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<i>J. ... Osgen</i>	
Clerk of the Senate	

THE SENATE

STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

FIFTY-FIRST REPORT

GENERAL REPORT 1975

AT TABLING OF PAPERS

Mr President,

I bring up the 51st report from the Standing Committee on Regulations and Ordinances, being a general report on the work of the Committee during 1975, I move, that the report be printed.

(Question to be put).

Mr President,

I ask leave to move ~~the~~<sup>a</sup> motion that the Senate take note of the report.

(When leave granted)

I move that the Senate take note of the Report. I wish to briefly explain to the Senate the nature of this report. The report deals with the work of the Committee during 1975. It was ~~presented~~<sup>drafted</sup> prior to the Dissolution of the Senate, and the present committee has resolved to present it unaltered as a record of the work of the previous Committee. The report records the situation as it was in November last year. Where the report refers to undertakings to amend regulations and ordinances given by Ministers, it refers to Ministers of the previous Government. Some of these undertakings have not yet been carried out, but that is a matter which the present Committee is taking up with the new Ministers.

I would like to pay tribute to the excellent work of my predecessor as Chairman of the Committee, Senator Devitt, who pursued the work of the Committee diligently and with the highest regard for the principles on which the Committee operates, *and also to those members of the committee, who presented such excellent work.*

I ask leave to continue my remarks.

(Leave to be granted)

I move that the resumption of the debate be made a order of the day for the next day of sitting.

MEMBERS OF THE COMMITTEE

Fifty-sixth Session

Senator D.M. Devitt (Chairman)

Senator W.W.C. Brown <sup>5</sup>

Senator J.N. Button

Senator M.G. Everett, Q.C.

Senator A.G.E. Lawrie <sup>2</sup>

Senator A.J. Missen <sup>4</sup>

Senator D.B. Scott <sup>1</sup>

Senator P.A. Walsh <sup>6</sup>

Senator I.A.C. Wood

Senator R.C. Wright <sup>3</sup>

1 Discharged 24 September 1974

2 Appointed 24 September 1974

3 Discharged 16 October 1974. Reappointed 12 February 1975

4 Appointed 16 October 1974. Discharged 12 February 1975

5 Discharged 21 August 1975. Reappointed 28 October 1975

6 Appointed 21 August 1975. Discharged 28 October 1975

Fifty-seventh Session

Senator I.A.C. Wood (Chairman)

Senator W.W.C. Brown

Senator S.J. Collard

Senator D.M. Devitt

Senator P.D. Durack

Senator S.M. Ryan

Senator R.C. Wright

STANDING COMMITTEE ON REGULATIONS AND ORDINANCES  
FIFTY-FIRST REPORT  
GENERAL REPORT 1975

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

- 2 The purpose of this Report is to acquaint the Senate with the Committee's consideration of certain regulations and ordinances during 1975.

STATUTORY RULES AND BY-LAWS  
Postal Services Regulations  
and Postal By-laws

- 3 These Regulations and By-laws contain provisions empowering officers of the Postal Commission to open and dispose of mail in certain circumstances. The Committee regards these as unduly infringing the rights and liberties of citizens. The Committee considers that the right to privacy of mail is an important right of the individual and ought to be abridged only pursuant to law, and with proper safeguards against misuse of the powers conferred by law.
- 4 Regulation 40 of the Regulations allows the opening of a postal article that may have been posted, or may contain a thing, in contravention of any Act, Regulations or By-laws, and where the article is found to be so posted or to contain such a thing, the article shall be dealt with in accordance with Regulation 46.

Regulations 41 and 42 allow the opening of postal articles which may contain goods on which duties of customs are payable or the importation or exportation of which is prohibited. Where an article is found to contain goods subject to customs duty the Regulations allow the goods to be disposed of in accordance with Regulation 46 if the addressee or the sender fails to comply with a request to pay the customs duties.

Regulation 43 allows the opening of a postal article posted free of charge or at a concessional rate, "or otherwise in circumstances that require that it be open for inspection".

Regulation 45 allows the opening of postal articles posted abroad on behalf of persons in Australia in order to gain the advantage of lower overseas postage rates.

Regulation 46 makes provision for the disposal of postal articles where this is authorised by the Regulations.

By-law 222 of the By-laws allows the Commission to return to the country of lodgment articles posted in the circumstances set out in Regulation 45, or to demand payment of postage in respect of such articles and return them to the country of lodgment where the person on whose behalf they were posted does not pay the required postage.

- 5 The Committee considers that a provision allowing the opening of mail where it may be posted in certain circumstances or contain certain things would virtually allow the opening of all or any mail. It is considered that the Regulations ought to specify that there must be a reasonable belief that the mail meets the criteria set out in the Regulations. The Committee considers that mail alleged to be in contravention of the law ought not to be disposed of until that allegation is tested before a court. The wording of Regulation 43 appears to leave some doubt as to the scope of the power conferred by that Regulation. The Committee considers that Regulation 46 ought not to come into operation while there are legal proceedings concerning the postal articles in question. Where mail has been opened and delivered, the recipient ought to be made aware that it has been opened, and the reason for it being opened. The Committee also considers that there ought to be some right of appeal where it is alleged that articles have been posted abroad to gain the advantage of lower overseas postal rates.
- 6 The Committee corresponded with the Postmaster-General in relation to these matters, and that Minister has agreed to have the Regulations and By-laws amended as follows.

