

DEPARTMENT OF THE SENATE	
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<i>J.R. Odgers</i>	
Clerk of the Senate	

T H E   S E N A T E

FORTY-FIRST REPORT

FROM

THE STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

relating to

Statutory Rules 1972 No.127

Amendments of the Military Financial Regulations

## PERSONNEL OF COMMITTEE

### *Chairman:*

Senator I. A. C. Wood

### *Members:*

Senator J. L. Cavanagh

Senator D. M. Devitt

Senator P. D. Durack

Senator P. E. Rae

Senator J. J. Webster

Senator J. M. Wheeldon

*Functions of the Committee.* Since 1932, when the Committee was first established, the principle has been followed that the functions of the Committee are 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

FORTY-FIRST REPORT

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

Statutory Rules 1972, No. 127

Amendments of the Military Financial Regulations

2. For many years the Committee has been concerned with the frequency with which regulations, particularly relating to the Armed Forces, make payments of moneys and provide for long periods of retrospectivity of such payments.

3. In its Twenty-fifth Report to the Senate, in November 1968, the Committee set down the grounds of its objection to retrospective financial regulations. The following paragraph in that Report summarises the Committee's view:

Delay in the promulgation of regulations providing for the payment of moneys denies to either House of the Parliament the right to approve or disapprove of the expenditure at the time of expenditure and, under these circumstances, the Committee is of the opinion that such provisions should, more properly, be embodied in substantive legislation.

4. The Report also set down guidelines which the Committee would observe in its examination of such retrospective regulations:

- (1) All regulations, of whatever character, having a retrospective operation will *prima facie* attract the attention of the Committee.
- (2) Where the retrospectivity involved is in relation to payment of moneys the Committee will view the retrospectivity as requiring close scrutiny.
- (3) The Committee regards retrospectivity beyond a few months as objectionable. It is recognised, for obvious practical reasons of an administrative character, that some retrospectivity is inevitable. The Committee believes that such retrospectivity should be of the shortest period practicable.
- (4) Regulations involving retrospectivity in payment of moneys, if extending beyond two years, will be the subject of report to the Senate and unless quite exceptional circumstances are established to the Committee's satisfaction, will be the subject of a recommendation for disallowance.

The Committee will continue to scrutinise all regulations for payment of moneys which contain retrospective provisions extending beyond a few months, and will regard the retrospective aspect of such regulations as warranting some explanation.

18. The disallowance of such regulations by the Senate will have the effect of placing the onus upon the Minister to obtain proper Parliamentary sanction before the payments to which the retrospective provisions apply can be made.

5. Pursuant to the intention expressed in that Report, the Committee has scrutinised regulations which provide for retrospective payments, and has required the responsible authorities to provide explanations of the need for the retrospective operation of such regulations. In accordance with the undertaking given in its Twenty-fifth Report, the Committee has drawn the attention of the Senate to retrospective financial regulations and recommended their disallowance when this was warranted, and the Senate has been pleased to support such recommendations (for example, on 21 May 1970).

6. Regulation 3 of the amendments which are the subject of this Report provide for a special allowance, called "command money", to be paid to certain military personnel, and by sub-regulation (2.) of the regulation

payment of the allowance is made retrospective to 26 May 1970. As the amendments were gazetted on 3 August 1972, the period of retrospectivity involved is in excess of two years.

7. The Committee has received written explanations of the regulation from the Minister for the Army and the Secretary of the Department of the Army, and has taken evidence from officers of the Department of the Army and the Department of Defence. These documents are included in this Report as an appendix.

8. The Committee does not consider that the explanations provided indicate that there were exceptional circumstances which would justify the long period of retrospectivity of this regulation. On the contrary, the explanations reveal a situation which the Committee believes deserves the censure of the Senate.

9. The following is the sequence of events relating to the making of the regulation:

- July 1969: the payment of the allowance was considered by the Department of the Army.
- 25 November 1969: a submission was made to the Treasury on the matter.
- 26 May 1970: the approval of the Department of Defence for the payment of the allowance was sought.
- 5 August 1971: the Department of Defence gave that approval, after securing a recommendation

from the Defence (Conditions of Service) Committee, and specified that the payment of the allowance was to be in accordance with conditions applying in the Navy, and that the payment was to be retrospective to 26 May 1970.

10 December 1971: the Department of the Army gave instructions to the Parliamentary Counsel regarding the drafting of the regulation.

3 August 1972: the Statutory Rules containing the regulation were gazetted.

10. The Committee believes that the above list of events, without any elaboration, indicates administrative delay of a degree which should cause concern on the part of the Senate.

11. In explanation of these great delays, it was put to the Committee that the reason why the Department of Defence took more than a year to approve of the proposed allowance was that there were administrative problems resulting from the transfer of certain responsibilities from the Treasury to the Department of Defence, and there were other "major matters" effecting a greater number of personnel under review. The reason given for the delay in the drafting of the regulation was that there were complexities involved in putting into effect the requirement that the payment of the allowance to Army personnel was to be in accordance with conditions applying to the corresponding Navy allowance.

12. As was stated in paragraph 8, the Committee does not consider that these explanations establish exceptional circumstances justifying the retrospectivity of the regulation, and this contention is supported by the answers of the Departmental officers who gave evidence on the regulation before the Committee. Indeed, when they were asked whether the circumstances they had outlined amounted to exceptional circumstances, they were constrained to admit that they did not.

13. Apart from the reasons for the great delay in the making of the regulation, there appears to be no good reason why the payment of the allowance was made retrospective to May 1970. The corresponding Navy allowance had been paid for many years before its application to the Army was considered in 1969, so that there was no question of compensating Army personnel for the relative advantage which Navy personnel had enjoyed. If any retrospectivity was desired, the date of the approval by the Department of Defence would seem to be the more logical date to choose (although the Committee would have required explanation of any such retrospectivity), except for the fact that this would disadvantage the persons concerned because of the unreasonable slowness of the Department of Defence. It is a matter of concern to the Committee that in spite of the known views of the Committee and the past action of the Senate in support of those views, the decision to make the regulation retrospective to May 1970 was persisted in even when it became obvious that this would involve retrospectivity of more than two years.

14. The Committee is most reluctant to recommend to the Senate any action which would cause financial disadvantage to members of the Armed Forces. The Committee considered, however, that if the Senate tolerated the retrospectivity of this particular regulation and the circumstances leading to it, this would invite the making of other regulations with longer periods of retrospectivity, involving larger sums of money, and involving a more serious undermining of Parliamentary control of expenditure. In deciding whether this consideration outweighed its desire that Services personnel should not be disadvantaged by its recommendations, the Committee was influenced by the fact, stated in evidence before the Committee, that the allowances under the regulation have not been paid, and by the paragraph of its Twenty-fifth Report which was quoted above:

The disallowance of such regulations by the Senate will have the effect of placing the onus upon the Minister to obtain proper Parliamentary sanction before the payments to which the retrospective provisions apply can be made.

15. In the light of the undertaking given to the Senate by the Committee in that Report, the support by the Senate of that undertaking in the past, and the explanations of this regulation which were put to the Committee, the Committee felt that it ought to recommend the disallowance of the regulation.

16. The Minister for the Army indicated to the Committee that he would be willing to have the regulation amended so as to reduce the period of retrospectivity to less than two years by making the allowance payable from



1 January 1972. The regulation as amended would still be regarded by the Committee as objectionable and involving an excessive period of retrospectivity, but out of its desire to act so as to cause the minimum disadvantage to the personnel involved, the Committee was inclined to accept the Minister's suggestion and recommend that the Senate not proceed to the disallowance of the regulation. Some doubt has arisen, however, as to the legal validity of the proposed amending regulation in the light of section 48(2.) of the Acts Interpretation Act, and it is doubtful whether the amendment would remove the legal entitlement of the personnel concerned to be paid the allowance retrospective to May 1970. Although the Minister has indicated that the amending regulation could be so drafted as to remove any doubt as to its validity, the Committee feels that it cannot accept this suggestion because it would have the effect of retrospectively removing rights which existed under the original regulation.

