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STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

SEVENTIETH REPORT

LEGISLATION CONSIDERED
NOVEMBER 1980 TO MAY 1981

JUNE 1981

THE SENATE

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SENATE STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

MEMBERS OF THE COMMITTEE

Senator A.W.R. Lewis (Chairman)
Senator the Hon. J.L. Cavanagh (Deputy Chairman)
Senator N.T. Bonner
Senator M.A. Colston
Senator D.J. Hamer, D.S.C.
Senator A.J. Missen
Senator M.C. Tate

PRINCIPLES OF THE COMMITTEE

(Adopted 1932; Amended 1979)

The Committee scrutinises delegated legislation to ensure:

- (a) that it is in accordance with the statute;
- (b) that it does not trespass unduly on personal rights and liberties;
- (c) that it does not unduly make the rights and liberties of citizens dependent upon administrative decisions which are not subject to review of their merits by a judicial or other independent tribunal; and
- (d) that it does not contain matter more appropriate for Parliamentary enactment.

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STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

SEVENTIETH REPORT

The Standing Committee on Regulations and Ordinances has the honour to present its Seventieth Report to the Senate. The purpose of this Report is to acquaint the Senate with the Committee's consideration of legislation since its last Report (the Sixty-ninth Report) was presented on 15 September 1980.

MATTERS ARISING FROM PREVIOUS REPORT

Overseas Students Charge Collection Regulations

- 2 The Committee reported to the Senate its concern that no provision had been made for a review of decisions under these regulations. It further indicated the reservations of the Minister for Immigration and Ethnic Affairs concerning the question of review, but that he had agreed to refer the matter to the Administrative Review Council.

- 3 In its Fourth Report, tabled in the Senate on 18 September 1980, the Council advised that it expected to complete its examination of the review of decisions under the Migration Act and Regulations, including the Overseas Students Charge Act 1979 and the Overseas Students Charge Collection Act 1979, in 1980-81. The Committee has written to the Chairman of the Council, seeking details of the progress made in the Review.

Australian Military Regulations

- 4 In its last Report, the Committee indicated that it had recommended to the Minister for Defence that there should be a right of appeal by a person aggrieved by a decision of a compensation board established by the military authorities.
- 5 The Minister for Defence advised in September 1980 that legislation would be drafted to provide a right of appeal to the Administrative Appeals Tribunal in respect of compensation for action taken under section 68 of the Defence Act. In April 1981, the Committee was advised that the undertaking had been carried out. The Committee was pleased to note the expeditious fulfilment of the undertaking.

A.C.T. Consumer Affairs Ordinance

- 6 The Committee indicated in its Report that certain amendments had been made to carry out a number of undertakings to the Committee in relation to the principal Ordinance. However, the Committee sought a further clarifying amendment of the Ordinance to ensure that voluntary disclosure to a court of information gained under the Ordinance was prohibited. The Minister for the Capital Territory agreed on 30 October 1980 to make the amendment sought.

Forms of Summonses

- 7 The Committee reported that, arising from its consideration of the Motor Traffic Ordinance, it had requested the Attorney-General to give consideration to the reform of summons documents in jurisdictions under the control of the Commonwealth, and had put forward suggestions for their simplification.

- 8 The Attorney-General has now advised that a simplified form of summons, covering the majority of cases with which the Committee was concerned, is in use in the Australian Capital Territory, and the Committee shares the Attorney-General's view that the new form of summons goes a long way towards meeting its objections to the abstruse language in which summonses were previously couched.

Conference of Delegated Legislation Committees

- 9 The Committee's last Report indicated that a Commonwealth Conference of Delegated Legislation Committees was to be held in 1980. As the former Chairman, Senator Missen, stated when tabling the papers of the Conference in November 1980, this first Conference was most successful, and a permanent committee, of which Senator Missen was appointed Chairman, has now been established to ensure a continuing dialogue among Commonwealth Parliaments on regulatory review developments.
- 10 The Regulations and Ordinances Committee is at present examining certain practices in other jurisdictions, with a view to evaluating their applicability to its own functions. It has also written to the Attorney-General, seeking his comments on the matters it is now considering. The Committee welcomes the opportunity of an on-going evaluation of its own procedures and practices in the context of methods adopted by other institutions to ensure the pre-eminence of the Parliament in the scrutiny of delegated legislation.

