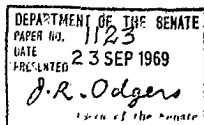


1969



THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

JOINT COMMITTEE OF PUBLIC ACCOUNTS

ONE HUNDRED AND ELEVENTH
REPORT

TREASURY MINUTE ON THE
ONE HUNDRED AND THIRD REPORT

TOGETHER WITH A

SUMMARY OF THAT REPORT

JOINT COMMITTEE OF PUBLIC ACCOUNTS

SEVENTH COMMITTEE

R. Cleaver, Esquire, M.P. (Chairman)

Senator J.F. Fitzgerald (Vice-Chairman)

Senator J.J. Webster

F.W. Collard, Esquire, M.P.

Senator Dame Ivy Wedgwood

J.F. Cope, Esquire, M.P. (1)

J.D.M. Dobie, Esquire, M.P.

E.M.C. Fox, Esquire, M.P. (3)

G.H. Gray, Esquire, M.P. (2)

D.S. Jessop, Esquire, M.P. (4)

E.W. Peters, Esquire, M.P.

I.L. Robinson, Esquire, M.P.

The Senate and the House of Representatives appointed their
Members on 22nd February, 1967.

- (1) Appointed 23rd August, 1967.
- (2) Deceased 2nd August, 1967.
- (3) Resigned 26th February, 1969.
- (4) Appointed 26th February, 1969.

DUTIES OF THE COMMITTEE

Section 8 of the Public Accounts Committee Act 1951-1966 reads as follows :-

8. The duties of the Committee are -

- (a) to examine the accounts of the receipts and expenditure of the Commonwealth and each statement and report transmitted to the Houses of Parliament by the Auditor-General in pursuance of sub-section (1.) of section fifty-three of the Audit Act 1901-1950;
- (b) to report to both Houses of the Parliament, with such comment as it thinks fit; any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Parliament should be directed;
- (c) to report to both Houses of the Parliament any alteration which the Committee thinks desirable in the form of the public accounts or in the method of keeping them, or in the mode of receipt, control, issue or payment of public moneys; and
- (d) to inquire into any question in connexion with the public accounts which is referred to it by either House of the Parliament, and to report to that House upon that question,

and include such other duties as are assigned to the Committee by Joint Standing Orders approved by both Houses of the Parliament.

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JOINT COMMITTEE OF PUBLIC ACCOUNTS

One Hundred and Eleventh Report

Treasury Minute on the One Hundred and Third Report

CHAPTER 1 --INTRODUCTION

In its Seventy-ninth Report dated 10th March, 1966, P.P.No.275
Your Committee set out in detail the basis of the Treasury of 1964-65-66
Minute arrangements which have been made to ensure that appropriate
action ensues from comments contained in our Reports.

As they now stand, the arrangements concerned are:-

- (1) The Report of Your Committee is tabled by the Chairman in the House of Representatives and by a Member of the Committee in the Senate. Motions are moved in both Houses of the Parliament that the Report be printed as a Parliamentary Paper.
- (2) The Chairman of Your Committee thereafter forwards a copy of the Report to the Departments affected and to the Treasurer with a request that he give the Report his consideration and inform the Chairman of the action taken to deal with Your Committee's comments.
- (3) The reply received, which is in the form of a Treasury Minute, is then examined by Your Committee and, together with the conclusions of the Report to which it relates, is submitted as soon as possible to the Parliament as a Report.
- (4) Where during its examination of a Treasury Minute Your Committee finds that there are recommendations not fully dealt with or which are subject to a further Minute, it holds an exploratory discussion with officers of the Department of the Treasury prior to the submission of the Minute to the Parliament.

- (5) In reporting a Treasury Minute to the Parliament, Your Committee does not usually make any comment on the Minute other than to note recommendations not fully dealt with or subject to a further Minute. In special cases where comment is thought to be necessary, Your Committee makes it.
- (6) Your Committee reviews a Treasury Minute, if necessary, when it again examines the department concerned.
- (7) The Department of the Treasury furnishes Your Committee with a half-yearly report on outstanding Treasury Minutes, indicating the progress made in dealing with Your Committee's comments.

CHAPTER 2- TREASURY MINUTE ON THE ONE HUNDRED
AND THIRD REPORT RELATING TO
FINANCIAL REGULATIONS

On 29 August, 1969 and in accordance with the arrangements relating to follow-up action on Your Committee's Report, the Treasurer conveyed to the Chairman a Treasury Minute which reported the action taken on Your Committee's One Hundred and Third Report.