17. In all the circumstances, the Committee feels that it has no alternative but to recommend the disallowance of regulation 3 of the amendments of the Military Financial Regulations, as contained in Statutory Rules 1972, No. 127, and made under the Defence Act 1903-1970.

Ian Wood  
Chairman

Senate Committee Room,  
Wednesday, 27 September 1972

A P P E N D I X

Correspondence and evidence relating to  
Statutory Rules 1972 No.127  
Amendments of the Military Financial Regulations



MINISTER FOR THE ARMY

Parliament House,  
CANBERRA, A.C.T. 2600

7 SEP 1972

Dear Senator Wood,

I refer to your letter of 24 August 1972, concerning the long period of retrospectivity attached to payment of Command Money to members of the Army, contained in regulation 3 of statutory rule 1972 No. 127.

I should explain that my Department sought approval from the Department of the Treasury for these payments on 26 May 1970. However, at that time, a changeover in responsibility for such matters was taking place between the Departments of Treasury and Defence.

The Department of Defence has advised my Department that there were many major matters under review and precedence had to be given to those matters which affected the bulk of service members. By contrast, the proposal for Command Money affected only about eleven members at any given time. It was not until mid 1971 that the matter could be considered and because of the lapse of time it was proposed, and subsequently approved, to apply retrospective cover to 26 May 1970.

The approval, which advised that the payments were to be in accordance with conditions applying in the Royal Australian Navy, was sent to my Department on 5 August 1971.

The adaption of the current Navy conditions was an involved task and necessitated many consultations. In a number of instances the Navy regulations were either unsuitable, or did not cover a particular point appropriate to Army conditions.

Some of the problems associated with the Navy conditions when compared with those in the Army are:

- In the Army the rate of payment is common to both officers and other ranks, whereas in the Navy it applies to Commissioned Officers only.

The class and size of ships and harbour craft in the Navy are quite different to those in the Army.

Because of these and other difficulties, it was not until December 1971, that instructions were passed to the Parliamentary Council for drafting of the amendment to the Military Financial Regulations.

The Parliamentary Council gave the matter his attention as soon as other urgent priority legislative drafting permitted and, in fact, had a number of conferences with my departmental officers.

However, the drafting difficulties were not finally overcome until some months after he received his original instructions.

In view of the foregoing, I should be glad to learn that you and your Committee would accept the explanation and permit the legislation to remain in force with retrospective effect to May 1970.

Yours sincerely,

  
(Bob Katter)

Senator I.A.C. Wood,  
Chairman,  
Standing Committee on Regulations  
and Ordinances,  
Parliament House,  
CANBERRA, A.C.T. 2600



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Department of the Army  
CANBERRA ACT 2600

The Secretary  
Senate Standing Committee on  
Regulations and Ordinances  
Parliament House  
CANBERRA ACT 2600

8 AUG 1972

Dear Sir,

Statutory Rule No 127 gazetted, on 3rd August, 1972 amends the Military Financial Regulations, and contains provisions having retrospective effect. The Senate Committee has requested in the past to be provided with explanations wherever retrospective application is provided in Statutory Rules. The following explanations are accordingly provided on Statutory Rule No 127 as follows:

Paragraph 1. Introduces new conditions for the payment of higher duties allowance with effect from 23rd September, 1971. This amendment resulted from an approach from this Department to the Department of Defence. The request was to align members of the Army in this respect with that of the Commonwealth Public Service whereby the allowance is payable for leave periods if a member has performed higher duties for a period during the past two years. The effective date of 23rd September, 1971 was the date upon which Department of Defence notified this Department of the applications of the new conditions. A request was forwarded on 26th October, 1971 to the Parliamentary Counsel for amendment of the necessary Military Financial Regulation. The delay was occasioned from work pressures following the introduction of the Kerr Committee Report No 1.

Paragraph 2. Approves the payment of flight pay to Analysts Special Duties with effect from 18th June, 1971. Flight pay was originally approved in relation to Operators Signals and on 29th January, 1971 an approach was made to Department of Defence for approval to pay the allowance to Analysts Special Duties. The submission was considered by the Defence (Conditions of Service) Committee who approved the payment of the allowance with effect from 18th June, 1971. Department of Defence notified this Department of the approval on 5th August, 1971 and the request for the amendment of the necessary Military Financial Regulation was forwarded to the Parliamentary Counsel on 8th October, 1971. The delay within this Department was due to staff shortages and work pressure due to the introduction of the Kerr Committee Reports.

Paragraph 9. Introduces the payment of Command Money to members of the Army with effect from 26th May, 1970. This was the date upon which this Department made an approach to the Department of Defence for the allowance to be payable to members of the Army. Department of Defence advised this Department on 5th August, 1971 that the Defence (Conditions of Service) Committee had approved payment of Command Money to members of the Army with effect from 26th May, 1970. Department of Defence advised that the delay from the date of our submission until the issue of the approval was due to the number of major matters under review at the time and also they had recently accented the carriage for the policy on pay and allowances from the Treasury. The approval stated Army were to be paid under similar conditions to those applying to the RAN. The adaption of the current RAN conditions, was an involved task and the instruction to introduce the necessary Military Financial Regulation was forwarded to the Parliamentary Counsel on the 10th December, 1971.

Paragraph 10. Amends the conditions under which pay is granted to Officers of Cadets with effect from 27th August, 1971. This matter had been under review on an inter-service basis for some time and a submission was made to the Defence (Conditions of Service) Committee in January, 1972. The amendment to reduce the minimum qualifying period of service for pay from seven to two days was back dated to 27th August, 1971 to coincide with the introduction of the new pay scales recommended by the Kerr Committee. The approval was received from the Department of Defence on 22nd February, 1972 and due to priorities within this Department the instruction to the Parliamentary Counsel to amend the necessary Military Financial Regulation was not forwarded until 13th April, 1972.

Paragraph 11. Amends the rate of service allowance payable for officers with effect from 1st July, 1971. This allowance has also been under review for a time and was considered by the Defence (Conditions of Service) Committee in January, 1972. As the allowance is paid on a half yearly basis the approval was back dated to the 1st July, 1971 to the commencement of the half yearly pay period in which the new pay scale recommended by the Kerr Committee were introduced (i.e. 27th August, 1971). The time frame of the receipt of approval etc is the same as that outlined for paragraph 10 above.

Paragraph 13. Increases the amount from \$120 to \$300 for funeral expenses which may be reimbursed to a widow or other relative of a deceased member of the Army who is entitled to a Military Funeral but who is given a private funeral instead. Treasury advised the effective date of 25th May, 1971 on 12th January, 1972. The effective date is that which similar conditions under the Commonwealth Employees Compensation Act were amended. The necessary instruction was forwarded to Parliamentary Counsel on 21st January, 1972.

Following the resultant gazettal of the Statutory Rule payments will be made to members of the Army within the next few weeks.

Yours faithfully

*J. Williamson*  
(B. WHITE)  
Secretary

SENATE STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

TRANSCRIPT OF EVIDENCE

(Taken at Canberra)

THURSDAY, 14 SEPTEMBER 1972

Present

Senator Wood (Chairman)

Senator Cavanagh

Senator Rae

Senator Devitt

Senator Wheeldon

Senator Durack

INQUIRY

Statutory Rules 1972 No. 127

Amendments of the

Military Financial Regulations



MR KENNETH WILLIAM MAJOR, First Assistant Secretary  
(Establishments and Services), Department of the Army,  
COLONEL BASIL VIRTUE, Deputy Director of Legal Services,  
Department of the Army, and

MR RONALD ANDERSON, Chief Executive Officer, Pay and  
Conditions Section, Department of Defence,  
were called and examined.

