

Air Navigation (Aerodrome Curfew) Regulations Statutory Rules 1989 No.354

4.2 On 10 July 1990 the Minister for Shipping and Aviation Support, Senator the Hon Bob Collins, undertook to amend the Regulations to provide a right of review and a defence of reasonable excuse. This undertaking was implemented by the **Air Navigation (Aerodrome Curfew) Regulations (Amendment), Statutory Rules 1991 No.408, of 5 December 1991.**

Air Navigation (Charges) Regulations (Amendment) Statutory Rules 1991 No.237

4.3 On 30 September 1991 the Minister for Shipping and Aviation Support, Senator the Hon Bob Collins, undertook to amend the Regulations to clarify drafting. This undertaking was implemented by the **Air Navigation (Charges) Regulations (Amendment), Statutory Rules 1991 No.427, of 12 December 1991.**

Australian Horticultural Corporation (Export Control) Regulations Statutory Rules 1990 No.422

4.4 On 15 May 1991 the Minister for Primary Industries and Energy, the Hon John Kerin MP, undertook to amend the Regulations to correct drafting oversights and to clarify review provisions. This undertaking was implemented by the **Australian Horticultural Corporation (Export Control) Regulations (Amendment), Statutory Rules 1991 No.436, of 12 December 1991.**

Australian Meat and Live-stock Orders Nos. L8/89, M41/89, MQ32/89, MQ33/89 and MQ34/89

4.5 On 13 August 1990 the Minister for Primary Industries and Energy, the Hon John Kerin MP, undertook to amend the parent Act to provide AAT review of certain decisions. This undertaking was implemented by the ***Australian Meat and Live-stock Corporation Amendment Act 1990, of 21 December 1990.***

Australian Meat and Live-stock Order No.MQ34/89

4.6 On 13 August 1990 the Minister for Primary Industries and Energy, the Hon John Kerin MP, undertook to amend the Order to correct a drafting oversight. This undertaking was implemented by the **Australian Meat and Live-stock Order No. MQ35/90**, of 23 October 1990.

Australian National Maritime Museum Regulations Statutory Rules 1991 No.10

4.7 On 16 April 1991 the Minister for Arts, Tourism and Territories, the Hon David Simmons MP, undertook to amend the Regulations to reduce the penalty for illegal parking and to remove a strict liability offence. This undertaking was implemented by the **Australian National Maritime Museum Regulations (Amendment)**, **Statutory Rules 1991 No.220**, of 27 June 1991.

Civil Aviation Orders

4.8 On 16 July 1990 the Minister for Shipping and Aviation Support, Senator the Hon Bob Collins, undertook to repeal the Orders progressively over the next four years and replace them with Regulations. This undertaking is being implemented.

Civil Aviation Regulations (Amendment) Statutory Rules 1991 No.487

4.9 On 12 May 1992 the Minister for Shipping and Aviation Support, Senator the Hon Peter Cook, undertook to amend the regulations to correct reference errors. This undertaking was implemented by the **Civil Aviation Regulations (Amendment)**, **Statutory Rules 1992 No.174**, of 18 June 1992.

Customs (Prohibited Imports) Regulations (Amendment) Statutory Rules 1990 No.460

4.10 On 8 May 1991 the Minister for Small Business and Customs, the Hon David Beddall MP, undertook to amend the Regulations retrospectively to remove a discretion. This undertaking was implemented by the **Customs (Prohibited Imports) Regulations (Amendment)**, **Statutory Rules 1991 No.248**, of 2 August 1991.

Defence (Areas Control) Regulations Statutory Rules 1989 No.337

4.11 On 22 August 1990 the Minister for Defence Science and Personnel, the Hon Gordon Bilney MP, undertook to amend the Regulations to remove a strict liability offence. This undertaking was implemented by the **Defence (Areas Control) Regulations (Amendment)**, **Statutory Rules 1991 No.245**, of 2 August 1991.

**Defence Force Regulations (Amendment)
Statutory Rules 1989 No.290**

4.12 On 8 January 1990 the Minister for Defence Science and Personnel, the Hon David Simmons MP, undertook to amend the Regulations to remove a strict liability offence. This undertaking was implemented by the **Defence Force Regulations (Amendment), Statutory Rules 1990 No.92**, of 16 May 1990.

Determination of Application No.2 made under s.72 of the *Privacy Act 1988*

4.13 On 17 April 1991 the Privacy Commissioner, Mr Kevin O'Connor, undertook to revoke and remake the Determination to allow for consultation with all interested parties on the scope of the application. This undertaking was implemented by **Public Interest Determination No.3A made under s.72 of the *Privacy Act 1988***, of 22 August 1991.

Determinations Nos. TAFE 29/89, 7/90 and 8/90

4.14 On 25 March 1991 the Minister for Employment, Education and Training, the Hon John Dawkins MP, undertook to change the operative words of future determinations to conform more closely to the requirements of the parent Act. This undertaking was implemented by **Determination TAFE 21/91 made under the *States Grants (TAFE Assistance) Act 1989***, of 5 November 1991, and subsequent determinations.

**Environment Protection Management (Amendment) Ordinance 1990
Territory of Heard Island and McDonald Islands Ordinance No.1 of 1990**

4.15 On 25 March 1991 the Minister for Arts, Sport, the Environment, Tourism and Territories, the Hon Ros Kelly MP, undertook to amend the Ordinance to limit the level of delegation of powers. This undertaking was implemented by the **Environment Protection and Management (Amendment) Ordinance 1991, Territory of Heard Island and McDonald Islands Ordinance No.1 of 1991**, of 30 May 1991.

Fisheries Notice No. ECF 1

4.16 On 12 December 1991 the Minister for Primary Industries and Energy, the Hon Simon Crean MP, undertook to amend the Notice to correct a citation error. This undertaking was implemented by **Fisheries Notice No. ECF 2**, of 24 December 1991.

Fisheries Notice No. TEC 2

4.17 On 14 November 1990 the Minister for Primary Industries and Energy, the Hon John Kerin MP, undertook to amend the Notice to correct a drafting oversight. This undertaking was implemented by **Fisheries Notice No. TEC 4**, of 28 March 1991.

**Great Barrier Reef Marine Park Regulations (Amendment)
Statutory Rules 1990 No.35**

4.18 On 4 September 1990 the Minister for Arts, Sport, the Environment, Tourism and Territories, the Hon Ros Kelly MP, undertook to amend the Regulations to remove a strict liability offence. This undertaking was implemented by the **Great Barrier Reef Marine Park Regulations (Amendment), Statutory Rules 1991 No.257**, of 23 August 1991.

Guidelines HSB 3/1992 made under s.82F of the *National Health Act 1953*

4.19 On 24 April 1992 the Minister for Health, Housing and Community Services, the Hon Brian Howe MP, undertook to amend the Guidelines to provide criteria under which appointees to the Private Health Insurance Administration Council may be removed from office. This undertaking was implemented on the same day by **Guidelines HSB 8/1992 made under s.82F of the *National Health Act 1953***.

**Health Insurance Regulations (Amendment)
Statutory Rules 1991 No.82**

4.20 On 16 July 1991 the Minister for Health, Housing and Community Services, the Hon Brian Howe MP, undertook to renumber the Regulations. This undertaking was implemented by the **Health Insurance Regulations (Amendment), Statutory Rules 1992 No.111**, of 21 April 1992.

**High Court of Australia (Fees) Regulations
Statutory Rules 1991 No.449**

4.21 The **High Court of Australia (Fees) Regulations (Amendment), Statutory Rules 1992 No.80**, of 27 March 1992, corrected a drafting error pointed out by the Committee on 28 February 1992.

**Horticultural Export Charge (Nursery Products) Regulations (Amendment)
Statutory Rules 1989 No.251**

4.22 On 11 January 1990 the Minister for Resources, the Hon Alan Griffiths MP, undertook to provide greater safeguards for the issue of search warrants. This undertaking was implemented by the ***Primary Industries Levies and Charges Collection Act 1991***, of 1 March 1991.

**Industrial Chemicals (Notification and Assessment) Regulations
Statutory Rules 1990 No.231**

4.23 On 31 October 1990 the Minister for Industrial Relations, Senator the Hon Peter Cook, undertook to amend the Regulations to provide criteria for the exercise of certain discretions. This undertaking was implemented by the **Industrial Chemicals (Notification and Assessment) Regulations (Amendment), Statutory Rules**

1992 No.29, of 31 January 1992.

Industry Training Agents Guidelines No.1

4.24 On 4 December 1990 the Minister for Employment, Education and Training, the Hon John Dawkins MP, undertook to amend the Guidelines to clarify legislative intent and to require public officials to produce identification documents when entering private premises. This undertaking was implemented by the **Industry Training Agents Guidelines No.1 of 1991, of 28 May 1991.**

Lotteries Ordinance 1989

Territory of Christmas Island Ordinance No.4 of 1989

4.25 On 15 November 1989 the Minister for the Arts, Tourism and Territories, the Hon Clyde Holding MP, undertook to amend the Ordinance to -

- (a) provide detailed criteria for a discretion;
- (b) provide AAT review for the same discretion;
- (c) limit the persons to whom the discretion may be delegated;
- (d) limit the power of officials to enter premises; and
- (e) limit the power of officials to give directions.

This undertaking was implemented by the **Lotteries (Amendment) Ordinance 1991, Territory of Christmas Island Ordinance No.4 of 1991, of 25 July 1991.**

Motor Vehicle Standards Regulations

Statutory Rules 1989 No.202

4.26 On 26 October 1989 the Minister for Land Transport and Shipping Support, the Hon Bob Brown MP, undertook to amend the parent Act to provide that certain instruments be disallowable and for AAT review of discretions. These undertakings were implemented by the *Transport and Communications Legislation Amendment Act (No.2) 1989*, of 17 January 1990, and the *Transport and Communications Legislation Amendment Act 1990*, of 21 January 1991.

National Health Regulations (Amendment)

Statutory Rules 1990 No.114

4.27 On 14 September 1990 the Minister for Aged, Family and Health Services, the Hon Peter Staples MP, undertook to amend the Regulations to provide for the notification of review rights and the tabling of annual reports. This undertaking was implemented by the **National Health Regulations (Amendment), Statutory Rules 1991 No.232, of 25 July 1991.**

**Navigation (Marine Casualty) Regulations
Statutory Rules 1990 No.257**

4.28 On 8 November 1990 the Minister for Shipping and Aviation Support, Senator the Hon Bob Collins, undertook to amend the Regulations retrospectively to remove possible self-incrimination. This undertaking was implemented by the **Navigation (Marine Casualty) Regulations (Amendment), Statutory Rules 1991 No.462**, of 12 December 1991.

