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<i>J.R. Odgers</i>	
Clerk of the Senate	

T H E   S E N A T E

FORTIETH REPORT

FROM

THE STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

relating to

Statutory Rules 1972 No. 35

Amendments of the Naval 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

FORTIETH REPORT

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

Statutory Rules 1972 No. 35  
Amendments of the Naval Financial Regulations

2. Regulation 3 of these amendments contained the following new regulation:

Territory  
education  
allowance.

111A.—(1.) In this regulation, 'territory officer' means an officer of the Public Service referred to in section 30 of the *Papua New Guinea Act 1949-1971*.

"(2.) Where territory officers, or territory officers included in a class of territory officers, are, by virtue of the terms and conditions of their employment, entitled in particular circumstances to be paid an allowance for the education of their children, being an allowance related to special aspects of service in Papua New Guinea, the Naval Board may, subject to the next succeeding sub-regulation, determine—

- (a) that an allowance is payable to members in circumstances specified in the determination, being circumstances that are similar to the circumstances in which that first-mentioned allowance is so payable;
- (b) the rate at which, or the scale of rates in accordance with which, the allowance is to be payable to members in the circumstances so specified; and
- (c) the conditions (if any) subject to which the allowance is to be payable to members in the circumstances so specified.

"(3.) The rate or scale of rates, and the conditions, determined by the Naval Board in respect of the allowance under the last preceding sub-regulation shall be such as are necessary for the purpose of providing reasonable compensation to members, in the circumstances to which the determination relates, in respect of like aspects of service.

"(4.) Where a determination under sub-regulation (2.) of this regulation is in force, a member is, subject to the next succeeding sub-regulation, entitled, in the circumstances and subject to the conditions (if any) specified in the determination, to be paid an allowance at the rate, or in accordance with the scale of rates, specified in the determination.

"(5.) Where a member would, but for this sub-regulation, be entitled to be paid an allowance under this regulation and also an allowance under regulation 122 of these Regulations in respect of the education of a child at a school—

- (a) if the amount of the allowance payable under this regulation exceeds the amount of the allowance payable under regulation 122 of these Regulations—the member is not entitled to be paid an allowance under regulation 122 of these Regulations; or
- (b) if the amount of the allowance payable under this regulation is equal to or less than the amount of the allowance payable under regulation 122 of these Regulations—the member is not entitled to be paid an allowance under this regulation,

in respect of the education of the child at the school.

3. Regulations similar to this regulation were made with respect to officers of the Public Service by Statutory Rules 1970, No. 164, and with respect to members of the Army by Statutory Rules 1971, No. 131.

4. It appeared to the Committee that new regulation 111A conferred upon the Naval Board a discretionary power to determine whether an allowance would be paid, and, subject to the criterion of reasonable compensation contained in sub-regulation (3.), the rates of the allowance and the conditions subject to which it would be paid. The discretion as to whether the allowance would be paid was conferred by the use of the word "may" in the fifth line of sub-regulation (2.). The Committee considered, moreover, that the regulation appeared to be complicated by the fact that the entitlement of naval personnel to the allowance was established by reference to the allowance paid to "territory officers" (a territory officer in this regulation is defined as "an officer of the Public Service referred to in section 30 of the Papua New Guinea Act 1949-1971"), instead of the regulation setting down a separate entitlement and a separate allowance for naval personnel and the circumstances in which such an allowance would be paid.

5. The Committee had correspondence with the Minister for the Navy, and heard evidence from officers of the Department of the Navy and the Office of the Parliamentary Counsel, and the points raised in the preceding paragraph were thoroughly discussed.

6. The Committee was told that the discretionary power conferred upon the Naval Board by the regulation was necessary because of the way in which the regulation was drafted by means

of reference to the allowance paid to territory officers. The Minister explained in a letter to the Committee:

There are three kinds of education allowance payable to members of the Naval Forces - an allowance payable to members serving in Australia, another allowance payable to members serving abroad, and the new allowance. There is possibly more than one kind of education allowance payable to officers of the Papua New Guinea Public Service. If "shall" were to be substituted for "may" in regulation 111A(2.), this could have the effect of obliging the Naval Board to determine, in addition to the intended allowance, some other kind of education allowance that either duplicated one of the Navy's existing allowances, or that was not appropriate for members of the Naval Forces.

7. This explanation led the Committee to raise its second area of concern, namely, why it was necessary to establish the entitlement to the allowance under the regulation by reference to a different allowance paid to a different group of persons. The explanation which was put to the Committee consisted of two main points:

First, the regulation as drafted would permit the allowance paid to naval personnel to change automatically in accordance with changes in the allowance paid to territory officers. This would obviate the necessity for frequent changes in the regulation and thereby reduce drafting work in the Office of the Parliamentary Counsel.

Secondly, regulations similar to the new regulation 111A had already been made, as mentioned in paragraph 3, and it was considered desirable that there should be no question that the entitlement to allowances under those regulations was in any way different from the entitlement under regulation 111A.

8. The Committee considers that the explanations which have been put to it do not amount to sufficient reasons for the

way in which the regulation has been framed. Apart from the precedent established by the regulations referred to in paragraph 3, there appears to be no good reason why the regulation could not simply state that certain naval personnel shall be paid a specified allowance where certain specified circumstances apply. At best the regulation as it stands is an unnecessarily complicated and untidy piece of drafting, and its wording is such that a member of the Naval Forces, on reading the regulation, would have the greatest difficulty in discovering exactly what he was entitled to under the regulation.

9. The Committee is aware of the difficulties faced by the Office of the Parliamentary Counsel, due to the shortage of trained legal staff, but does not consider that the avoidance of the need to frequently amend regulations is a valid reason for promulgating regulations of this character.

10. The Committee does not consider that the circumstances justify a recommendation to the Senate that the regulation in question be disallowed, but wishes to draw the attention of the Senate to the regulation and to record the Committee's opinion. For the information of the Senate the evidence taken by the Committee with respect to the regulation is included in this Report.

Ian Wood  
Chairman

Regulations and Ordinances  
Committee Room,  
Thursday, 31 August 1972.

SENATE STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

TRANSCRIPT OF EVIDENCE

(Taken at Canberra)

WEDNESDAY, 30 AUGUST 1972

Present

Senator Wood (Chairman)

Senator Cavanaugh	Senator Roe
Senator Devitt	Senator Webster
Senator Durack	Senator Wheeldon

INQUIRY

Statutory Rules 1972 No 35  
Amendments of the  
Naval Financial Regulations

MR ROBERT DOUGLAS MARTIN, Head of Naval Personnel Branch,  
Department of the Navy,

MR ALBERT NEIL PRESTON, Senior Executive Officer (Legal),  
Department of the Navy, and

MR JOSEPH MONRO, Senior Assistant Parliamentary Counsel,  
Office of the Parliamentary Counsel,  
were called and examined.

