

TABLED PAPER

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DEPARTMENT OF THE SENATE	
PROJECT NO.	612
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<i>J. ...</i>	
Clerk of the Senate	

THE SENATE

STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

SIXTIETH REPORT

DEFENCE FORCE (SALARIES) REGULATIONS

MEMBERS OF THE COMMITTEE

Senator I.A.C. Wood (Chairman)
Senator the Hon. J.L. Cavanagh
Senator S.J. Collard
Senator G. Georges .
Senator A.J. Missen
Senator S.M. Ryan
Senator the Hon. R.C. Wright

Function of the Committee: Since 1932, when the Committee was first established, the principle has been followed that the function of the Committee is 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

SIXTIETH REPORT

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

Defence Force (Salaries) Regulations

- 2 The amendment of these regulations contained in Statutory Rules 1978 No. 3, and attached to this report as appendix 1, provides that where a medical or dental officer of the Defence Force is appointed to a higher rank, and the rate of salary applicable to that rank is lower than that of his previous rank, he shall be paid the higher rate of salary while this difference in rates persists. In addition he is entitled to further increases that accrue from time to time to the rank which he previously held.
- 3 This peculiar provision has been explained to the Committee as an attempt to overcome an anomaly which has arisen because the remuneration of these officers is fixed by reference to public service classification. As a result of certain changes in public service salaries, the salary of a colonel has overtaken that of a brigadier and a major-general.
- 4 The evidence disclosed that the regulation is designed to be a stop-gap measure to overcome the inability of the Public Service Board to remove the anomaly, which arises from the fact that ranks above colonel are aligned with the Second Division of the public service and their salaries did not increase. Instead of obtaining an adjustment of such salaries, further anomalies are created and may result

in two officers, of the same rank, undertaking the same duties, being paid different salaries because of the different emoluments of their previous ranks. Instead of taking resolute action to correct the anomaly, the Department of Defence has produced a regulation, not restricted to the particular circumstances, but couched in general terms, which if taken as a precedent for other areas of Commonwealth employment, establishes a radical and potentially disruptive new principle of remuneration; that an officer is entitled to any advantage accruing to any position he has formerly held.

- 5 The amendment of the regulations has the effect of unfairly discriminating between individuals, and thereby trespasses unduly upon personal rights. For that reason the Committee recommends that the amendment be disallowed.
- 6 The disallowance of the amendment would not disadvantage any officers, because according to evidence given before the Committee there are no officers in the situation contemplated by the amendment. The disallowance would also help to ensure that the anomaly is corrected properly.
- 7 The evidence taken by the Committee is contained in appendix 2 to this report.

Ian Wood
Chairman

13 April 1978

APPENDIX 1



Statutory Rules

1978 No. 3

REGULATIONS UNDER THE DEFENCE ACT 1903, THE NAVAL DEFENCE ACT 1910 AND THE AIR FORCE ACT 1923*

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Defence Act 1903*, the *Naval Defence Act 1910* and the *Air Force Act 1923*.

Dated this eleventh day of January 1978.

ZELMAN COWEN
Governor-General

By His Excellency's Command,

D. J. KILLEN
Minister of State for Defence

AMENDMENT OF THE DEFENCE FORCE (SALARIES) REGULATIONS†

1. Regulation 7 of the Defence Force (Salaries) Regulations is amended—

- (a) by omitting "The" and substituting "Subject to sub-regulation (2), the";
- (b) by adding at the end thereof the following sub-regulation:

"(2) Where a medical officer or a dental officer is promoted to a higher rank, or appointed to hold temporarily a higher rank, and the rate of salary applicable to the officer in respect of his service in that higher rank during a period is less than the rate of salary that would have been applicable to the officer in respect of his service during that period if he had not been so promoted or appointed, the rate of salary applicable to his service during that period shall be that higher rate."

Annual rate of salary payable to officers

2. The amendment effected by regulation 1 applies in relation to Application service by members of the Defence Force after 10 October 1977.

* Notified in the *Commonwealth of Australia Gazette* on 16 January 1978.

