



1970

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

THIRTY-FIRST REPORT

from the

STANDING COMMITTEE

on

REGULATIONS AND ORDINANCES

Being a report upon the Amendments of the Conciliation and Arbitration Regulations, contained in Statutory Rules 1970, No.1.

PERSONNEL OF COMMITTEE

Chairman:

Senator I.A.C. WOOD

Members:

Senator Cavanagh
Senator Davidson
Senator Devitt
Senator Greenwood
Senator Lawrie
Senator Wheeldon

FUNCTIONS OF THE COMMITTEE - Since 1932, when the Committee was first established, the principle has been followed that the functions of the Committee are to scrutinize 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; and
- (d) that they are concerned with administrative detail and do not amount to substantive legislation which should be a matter for parliamentary enactment.

SENATE STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

THIRTY-FIRST REPORT OF THE COMMITTEE

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

Statutory Rules, 1970, No. 1

Amendments of the Conciliation and Arbitration Regulations

2. These amendments provide for a sitting fee of seventy five dollars per day for a person constituting the Flight Crew Officers Industrial Tribunal, or one hundred dollars per day for a person appointed to perform the functions of the Tribunal in relation to an industrial question. Additional provision is made for the payment of a travelling allowance of twenty-one dollars per day for a person constituting, or performing the functions of, the Tribunal.

Section 3 of the amendments makes these payments retrospective to 13 December 1967. The departmental explanatory memorandum accompanying the Statutory Rules provided no explanation of the need for this retrospectivity of almost three years.

3. The Committee draws attention to its Twenty-fifth Report to the Senate on retrospectivity of regulations, wherein the Committee stated the following principle, viz.-

"3. Delay 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."

Later in the same Report the Committee set out the following guidelines, viz.-

- "(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 the 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."

4. In view of the Committee's twenty-fifth Report, and the fact that no explanation has been made of the high degree of retrospectivity of these Regulations, the Committee has no alternative but to recommend the disallowance of the amendments of the Conciliation and Arbitration Regulations, contained in Statutory Rules, 1970, No. 1, made under the Conciliation and Arbitration Act, 1904-69.

Regulations and Ordinances Committee Room,
Thursday, 23 April 1970.

IAN WOOD
Chairman