CHAIRMAN - The Committee is considering the new Regulation 111A contained in Regulation 3 of the amendments of the Naval Financial Regulations, contained in Statutory Rules 1972 No. 35. The Committee has before it a letter dated 23rd August 1972 from the Minister for the Navy, relating to the Regulation. There was some previous correspondence from the Minister, but it appears that this related to the wrong regulation.

The regulation in question empowers the Naval Board to determine that an educational allowance is payable to certain naval members in circumstances which are similar to the circumstances in which an allowance is payable to certain officers of the Territory of Papua New Guinea.

The question originally raised by the Committee related to the discretion which is conferred upon the Naval Board to determine whether the allowance shall be paid, the rate of the allowance and the conditions subject to which the allowance is payable.

I would like to begin by asking the witnesses 2 related questions: Firstly, why does the Regulation establish the entitlement to the allowance by referring to allowances payable



to officers outside the Navy, instead of setting down a separate entitlement of the naval personnel to an allowance? The second question is: If the Regulation set down such a separate entitlement, would it still be necessary to confer upon the Naval Board a discretion to determine the matters to which I have referred?

Mr Monro - I think we should take it in 2 stages. This goes back to 1970, when we were instructed by the Public Service Board to deal with the position of Commonwealth Public Servants serving in Papua New Guinea, in relation to the change in the status of the Papua New Guinea Administration and the gradual handover to the local people. They had the problem that the Papua New Guinea Administration was developing their own system of allowances and payments in respect of disabilities and things of that nature that occurred to officers working in Papua New Guinea - that is, local Papua New Guinea officers. Some of these, of course, were related to the native people of the community and some were related to Australians who were over there working. This produced 2 problems, in that they wanted eventually to reach a stage where all rates and allowances were geared to local people, so that on independence they would have a complete scale of rates which were appropriate to the people they were dealing with - their own people. But then there were problems of giving something extra to Australians to induce them to come there, and this created a system that was imposed on that. All this is being done as local Papua New Guinea law, not as Australian law. Then the Public Service Board faced the position of Commonwealth officers

serving in the Territory for Commonwealth purposes, working alongside local Papua New Guinea officers and not receiving the same kind of treatment by way of education allowance and some other allowances. The Public Service Board wanted to ensure that where Commonwealth officers go there and work alongside local people, and in similar circumstances to local people, they would be treated in the same way.

This was the problem that was submitted to me. The result of that was a Statutory Rule, No. 164, which was made in 1970. I have not enough copies of it to go right around as there were not sufficient in the Department; but there are a few copies here. In that Statutory Rule we provided for an allowance which went wider than an education allowance; we provided for any allowances which were of a special nature for the local Public Service of Papua New Guinea to be applied to Commonwealth public servants who are working in similar circumstances and by determination of the Public Service Board. It was done this way because the Public Service Board found it difficult to identify all the circumstances in which they were going to apply this. Certainly education allowance was one of them, but there were others and I found it difficult to identify them. Moreover they said the situation up there is developing and new allowances are coming in, new conditions are being applied, and new circumstances arise and new rates arise and if we take them one by one we are likely to be in a position where we have to amend them or add to them very frequently, and this was something which, I think you can understand, I was anxious to avoid if it were possible to do so. The result was that we gave them a regulation which is in this Statutory Rule 1970/164. It was one which was drafted very much with the views which this Committee has expressed before us in that whilst it conferred quite a discretion on the Public Service Board to determine the conditions, to determine the rights and the circumstances, it also set out what they had to have regard to, that they had to be circumstances which were equivalent to circumstances in which an allowance was

payable to the local Papua New Guinea Public Service - the conditions had to be the same, and the rates had to be the same. So, as far as I could see, we were doing what you have asked. We were setting out a criterion and almost completely controlling them to local conditions. As I say, this was made in 1970 and has been in force in the Public Service since that date. That was, if I may say, the first step when I was faced with the instructions from the Navy. Then in 1971 the Navy came along and asked for an education allowance and it became clear to me very soon - and I went into it with the officers in Navy - that this was the very same education allowance that the Public Service was providing for under this regulation which was made in 1970. So I was then faced with a separate situation again in that I wanted to do for the Navy exactly the same as the Public Service was doing for ordinary Commonwealth officers, and it seemed to me most appropriate that it should be done in exactly the same way, that I should not start out afresh and try to do something which would set out the conditions and everything else seriatim in the regulation. But if I was trying to give them exactly the same as the Public Service got, and they were to get this as altered from time to time, then the appropriate way to do it was to follow exactly the terms of the Public Service Regulation, and this is in fact why it took that form. It is now however in the Public Service Regulation because I was instructed by the Navy that they saw no need at that stage or in the foreseeable future to cover any other kinds of allowances than this particular education allowance, so it is limited to an education allowance while the Public Service Regulation is wide enough to cover other kinds of allowances.

CHAIRMAN - The second question was: If the Regulation set down such a separate entitlement, would it still be necessary to confer upon the Naval Board a discretion to determine the matters to which I referred?

Mr Monro - I do not think one could add to that categorically. It would depend on how much was set out in the Regulation and how much were the reasons left to the Naval Board. It could, of course, all be set out in the Regulations. I cannot say for one moment that it would be impossible to separate all the Regulations. On the other hand, we have had regard to the principle which this Committee has accepted in the past. Where things are of a minor administrative nature and are likely to be subject to change at frequent intervals, this Committee has accepted that it may be suitable to allow them to be determined rather than set out purely for the purpose of saving work in the Office of Parliamentary Counsel. You have said that this is not the ideal method, but in view of the difficulties which the Office is experiencing at present, it might be appropriate in some cases to do it. I have not analysed what would have to go into the Regulation, so I cannot say that if we set it out in detail we might not suggest that some things be left to determination, but there would be no need to leave anything to determination.

Senator CAVANAGH - Our concern in this matter is that Territory officers get their allowance by virtue of their contracts of employment, but when naval personnel are in the same circumstances as Territory officers, the Naval Board may or may not issue a determination giving them the same allowance. It is

at the discretion of the Board whether the naval personnel get this allowance or not. Is that the correct interpretation?

Mr Monro - There is a discretion on the Board as to whether it does so, but, in a sense, it is a discretion in respect of which the Board has to answer, though the Minister to Parliament.

Senator WHEELDON - Surely that could be said of anything. To follow that through, you could say that all boards should be given total discretion because the Minister is ultimately answerable to Parliament, could you not?

Mr Monro - I am not suggesting that. What I am trying to put into words is that we are not in an entirely clear area. What has to be weighed up are the terms and conditions of employment that apply to local officers of the Public Service of Papua and New Guinea and the terms and conditions of service that apply to Naval personnel, or in the case of the Public Service, to Commonwealth officers.

