

1960.

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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA.

---

JOINT COMMITTEE OF PUBLIC ACCOUNTS.

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FIFTIETH REPORT  
AND  
FIFTY-SECOND REPORT.

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THE REPORTS OF THE AUDITOR-  
GENERAL—FINANCIAL YEAR 1958-59

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PARTS I. AND II.

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*Part I.—Presented pursuant to Statute; ordered to be printed, 8th November, 1960.*

*Part II.—Presented pursuant to Statute; ordered to be printed, 30th November, 1960.*

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[*Cost of Paper*.—Preparation, not given; 955 copies; approximate cost of printing and publishing, £310.]

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Printed and Published for the GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA by  
A. J. ARTHUR, Commonwealth Government Printer, Canberra.  
(Printed in Australia.)

Nos. 84 & 89 [GROUP B].—F.8936/60.—PRICE 2s.

JOINT COMMITTEE OF PUBLIC ACCOUNTS.

FOURTH COMMITTEE.

F. A. BLAND, C.M.G., ESQUIRE, M.P. (Chairman).<sup>1</sup>

F. J. DAVIS, ESQUIRE, M.P. (Chairman).<sup>2</sup>

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R. CLEAVER, Esquire, M.P.  
J. F. COPE, Esquire, M.P.  
A. S. LUCHETTI, Esquire, M.P.<sup>4</sup>

The Senate appointed its Members of the Committee on 19th February, 1959 and the House of Representatives its Members on 24th February, 1959.

<sup>1</sup> Resigned 10th March, 1960.

<sup>2</sup> Appointed 16th March, 1960; elected Chairman 17th March, 1960.  
<sup>4</sup>Appointed 30th March, 1960.

<sup>3</sup> Resigned 30th March, 1960.

## DUTIES OF THE COMMITTEE.

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Section 8 of the *Public Accounts Committee Act* 1951 reads as follows:—

8. The duties of the Committee are—

- (a) to examine the accounts of the receipts and expenditure of the Commonwealth and each statement and report transmitted to the Houses of the Parliament by the Auditor-General in pursuance of sub-section (1.) of section fifty-three of the *Audit Act* 1901–1955;
- (b) to report to both Houses of the Parliament, with such comment as it thinks fit, any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Parliament should be directed;
- (c) to report to both Houses of the Parliament any alteration which the Committee thinks desirable in the form of the public accounts or in the method of keeping them, or in the mode of receipt, control, issue or payment of public moneys; and
- (d) to inquire into any question in connexion with the public accounts which is referred to it by either House of the Parliament, and to report to that House upon that question,

and include such other duties as are assigned to the Committee by Joint Standing Orders approved by both Houses of the Parliament.

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# JOINT COMMITTEE OF PUBLIC ACCOUNTS.

## FIFTIETH REPORT.

### THE REPORTS OF THE AUDITOR-GENERAL—FINANCIAL YEAR 1958–59.

#### PART I.

##### CHAPTER I.—INTRODUCTORY.

The first duty of Your Committee as set down in section 8 of the Public Accounts Committee Act 1951 is—

- “(a) to examine the accounts of the receipts and expenditure of the Commonwealth and each statement and report transmitted to the Houses of the Parliament by the Auditor-General in pursuance of sub-section (i) of section fifty-three of the *Audit Act* 1901–1955.”

The second duty of Your Committee is—

- “(b) to report to both Houses of the Parliament, with such comment as it thinks fit, any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Parliament should be directed.”

2. While it was the practice of the first three Committees to consider each Report of the Auditor-General none had undertaken an inquiry based on these Reports alone, the follow-up of items being made in the course of other inquiries. On our appointment in 1959 Your Committee reviewed the situation. Noting that the main work of the Public Accounts Committee of the British House of Commons was concerned with the Reports of the Comptroller and Auditor-General and conscious of the specific reference to the Report of the Auditor-General in the present Act\* we considered whether the interests of the Parliament, Your Committee and the Auditor-General would be better served if we commenced a new series of annual inquiries which would deal specifically with matters raised in the Report of the Auditor-General.

3. At our Thirty-Sixth meeting held on Wednesday, 18th November, 1959, Your Committee agreed in principle to undertake such an inquiry based on the Reports on the accounts for the financial year ended 30th June, 1959. The following day we discussed those Reports (the Annual and Supplementary Reports) with the Auditor-General, Mr. H. C. Newman, C.B.E., and the Secretary and Chief Inspector of the Audit Office, Mr. V. J. W. Skermer, obtaining their views on matters where further examination by the Committee might be appropriate. Subsequently we appointed a sub-committee to select items for public inquiry and arrangements were made to seek written comments from the Departments concerned.

4. Your Committee considered these comments at our Forty-Fourth meeting on 24th March, 1960, and, having selected those items where further inquiry appeared warranted, discussed them with the Auditor-General and the Acting Secretary and Chief Inspector, Mr. W. A. Harper, on 29th March and with Mr. Harper alone on 31st March.