Regulations 40, 41, 42 and 45 will be amended so that postal articles may be opened only where there is a reasonable belief or a reasonable suspicion that the circumstances set out in those Regulations apply.

Regulation 40 will be amended so as to incorporate a provision similar to Section 9 of the Crimes Act, so that a postal article alleged to be in breach of the law will be taken before a court, which may then inquire into the matter, and may order the disposal of the article in accordance with Regulation 46 if the court is satisfied that the postal article is in breach of the law.

As regards Regulations 41 and 42, articles which are alleged to be subject to customs duty or to be prohibited imports or exports are dealt with in accordance with the procedures laid down under the Customs Act.

Regulation 43 will be amended so as to make it clear that it empowers the opening only of articles which have as a condition of their transmission and delivery that they be open for inspection.

Regulation 46 will be amended so that it will not come into operation in relation to postal articles which are the subject of legal proceedings until the termination of those proceedings.

Regulation 48, which provides that a recipient is to be notified of the fact that his mail has been opened, will be amended so that there will also be notification of the reason for the mail being opened.

By-law 222 will be amended so that where articles are alleged to have been posted abroad to gain advantage of lower overseas postal rates, a demand will be made for payment of postage and a person will have a right to apply to the Administrative Appeals Tribunal for a review of that demand.

- 7 The Committee regards these proposed amendments as substantially overcoming its objections to the Regulations and By-laws, and as providing proper limits to the power to open and dispose of mail, and proper safeguards of the rights of the citizen.

#### Postal By-laws

- 8 These By-laws provide for compensation to be paid by the Commission where registered or certified mail is lost or damaged, but provide that the decision of the Commission in relation to compensation is final. The Committee has been assured that provision will be made so that a person aggrieved by a decision of the Commission with regard to such compensation will have a right of appeal to the Administrative Appeals Tribunal.

#### Telecommunications (General) By-laws

- 9 By-law 31 of these By-laws provided that the Commission or any of its employees would not be liable for any damage or injury which might result by reason of the installation of telecommunications equipment in a subscriber's premises, and that where the subscriber is not the owner of the premises he should indemnify the Commission against any damage or injury which might be caused. By-law 32 provided that the subscriber was liable for any loss of, or damage to, telecommunications equipment installed on his premises. By-law 33 provided that this liability applied notwithstanding that the loss or damage to the equipment was not due to the act or default of the subscriber.

- 10 The Committee regarded these provisions as an undue infringement of the rights and liberties of the citizen. Although it was acceptable some years ago to confer immunity of this nature upon statutory bodies, it is now regarded as not in accordance with accepted standards, and the Committee regards it as an undesirable type of provision, especially in delegated legislation. The Committee also considered that the liability of the subscriber ought to be limited to cases where loss or damage to equipment was caused by his negligence and there ought not to be virtually unlimited liability imposed by the By-law. The Committee put these views to the Postmaster-General and to the Telecommunications Commission. The Commission has now amended By-law 31 so as to remove the immunity of the Commission, and has repealed By-law 33. The Commission has also agreed to repeal By-law 32 and to replace it with a new By-law limiting the liability of the subscriber to cases of negligence.

#### Census Regulations

- 11 The regulations under the Census Act prescribe, in accordance with that Act, the matters concerning which particulars are to be specified in the schedule filled in by householders at each census. The regulations applying to the 1976 census, as contained in Statutory Rules 1975 No. 28, caused the Committee some concern.
- 12 First, it became apparent, when the Committee heard evidence on the necessity for some of the matters included in the regulations, that the regulations give no indication of the actual questions to be asked in the census schedule. The Committee suggested that the schedule be included in the regulations, so that each House of the Parliament could see clearly the questions authorized by the regulations. The Special Minister of State considered that there would be too many practical difficulties involved in this course, but agreed to make the schedule available to the Committee so that the Committee could see how the schedule made use of the authority given by the regulations.
- 13 Secondly, it appeared to the Committee that there had occurred over the years a continuous extension of the information required by the census. The present regulations allowed questions on a number of matters not previously included in the schedule, including such matters as sources of mortgages and monthly repayments, and languages used. The Committee wished to assure itself that the questions did not become unduly intrusive and were based upon the need for specific information to usefully serve some particular purpose of government. The Committee therefore sought and obtained an assurance of ministerial approval of the questions to be asked.

- 14 The Committee will continue to scrutinise closely regulations relating to the census to ensure that there is no misuse of the power to extend the census questions by regulation.