Senator CAVANAGH - You have not much of a discretion to alter the rates.

Mr Monro - We have no discretion to alter the rates.

Senator CAVANAGH - They are payable to Territory officers. But you have the discretion of saying whether the allowance will or will not be paid.

Mr Monro - This is what I am leading up to. It is a question of political or administrative judgment as to whether the special circumstances that apply to the local officers, having regard to all their terms and conditions, justify the giving of something special to Naval personnel, having regard to

all their terms and conditions. They are not all on the same basis. Their terms and conditions vary to a large extent. It is a question of whether, having regard to other benefits which one set of people have and other benefits which another group have, it is reasonable that they should be equated in this particular respect alone. This is a matter of judgment, so that it seems to me difficult in that situation to put it on the basis of 'shall'.

Senator CAVANAGH - It could be that local officers, on application to the Public Service Board, have better advocates than Naval personnel.

Mr Preston - One other point is that more than one kind of education allowance is payable to the Navy people and more than one kind could be payable to Territory officers. It seems to me that if you had 'shall', the Naval Board would have to make a determination applying all kinds of Territory allowances which fell within this, even though perhaps one of them might, in fact, be a duplication of something we already have or might be an allowance which was not appropriate to be paid to Navy people because of the different conditions of service.

Senator DEVITT - Does not the converse apply? If there were a degree of rigidity because the word 'shall' was used, might there be no obligation to pay any allowance at all?

Mr Preston - The only thing I can say on that is that when it is decided that a particular allowance should not be payable, we normally repeal the Regulation. If you have Regulations, they are made available. They are issued and people know what is in them. They are looking to see what their entitlement is. You would not normally leave the Regulation there, because it would be very embarrassing to people who wanted to know what their entitlements were when, in fact, there were none.

Senator DEVITT - Regulation on 111A (2) says:

Where Territory officers are .... entitled in particular circumstances to be paid an allowance .... the Naval Board may .... determine that an allowance is payable.

That is the first thing they may determine. They then may determine the rate at which or the scale at which it is payable



and they may determine the conditions. There are 3 things that they may or, I imagine, may not do. That seems to be a very wide area of discretion.

Mr Preston - I would think that if the Naval Board failed to determine any one of those, the allowance would not be payable. They have to determine each of those things for the allowance to be payable, and in each case the criteria are set out - the limits within which they can determine the particular thing. In other words, it has to be a thing virtually the same as for the Territory officers.

Senator WHEELDON - As often happens in this Committee, we seem to be at cross purposes. I do not think that anybody is arguing against the administrative problems that are involved in doing these rather complicated things but the Committee's position on these questions is that unnecessary discretion, or arbitrary discretion, should not be given to any executive arm of the government. What we are saying is that, as far as possible, certain mandatory requirements should be imposed upon the administrative organs of government. What I cannot see is why you cannot say that in such and such circumstances, if this and if that, the Board shall do these things. Why 'may'? With the inclusion of 'may', it is left up in the air. Even though all of these requirements are met, the Board may or may not determine. If you say the Board shall determine, they still use their own de facto discretion and decide in a particular instance that they shall pay it and in another instance that they shall not, but then if a person feels aggrieved, he does have some clear redress, because the Regulation requires that he shall be paid these things, whereas

if it stays as 'may' it seems to me that it could well be argued successfully that there would be no redress, even though you were in precisely the same position as somebody else who was being paid all these things. Because the Board may do it, they also may not. They say: 'We have a discretion. We may or may not do it, and we have decided not to. What are you going to do about it?' What we are arguing for is that as far as possible the verb will be 'shall' rather than 'may'.

Senator DURACK - The objection that you raised in your letter, and repeated a few minutes ago, to the use of the word 'shall' is that there may be more than one allowance in the Territory, which would duplicate an allowance already given to Naval officers. Is that so?

Mr Preston - That is so.

Senator DURACK - In the Public Service Regulation which you circulated, Sub-regulation 4 says that the Board shall not make a determination under Sub-regulation 2 - that is the one we have been talking about - in relation to particular circumstances, if an allowance is payable to Commonwealth officers under the Act or under any other Regulation in those circumstances in respect of like aspects of service. There does not seem to be any similar Sub-regulation in the one in front of us, and I am wondering whether, if that Sub-regulation was transposed into the present regulations, that would overcome the objection to the use of the word 'shall' which you have put forward?

Mr Monro - I do not think it would really overcome the difficulties about 'shall', because there are 2 sides to this. Sub-regulation 2 sets out only one side. It sets out the situation where officers of the Navy are serving in New Guinea in circumstances in which, if they were officers of the Territory of New Guinea, they would be getting a particular allowance of a kind that is called an educational allowance, but it does not set out the other situation which has to be considered, and that is: What are the allowances which Navy personnel are getting, as officers of the Navy, which are not paid to officers of Papua New Guinea? I am not saying that something along this line cannot be put into it, but I

am saying that it is not there at the moment, so that the alteration of 'may' to 'shall' would leave you in the situation that the Board would be under an obligation or under a duty whenever they were in this situation, to pay this allowance, notwithstanding that the Navy personnel were already getting other things which covered it. They might be getting other allowances which it would not be easy to say were of the same kind, but which might, in different circumstances, be intended to cover different things.

Senator CAVANAGH - They cannot get the allowance under section 122.

Mr Monro - These, of course, are the only educational allowances which the Navy pays at present, so that that, in fact, was intended to take the place of Sub-regulation 4 of the Public Service one-----

Senator WHEELDON - But surely that point could be covered by the inclusion of some clause saying that, subject to their not getting anything else, it could be approved. This seems to the Committee to be a very important principle - the principle of not having a discretion floating around in the air. I know it is rather an awkward sort of thing, but this is not the most complex regulation that would ever have been drafted. Would it not have been possible to set out precisely the situations in which this allowance is to be paid to Naval officers serving in New Guinea, and to say that they shall be paid it if certain criteria are met, or if they are not receiving payment of a like kind from some other source. The Board would still exercise its discretion and say that this one will get it and that that one will not get it, but at least the fellow who did not get it would have a regulation to fall back on. That is all they are asking.

And this is a very important principle to us.

Senator CAVANAGH - It is not a question of one or not the other. If the determination were made, all would come within that category.

Mr Monro - That is right.

Senator WHEELDON - Any class could object. It could still be a one-person class.

Senator CAVANAGH - It would take away discretion, would it not?

Mr Monro - It takes it away from the employer in clause 4.