**Occupational Superannuation Standards Regulations (Amendment)
Statutory Rules 1991 No.148**

4.29 On 19 September 1991 the Parliamentary Secretary to the Treasurer, Senator the Hon Bob McMullan, undertook to amend the Regulations to correct a drafting oversight. This undertaking was implemented by the **Occupational Superannuation Standards Regulations (Amendment), Statutory Rules 1991 No.458**, of 12 December 1991.

**Prescribed Goods (General) Orders as amended (Amendment)
Export Control Orders No.5 of 1990**

4.30 On 20 March 1991 the Minister for Primary Industries and Energy, the Hon John Kerin MP, undertook to amend the Orders to clarify legislative intent. This undertaking was implemented by the **Prescribed Goods (General) Orders as amended (Amendment), Export Control Orders No.3 of 1991**, of 19 August 1991.

**Prescribed Goods (General) Orders as amended (Amendment)
Export Control Orders No.3 of 1991**

4.31 On 6 November 1991 the Minister for Resources, the Hon Alan Griffiths MP, undertook to amend the Orders to improve presentation and access. This undertaking was implemented by the **Prescribed Goods (General) Orders (Amendment), Export Control Orders No.3 of 1992**, of 30 April 1992.

**Primary Industries Levies and Charges Collection (Avocado) Regulations
Statutory Rules 1991 No.207**

4.32 On 29 October 1991 the Minister for Primary Industries and Energy, the Hon Simon Crean MP, undertook to amend the Regulations to correct reference errors. This undertaking was implemented by the **Primary Industries Levies and Charges Collection (Avocado) Regulations (Amendment), Statutory Rules 1992 No.116**, of 21 April 1992.

Public Service Determinations 1990/95 and 1990/177

4.33 On 20 November 1990 and 25 February 1991 respectively, the Minister for Industrial Relations, Senator the Hon Peter Cook, undertook to amend the Determination to remove archaic drafting expressions such as "kitchenman",

“kitchenmaid” and “diet maid”. This undertaking is being progressively implemented.

Public Service Determination 1991/27

4.34 On 15 April 1991 the Minister for Industrial Relations, Senator the Hon Peter Cook, undertook to amend the Determination to correct a drafting error. This undertaking was implemented by Public Service Determination 1991/256, of 9 September 1991.

Public Service Determination 1991/39

4.35 On 22 July 1991 the Minister for Industrial Relations, Senator the Hon Peter Cook, undertook to amend the Public Service Regulations to provide for review of certain discretions. This undertaking was implemented by the Public Service Regulations (Amendment), Statutory Rules 1991 No.286, of 10 September 1991.

Superannuation (Approved Authorities) Regulations (Amendment) Statutory Rules 1990 No.96

4.36 On 4 December 1990 the Minister for Finance, the Hon Ralph Willis MP, undertook to repeal the principal Regulations. This undertaking was implemented by Superannuation (CSS) Approved Authority Declaration No.4, Statutory Rules 1991 No.190, of 21 June 1991.

Wheat Industry Fund Regulations Statutory Rules 1990 No.28

4.37 On 13 November 1990 the Minister for Primary Industries and Energy, the Hon John Kerin MP, undertook to amend the Regulations provide safeguards for individual equity holders in the Wheat Industry Fund. This undertaking was implemented by the Wheat Industry Fund Regulations (Amendment), Statutory Rules 1991 No.315, of 9 October 1991.

Wool Marketing Regulations (Amendment) Statutory Rules 1990 No.203

4.38 On 3 October 1990 the Minister for Primary Industries and Energy, the Hon John Kerin MP, undertook to legislate to limit the right of a statutory authority to obtain information. This undertaking was implemented by the *Australian Wool Realisation Commission Act 1991*, of 27 June 1991.

CHAPTER 5

MINISTERIAL UNDERTAKINGS NOT YET IMPLEMENTED

5.1 Below are Ministerial and other undertakings, given to amend legislation to meet the concerns of the Committee, which had not been implemented at 30 June 1992, the end of the reporting period. Some have been implemented since that date.

Aboriginal and Torres Strait Islander Commission (Election of Executive Committees) Regulations Statutory Rules 1990 No.399

5.2 On 15 August 1991 the Minister for Aboriginal Affairs, the Hon Robert Tickner MP, undertook to amend the Regulations to remove a discretion conferred on an electoral official.

Air Navigation Regulations (Amendment) Statutory Rules 1991 No.193

5.3 On 8 October 1991 the Minister for Transport and Communications, the Hon Kim Beazley MP, undertook to amend the Regulations to correct reference errors.

Australian Horticultural Corporation (Dried Fruits Export Control) Regulations Statutory Rules 1991 No.199

5.4 On 29 October 1991 the Minister for Primary Industries and Energy, the Hon Simon Crean MP, undertook to amend the Regulations to correct reference errors.

Australian Sports Drug Agency Regulations Statutory Rules 1991 No.19

5.5 On 21 June 1991 the Minister for the Arts, Sport the Environment, Tourism and Territories, the Hon Ros Kelly MP, undertook to amend the Regulations to correct reference errors.

Banking (Statistics) Regulations Statutory Rules 1989 No.357

5.6 On 23 July 1990 the Minister Assisting the Treasurer, the Hon Simon Crean MP, undertook to amend the Regulations to require that a notification be in writing.

Child Care Centre Relief Eligibility Guidelines under s.12A of the *Child Care Act 1972*

5.7 On 27 May 1992 the Minister for Aged, Family and Health Services, the Hon Peter Staples MP, undertook to amend the Act and delegated legislation to provide for review of discretions.

**Civil Aviation Orders Parts 105, 106 and 107
Amendment Lists 12/90**

5.8 On 5 March 1991 the Minister for Shipping and Aviation Support, Senator the Hon Bob Collins, undertook to amend the Orders to restrict discretions and to provide for AAT review.

Civil Aviation Orders Part 105 AD/F28/45 Amdt No.2

5.9 On 28 March 1991 the Minister for Shipping and Aviation Support, Senator the Hon Bob Collins, undertook to amend the Orders to clarify legislative intent.

**Customs (Prohibited Exports) Regulations (Amendment)
Statutory Rules 1991 No.288**

5.10 On 19 December 1991 the Minister for Small Business and Customs, the Hon David Beddall MP, undertook to amend the Regulations to limit a power to delegate.

Determination No. 1991-92/12 made under s.10GI of the *Aged or Disabled Persons Care Act 1954*

5.11 On 28 May 1992 the Minister for Aged, Family and Health Services, the Hon Peter Staples MP, undertook to amend the Determination and to seek an amendment to the Act to provide for review of discretions and to limit a power to delegate.

**Electricity (Amendment) Ordinance 1991
Territory of Christmas Island Ordinance No. 2 of 1991**

5.12 On 22 August 1991 the Minister for Arts, Tourism and Territories, the Hon David Simmons MP, undertook to amend the Ordinance to provide for public officials to carry and produce identity cards.

**Fisheries Levy (Northern Fish Trawl Fishery) Regulations (Amendment)
Statutory Rules 1992 No.13**

5.13 On 3 June 1992 the Minister for Primary Industries and Energy, the Hon Simon Crean MP, undertook to amend the Regulations to correct a drafting oversight.

**Fisheries Management Regulations
Statutory Rules 1992 No.20**

5.14 On 27 May 1992 the Minister for Primary Industries and Energy, the Hon Simon Crean MP, undertook to amend the Regulations to require notification of rights and to correct reference errors.

Fisheries Notices No. NPF 9

5.15 On 21 August 1991 the Minister for Primary Industries and Energy, the Hon Simon Crean MP, undertook to amend the Notice to effect legislative intent.

Fisheries Notices Nos. NPF 11 and 12

5.16 On 21 August 1991 the Minister for Primary Industries and Energy, the Hon Simon Crean MP, undertook to amend the Notices to correct reference errors.

Fisheries Notices Nos. NPF 13 and 14

5.17 On 21 August 1991 the Minister for Primary Industries and Energy, the Hon Simon Crean MP, undertook to amend the Notices to clarify legislative intent and correct reference errors.

**Freedom of Information (Miscellaneous Provisions) Regulations (Amendment)
Statutory Rules 1991 No.321**

5.18 These regulations, which provided for a conclusive exemption certificate to remain in force for five years, were disallowed by the Senate on policy grounds on 24 March 1992, with the result that such certificates remained in force indefinitely. On 29 April 1992 the Attorney-General, the Hon Michael Duffy MP, undertook to consult with other agencies to ascertain the best way to resolve the matter.

**Marine Orders, Part 26 Equipment - Communication Issue 2
Order No.2 of 1992
Marine Orders, Part 26 Equipment - Communication Issue 1
Order No.4 of 1992**

5.19 On 17 June 1992 the Minister Shipping and Aviation Support, Senator the Hon Bob Collins, undertook to provide a Note in the body of Marine Orders indicating that particular decisions are reviewable by the AAT.

Migration Regulations

5.20 On 29 November 1990 the Minister for Immigration, Local Government and Ethnic Affairs, the Hon Gerry Hand MP, undertook to take the Committee's concerns into consideration during a review of the Regulations.

NHMRC Guidelines for the Protection of Privacy in the Conduct of Medical Research under s.95 of the *Privacy Act 1988*

5.21 On 3 September 1991 the Minister for Justice, Senator the Hon Michael Tate, undertook to provide for the tabling and possible disallowance of the Guidelines.

**Occupational Health and Safety (Commonwealth Employees) Regulations
Statutory Rules 1991 No.266**

5.22 On 11 December 1991 the Minister for Industrial Relations, Senator the Hon Peter Cook, undertook to amend the Regulations to provide for AAT review, prescribe notices issued by investigators and correct drafting oversights.

**Public Interest Determination No.4(PID) under s.72 of the *Privacy Act 1988*
Public Interest Determination No.5(PID) under s.72 of the *Privacy Act 1988***

5.23 On 29 August 1991 the Privacy Commissioner, Mr Kevin O'Connor, undertook to include in future Determinations the particular Information Privacy Principle a proposed practice may breach.

Public Service Determination 1991/102

5.24 On 21 May 1992 the Minister for Industrial Relations, Senator the Hon Peter Cook, undertook to amend the Determination to correct inaccuracies in the Tables of Allowances.

Regional Council Election Rules, Rules No.1 of 1990 under the *Aboriginal and Torres Strait Islander Commission Act 1989*

5.25 On 12 April 1991 the Minister for Aboriginal Affairs, the Hon Robert Tickner MP, undertook to amend the Rules to clarify the powers of a public official, remove a strict liability offence and remove a reversal of the usual onus of proof.

Remuneration Tribunal Determination No.23 of 1988

5.26 On 20 December 1989 the Minister for Industrial Relations, the Hon Peter Morris MP, undertook to consider amending the *Remuneration Tribunal Act 1973* to require that copies of Determinations be tabled within 15 sitting days of making.