CHAIRMAN - I declare the meeting open. In doing so I would point out that the Committee is examining regulation 3 of the amendments of the Military Financial Regulations, contained in Statutory Rules 1972 No.127. This regulation provides for certain payments to military personnel to be made retrospective to May 1970, a period of more than 2 years. The Committee has pointed out to the Minister for the Army that in its 25th Report the Committee stated that financial regulations with retrospective operation of more than 2 years would be the subject of a recommendation of disallowance unless quite exceptional circumstances justifying the retrospectivity were established to the Committee's satisfaction. Written explanations of the regulations have been received from the Minister for the Army and the Secretary of his Department. The Committee has decided that before it proceeds further, it should offer one more opportunity for the responsible officers to put before the Committee any further points of explanation which they think the Committee should consider.

I want to stress that the purpose of this brief hearing is not to go over the ground already covered by the correspondence, but to discover whether the officers can provide any further

explanation or reason why these regulations should not be disallowed. I would like to begin by asking the officers to state concisely why the regulations were made retrospective to the date when the allowance was first suggested, rather than the date of the approval by the Department of Defence.

Mr Anderson - The authority to Army was issued by Defence on 5th August 1971, which at that stage made the approval over 12 months retrospective at that point. The reason for this was twofold. The pay and conditions area in Defence was a fairly new one, and had been set up by a change in government policy on the administration of pay and conditions for the services. It was not until 1970 that this area was really established. This coincided with a considerable upsurge of major matters that had to be handled, and the minor ones were all left. When I say minor, no condition of service affecting a person is minor - we know that; but it was minor in the sense that it only affected a few people, as opposed to the major things which affected the whole of the services. Secondly, the Kerr Committee was set up late in 1970 and this placed strains on the defence group because they had to service it and supply the staff. So it was not until 1971 that we were able to look at these items which I called minor. We put them up to the DCS Committee in May 1971 and the Minister eventually approved them in late July. The DCS, in making their recommendation to the Minister, was aware of the inability of the defence staff to handle these things, and they took cognisance of this and also of the fact that this was not a new allowance, nor was it a change in the rates or the conditions. It was merely the application of an

existing allowance to a new category. So the DCS felt, as a matter of equity, it should be applied from the date when it was requested.

Senator DURACK - I would like Mr Anderson to amplify his statement that it was not a new allowance. Had it been applied in the Army before?

Mr Anderson - No, it had not been applied in the Army, but it was a very old type allowance which had existed in the Navy for as long as we can remember. This is an allowance paid only to captains of ships for the additional responsibility they accept in commanding a vessel. Army is relatively new in the command of ships, and it was only the advent of Vietnam that really brought this to the fore. In fact I do not think Army was even aware that Navy got such an allowance.

Senator CAVANAGH - But they did become aware at some time in 1970.

Mr Anderson - The Army did, yes.

Mr Major - Perhaps I could add something to that from the Army's point of view. From my understanding of it I think the Army, who were running small ships for quite some time, even before the war, were no doubt aware of the Navy's allowance of command pay but, at that time, the Army employed Master Mariners specifically in this job, and had regard to the fact that these men were actually masters of their vessels.

Their rate of pay at the time was accepted by the Army as taking into account the fact that they were commanding a vessel. It was post Second World War that Army decided to build up the numbers of these master mariners so that the few that they had originally were not permanently at sea and there was an opportunity for them to be at sea for a short posting and then ashore. This altered the conditions a little bit in that they were not always master of their vessels. Subsequently, when Vietnam arose, the vessels were operating in Vietnam in conditions virtually precisely similar to those which warranted command pay for the Navy, and it was at that stage - in fact, July 1969 - it was first proposed within Army and discussed within Army that the allowance should be paid. That is basically the history of the thing as I understand it.

CHAIRMAN - The concern of the Committee is the very long delay in some of these things and why this should be. The 25th Report did specify that we consider anything beyond 2 years to be outside the limits of reason. This is what we are trying to find out.

Mr Major - As far as the Army is concerned, we are certainly well aware of this and following the introduction of the 25th Report an instruction went out from the Permanent Head of Army to all the branches of Army drawing specific attention to this and as a consequence of this a sort of control progressing system was set up within Army to attempt to keep a close eye on these things to make sure that they were handled as quickly as possible and at all costs to minimise retrospectivity. I think the Committee accepts that there will be cases inevitably in which we will have some degree of retrospectivity. Although

there have been a lot of cases over the last few years where there has been some retrospectivity, I think in general that Army's performance has been reasonably good in this regard.

Senator WHEELDON - This has never been the general impression.

Mr Major - I did mention that I know there have been some cases where there has been retrospectivity. This is, as far as I am aware, and certainly the only one that has gone over the 2 years. I do not want to repeat what has already been given in the correspondence but I think this particular one was an unfortunate one. Mr Anderson has explained the 15 months or so period in Defence and how that occurred, Army itself is not particularly in a good position over this because after we got it back from Defence in August it still took us until December to give instructions to the Parliamentary Draftsman.

Senator DEVITT - Can you just explain why?

Mr Major - I am just about to do so, Senator. The problem here was that the approval in effect was that we should proceed in accordance with Navy Regulations. When that started to be examined it was found that there were a great number of differences in the conditions. The Navy allowance, in fact, is only payable to commissioned officers because the Navy always has commissioned officers in command of vessels. They do not have NCOs. The Army on the other hand, mainly because of their smaller vessels, has both commissioned officers and quite frequently NCOs - warrant officers and sergeants - in command. The Navy - I think I am right in saying this, Mr Anderson - has a sliding scale of command pay depending on rank. The Army

wanted to fix a minimum figure of 60c irrespective of the rank of the master. In trying to give instructions for the regulations to Parliamentary Counsel a lot of problems arose, I understand, over this. There were questions of definition; and the Naval terminology is quite different from the Army's. It sounds ridiculous that this would take 4 months but the thing was being processed; it was the subject of numerous discussions between Defence and Navy and Army in trying to solve this. Perhaps I could make one point. Mr Anderson remarked that at that period in Defence they had the problem of conditions of service having been taken over by them on the establishment of the Kerr Committee.

Unfortunately the people who are having to deal with this in Army were also the people who were having to prepare submissions on these much wider aspects of pay and conditions within Army - prepare them for Defence and the Kerr Committee. There is no particular excuse about this, but it was just at that time a great pressure of work that caused the delay. I do not think there is anything further I can say about why it was, but that is the situation. I might add, perhaps, one thing: The Parliamentary Draftsman got it in December and he wrote in June forwarding the printed-----

CHAIRMAN - He got the application in for the drafting of it in December?

Mr Major - It went to the Draftsman in December and he finally wrote back referring to a variety of statutory rules including this particular regulation in June and forwarded the printed-----

CHAIRMAN - Seven months later.

Mr Major - Yes. Say 6 months, because it was right at the end of December. In his letter he commented that on this particular regulation he had had to have numerous conferences with Army and, in fact, the final draft had departed very considerably from the instructions we had originally given in December. This was frankly for the same reason - the complications of trying to apply an existing Navy regulation with its totally different terminology and different conditions. So there were a number of conferences between the Parliamentary Counsel and Army in that intervening period as well. I mention that because the Parliamentary Counsel apparently also found it was very difficult to put into regulation form.

