

Rejected

2. Enabling powers cast in terms of subject matter, and commonly introduced by the word "respecting" should not be included in enabling statutes whilst the view is held by the Crown that such powers permit both sub-delegation of rule-making power and a power of dispensation in favour of individuals.

Appears no longer to be done

3. No enabling power should confer upon Parliament's delegate the authority to determine or to declare the scope of his own delegated power or the true intention of the enabling statute.

J. The pretended power of dispensing with regulations in favour of individuals

(Paragraphs 96-103)

Not acted upon

The pretended power of dispensing with the provisions of subordinate legislation in favour of individuals under colour of enacting further subordinate legislation, being illegal unless expressly authorized by the enabling statute, should be abandoned forthwith.

K. Enabling powers in appropriation acts

(Paragraphs 104-113)

Not acted upon

1. The practice of using Votes, whether substantive or dollar Votes, and Items in the Estimates as vehicles for the conferring of enabling powers should come to an end. Subordinate legislation should be made under enabling authority contained in ordinary statutes.

Not acted upon

2. Even if the practice is not terminated immediately, the following particular abuses should stop, viz:

- (a) the conferring of subordinate law-making power in Votes and Items in terms which, in the view of the Crown, excludes the subordinate legislation, when made, from the definition of a "statutory instrument", and thus from Parliamentary scrutiny;
- (b) the conferring of subordinate law-making power by use of the words "subject to terms and conditions approved by the Governor in Council";
- (c) the extension and amplification of the purposes of old votes by a series of subsequent Votes.

L. Scrutiny of enabling powers

(Paragraph 114)

Not acted upon

Enabling clauses in Bills should be scrutinized while the Bills are before Parliament by the appropriate Standing Committees or by the Standing Joint Committee on Regulations and other Statutory Instruments.

M. The Text of Instruments subject to amendment

(Paragraphs 115-118)

Not acted upon

Statutory instruments that have been much amended should be revoked and remade in complete form. An instrument in respect of which a process of constant amendment is foreseeable

should be revoked and remade in consolidated form at regular intervals, perhaps annually.

P. Implementation of international agreements by statutory instrument—Remission orders under section 17 of the Financial Administration Act

(Paragraphs 123-125)

Not acted upon

Remission Orders made pursuant to section 17 of the Financial Administration Act should be regarded as subordinate legislation and as subject to Parliamentary scrutiny. The exclusion of any class of such Orders from scrutiny should occur only if expressly provided for in the Statutory Instruments Act.

S. Powers of Officers of Agricultural Agencies

(Paragraphs 128-131)

Acted upon

1. Rights of entry, powers of inspection and of seizure and the power to demand or take information should be confined exactly within the limits provided for in enabling legislation.

T. Discretionary administrative decisions, The rules of natural justice and a right of appeal

(Paragraphs 132-138)

Not acted upon

1. As a general rule, subordinate legislation should set objective criteria governing the taking of decisions provided for in that legislation.

Not acted upon

2. Where tests are set for eligibility or as prerequisites to the taking of some action under subordinate legislation, the test should be cast in objective and not in subjective terms. Tests, prerequisites or criteria dependent upon the formation of opinions or the satisfaction of individuals should be avoided.

Not acted upon

3. The granting of discretionary powers is properly the subject of a statute and not of subordinate law.

Not acted upon

4. Any person aggrieved by a refusal to grant a licence or permit, or by a suspension, cancellation or revocation of a licence or permit, pursuant to subordinate legislation, should be accorded in the subordinate legislation itself a right to be heard in objection, a right to be given reasons and a right to be apprised of any adverse material in any report submitted to the determining official. These rights should be accorded even where a right of appeal might exist, for the subject should not be forced unnecessarily to litigation, and their presence will assist in guaranteeing jurisdiction in the Federal Court under section 28 of the Federal Court Act.

U. Exemptions from Civil Liability

(Paragraph 139)

Not acted upon

Subordinate legislation should not attempt to exempt governmental agencies from the legal consequences of their acts or defaults or of those of their employees in either tort or contract.