Senator CAVANAGH - Is it the position that Territory officers have by nature of their contract with their employers an application to their wage fixing authority. The naval personnel have gone into the Navy on a contract of service and remuneration, and if some circumstance not envisaged at the time of joining up occurs in this particular locality you, as an authority, then decide whether he should be given any extra reimbursement. Is that the position - because he is under similar circumstances to Territory officers. And you say that although he is under similar circumstances, he may not be entitled to it in view of other concessions he gets.

Mr Preston - They are the things to look at. When proposals are put to them by one Service or another, it is something that Defence themselves consider having regard to what has been provided in the Public Service and they examine this and consider it in relation to the total conditions of service and the other payments and decide whether it is an appropriate matter to be applied to the Services or not. Conditions of service may vary sufficiently for a thing not to be appropriate. And in the same way, Service people get allowances which are just not payable in the Public Service.

Senator CAVANAGH - And then you, being the wage fixing authority for naval personnel, decide whether we will pay this allowance in this particular circumstance?

Mr Preston - You are putting this in the sense that this is a Naval Board matter? Technically, I suppose that is true. The

only answer I could make to that is what I mentioned before that the Minister would not have proposed the making of the Regulation if it was not intended to make the payment.

Senator DEVITT - In these Regulations we are talking about now, 111A(4) reads:

Where a determination under sub-regulation (2.) of this regulation is in force, a member is, ... entitled, in the circumstances... to be paid an allowance at the rate, or in accordance with the scale of rates, specified in the determination.

And reaching the figure of the rate to be applied, that is tied, I take it, immediately to the rates which are referred to as being applicable in the other circumstances in the Public Service?

Mr Preston - That is correct.

Senator DEVITT - So, you would argue, I imagine, that the rate is pretty strictly determined on those lines which are applicable in that other circumstance?

Mr Preston - In practice, we determine the same conditions and the same rates.

Senator CAVANAGH - With due respect I would have thought that (3.) would have decided the rate.

Mr Preston - Well (4.), strictly speaking, merely says that once the Naval Board makes a determination then the person has an entitlement. Once the determination has been made, then the rest is automatic.

Senator CAVANAGH - But the rate you have power to determine must be a rate providing reasonable compensation to members in the circumstance. The rate for Territorial officers may not be a reasonable rate and therefore you can differ with them in that you are bound to give a reasonable compensation.

Mr Preston - That is true.

Senator CAVANAGH - There is no compulsion to stick to the rate for Territorial officers?

Mr Preston - In practice, I am not too sure how the Naval Board independently would be able to work out that the rate was not reasonable.



In other words, the rates are worked out, say, by the Public Service Board in relation to the rates that have to be paid in New Guinea. We would assume that those rates were reasonable.

Senator D'WITT - You have to accept them.

Mr Preston - Yes. We would have no way, I imagine, of knowing that in fact the rates-----

Senator CAVANAGH - If on the evidence of your personnel that what you were paying in fact did not meet the cost of sending the child, would you not have power or would it not be reasonable to increase that under clause 3?

Mr Preston - I presume so. That is not the way the system works, of course. If anyone feels that the rate is inadequate, then, naturally, they make representations and then these go to Defence because the 3 services are on an equal basis on this matter and presumably Defence would take the matter up with the Public Service Board. I do not know how they would conduct inquiries.

Senator CAVANAGH - That is the point. When we give them power under this clause 3 should they not say: 'I think the case is made out that this is not reasonable compensation. Therefore I am prepared to lift them above the Territorial officers.'

Mr Preston - I do not think you would necessarily make this decision on the basis merely that one member had made a representation. You would have to make your own inquiry into it, I think.

Senator CAVANAGH - I imagine so.

Mr Preston - The Naval Board could not itself do this because it would pass it across to Defence because of the involvement of Army and Air and also because, as I would see it, these people

are all virtually the same and one would assume they should all receive the same benefit. Therefore I do not see the Naval Board operating unilaterally.

Senator CAVANAGH - I would think contrary. As you claim that you may or may not pay it, taking into consideration the other conditions of service, surely the Public Service Board would decide to increase or reduce in consideration of other benefits.

Mr Preston - When we are talking about other benefits, this particular amount relates to a particular circumstance. In other words, it really deals with the parent who goes to New Guinea and leaves the child in Australia and I would think that everybody who went to New Guinea and left their child in Australia would be virtually in the same situation. I cannot see that the financial problems of the parent would be different as a matter of principle whether you are in the Public Service or in the Navy in relation to this particular amount.

Senator CAVANAGH - What if the Public Service Board said: 'Yes, the circumstances are the same but in view of the fact that under this award you are getting a house or a living allowance, what you miss out on one, you pick up on the other'- conditions that do not apply to Naval personnel.

Mr Preston - As I mentioned, I do not really see just how that could happen. It is theoretically possible; I would not think on this particular allowance it would be practically possible because it relates purely to the fact that the parents left the child in Australia.

Mr Monro - I think, Senator, the answer is that they could have regard to these things under the regulations. In fact, the

regulation is intended to enable them to have regard to this - to even the conditions up. That is the intention.

Senator CAVANAGH - I would have thought that that justified the use of the word 'may' rather than 'shall'.

Mr Monro - This is one of the reasons why I thought that 'may' was more appropriate than 'shall' because the intention is twofold. It is to even up the Naval personnel with the local officers, and the intention is to do this in a way which will preserve the local conditions in these local circumstances. And quite frankly it will do it in a way which will cause the least continual amendments from the point of view of the Office of Parliamentary Counsel.

Senator WHEELDON - That can be easily accomplished because the Board has full authority to do what it wants.

Senator DEVITT - Can we come to the point of the reasonableness mentioned in sub-clause (3) of the Public Service Regulations and sub-clause (3) of the Naval Financial Regulations. Is the reasonableness on all fours in both instances? When you talk about reasonable compensation in relation to Public Service Regulations, does that have exactly the same intent and meaning and effectiveness as reasonable compensation in relation to the Naval Financial Regulations? It seems to me that it would have to be, would it not?

Mr Monro - It is intended to be so.

Senator DEVITT - In fact if the circumstances are exactly the same, relating it to the Public Service Regulations preserves relativity.

Mr Monro - That is right.

Senator DEVITT - I wondered why when you were drafting the Naval Financial Regulations you departed then from the terms of clause (4) of the Public Service Regulations and wrote in a new sub-regulation for the Naval Financial Regulations and then of course went on to clause (5) to spell out that the higher figure would be paid but only one of the allowances, however many, may qualify under the terms of this thing. If Regulation 122 exceeds the figure that would be determined here then the Regulation 122 figure would take precedence, or conversely if the determination exceeded the figure of Regulation 122 it would take precedence.