**Rules under the *Federal Court of Australia Act 1976*
Statutory Rules 1990 No.414**

5.27 On 8 July 1991 the Chief Justice of the Federal Court undertook to amend the rules to correct a drafting oversight.

**South East Fishery (Individual Transferable Quota) Management Plan 1991
Plan of Management No. SEF1 (No.11 of 1991)**

5.28 On 27 May 1992 the Minister for Primary Industries and Energy, the Hon Simon Crean MP, undertook to amend the Plan to correct references to the Act.

Statutory Rules series

5.29 On 10 August 1990 the Attorney-General, the Hon Michael Duffy MP, undertook to amend the *Acts Interpretation Act 1901* to provide that statutory rules relying on s.4 of that Act for their authority as well as another parent Act, may be made in the same instrument as those which rely only on a parent Act.

**Superannuation (Eligible Employees) Regulations (Amendment)
Statutory Rules 1990 No.97**

5.30 On 4 December 1990 the Minister for Finance, the Hon Ralph Willis MP, undertook to amend the Regulations to improve drafting.

**Television Licence Fees Regulations (Amendment)
Statutory Rules 1991 No.79**

5.31 On 2 September 1991 the Minister for Transport and Communications, the Hon Kim Beazley MP, undertook to amend the Regulations to provide for AAT review.

**Training Guarantee (Wool Industry) Regulations
Statutory Rules 1991 No.308
Training Guarantee (Outstanding Trainer) Regulations
Statutory Rules 1991 No.309**

5.32 On 18 February 1992 the Minister for Employment, Education and Training, the Hon John Dawkins MP, undertook to amend the Regulations to meet the Committee's concerns regarding discretionary decisions, strict liability offences and definitions.

Zone Election Rules, Rules No.4 of 1990 under the *Aboriginal and Torres Strait Islander Commission Act 1989*

5.33 On 12 April 1991 the Minister for Aboriginal Affairs, the Hon Robert Tickner MP, undertook to amend the Rules to remove strict liability and vicarious liability offences and a reversal of the usual onus of proof.

CHAPTER 6

POLITICAL BROADCASTS REGULATIONS: STATEMENT BY SENATOR GILES

6.1 On 1 April 1992, Senator Giles made a statement in the Senate about regulations made following passage of the *Political Broadcasts and Political Disclosures Act 1991*. The statement illustrates several aspects of the operations of the Committee.

Senator Giles, 1 April 1992, Senate Weekly Hansard, p.1539

6.2 “Honourable senators will recall that the *Political Broadcasts and Political Disclosures Act 1991*, which for convenience I will refer to as the Political Broadcasts Act, was passed by the Senate after considerable debate. That debate appropriately concentrated on the policy aspects of its provisions. However, the actual implementation of those provisions would not have been possible without regulations filling out the details of its general framework. These regulations were made under the parent *Broadcasting Act 1942*, which I will call the Act, as amended by the Political Broadcasts Act.

6.3 “As part of its mandate from the Senate the Standing Committee on Regulations and Ordinances examined nine separate sets of regulations made under the Act, to ensure that they complied with its principles of parliamentary propriety and personal liberties. The Committee found that the only principle which may have been breached was that which requires delegated legislation to be in accordance with its parent Act.

6.4 “The Committee considers that it is not certain that some, or all, of these regulations have a valid effect. However, this is a matter upon which opinions may differ and which may only be determined conclusively by a court. In such cases of uncertain validity the Committee does not express an opinion one way or the other. This is a point which was made by Senator Patterson recently during the condolence motion for Senator Ian Wood. Nevertheless, in this case the Committee decided that it may be useful to set out the issues of legislative scrutiny raised by the regulations.

6.5 “The nine separate sets of regulations dealt with broadcasts in Tasmania, the Australian Capital Territory and New South Wales. However, they conveniently fall into three groups of three. I seek leave to incorporate in *Hansard* a Table setting out details of these groups.

TABLE

First Group

Political Broadcasts (Tasmania) Regulations
Statutory Rules 1991 No 482
Made, gazetted and tabled on 19 December 1991

Political Broadcasts (Australian Capital Territory) Regulations
Statutory Rules 1991 No 483
Made, gazetted and tabled on 19 December 1991

Political Broadcasts (New South Wales) Regulations
Statutory Rules 1991 No 489
Made on 23 December 1991, gazetted on 3 January 1992 and tabled on
25 February 1992

Second Group

Political Broadcasts (Australian Capital Territory) Regulations
Statutory Rules 1992 No 1

Political Broadcasts (Tasmania) Regulations
Statutory Rules 1992 No 2

Political Broadcasts (New South Wales) Regulations
Statutory Rules 1992 No 3

All of the second group were made and gazetted on 3 January 1992 and
tabled on 27 February 1992

Third Group

Political Broadcasts (Australian Capital Territory) Regulations
(Amendment)
Statutory Rules 1992 No 4

Political Broadcasts (Tasmania) Regulations (Amendment)
Statutory Rules 1992 No 5

Political Broadcasts (New South Wales) Regulations (Amendment)
Statutory Rules 1992 No 6

All of the third group were made and gazetted on 10 January 1992 and
tabled on 27 February 1992

6.6 "Regulations in the first group all prescribe the free time to be allocated in respect of elections in those two States and the Australian Capital Territory and the method of allocation of this free time. Those in the second group repeal the first

group and remake similar provisions to those made by the first group. The third group amends the first group of regulations.

6.7 “At this point it should be emphasised that actions have been instituted in the High Court seeking declarations that Part IIID of the Broadcasting Act, inserted by the Political Broadcasts Act, is invalid. If these actions are successful and that Part is declared invalid, then all of these regulations, which are dependent upon provisions in that Part, will also fail.

6.8 “I will now deal with the first group of three sets of regulations. There are two possible problems with this legislation. First, two of the group of three, those dealing with elections in Tasmania and the Australian Capital Territory, contained a regulation providing for their commencement on 1 January 1992. This may have created a difficulty because the first proclamation of Part 2 of the Political Broadcasts Act, which inserted Part IIID containing the amendments upon which the regulations were to operate, was not gazetted until 2 January 1992. The third of this group of three regulations, dealing with elections in New South Wales, was not affected in this way as they commenced on their date of gazettal, 3 January 1992, which was the date of the second proclamation of Part 2 of the Political Broadcasts Act.

6.9 “The second problem with this first group of regulations is that all three sets of regulations in the group refer to section numbers which in fact do not exist in the amendments effected by the Political Broadcasts Act. Thus they appear to have nothing upon which to operate.

6.10 “I now pass on to the second group, also of three sets of regulations dealing with elections in the Australian Capital Territory, Tasmania and New South Wales. This second group was made on 3 January 1992, which was the date of the second proclamation of the Political Broadcasts Act, so there is not the same problem with commencement as exists for the first group. However, there are other difficulties.

6.11 “First, two of the three sets of regulations, dealing with the Australian Capital Territory and Tasmania, were made at a time when there was a motion pending in the Senate for disallowance of the equivalent regulations in the first group, which had been tabled in both Houses. In this context, section 48B of the *Acts Interpretation Act 1901* provides, in effect, that if a regulation is made while a regulation the same in substance - and I emphasise ‘the same in substance’ - is subject to a disallowance motion, then the second regulation ‘has no effect’. It is a possible argument that some of the individual regulations in the two sets of affected regulations are the same in substance as those in the earlier group. Here, it is not necessary for the whole set to be the same in substance as the earlier set, but each regulation can be compared with an earlier one. In the second group there were differences in many of the regulations in that correct sections of the Act were included, compared with the incorrect references in the previous group. This could raise the question whether these later regulations were the same in substance as the earlier.

6.12 “This is a matter of legal and factual interpretation to be decided by the Courts and, if the later regulations were held to be the same in substance, they would have no effect. On the other hand, if they were held not to be the same in substance, the second group of regulations would stand.

6.13 “The third set of regulations in the first group, dealing with New South Wales, had not been tabled at the time the second group was made. Thus, they were not subject to a disallowance motion and so the corresponding set in the second group was not caught by section 48B. However, a similar fate could be argued for the third set in the second group or some of them, relying on section 48A of the Acts Interpretation Act, which provides that, if regulations the same in substance are made during the tabling requirement period, they have no effect.

6.14 “It should be noted that if any of the regulations were held to be the same in substance, they would be void and not merely voidable as is the case if regulations are made and not tabled within 15 sitting days.

6.15 “There is another problem with the set of regulations dealing with New South Wales in the second group. Cross-references in regulations 8 and 9 refer to regulation 5, when a reference to regulation 6 was probably intended. Indeed, if the cross-references to regulation 5 are correct then the corresponding cross-references in the other five sets of regulations in the first and second group would appear to be wrong.

6.16 “The next difficulty with the second group of regulations concerns a final provision repealing the equivalent set of regulations in the first group. It could be argued that, even if the other individual regulations in the second group of regulations are of no effect because they are the same in substance as regulations in the first group, there are certainly no regulations in the first group the same in substance as these three repealing regulations. If this argument is correct, these three repealing regulations would stand and would be effective to repeal the first group.

6.17 “On the other hand, it could be argued that the repealing regulations were such an integral part of the whole set that, if the other regulations in the set fell as being the same in substance, these repealing regulations also fall. However, as noted earlier, neither section 48A nor section 48B refers to a set of regulations the same in substance, but refer to ‘no regulation the same in substance’. Incidentally, the Explanatory Statements for the second group of regulations offer no assistance, as they provide an outline of every provision in each set apart from the repealing provision, which is not mentioned.

6.18 “This question of repeal becomes important when the third group of regulations is considered, because they purport to amend the first group, which may or may not have been repealed by the repealing regulations in the second group.

6.19 “The third group of regulations was apparently made on the assumption that all the substantive provisions of the second group, including the repeal

provisions, were invalid, and that the first group had therefore not been repealed.

6.20 “This third group amended the first group to do two principal things as well as to make some minor changes. First, they amended the two sets of regulations dealing with Tasmania and the Australian Capital Territory to repeal the individual provisions fixing their commencement date as 1 January 1992, with the aim of ensuring commencement after the second proclamation of Part 2 of the Political Broadcasts Act. The explanatory statement advised that this amendment was intended to ensure that the amended sets of regulations came into effect, at the latest, on the gazettal of the third group on 10 January 1992.

6.21 “Whether this has been the effect will be for a court to decide and will be a test, among other things, of the interpretation of section 4 of the Acts Interpretation Act, under which the first two sets in the first group were made. That section provides that regulations may be made under provisions of a parent Act which have not yet come into operation, although the regulations cannot come into operation before those provisions. Secondly, the third group amended the first group to remove the spurious section numbers and to insert the correct ones.

6.22 “In summary, there are arguments both for and against the validity of the regulations made under the Political Broadcasts Act amendments. In all of these arguments the meaning of the phrase ‘the same in substance’ is crucial. So, too, is the effect of the three repealing regulations.