AUDIT (EXEMPT ACCOUNTS) REGULATIONS

- 11 In its Sixty-eighth Report, presented to the Senate in November 1979, the Committee drew attention to the prescription of whole departments or authorities as exempt from the provisions of the Audit Act when in fact only certain accounts were proposed to be exempted. The Committee indicated at that time that the then Minister for Finance had been requested to give consideration to an amendment of the Audit Act to permit the prescription of particular accounts only.
- 12 As a result of changes in administrative arrangements, the account which gave rise to the Committee's initial concern - the Customs Advance Account - was transferred to the Australian Federal Police. The Commissioner, Sir Colin Woods, took the enlightened and constructive attitude that exemption from audit of accounts relating to the investigation of narcotics was unnecessary, and the regulation was repealed.
- 13 The Committee pursued the general principle with the Minister for Finance. Successive Ministers perceived difficulties in amending the Audit Act to comply with the Committee's request. However, on 29 April 1981 the present Minister advised the Committee that the requirement to prescribe a whole department or authority is highly unlikely to arise in the future and gave an assurance that should such a necessity occur, the Committee would be consulted, and an explanation of the necessity for such a regulation given, before a Statutory Rule is put to the Executive Council.

- 14 This assurance meets the Committee's principal objection that, as matters stood, the Parliament would have had no control over what was to be exempted from audit unless it was known in advance how a Minister intended to use the power conferred by the regulations. The Committee expresses its pleasure at the satisfactory resolution of this long-standing problem.

A.C.T. NATURE CONSERVATION ORDINANCE

- 15 The matters of concern to the Committee in relation to this Ordinance were reported in detail to the Senate on 5 March 1981, when a notice of motion for disallowance of the Ordinance was withdrawn. Briefly, the Committee's concern lay with the unfettered discretion conferred on officers to exercise certain powers; the unduly wide conferral of powers of search and entry; forfeiture provisions; restrictions on keeping pets and the importation of live fish into the Territory; and prosecution provisions for trivial offences. Appropriate explanations and assurances were given by the Minister in relation to these matters, giving rise to the Committee's decision to withdraw the notice of disallowance.
- 16 The statement also referred to the question of the admissibility of improperly obtained evidence, indicating that the Committee intended to take up this general principle with the Attorney-General and the Law Reform Commission. The Committee has since corresponded with the Attorney-General and the Chairman of the Law Reform Commission, who have both given detailed responses to questions posed by the Committee.

- 17 In view of the importance of the matters discussed by the Attorney-General and the Chairman, the Committee suggests that their views be made known to the Senate Standing Committee on Constitutional and Legal Affairs, which is at present undertaking an inquiry into the onus of proof.

CUSTOMS (PROHIBITED IMPORTS) REGULATIONS

- 18 During its examination of the Customs (Prohibited Imports) Regulations, contained in Statutory Rules 1980 No. 382, the Committee noted that there was no right of appeal against certain decisions of the Director-General of Health regarding permission to import drugs under the provisions of the Regulations.
- 19 The Committee, while noting that the general matter of appeal provisions under the Customs Act and Regulations was the subject of consideration by the Administrative Review Council, decided to request the Minister for Business and Consumer Affairs to consider the incorporation of appropriate appeal provisions in the Regulations. It also requested comment from the Chairman of the Administrative Review Council concerning progress made in the general review, and asked the Attorney-General to advise of progress made in his consideration of a Report by the Council on Review of Import Control and Customs By-law Decisions, which was forwarded to him in mid-1979. It is clear to the Committee, from the Chairman's response, that the Council is labouring under considerable difficulties in carrying out the extensive tasks allocated to it, and the Committee has therefore sought the Attorney-General's comments on the difficulties identified in the Chairman's letter.