Senator WHEELDON - I think perhaps you will appreciate our position, though. This is a Committee which is taken fairly seriously by the Parliament, and one of our purposes is to avoid undue retrospectivity in these things. As a result of delays of this sort we made it, I think, pretty clear in our report, which was adopted by the Senate, that anything over 2 years was just too long for retrospectivity. I must say that it does seem to me that 2 years is a pretty long time to go for retrospectivity. It does not seem to be a reasonably sudden death proposition to be putting to anybody, but 2 years retrospectivity is regarded as the maximum. Having said this, we then find in a letter from the Minister for the Army, which I take it was drafted by the Department, that he says:

The Department of Defence has advised by Department that there were many major matters under review and precedence had to be given to those matters which affected the bulk of service members.

I do not know whether I am unduly sensitive, but it seems to me that the clear implication in this is that a recommendation made by the Committee and accepted by the Senate is not regarded as being of very high priority, that a number of other domestic matters of the Department, admittedly affecting a lot of members and so on, but none the less still domestic relations of the Department of the Army, take precedence over something which has been made very very clear by the Parliament. I do not see any other conclusion that can be drawn - other matters had priority.

Mr Major - That comment was quoted by us as advice we got from Defence - that other things had been given priority - but I would think, and perhaps Mr Anderson could direct me,



that the same situation really was going to apply to all of these things. They all would have affected statutory rules in the same way. In this particular case there were, at any one time, about 11 people likely to be involved. The total cost including rent was estimated to be of the order of \$1,000 a year. At the same time Defence were literally at this stage immersed with pay variations, pay changes, proposals, all of which needed reflection in statutory rules as well. In other words, Senator, I do not think there was any suggestion of not taking this Committee's recommendation seriously. The Senate Committee's 25th Report was taken very seriously. The only thing was that in the total they were all affected by it. This one happened to affect fewer people and therefore it was put aside.

Senator WHEELDON - The point I am making is that I think that the Senate at least likes to think that it is taken as seriously as, say, a court of petty sessions. If the Statute of Limitations applied, I do not think a solicitor would make much impact on the magistrate if he turned up and said: 'I realise we have exceeded the time allowed under the Statute of Limitations but after all I only had 11 clients involved and only \$1,000 a year. So I felt that other more pressing matters I had to deal with should be dealt with first. In that case will you please rule that the Statute of Limitations does not apply'. I think we all know that the magistrate would say: 'Be serious will you'. And that would go out the window very quickly. It is just my feeling that the Senate ought to be

taken at least as seriously as a magistrate in a court of petty sessions. And again it just seems to me that if we are being taken seriously, if the national Parliament is being taken seriously, if there is a report which says that 2 years is the maximum time, it means what it says.

It does not say that it only means what it says provided we are not too busy, and if we are busy and it is a bit complicated to work out the difference between the Army and the Navy, and we have to have a few talks, well then we can let that ride because it is only the Federal Parliament and that does not really count. I must confess, that is the impression that I have.

Mr Anderson - Speaking for Defence, we certainly take your point quite seriously; but if I could just put it this way: If we have to appear before your Committee we would far rather appear on a minor matter like this than a major matter of retrospectivity affecting maybe several thousand people, and involving the Government in millions of dollars of retrospective payments. That is the way we had to see it.

Senator RAE - Did the Department point out to the Parliamentary Counsel at the time of giving instructions at the end of December 1971 that the retrospectivity would exceed the 2 year limit unless it was introduced by May 1972?

Mr Major - This would be a matter for us, then.

Col. Virtue - There was no specific mention, in the letter of instructions which went to the Parliamentary Counsel, of the date to which it was desired that the draft statutory rule expressed retrospectively was in fact the date which now appears. There was no special mention made of the instructions or special reference to the point-----

Senator RAE - Was there any follow-up after the instructions pointing out to the Parliamentary Counsel that this situation would exist where you would have infringed one of the

MR R. ANDERSON  
MR K.W. MAJOR  
COL. B. VIRTUE

rules laid down in the 25th report unless you received it before the end of May?

Mr Major - I am sure from looking at the papers that, this was not done in writing. Perhaps I am wrong, but I think it would be a reasonable assumption that in the discussions which certainly did take place in that period - and the Parliamentary Counsel refers to them - and as our instruction was quite clear in the letter to them that the thing was at the moment retrospective to that May date, both Army talking with Parliamentary Counsel and Parliamentary Counsel must have realised that the situation was developing. In the letter to the Parliamentary Counsel in December it was pointed out, not directly to the point but bearing a little on it, that particular ships referred to in there were in fact no longer in existence at that point of time, but they were shown and included to make allowance for the retrospectivity which was being provided for. In other words, I think it was very clear to everybody that this was likely to run late, and I can only gather that it became literally an impossibility to achieve it. I am sure that however it may appear, certainly no-one with Army takes this 25th report and its recommendations lightly at all. We do not.

Senator RAE - Not at any stage did anyone say: 'This 25th report means what it says, and if we do not get it in within 2 years we might as well drop the whole thing. It says 2 years, and they would not say it unless they meant it, so we either get it in within 2 years or we just abandon the idea' - as you would, say, with the Statute of Limitations if you were issuing a writ or something.

Senator WHEELDON - Abandon the retrospectivity.

Either it is less than 2 years or-----

Senator CAVANAGH - Or bring it in by legislation.

Mr Major - I realise that.

Senator WHEELDON - I put it to you that it seems to be taken as: 'Well, it says that, but if we write them a letter they will not worry. You will just get it through.'

Senator DEVITT - You accept that this puts us in a very difficult situation, that in fact if the Committee were to say: 'No, we will not allow this because it infringes the rules which are clearly laid down and understood' this Committee is put in the position of denying somebody something to which there is no question that they would be entitled. It seems to me to be a remarkable situation that this sort of thing is persisted with in the light of the policy of this Committee; and that in fact it may be a much better practice to say when introducing these regulations that, if there is a degree of retrospectivity then in fact the retrospectivity will date to such and such a day, rather than to persist. It seems to me that you put this Committee in a pretty difficult situation in persisting with something in the face of what is clearly laid down as the policy of the Committee.

Mr Major - I do appreciate that, and I do fully realise that the Committee is concerned at the effects this can have on these-----

Senator DEVITT - We would obviously get the blame for it. There is no question that those who are responsible for this delay

would be absolved by the sort of circumstances in which it comes about, and the Committee would get the odium for denying something to members of the Services, which they would have no intention of doing or no wish to do.

Senator RAE - Have the payments been made?

Mr Major - No.

Senator RAE - I understand from what you said earlier that it is not in any way a novel allowance, that it is rather an application of an established principle to a new category, namely Army personnel in command of ships?

Mr Major - Yes.

Senator RAE - So there was no novelty to be considered, there was only the appropriate application to a different category?

Mr Major - To a different category of ship and men.

Senator RAE - The sequence of events, as I understand it, is as follows: On 26th May, 1970, the Army sought the approval of the Treasury for the application of this established principle to a different category. By July 1971, the approval of the Minister had been obtained - we have been told of the problems which apparently existed, creating that delay. Then we get to what I would regard as the even more relevant part, accepting that there were special problems perhaps for a period of time up to July 1971. It takes until the end of December 1971 for instructions to Parliamentary Counsel, and it takes until 27th July, 1972, for the Statutory Rule to actually be produced. That means that it was exactly 12 months from the time the approval of the Minister was obtained until the Statutory Rule came into force. Would you agree that that pace, in the various sections dealing with it, would appear to be leisurely at the least?

Mr Major - I think I could not do other than agree with that. It would be silly not to. I do not know whether

'leisurely', though, is perhaps the right word. I doubt whether, in fact, it was leisurely. It sounds silly, but it did involve a lot of discussion. Looking at it now with hindsight, I think that in August, when Army got the approval from Defence, if other things had been put aside this could have been done more quickly. I have to agree with you, except I think 'leisurely' perhaps might not quite be the right word.

Senator RAE - I was using that as descriptive of the pace at which it proceeded, not the attitude of anyone involved. You have told us that the Army is familiar with the 25th Report of this Committee. The particular paragraph of that Report is 17, which reads:

The Committee has now formulated guidelines which it will observe in its examination of such Regulations. These are:

...

