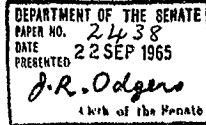


1964-65



THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA.

THE SENATE

TWENTIETH REPORT

from the

STANDING COMMITTEE

on

REGULATIONS AND ORDINANCES

(Being the Second Report of the 1964-65 Session, and the
Twentieth Report since the formation of the Committee.)

PERSONNEL OF COMMITTEE

Chairman:

Senator I.A.G. Wood

Members:

Senator R. Bishop
Senator S.H. Cohen, Q.C.
Senator G.S. Davidson
Senator A.G.E. Lawrie
Senator D.R. Willesee
Senator R.C. Wright.

STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

TWENTIETH REPORT OF THE COMMITTEE

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

Territory of Christmas Island
Ordinance No. 1 of 1965
being the Tuberculosis Ordinance 1965

2. (a) This ordinance empowers the Official Representative -
- (i) by notice to require persons to submit themselves to radiological examination;
 - (ii) by notice to require persons to submit themselves to a tuberculin skin test and, in certain cases, to subsequent vaccination or other prophylactic treatment as the Official Representative determines.
- (b) It is further provided that where the Official Representative has reason to believe that a patient is suffering from tuberculosis in an infectious condition and that -
- "(a) it is in the patient's interest that he should be properly attended and treated;
 - (b) the patient's circumstances are such that proper precautions to prevent the spread of the infection cannot be taken, or that such precautions are not being taken; and
 - (c) substantial risk of infection is or will be thereby caused to others,
- the Official Representative may
- (d)
 - (e) order the patient to be apprehended and removed to an institution or other place in the Territory and there detained for a specified period not exceeding 12 months for the purposes of isolation and treatment;
 - (f)"
- Clause (4) provides "A person who is detained under an order under this section shall be deemed to be in lawful custody."
- (c) The patient detained is given the right, during the currency of any order, to apply to the Magistrate's Court for a review of the order.

(d) Section 12 of the Ordinance reads -

"No action lies against the Official Representative, a medical practitioner or other person in respect of anything done or omitted to be done during the course of an examination, test or treatment conducted in pursuance of this Ordinance or in respect of the detention of a person in pursuance of this Ordinance but, if the Governor-General is satisfied that the thing was done or omitted to be done without reasonable cause, or that the detention was without reasonable cause, he may award reasonable compensation in respect of it."

3. The Committee is not concerned with the policy of the Ordinance.

4. The Committee is concerned to scrutinise the Ordinance to ascertain -

- (a) that it does not trespass unduly on personal rights and liberties;
- (b) that it does not unduly make the rights and liberties of citizens depend upon administrative rather than upon judicial decisions.

For the reasons set out in paragraph 5, the Ordinance, in the opinion of the Committee, offends against these principles.

5. The Committee is of the opinion that, in respect of the liberty of the subject -

- (a) no single officer should be empowered, on his own decision, to apprehend and detain persons for up to 12 months. Such a power should be conditional upon getting authority from a Justice of the Peace, Special Magistrate or Medical Board;
- (b) that the patient's right of redress by legal action, in any case where the integrity of the person is wrongly invaded, in pursuance of procedures under this Ordinance, should not be abrogated by such provision as Section 12 of the Ordinance.

And it is not a proper provision to substitute, for such legal right of action, a discretionary administrative award of compensation determined by the Governor-General.

Such provisions re-echo the idea that the divine decisions

of Kings (or their representatives) are proper alternatives to judicial decisions of independent Courts.

IAN WOOD,
Chairman.

Regulations and Ordinances Committee Room,
16th September, 1965.

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