20 So far as the Regulations to which the Committee directed its attention are concerned, the Minister for Business and Consumer Affairs advised that he saw no objection to a right of appeal being inserted as requested. In addition, the Chairman of the Administrative Review Council indicated in a further letter to the Committee that the Council sees no conflict between the Committee's desire to propose the incorporation of rights of review in individual regulations, and the Council's own functions and responsibilities. The letter indicates that the Council would not wish the constraints on its work programme to inhibit the extension of administrative review to new areas where its introduction is desirable. The views of the Council have been conveyed to the Attorney-General and the Minister for Business and Consumer Affairs, who has now advised that drafting instructions have been sent for the necessary amendments to the Customs (Prohibited Imports) Regulations to give effect to the Committee's recommendation. The Committee intends to pursue its normal practice in relation to review provisions as and when they arise.

GREAT BARRIER REEF MARINE PARK - CAPRICORNIA SECTION
ZONING PLAN

21 The Committee noted that Clause 4 of the Zoning Plan for the Capricornia Section of the Great Barrier Reef Marine Park did not provide any avenue of review, such as by the Administrative Appeals Tribunal, in relation to decisions by responsible agencies to grant permission for entry into and use of the zone. On 4 December 1980 the Committee wrote to the former Minister for Home Affairs and Environment, the Hon. R.J. Ellicott, seeking his views on the matter.

- 22 On 24 February 1981, the then Minister for Home Affairs and Environment, the Hon. M.J.R. MacKellar, advised the Committee that draft regulations were being prepared to regulate the granting of permission to enter and use zones. The Minister indicated that the regulations would include provision for reconsideration of decisions by the Marine Park Authority by the Authority when requested, and, ultimately, a right to apply for review by the Administrative Appeals Tribunal. The promised amendments were made by Statutory Rules 1981 No. 108, tabled in the Senate on 28 May 1981. The Committee was gratified to note the prompt acceptance and implementation of its suggestion.

DEFENCE FORCE REGULATIONS

- 23 The Committee, having considered an amendment of the Defence Force Regulations, contained in Statutory Rules 1980 No. 95, wrote to the Minister for Defence on 22 May 1980 requesting consideration of the insertion of a review provision where applicants are aggrieved by a decision of the Minister authorising payment to an applicant where he is satisfied that the applicant was the owner of unclaimed property which has been sold.
- 24 The former Minister Assisting the Minister for Defence indicated to the Committee in July 1980 that advice had been sought from the Attorney-General's Department on the question. In a further letter dated 27 March 1981 the present Minister Assisting the Minister for Defence notified the Committee that advice from the Attorney-General's Department had not as yet been forthcoming, despite continued inquiries from the Department of Defence.

- 25 The Committee views with grave concern the delay in providing such advice, which does not appear to the Committee to involve great complexity and which on its face also does not appear to differ widely in principle from advice sought and given in relation to the Australian Military Regulations, discussed earlier in this Report.

A.C.T. TRAFFIC (AMENDMENT) ORDINANCE

- 26 This Ordinance was considered by the Committee with some degree of urgency following its tabling in the Senate on 28 April 1981. As reported to the Senate on 14 May 1981, the Committee examined the Ordinance under its principles (b) and (d), to establish whether it might trespass unduly on personal rights and liberties and whether it contained matters more appropriate for Parliamentary enactment. The Committee sought the views of the A.C.T. House of Assembly and the Joint Committee on the Australian Capital Territory on the question of Parliamentary enactment, in accordance with the intention expressed in the Committee's Sixty-fourth Report, and also sought advice on the consequences for accused persons of the disallowance of an Ordinance in force at the time prosecutions are launched.
- 27 The Minister for the Capital Territory gave an undertaking that a general Ordinance incorporating a code covering the law relating to parades, processions and assemblies, generally, in the Australian Capital Territory would be made prior to Anzac Day 1982, and that the draft Ordinance would be made available to the Committee and the A.C.T. House of Assembly prior to its coming into operation.

