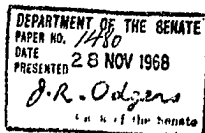


1968



THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

TWENTY-FIFTH REPORT

from the

STANDING COMMITTEE

on

REGULATIONS AND ORDINANCES

(Being the First Report of the 1968 Session,
and the Twenty-fifth Report since the
formation of the Committee.)

PERSONNEL OF COMMITTEE

Chairman:

Senator I.A.C. Wood

Members:

Senator R. Bishop
Senator J.L. Cavanagh
Senator G.S. Davidson
Senator D.M. Devitt
Senator I.J. Greenwood
Senator A.G.E. Lawrie

SENATE STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

TWENTY-FIFTH REPORT OF THE COMMITTEE

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

Retrospectivity

2. For many years the Committee has kept a close scrutiny on delays which occur in the promulgation of regulations, and the consequent retrospective operation necessitated in some cases, with a view to minimising the incidence of retrospectivity in regulations, particularly those involving the payment of moneys.
3. Delay~~s~~ in the promulgation of regulations providing for the payment of moneys denies to either House of the Parliament the right to approve or disapprove of the expenditure at the time of expenditure and, under these circumstances, the Committee is of the opinion that such provisions should, more properly, be embodied in substantive legislation.
4. The Committee has corresponded with various Ministers and from time to time received written assurances that their Departments are cognisant of the need to take action to expedite the processes in order to avoid undue retrospectivity. On other occasions it has been considered

necessary to call witnesses from various Departments before the Committee in order to ascertain the reasons for undue delays and to reach an understanding of the problems concerned.

5. The Committee is pleased to report that all Departments have indicated a readiness to co-operate, and that, with the exception of those relating to the Defence Services, regulations involving undue retrospectivity are now few in number.

6. In the case of the Defence Services and, in particular, the Department of the Navy and the Department of the Army, the number of regulations being promulgated providing for the retrospective payment of certain types of pay and allowances and other financial entitlements, some dating back as far as four and five years, has now reached considerable proportions. The Committee has regularly written to the appropriate Ministers explaining the need to avoid undue retrospectivity and criticising the inordinate delays that have taken place in the promulgation of regulations.

7. In view of the large number of Defence Services regulations which have recently come forward offending in this manner, the Committee, over recent weeks, has called and examined witnesses from the Department of Air, the Department of the Army, the Department of the Navy, and the Attorney-General's Department.

8. The delays revealed by this examination can be divided into two principal areas:

- (i) The time taken to decide upon the amount and conditions of the adjustment, to obtain necessary approval and issue instructions to the Draftsman; and
- (ii) the time taken by the Draftsman to finalise the regulations and arrange for their promulgation.

9. In the first area there appears to the Committee to be considerable room for improvement. In some cases examined, there were what appeared to be inordinate delays while negotiations between the Public Service Board, the Inter-Service Committee and the Treasury have taken place; at times there have been delays while submissions were prepared by the Departments for consideration by one or all of these bodies; and, delays have taken place after final Treasury approval has been granted before instructions have been sent to the Parliamentary Draftsman.

10. During its inquiry, the Committee was informed that in the case of certain regulations, some of which provided for long periods of retrospectivity, the delays were due to administrative difficulties within the Department and the Committee was assured that this type of delay should not occur again. The Committee has been corresponding with

the Defence Services Departments since 1960 and has had repeated assurances that action had been taken to avoid delays within the Departments concerned.

11. The Committee was advised that, in relation to 12 regulations involving retrospective operation as far back as 1963, the Department concerned accepted 50% of the responsibility for the delays which occurred in promulgating these regulations.

12. In the light of this evidence, and, if no significant improvement in this situation is evident after a reasonable period of time, the Senate may wish to consider whether an inquiry should be conducted into the administration of the appropriate sections of the Departments involved.

13. The second area of delay occurs in the drafting of the necessary statutory instruments by the Parliamentary Drafting Section of the Attorney-General's Department. Whilst the Committee accepts the explanations given over the last eight years and realizes that there are difficulties in recruiting staff with sufficient training and experience for this specialized work, it must be stressed that this situation cannot be allowed to go on indefinitely.

14. The Committee was pleased to note that investigations have recently been carried out overseas, and that plans are at present being formulated, in an attempt to overcome the lengthy period of delay which occurs in the drafting section.

15. This report has expressed the view of the Committee that delay in promulgation of regulations denies to Parliament the right to approve or disapprove of expenditure at the time of expenditure. It is for this reason that the Committee has over a long period, scrutinised regulations involving payment of moneys which have a retrospective operation. In the 19th Report of the Committee, the principle was enunciated that, based on a desire to avoid any possibility of adversely affecting the rights of servicemen serving in overseas areas, a maximum period of two years retrospectivity could be accepted for exceptional cases, but that two years should not be taken in any way as a criterion for retrospectivity. "On the contrary, the Committee believes that retrospectivity beyond a few months is objectionable, and will continue its scrutiny on this basis." The Committee now re-affirms the principles set out in the 19th Report.

16. The Committee has explored every available avenue for reducing the incidence of retrospectivity, including writing to Ministers, the examination of witnesses from offending Departments, and reporting to the Senate when the situation warranted such action.

17. The Committee has now formulated guidelines which it will observe in its examination of such regulations. These are:

- (1) All regulations, of whatever character, having a retrospective operation will prima facie attract the attention of the Committee.
- (2) Where the retrospectivity involved is in relation to payment of moneys the Committee will view the retrospectivity as requiring close scrutiny.
- (3) The Committee regards retrospectivity beyond a few months as objectionable. It is recognised, for obvious practical reasons of an administrative character, that some retrospectivity is inevitable. The Committee believes that such retrospectivity should be of the shortest period practicable.
- (4) Regulations involving retrospectivity in payment of moneys, if extending beyond two years, will be subject of report to the Senate and, unless quite exceptional circumstances are established to the Committee's satisfaction, will be the subject of a recommendation for disallowance.

The Committee will continue to scrutinise all regulations for payment of moneys which contain retrospective provisions extending beyond a few months, and will regard the retrospective aspect of such regulations as warranting some explanation.

18. The disallowance of such regulations by the Senate will have the effect of placing the onus upon the Minister to obtain proper Parliamentary sanction before the payments to which the retrospective provisions apply can be made.

IAN WOOD
Chairman

Regulations and Ordinances Committee Room,
Thursday, 28 November, 1968.