

STANDING COMMITTEE ON SENATE

OF THE SENATE

- 7 JUN 1978

SIXTY-FIRST REPORT

- Remuneration Tribunal (Members' Fees and Allowances) Regulations
- National Parks and Wildlife Regulations
- Naval Financial and Air Force Regulations
- Defence Force (Salaries) Regulations
- Federal Court of Australia Regulations
- Australian National Railways General By-law
- A.C.T. Physiotherapists Registration Ordinance



AUSTRALIAN SENATE

Bradshaw
7/6/78

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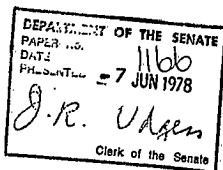
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2 June 1978

MEMBERS OF THE COMMITTEE

Senator I.A.C. Wood (Chairman)

Senator the Hon. J.L. Cavanagh

Senator S.J. Collard

Senator G. Georges

Senator A.J. Missen

Senator S.M. Ryan

Senator the Hon. 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.

STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

SIXTY-FIRST REPORT

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

- 2 The purpose of this report is to acquaint the Senate with the Committee's consideration of the following regulations and ordinances.

REMUNERATION TRIBUNALS (MEMBERS' FEES AND ALLOWANCES)
REGULATIONS

- 3 The Remuneration Tribunals Act provides for the fees and allowances of Remuneration Tribunal members to be fixed by regulation. A practice has arisen of applying by regulation to members of the Tribunal the determinations of the Tribunal itself. The effect of this is that the members of the Tribunal are in a position of knowing that when they determine the fees and allowances of certain officers they are in effect indirectly determining their own fees and allowances. This detracts from the independence of the Tribunal. The Committee considers that fees and allowances of the members should be determined by statute for the period of their term of office.

NATIONAL PARKS AND WILDLIFE REGULATIONS

- 4 These regulations, contained in Statutory Rules 1977 No. 217, contain two provisions which appear to the Committee to confer an excessive power upon officials. Regulation 8 allows the Director to prohibit access to a park or reserve by particular persons or classes of persons where he is of the opinion that it is necessary to do so. The Committee considers that the Director ought not to have this power merely upon his opinion, and that the regulations should provide some objective criteria governing the exercise of the power. Regulation 12 empowers the Director to take any measures he considers necessary for the control of animals and plants that are not wildlife. This power presumably would allow him to summarily destroy animals or take other drastic measures. The Committee considers that there ought to be some limitation upon this power.

- 5 The Minister for Environment, Housing and Community Development has acceded to the Committee's views, and has given an undertaking that regulation 8 will be amended so as to substitute the words "he has reasonable cause to believe" for "he is of the opinion" wherever the latter words occur in the regulation, and that regulation 12 will be amended so as to make it clear that it does not apply to domestic animals.

NAVAL FINANCIAL REGULATIONS AND AIR FORCE REGULATIONS

- 6 The amendments of these regulations contained in Statutory Rules 1977 Nos 278 and 279 confer upon the Minister for Defence a discretion to determine certain allowances of members of the Defence Force. The Committee considers that the discretionary power conferred upon the Minister by the regulations is excessive. The Minister for Defence, in response to the Committee's view, has given an undertaking that he will amend the regulations so as to remove the Minister's discretion and to make the operation of the regulations objective.

DEFENCE FORCE (SALARIES) REGULATIONS

- 7 In its Sixtieth Report, presented to the Senate on 13 April, the Committee recommended the disallowance of the amendment of these regulations contained in Statutory Rules 1978 No. 3, on the ground that it had the effect of unfairly discriminating between individuals, and thereby trespassed unduly on individual rights. The Minister for Defence, following the presentation of the Committee's report, has stated that he will repeal the amendment, and on the basis of that assurance the notice of motion for the disallowance of the amendment was withdrawn.

FEDERAL COURT OF AUSTRALIA REGULATIONS

- 8 These regulations, contained in Statutory Rules 1978 No. 36, provide that fees are not payable where the Registrar of the Court or a District Registrar is satisfied that the person concerned has been granted legal aid or that the fee would impose hardship. The Committee considers that these matters ought not to be determined on the opinion of these officers. The Attorney-General, while considering that some discretion is necessary in the operation of the provisions, has agreed to amend the regulations so that the decisions of the officers of the Court in these matters will be subject to review by a justice of the Court.