Apple and Pear (Conditions of  
Export) Regulations

- 15 Following the enactment of the Australian Apple and Pear Corporation Act in 1973, exporters in the Apple and Pear industry were given an undertaking by the government that export licences would be issued for a term of three years. The Apple and Pear (Conditions of Export) Regulations, which were gazetted on 2 September 1974, carried out that undertaking by providing for export licences to be issued for a term of three years.
- 16 Subsequent to the making of the regulations the Apple and Pear Corporation established by the Act met for the first time and recommended that the term of the licences be reduced to one year. This recommendation was put into effect by an amendment of the regulations, contained in Statutory Rules 1975 No. 5, which was gazetted on 17 January 1975. The reason given for the amendment was that the Corporation had not had time to formulate its plans and needed a temporary limitation of licences to one year in order to do so.
- 17 The Committee considered, however, that even though no licences had actually been issued prior to the amendment of the regulations, the amendment violated a substantive right of exporters, a right which was conferred by the principal regulations, in so far as exporters had a firm expectation of being granted licences for three years, and had based their business decisions upon that expectation.
- 18 The Minister acceded to the Committee's view, and the three year term of export licences has now been restored.

Customs (Prohibited Exports) Regulations

- 19 An amendment of these regulations, contained in Statutory Rules 1975 No. 19, was intended, inter alia, to prohibit the export of items associated with the early exploration of Australia, except by Ministerial permission. This prohibition was expressed without limit as to time, so that items connected with contemporary exploration, for example, mining surveys, could be held to be prohibited exports.



This defect has now been corrected by a further amendment of the regulations to make their intention clear.

Patents Regulations

- 20 The fees set under the regulations for acquiring and maintaining patents are high and give the appearance of being a form of taxation. This is due to government policy that the patent office must recover its costs. The Committee was concerned that the fees might discourage persons from seeking or exercising patent rights, but has been assured that this does not appear to be so.

TERRITORY LEGISLATION  
A.C.T. Motor Traffic Ordinance

- 21 This Ordinance contains a number of provisions which create absolute offences and then specify defences which a defendant has to establish in order to be acquitted. The Committee regards such provisions in most contexts as a form of reversal of the onus of proof. It was put to the Committee that the task of the prosecution would be made too difficult if, in relation to the offences in question, the matters contained in the defence provisions had to be proved in the negative for a prosecution to succeed. For example, one such provision, which attracted the Committee's attention to this problem, made it an offence to drive a vehicle in a traffic lane reserved for buses, and specified a number of situations in which it would be lawful for a vehicle to be so driven, with the onus of proving those circumstances on the defendant.
- 22 The Attorney-General gave consideration to this problem and agreed to amend the law relating to prosecution procedures in the Territory, so as to impose upon the prosecuting authority an obligation to consider, before proceeding with a prosecution for any of the offences in question, whether a defendant had any of the defences provided by the Ordinance. The Committee considers that this will provide an additional safeguard for the individual who might otherwise be put to the expense and inconvenience of establishing his defence.
- 23 An amendment of the Ordinance contained in Ordinance No. 37 of 1974 prohibited the use of motor vehicles where they are the subject of a defect notice issued by an inspector, and the concern of the Committee was that there was no right of review of a refusal by an inspector to remove a defect notice. The Minister for the Capital Territory agreed to amend the Ordinance so that the Registrar of Motor Vehicles will decide whether a defect notice is to be removed. A refusal by the Registrar to register a vehicle or to renew a registration is subject to an appeal to the courts.

Canberra Hospitals (Charges) Regulations

- 24 The charges set for the Canberra hospitals follow the pattern of many other hospitals by providing higher fees for patients with a claim for compensation or damages. While this practice may appear to be discriminatory in principle, it is a common feature of hospital charges in the States and, in respect of the Canberra hospitals, the charges for patients with compensation or damages are based upon hospital costs,

while charges for other patients are substantially below the cost of treatment. The Committee therefore did not consider that it ought to interfere with the practice.

A.C.T. Liquor Ordinance

- 25 This Ordinance, as contained in Ordinance No. 19 of 1975, contains a provision which would allow the Liquor Licensing Board to cancel a liquor licence in certain circumstances without first holding a hearing or giving the licensee a right to be heard. The Committee considers that, notwithstanding the provision of a right of appeal to a court where a licence is cancelled, a licensee ought to have a right to be heard before his licence is cancelled. The Minister for the Capital Territory has agreed to amend the Ordinance to this effect.

A.C.T. Lake Burley Griffin Ordinance

- 26 An amendment of this Ordinance contained in Ordinance No. 14 of 1975 empowers the Minister for the Capital Territory to close Lake Burley Griffin, without specifying the circumstances in which that power may be exercised. The Committee considers that the Ordinance ought to indicate criteria of a general nature, related to the public interest, to govern the exercise of the Minister's power. The Minister has agreed to amend the Ordinance to include some such criteria.

IAN WOOD  
Chairman

Senate Committee Room,  
4 March 1976