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(29 August, 1969)

The Treasury has examined the Report and has discussed with relevant departments and authorities the conclusions and findings of the Committee which have, where necessary, been brought to the notice of officers concerned.

44. In 1960 Your Committee examined the causes of delays that had been reported by the Auditor-General in the processing of financial regulations. Arising from that Inquiry Your Committee recommended that early action be taken to ensure that departments would in future comply with the law by ceasing to make payments prior to the necessary amendment of enabling regulations, would observe legislative requirements promptly and would keep their Ministers fully informed in regard to these matters. Your Committee

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also recommended that the Public Service Board and other authorities involved should ensure that adequate administrative machinery is available to permit the expeditious drafting of regulations and that immediate attention should be given to the staffing problems in the Drafting Division of the Attorney-General's Department. Although the subsequent Treasury Minute showed that appropriate action by the authorities concerned had followed these recommendations, Your Committee felt that, after a period of some seven years, it should examine again the position in relation to the Defence Departments' Financial Regulations.

45. Our Inquiry revealed that as at 18 March, 1968, there were sixty-nine proposed amendments to the financial regulations concerned, of which twenty-eight had been outstanding for two years or longer and a further nineteen had been outstanding for more than one year. Inquiries made as at the date of this Report, however, showed that of the sixty-nine matters referred to, no less than forty-five had been tabled in the Parliament subsequent to our Inquiry,

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while eight had been withdrawn or were under consideration for withdrawal.

46. As the evidence showed, a wide range of factors had impeded the processing of regulations. In some cases, the Attorney-General's Department had been requested to draft regulations that proved, on examination, to be inconsistent with existing statutes or which were attendant upon decisions being taken on matters of Government policy. Having regard to the problems confronting the Drafting Division of the Attorney-General's Department, Your Committee believes that instructing departments have a responsibility to ensure that proposed amendments to regulations are valid in their intention and that their promulgation would not be hindered by reason of Government policy considerations. We consider that these requirements could best be met by consultation between the instructing departments and the Drafting Division at the earliest possible opportunity in the development of proposed amendments. We view with concern the opinion expressed by the Parliamentary Draftsman that, over the past five years, there has been a noticeable decline in the standard of

In considering this finding departments have recognised that the question of whether a proposed amendment to regulations is or is not consistent with existing statutes is a legal one which would be determined finally by the Attorney-General's Department. Nevertheless, they have agreed that, as far as it is within their competence to do so, they will ensure that proposed amendments to regulations are consistent with existing legislation and are also in accordance with Government policy. Consultations with the Parliamentary Draftsman would, of course, take place at the earliest opportunity where departments had any reason to doubt the legislative feasibility of a proposal.

Departments were not aware that the Parliamentary Draftsman was not satisfied with the standard of drafting instructions submitted to him. Departments are conscious of the need to provide clear and comprehensive drafting instructions and have undertaken to pay even greater attention to this aspect in future.

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instructions given to his Division by almost all departments. We believe that departments should make strenuous efforts to improve the quality of their instructions put forward for drafting and that they would be assisted in this regard by early consultation with the Drafting Division.

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The Attorney-General's Department has suggested to the Public Service Board that it should introduce a formal scheme of training for departmental officers engaged in preparing drafting instructions for the Parliamentary Draftsman. The Board supports this proposal and work has commenced, in consultation with the Attorney-General's Department, on the development of an appropriate training course for inclusion in the Board's 1970 training programme. As an initial step to improving the quality of drafting instructions plans are being made to conduct a three day "trial" course later this year.

Consultations with the Parliamentary Draftsman will be arranged by departments at all stages in the development of proposed amendments to regulations where it is felt that it would be helpful to ascertain his views or preferences on the method of handling particular matters.

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47. So far as the instructing departments are concerned, the evidence showed in the case of the departments that were examined, that arrangements for maintaining a check on outstanding amendments to regulations vary widely. We consider that all departments should examine carefully their administrative arrangements in this regard to ensure that regulation changes are kept under close and efficient surveillance.