- 28 The Committee, acting on advice that withdrawal of the Ordinance would not in law affect prosecutions already launched and on the clear understanding that the Ordinance will not operate in 1982, decided to take no further action in relation to the Ordinance. The Committee is of the view that the undertakings given by the Minister should result in the creation of pathfinding legislation on the law of assembly in accordance with the International Covenant on Human Rights.

A.C.T. HEALTH COMMISSION (AMENDMENT) ORDINANCE

- 29 This Ordinance was also the subject of detailed examination by the Committee. In addition, it was the subject of a disallowance motion moved in the Senate on 3 June 1981 by a Senator who was not a member of the Committee. Details concerning the Committee's consideration, and its conclusion that the Ordinance did not offend against its principles, were conveyed to the Senate in the course of that debate.
- 30 During its examination of the Ordinance, the Committee noted a recommendation of the Senate Standing Committee on Constitutional and Legal Affairs contained in its Report on the Evidence Act 1972 that, if the Regulations and Ordinances Committee reports to the Senate that an Ordinance is socially innovatory or affects fundamental rights and liberties, it should be the subject of substantive debate. As indicated to the Senate during debate on the disallowance motion, the Committee was unanimously of the view that the matters contained in the Health Commission (Amendment) Ordinance were of such importance as to warrant substantive consideration by the Senate, and therefore welcomed the opportunity for debate afforded by the disallowance motion.

- 31 The Committee is concerned to establish a mechanism whereby the attention of the Senate may be drawn to a matter which, while not necessarily warranting disallowance under the Committee's principles, is nonetheless of such significance as to merit substantive discussion in the Senate, as recommended in the Constitutional and Legal Affairs Committee Report. The Committee is giving consideration to the most appropriate means of attaining this objective, and will report to the Senate.

RETROSPECTIVE LEGISLATION

- 32 In accordance with the undertaking contained in its Twenty-fifth Report, the Committee reports to the Senate the following instruments which contain retrospectivity provisions extending beyond two years:
Public Service Regulations, contained in Statutory Rules 1980 No. 272. Retrospective in operation to 10 May 1978.

The purpose of the amendment to the regulations was to declare Commonwealth Accommodation and Catering Services Ltd (formerly Commonwealth Hostels Ltd) to be a company for the purposes of enabling the Public Service Board to grant leave of absence to an officer or employee to engage in employment with the company. The explanatory memorandum stated that the amendment was desirable because of the planned transfer of a number of staff and their functions from the Department of Productivity to CACS. The

amendment was made retrospective to 10 May 1978, the date on which Commonwealth Hostels Ltd changed its name to CACS, to ensure that the Act applied continuously.

It was not clear to the Committee why the amendment had not been made sooner, but since retrospectivity did not prejudicially affect the rights of individuals or impose liabilities on them, the Committee decided to take no further action in relation to the Regulations.

Phosphate Fertilizers Bounty Regulations, contained in Statutory Rules 1980 No. 357. Made retrospective to cover the period from 1 July 1977 to 21 August 1979.

The explanatory statement relating to these Regulations indicated that they were made in response to a criticism of the Auditor-General that certain payments of bounty between 1 July 1977 and 21 August 1979 might have been made without proper legislative support. It is to be noted that the Auditor-General criticised the slowness in making Regulations under the terms of the parent Act: the Act came into effect on 1 July 1977, but the relevant Regulations under the Act were not notified in the Commonwealth of Australia Gazette until 21 August 1979. The current Regulations were, in the Auditor-General's opinion, required to validate payments made in the period between the commencement of the Act and promulgation of the Regulations.

The Committee took the view that, under the circumstances, the retrospectivity appeared essential, and as it did not impinge on individual rights or impose liabilities the Regulations should stand.

Postal (Staff) By-laws Amendment No. 1 of 1981. One provision retrospective to 16 May 1977, a second to 18 January 1978.

These By-laws conferred certain benefits on individuals relating to expenses incurred in connection with the sale of a house by an officer of the Postal Commission as a result of his transfer to another location.