(4) Regulations involving retrospectivity in payment of moneys, if extending beyond 2 years, will be the subject of report to the Senate and unless quite exceptional circumstances are established to the Committee's satisfaction, will be the subject of a recommendation for disallowance.

I emphasise the words 'unless quite exceptional circumstances are established'. I now invite you to summarise for us the quite exceptional circumstances which do not appear to me to have been shown in anything that has been said so far today or in the correspondence.

Mr Major - I can summarise it. Whether they are exceptional circumstances is a matter for determination by the Committee. The pure facts of the matter, I think, very simply are that the matter was put to Defence at a stage, in this



particular instance, where Defence were just taking over and building up their arrangements to take this sort of responsibility from the Treasury. At the same time, with the advent of the Kerr Committee and so on, there were, I am sure, tremendous pressures at work in Defence which caused that initial delay. To a great extent, as I mentioned earlier, some of the same pressures affected our handling of it and subsequently getting it back. The other thing is that, although as you have said it was in effect a straight adaptation of an existing Naval regulation, because of the really quite different terminology it was not easy to resolve it precisely and get everyone's agreement. For instance the question arose of what is a harbour craft, in Naval parlance what does this equate to in the Army? That might sound like something that could be solved very quickly. But that was just one of many. I do not really think I can add any more to that.

I agree with Senator Devitt that this is very unfortunate. Probably it has no relevance, but relatively few people were involved and this thing arose from the way they were employed in Vietnam. Since then a fairly recent decision is that not all but a number of the vessels which we currently operate will in future be operated by the Navy. This has not done very much for the morale of these Army master mariners.

Senator RAE - Is that not your job to look after their morale and needs and to be aware that they are likely to be upset by your delay in looking after some of their entitlements so far as pay is concerned?

Mr Major - Yes, I quite agree.

Senator RAE - That is a matter for urgency rather than delay.

Mr Major - I appreciate that.

Senator RAE - Could you seriously put to this Committee that the factors which you have just outlined do constitute quite exceptional circumstances, particularly bearing in mind that there was a delay of 12 months from the time when approval of the Minister was received until the statutory rule came into force, and that it did involve the application of an established principle to a new category?

Mr Major - Personally I do not think I could say they were exceptional circumstances. I think they were very difficult circumstances. I cannot comment precisely on what might have happened after December when Parliamentary Counsel received the thing, but in that intervening period of 4 or 5 months I think we should have produced the thing quicker. I do

not think there is any doubt about that.

Senator RAE - And you could have asked Parliamentary Counsel to expedite it in view of the fact that it would otherwise infringe the guidelines that the Senate set out in its 25th Report.

Mr Major - As I said, unfortunately there is nothing to show this, in fact, on the file. I cannot believe that in the quite protracted discussions that took place between Parliamentary Counsel and Army, this point was not well to the fore. However, it did not achieve the desired result.

Col. Virtue - If I may speak on that last point: It has been my function within the Department to act in the capacity of liaison officer with Parliamentary Counsel for the last 8 years and I can assure this Committee that the Parliamentary Counsel is very alive to this point and that he always accords priority to matters which have retrospectivity. Now that might seem incongruous in this context. You might say well 6 months is not really priority. But having in view Parliamentary Counsel's workload and his staff shortages he did in fact turn his attention to this matter and the critical factor was the retrospectivity involved, although there was nothing specifically to draw this to his attention in the letter that went to Parliamentary Counsel. So Parliamentary Counsel was alive to this matter and he still took 6 months, I know; but he did, in fact, in his terms, accord the matter priority on the count of the retrospectivity problem.

Senator DEVITT - I was just wondering whether there

is a special appropriateness about the commencement date, particularly in view of the fact that had the regulation been drafted in such a way as not to offend the principle indicated by the Committee it would have amounted to a time period of about 2½ months only. Is there some special reason here? You were talking about an approximation to some similar Naval position. Does the date have any bearing on this?

Mr Anderson - Generally speaking, Defence, our Minister, and the DCS who advise the Minister, are very wary of giving retrospectivity in any of their approvals. Where a matter is reviewed it is generally speaking the day approved by the Minister or a recommended pay day which will be about that time. That applies particularly to conditions, because a retrospective application of conditions is nonsense really.

It applies also usually to rates. But in this particular situation I just reiterate what I said previously, that it was not a review of rates or a review of conditions. Army had made their application on a letter dated 26th May 1970, that is where the date arises from, and the Defence (Conditions of Service) Committee, having regard to the inability of the Defence staff to raise the matter prior to May 1971, felt that it was appropriate in applying an accepted set of conditions to a new category that they should take it back to the date from which it was asked.

Senator DEVITT - Even though it came out in this way as to offend the -----

Mr Anderson - I am sure that the DCS Committee, in making that recommendation, would have thought that the thing might have flowed smoothly from there.

Senator DEVITT - I am not talking about that, I am talking about the later performance where time ran out.

Mr Major - I think the decision was that, as the date 25th May had been approved by Defence and was put to the Parliamentary Counsel, it should be adhered to as a fairly just date in regard to the people. I agree now perhaps that, when it was realised it was going to go over the 2 year period, possibly it should have been amended. I did say earlier that, after the Committee's 25th Report and the Permanent Head issued this instruction, we established within Army a type of follow-up system which I mentioned. Looking at the operation of that, particularly in relation to this, I have certainly in the last day or so seen some distinct weaknesses in the system. It did

not work in this particular case, there is no question about that. I plan to try to amend this in some way so that it will constantly bring to notice these things running behindhand and try to exert pressure, if necessary from the Permanent Head or the Minister, on the Department to get something specifically moving. As I said earlier, this is the only case that I am aware of that has run to this length. We can just see that it does not happen again.

Senator CAVANAGH - You stated that it had become apparent that payment should be made in about July 1969. And realising in July 1969 that payment should be made, you sought approval from the Treasury on 26th May 1970.

Mr Major - That in itself is slightly inaccurate. What date did you say?

Senator CAVANAGH - 26th May 1970.

Mr Major - Yes. An original submission went to the Treasury in November 1969 on the subject. That was at the time when Treasury was handling these matters. Subsequently the responsibility moved to Defence, and it was on 26th May that we formally submitted further details to Treasury and brought Defence into the picture. I realise it is not on that and I am not quite sure why, but according to the papers it is quite clear that on 25th November 1969 the Army initially took the matter up with the Treasury.

Senator CAVANAGH - All right. Then it took from July 1969 when you realised the payment until November to seek approval. No one had done anything about the matter.

Mr Major - I would not say that that is quite right,

in fact it is not. In July the Corps authorities particularly concerned in Army headquarters with this raised the matter and various other aspects as well. There was another aspect of entertainment allowance for these masters. That was processed through Army headquarters and in fact, in the event, it was decided that there were no good grounds for an entertainment allowance but there were grounds for the command money. It took that period of time to sort that out and finally put the submission to -----

Senator CAVANAGH - Looking at our 25th Report, which you have just stated you studied and issued a circular on to the departmental heads, this Report was a complaint about the Defence Services, particularly the Army. The Committee had been advised that the long periods of retrospectivity were due to administrative difficulties. So these administrative difficulties occurred long before the Kerr Committee came into it.

Mr Major - Yes.

Senator CAVANAGH - The Committee has been corresponding with the Defence Department since 1960 over this, and despite the assurance we received in 1968, when we submitted these reports, there has been nothing done in the Department to rectify it.

Mr Major - So far as Army is concerned, as I have said, following that report we did in fact set up this system so that even if the situation is still bad - which is due to various circumstances for different reasons - it is certainly better than it was. But it is still obviously not as good as we would like it to be. There are other aspects which I might raise - staffing problems and so on - which do come into this. There is no question that we most certainly have, following that report, taken action to try to improve it. I think we have, but it is still by no means-----

Senator CAVANAGH - It is not reflected in your regulations, is it?

