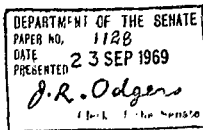


1969



THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

TWENTY-SEVENTH REPORT
FROM THE STANDING COMMITTEE
ON REGULATIONS AND ORDINANCES

(Being the Second Report of the 1969 Session,
and the Twenty-seventh Report since the formation
of the Committee)

PERSONNEL OF COMMITTEE

Chairman:

Senator I.A.C. Wood

Members:

Senator R. Bishop
Senator J.L. Cavanagh
Senator G.S. Davidson
Senator D.M. Devitt
Senator I.J. Greenwood
Senator A.G.E. Lawrie

SENATE STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

TWENTY-SEVENTH REPORT OF THE COMMITTEE

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

STATUTORY RULES 1969, NOS. 112, 113 AND 117
BEING AMENDMENTS OF THE MILITARY FINANCIAL,
NAVAL FINANCIAL, AND AIR FORCE REGULATIONS.

2. Regulation 1 of the amendments of the Military Financial Regulations contained in Statutory Rules 1969, No. 112, provides for an annual allowance of \$1,000 for the Chairman, Chiefs of Staff Committee and for the Chief of the General Staff;

Regulation 1 of the amendments of the Naval Financial Regulations contained in Statutory Rules 1969, No. 113, provides for an annual allowance of \$1,000 for the first Member of the Naval Board and the Chairman, Chiefs of Staff Committee (when a Naval officer); and

Regulation 5 of the amendments of the Air Force Regulations contained in Statutory Rules 1969, No. 117, provides for an annual allowance of \$1,000 for the Chairman, Chiefs of Staff Committee and for the Chief of the Air staff.

3. These Regulations purport to be made under the authority of Section 124 of the Defence Act, 1903-1966, Sections 5 and 45 of the Naval Defence Act, 1910-1968, and Sections 3 and 9 of the Air Force Act, 1923-1965, respectively. These provisions are the same, in substance, as Section 124 of the Defence Act, which reads, in part -

"The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for securing the discipline and good government of the Defence Force, or for carrying out or giving effect to this Act, and in particular prescribing matters providing for and in relation to

- (d) The fixing of the rates of pay of members of the Defence Force who are paid for their services;"

and by provisions in the Naval Defence Act and the Air Force Act this section applies in relation to the Naval and Air Forces and the members thereof.

4. The Committee is not concerned with the policy of the regulations, but it is the Committee's duty to scrutinise all regulations to ensure that -

- (a) They are in accordance with the Statute.
(b) They are confined to administrative detail and do not contain matters more appropriate to substantive legislation.

5. The Committee is opposed to the regulations because -

- (a) It is doubtful if they are properly authorised under the regulation-making power of the Statutes, and therefore, if they are in accordance with their relevant Statutes.
(b) Apart from any previous regulations which may have been issued under the regulation-making power of the Statute, the provision of this annual allowance is not an administrative detail but an important innovation more appropriate to substantive legislation.

6. The Committee recognises that, in expressing an opinion that the regulations may not be in accordance with the Statutes under which they purport to have been made, it is entering a field where legal opinions may vary. The Committee supports its view on the considerations that -

(a) Section 124 (d) of the Defence Act permits the making of regulations "prescribing matters providing for and in relation to

(d) the fixing of the rates of pay of members of the Defence Force who are paid for their services".

(b) The payment of an annual allowance, in the sum of \$1,000, does not appear to be within the expression "the rates of pay". The Committee notes that the Leader of the Government in the Senate, when introducing the Salaries Bill in the Senate on 27 November 1968, said -

"This Bill arises from the Government's decision to increase the salaries of \$15,000 and \$17,500 for permanent heads of departments of state and certain statutory offices and to provide for the payment of annual allowances additional to these salaries."

(c) The express power to make regulations prescribing, in effect, the rates of pay of members of the Defence Force possibly excludes any implied power to make regulations granting an annual allowance. The Committee was doubtful whether any express or implied power could be derived from the introductory general words of Section 124 of the Defence Act having regard to dicta of judges of the High Court in cases such as Plunkett v Smith 14 CLR 76 at 82; Morton v Union Steamship Co. 83 CLR 402 at 409-410; and Shanahan v Scott 96 CLR 245 at 249-50.