Mr Monro - I think there is something here that Mr Preston might like to reply to, but if I could deal with the form of it: Sub-regulation (4) of the Naval one is the

equivalent of (5) of the Public Service. It is exactly the equivalent of that. They are swung around the other way and (5) is intended to take the place of (4) in the Public Service. As to why I did not put in a (4) or a (5) in the Naval one in exactly the same terms as (4) in the Public Service one, in the Public Service we were dealing with a multiplicity of allowances of which education allowance was specially mentioned to me as being one that they were particularly interested in at that particular time. Therefore it was impossible to spell out in detail in relation to ones which we knew of then, and others which might come into it in the future, their inter-reaction with existing Public Service allowances at the time. So (4) in the Public Service one took a very general form to cover this sort of situation. But with the Navy I was only faced with an allowance to cover education, and I was faced with some existing regulations which told me exactly what they would be entitled to but for this, and therefore I was able to go to the Department of the Navy and say: 'Now what is to be the relationship between these new allowances and the existing allowances?' And I received instructions which were put into effect by sub-regulation (5). As to why the instructions should have been along those lines I think, perhaps, is a matter for Mr Preston. That is my explanation to why one went into one and one went into the other.

Mr Preston - The answer to that was that we knew that there could be conflict with only one other allowance we paid, that is the one under Regulation 122 which is what we look on

as the ordinary education allowance. So we were able to spell it out in detail that if he is entitled to both then in effect he got the one which gave him the higher rate.

Senator DEVITT - I refer to page 2 of the Minister's letter to us of 23rd August and to your observation that if 'shall' were to be substituted for 'may' in Regulation 111A (2.) this could have the effect of advising the Navy Board to determine, in addition to the intended allowance, some other kind of education allowance that either duplicated under the Navy's existing allowances, or that was not appropriate to members of the Naval Forces. Was it not possible to put into words some clause which would clarify this?

Mr Preston - The answer to that is that the Navy Board intended to determine only this particular allowance under (2.). We did not know what other allowances were payable to Territory officers which might fall in the circumstances spelled out in (2.) in respect of that aspect of service and so on.

Senator DEVITT - Would it not be in order at some subsequent stage if they arose?

Mr Preston - If they arose and if there was any likelihood of conflict with some existing regulation, you would have to amend the regulation. You could not make a determination, because the Board would not have power, as I see it, under this, because the criteria did not mention the Board's power, to write into this determination some such limitation because that is the sort of thing the Board is not given power to do. It can only determine the circumstances which have to be similar, and once a circumstance is similar a man gets it. So we would not then be able to say he cannot get it if he is getting something else. So in practice you could not do it without amending the regulations.

Senator DEVITT - You say, that as the Regulations are presented to us now, what is the absolutely irreducible minimum of

discretion that is available to the Naval Board to make the determination as to whether an allowance is payable, the rate at which it is payable and the conditions of it.

Mr Preston - As I see it, yes. Perhaps I should mention that we have made variations in the past which allowed the Naval Board to determine conditions under which allowances are payable and the kind of regulation you have objected to. The Naval Board could then determine under a regulation such as that, that the allowance was not payable if the person is entitled to some other allowance. But once you spell out this sort of criteria, then the Naval Board's discretion to do that sort of thing is destroyed.

Senator DEVITT - It turns on the word 'may'.

Mr Preston - 'May' there really means whether the determination is made or not. There is no other discretion given to the Board.

Senator CAVANAGH - The only discretion the Board has is whether they pay an education allowance, and when they decide to pay it they fix rates, and the circumstances. There is not much discretion.

CHAIRMAN - Do you still desire to retain the use of the word 'may' as against 'shall'?

Mr Monro - Could I speak to that first, Mr Chairman. It seems to me that the Committee might think of 2 special considerations about this regulation, and I am not certain they will appreciate it at the moment. First of all, it applies in a very particular area only that is intended to deal with the particular difficulties that arise in relation to Australians serving in New Guinea and the transition which is going forward at an increased rate



in New Guinea to set up a system of law which will apply upon independence. We would not adopt this formula in relation to local allowances within Australia. We have not adopted this formula over many years, having regard finally to the views which this Committee has put forward. But in these particular special conditions, with an idea of equating as far as it is possible to do, our conditions with theirs, and giving them the flexibility to alter their conditions from time to time if they want to, it was felt that this doing it by reference was an appropriate way in these special conditions.

It was felt that 'may' was appropriate also in those particular conditions. The second thing was that we were endeavouring to do, in relation to this education allowance, exactly the same for the Navy as was being done under a Commonwealth law, which also did it by conferring discretion, in this case on the Public Service Board. It is, in ordinary circumstances, a very sound drafting policy that where you want to do for one group exactly the same as you are doing in law for another group, that you should do so in exactly the same way. If we had not been faced with the Public Service one, then this may well have not taken the form it did, but this was done after the Public Service one. It was done with the intention of giving them exactly the same as the Public Service one, and it is a sound drafting principle in those circumstances that you try to do it, if possible, unless there are other considerations, in exactly the same way.

Senator WHEELDON - The Public Service one is an Act?

Mr Monro - No, the Public Service one is a regulation, which came before this Committee.

Senator WEBSTER - I acknowledge the difficulties that may have beset drafting in this instance, but I am not convinced that the comments that Mr Monro has just made in summing up have anything to do with the point that this Committee has raised. The points that you have made are well coped with in 111A (1) and (2), but the points that we are taking up, as I understand, have more reference to what we find in Public Service Regulations 4 and 5, which apparently are not in the Naval Financial Regulations, nor are they described in the letter that we have from the Minister for the Navy as adequately as we would have wished. It appears to me that if Public Service

Regulations 4 and 5 were incorporated in the Naval Financial Regulations, the problems that you have described to us would be non-existent.

Mr. Monro - Public Service Regulation 5 is there in the same terms as Regulation 4 in the Naval Financial Regulations.

Senator WEBSTER - In exactly the same terms?

Mr. Monro - In exactly the same terms. So that 5 is covered, and while 4 is not there in the same terms it is dealt with by specific reference to the particular education allowances which are payable to the Navy. Therefore, its equivalent is there in even more definite terms so far as the Navy is concerned than it is there for the Public Service. The Public Service one is in general terms, whereas the Navy one has a specific reference to the very allowances in respect of which there could be a conflict and resolves the conflict in specific terms.

Senator WEBSTER - The wording of 5 in the Public Service Regulations is not the same as 4 in the Naval Financial Regulations.

Mr. Monro - I do not see that there is any difference in law.

Senator WEBSTER - No, but the wording is different though, is it not?

Mr. Monro - It means exactly the same thing.