One provision of the By-laws was designed to ensure that staff who prefer to do their own conveyancing unassisted by lawyers or other conveyancers do not miss out on reimbursement of essential out-of-pocket expenses. This provision was backdated to 16 May 1977 to enable reimbursement to be made of expenses involved in two cases, the earlier of which precipitated the amendments. The Minister for Communications explained that consultations were necessary with the Public Service Board, Telecom Australia, the Department of Industrial Relations and, in particular, the Crown Solicitor's Office. The Minister pointed out that, while it was regrettable that the consultation process took so long to complete, Australia Post took the view that it would be unreasonable and inequitable to exclude reimbursement in the cases which initially precipitated the amendments to the By-laws.

The Committee agrees with that view, but expresses its concern at the lengthy delay in completing the consultations.

The second retrospective provision - backdated to 18 January 1978, when similar amendments were made to Public Service Regulation 97D - increased the amounts of the limits on house values and mortgage levels. These increases have been paid to Australia Post staff under a determination made pursuant to section 46 of the Postal Services Act, but the opportunity was taken to include the provisions in the By-laws at this time.

In the light of the explanations provided by the Minister, the Committee decided to take no further action on the By-laws.

Defence Determination No. 11 of 1981. Retrospective to 1 January 1979. (Statutory Rules 1981 Nos. 68 to 70 also retrospective to this date, consequential upon the making of Determination No. 11.)

This determination extends payment of Education Allowance to a member of the Defence Force who, on posting, either places his child at a school in an area where he reasonably expects to be next posted and is not so posted, or leaves his child at a school in the old locality with the reasonable expectation of returning there on his next posting and is not so posted.

The Minister Assisting the Minister for Defence explained to the Committee that consideration was given to the matter by the

Defence (Conditions of Service) Steering Committee at meetings in May and October 1980. At the second meeting the Steering Committee agreed that the allowance should be extended in such circumstances, with effect for the 1979 school year to cover certain cases which had arisen between 1 January 1979 and finalisation of the Steering Committee's considerations. Following the Steering Committee's decision, further delays in both setting policy and drafting the determination occurred, and it was not until 25 March 1981 that the determination was submitted for the Minister's signature.

The Committee again expresses its concern at the inordinate delays in the decision-making process involved in the making of the determination, but for reasons discussed below decided to take no further action in relation to it.

- 33 It is to be noted that, in two of the four matters reported by the Committee, excessive delays have occurred in the conferral of a financial benefit upon individuals. The Committee had occasion to refer in general terms in its Sixty-eighth Report to the blunt weapon it has available to it in order to censure errant departments for their delays, or neglect of the rights of individuals, in the preparation of certain delegated legislation. It appears to the Committee intolerable that, in order to take departments to task for their ineptitude, the only method available to it is disallowance, which would have the effect of doubly penalising an individual who has already been the victim of delay in conferring a benefit.

- 34 The Committee considers that it is not appropriate in these cases to comply with the undertaking given in its Twenty-fifth Report that, unless exceptional circumstances are established to the Committee's satisfaction, regulations involving retrospectivity in payment of moneys, if extending beyond two years, will be the subject of a recommendation for disallowance. The Committee will, however, continue to draw the attention of the Senate to matters of retrospectivity of this nature, and trusts that its strong censure might have some effect in preventing similar delays in future.

CONSIDERATION OF DRAFT DELEGATED LEGISLATION

- 35 In its Sixty-eighth Report, the Committee drew attention to the increasing practice of considering delegated legislation in draft. The Committee pointed out both the advantages and disadvantages of this procedure. The Committee at present has before it three explicit assurances that regulations and ordinances will be made available to it in draft form:
- (a) from the Minister for Finance in relation to certain Audit (Exempt Accounts) Regulations;
 - (b) from the Minister for the Capital Territory in relation to a proposed code governing the law of assembly in the Territory; and
 - (c) from the Minister for Health in relation to a proposed Poisons and Drugs Ordinance.