† Statutory Rules 1973, No. 100 as amended to date. For previous amendments of the Defence Force (Salaries) Regulations see footnote † to Statutory Rules 1978, No. 2 and see also Statutory Rules 1977, No. 2.

EXPLANATORY STATEMENT

STATUTORY RULES 1978 NO 3

Issued by the Authority of the Minister for Defence

AMENDMENTS OF THE DEFENCE FORCE (SALARIES) REGULATIONS

Regulation 7 of the Defence Force (Salaries) Regulations provides that the salary payable to an officer is the rate specified in the appropriate schedule. Schedule 5 prescribes a higher rate of salary for a medical or dental officer holding the rank of Colonel, or equivalent in the Navy or Air Force, than for a medical or dental officer holding the higher rank of Brigadier, Major General or equivalent.

The attached Statutory Rules provide that, where a Colonel or equivalent is promoted to a higher rank, the rate of salary payable to him will not be reduced.

The date of effect of the Statutory Rules will be 10 October 1977.

APPENDIX 2

SENATE STANDING COMMITTEE ON
REGULATIONS AND ORDINANCES

Transcript of Evidence

(Taken at Canberra)

THURSDAY, 16 MARCH 1978

Inquiry: Defence Force (Salaries) Regulations

Present

Senator Wood (Chairman)

Senator Cavanagh Senator Missen

Senator Collard Senator Ryan

Senator Georges

IN CAMERA

Mr S. BROWN, Chief Executive Officer, Legislation Review,
Department of Defence, and

Mr L. LUDOVICI, Chief Executive Officer, Pay and Allowances,
Department of Defence,

were called and examined.

CHAIRMAN - The Committee is examining the amendment of the Defence Force (Salaries) Regulations contained in statutory rules 1978 No.3. The stated purpose of this amendment is to ensure that where certain officers are promoted to a higher rank, their salary will not be reduced. The Committee would like the witnesses to explain how it comes about that officers promoted to higher ranks suffer financially, and why this anomaly is sought to be corrected by the apparently peculiar provisions of this amendment.

Mr Ludovici - The anomaly arose because of a long standing alignment of service medical and dental officers' salaries with the Commonwealth Public Service medical officers. The alignments exist for medical officers in the Defence Force up to the rank of colonel. Above the rank of colonel the alignments are with the Second Division of the Australian Public Service. In 1976 Public Service medical officer rates were increased following an Arbitration Commission decision, and those increases flowed only to the ranks up to colonel. The ranks that were aligned with the Second Division of the Public Service did not increase. The increases were large and consequently the ranks up to colonel received quite substantial increases. The colonel's salary has overtaken the salary of brigadier and major-general. The situation that has arisen as a consequence of this is that an officer promoted from colonel to brigadier receives a reduction in salary and this was thought to be not a proper situation. Also it would be a disincentive to officers seeking promotion or being given promotion. The purpose of the regulation was to provide a mechanism to preserve the salary of a colonel on promotion. In brief, those are the circumstances leading to the regulation in statutory rules 1978 No.3.

CHAIRMAN - Senator Missen has had quite a lot to do with this aspect, so perhaps he will commence.

Senator MISSEN - I suppose you are familiar with the correspondence which the Minister has had with Mr Peter Falconer, the member for Casey.

Mr Ludovici - Yes.

Senator MISSEN - This includes a letter which I received yesterday from Mr Falconer on 15 March - the most recent letter.

Mr Ludovici - Is that from Mr Falconer to the Minister?

Senator MISSEN - No, that is from the Minister to Mr Falconer.

Mr Ludovici - Yes, you are right.

CHAIRMAN - Have you seen that letter?

Mr Ludovici - Yes, I have.

Senator MISSEN - Perhaps I can deal first with your comments. Let me get the situation clear. The regulation itself, the amendment of it, does not refer in any way to a brigadier-colonel situation. It is expressed in quite general terms, is it not, in the amended regulation.

Mr Ludovici - Yes, it is.

Senator MISSEN - It could apply, I take it, to other positions in the medical-dental service as well.

Mr Ludovici - It certainly would not occur.

Senator MISSEN - It would not occur on present salary arrangements.

Mr Ludovici - That is true.