6.23 “The result is that there are at least two ways in which a court decision could result in there being no effective regulations in force. Firstly, in the actions already commenced, the High Court of Australia could make declarations that Part IIID of the Act, inserted by the Political Broadcasts Act, was invalid.

6.24 “If that happened, then these regulations, all of which depend on provisions in that Part, will not be effective. Alternatively, a court could hold that most of the regulations in the second group were the same in substance as those in the first group and thus have no effect, but that the repealing provisions were not the same in substance and thus operate to repeal the first group. The third group would then be ineffectual as they merely purport to amend the first group.

6.25 “On the other hand, a court could hold that there were effective regulations in force. Under this argument the individual regulations, including the repealing regulations, in the second group, would be held to be the same in substance as the relevant earlier regulations and thus of no effect. The first group would thus be held not to have been repealed. In addition, any possible defects in the first group concerning the date of commencement and the wrong section numbers would have been corrected by the third group.

6.26 “As mentioned earlier, the Committee does not express a view on the validity of these regulations. Instead, this survey of possible issues concerning validity is presented generally to assist honourable senators and as a case study of some technical aspects of delegated legislation.”

CHAPTER 7

CHILD CARE CENTRE FEE RELIEF ELIGIBILITY GUIDELINES: STATEMENT BY SENATOR GILES

7.1 On 28 May 1992, on behalf of the Committee, Senator Giles made a statement in the Senate on the **Child Care Centre Fee Relief Eligibility Guidelines**. The statement illustrates several aspects of the operations of the Committee.

Senator Giles, 28 May 1992, Senate Weekly Hansard, p.2978

7.2 “This matter first came before the Committee when it examined the Child Care Centre Fee Relief Eligibility Guidelines, an instrument of delegated legislation made under the Child Care Act. That Act, as well as providing the usual broad regulation making power, also expressly provides for the Minister to make disallowable guidelines in respect of basic aspects of the administration of the scheme established by the Act. For instance, one set of guidelines, which had to be observed when making decisions under the Act, was to identify children in economic need, and to calculate maximum amounts payable to the operators of child care centres. Another set of guidelines was to limit and guide a broad discretion granted to the Minister to determine whether a child care centre was eligible for fee relief.

7.3 “These Guidelines are obviously important even when decisions are made by the Minister. However, this importance is magnified by the Act providing that the Minister may delegate any or all of his or her powers to any officer in the Department.

7.4 “The particular Guidelines in question were made on 19 December 1990, tabled in the Senate on 12 February 1991 and considered by the Committee at its regular meeting on 7 March 1991. The Guidelines were not accompanied by the usual Explanatory Statement. Also, on their face, they provided the Minister or, of course, a delegate, with the discretion to approve a child care centre as eligible for Commonwealth grants even though at the time the Guidelines were not met. Such a discretion always attracts a question from the Committee if, as in this case, there was no obvious right of review of the discretion either in the parent Act or other delegated legislation.

7.5 “The Committee wrote to the Minister about these aspects of the Guidelines on 11 March 1991. The Minister replied on 29 May 1991, providing an Explanatory Statement. That document assisted the Committee, as it confirmed that there was no external review of an adverse exercise of the discretion. The only protection available for people affected by the Guidelines was that they may apply again at any time. Thus, any defects in the original application may be corrected

and a refusal is not regarded as final. However, while this is a safeguard of sorts, it may not be an appropriate substitute for external, independent merit review by the Administrative Appeals Tribunal. Therefore, on 7 June 1991, the Committee wrote back to the Minister asking whether advice had been sought from the Administrative Review Council or the Attorney-General's Department on whether AAT review was appropriate in this case.

7.6 "On 24 July 1991 the Minister advised the Committee that merit review of discretions in the Guidelines was not considered appropriate because the parent Act did not provide for AAT review of what could be termed the head power in the Act. The Committee accepted this point, as we understand that it is the view of the ARC that it may not be appropriate to have subsidiary discretions subject to review when the head power is not so subject. However, this at once raised the question of whether review of that head power should be reviewable by the AAT. This letter from the Minister had also advised that although the Guidelines were drafted by the Office of Legislative Drafting, which the Committee has found to produce good quality work, advice was not sought from either the ARC or the Attorney-General's Department on whether AAT review was suitable because of the absence of merit review in the parent Act. Therefore, the Committee wrote to the Minister for the third time on 16 August 1991 asking if he could approach the ARC for its advice on whether the entire general scheme, set out in the parent Act and implemented in detail through delegated legislation, should be subject to AAT review of the merits of any decision. The Minister helpfully agreed to do this.

7.7 "The ARC reported its findings on 13 December 1991, recommending that the parent Act, an associated Act and delegated legislation be amended to provide for review by both the AAT and, in one case, by the Social Security Appeals Tribunal. The decisions which the ARC advised should be reviewable included every major discretion in the entire child care program established by the Act.

7.8 "For instance, the Act provides that the Minister may determine that an institution is a child care centre. The ARC advised that this discretion affected the interests of people concerned about receiving assistance. Also, although these decisions are made by a Minister, they do not fall into the class which, because of the level of consequence and highly political nature involved, should be exempt. In addition, these decisions do not involve matters of a polycentric nature, or competing interests of several parties, and are not merely facultative. Therefore, such decisions should be reviewable.

7.9 "There were numbers of other discretions which the ARC considered suitable for merit review by the AAT. Thus, one section provides that the Minister may approve a body to operate a child care centre. The ARC pointed out that although these decisions are not the final steps in a substantive process, they are essential steps. In addition, the same section provides two separate avenues for the Minister to determine that a child care centre is eligible for assistance under the Act. Both should be subject to AAT review, even though there is express provision in the Act for disallowable guidelines to be made to guide the exercise of the discretion.

7.10 “The Act provides a number of discretions on recurrent expenditure. In accordance with its longstanding practice the ARC recommended that those which made allotments from a finite pool of money should not be subject to review, but that two discretions which did not involve such allotment should be reviewable. In this context, the power, in certain circumstances, to determine the rate of salary or wages payable at child care centres, should be reviewable.

7.11 “The power to make a grant for fee relief should be reviewable, even though this is another case where the Act expressly provides for disallowable mandatory guidelines in respect of the exercise of the power.

7.12 “A discretion to seek repayment of overpayments, which the ARC considered was not substantially different from recovery powers in other Acts, should be subject to review.

7.13 “With respect to the disallowable guidelines actually made under the Act the ARC recommended that three discretions, relating to children in economic need and the amount of fee relief available, should be subject to review. One of these discretions should be reviewable by the Social Security Appeals Tribunal, which is thus an example of a case where it is appropriate for an independent tribunal other than the AAT to examine the merits of an individual decision.

7.14 “Although the ARC sent its recommendations to the Minister on 13 December 1991 the Department did not notify the Committee of this until 16 April 1992, or more than four months later, and only at the prompting of the Committee secretariat. A delay of this length may indicate management problems in the Department.

7.15 “On the other hand, the Committee has received particularly constructive advice from the Minister, Peter Staples, Minister for Aged, Family and Health Services, that necessary changes to the Act would be progressed in the Autumn sittings next year. While the Committee appreciates that this may be the earliest sittings in which the legislative program can accommodate the amendments, the Committee will indicate to the Minister that the importance and sensitivity of child care would justify its introduction early in those sittings.

7.16 “The Committee is grateful to the Minister for this cooperation, which will improve the technical quality of legislation in the portfolio.

7.17 “In summary, the Committee's scrutiny of this instrument illustrates the thoroughness and persistence of its operations. More than a year elapsed between the meeting at which the Committee first considered this matter and the final undertaking by the Minister to amend the Act. Moreover, it will be two years from the time the Committee raised the matter with the Minister in early 1991 until the Act is actually amended. Nevertheless, these comprehensive changes to the Child Care Act, and its associated delegated legislation, arising entirely from an initiative by the Committee, will result in the introduction of important safeguards for those affected by Commonwealth child care programs. This is an example of the diligence with which the Committee pursues its mandate from the Senate.”

CHAPTER 8

FREEDOM OF INFORMATION (MISCELLANEOUS PROVISIONS) REGULATIONS: STATEMENT BY SENATOR GILES

8.1 On 28 May 1992, on behalf of the Committee, Senator Giles made a statement in the Senate on the **Freedom of Information (Miscellaneous Provisions) Regulations**. The statement illustrates several aspects of the operations of the Committee.

Senator Giles, 28 May 1992, Senate Weekly Hansard, p.2977

8.2 “Honourable Senators will recall that the Standing Committee on Regulations and Ordinances was concerned at aspects of the Freedom of Information (Miscellaneous Provisions) Regulations (Amendment), Statutory Rules 1991 No.321. Our difficulty was with provisions concerning conclusive exemption certificates, which exclude public disclosure of certain material in documents. The regulations provided that such certificates were to remain in force for five years. This was in contrast to the Report by the Standing Committee on Legal and Constitutional Affairs on the Operation and Administration of the Freedom of Information Legislation, which recommended that certificates should only be effective for two years.

8.3 “The Committee devoted some time to this question. We had considerable correspondence with the Minister and asked senior officials from the Department to attend before the Committee. Eventually we decided, with some hesitation, to accept the explanation of the Minister. I reported to the Senate in some detail on this on 24 March 1992 and incorporated our correspondence in Hansard. Subsequently, on the same day, the Senate disallowed the regulations on policy grounds.

8.4 “At its next meeting the Committee discussed the effect of the disallowance, which was that while the Regulations had set five years duration for conclusive certificates, following their disallowance such certificates were in force indefinitely. The Committee then decided to write to the Attorney-General, noting his earlier advice that the Government accepted that this indefinite operation was inappropriate, and asking whether it was intended to make fresh regulations to set a duration shorter than five years.

8.5 “The Attorney-General, Michael Duffy, replied promptly, confirming that the Government believed that there should be a limit on the duration of certificates. Although he still considered that two years was too short, the Department would consult with other agencies to ascertain the best way to resolve the matter.

8.6 “The Committee considers that this helpful advice from the Attorney-General should be made known to the Senate. The Committee will, of course, scrutinise any fresh legislation which appears as a result of this undertaking.”

CHAPTER 9

COMPLAINTS (AUSTRALIAN FEDERAL POLICE) REGULATIONS: STATEMENT BY SENATOR GILES

9.1 On 23 June 1992, on behalf of the Committee, Senator Giles made a statement in the Senate on the **Complaints (Australian Federal Police) Regulations**. The statement illustrates several aspects of the operations of the Committee.

Senator Giles, 23 June 1992, Senate Weekly Hansard, p.4260

9.2 “The Standing Committee on Regulations and Ordinances has recently concluded its scrutiny of the **Complaints (Australian Federal Police) Regulations (Amendment)**, Statutory Rules 1992 No.58, made under the *Complaints (Australian Federal Police) Act 1981*. I reported to the Senate on 26 May 1992 on our concerns with this instrument, when on behalf of the Committee I gave notice of a motion of disallowance in respect of the regulations. Also, at giving of notices yesterday I incorporated in Hansard the correspondence of the Committee with the Minister on this matter. However, this instrument raised issues of such interest and importance that the Committee considered that a more detailed statement should be made.

