

1970-71

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

THIRTY-SIXTH REPORT

from the

STANDING COMMITTEE

on

REGULATIONS AND ORDINANCES

relating to

A.C.T. Ordinance 1971, No.4
Evidence Ordinance 1971

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-SIXTH REPORT

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

A.C.T. Ordinance 1971 No.4
Evidence Ordinance 1971

2. This Ordinance enacts a comprehensive code of the law of evidence, and replaces various New South Wales statutes and other laws previously in force in the Australian Capital Territory.

3. The law of evidence is perhaps the most important branch of the law, affecting as it does the way in which other branches of the law apply in practice.

4. The Ordinance introduces important changes to the law of evidence in the Territory, and some of its provisions are new to Australia. For example, Section 42 of the Ordinance provides for the admissibility of computer studies as evidence. The Committee understands that these provisions have been copied from a recent British statute and do not have any counterpart in the laws of the Australian States.

5. The Committee is concerned that so important a matter as the law of evidence should be changed, and in some respects radically changed, by means of delegated legislation rather than by substantive legislation which is openly debated in Parliament.

6. The Committee is not here concerned with the merits or demerits of the provisions of the Ordinance, but with the propriety of introducing matters of great importance by means of subordinate legislation.

7. The Committee realizes that the Ordinance is the result of long consideration and diligent research, and that many eminent legal authorities have either contributed to its production, or commented favourably upon it.

8. The Committee further realizes that legislation by ordinance is inherent in the system of government of the Territory, and that A.C.T. Ordinances are often the outcome of agreements among the states concerning uniform legislation.

9. The Committee believes, however, that the matters contained in this Ordinance are sufficiently important to warrant enactment whereby it would attract scrutiny by the whole Parliament.

10. The Parliament has often been asked to enact important changes in the law of the A.C.T. when it was thought inappropriate to make such changes by ordinance, and in the case of the proposed criminal code for the Territories, this was issued in draft form for public and Parliamentary comment before promulgation. It is not clear to the Committee what criteria are used to determine whether changes in Territory law should be by ordinance or by substantive legislation, but it is clear that the Evidence Ordinance 1971 is a case for the latter.

11. For these reasons, the Committee recommends the disallowance of A.C.T. Ordinance No. 4 of 1971, being the Evidence Ordinance 1971, made under the Seat of Government (Administration) Act 1910-1970.

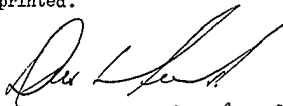
Regulations and Ordinances
Committee Room
18 August 1971

IAN WOOD
Chairman

AT TABLING OF PAPERS

Mr President, I present the Thirty-sixth Report of the Standing Committee on Regulations and Ordinances relating to A.C.T. Ordinance 1971 No. 4, the Evidence Ordinance 1971, and I move:

That the Report be printed.



18. 8. 71