Mr Major - No.

Senator CAVANAGH - You have not taken any action. You have now found another excuse for this occurring.

Col. Virtue - I would not like to leave here without



making some attempt to dispel what appears to be an impression that seems to be abroad, that the Department, or at least some departmental officers, are trying to take a rather cavalier attitude to the principles laid down by this Committee. I can assure this Committee that this certainly is not so. If I can relate to this present matter, the First Assistant Secretary, Finance and Logistics, has issued an instruction within the Department that if, notwithstanding these safeguards that have been laid down to try to avoid retrospectivity, retrospectivity does occur, these matters are to be brought to his attention before the draft statutory rule goes out of the Department. In relation to this command money, the object is to see if retrospectivity can in some way or other be avoided or curtailed. In this particular instance the First Assistant Secretary made a decision that the thing should proceed because, in his view, there would be injustice done to the people affected by the statutory rule. So his direction was that the thing should proceed, and in the terms of the Senate Committee's edict that we should attempt to bring this within the special case referred to. Pursuant to that, the letter which went immediately to the Senate Committee, as soon as the statutory rule was commenced to be processed, did contain our view of why this constituted exceptional circumstances. I can feel that the Committee is not very satisfied, but that was the view from the Department. It was by no means a matter of unthinkingly putting something forward in contravention or as an affront to the Committee.

Senator WHEELDON - Over the year that it took to approve the regulation there were considerable discussions. How

many discussions in a rough sort of way would there have been. Were there daily discussions, weekly discussions, or monthly or biennial or what?

Mr Major - In the first period from August until December, they were discussions by meeting and telephone between Army people and Navy and Defence, but unfortunately there is no basic evidence on file of how frequently those occurred.

Senator WHEELDON - Do you have a big file on this, lots of letters, lots of correspondence, lots of minutes of meetings, and this sort of thing?

Mr Major - Those are the files. This is the prime one, this one here, so that is an indication-----

Senator WHEELDON - It is just on this one regulation?

Mr Major - I think I am right in saying that one is primarily on that one regulation.

Senator RAE - Do you mean the whole of Statutory Rule 127?

Mr Major - I just want to be sure. That is the specific one relating to allowances, Army personnel in command of Army vessels.

The second point - and possibly Colonel Virtue could answer this one better than I can - is the discussions between the Parliamentary Counsel and Army. The Parliamentary Counsel in his letter of 20th June forwarded 6 copies of draft statutory rules, a whole number of them. When he got down to regulation 3 he said: 'This gives effect to the instructions contained in memorandum of 10th December concerning part of command money. The regulation departs considerably from the instructions. It was drafted as a result of lengthy discussions with your officers. In particular the instructions contained in paragraph 6 of the memorandum we withdrew, and the instructions contained in paragraph (c) of paragraph 5 - the rating and payment of command money from the commencement of loading until the completion of discharge - we will withdraw'. And he goes on with a couple more details of that nature. Did he have these discussions with you or your officers?

Col. Virtue - The Parliamentary Counsel made a request that one of the technical officers from the Department - that is the small ships officers - should be made available to him. This was done, and what he did thereafter is the normal pattern of Parliamentary drafting in my experience. He would have a lengthy conference, and as a result of that he would produce a further draft and submit that to the Department for consideration. We would comment on that, and as a result of our comments he would again call for the departmental representative. Further points would emerge, and a further draft would be produced. This was the way the matter progressed in the Parliamentary Counsel's office.

CHAIRMAN - It has been stated that there is some considerable delay in the transfer from the Treasury to Defence. Was there evidence that the Defence Department was working under terrific pressure?

Mr Major - I think so.

Mr Anderson - Mr Chairman, I can inform you that it was the end of 1969 that these functions began to be transferred over. There was only a very small staff, and it was unfortunate that at that time, as I mentioned before, there was quite an upsurge in reviews of conditions and pay. For instance, there was a major review done on restructuring of officers' pay. There was a considerable amount of work done on equal pay. There was a major review of flying pay and submarine pay, and quite a number of other things. I could give you the list if you wish.

CHAIRMAN - It was really a case of exceptional circumstances at that time - getting this working in the Department?

Mr Anderson - It was quite exceptional, because it was a new section being formed. Nobody could say in advance what staffing was needed, and no sooner had the thing started to get under way than the Kerr Committee was formed, as I said, and 3 or 4 of our major staff were taken over by the Kerr Committee.

Senator WHEELDON - Was there at any stage some sort of high level report made? Did someone go to whoever was in charge - the Secretary to the Army or somebody - and say: 'Look, we are going to be overtaken by tragedy before long. The Senate

has said that unless we have less than 2 years retrospective they are going to disallow our regulations. Time is pressing, we have only 3 months to go. We will just have to get some extra staff to get this thing in. This is real urgency. This is an important matter to the Federal Parliament and our country. Assuming that it has to be within 2 years, this is really urgent'. Did that ever happen, anything along these lines?

Mr Major - I do not think I can point to anything.

Senator WHEELDON - It was not regarded as of real urgency in that sense, that you had to report it to a higher level to say: 'This is for Parliament'. It was never taken in that sense of being serious?

Mr Major - No. It probably should have been, and I think it would have been if the system that we had installed had been operating as originally we had intended it should, and as I certainly hope it will. As I said, I have discovered now that it has some serious defects that will have to be remedied, but if it had been operating as expected I think the sort of thing you are contemplating certainly should have, and I think would have happened, but it just did not. Unfortunately, it did not come to light in the way it should have done.

Senator CAVANAGH - I would read that 25th Report as a strong criticism of the Defence Department.

Senator WHEELDON - It was your Department that brought this report about.

Senator CAVANAGH - As in fact saying: 'Well, you are doing nothing, we will have to do something to remedy the lack'. It would seem in complete contempt of that; and after all it is only 12 months later.

Senator WHEELDON - We just had some regulations from the Air Force which came in the other day. They were introducing some new allowances. They did not make these recommendations about retrospectivity. I think our attention was drawn to it the other day.

Senator CAVANAGH - Who?

Senator WHEELDON - The Navy. I do not think they had any problems in the Navy, but they seem to be finding no difficulty. Navy, seems to have no problem in fitting in with this Committee. I do not know: There may be vastly different matters that arise, but they are not the sort of things that are immediately apparent to someone sitting on the Committee as to why the Navy should be able to do it but the Army cannot.

Senator RAE - Both Mr Major and Col. Virtue have suggested that the Army has attempted to observe at least the spirit of the 25th Report of this Committee and that steps have been taken to overcome problems, but I would like to go through the letter written by the Department of the Army, signed by the Secretary, relating to Statutory Rule 127, and I would also like to make some comments and at the same time ask some questions of Mr Anderson in relation to the Defence Department on what you said. If I could just summarise it: It does appear that in relation to paragraph 1 of Statutory Rule 127 it was made retrospective for 10 months and that it did take one month for the Department of the Army to get instructions to Parliamentary Counsel. The date on which that particular matter was approved does not appear, so I am not able to say whether it was made retrospective even to the decision or not. In relation to paragraph 2 the retrospective period was 13 months and it took the Army 2 months to send instructions to Parliamentary Counsel. In relation to that one so far as the Defence Department is concerned it was approved in January 1971 in relation to operators, signals. The Department of Defence apparently notified the Department of the Army on 5th August that it had approved it effective as from 18th June so there does appear to have been some retrospectivity before the date of the decision. In relation to paragraph 3 we have the one we are primarily concerned with, which is 2 years 2 months retrospective and taking 4 or 5 months to send instructions to Parliamentary Counsel. And we have already discussed the fact that this was apparently a departure from the normal Department of Defence attitude in relation to retrospectivity. The next one,

paragraph 10, retrospectivity was 11 months and there was a delay of 7 weeks apparently in sending the instructions to the Parliamentary Counsel by the Department of the Army and again so far as the Department of Defence is concerned the submission was made in January 1972 to the Defence (Conditions of Service) Committee. Retrospectivity was backdated to 27th August although approval was not given until 22nd February 1972 - that is 6 months later. Again I am drawing your attention to the fact that it does appear that the Department of Defence has given retrospectivity before the date of its decision in a number of cases. Paragraph 11 was retrospective to 13 months and so it goes on. Paragraph 13, retrospective 14 months, and it would appear that in relation to the Department of Defence contained in Statutory Rule 127 are a number of instances of the Department's committee granting retrospectivity before the date of the decision of the Department which appears to conflict with what you told us earlier. And so far as the Army is concerned it does appear that far from being exceptional circumstances this was only a little worse than the norm. Can I make that summary and ask for your comments?

