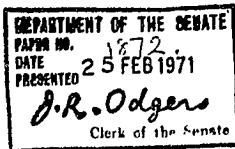


1970-71



THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

THIRTY-FIFTH REPORT

from the

STANDING COMMITTEE

on

REGULATIONS AND ORDINANCES

Being a report upon the Dairying Industry
Equalization Legislation Referendum Regulations
contained in Statutory Rules 1970, No. 178.

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 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-FIFTH REPORT OF THE COMMITTEE

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

Statutory Rules 1970, No. 178

Dairying Industry Equalization Legislation Referendum Regulations

2. The Dairying Industry Equalization Legislation Referendum Act of 1970 provided for a referendum to be held of the persons who supply milk for butter and cheese factories to determine whether the producers favour the Dairying Industry Equalization Act 1970, the Dairying Industry Levy Act 1970 and the Dairying Industry Levy Collection Act 1970 being brought into operation. The Act contained a provision enabling the Governor-General to make regulations, inter alia, in relation to the manner of voting at the referendum.

3. The regulations include the following provision in relation to informal votes:

11. (3.) A ballot-paper is informal -
 - (a) if it is not initialled by the Deputy Returning Officer; or
 - (b) if, in the opinion of the Deputy Returning Officer -
 - (i) it has no vote marked on it;
 - (ii) the marking on the ballot-paper is such that the intention of the voter is not clear; or
 - (iii) it has upon it any mark or writing by which the voter can be identified.

4. The above provision contrasts with provisions in the Commonwealth Electoral Act and other Commonwealth ^{legislation} regulations whereby the conditions rendering ballot papers informal are,

in the main, stated objectively and not made to depend upon the opinion of a returning officer. Section 21 of the Referendum (Constitution Alteration) Act 1906-1965, for example, provides that:

21. - (1.) A ballot-paper, other than an absent voter's ballot-paper or a postal ballot-paper or a ballot-paper used for voting in pursuance of section one hundred and twenty-one or section one hundred and twenty-one A of the Commonwealth Electoral Act 1918-1934 shall be informal if -

- (a) it is not authenticated by the initials of the presiding officer or by an official mark as prescribed; or
- (b) it has no vote marked on it; or
- (c) it has more than one vote marked on it; or
- (d) it has upon it any mark or writing (not authorized by this Act or the regulations to be put upon it) by which, in the opinion of the Divisional Returning Officer or Assisting Returning Officer, the voter can be identified.

5. The Committee considers that the provisions in the Referendum Regulations make the rights of citizens unduly dependent upon administrative rather than judicial decisions, in that the decision of the returning officer as to whether a vote is informal is final. There is, in the Committee's view, no scope for an objective judicial review of facts which, by the regulations, are committed to the opinion of the Deputy Returning Officer.

6. The regulations were gazetted on 19 November 1970, but were not tabled, and therefore not formally referred to the Committee, until the Parliament resumed on 16 February 1971. The referendum conducted under the regulations began on 22 January 1971, and the ballot closed at mid-day on 24 February 1971. The Committee has been informed that the voting has been completed and the counting of votes has now commenced. The regulations, on their face, apply only to the 1971 referendum.

7. The Committee wishes to record its opinion that the criteria for determining informality of votes in an election or referendum held under a Commonwealth Act ought to be stated objectively. Questions of whether or not a ballot

paper has a vote marked on it ought not to depend, finally, upon the opinion of a returning officer or other administrative official.

8. The Committee considers, however, that, in all the circumstances, it ought not to recommend to the Senate that the regulation should be disallowed. The Committee's opinion is strongly influenced by the belief that it is unlikely that the operation of regulation 11 will have any bearing on the outcome of the referendum.

Regulations and Ordinances Committee Room,
Thursday, 25 February 1971.

IAN WOOD
Chairman

AT 8 P.M.

SENATOR WOOD -

MR PRESIDENT, I BRING UP THE 35TH REPORT FROM
THE STANDING COMMITTEE ON REGULATIONS AND ORDINANCES BEING
A REPORT UPON THE DAIRYING INDUSTRY EQUALIZATION LEGISLATION
REFERENDUM REGULATIONS CONTAINED IN STATUTORY RULES 1970,
NO. 178 AND MOVE -

THAT THE REPORT BE PRINTED.