Senator MISSEN - In fact, it does not occur to anybody at all at the moment, does it?

Mr Ludovici - No, it does not. There is no one receiving any salary protection under that regulation at this moment.

Senator MISSEN - The amendment is to take effect after 10 October 1977 and the regulation comes into operation on 11 January 1978. What is the significance of 10 October 1977?

Mr Ludovici - No particular significance. That was simply the day on which the delegate of the Minister approved the conditions.

Senator MISSEN - I see. You have gone ahead with this regulation which I will come to in a moment - it seems to me an extraordinary regulation - on the basis of nobody being affected at the present time. But is anyone contemplated to be affected soon?

Mr Ludovici - Yes. When we did it there was a situation in contemplation. But it has not come to pass as yet.

Senator MISSEN - I see. The Minister says there are no cases warranting this application at present. I will have to go further

and say that you expect that there will be cases warranting it quite soon?

Mr Ludovici - Yes, possibly.

Senator MISSEN - Let us go to the actual thing itself. As I understand it from the correspondence of Mr Falconer, there is some argument backwards and forwards as to whether this was in accordance with other provisions of the Public Service regulations protecting people on promotion and not going to a lower salary. But this regulation goes much further than that, does it not?

Mr Ludovici - Yes, it goes somewhat further. It allows national wage case increases or subsequent increases to pass to the officer concerned.

Senator MISSEN - Does it mean that if an officer is promoted from job A to job B, then according to this proposed regulation, for any period where there is a rise in the salary of the job he left which makes that salary higher than his existing wage, he will get that rise?

Mr Ludovici - The idea of it is salary preservation. We are talking of, say, someone of the rank of colonel being promoted to brigadier. He remains with the salary of a person of the rank of colonel.

Senator MISSEN - If the brigadier's salary gets better he will be on a brigadier's salary but if the colonel's salary is better or gets better, say, this year, next year or in 10 years time, he will be entitled to claim that increase?

Mr Ludovici - Yes, that increase would flow to him.

Senator MISSEN - Yes, that is right. He will have to draw attention to it, perhaps, because years might have gone by since he moved from one position to another. But that salary increase will go to him if the job he has been promoted from gets a better salary?

Mr Ludovici - Yes. It happens regularly now of course because of wage indexation. It happens every quarter; the salaries are increased.

Senator MISSEN - Yes, but it does not happen every quarter that you get this curious situation that a brigadier, who is a higher rank, is on a lower salary than a colonel. That would be a pretty unusual situation, would it not?

Mr Ludovici - Yes, that is the anomaly that we are trying to correct.

CHAIRMAN - I really cannot understand how this happens.

Senator MISSEN - Why cannot the anomaly be corrected by making sure that the brigadier's salary is more than the colonel's salary?

Mr Ludovici - The situation is that because of a close connection as far as salary is concerned, we approached the Board some time ago with regard to this anomaly and sought to apply what we call a boss-subordinate allowance, which is an increase of 2 per cent to the higher rank to give him a margin over people on a lower rank. At the time the Board was in negotiations with the AMA and it had not come to a position with regard to its own employees as far as this boss-subordinate anomaly was concerned. The matter has not yet been resolved. It has proceeded to the anomalies conference which considered that there was an arguable case for the anomaly to be determined; the matter is to come before the Arbitration Commission but it has not been listed as yet. This is the reason why we have not moved to rectify the basic situation.

Senator MISSEN - Soon we are going to be given the most extraordinary regulation and expected to approve that regulation instead of the obvious thing being done, that is, giving a slight increment to someone holding a higher rank.

Mr Ludovici - It arises because of the circumstances I have just described.

Senator MISSEN - Because the Board has not approved of this?

Mr Ludovici - It is before arbitration. It is a matter that is being argued in another forum.

Senator MISSEN - And because that has not been cured, this regulation has been put in to patch up the situation?

Mr Ludovici - Yes.

Senator MISSEN - Do you not agree that in patching up the situation you are creating a precedent for people in other spheres of the Public Service to look back to a job they left 10 years before to see whether there is any increase and to claim that they ought to get that increase?