Mr Anderson - So far as Defence is concerned, Senator, I would not know what those things were without knowing the subject. I am afraid I have not a copy of the letter. But you did mention several, and the authority went out on 5th August. If I could add to what I said previously: So far as command money was concerned that was one of a number of smaller subjects which were all wrapped up together in the early part of 1971 and a submission was made to the Defence (Conditions of Service) Committee and they recommended certain approvals to the Minister. In most of those



small instances there was retrospectivity involved and for the same reason.

Senator RAE - In other words, the one relating to the command money was not an exceptional case but it was one of a group.

Mr Anderson - Yes, one of a group at that time if I could say that. Several of them involved flight pay, for instance, which is an additional allowance paid to a person who is not a member of an air crew but works in an aeroplane.

Senator RAE - You have higher duties allowances, flight pay, command money, mileage allowances, officers of cadets pay, officers of cadets service allowances, outfit allowances for female members, and private funerals. So it is a variety of matters, but it does include matters closely related to basic pay as well as the more esoteric allowances.

Senator WHEELDON - I would like to just add something here which I think is relevant by comparison; it is in a letter from the Minister for the Navy. They had a problem in making adjustments to the pay of officers in the Australian Sea Cadet Corps This had to be brought into line, or they wanted to bring it into line, with the Citizen Military Forces. They had problems, as is pointed out in the letter, of the same type it seems. It says in the letter:

The Defence (Conditions of Service) Committee was faced with numerous matters having wide application in the Services (for example, equal pay for female other ranks) and it was not until February 1972...

This had been going on for about a year at this stage. It continues:

that the matter of the annual allowance for officers and instructors of cadet corps was decided. The amendments to the Australian Sea Cadet Corps Regulations were made as soon as practicable thereafter. Because of the time that had elapsed since the increases were first proposed, it was considered equitable that the increased rates should be made applicable to the first annual payments due to be made after the date of the decision (i.e. due to be made on 1 July 1972).

So they are providing presumably for one year's retrospectivity, and they feel that it requires quite a long explanation to us to establish their one year's retrospectivity. This,if

I may say so, is the sort of thing that we thought we were suggesting in our annual report and which seems to have been quite clear to the Department of the Navy whose difficulties, on the face of it, seem to have been the same as your difficulties, or very similar to your difficulties.

Mr Major - Apparently the Navy did not backdate it as far, perhaps, as they might have, but you said they gave a clear explanation. To the best of my knowledge-----

Senator WHEELDON - I was not talking about their explanation, all I am saying is that they did not make it retrospective for 2 years. It seems to me that they could have come along with the same argument: 'Well, there was female pay and all these sorts of things', but they did not. They did tell us that, but they said that was their explanation for making it one year retrospective.

CHAIRMAN - No further questions? If not, I would like to thank the officers for their attendance.

The witnesses withdrew.

THIS Public Bill originated in the Senate; and, having this day passed, is now ready for presentation to the House of Representatives for its concurrence.

*J.R. Odgers*  
Clerk of the Senate.

The Senate,  
Canberra, 19 October 1972

THIS Bill has been agreed to by the House without amendment.

*J. Spink*  
Clerk of the House of Representatives

House of Representatives,  
Canberra, 24 October 1972

~~and 1<sup>st</sup>, 28 September 1972~~

~~(THE MINISTER FOR CIVIL AVIATION, SENATOR COTTON)~~

DEPARTMENT OF THE SENATE
PAPER NO. 4475A
DATE PRESENTED 28 SEP 1972
<i>J.R. Odgers</i> Clerk of the Senate

## A BILL

FOR

## AN ACT

~~No. 385~~

Relating to Charges in respect of Commonwealth Air Navigation Facilities and Services.

**B**E it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

5 1.—(1.) This Act may be cited as the *Air Navigation (Charges) Act* 1972. Short title and citation.

(2.) The *Air Navigation (Charges) Act* 1952–1970\* is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Air Navigation (Charges) Act* 1952–1972.

10 2.—(1.) Subject to the next succeeding sub-section, this Act shall come into operation on the day on which it receives the Royal Assent. Commencement.

(2.) Sections 5, 7 and 8 of this Act shall come into operation on the first day of December, One thousand nine hundred and seventy-two.

15 3. Paragraph 3 of the First Schedule to the Principal Act is amended by inserting after the word "Canberra" (wherever occurring) the word "Darwin". First Schedule, para. 3.

\* Act No. 101, 1952, as amended by No. 87, 1957; No. 49, 1960; No. 78, 1962; No. 97, 1963; No. 95, 1964; Nos. 107 and 125, 1965; No. 48, 1966; No. 79, 1967; No. 84, 1968; No. 75, 1969; and No. 105, 1970.

First Schedule, para. 4.

4. Paragraph 4 of the First Schedule to the Principal Act is amended by inserting after sub-paragraph (1.) the following sub-paragraph:—

“(1A.) Notwithstanding the last preceding sub-paragraph, where a flight between two places by way of an intermediate stopping place or intermediate stopping places includes—

- (a) travel between places that are places in respect of flights between which a factor is prescribed in the Table in this Schedule or by the Regulations; and
- (b) other travel that is not between such places,

the amount of the charge payable under paragraph 1 or 2 of this Schedule is the sum of the amount that would be payable if the flight were confined to the travel referred to in clause (a) of this sub-paragraph and an amount equal to the unit charge for the aircraft.”

5. After paragraph 5 of the First Schedule to the Principal Act the following paragraph is inserted:—

First Schedule, para. 5A.

“5A.—(1.) A charge is payable by the holder of an airline licence in respect of a training flight made by an aircraft operated by him and having a weight exceeding 9,000 kilogrammes, being a training flight in respect of which an amount of charge is fixed by the next succeeding sub-paragraph.

- “(2.) The amount of a charge under this paragraph is—
- (a) in the case of a training flight, not being a local training flight, in the course of which the aircraft takes off from, or lands at, an aerodrome or aerodromes operated by the Commonwealth—an amount equal to the unit charge for the aircraft; or
- (b) in the case of a training flight that is a local training flight commencing and ending at an aerodrome operated by the Commonwealth—an amount calculated at the rate of one half of the unit charge for the aircraft for each hour or part of an hour of the period commencing at the time when facilities or services provided by the Commonwealth at that aerodrome commence to be used in connexion with the flight and ending at the time when the flight has been completed and facilities and services so provided have ceased to be so used.

“(3.) Where an aircraft travels from one place to another on the one day with an intermediate stopping place or intermediate stopping places, that travel shall, for the purposes of this paragraph, be deemed to be one flight.

“(4.) Two or more local training flights made by an aircraft from the same aerodrome on the same day shall, for the purposes of this paragraph, be treated as one local training flight.

