



THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA.

T H E S E N A T E .

TWELFTH REPORT

from . the

STANDING COMMITTEE

on

REGULATIONS AND ORDINANCES

(BEING THE SECOND REPORT OF THE 1957 SESSION, AND THE TWELFTH
REPORT SINCE THE FORMATION OF THE COMMITTEE).

PERSONNEL OF COMMITTEE.

Chairman:

Senator I.A.C. Wood.

Members:

Senator J.J. Arnold.

Senator C.B. Byrne.

Senator K.A. Laught.

Senator the Hon. H.S. Seward.

Senator D.R. Willesee.

Senator R.C. Wright.

Functions of Committee. -

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

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

TWELFTH REPORT OF THE COMMITTEE.

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

2. The Committee wishes, in this report, to refer briefly to three matters with which it has concerned itself in its scrutiny of Regulations and Ordinances laid on the Table of the Senate. These matters are amendments to the Australian Capital Territory Companies Regulations, amendments of the Estate Duty Regulations and amendments to the Public Service Regulations. The amending legislation is contained in Australian Capital Territory Regulations 1955, No. 16, Statutory Rules 1956, No. 51 and Statutory Rules 1956, No. 48.

Australian Capital Territory Companies Regulations (No. 16 of 1955):

3. The Committee has taken these Regulations into consideration and has heard evidence on them from departmental officers. It noted that the regulations are retrospective in their operation, as they were gazetted on 22nd December, 1955, and were expressed to have effect from the first day of October, 1954. They authorise a refund of registration fees paid by companies for registration in^{the} Australian Capital Territory. The amount refunded was £6,950. 2. 6.

4. The Committee invites attention to regulations which retrospectively authorise refunds of public revenue. The justification explained to the Committee was that in prescribing the original scale of registration fees the New South Wales scale was adopted. That scale, we were told, inadvertently imposed fees calculated in accordance with the company's capital without a maximum limit. This required payment by companies registering in the Australian Capital Territory of large amounts, in some cases as much as \$659 and £815, and, in one case, £1,534. The view upon which the regulation was based was that it was considered that the maximum limit should be £50 and any excess refunded.

5. From the evidence taken by the Committee, it appeared that companies registering in the Territory enjoy immunity from stamp duty on registration, and that transferors of shares which are registered in the Australian Capital Territory share register also are free from stamp duty.

6. While the policy giving rise to the regulations is no concern

of the Committee, it considers that the inter-relation of these matters with effects of the regulations retrospectively refunding revenue may be an appropriate matter for consideration by the Parliament. The Committee calls attention to the matter only insofar as executive action subtracting money from the Treasury affects parliamentary control of public revenue.

Estate Duty Regulations (Statutory Rules 1956, No. 51):

7. The Committee has noted that these Regulations, gazetted on 21st June, 1956, give effect, inter alia, to certain of the provisions of the Estate Duty Assessment Act 1953. This Act raised the statutory exemption exempting estates from federal estate duty from £2,000 to £5,000, where the whole of the estate passed to the widow, widower, children or grand children of the deceased, and from £1,000 to £2,500 where no part of the estate so passed. It provided for decreased exemption in certain other cases. The Act was assented to on 28th October, 1953.

8. The Committee believes that following the 1953 Act a relatively large number of estates of comparatively small value would have become entirely exempt from estate duty and a further group would become partially exempt from estate duty.

9. The Committee notes with surprise that no regulations giving effect to the amendment of the Act were made until over two and a half years after the passing of the Act.

10. The Regulations of 1956 include a provision that the relative sub-regulation giving effect to the amendment of the Act should apply in relation to estates of deceased persons dying on or after the twenty-eighth day of October 1953.

11. The effect of the delay in bringing out regulations to give effect to the parliamentary enactment has been that administrators of estates of deceased persons falling within the limits set out in paragraph 7 have, by virtue of unamended regulations, been required to submit returns from which exemption was virtually granted by Parliament in October 1953. This could have involved persons in unnecessary costs, for solicitors' fees, valuers' fees and the like.

12. The Committee invites attention to these regulations as illustrating a situation arising from long delay between a parliamentary enactment and the promulgation of consequential subordinate legislation. Relief has thus been denied to the subject through this delay. While not attempting to extend its activities beyond a proper sphere, the Committee suggests that it is important for Ministers when introducing Bills to Parliament, and particularly Bills providing for a measure of relief to the subject, to ensure that should Parliament enact the legislation, immediate promulgation of subordinate legislation could follow with reasonable promptness. To enable this to be done it is suggested that the subordinate legislation should be at least in fair copy draft form by the time Parliament has approved of the legislation.

Public Service Regulations (Statutory Rules 1956, No. 48):

13. The Committee considered these regulations, and heard evidence relating to them. In the course of its enquiries, it learned that the regulations, by increasing the salaries of public service officers, make provision for increasing the expenditure from Commonwealth revenue by an amount of £9,500,000 per annum. The total amount involved in payments under the regulations is in the vicinity of £120,000,000 per annum.

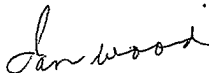
14. While the regulations do not provide the authority for payment of these amounts, which is provided in the annual Appropriation Act, their enactment in advance of parliamentary appropriation does place an obligation upon the Parliament to increase the relevant appropriations.

15. In the circumstances, as explained to the Committee, this appears unavoidable, but the Committee expresses the view that control over taxation and appropriation is a strict parliamentary function, and that the development of any tendency to lessen that control should be closely watched.

16. In conclusion, the Committee expresses its appreciation of the assistance which it continues to receive from departmental officers in the course of its enquiries.

Senate Committee Room,

20th May, 1957.



Ian Wood.

Chairman.