9.3 “The regulations were very short, substituting a new regulation 9 which provided that the standard of proof required before the Federal Police Disciplinary Tribunal is proof beyond reasonable doubt. The only other substantive provision, which was not an amendment of the principal regulations, provided that the amendment extends to proceedings or matters which arose before the regulations commenced.

9.4 “The Explanatory Statement which accompanied the regulations advised that the previous regulation 9 was replaced by the new regulation 9 to the same effect because it was understood that the previous regulation was invalid. No details of the putative invalidity were provided.

9.5 “The Committee considered the instrument and decided to write to the Minister about three matters. Firstly, we wished to know why the previous regulation 9, which had apparently been in operation for seven years, was invalid. The Committee assumed that it was because it lacked the authority expressly inserted in s.76(4)(aa) of the parent Act in 1987. Secondly, the Committee asked for an assurance that the application of the new r.9 to proceedings which arose before this provision was made did not operate retrospectively in a prejudicial fashion. Such retrospectivity, unless it only affects the Commonwealth, is invalid under s.48(2) of the *Acts Interpretation Act 1901* and is also a breach of personal liberties. Thirdly, and most importantly, the Committee was concerned at the adoption of the

criminal, rather than the lesser civil, standard of proof before the Disciplinary Tribunal. In its letter to the Minister the Committee observed that, given the nature of the relevant proceedings, the rights of the public may be better protected by the civil standard of proof, which is the balance of probabilities, rather than the criminal standard of proof beyond reasonable doubt.

9.6 "The Minister for Justice, Senator the Hon Michael Tate, replied promptly to our concerns, confirming that the Committee was correct in its assumption that there was no authority for r.9 until amendment of the Act in 1987. Also, there was no prejudicial retrospectivity. The new provision applied only to AFP officers facing charges and technically the effect of the amendment was to provide a higher standard of proof in the future, to the benefit of those officers.

9.7 "With respect to the standard of proof, the Minister advised that the purpose of the amendment was to rectify the invalidity of the standard in use since 1985, not to implement a new policy decision. The reason for the criminal standard of proof was that penalties imposed as a result of disciplinary proceedings can have practical consequences as severe as any criminal sentence short of imprisonment. In addition, many acts constituting a breach of discipline in the AFP would also be crimes. This was particularly significant, even in groups subject to disciplinary regimes, because of the confrontational character of much police interaction with the public. Also, where a crime is suspected and a prosecution initiated, any disciplinary proceedings are suspended for the duration of the prosecution. The prospect of a lesser standard of proof would inevitably discourage pursuit of criminal investigations. The Minister concluded by pointing out that the lower standard of proof could harm a member in ambiguous circumstances and that complaints against police may be not only an avenue of redress for the genuinely aggrieved but also a means for dishonest persons to raise doubts about police evidence or avenge themselves on an AFP member.

9.8 "The Committee accepted the advice of the Minister about the invalidity and the retrospectivity. However, while it regarded the Minister's explanations about the standard of proof as persuasive, the Committee decided to take advantage of the opportunity to hear the views of the Commonwealth Ombudsman.

9.9 "Accordingly, the Committee was briefed by the Ombudsman, Mr Alan Cameron, and by other senior officials of the Ombudsman's office, Sue Pidgeon and John Taylor. The Ombudsman pointed out that when the police complaints regime was originally proposed, the Australian Law Reform Commission suggested that the civil standard of proof then in operation before the Police Appeal Board should continue. This was a flexible, or floating standard, the degree of seriousness of the charge affecting whether the issue had been proved to the satisfaction of the Tribunal. The criminal standard prevented disciplinary authorities from pressing action where reasonable satisfaction was felt, but not beyond reasonable doubt. This encouraged an undue measure of caution when disciplinary proceedings are in prospect.

9.10 “The Ombudsman also advised that, among the States, only South Australia now had a criminal standard of proof; the rest had the floating civil standard. While the Minister was correct in noting that there should be rigorous pursuit of any criminal aspects, an alternative of disciplinary proceedings at a lesser standard of proof and lesser punishments, was better than no action at all. The criminal standard may be defensible when a member's career is at stake, but there is a much weaker case for this in less serious complaints. The higher standard of proof tended to undermine public confidence in the complaints procedure if action was pressed in only a small proportion of cases.

9.11 “The Committee was therefore faced with the dilemma of deciding, as the Ombudsman expressed it, the fine balance between the rights of AFP members under inquiry and the capacity under the legislation for a thorough and impartial investigation of alleged offences. Here the Committee had two compelling but conflicting arguments. On the one hand, the criminal standard of proof beyond reasonable doubt gave a high level of protection to individual police officers under investigation, while giving a lesser standard of protection to the broader interests of the public. On the other hand the civil standard of proof on the balance of probabilities provides reduced protection for the individuals concerned but ensures greater protection for the broader public interest.

9.12 “After considerable discussion the Committee took its usual course of action in cases where there is a difference between reasonable people about sensitive issues of personal and other rights. That is, that where there are two or more conflicting sets of rights to be protected, then the Committee will not insist on amendment of the relevant delegated legislation. Instead, as in this case, it will simply point out to the executive law maker the existence of the dilemma. Here, the Committee sent to the Minister a copy of a paper presented to us by the Ombudsman, ‘The standard of proof in police disciplinary matters’, observing that its quality was such that it should be taken into account in any future review of this aspect of the regulations.”

CHAPTER 10

CONDOLENCE MOTION FOR FORMER SENATOR IAN WOOD

10.1 On 25 February 1992 the Leader of the Government in the Senate, Senator Button, moved a condolence motion for former Senator Ian Wood, Senator for Queensland from 1949 to 1978, a member of the Committee from 1950 to 1973 and from 1974 to 1978 and Chairman from 1953 to 1973 and 1976 to 1978. Four present members of the Committee spoke to the motion; these speeches are set out below. A former Chairman of the Committee, Senator Lewis, and two former members, Senator Button and Harradine, also spoke.

Senator Colston, 25 February 1992, Senate Weekly Hansard, p.27

10.2 “I would very much like to be associated with the condolence motion for our former Senate colleague, Ian Wood. Only a handful of current senators served here at the same time as former Senator Wood. Ian Wood was in the Senate when I arrived in 1975 so I knew him as a fellow senator between that time and his retirement in 1978. I had met him before being elected to the Senate and met him on numerous occasions after his retirement.

10.3 “I first became aware of former Senator Wood some time in the early 1960s. He and another honourable senator in the Menzies Government rebelled against an increase in sales tax on motor vehicles. For some time it appeared that the legislation would not pass the Senate and during this time former Senator Wood gained a great deal of publicity in Queensland. As was mentioned earlier, he was renowned in Mackay for shunning the use of motor vehicles and using a bicycle instead. I recall that, during the period when a sales tax Bill was stalled in the Senate, Ian Wood was asked on television what he would do if sales tax on bicycles were increased. The interviewer was obviously trying to embarrass Ian Wood but I recall that his reply was such that the interviewer himself was embarrassed. The sales tax Bill, incidentally, was eventually passed after the then Prime Minister had some words with his reluctant colleagues.

10.4 “In his long period of service, ex-Senator Wood made significant contributions to the Senate. As has been mentioned earlier, perhaps his greatest energies were expended towards the Standing Committee on Regulations and Ordinances. It was not until I became a member of that Committee that I realised its importance to the parliamentary process. Ian Wood's long chairmanship of that Committee, no doubt, helped it to operate in the effective manner that it did and since has done.

10.5 "It was a matter of some regret to me, having served in the Senate with Ian Wood, that I was not able to attend his funeral in Mackay. I was, at that time, in hospital for a brief period and it was suggested to me that my treatment would be interrupted if I went to Mackay even if only for the day. I extend to all of those who were close to Ian Wood my sympathy during the time of their bereavement."

Senator Giles, 25 February 1992, Senate Weekly Hansard, p.29

10.6 "Senator Wood was a member of the Standing Committee on Regulations and Ordinances for more than 28 years and was Chair of that Committee for a total of 22 years. I speak today as the present Chair of the Committee, with a mere six years of membership of the Committee behind me but with a deep consciousness of the tradition established by Senator Wood. Senator Wood made a tremendous contribution to the present reputation of the Regulations and Ordinances Committee, and not only a national reputation but also, as has already been said, an international reputation.

10.7 "Many of the safeguards which the Australian people now enjoy and take for granted were initiated by the Committee under his leadership, and were only established against opposition from those whose commitment to these freedoms was less than that of Senator Wood. It is a tribute to Senator Wood that a person who left school at 12, as he did, to go to work to help his mother support the household, should play such an important role in the content and form of Commonwealth legislation. It is also a tribute to the Senate as an institution that he should be able to do so.

10.8 "As Senator Hill has described, Senator Wood was particularly concerned that delegated legislation did not breach personal rights and liberties. I will briefly describe his considerable contribution in this area. Instruments of delegated legislation often include offence provisions, the penalties for breach of which are no less real than penalties imposed by Acts. Under Senator Wood the Committee ensured that offence provisions contained appropriate safeguards for those affected. Many instruments which came before the Committee were defective in relation to such safeguards.

10.9 "In one case, individuals were required to give to an inspector such information as they possessed about an offence or a suspected offence. This was a violation of normal standards of personal freedom. A person is generally not required to give such information to anyone, even if arrested. Another instrument provided that the prosecution could amend its statement alleging an offence without giving the accused an opportunity to prepare to meet the new charge. Another replaced objective defences to a prosecution, which could be argued before an independent court, with the subjective opinion of a public official. All these provisions were the subject of caustic comment by Ian Wood.

10.10 "Today it is commonplace that all important discretions vested in public officials, whether Ministers, statutory officers or public servants, should be subject

to independent, external review of the merits of each exercise of the power. Present delegated legislation, due largely to the efforts of the Committee during Senator Wood's time, now usually provides for such review, normally to a specialist body such as the Administrative Appeals Tribunal. This ensures that individual rights and liberties are not subject to arbitrary or improper interference, however remote that possibility may be.

10.11 “However, things were considerably different when Senator Wood was on the Committee. There were many examples of wide discretions not subject to review. With Senator Wood as Chair, these deficiencies were exposed. In one case, regulations totally prohibited an important area of economic activity unless the Minister granted a licence. These licences could be subject to conditions which could be varied or added to at any time and which could, and did, relate to matters occurring both before and years after the initial transaction. There were no criteria to guide the Minister in the exercise of the power which could be different for, and discriminate against, individuals in the same position. The Minister could revoke a licence at any time. A licensing officer who was not the Minister could demand any sum of money that he or she thought fit as security for compliance with the conditions. The Minister could delegate his or her powers; there were not many women Ministers in those days. There was no provision for review of any decision and access to the ordinary courts was denied, apparently even where the Minister refused to consider an application or where there was unjust treatment or delay.