Mr Ludovici - I do not think we saw those implications in it. In fact there are precedents for that type of regulation already in Defence Force Regulations.

Senator MISSEN - Can you mention them to me?

Mr Ludovici - I cannot name the specific regulation but we have a system of salary protection for other ranks who are commissioned and who go to a service college. They receive a salary protection much along the same lines, with national wage cases being paid as if they were in the rank they occupied before commissioning.

Senator MISSEN - Those are not the circumstances the Minister was referring to in his letter when he said that the precedents were to protect someone moving from one place to another to make sure that he was certainly not on a lower rank. That only goes that far, does it not?

Mr Ludovici - Yes. But the circumstances are similar when another rank is commissioned because there is a salary on commissioning. There is a regulation of long standing in fact in the Defence Force Regulations to protect the salary of the other rank member, so that he does not get a fall in salary on commission.

Senator MISSEN - On commissioning, yes, but it does not mean that five years later he can look back and say: 'I was in a different position, and because it has been upgraded or got a better ranking I am now entitled to that increase as well'.

Mr Ludovici - Yes, but I do not think a member, say, a medical officer who has been promoted in the past can now look back and ask for protection under this regulation.

Senator MISSEN - I suggest that is not right. On interpretation of the regulation, where in fact he is promoted to a higher rank, in respect of his service in that higher rank, during a period his salary is less than the rate of salary that would have been applicable to the officer and if he had not been promoted, the rate of salary applicable for his service during that period shall be the higher rate. Surely that has no limitations in time upon it? If in fact 10 years ago you were in position A and entitled to a certain salary; you are promoted to a brigadier and then later the Government or the arbitration system or someone upgrades that original position, or gives it a higher increment; you get that increase to keep you ahead - do you not?

Mr Brown - I should not have thought so. I should make it clear that officers of the Defence Force are paid according to their rank, not according to classifications for positions, as is the case in the Public Service. So there would not be a situation where someone could look back to a particular position that he held in the past. It may be that a position gets re-classified say, from lieutenant-colonel to colonel classification, but that would not have any pay consequences for somebody who might have held that position in the past.

Senator MISSEN - Take the positions of colonel and below:

Because of arbitration decisions they would be above a brigadier. Is that right? They could go further above a brigadier because of another arbitration decision in three years' time, could they not?

Mr Ludovici - It is possible.

Senator MISSEN - It is possible. And thereby this regulation would entitle the brigadier to that increase - is that not right? I am sorry it is speculative.

Senator RYAN - We are considering only the case of an officer temporarily holding a higher rank - are we not? Are you arguing from that position?

Senator MISSEN - No, he is promoted to a higher rank, or appointed to hold temporarily a higher rank. It is one or the other; it is not just temporarily. It could be any of them.

Mr Brown - Yes, it is substantive.

CHAIRMAN - It could be any of them.

Senator MISSEN - It could be a permanent position or a temporary one.

Senator GEORGES - I cannot follow what is happening. When this officer is promoted to the rank of brigadier, are his responsibilities in the same area as they were when, say, he was colonel? Or does he take on a new range of responsibilities? Is he in the range of being a medical officer, or has he other responsibilities of brigadier?

Mr Ludovici - He is a brigadier in the Medical Corps or the medical branch; his responsibilities would be higher than if he were of the rank of colonel. There would be medical duties and no doubt supervisory and policy duties as well.

Senator GEORGES - But is he still in the same stream?

Mr Ludovici - He is in exactly the same stream. If you wish I can pass round a schedule here which shows the anomaly and how it occurred. It might be of some assistance.

Senator MISSEN - One thing that worries me is: Say another officer is appointed. There is more than one brigadier in the Medical Corps, I assume.

Mr Ludovici - Yes.

Senator MISSEN - Some are appointed through the ranks and some

I suppose come in from outside, do they?

Mr Ludovici - No, not at that rank.

Senator MISSEN - They come in at a lower rank at some stage?

Mr Ludovici - Yes. The normal rank of entry is captain, and in some cases major. But it does not go as high as direct entry at the level of colonel.

Senator MISSEN - Do they ever jump from captain to brigadier?