48. A further matter revealed in evidence and involving the instructing departments is their reluctance to seek Ministerial approval to changes in regulations prior to drafting, except where significant policy issues are involved. In this regard we note the views of the Parliamentary Draftsman that while it would not be necessary for all proposed amendments to regulations to be submitted to Ministers prior to drafting there are some areas in which the Drafting Division would expect to receive a ministerial decision prior to proceeding with drafting work and that some regulations that the Drafting Division is requested to draft would be eliminated if prior ministerial authority were to

The departments concerned have reviewed their administrative arrangements for controlling matters requiring amendments to regulations and have amended procedures where this was considered necessary. The arrangements are now considered to be satisfactory and should enable departments to keep under close surveillance progress in these matters and ensure that undue delays within departments are avoided.

Departments have agreed that ministerial approval should be obtained for all proposed amendments involving a change of policy of any significance before drafting instructions are sent to the Parliamentary Draftsman. This would seem to accord generally with the views expressed by the Parliamentary Draftsman during the course of the enquiry.

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be sought. We believe that guidance on this point should be obtained by instructing departments from the Drafting Division at the earliest opportunity in the formulation of proposed amendments to regulations.

49. So far as the Attorney-General's Department and the Drafting Division in particular are concerned, the evidence taken confirmed that the Department and the Public Service Board have made strenuous efforts since our previous inquiry in 1960, to overcome the problems that then existed. In 1962 a new organisation structure was approved for the Department and, based on experience, this was varied in 1965 to meet more adequately the Department's needs.

50. While it appears that the Department was unable to agree with the salary classifications determined by the Public Service Board in 1962, reclassifications of salary were subsequently obtained in 1967 although they continued to remain considerably below the level that had been sought by the Department. In regard to the level

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of salary applying to draftsmen in particular we noted with interest that while in the United Kingdom the salaries of Drafting Officers had been increased vis a vis other Legal Officers, a shortage of draftsmen had persisted in that country.

51. In connection with the problems within the Drafting Division of the Department we noted the view expressed by the Secretary of the Department that in order to overcome the considerable lag that exists in the drafting of statutory legislation it would be necessary for the staff of the Drafting Division, which has a number of vacancies, to be increased. On the other hand, the Parliamentary Draftsman indicated that if he were able to obtain experienced officers to fill the establishment of the Drafting Division it would probably be possible for that establishment to be reduced.

52. On the basis of confidential evidence submitted by the Department it appears that the problem of obtaining sufficient Parliamentary Draftsmen is not so much one of creating drafting positions within the Establishment of the

The Attorney-General's Department has advised that the question of approaching University under-graduates in Law schools to interest them in Parliamentary Drafting as a career has been discussed with the Attorney-General and action has commenced

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Department as that of attracting to a career service, members of a traditionally individualistic profession which is said to regard drafting work as uninteresting in nature. We believe that a useful purpose would be served in this regard if the Department were to present to undergraduates in the Faculties of Law in the universities an indication of the opportunities available to them in the field of legal drafting with a clear appreciation of the challenging and imaginative nature of the work involved. We further believe that the universities themselves should be invited to participate in this approach and in the development of special training arrangements that were referred to in confidence. We also consider that the Department itself should explore fully the possibility of providing a more formalised method of training for Parliamentary Draftsmen after they have been recruited. This might well involve the substitution of full-time training in place of the "on the job" training which is evidently practised exclusively at present.

on a number of supplementary approaches suggested at this discussion. The Department envisages approaches that cover the work of the whole of the Department but with special emphasis on Parliamentary Draftsmen. The Department has stated that it intends to avail itself of the Public Service Board's offer to provide assistance in the examination and development of these proposals.

This matter also has been discussed by the Department with the Attorney-General and, on his direction, and in consultation with him the Secretary of the Department and the Parliamentary Draftsman are exploring the possibility of providing a more formalised method of training.

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53. While we recognise that legislative drafting is highly specialised work we believe that this applies also to other areas of law practised by the Attorney-General's Department and we do not consider that the problems confronting the Drafting Division itself would be more readily solved by a fundamental restructuring of the Department along the lines suggested to us in confidential evidence. Indeed, the present structural arrangement has enabled officers to be transferred to the Drafting Division in an effort to strengthen it, from other Divisions of the Department. Although the benefits to be derived from these transfers have yet to be demonstrated, we believe that the Department should persist with its experiment and, if necessary, should transfer officers into and out of the Drafting Division at any level as the circumstances appear to warrant. We believe that, in practice, the restructuring of the Department would reduce the flexibility at present available to the Permanent Head of the Department to effect such transfers.

