



THE SENATE

STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

FIFTY-FIFTH REPORT

AUSTRALIAN CAPITAL TERRITORY ORDINANCES  
CONTAINING SUBSTANTIVE LEGISLATION

MEMBERS OF THE COMMITTEE

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

Function of the Committee Since 1932, when the Committee was first established, the principle has been followed that the function of the Committee is to scrutinise 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.

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

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- 2 In its Fifty-third and Fifty-fourth reports the Committee recommended the disallowance of two ordinances of the Australian Capital Territory, the Misrepresentation Ordinance 1975 and the Manufacturers Warranties Ordinance 1975, on the ground that they contained substantive legislation which should be a matter for parliamentary enactment. The Committee also considered that the Misrepresentation Ordinance trespassed unduly upon personal rights and liberties by creating a criminal liability for misrepresentation and reversing the onus of proof. Two members of the Committee dissented from the Committee's recommendation that the Ordinances be disallowed on the ground that they contained substantive legislation which should be a matter for parliamentary enactment.
- 3 After the presentation of the Reports, section 6 of the Misrepresentation Ordinance, which created a criminal liability for misrepresentation and reversed the onus of proof in a prosecution for an offence, was repealed.
- 4 After discussions, the Committee and the Minister for the Capital Territory agreed to the following:
  - (1) That the Ordinances would be repealed;
  - (2) That the Senate would be asked on motion of the Minister representing the Minister for the Capital Territory to refer the Ordinances to the Senate Standing Committee on Legal and Constitutional Affairs for inquiry and report by

30 September 1976, and that should that Committee recommend any amendments to the Ordinances they would be remade with those amendments; and

- (3) That the Committee would recommend to the Senate that it be authorised to revise its charter so that it will no longer apply to A.C.T. Ordinances approved by the Legislative Assembly the Committee's fourth principle relating to substantive legislation.
- 5 In 1959, with the concurrence of the Senate, the Committee ceased to scrutinise ordinances of the Northern Territory. The reason for that decision was that the partly elected Legislative Council of that Territory had power, conferred by statute, to make ordinances for the Territory, and such ordinances were no longer subject to disallowance by either House of the Parliament.
- 6 The situation in the Australian Capital Territory does not correspond to the situation in the Northern Territory at that time. Although there is now a fully elected Legislative Assembly in the Capital Territory, it is itself established by ordinance and not by Act of the Parliament. The Assembly's functions are advisory only. It has no power to make ordinances. They are still made by the Governor-General with the advice of the Executive Council, and are still subject to disallowance by either House of the Parliament.
- 7 While the Committee therefore would not be justified in withdrawing altogether from the scrutiny of A.C.T. ordinances, the Committee considers that it would be proper for it to cease to apply to ordinances of the A.C.T. the fourth principle which it adopts in scrutinising regulations and ordinances, i.e., that they should not contain substantive legislation which should be a matter for parliamentary enactment.
- 8 Subject to the approval of the Senate, the Committee will continue to scrutinise A.C.T. ordinances and to apply to them its other three principles, i.e.:

- (a) that they should be in accordance with the statute;
- (b) that they should not trespass unduly on personal rights and liberties;
- (c) that they should not unduly make the rights and liberties of citizens dependent upon administrative rather than upon judicial decisions.

The Minister for the Capital Territory has stated in a letter to the Committee:

"I welcome the Committee's continued scrutiny of A.C.T. legislation to ensure that they are in accordance with the statute; that they do not trespass unduly on personal rights and liberties; that they do not unduly make the rights and liberties of citizens dependent upon administrative rather than upon judicial decisions".

- 9 The purpose of this Report is to acquaint the Senate with the foregoing and to seek the Senate's concurrence with the course of action proposed by the Report.

IAN WOOD  
Chairman

27 May 1976