5. A series of public hearings was commenced on 5th April, 1960, when evidence was taken from representatives of the Snowy Mountains Hydro-electric Authority and the Treasury. Further evidence was taken on 29th April, 2nd, 3rd, 10th and 17th May, and on 6th June when Your Committee took evidence in private on matters connected with regulations prescribing rates of pay and allowances for members of the Defence Forces.

6. So far as was possible, we limited the field of our inquiries directly to the comments made by the Auditor-General in his Reports. Even so, some of our investigations proved to be extensive and raised issues of major importance. Accordingly, we have considered it appropriate to submit the results of our investigations in two Reports. This, the first Report, will deal with two subjects—

- (a) The delay in the issuing by the Treasurer, of a financial directive under section 25 (2.) of the *Snowy Mountains Hydro-electric Power Act* 1949–1958;
- (b) The delay in the promulgation of amending regulations prescribing new rates of pay and allowances for members of the Defence Forces, and unlawful payments made in the absence of these amending regulations.

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\*There was no reference to the Report of the Auditor-General in the 1913 Act.

The second Report will cover items concerned with—

- (a) Commonwealth Railways;
- (b) Commonwealth Serum Laboratories and the Canberra Community Hospital;
- (c) Postmaster-General's Department;
- (d) Department of Civil Aviation; and
- (e) Department of the Interior.

7. The nature of the matters disclosed by our follow-up of the Reports for the year ended 30th June, 1959, have been such that we have confirmed our intention to undertake regular annual inquiries based on the Reports of the Auditor-General. Our examination of matters raised in the Reports for the year ended 30th June, 1960, is now in progress.

## CHAPTER II.—SNOWY MOUNTAINS HYDRO-ELECTRIC AUTHORITY— DELAY IN THE ISSUING OF A FINANCIAL DIRECTIVE BY THE TREASURER.

### (a) INTRODUCTION.

See paragraph  
11 below.

8. Your Committee's investigation concerned a matter raised in paragraph 50 of the Supplementary Report for the year ended 30th June, 1959. Evidence was taken on 5th April, 1960, from—

Snowy Mountains Hydro-electric Authority	Sir William Hudson, K.B.E., Commissioner.
Department of the Treasury	Mr. K. W. See, Business Manager.
	Mr. J. F. Nimmo, First Assistant Secretary.
	Mr. J. H. Garrett, Assistant Secretary.
Audit Office	Mr. W. A. Harper, Acting Secretary and Chief Inspector.
	Mr. F. A. Johnston, Chief Auditor, Canberra.
Public Service Board	Mr. E. S. Lightly, Assistant Commissioner.

9. Section 25 (2.) of the *Snowy Mountains Hydro-electric Power Act 1949–1958* provides that the Treasurer may, out of moneys appropriated by the Parliament for the purposes of the Act, make advances to the Snowy Mountains Authority of such amounts and on such terms as the Treasurer, having regard to the provisions of clause 15 of the Agreement, determines. The Agreement comprises the First and Second Schedules to the *Snowy Mountains Hydro-electric Power Act (Number 31 of 1958)* which came into force on 6th November, 1958. Clause 15 of the Agreement relates to the calculation of the price of electricity produced by the Authority.

10. The accounting principles laid down in the Agreement vary significantly from those upon which the Authority's accounting was previously based, and the complete recasting of the Authority's accounts has been necessary.

11. In paragraph 50 of his Supplementary Report for the year ended 30th June, 1959, the Auditor-General said—

“ . . . As mentioned in my Supplementary Report for 1957–58 the recasting of the accounts to conform with the financial provisions of the Agreement is a task of considerable magnitude. Questions of interpretation have, with few exceptions, now been resolved and it is expected that the Authority will complete the financial statements for 1956–57, 1957–58 and 1958–59 shortly after the directive concerning the terms of Commonwealth advances to the Authority is issued by the Treasurer . . . ”

The purpose of Your Committee's inquiry into this matter was to ascertain more about the recasting of the Authority's accounts and to establish the reasons for and the effects, if any, from the delay in the issue by the Treasurer of the Financial Directive.

12. The Act (section 28) requires the Authority to keep proper accounts and records in accordance with the accounting principles generally applied in commercial practice. The accounts and records of financial transactions are subject to inspection and audit by the Auditor-General who is required, at least once in each year, to report to the Minister the results of such inspection and audit (section 28A).

13. Under section 32B of the Act the Authority is required also to prepare an annual report—

“ 32B.—(1.) The Authority shall, as soon as practicable after each thirtieth day of June, prepare and furnish to the Minister a report on its operations during the year ended on that date, together with financial statements in respect of that year in such form as the Treasurer approves.

Annual report  
of Authority.



(2.) Before furnishing the financial statements to the Minister, the Authority shall submit them to the Auditor-General, who shall report to the Minister—

- (a) whether the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records and show fairly the financial operations and the state of the finances of the Authority;
- (c) whether the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Authority during the year have been in accordance with this Act; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(3.) The Minister shall lay the report and financial statements of the Authority, together with the report of the Auditor-General, before each House of the Parliament within fifteen sitting days of that House after their receipt by the Minister."