- “(5.) In this paragraph—
- ‘local training flight’ means a training flight that commences and ends at the one aerodrome;
- ‘training flight’ means a flight made solely for or in connexion with the training or testing of a person as a member of the flight crew of an aircraft.”

6. Paragraph 6 of the First Schedule to the Principal Act is amended by omitting sub-paragraph (2.) and inserting in its stead the following sub-paragraph:—

First Schedule, para. 6.

- “(2.) A charge is not payable under the last preceding sub-paragraph in respect of the landing or take-off of an aircraft if the landing or take-off occurs—
- (a) in the course of charter operations, aerial work operations or private operations in a period in respect of which a charge has been paid, or is payable, in respect of the aircraft under the Second Schedule to this Act; or
- (b) in a period in respect of which a charge has been paid, or is payable, in respect of the aircraft under the Third Schedule to this Act.”

7.—(1.) Paragraph 7 of the First Schedule to the Principal Act is amended by omitting sub-paragraphs (1.) and (1A.) and inserting in their stead the following sub-paragraph:—

First Schedule, para. 7.

“(1.) The unit charge for an aircraft is an amount calculated in accordance with the following table:—

Column 1 Weight of aircraft in kilogrammes	Column 2 Amount of unit charge
Not more than 500	7 cents
More than 500 but not more than 900	17.6 cents
More than 900 but not more than 9,000	8.8 cents for each 450 kilogrammes, or part of 450 kilogrammes, of the weight of the aircraft
More than 9,000 but not more than 20,000	\$1.76, plus 21 cents for each 500 kilogrammes, or part of 500 kilogrammes, by which the weight of the aircraft exceeds 9,000 kilogrammes
More than 20,000 but not more than 100,000	\$6.38, plus 25.7 cents for each 500 kilogrammes, or part of 500 kilogrammes, by which the weight of the aircraft exceeds 20,000 kilogrammes
More than 100,000	\$47.50, plus 23.8 cents for each 500 kilogrammes, or part of 500 kilogrammes, by which the weight of the aircraft exceeds 100,000 kilogrammes”.

- “(2.) Paragraph 7 of the First Schedule to the Principal Act is amended—
- (a) by omitting from sub-paragraph (2.) the words “the last two preceding sub-paragraphs” and inserting in their stead the words “the last preceding sub-paragraph”; and
- (b) by omitting sub-paragraph (4.).

First Schedule,  
para. 8.

8. Paragraph 8 of the First Schedule to the Principal Act is amended by omitting clause (c) and inserting in its stead the following clause:—

“(c) a flight, not being a flight to which paragraph 5A of this Schedule applies, made solely in connexion with the training or testing of a person as a member of the flight crew of an aircraft;”

First Schedule,  
table of flights.

9.—(1.) The table of flights in the First Schedule to the Principal Act is amended by inserting after each item the number of which appears in the first column of the First Schedule to this Act the item or items set out in the second, third and fourth columns of the First Schedule to this Act opposite to that first-mentioned number.

(2.) The table of flights in the First Schedule to the Principal Act is amended as set out in the Second Schedule to this Act.

Second  
Schedule,  
para. 6.

10. Paragraph 6 of the Second Schedule to the Principal Act is repealed and the following paragraph inserted in its stead:—

“6.—(1.) Where, at any time during a year in respect of which a charge has been paid under this Schedule in respect of an aircraft, the aircraft is operated by the holder of an airline licence or a charter licence in regular public transport operations, or is operated by the holder of an airline licence in training flights in respect of which a charge is payable under paragraph 5A of the First Schedule to this Act, there shall be refunded to the person who paid the charge under this Schedule an amount ascertained by multiplying one-seventh of the weekly rate at which the charge was paid under this Schedule by the number of days during which the aircraft is so operated in regular public transport operations or training flights.

(2.) A person is not entitled to so much of a refund otherwise payable under the last preceding sub-paragraph in respect of an aircraft as would exceed the amount of the charges payable under the First Schedule to this Act by reason of the use of that aircraft in the regular public transport operations or training flights that gave rise to the right to the refund.”

Notice  
being weight  
of aircraft.

11. At any time after this Act has received the Royal Assent and before the first day of December, One thousand nine hundred and seventy-two, the Director-General may publish a notice in accordance with sub-paragraph (3.) of paragraph 7 of the First Schedule to the *Air Navigation (Charges) Act 1952-1972* as if the amendments made by section 7 of this Act had come into operation on the day on which this Act received the Royal Assent, but such a notice shall be expressed to take effect on that first day of December and takes effect accordingly.

## THE SCHEDULES

## FIRST SCHEDULE

Section 9 (1.).

## ITEMS INSERTED IN THE TABLE OF FLIGHTS IN THE FIRST SCHEDULE TO THE PRINCIPAL ACT

Items after which inserted	Items inserted in Table of Flights in First Schedule to Principal Act						
39	39A	Sydney—Gove	..	..	..	..	9
52A	52AAA	Sydney—Maroochydore	..	..	..	..	4
158	158AA	Melbourne—Kununurra	..	..	..	..	12
164	164AA	Melbourne—Port Hedland	..	..	..	..	11
170	170A	Melbourne—Townsville	..	..	..	..	12
174	174A	Melbourne—Wyndham	..	..	..	..	11
202A	202a	Perth—Dampier	..	..	..	..	3
218	218A	Perth—Paraburdo	..	..	..	..	3
235	235A	Darwin—Gove	..	..	..	..	3
239	239A	Darwin—Tenant Creek	..	..	..	..	2
247	247AA	Alice Springs—Kununurra	..	..	..	..	5
250A	250b	Alice Springs—Port Hedland	..	..	..	..	5
254	254AA	Broome—Port Hedland	..	..	..	..	2
275	276	Dampier—Mount Newman	..	..	..	..	2
	277	Derby—Broome	..	..	..	..	1
280	280A	Derby—Koolan Island	..	..	..	..	1
286	286A	Lae—Kavieng	..	..	..	..	3
287	287A	Lae—Namatani	..	..	..	..	2
288c	288ca	Learmonth—Onslow	..	..	..	..	1
288d	288e	Mount Tom Price—Port Hedland	..	..	..	..	1
	288f	Paraburdo—Port Hedland	..	..	..	..	1
	288g	Paraburdo—Wittenoom Gorge	..	..	..	..	1
289A	289b	Port Moresby—Kavieng	..	..	..	..	4
	289c	Port Moresby—Kieta	..	..	..	..	4
291	291A	Port Moresby—Momote	..	..	..	..	2
	291b	Port Moresby—Mount Hagen	..	..	..	..	4
292	292A	Port Moresby—Wewak	..	..	..	..	4

## SECOND SCHEDULE

Section 9 (2.).

## AMENDMENTS OF THE TABLE OF FLIGHTS IN THE FIRST SCHEDULE TO THE PRINCIPAL ACT

Omit items 203 and 204, insert the following items:—

“203 | Perth—Darwin .. .. . | 9”  
“204 | Perth—Derby .. .. . | 7”

Omit items 214, 215 and 215A, insert the following items:—

“214 | Perth—Meekatharra .. .. . | 2”  
“215 | Perth—Mount Newman, by way of Port Hedland .. .. . | 5”  
“215A | Perth—Mount Newman, by way of any route other than by way of Port Hedland .. .. . | 3”  
“215B | Perth—Mount Tom Price .. .. . | 3”

Omit items 220, 221, 222 and 223, insert the following items:—

“220 | Perth—Port Hedland .. .. . | 4”  
“221 | Perth—Roobourne .. .. . | 3”

Omit item 226, insert the following item:—

“226 | Perth—Wittenoom Gorge .. .. . | 3”

Omit item 236, insert the following item:—

“236 | Darwin—Groote Eylandt .. .. . | 2”

Omit item 281, insert the following item:—

“281 | Derby—Port Hedland .. .. . | 3”