7. The second contention in paragraph 4 is supported by the fact that, when similar annual allowances were provided for first division officers of the Public Service and certain heads of Statutory Authorities, the governing statutes of these bodies were amended by the Salaries Act, 1968, even though some of those statutes provide for rates of pay to be fixed by regulation and contain a regulation-making power apparently as wide as that of the Defence Act (e.g., Section 97 of the Public Service Act).

8. During the debate in the Senate on the Salaries Bill, 1968, the responsible Minister stated that the annual allowances "are for the expenses of office in which these senior officials are necessarily involved but which, by their nature, cannot be met by direct reimbursement", he also added "this is a new allowance which was not provided before".

9. The Committee stresses again that it is concerned merely with ensuring that important innovations are not introduced by regulation but by substantive legislation which will attract Parliamentary scrutiny. The Committee is not concerned with the fixing of the amount of the allowance by regulation, but with the provision by regulation for such an annual allowance to be paid.

10. The Committee is of the opinion that the extension of this annual allowance to officers other than those indicated in the Salaries Act, 1968, should more properly be brought to the attention of Parliament in substantive legislation and therefore recommends that -

Regulation 1 of Statutory Rules 1969, No. 112;
Regulation 1 of Statutory Rules 1969, No. 113; and
Regulation 5 of Statutory Rules 1969, No. 117

be disallowed.

IAN WOOD
Chairman

Regulations and Ordinances
Committee Room,
Tuesday, 23 September 1969.



COMMONWEALTH OF AUSTRALIA

Salaries Act 1968

No. 120 of 1968

AN ACT

Relating to the Salaries and Allowances payable to the Holders of certain Offices.

[Assented to 2 December 1968]

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

1. This Act may be cited as the *Salaries Act 1968*. Short title.
2. This Act shall come into operation on the day on which it receives the Royal Assent but the amendments made by this Act shall be deemed to have taken effect on the first day of December, One thousand nine hundred and sixty-eight. Commencement
3. The Acts specified in the first column of the First Schedule to this Act (being Acts containing provisions relating to the salaries payable to the holders of the offices respectively specified in the second column of that Schedule) are amended as respectively specified in the third column of that Schedule. Amendment of certain Acts
- 4.—(1.) An Act specified in the first column of the Second Schedule to this Act, as amended by this Act, may be cited in the manner specified in the second column of that Schedule opposite to the reference to that Act in the first column. Citation of Acts

(2.) Section 1 of the *Commonwealth Railways Act* 1968 is amended by omitting sub-section (3.).

(3.) Section 1 of the *Post and Telegraph Act (No. 2)* 1968 is amended by omitting sub-section (4.).

(4.) Section 1 of the *Public Service Act (No. 2)* 1968 is amended by omitting sub-section (4.).

(5.) Section 1 of the *Repatriation Act* 1968 is amended by omitting sub-section (3.).

THE SCHEDULES

FIRST SCHEDULE

Section 3.

First Column Acts amended	Second Column Offices	Third Column Amendments
<i>Audit Act</i> 1961-1966 ..	Auditor-General for the Commonwealth	Section 4 - Omit " fifteen thousand dollars, and such salary ", insert " Nineteen thousand five hundred dollars and an annual allowance of One thousand dollars, and that salary and allowance ".
	Acting Auditor-General for the Commonwealth	Section 9A - Omit " and that remuneration ", insert " and an allowance at the rate of the allowance payable to the Auditor-General under that section, and that remuneration and allowance ".
<i>Commonwealth Railways Act</i> 1917-1966, as amended by the <i>Commonwealth Railways Act</i> 1968	Commonwealth Railways Commissioner	Section 14 - Omit sub-sections (1.) and (2.) insert:- " (1) The Commissioner shall be paid a salary at the rate of Nineteen thousand five hundred dollars per annum and an annual allowance of One thousand dollars." After " salary " in sub-section (3.), insert " and annual allowance ".
<i>Post and Telegraph Act</i> 1961-1966, as amended by the <i>Post and Telegraph Act</i> 1968 and the <i>Post and Telegraph Act (No. 2)</i> 1968	Director-General of Posts and Telegraphs	Section 6 - Omit sub-section (2.), insert:- " (2) The Director-General shall be paid a salary at the rate of Twenty-two thousand seven hundred and fifty dollars per annum and an annual allowance of One thousand five hundred dollars."