10.12 “In another case there was no legal redress from a decision by an official which, effectively, resulted in a confiscation of property. Other instruments provided for people to be taken into custody and detained with no proper safeguards. There were many similar cases, usually with no provision for a right to be heard, no right of review and no redress to the ordinary courts unless an official acted wholly unreasonably or from corrupt or improper motives. Ian Wood took active steps to correct all these defects.

10.13 “In conclusion, I remind the Senate of one of the best known deficiencies revealed by the Committee under Senator Wood. There was a Telecom by-law which had the admirable purpose of dealing with hoax calls to emergency services, but the unintended result of the actual drafting was to make it an offence to tell a lie over the telephone. There may have been times in the past when, in responding to an unwelcome invitation over the telephone, I, like countless other people, have been guilty of a small deception. Senator Wood's vigilance saved many of us from breaching Commonwealth law.

10.14 “On behalf of the members of the Regulations and Ordinances Committee I extend our sympathies to Ian Wood's family and to his friends and well-wishers, of whom there are many on both sides of the Senate.”

Senator Bishop, 25 February 1992, Senate Weekly Hansard, p.32

10.15 “As the present Deputy Chairman of the Senate Standing Committee on Regulations and Ordinances, I would like to be associated with the condolence motion for former senator Ian Wood. Because I hold that position, I see daily examples of delegated legislation with high standards of drafting, content and accessibility. These standards are largely based on those established by Senator Wood during his 28 years on the Committee, with 22 of those years as Chairman. Of course, we also see daily examples of low quality delegated legislation, but this is because those basic principles established by the Committee under Senator Wood have been disregarded.

10.16 “The contribution of Senator Wood to Commonwealth legislation was not limited to the technical quality of individual instruments. It had a general beneficial effect on public administration. Ian Wood was keenly aware of the actual effect of delegated legislation and was critical of any obvious administrative deficiencies.

10.17 “The type of administrative procedure which Senator Wood deplored and largely remedied is illustrated by a set of regulations which allowed a statutory authority to make deductions from money owed by the Commonwealth to individuals. In this case the Committee found that the regulations were not authorised by the parent Act; that they made substantial alterations of the law which were appropriate only to an Act; that they provided for deduction of unlimited funds without giving the person affected an opportunity to be heard or to present a case; and that there was no right of review. In addition, the statutory authority could delegate its powers. In another case, regulations provided for compensation to building owners whose buildings were ordered to be removed or altered by a statutory authority, but did not provide for compensation to owners who were prevented from altering their buildings.

10.18 “In those days it was also quite common for delegated legislation to provide for public officials to waive fees and charges at their complete discretion, with no criteria to guide and limit this power, no requirement for a statement of reasons, and with no review. Under the chairmanship of Senator Wood, the Committee also found instances where Commonwealth money had been spent without authorisation. This is still not uncommon today.

10.19 “The response of the Regulations and Ordinances Committee under Senator Wood to these forms of public administration was direct and practical. It was quite common for the Committee to ask senior public servants, such as the Parliamentary Draftsman, to appear before it to explain individual provisions. After one such session, not with the Parliamentary Draftsman, the Committee suggested that the Senate may wish to conduct an inquiry into the administration of individual sections of a particular department. In other cases, after scrutinising the delegated legislation, the Committee made practical suggestions about the operation of particular programs.

10.20 "In short, Senator Wood contributed to a much fairer and more efficient public administration in Australia. His legacy will be remembered long and well. I accordingly extend my sympathies to those who personally remember him and by whom he will be missed."

Senator Patterson, 25 February 1992, Senate Weekly Hansard, p.33

10.21 "I also express my regret at the death of former Senator Ian Wood. As a new member in this chamber in 1987, I was appointed to the Standing Committee for the Scrutiny of Bills and the Standing Committee on Regulations and Ordinances. I served on the Scrutiny of Bills Committee for my first parliamentary term; I am still a member of the Regulations and Ordinances Committee. One could not be a member of that Committee and not learn of the work of Senator Ian Wood. In fact, his name is one that I have heard more often than any other in my five years in this chamber. When I go to schools to talk about the role of the Senate and especially about the scrutiny of legislation, I talk about the importance of separating out one's role as a parliamentarian and one's role as a politician.

10.22 "Today we have heard Senator Ian Wood described as a maverick and other such things. I would describe him, from the illustrations I have been given around this place, as an example of a parliamentarian, a person who could take off his political hat and put on his parliamentary hat in making the decisions that were made in regulations and ordinances in particular.

10.23 "I appreciate the great contribution made by Senator Wood to Commonwealth legislation. That contribution has resulted in a permanent and beneficial improvement to personal rights and liberties and to parliamentary propriety. I do not think that was gained lightly or easily. Those on the other side of the chamber who have chaired the Regulations and Ordinances Committee will know that one does not win many pixie points for going to one's own Minister and telling him that subordinate legislation is not acceptable in the eyes of the Committee.

10.24 "Senator Ian Wood and Senator Messner played a very important part in establishing the strength of that Committee. One of its former secretaries describes very clearly the role that both those people played, but in particular Senator Wood, in the development of the Committee. During his chairmanship, Senator Wood crossed the floor a number of times to ensure that the Committee's recommendations were adhered to. In fact, he established and set in concrete the tradition that when the Regulations and Ordinances Committee moves for disallowance of a regulation it almost always goes unquestioned in the Senate and the Committee wins.

10.25 "As people have said, that Committee has been recognised overseas. When Senator Giles, Senator Crowley, Senator Bishop and I attended the last Commonwealth conference on delegated legislation, it was obvious that Australia was leading the Westminster world in the scrutiny of legislation and delegated

legislation. That is in no small part due to the very significant influence Ian Wood had on that Committee and its role.

10.26 “I shall give a couple of short examples of his concerns about parliamentary propriety. The very first report made by Senator Wood as Chairman drew attention to the considerable danger for parliamentary propriety of what is often called quasi-legislation. The report described an increasing tendency for Acts to provide for legislative instruments that are subject to neither tabling nor disallowance. Such instruments are really not quasi-legislation but legislation properly so-called. In recent years, there has been a general effort to formalise such instruments and bring them within parliamentary scrutiny.

10.27 “Important developments in this area were the establishment of the Scrutiny of Bills Committee in 1982 and the Administrative Review Council interim report last year on rule making by Commonwealth agencies. This is now much less of a problem than it was. However, it should be acknowledged that Senator Wood identified this danger almost 40 years ago. Indeed, the Committee at that time suggested the same course as the ARC now recommends, which is a statement of criteria to determine which instruments should be subject to tabling and disallowance.

10.28 “Another area of parliamentary propriety that concerned Senator Wood was the tendency for delegated legislation to express policy rather than administrative detail. The Committee was particularly vigilant to ensure that regulations should not deal with substantive legislation. This is also a matter that has now been addressed by the ARC.

10.29 “Many of the practices and procedures established under Senator Wood continue to the present as undertakings under which the Regulations and Ordinances Committee still operates. For instance, it is a breach of parliamentary propriety if delegated legislation is not in accordance with the parent Act. Under Senator Wood, the Committee decided that this would not be interpreted in a narrow, legalistic fashion to mean merely that an instrument was valid. Rather, the Committee adopted the view that an instrument may be valid but still breach its principles because of an unusual or unexpected use of the powers conferred by the Act. The Committee sensibly acknowledged that legal validity is a subject on which opinions differ and which can finally be decided only by a court. Therefore, decades later the Committee is still using the standards first established during Senator Wood's stewardship.

10.30 “It is with great interest that I note that the two senators who contributed most to the development of the Regulations and Ordinances Committee have been Liberal senators, a tradition they have set that I hope will be followed by honourable senators on both sides of this chamber. I know, as a member of that Committee, that

the tradition they set of enabling us to take off our political hats and put on our parliamentary hats and to discuss issues in that Committee without hindering it with issues of policy is a tradition Senator Wood set. I hope I can leave this chamber with the sort of record he had as a parliamentarian. I extend my condolences to those who cared for him and to the people of Mackay."

Stephen Loosley

Stephen Loosley
Chairman

May 1993

APPENDIX 1

**CLASSIFICATION OF LEGISLATIVE INSTRUMENTS
UNDER THE HEADING "MISCELLANEOUS"
IN PARAGRAPH 1.8**

Telecommunications instruments	29
Territory instruments	9
Privacy instruments	7
Marine orders	3
Accounting standards	4
ATSIC instruments	7
Quarantine instruments	2
Petroleum products instruments	3
Motor vehicle standards instruments	4
Wildlife protection declarations	1
Industry training agents guidelines	2
Occupational superannuation scheme instruments	3
Commonwealth employees rehabilitation and compensation instruments	3
Social security instruments	5
Currency determination	1
	<hr/>
	83

APPENDIX 2

DISALLOWABLE INSTRUMENTS TABLED IN THE SENATE 1991-92

During the year 1991-92 there were 1543 disallowable legislative instruments tabled in the Senate. Of these, 524 were included in the statutory rules series, which are easily accessible to users, being part of a uniform series which is consecutively numbered, well produced, available on ADP, indexed and eventually included in annual bound volumes. However, the other 1019 instruments are generally less accessible, possessing few of the advantages of statutory rules. These other series are listed as follows:

<i>Aboriginal and Torres Strait Islander Commission Act 1989</i>	determinations, ss.126,194
<i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i>	declarations, ss.9,10
<i>Aged or Disabled Persons Homes Act 1954</i>	determinations, s.10
<i>Australian and Overseas Telecommunications Corporation Act 1991</i>	determinations, s.12
<i>Australian Horticultural Corporation Amendment Act 1991</i>	determinations, s.25A
<i>Australian Meat and Live-stock Corporation Act 1977</i>	orders, s.16H
<i>Australian Wool Corporation Act 1991</i>	determinations, s.98
<i>Australian Wool Realisation Commission Act 1991</i>	determinations, s.80
<i>Child Care Act 1972</i>	fee relief guidelines, s.12A
<i>Civil Aviation Act 1988</i>	orders, s.98(5) exemptions, r.308
<i>Commonwealth Employees' Rehabilitation and Compensation Act 1988</i>	notices of declarations and specifications, s.5