AUSTRALIAN NATIONAL RAILWAYS GENERAL BY-LAW

- 9 This By-law, made by the Australian National Railways Commission under the Australian National Railways Act, contains provisions regulating the conduct of persons in relation to the use of the railways conducted by the Commonwealth. The Committee considers that a number of these provisions trespass unduly on individual rights and liberties, as follows:
- (i) Sub-clause 17(1) makes it an offence for a passenger to "project a part of his body out of a window, doorway or other opening on a moving carriage." Unlike other sub-clauses which relate to other conduct which is prohibited, the qualification of "without reasonable excuse" has been omitted.
 - (ii) Under clause 18, the Commission will not be liable in respect of an injury sustained by a person found guilty of an offence under any of the provisions of clause 17.
 - (iii) Under clause 34, a person finding lost property on a train is required to hand over that property to the guard, failing which such person will be committing an offence and be liable to a penalty of \$100. That requirement is too strict in that it may not be easy to either locate or have access to the guard on a train.
 - (iv) Clause 54 is concerned with interference caused by lights. Under sub-clause 54(2) the Commission may by notice require the owner or person in charge of a light to comply with a direction given by the Commission. The invoking of this power is dependent upon the subjective opinion of the Commission. Sub-clause 54(4) makes it an offence for a person to fail to comply with such a notice and sub-clause 54(6) enables the Commission to enter premises and carry out directions contained in a notice given under the clause where such directions have not been complied with.
 - (v) Sub-clause 60(1)(f) preserves the Commission from responsibility for loss or damage to a ship, cargo, equipment or goods where a ship is at or approaching a berth at a wharf of the Commission.
 - (vi) Sub-clause 64(a) is highly objectionable in placing the burden of proof on the defendant in any prosecution under the By-laws.

- 10 The Minister for Transport, after consultation with the Railways Commission, has given the Committee an undertaking that the By-law will be promptly amended as follows:

- (i) Sub-clause 17(1) will be amended to insert the defence of reasonable excuse.
- (ii) Clause 18 will be amended so as to remove the immunity of the Commission from liability.
- (iii) Clause 34 will be amended so as to significantly reduce the responsibility of the passenger in relation to lost property.
- (iv) Clause 54 will be amended so that a person complying with a notice of the Commission will be able to claim in a court of competent jurisdiction the cost of that compliance.
- (v) Sub-clause 60(1)(f) will be repealed.
- (vi) Sub-clause 60(a) will be repealed.

The Committee regards these promised amendments as greatly improving the by-law so far as its effect upon the rights and liberties of the citizen is concerned.

A.C.T. PHYSIOTHERAPISTS REGISTRATION ORDINANCE

- 11 This ordinance provides that where witnesses are called to an inquiry, by the Physiotherapists Board, witnesses called by the Capital Territory Health Commission have their fees and expenses paid by the Commonwealth, but witnesses called by any other person have their fees and expenses paid by that person. The Committee considers that this provision is unfairly discriminatory. The test ought to be whether the calling of those witnesses was proper for the purpose of the inquiry. The Minister for Health has agreed to amend the ordinance so that the Board may make the Commonwealth liable for the fees and expenses of witnesses where the Board considers that the calling of those witnesses was reasonable. There are a number of other ordinances of the Territory which require this amendment for the same reason.

Ian Wood
Chairman

ADDENDUM

The Committee has directed that this addendum be added to the Report to record the deep appreciation of the Committee, an appreciation which the Committee believes will be strongly endorsed by the Senate, of the long years of service to the Committee by its Chairman, Senator Ian Wood, and by Senator the Honourable R.C. Wright.

Senator Wood has served on the Committee for over twenty-eight years and has been its Chairman for more than twenty-two years. His assiduous and enthusiastic work is well known to the nation and has been of substantial importance in ensuring the success of the Committee as a constant watchdog over the regulation-making power of the executive.

Senator the Honourable R.C. Wright has given to the Committee for many years his inestimable service as a lawyer and as a defender of the liberties of the people.

The Committee believes that it has played an important part in establishing the Senate Committee system as we know it today and in ensuring the predominance of Parliament, and these two Senators have played unique roles in developing this tradition of the Australian Parliament.

added by direction of the Committee

Harry Evans
Secretary