



THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

THIRTEENTH REPORT

FROM THE

STANDING COMMITTEE

ON

REGULATIONS AND ORDINANCES.

(BEING THE THIRD REPORT OF THE 1957  
SESSION, AND THE THIRTEENTH REPORT  
SINCE THE FORMATION OF THE  
COMMITTEE.)

REGULATIONS AND ORDINANCES COMMITTEE.

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

The Committee's attention was drawn to A.C.T. Ordinance No. 6 of 1953, to amend the Meat Ordinance 1931-1950, and to Clause 20A of Regulation No. 5 of A.C.T. Regulations, 1953, made thereunder, by Senator Gorton on 4th September, 1957.

2. The Committee has considered the Ordinance and the Regulations on the 3rd, 10th, 25th and 30th October, and has taken evidence from Mr. R.N. Wardle, the Director of Veterinary Hygiene.
3. The original Ordinance of 1931 by Section 7 prohibited the bringing of meat into the Territory for the purposes of sale or business "except in accordance with such conditions as are prescribed", i.e. conditions stated in regulations. The amending Ordinance in 1953 altered this provision to a prohibition against bringing meat into the Territory for the purposes of sale or business "except as authorised under the Regulations." It will be apparent that the original Ordinance required the conditions of entry to be prescribed and set forth in the regulations. The amended Ordinance enables the regulations to authorise the entry.
4. Under the amended Ordinance the following regulation 20A was made :-

"20A. - (1.) The Director-General may grant to a person a permit in writing authorizing him to bring meat into the Territory, or to cause meat to be brought or sent into the Territory, for the purposes of sale or of a business carried on by him or by another person, and, subject to this regulation, meat may be brought or sent into the Territory in accordance with the permit.

"(2.) A permit under this regulation (other than a permit referred to in the next succeeding sub-regulation) does not authorize a person to bring meat into the Territory, or to cause meat to be brought or sent into the Territory, unless -

- (a) the meat has been obtained from beasts slaughtered at an abattoir approved by the Director-General;
- (b) the meat has been branded by a meat inspector employed at that abattoir with a brand indicating that it has been passed by him as fit for human consumption;

- (c) the meat is accompanied by a certificate of that inspector, bearing a replica of the brand referred to in the last preceding paragraph, stating the date of slaughter and certifying that the meat is of first quality or second quality as prescribed by the Commerce (Meat Export) Regulations in force under the Customs Act 1901-1952 and the Commerce (Trade Descriptions) Act 1905-1950;
- (d) the meat is transported from the abattoir to its destination in the Territory in a vehicle approved by the Director-General; and
- (e) the holder of the permit has given to the Director-General, not less than twenty-four hours before the entry of the meat into the Territory, notice of the time at which the meat will arrive at its destination in the Territory and of that destination.

"(3.) A permit under this regulation may be expressed to apply only to packaged deep-frozen cuts of meat.

"(4.) A permit referred to in the last preceding sub-regulation does not authorize a person to bring meat into the Territory, or to cause meat to be brought or sent into the Territory, unless -

- (a) the meat is in the form of packaged cuts and is frozen to, and maintained during transport at, a temperature not higher than 0 degrees Fahrenheit;
- (b) the meat is accompanied by a declaration to the satisfaction of the Director-General that no meat other than meat obtained from beasts slaughtered at an abattoir approved by the Director-General is used at the establishment at which the meat has been deep-frozen; and
- (c) the meat is accompanied by a certificate of a meat inspector employed at that establishment certifying that the meat has been passed by him as fit for human consumption and that the meat is of first quality or second quality as prescribed by the Commerce (Meat Export) Regulations in force under the Customs Act 1901-1952 and the Commerce (Trade Descriptions) Act 1905-1950."

5. It was explained to us by Mr. Wardle that sub-paragraph 2 of the regulation specified all the conditions which were necessary to ensure compliance with proper standards of hygiene. Mr. Wardle said that until 1953 there was not a great demand for the introduction of meat at all. He quite frankly said that the discretionary right of the Director-General under sub-paragraph 1, to permit or prohibit entry of meat, was taken in the regulations to protect the abattoir investment on

economic grounds.

6. The Committee is of the opinion that the regulation -
  - (a) provides a discretionary power for the Director-General to give or refuse a permit to a person authorising him to bring meat into the Territory;
  - (b) enables the Director, by administrative decision, to discriminate between persons;
  - (c) enables the Director to refuse a permit without stating any grounds of refusal;
  - (d) denies the applicant any remedy in the Courts unless he can prove that the Director has acted capriciously or wholly unreasonably or for corrupt and improper motives.
7. In the opinion of the Committee the regulation makes the right of the person seeking to bring meat into the Territory unduly dependent upon administrative decision, with insufficient means of protection by the Court process.
8. It should be noted that Section 92 of the Constitution has been held to protect the freedom of trade only "between the States" and does not protect free trade between a State and a Territory. But an administrative discretion to refuse a licence or a permit is an authority to deny freedom of trade. In *Collier Garland Ltd. v. Hotchkiss* 1957 A.L.R. @ 679, the High Court has ruled that a right to trade only with the permission of an official is not freedom to trade.
9. It may be proper to suggest that if protection of the Government investment in the abattoir is the aim, that could be secured by fiscal provisions which tax but do not prohibit the right to trade.

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Chairman.