<i>Corporations Act 1989</i>	accounting standards, s.32
<i>Currency Act 1965</i>	determinations, s.3A
<i>Customs Act 1901</i>	instruments of approval, s.4A
<i>Data-matching Program (Assistance and Tax) Act 1990</i>	guidelines, s.12
<i>Defence Act 1903</i>	determinations, ss.52,85
<i>Excise Act 1901</i>	instruments of approval, s.4A
<i>Export Control Act 1982</i>	orders, s.25
<i>Fisheries Act 1952</i>	management plans, s.7B notices, s.8
<i>Health Insurance Act 1973</i>	determinations, ss.3C,23DNB,23DNC
<i>Higher Education Funding Act 1988</i>	determinations, ss.15,16,24,26,31
<i>Horticultural Research and Development Corporation Act 1987</i>	orders, s.81
<i>Meat Inspection Act 1983</i>	orders, ss.36,37
<i>Military Superannuation Benefits Act 1991</i>	instruments (trust deed and rules), s.5
<i>Motor Vehicle Standards Act 1989</i>	determinations, ss.7,9
<i>National Health Act 1953</i>	declarations, ss.85,98,99 determinations, ss.4,47 guidelines, s.82F notices, s.40AA principles, s.40AA
<i>Navigation Act 1912</i>	marine orders, s.19
<i>Nursing Homes Assistance Act 1974</i>	determinations, s.12
<i>Occupational Health and Safety (Commonwealth Employees) Act 1991</i>	declarations, s.7 notices, s.70
<i>Overseas Students (Refunds) Act 1990</i>	determinations, s.4

<i>Primary Industries and Energy Research and Development Act 1989</i>	determinations, s.98
<i>Privacy Act 1988</i>	codes of conduct, s.18A determinations, ss.11B,18E,18K public interest determinations, s.72
<i>Public Service Act 1922</i>	determinations, s.82D determinations (LES), s.82 determinations (Parliamentary), s.9
<i>Quarantine Act 1908</i>	determinations, s.86E
<i>Remuneration Tribunal Act 1973</i>	determinations, ss.7,8,12
<i>Social Security Act 1991</i>	determinations, s.1237 notices, s.1099F
<i>States Grants (Petroleum Products) Act 1965</i>	amendments, s.4
<i>States Grants (Schools Assistance) Act 1988</i>	determinations, ss.16, 17
<i>States Grants (TAFE Assistance) Act 1989</i>	determinations, ss.10,12,13,14
<i>Student Administration Act 1973</i>	guidelines, s.44
<i>Superannuation Act 1976</i>	determinations, ss.238,240,241
<i>Superannuation Act 1990</i>	deeds, s.5
<i>Superannuation Benefits (Supervisory Mechanisms) Act 1990</i>	determinations, s.6
<i>Telecommunications Act 1989</i>	determinations, s.106
<i>Telecommunications Act 1991</i>	determinations, s.16 directions, ss.106,204 licences, s.57 notices, ss.246,267,280
<i>Telecommunications (Interception) Act 1979</i>	declarations, s.34
<i>Therapeutic Goods Act 1989</i>	determination of principles, s.36 orders, s.10

*Training Guarantee (Administration)
Act 1990*

guidelines, ss.30,94

Veterans' Entitlements Act 1986

guide to assessment of rate of
pensions, s.29

APPENDIX 3

ALPHABETICAL INDEX OF LEGISLATION AND DELEGATED LEGISLATION WITH PARAGRAPH REFERENCES 1991-1992

A

Aboriginal and Torres Strait Islander Commission (Election of Executive Committees) Regulations Statutory Rules 1990 No.399	5.2
<i>Acts Interpretation Act 1901</i>	2.12, 2.25, 2.34, 3.2, 5.29, 6.11, 9.5
Administrative Appeals Tribunal Regulations (Amendment) Statutory Rules 1991 No.450	3.42
Air Navigation (Aerodrome Curfew) Regulations Statutory Rules 1989 No.354	4.2
Air Navigation (Aerodrome Curfew) Regulations (Amendment) Statutory Rules 1991 No.408	4.2
Air Navigation (Charges) Regulations (Amendment) Statutory Rules 1991 No.237	3.6, 4.3
Air Navigation (Charges) Regulations (Amendment) Statutory Rules 1991 No.427	4.3
Air Navigation Regulations (Amendment) Statutory Rules 1991 No.193	3.16, 3.40, 5.3
Approvals of Forms under the <i>Health Insurance Act 1973</i>	3.2, 3.14
Australian Broadcasting Corporation (Election of staff-elected Director) Regulations Statutory Rules 1991 No.32	3.53
Australian Capital Territory (Electoral)(Modifications of the <i>Commonwealth Electoral Act 1918</i>) Regulations Statutory Rules 1991 No.397	3.32

Australian Horticultural Corporation (Dried Fruits Export Control) Regulations Statutory Rules 1991 No.199	3.16, 5.4
Australian Horticultural Corporation (Export Control) Regulations (Amendment) Statutory Rules 1990 No.422	4.4
Australian Horticultural Corporation (Export Control) Regulations (Amendment) Statutory Rules 1991 No.436	4.4
<i>Australian Meat and Live-stock Corporation Amendment Act 1990</i>	4.5
Australian Meat and Live-stock Orders Nos. L8/89, M41/89, MQ32/89, MQ33/89	4.5
Australian Meat and Live-stock Order No. MQ34/89	4.5, 4.6
Australian Meat and Live-stock Order No. MQ35/90	4.6
Australian Meat and Live-stock Order No.L10/91	3.27
Australian National Maritime Museum Regulations Statutory Rules 1991 No.10	4.7
Australian National Maritime Museum Regulations (Amendment) Statutory Rules 1991 No.220	4.7
Australian Sports Drug Agency Regulations Statutory Rules 1991 No.19	3.16, 3.20, 3.38, 3.40, 5.5
<i>Australian Wool Realisation Commission Act 1991</i>	4.38
 B	
Banking (Statistics) Regulations Statutory Rules 1989 No.357	5.6
Bass Strait Scallop Fishery Preliminary Management Plan (No.4 of 1991) Plan of Management No.BSS 1	3.28, 3.30
<i>Broadcasting Act 1942</i>	6.2

C

Child Care Centre Fee Relief Eligibility Guidelines under s.12A of the <i>Child Care Act 1972</i>	3.13, 3.45, 5.7, 7.1
Civil Aviation Orders	4.8
Civil Aviation Orders amendment of section 40.3.5	3.47
Civil Aviation Orders Parts 105, 106 and 107 Amendment Lists 12/90	5.8
Civil Aviation Orders Part 105 AD/F28/45 Amdt No.2	5.9
Civil Aviation Regulations (Amendment) Statutory Rules 1991 No.147	3.30
Civil Aviation Regulations (Amendment) Statutory Rules 1991 No.157	3.51
Civil Aviation Regulations (Amendment) Statutory Rules 1991 No.409	3.51
Civil Aviation Regulations (Amendment) Statutory Rules 1991 No.410	3.3
Civil Aviation Regulations (Amendment) Statutory Rules 1991 No.487	3.16, 3.46, 4.9
Civil Aviation Regulations (Amendment) Statutory Rules 1992 No.174	4.9
<i>Complaints (Australian Federal Police) Act 1981</i>	9.2
Complaints (Australian Federal Police) Regulations (Amendment) Statutory Rules 1992 No.58	3.4, 3.12, 3.39, 9.2
Customs (Prohibited Exports) Regulations (Amendment) Statutory Rules 1991 No.288	3.21, 5.10
Customs (Prohibited Imports) Regulations (Amendment) Statutory Rules 1990 No.460	4.10
Customs (Prohibited Imports) Regulations (Amendment) Statutory Rules 1991 No.248	4.10
Customs Regulations (Amendment) Statutory Rules 1991 No.228	3.27

D

Defence (Areas Control) Regulations Statutory Rules 1989 No.337	4.11
Defence (Areas Control) Regulations (Amendment) Statutory Rules 1991 No.245	4.11
Defence Determination 1991/22	3.35, 3.53
Defence Determination 1991/45	3.22
Defence Force Regulations (Amendment) Statutory Rules 1989 No.290	4.12
Defence Force Regulations (Amendment) Statutory Rules 1992 No.92	4.12
Design Regulations (Amendment) Statutory Rules 1991 No.65	3.17
Determination No.1991-92/12 made under s.10GI of the <i>Aged or Disabled Persons Care Act 1954</i>	3.28, 3.46, 5.11
Determination No.1991-92/24 under s.10F of the <i>Aged or Disabled Persons Care Act 1954</i>	3.12, 3.46
Determination BIT2/1991 under s.4D(1)(a) of the <i>National Health Act 1953</i>	3.2
Determination under s.13(1)(a) and (c) of the <i>Nursing Homes Assistance Act 1973</i>	3.14
Determination made under s.4 of the <i>Overseas Student (Refunds) Act 1990</i>	3.14
Determination of Application No.2 made under s.72 of the <i>Privacy Act 1988</i>	4.13
Determinations Nos. TAFE 29/89, 7/90 and 8/90	4.14
Determination No. TAFE 21/91 under the <i>States Grants (TAFE Assistance) Act 1988</i>	3.7, 4.14

E

Electricity (Amendment) Ordinance 1991	
Territory of Christmas Island Ordinance No.2 of 1991	3.37, 5.12
Environment Protection Management (Amendment) Ordinance 1990	
Territory of Heard Island and McDonald Islands Ordinance	
No.1 of 1990	4.15
Environment Protection Management (Amendment) Ordinance 1991	
Territory of Heard Island and McDonald Islands Ordinance	
No.1 of 1991	4.15
Exemption made under Regulation 308 of the Civil Aviation	
Regulations	3.14
Explosives Regulations	
Statutory Rules 1991 No.329	3.20
Extradition (Aviation) Regulations	
Statutory Rules 1992 No.67	3.9
Extradition (Hellenic Republic) Regulations	
Statutory Rules 1991 No.94	3.5

F

Family Law Regulations (Amendment)	
Statutory Rules 1991 No.447	3.4
Family Law Regulations (Amendment)	
Statutory Rules 1992 No.33	3.4
Fisheries Levy (Northern Fish Trawl Fishery)	
Regulations (Amendment)	
Statutory Rules 1992 No.13	3.16, 5.13
Fisheries Levy (Northern Prawn Fishery) Regulations (Amendment)	
Statutory Rules 1991 No.371	3.17
Fisheries Management Regulations	
Statutory Rules 1992 No.20	3.16, 3.32, 5.14
Fisheries Notice No. BSS 4	3.31

Fisheries Notice No. ECF 1	3.16, 4.16
Fisheries Notice No. ECF 2	3.15, 4.16
Fisheries Notice No. NPF 9	3.8, 5.15
Fisheries Notice No. NPF 11	3.16, 5.16
Fisheries Notice No. NPF 12	3.16, 5.16
Fisheries Notice No. NPF 13	3.6, 3.16, 5.17
Fisheries Notice No. NPF 14	3.6, 5.17
Fisheries Notice No. ORF 15	3.3
Fisheries Notice No. TEC 2	4.17
Fisheries Notice No. TEC 4	4.17
Fishing Levy Regulations Statutory Rules 1992 No.59	3.18
<i>Freedom of Information Act 1982</i>	2.20
Freedom of Information (Miscellaneous Provisions) Regulations (Amendment) Statutory Rules 1991 No.321	3.43, 5.18, 8.2
G	
Great Barrier Reef Marine Park Regulations (Amendment) Statutory Rules 1990 No.35	4.18
Great Barrier Reef Marine Park Regulations (Amendment) Statutory Rules 1991 No.257	4.18
Great Barrier Reef Marine Park Regulations (Amendment) Statutory Rules 1991 No.296	3.46
Guidelines HSB 3/1992 under s.82F of the <i>National Health Act 1953</i>	3.35, 4.19
Guidelines HSB 8/1992 under s.82F of the <i>National Health Act 1953</i>	4.19