- 36 The Committee has also had the benefit of evaluating the practice of examining delegated legislation in draft in other jurisdictions. While the Committee is concerned to ensure that its examination of draft instruments does not prejudice future action on them when they appear, the Committee is at present of the view that the advantages perceived in the Sixty-eighth Report outweigh the disadvantages. At this experimental stage, however, it does not intend to seek an amendment to Standing Order 36A, as foreshadowed in that Report, but will give consideration to such a course following its further experience in testing the procedure.

UNDERTAKINGS BY MINISTERS

- 37 The Committee expresses its appreciation of the co-operation extended to it by Ministers and their Departments. For the information of the Senate, a report of progress made in the fulfilment of outstanding undertakings listed in the Committee's 66th and 69th Reports is attached as Appendix I. Also appended is a summary of recommendations of the Committee, other than recommendations for amendment or review of particular pieces of delegated legislation, and action taken or foreshadowed in relation to them.

RETIREMENT OF DEPUTY CHAIRMAN

- 38 On 30 June 1981, Senator the Hon. J.L. Cavanagh will retire from the Senate and consequently from his position as Deputy Chairman of this Committee. Senator Cavanagh has been a member of the Committee for 12 of his 19 years as a Senator for South Australia. The Committee wishes to place on record its appreciation of the inestimable services of Senator Cavanagh to the Committee and the Senate.
- 39 His clear understanding of the operation and principles of the Committee, his profound knowledge of the principles of statutory interpretation, and his concern to ensure that there is no derogation of the law-making responsibilities of the Parliament have, in the Committee's view, been among the major features of his contribution to the Parliament as a whole, and through it to the people whom he has so ably represented for almost twenty years.



Austin Lewis
CHAIRMAN

June 1981

APPENDIX I

REPORT ON UNDERTAKINGS BY MINISTERS TO AMEND OR REVIEW DELEGATED LEGISLATION

A Listed in the 66th Report (June 1979)

- 1 Postal Services Regulations: provisions allowing the opening of mail by officers: undertaking given 5 November 1975. This undertaking was delayed by the consideration of the opening of mail by the Law Reform Commission and the Royal Commission on Drugs. The responsible Minister agreed in February 1979 not to await the reports of those bodies and to proceed with the promised amendments. In April 1980 the Minister reported that difficulties had been encountered in preparing the amendments. These difficulties were the subject of a hearing of various officers on 17 April 1980. The officers considered that there were no substantial difficulties preventing the speedy enactment of the amendments, with minor modifications. The Committee reported this conclusion to the Minister on 28 April 1980. In August 1980 the Minister advised that the amendments would proceed and on 16 April 1981 further advised that the amendments were expected to be tabled in the near future.
- 2 Regulations under the Customs Act: rights of appeal against administrative acts: undertaking given 16 March 1976. This matter is partly still under consideration by the Administrative Review Council. In August 1979 the Council reported that it had sent to the Government the Report on the Customs (Import Licensing) Regulations, and in November 1979 reported that it would be 'well into 1980' before the remaining matters were concluded. A further letter from the Council advised that considerable delays had occurred in concluding the reference. (See also 70th Report, paras 18 to 20.)
- 3 A.C.T. Sale of Motor Vehicles Ordinance: powers of registrar to determine disputes: undertaking given 20 October 1977. In January 1981 the responsible Minister reported that draft amendments had been received by the Department, following completion of a review of the ordinance, but that further discussions with officers of the Attorney-General's Department were required.
- 4 Dried Fruits Export Control (Licences) Regulations: review of licensing decisions: undertaking given 28 March 1979. The undertaking was fulfilled by Statutory Rules 1980 No. 331.