Senator WHEELDON - I find this very interesting, but it still does not answer my point, and that is that the 'may' is still floating. It still leaves to the Board the discretion whether or not it shall determine these things. It may or may not determine them. The language seems rather cumbersome to me, but I cannot see anything particularly wrong with saying that where Territory officers, or Territory officers included in a class, are, and so on, the Naval Board shall, subject to the next succeeding sub-regulation pay an allowance to members in circumstances specified, and so on, at the rate, and so on, subject to the conditions, whatever they may be. In that form, the Regulation would say 'shall' all the way through. It would say that they shall be paid these things. It would cover all of the allowances which are relevant here, but it would remove an arbitrary discretion. I am talking hypothetically now. I am not suggesting that this would happen or that the Naval Board would want to do this. The Naval Board could, it seems to me, be acting quite properly within the Regulations, and to the letter of the Regulations, if they said: 'We could determine that this fellow was entitled to these things, but we are not going to do so, because the Regulation says only that we may do it'. And I cannot see what would be lost if it said that a person shall be paid these amounts, subject to all the things that you mention.

Mr Monroe - We could do that, but we would then have to spell out in much greater detail the areas of conflict.

Senator WHEELDON - Why?

Mr Monroe - Because we would have to spell out that they shall do it in circumstances which are the same where there are

no compensating factors. Once you bring in the compensating factors, you take away the discretion which is there at the moment. You say that despite the compensating factors - the ones that Senator Cavanagh was talking about - they can determine an allowance where there are compensating factors; but then, in that case, they are to pay reasonable rates, and the reasonable rates are to have regard to these compensating factors.

Senator CAVANAGH - Personally, I would have thought that this is a proper use of the word 'may'.

Senator WHEELDON - It may be a proper use of the word 'may'. I am not disputing the English usage. The point is whether the word 'may' ought to be used at all.

Senator CAVANAGH - The Public Service Arbitrator decided that Territory officers shall get this. If I go up on a contract for an employer, I make an application to another wage fixing authority that I shall get it also, and he says: 'No. It does not apply to this class of work because you are getting other concessions under the award. Therefore, you should not get this. It might be for the duration of your job'. This is a question of another wage fixing authority to decide whether this should apply to our section. I think that, having made the decision, that is the end of it. Whether we will pay an education allowance to officers in Papua New Guinea is a decision to be made at any time. I think it is within the authority of a wage fixing authority to say whether they will pay it or not. I would have thought it wrong to interfere with that and, because something is payable to someone else, to make it payable to everyone, without consideration of the whole conditions of employment.

Senator WHEELDON - It does not do that. As I said, it would say 'shall', subject to all of these things.

Senator DURACK - If they did not give the education allowance under this one, they get it under 122, so they would still get some education allowance. That argument does not apply.

Senator WHEELDON - I do not think I can take it any further. It seems to be that, with some alterations, it could be a 'shall'. This leaves it right up in the air. It puts the whole thing back in the complete discretion of the Naval Board.

Senator DURACK - Coming back to the letter that we have from the Minister, the passage at the bottom of page 2 seems to be the crux of the problem we are dealing with, which is why you cannot use 'shall'. We have heard some other reasons from Mr Monro, but the reasons advanced here are that if 'shall' were to be substituted for 'may' this could have the effect of obliging the Naval Board to determine, in addition to the intended allowance, some other kind of education allowance that duplicated one of the Navy's existing allowances. We are talking only about education allowances, are we not?

Mr Preston - Yes.

Senator DURACK - We are not talking about any other form of allowances. Are there any other education allowances that the Navy gives, apart from Regulation 122?

Mr Preston - We have an overseas education allowance under some other Regulation. I do not think that would apply here.

Senator DURACK - That point does not seem to have much relevance then, does it?

Mr Monro - There could be other education allowances which become payable to local Papua New Guinea people.

Senator DURACK - That is not what we are talking about here. I am trying to take this step by step, Mr Monro. We are dealing with one phrase here - 'some other kind of education allowance that either duplicates one of the Navy's'. Just stop there. Other Navy education allowance that might be duplicated is what I am interested in at the moment.

Mr Preston - That is not quite what we said: We referred to 'one of the Navy's existing allowances'. I do not know the

conditions of service of the people in Papua New Guinea, and I do not know what sort of allowances they get, but it would be possible that there might be some allowance paid to them for some sort of educational need where we had some different sort of thing that is not called an education allowance. If we had a payment of some other sort, we would not want to be making this one.

Senator WEBSTER - Not related to education?

Mr Preston - It depends on what comes under education.

Senator WEBSTER - Could you give an example?

Mr Preston - I could not off hand.

Mr Monro - I think I can give an example. It could be that the Territory Service pays, as an educational allowance or part of an educational allowance, return fares for a child who is educated, say, at Port Moresby while his parents are stationed at Lae and that it does this 6 times a year. The Navy does not pay return fares as an allowance at all. This is regarded as an administrative expense, as a travelling expense, which the Navy meets on a certain number of occasions each year. It may be only once a year or twice a year. It is not an allowance that is payable at all, but it would certainly be something where similar things are provided for the Navy but not as an allowance for them. You would reach the stage where you would be dealing with an allowance as against a cost of running the Navy. If you were required to pay it as an allowance in these sort of circumstances, you could not compare it - there would be no comparison or no conflict between it and the 2 education allowances, or the other education allowance, which is the only one that is applicable.

CHAIRMAN - Senator Durack.



Senator DURACK - We have been told that there might be allowances given to Territory officers that are not appropriate for members of the Naval forces. Would it be difficult to find out what allowances the Territory officers are getting?

Mr Preston - I suppose in theory it would not be, in the sense that you could presumably put someone to work to cull the whole field of Territory allowances, wherever they are, and try to establish this.

Senator WEBSTER - All you have to do is to take an individual who was up there and advise the Committee of what allowances were being paid.

Mr Preston - Certainly, it could be ascertained.

Senator WHEELDON - It would have to be ascertained. Is not that the purpose of this regulation?

Mr Preston - No. One of the points about 'may' at the start of the thing is that we do not want to pick up <sup>all the allowances</sup> we know which one we want to pick up. It is the one that Defence have told is the one that has been approved to be paid, that is the Territory education allowance as we call it. We know the terms and conditions of the one we wish to pick up and so by 'may' the Naval Board makes a determination which specifies the circumstances, rates and conditions in the particular one we want to pick up.

Senator WHEELDON - This only refers to education; that is all it does refer to.

Mr Preston - As Mr Monro was saying, in the Territory they may include in some of their allowances as an education allowance fares which we would not want to pick up.

Senator DURACK - How are you going to be able to distinguish under this regulation? Once you retain the word 'may' and once you make a determination under this regulation you are going to have to give them the education allowance, which may duplicate some of these.

Mr Preston - No. They may have several different kinds of allowance. We know the particular one we want to pick up.

Senator WHEELDON - Maybe you do, but that is not what the regulation does. It does not say, 'we may determine the particular one we want to pick up'. It says that you may determine that they shall get these allowances, does it not?