The Attorney-General and the Department accept the principles embodied in these two findings. (This comment also applies to paragraph 54.)

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54. Although the possibility has been considered of separating the officers engaged in the drafting of subsidiary legislation from those engaged in the drafting of Bills we agree with the views expressed by the Public Service Board that the work involved in these two areas is sufficiently inter-related that the establishment of a division between them would have obvious weaknesses. In particular, it would appear that such a division would hamper rather than assist in the solution of the total drafting problem by introducing an element of rigidity in the use of professional staff resources in the Drafting Division where the availability of fully efficient staff is already evidently inadequate.

55. Although earlier attempts to have drafting work undertaken by qualified legal practitioners outside the Commonwealth Public Service have evidently not shown great promise, it appears that arrangements have been made recently for the drafting of the Australian Capital Territory Supreme Companies Rules by a prominent Sydney Counsel and further consideration has been

The Attorney-General's Department is prepared to use Counsel to undertake selected drafting work where it is practicable and appropriate.

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given to placing at least one proposed Ordinance with Counsel for drafting. Your Committee believes that until such time as the staffing problems of the Drafting Division have been resolved the placing of selected drafting work with well qualified Counsel who have been chosen carefully on the basis of demonstrated capacity and experience should be continued.

56. Your Committee has given careful consideration to the question of whether instructing departments might either prepare initial drafts of the proposed amendments to regulations for the Parliamentary Draftsman, or might prepare proposed amendments to regulations in final form. However, in view of the undertaking given by a previous Attorney-General that the Attorney-General's Department would vouch for the validity of all subordinate legislation; the complexity of drafting work and the problems that would arise in securing suitably qualified officers to occupy appropriate positions in the instructing departments, we have come to the conclusion that the Attorney-General's Department should continue as

The Attorney-General's Department agrees with the Committee's finding that the Department should continue as the sole drafting authority for subsidiary legislation.

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the sole drafting authority on behalf of Commonwealth Departments for subsidiary legislation.

57. Finally we have considered the proposal put to us that the volume of subordinate legislation requiring drafting could be reduced if a greater use were to be made of administrative determinations. The evidence taken in this regard suggests that, apart from contributions that could be made in the field of Defence Financial Regulations, there is probably little scope available in other areas of the administration for the use of this device. Your Committee is of the firm opinion that the principle inherent in the use of financial regulations should be preserved.

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The Secretary of the Attorney-General's Department has read this finding as meaning that the Committee is of the opinion that all the matters that were at the time of the enquiry covered in the Financial Regulations of the three Armed Services should continue to be dealt with in those Regulations. The Secretary of the Department and the Parliamentary Draftsman also have discussed this facet of the problem fully with the Attorney-General who said that he favours the use of administrative determinations where appropriate and thinks it could be appropriate in a wider field than at present.

Chapter 3

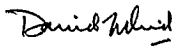
Observations of Your Committee

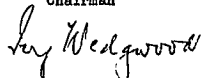
Your Committee referred in paragraph 48 of its Report to a reluctance on the part of instructing departments to seek Ministerial approval to changes in Regulations prior to drafting, except where significant policy issues are involved. In this regard Your Committee noted the views expressed by the Parliamentary Draftsman that while it would not be necessary for all proposed amendments to Regulations to be submitted to Ministers prior to drafting, there are some areas in which the Drafting Division of the Attorney-General's Department would expect to receive a Ministerial decision prior to proceeding with drafting work and that some Regulations that the Drafting Division is requested to draft would be eliminated if prior Ministerial authority were to be sought. Your Committee expressed the view that guidance on this point should be obtained from the Drafting Division at the earliest opportunity in the formulation of proposed amendments to Regulations.

In relation to this matter, Your Committee would invite attention to the relevant portion of the Treasury Minute which states that departments have agreed that Ministerial approval should be obtained for all proposed amendments involving a change of policy of any significance before drafting instructions are sent to the Parliamentary Draftsman.

After considering this aspect of the Treasury Minute Your Committee believes that it is of considerable importance that Ministerial approval should be obtained by instructing departments for all proposed amendments to Regulations involving a change of policy, irrespective of the significance of the change, before drafting instructions are sent to the Parliamentary Draftsman.

For and on behalf of the Committee,


DAVID N. REID,
Secretary,
Joint Committee of Public Accounts,
Parliament House,
CANBERRA, A.C.T.


RICHARD CLEAVER
Chairman


11 September, 1969