Mr Ludovici- No.

Senator MISSEN - They just must go through these steps.

Mr Ludovici - Yes. There is a strictly hierarchic progression through the steps.

Senator MISSEN - Would everybody who becomes a brigadier have gone through the same wage structure? Or are there different wage structures which they might have been through?

Mr Ludovici - No. They go through the same wage structure. They are in a particular wage/salary progression system.

Senator MISSEN - I think I can probably put the case most particularly: That this is the wrong way of doing it. This creates a curious precedent which other people may claim in regard to other positions. They can always look back at something they would have had and claim it to keep above. Surely the right thing is the straightforward thing of ensuring that the higher rank gets a higher salary and not this sort of band-aid method of doing it.

Mr Ludovici - Yes, that is quite right. That would be the normal way of solving that problem except for the circumstances that I described. We are tied to the Board with regard to this. The Board's negotiations with the AMA would have been pre-empted had we moved to recognise the boss-subordinate anomaly in advance of their recognising them.

Senator MISSEN - I understand that but I do not appreciate nor agree with the matter.

Senator CAVANAGH - Do I understand from this that you can have two officers of the same rank doing the same duties on different rates of pay? One has an entitlement through a previous post?

Mr Ludovici - Yes, that is a situation that could arise. You could have a brigadier promoted before the statutory rule comes into effect and one promoted after that.

Senator MISSEN - I thought the answer I got was that this could not take place.

Senator CAVANAGH - That is the actual position? He gets a higher pay because of a previous entitlement?

Mr Ludovici - Could I go back a step? The situation is that those already promoted have had an increase on promotion. There was no problem with regard to having medical officers accept

promotion under those circumstances. The situation that we are confronted with now is that an officer accepting promotion would take a fall in salary. That is the situation we are trying to protect.

Senator CAVANAGH - He would not take a fall in salary which would be the salary applicable to the promotion he was getting.

Mr Ludovici - Yes.

Senator CAVANAGH - Therefore you pay that individual a higher salary than the colleague doing the same work with the same rank next to him.

Mr Ludovici - Yes. The situation is that there are people at a lower rank with lower responsibilities getting a higher rate of pay than officers with higher responsibilities. That is the basic anomaly that we are confronted with.

Senator CAVANAGH - It is quite right then what Senator Missen said? The whole set-up is wrong, is it not?

Mr Ludovici - Yes, it is a very anomalous situation at the moment.

CHAIRMAN - Do you not think it is a ridiculous situation that people getting promoted are really lowered as far as their salary is concerned? Could not the department rectify this and put it on to a proper basis?

Mr Ludovici - We would like to do so except for the situation that we have been requested not to pre-empt the Board in its negotiations by moving at this point of time.

Senator COLLARD - Is this regulations?

Mr Ludovici - That is right.

Senator RYAN - Has the Board indicated how long it will take?

Mr Ludovici - We keep this situation monitored continuously. What has happened is that the Board and the AMA have gone to the Anomalies Conference and have received an okay to take this case to the Arbitration Commission. The Anomalies Conference recognised that there was an arguable case to establish that there was an anomaly. They are tied because of the indexation guidelines and the general arbitration principles that apply in the area. These

apply some constraint. The matter is now waiting to be listed in the Commission for hearing.

Senator RYAN - You have no indication?

Mr Ludovici - We are in the Commission's hands, of course. We cannot say when the Commission will list it.

Senator RYAN - It does make a difference if it is a short period of time - a couple of months - or whether it is going to be years.

Mr Ludovici - It is not likely to be years. It is more likely to be months.

Senator CAVANAGH - Do you not think you should put a limit on the application of this amended regulation?

Mr Ludovici - The purpose of the regulation is to tide us over until we can institute a boss-subordinate anomaly.

Senator CAVANAGH - Yes, but once it is there it is always there. Perhaps the regulation could stipulate a specific period after which it would automatically cease to apply.

Mr Brown - We would certainly proceed to repeal this sub-regulation at a time when the anomaly disappeared, but it would be rather difficult to put a time limit on the provision itself because we simply would not know how long it would be before the anomaly disappears. It depends on these arbitration processes.