Senator CAVANAGH - Reasonable compensation - that is my argument; it is not the same allowance.

Senator WEBSTER - It seems to my simple mind that on the explanation that you have given relating to other allowances which the Navy may pay for other purposes and perhaps which Navy may say could be attributed to education, the point that the Committee has originally brought up is well made and that is that there is residing in the Naval Board a discretionary power whereby they may say that a travel allowance already granted to a member of the Navy who happens to go into New Guinea in their view is an education allowance. So the whole basis of an education allowance being made available because they happen to be in the Territory can by the Navy's discretion be eliminated. Would that be a reasonable argument?

Mr Preston - It seems to me that you are suggesting that the Naval Board would not make the determination at all. We suggested that in fact the regulation would not have been put forward if there was any intention for the Naval Board not to make a determination.

Senator WEBSTER - I acknowledge that undoubtedly the goodwill is there to do the job. On the point made by the Committee with respect to 'may', there is no requirement for the payment to be made. You have emphasised that there may be in all of these various allowances, for instance, a travelling

allowance and that travelling allowance could be made really to be the education allowance that is spoken of in the Public Service Regulation.

Mr Monro - Could you not look at it this way: If the regulation had merely provided for an education allowance and had set out the present conditions and the present rates of the one that they are paying under this and went no further than that at all, then the situation would be that if any further allowances of an educational nature were to be paid because similar ones were paid to local officers there would be a discretion in the Government as to whether they would come back and make another regulation which covered it. They would not have to do it automatically. They would have a discretion. The Government would have a discretion.

It only wants, at the moment, to cover one particular one, and it could cover that and it would then have a discretion as to whether it added any others in the future. So the discretion would therefore be there. All this does is leave that discretion still here under this Regulation. But it saves the need, whenever they want to exercise that discretion, of coming back and using up the time of the Office of Parliamentary Counsel to translate another one into it, and it avoids the need for retrospectivity because all these things are very often determined as a result of a review of conditions in the past and to make it fair that they date back to a past date. So there is an administrative discretion, a government discretion, as to what it will do on the nature of things. All this does is remove it a little further back if you look at it in that light, although I would agree more with Senator Cavanagh's view. It seems to me that what I am saying is an answer to your question, Senator.

Senator WEBSTER - I acknowledge the point.

Senator CAVANAGH - I think the question is: Is it fair and right that Naval officers should get an education allowance? Someone has to make the decision and the authority to make the decision is the Naval Board. If they have the right to make the decision that it is fair that they get it, they must have the right to make the decision that they should not get it. That is their discretion.

Senator DURACK - Can I come back to this question of the exercise of the discretion in the first place as to whether you will give the allowance or not. If the Board decides to give

the allowance and you say it is the purpose of the regulation to give it that discretion, then where is there in the regulations here anything which would prevent that education allowance covering some provision which is not, as you say, appropriate for members of the Naval services? Once you exercise the discretion and give it, where is there anything here which says that it is not to cover something which you consider to be not appropriate?

Mr Preston - Supposing there are 2 different allowances in the Territory, I was saying we want to pick up one and not the other; I did not say we wanted to pick up part of one. I said we wanted to pick up one and not the other. I did not say we were going to pick and choose in the one we picked up between the various conditions, because, under this, the conditions have to be the same. This says: 'Where they are paid an allowance by virtue of these things.' Then it says, 'The Naval Board may....' so we look at the particular allowances that are paid. Usually allowances are given a name; this one is called 'Territory Education Allowance'. Supposing they have one called 'Territory Education Allowance' and we pick up that one, then we have to pick up all the conditions in that. But that does not oblige us to pick up some other education allowance that they have got payable.

Senator WHEELDON - I do not think that was your question, Senator, was it.

Senator WEBSTER - I think it is an interesting point.

Mr Preston - I thought the Senator was saying we could pick and choose the terms and conditions.

Senator DURACK - I think we were saying that when you decide to give something which is an allowance for the education of their children, your discretionary area is limited to giving something which, in particular circumstances, is an allowance for the education of children. It seems to me that you have a power to grant that or not grant it. You cannot pick and choose. Is that not the position?

Mr Preston - That is so. They have an allowance which is payable, and it pays for books and fees and that sort of thing, and that is the one we are picking up.

Mr. Monroe - I think the answer goes to sub-regulation 3, which says that the rates and the conditions are such as are necessary for the purpose of providing reasonable compensation in the circumstances.

Senator DURACK - If that is the case it does not matter if you say 'shall' because if you say 'shall' and it is not reasonable compensation, you are not going to get it.

Mr. Monroe - In fact it says 'shall' in that sub-regulation. It says: '... shall be subsequently....'

Senator CAVANAGH - If you decided to pay it to the naval officer.

Senator DURACK - I am concerned here, at the moment, with the statement in the letter that you may not want to give it, and with some allowance which is not appropriate for members of the naval forces. Is it not appropriate because it may be already provided by the Navy? For instance, travel is provided by the Navy. Is not this now, as Mr. Monroe says, really excluded by the words 'reasonable compensation'? If they are already getting it then they are not requiring compensation; it is something they are already getting.

Mr. Monroe - No, Sir. I was saying that the 'may' allows you to pick whether you will give an allowance or will not give an allowance. But having decided that you will give an allowance the question whether you should give the same amount as the Territory gives, or should give more or less having regard to the relationship between the overall terms and conditions of Navy personnel and Territory personnel is covered by the requirement that you 'shall' give reasonable



compensation. In that you can have a look at all the terms and conditions of the Navy, and compare them with all the terms and conditions of the Territory, and that is mandatory. But the question whether you will give an allowance at all is discretionary and that is discretionary for the reason that we do not want to - that they can say that although this is an allowance which goes to local people it is entirely covered by other things which the Navy gets. Therefore, although it is an education allowance, it is related to special circumstances in the Territory. It is not one which we want to pick up, and that is why the 'may' is there.

Senator DURACK - Do you have this discretion to pick up what you like?

Mr Monro - Yes, that is the original 'may'.

Senator DURACK - Listen to this:

Where Territory officers are by virtue of the terms and conditions of their employment entitled in particular circumstances

I do not quite know what is meant by that -

to be paid an allowance for the education of their children, being related to special aspects of service in Papua-New Guinea, the Naval Board may determine that an allowance is payable to members in circumstances specified in their commission, being circumstances that are similar to the circumstances in which the first mentioned allowance is payable.

Now does that not cover all the education allowances? Is not the discretion only really in respect of all or none?

Mr Preston - No, this does not say 'as we paid allowances'. It says 'an allowance'. Perhaps I can reverse this. In the Navy at the moment we have Territory education allowance under 111(A), and we have education allowance under

112(2). There are 2 allowances payable for the education of a child. If they have 2 allowances in the Territory, we do not want to pick them both up; we only want to pick up one of them. That is why it says: '...is eligible to be paid an allowance, the Naval Board may...' If you said '... an allowance, the Naval Board shall...' the Naval Board would have to pick them both up.