H

Health Insurance Regulations (Amendment) Statutory Rules 1991 No.82	3.24, 4.20
Health Insurance Regulations (Amendment) Statutory Rules 1992 No.111	4.20
High Court of Australia (Fees) Regulations Statutory Rules 1991 No.449	4.21
High Court of Australia (Fees) Regulations (Amendment) Statutory Rules 1992 No.80	4.21
Horticultural Export Charge (Nursery Products) Regulations (Amendment) Statutory Rules 1989 No.251	4.22
Hostel Variable Funding Guidelines No.2 under the <i>Aged or Disabled Persons Homes Act 1954</i>	3.50

I

Income Tax Regulations (Amendment) Statutory Rules 1991 No.240	3.51
Industrial Chemicals (Notification and Assessment) Regulations (Amendment) Statutory Rules 1990 No.231	4.23
Industrial Chemicals (Notification and Assessment) Regulations (Amendment) Statutory Rules 1992 No.29	3.15, 4.23
Industry Training Agents Guidelines No.1	4.24
Industry Training Agents Guidelines No.1 of 1991	4.24
Insurance Acquisitions and Takeovers (Notices) Regulations Statutory Rules 1992 No.68	3.50
International Cocoa Organization (Privileges and Immunities) Regulations (Repeal) Statutory Rules 1991 No.260	3.5

International Coffee Organization (Privileges and Immunities) Regulations (Repeal) Statutory Rules 1991 No.259	3.5
International Tin Council (Privileges and Immunities) Regulations (Repeal) Statutory Rules 1991 No.261	3.5
L	
Laying Chicken Levy Regulations (Amendment) Statutory Rules 1991 No.101	3.7
Long Service Leave (Commonwealth Employees) Regulations (Amendment) Statutory Rules 1992 No.56	3.7
Lotteries Ordinance 1989 Territory of Christmas Island Ordinance No.4 of 1989	4.25
Lotteries (Amendment) Ordinance 1991 Territory of Christmas Island Ordinance No.4 of 1991	4.25
M	
Marine Orders No.2 of 1992, Part 26 Equipment - Communication, Issue 2	3.48, 5.19
Marine Orders No.4 of 1992, Part 26 Equipment - Communication, Issue 1: Amendment	3.48, 5.19
Marine Orders Part 6, Marine Qualifications - Radio, Order No.3 of 1992	3.47
<i>Migration Act 1958</i>	2.52
Migration Regulations	5.20
Migration Regulations (Amendment) Statutory Rules 1991 No.201	3.34, 3.54
Migration Regulations (Amendment) Statutory Rules 1991 No.230	3.17

Migration Regulations (Amendment) Statutory Rules 1991 No.285	3.41
Ministerial Guidelines 1991 under s.44 of the <i>Student Assistance Act 1973</i>	3.51
Motor Vehicle Standards Regulations Statutory Rules 1989 No.202	4.26

N

National Health Regulations (Amendment) Statutory Rules 1990 No.114	4.27
National Health Regulations (Amendment) Statutory Rules 1991 Nos.40 and 41	3.23
National Health Regulations (Amendment) Statutory Rules 1991 No.232	4.27
National Measurement Regulations (Amendment) Statutory Rules 1991 No.146	3.11
Navigation (Marine Casualty) Regulations Statutory Rules 1990 No.257	4.28
Navigation (Marine Casualty) Regulations (Amendment) Statutory Rules 1991 No.462	4.28
NHMRC Guidelines for the Protection of Privacy in the Conduct of Medical Research	5.21
Notice under s.1237(3) of the <i>Social Security Act 1991</i>	3.13, 3.14, 3.52

O

Occupational Health and Safety (Commonwealth Employment) Regulations Statutory Rules 1991 No.266	3.10, 3.16, 3.33, 3.52, 5.22
Occupational Superannuation Standards Regulations (Amendment) Statutory Rules 1991 No.148	4.29

Occupational Superannuation Standards Regulations (Amendment) Statutory Rules 1991 No.149	3.6
Occupational Superannuation Standards Regulations (Amendment) Statutory Rules 1991 No.458	4.29
Overseas Defence Determination 1991/61	3.11
P	
Patents Regulations Statutory Rules 1991 No.71	3.25
<i>Political Broadcasts and Political Disclosures Act 1991</i>	6.1, 6.2
Political Broadcasts (Australian Capital Territory) Regulations Statutory Rules 1991 No.483	6.5
Political Broadcasts (Australian Capital Territory) Regulations Statutory Rules 1992 No.1	6.5
Political Broadcasts (Australian Capital Territory) Regulations (Amendment) Statutory Rules 1992 No.4	6.5
Political Broadcasts (New South Wales) Regulations Statutory Rules 1991 No.489	6.5
Political Broadcasts (New South Wales) Regulations Statutory Rules 1992 No.3	6.5
Political Broadcasts (New South Wales) Regulations (Amendment) Statutory Rules 1992 No.6	6.5
Political Broadcasts (Tasmania) Regulations Statutory Rules 1991 No.482	6.5
Political Broadcasts (Tasmania) Regulations Statutory Rules 1992 No.2	6.5
Political Broadcasts (Tasmania) Regulations (Amendment) Statutory Rules 1992 No.5	6.5
Prescribed Goods (General) Orders as amended (Amendment) Export Control Orders No.5 of 1990	4.30

Prescribed Goods (General) Orders as amended (Amendment) Export Control Orders No.3 of 1991	3.25, 4.30, 4.31
Prescribed Goods (General) Orders as amended (Amendment) Export Control Orders No.3 of 1992	4.31
Primary Industries Levies and Charges (Apple and Pear) Regulations (Amendment) Statutory Rules 1991 No.403	3.13
<i>Primary Industries Levies and Charges Collection Act 1991</i>	4.22
Primary Industries Levies and Charges Collection (Avocado) Regulations Statutory Rules 1991 No.207	3.16, 4.32
Primary Industries Levies and Charges Collection (Avocado) Regulations (Amendment) Statutory Rules 1992 No.116	4.32
Primary Industries Levies and Charges (Horticultural Export Charge) Regulations (Amendment) Statutory Rules 1991 No.404	3.13
<i>Privacy Act 1988</i>	2.20, 3.10
Public Interest Determinations No.3A (PID 3A) under s.72 of the <i>Privacy Act 1988</i>	3.40, 4.13
Public Interest Determinations Nos.4 and 5 (PID) under s.72 of the <i>Privacy Act 1988</i>	3.6, 5.23
Public Service Determination 1990/95	4.33
Public Service Determination 1990/177	4.33
Public Service Determination 1990/190	3.26, 3.53
Public Service Determination 1991/24	3.19
Public Service Determination 1991/27	4.34
Public Service Determination 1991/37	3.53
Public Service Determination 1991/39	3.53, 4.35
Public Service Determination 1991/68	3.26

Public Service Determination 1991/73	3.26
Public Service Determination 1991/102	3.3, 3.7, 5.24
Public Service Determination 1991/154	3.17
Public Service Determination 1991/256	4.34
Public Service Regulations	3.53
Public Service Regulations (Amendment) Statutory Rules 1991 No.286	4.35

R

Regional Council Election Rules, Rules No.1 of 1990 under the <i>Aboriginal and Torres Strait Islander Commission Act 1989</i>	5.25
<i>Remuneration Tribunal Act 1973</i>	5.26
Remuneration Tribunal Determination No.23 of 1988	5.26
Revocation of Determination of Particulars under s.23DC(2)(c) of the <i>Health Insurance Act 1973</i>	3.14
Road Vehicle (National Standards) Determinations Nos. 1 and 2 of 1991	3.25
Rules under the <i>Federal Court of Australia Act 1976</i> Statutory Rules 1990 No.414	3.6, 5.27

S

South East Fishery (Individual Transferable Quota) Management Plan 1991 Plan of Management No.SEF1 (No.11 of 1991)	3.10, 3.16, 3.49, 5.28
Southern Shark Fishery Management Plan (Amendment) Plan of Management No.30 (No.1 of 1992)	3.50
Statutory Rules series	5.29
Superannuation (Approved Authorities) Regulations (Amendment) Statutory Rules 1990 No.96	4.36

Superannuation (CSS) Approved Authority Declaration No.3 Statutory Rules 1990 No.412	3.12, 3.36
Superannuation (CSS) Approved Authority Declaration No.4 Statutory Rules 1991 No.190	4.36
Superannuation (Eligible Employees) Regulations (Amendment) Statutory Rules 1990 No.97	5.30
Superannuation (PSS) Approved Authority Declaration No.3 Statutory Rules 1990 No.411	3.12, 3.36

T

Television Licence Fees Regulations (Amendment) Statutory Rules 1991 No.79	3.12, 3.45, 5.31
Therapeutic Goods Regulations (Amendment) Statutory Rules 1992 No.19	3.28
Therapeutic Goods (Manufacturing Principles) Determination No.1 of 1991	3.46
Therapeutic Goods Regulations (Amendment) Statutory Rules 1992 No.19	3.46
Trade Marks Regulations (Amendment) Statutory Rules 1991 No.64	3.17
Trade Marks Regulations (Amendment) Statutory Rules 1991 No.454	3.50
Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations Statutory Rules 1991 No.327	3.29
Training Guarantee (Outstanding Trainer) Regulations Statutory Rules 1991 No.309	3.30, 3.35, 5.32
Training Guarantee (Wool Industry) Regulations Statutory Rules 1991 No.308	5.32
<i>Transport and Communications Legislation Amendment Act (No.2) 1989</i>	4.26
<i>Transport and Communications Legislation Amendment Act 1990</i>	4.26

V

VHF High Band Frequency Plan (148 to 174 Mhz)
Statutory Rules 1991 No.354 3.51

VHF Mid Band Frequency Plan (70 to 87.5 Mhz)
Statutory Rules 1991 No.355 3.51

W

Wheat Industry Fund Regulations
Statutory Rules 1990 No.28 4.37

Wheat Industry Fund Regulations (Amendment)
Statutory Rules 1991 No.315 4.37

Wool Marketing Regulations (Amendment)
Statutory Rules 1990 No.203 4.38

Z

Zone Election Rules, Rules No.4 of 1990 under the
Aboriginal and Torres Strait Islander Commission Act 1989 5.33