CHAIRMAN - Once the regulation becomes a regulation there is no time limit unless the Department enacts it.

Mr Brown - Yes, that is so.

CHAIRMAN - When is the Department likely to take steps to have the general deficiency of this situation rectified?

Mr Ludovici - That would occur when the situation of the boss-subordinate anomaly is clarified, after the Arbitration Commission hearing has taken place.

CHAIRMAN - When will that be?

Mr Ludovici - I cannot say. The matter has not been listed yet and we are in the hands of the Commission as far as that is concerned.

Senator CAVANAGH - Are you not overriding the Commission and fixing your own wage rates outside the Commission?

Mr Ludovici - No, we are not, because the Commission is concerned with the boss-subordinate anomaly which raises the salary of the brigadier. We have simply preserved the salary of a colonel. We have not done anything with regard to establishing a higher salary, which is the situation before the Commission.

Senator CAVANAGH - No, but you are no longer on work value, you are on a personal payment, are you not?

Mr Ludovici - The person concerned has a salary fixed for

the work that he did in the lower rank and all we are doing is preserving his salary as if he were still in that lower rank, even though he is performing duties at a higher rank. That is all we are doing. We are not pre-empting the Arbitration Commission in any way.

Senator GEORGES - That last comment needs to be examined.

Senator MISSEN - Does the Arbitration Commission fix brigadiers' salaries normally?

Mr Ludovici - No, that alignment comes through comparison with the Second Division of the Public Service and the brigadiers' salaries would not normally move until the Second Division salaries moved.

Senator MISSEN - And they have not moved?

Mr Ludovici - That is right. We are not tampering with the salary of brigadier. In fact we are not tampering with any salaries at all. It is a situation analogous to providing a non-reduction allowance. That happens commonly.

Senator MISSEN - A non-reduction into the future. Whatever might happen to the colonel's salary, if the brigadier's does not move that former colonel will continue to get the benefit which the colonel gets.

Mr Ludovici - Yes, what the colonel gets.

Senator COLLARD - It is a crazy situation when a man can take two promotions and end up on a lower salary.

Mr Ludovici - Yes.

Senator COLLARD - I can see that it is not your fault. This situation has come about and you are trying to get around it.

Senator CAVANAGH - Is there some way of getting even indexation?

Mr Ludovici - I do not think we will be allowed to skirt around it.

Senator CAVANAGH - Are you not doing so, because in fact the Arbitration Commission has a rate for the job? Some people get higher salaries than those fixed by the Arbitration Commission.

Mr Ludovici - The situation we are looking at now is not one

of that type. We are not looking a rate above a work value rate for the job.

Senator CAVANAGH - I would have thought you would be doing so in some cases.

Mr Ludovici - Certainly not in this case. We are not giving the man a higher rate than he would normally get.

Senator CAVANAGH - A higher rate than he was getting but a higher rate than his colleague in the same position is getting.

Mr Ludovici - True.

Senator CAVANAGH - His colleague is getting the rate fixed by arbitration; he is getting something higher.

Mr Ludovici - That is certainly true. The brigadier's rate is fixed and cannot move until there is a move in the aligned area. What we are doing is not providing for differential pay for different people; we are trying to smooth out the difficulties of a person being promoted and getting a lower rate of pay than he was before.

Senator MISSEN - What you do does have an effect, does it not?

Mr Ludovici - That is true. We have that situation normally in any sort of non-reduction situation. You have two people doing the same job and getting different rates of pay because one person happened to be on a higher rate before his salary was lowered or before he went into a job that had a lower salary. It is an administrative practice of long standing.

Senator CAVANAGH - If this regulation was disallowed, is there another method of getting over the problem? I think everyone would agree to the justification of preserving this salary. But Senator Missen has brought up some dangers in this method of application.

Mr Ludovici - I am not sure that there would be a method that would be common throughout the three services. This would be a difficulty I would suggest. We could probably find a way of getting round it in perhaps one service or two but not in all.

CHAIRMAN - I would like to thank Mr Ludovici and Mr Brown for coming along this morning and answering the questions.

The witnesses withdrew.