Senator WHEELDON - Cannot you say 'shall' using the words 'pick it up', that in circumstances where one allowance is paid to the naval officers serving in the Territory, and 2 allowances are payable to the Territory officers the Naval Board 'shall pick up' the other allowance and give it to the naval officers?

Mr Freston - But how? If you have 2 allowances, then somehow or other, if you do not want the Naval Board to have the discretion to pick which one it is, the regulation has to pick it. Now if the regulation is to pick which one it is, it seems to me it would have to describe what that allowance was in considerable detail, so that you would be able to identify that it was that allowance, and not this allowance-----

Senator WHEELDON - No, I do not think so, because I think you have covered that in relation to what Senator Durack has already referred to - clause (3.) where it refers to providing reasonable compensation. I mean the whole rate is determined.

Mr Preston - That only arises when you have picked up the allowance.

Senator WHEELDON - Yes, of course. If you were not giving an allowance you would not have a rate of compensation when there was no allowance at all.

Senator CAVANAGH - Is there not in (a) a similarity between the circumstances not related to the rate? And (b) suggests to my mind there should be perhaps a different rate where you could pick up one rate and not another. And (3.) ties your hand somewhat to the rate you can fix.

Senator WHEELDON - Provision is made for reasonable compensation.

Senator CAVANAGH - The first thing is that the circumstances must be similar. You decide they are similar. Then under B you decide, because they are similar, to fix a rate. Now, the rate you fix must be determined by sub-clause (3.)

Mr Monro - Yes, I agree with that.

Senator CAVANAGH - And it must be reasonable compensation. Under the Public Service Act it may or may not be reasonable compensation. It might be an allowance and they might have a number of allowances. But it may not be reasonable compensation considering all the conditions of the Naval service.

Senator WHEELDON - It cannot be reasonable compensation unless you are considering all the conditions of Naval service. It is either reasonable or not reasonable.

Senator CAVANAGH - But a reasonable compensation under one service can be a different amount than under another service.

Senator DEVITT - I am trying to get it down to simple terms so that I can get a complete appreciation. I refer to sub-clause (3.) - where Territory officers are entitled to be paid an allowance. First of all, it is to be established that Territory officers are to be paid an education allowance. Then having told them that, surely it must go on to say that the Naval Board shall determine that and the rate and the conditions. Does the whole thing not hinge on this. Where Territory officers are entitled to be paid an allowance for education of their children, first of all you have to establish that that is so, have you not? And if you do not establish that they are entitled in certain circumstances to be paid that allowance, then the thing dies at that point, does it not? But if it is determined that an allowance is payable then surely it shall be payable.

Mr. Monroe - No, Senator. That leaves out a second step. I agree with you that the first thing is whether the Territory officers are entitled to be paid an allowance at all. And the third thing, if you do not find that, is there is no further to go. But having found that, you have then to go a second step and you have then to ask whether the Navy by virtue of their terms and conditions of employment adequately covered for this kind of allowance or are they at a disadvantage compared with the Territory officers. It does not say this in full, but this is the step that you have to take and this is the reason for the (inaudible)

You have got to find that in particular circumstances Territory officers are entitled to an allowance. But just because this happens, it does not mean that the Navy officers who are in the same circumstances - and 'the same circumstances' really means that they are working in the same area and subject to the same kind of particular disabilities, and that they have children, for example, and that there are no secondary schools in that area for children - these are the sorts of circumstances that we are thinking of. You find that they are the same circumstances, but then you have still got to go to the question: Are the Navy people already receiving something to compensate them for these circumstances? It is only when you find that, that you can get into the position where you can say 'shall'. The regulation does not put that in full. Perhaps it could, but it does not.

Senator DEVITT - Are you not putting a narrow interpretation on the 2 words 'particular circumstances'? You are confining them to an interpretation which you intend to convey in this thing, but could I not, with as much validity, argue that when you use the expression 'particular circumstances', this would give you a discretion as to whether there is an allowance payable at the present time, and things of that nature, and that the circumstances are such in this case that in fact the entitlement would not then exist?

Mr. Monro - I would not like it to rely just on that. I would not say that it could not be interpreted in that way, but I would not say it was the interpretation which would ordinarily be place on it. If I wanted it to mean that, then I would think that it would be desirable to spell that out in much more detail.

Senator WHEELDON - What I cannot understand is why you cannot say something to the effect that where members serving in the Territory are entitled to an education allowance, and such an education allowance is payable to Territory officers of a kind which is not payable to members, members shall be given reasonable compensation for such education allowance payable to Territory officers. Does that not cover it?

Mr Monroe - Something like that could have been said except for the fact that the Public Service Regulations were intended to do exactly the same thing and had done it in different terms. I come back to what I said - that we were trying to do for the Navy exactly what we had done for the Public Service, and that the ordinary principle is that if you are going to do it, you should do it in the same terms.

Senator WHEELDON - You have done it this way because the Public Service Board did it.

Mr Monroe - I started off by saying that that led into the form of it. We were trying to deal with a particular problem up in New Guinea. The Public Service action had preceded it, and had done it in a certain way, and we wanted to do exactly the same for the Navy as for the Public Service. Therefore, it was desirable, from a legal point of view, to do it in the same terms.

Senator WHEELDON - Why?

Mr Monroe - If you try to give people the same thing in different terms, you give rise to the suggestion that you are not trying to give the same thing - that you are in fact trying to give different things to one person and another.

Senator CAVANAGH - And you need 2 court cases to find out what they mean?

Senator WEBSTER - That point was avoided in the Minister's answer to us. He did not explain that the difficulties here arise from the fact that there is this Public Service Regulation which was attempted to be followed in this instance.

Mr Preston - We did not mention that. I was not fully aware of all the background because I was not involved in the Public Service situation.

Senator WEBSTER - This is the core of this matter.

Mr Preston - Yes.

Senator WHEELDON - It seems to me to be involved. The reason it is being done is that the Public Service regulations say so.

Mr Preston - Yes. Perhaps I may make this point: As far as we were concerned we put a proposition across to the Parliamentary Counsel for the making of a regulation and when he came to draft the regulation he said to me: 'I have already done one for Army in these terms'. Mr Monro did not in fact mention the Public Service one but because of this precedent which had been made some months before, we would not normally depart unless perhaps it did not fit conditions of naval service for some reason, or some reason like that. So to some extent we were presented with a sort of fait accompli, you might say.

CHAIRMAN - Are there any further questions? If not, thank you, gentlemen, for coming along this morning.

The witnesses withdrew.