FIRST SCHEDULE—continued

First Column Acts amended	Second Column Offices	Third Column Amendments
<i>Public Service Act 1922-1967, as amended by the Public Service Act 1968 and the Public Service Act (No. 2) 1968</i>	Chairman of the Public Service Board	Section 13— Omit from sub-section (1.) "Seventeen thousand five hundred dollars a year", insert "Twenty-two thousand seven hundred and fifty dollars a year and an annual allowance of One thousand five hundred dollars".
	Member of the Public Service Board	Section 13— Omit from sub-section (1.) "Fifteen thousand dollars a year", insert "Nineteen thousand five hundred dollars a year and an annual allowance of One thousand dollars".
	Office in the First Division of the Public Service of the Commonwealth	Section 30— After "salaries" in sub-section (1.), insert "and annual allowances".
<i>Public Service Arbitration Act 1920-1966</i>	Public Service Arbitrator..	Section 7— Omit from sub-section (1.) "The salary of the Arbitrator shall be Fifteen thousand dollars a year" insert "The Arbitrator shall be paid a salary at the rate of Nineteen thousand five hundred dollars per annum and an annual allowance of One thousand dollars".
<i>Repatriation Act 1920-1967, as amended by the Repatriation Act 1968</i>	Member of the Repatriation Commission	Section 9— After "remuneration" insert "and allowances".
<i>Taxation Administration Act 1953-1966</i>	Commissioner of Taxation	Section 5— Omit from sub-section (6.) "Seventeen thousand five hundred dollars a year", insert "Twenty-two thousand seven hundred and fifty dollars a year and an annual allowance of One thousand five hundred dollars".
	Second Commissioner of Taxation	Section 5— Omit from sub-section (6.) "Fifteen thousand dollars a year", insert "Nineteen thousand five hundred dollars a year and an annual allowance of One thousand dollars".
<i>Trade Practices Act 1965-1967</i>	Commissioner of Trade Practices	Section 24— Omit from sub-section (2.) "salary at such rate as the Governor-General determines, but his salary", insert "salary at such rate, and an annual allowance at such rate, as the Governor-General determines, but the salary and allowance".

SECOND SCHEDULE

Section 4.

First Column Acts amended	Second Column Citations
<i>Audit Act 1901-1966</i>	<i>Audit Act 1901-1968</i>
<i>Commonwealth Railways Act 1917-1966</i> , as amended by the <i>Commonwealth Railways Act 1968</i>	<i>Commonwealth Railways Act 1917-1968</i>
<i>Post and Telegraph Act 1901-1966</i> , as amended by the <i>Post and Telegraph Act 1968</i> and the <i>Post and Telegraph Act (No. 2) 1968</i>	<i>Post and Telegraph Act 1901-1968</i>
<i>Public Service Act 1922-1967</i> , as amended by the <i>Public Service Act 1968</i> and the <i>Public Service Act (No. 2) 1968</i>	<i>Public Service Act 1922-1968</i>
<i>Public Service Arbitration Act 1920-1966</i>	<i>Public Service Arbitration Act 1920-1968</i>
<i>Repatriation Act 1920-1967</i> , as amended by the <i>Repatriation Act 1968</i>	<i>Repatriation Act 1920-1968</i>
<i>Taxation Administration Act 1953-1966</i>	<i>Taxation Administration Act 1953-1968</i>
<i>Trade Practices Act 1965-1967</i>	<i>Trade Practices Act 1965-1968</i>

TABLING OF TWENTY-SEVENTH REPORT OF
THE COMMITTEE

AT TABLING OF PAPERS -

MR. DEPUTY PRESIDENT -

I BRING UP THE TWENTY-SEVENTH REPORT OF THE
STANDING COMMITTEE ON REGULATIONS AND ORDINANCES AND MOVE -
THAT THE REPORT BE PRINTED.