B Listed in the 69th Report (September 1980)

- 1 A.C.T. Poisons and Narcotic Drugs Ordinance: offences and penalties: undertaking given 19 July 1979. The responsible Minister undertook to amend some provisions of the ordinance and review others. The Minister has now advised that omnibus legislation in preparation as a result of the implementation of recommendations of the Williams Report will reflect matters raised by the Committee. The Minister has also given a commitment that a draft of the proposed ordinance will be made available to the Committee. (See also 70th Report, paras 35 and 36.)
- 2 A.C.T. Fuels Control Ordinance: powers of entry and search: undertaking given 9 October 1979. The Committee agreed that the amendments might be postponed pending a review of the Ordinance by the Department of the Capital Territory and the A.C.T. House of Assembly. The Minister advised on 28 October 1980 that drafting instructions had been sent to the Attorney-General's Department.
- 3 Norfolk Island Regulations: power of Parliament to disallow regulations not made by the local responsible executive: undertaking given 9 October 1978. In May 1980 the responsible Minister advised that the amendments were being drafted and on 29 May 1981 the present Minister for Home Affairs and Environment advised that a draft Bill had been sent to Norfolk Island with a view to its introduction into the Legislative Assembly.
- 4 Cocos (Keeling) Islands Immigration Ordinance: entry of persons into the Territory: right of appeal: undertaking given 1 June 1979. In September 1980 the then Minister for Home Affairs advised that the ordinance would be redrafted in the light of the recommendations of the Administrative Review Council. A further letter from the present Minister for Home Affairs and Environment indicated that complex policy issues have been identified, necessitating further consultations with the Attorney-General's Department.
- 5 Cocos (Keeling) Islands Postal Services Ordinance: power of Parliament to disallow by-laws: undertaking given 22 October 1979. The Minister also undertook to amend the provisions relating to the opening of mail. Both undertakings were fulfilled by Cocos (Keeling) Islands Ordinance No. 1 of 1981.
- 6 Overseas Students Charge Collection Regulations: question of appeals to be reviewed by the Administrative Review Council: undertaking given 17 May 1980. (See comments in 70th Report, paras 2 and 3.)
- 7 A.C.T. Flammable Liquids Ordinance: onus of proof: undertaking given 6 May 1980. The Minister advised on 9 January 1981 that drafting instructions had been sent to the Attorney-General's Department.

APPENDIX II

RECOMMENDATIONS CONTAINED IN REPORTS (OTHER THAN THOSE FOR AMENDMENT OR REVIEW OF PARTICULAR REGULATIONS AND ORDINANCES)

- 1 The Acts Interpretation Act should be amended to remove the uncertainty about the position of a notice of motion for disallowance remaining on the Senate notice paper at the end of a Parliament when the House of Representatives is dissolved but the Parliament is not prorogued (50th Report, December 1974).
- 2 A statutory provision to the same effect as section 12 (6) of the Seat of Government (Administration) Act should be applied to instruments made under Acts of the Parliament, so that the disallowance of a repealing instrument would revive the repealed provisions, and so that the present doubtful position with regard to the effect of disallowance and repeal would be clarified (66th Report, June 1979).
- 3 All statutes providing for the disallowance of statutory instruments should be amended so as to incorporate the provisions in the Acts Interpretation Act relating to the voiding of instruments not tabled in time, the 'automatic' disallowance if a notice of motion is not resolved within a limited time, the opportunity for renewal of a notice of motion unresolved at the end of a session, and the prohibition upon the making of an instrument the same in substance as a disallowed instrument within six months (68th Report, November 1979).

In a Ministerial Statement to the Senate on 26 May 1981, the Attorney-General advised that amendments to the Act Interpretation Act would be prepared to give effect to the substance of these recommendations.

- 4 The Senate Standing Committee on Constitutional and Legal Affairs should investigate the matter of statutory provisions imposing the burden of proof upon defendants in criminal cases (66th Report, June 1979).

The Constitutional and Legal Affairs Committee was asked to consider this matter at its convenience, and on 9 September 1980 the Senate agreed to a motion by the Chairman of that Committee that the matter be referred to the Committee.

- 5 The Senate Standing Committee on Constitutional and Legal Affairs should investigate the matter of the alteration of important entitlements by regulation (68th Report, November 1979).

The Committee has been asked to consider this matter at its convenience.