14. The Annual Reports of the Authority in respect of the years ended 30th June, 1957, and 30th June, 1958, were presented to the Parliament in each instance over thirteen months late and without the financial statements required under the Act. On the occasion of the presentation of the 1957-58 Report on 25th August, 1959, the Minister for National Development, Senator the Hon. W. H. Spooner, M.M., informed the Senate of the reasons for the delay and of the intention to present the financial statements for each of those years as soon as possible after the recasting of the accounts and their certification by the Auditor-General.

Senate  
Parliamentary  
Debates, page  
241.

15. At the time of Your Committee's taking evidence in this matter (7th April, 1960) the financial statements for the years 1956-57 and 1957-58 and the report for the year ended 30th June, 1959, had still not been presented to the Parliament. On 27th April, 1960, in the Senate, the Minister tabled the full report for the year 1958-59 together with the financial statements relating to the previous two years. Each financial statement was qualified as follows:—

"NOTE.—Section 25 (2) of the *Snowy Mountains Hydro-electric Power Act* 1949-1958 provides for advances by the Commonwealth to the Authority to be on such terms as the Treasurer having regard to the provisions of clause 15 of the Commonwealth-States Agreement, determines. In 1950 the Treasurer specified the terms which were to apply to advances until such time as the Authority first commences to sell power, but at the date of the preparation of these financial statements had not notified any revision of those terms. Rather than delay the presentation of the statements any longer, the Authority had to make certain assumptions as to the revised terms, but anticipates that these assumptions will be acceptable to the Treasurer."

As at the 27th September, 1960, the financial directive still had not been issued by the Treasurer.

#### (b) RECASTING THE ACCOUNTS.

16. As previously mentioned the need to recast the Authority's accounts arose from the terms of the 1958 Act in which was incorporated the Agreement of September, 1957, between the Commonwealth of Australia and the States of New South Wales and Victoria. The recasting was fundamental; whereas from the inception of the scheme costs had been allocated on the basis of structures such as dams, tunnels, bridges and roads, the terms of the new Agreement necessitated the system of allocation to be altered to one based on projects both present and future. Q. 58.

17. The Authority informed us that the recasting included a complete rearrangement of the form of its principal accounts and concerned expenditure which amounted to £92,000,000 at 30th June, 1957. Not only did the recasting involve a great deal of work in itself but the very complex financial provisions of the Agreement gave rise to numerous questions of interpretation which were the subject of protracted study and discussion by the Treasury, the Audit Office and officers of the Authority. The Authority continued—

Exhibit  
No. 50/1.

" . . . Furthermore, the application of many of the financial provisions of the Agreement was no straightforward matter. For example, the allocation of capital expenditure to 'Stages' of the permanent works had to have regard to the views of the Snowy Mountains Council. It was necessary therefore to devise a practical method, consistent with the terms of the Agreement, for making these allocations of capital expenditure and then to obtain the concurrence of the Snowy Mountains Council to it."

Exhibit  
No. 50/1  
page 2.

18. Sir William Hudson, K.B.E., the Commissioner constituting the Authority, said—

" . . . It meant recasting the whole of our accounts. That involved the work of at least half a dozen qualified accountants for over two years. It was a very intricate exercise. Q. 4.

COMMITTEE MEMBER: Did that commence in 1957 or 1958?—(Sir William Hudson) Q. 5.  
That commenced when the Agreement became law in 1957. That occupied right up until about October or November, 1959 . . ."



## (c) THE DIRECTIVE BY THE TREASURER.

Exhibit  
No. 50/1.

19. A directive on the terms of Commonwealth advances to the Authority was issued by the Treasurer in 1950 but this directive was to apply to the date on which the Authority first commenced to sell power, and to remain in force until such time as it might be superseded by a later directive. The Authority first commenced to sell power in 1955 but the issue of a new directive was delayed pending completion of the new Agreement, which was signed in September, 1957. But while the issue of a new directive then became essential we were informed that it would have been quite futile for the directive to have been revised and put in a permanent form until the recasting of the accounts was completed towards the end of 1959. Sir William Hudson said—

Q. 5.

“ . . . I think history shows that so many points cropped up and so many different viewpoints could be applied to the interpretation of this Agreement that if the Treasury had got out a directive before the completion of the recasting of accounts, it would have had to be altered again, probably several times. So really, we feel, there was no alternative for Treasury but to delay the issue of the new directive until we had completed the recasting of our accounts. That takes us up until November last year (1959).

Q. 6.

COMMITTEE MEMBER: That did not in any way hinder your recasting of accounts? —(Sir William Hudson) It did not hinder the recasting of accounts. It meant we were really doing two jobs in one. We were recasting the accounts and clarifying a lot of doubtful points in the interpretation of the Agreement.”

The authority did not support a suggestion that the directive might have been issued in stages.

Q. 67.

COMMITTEE MEMBER: Then why should the Treasury directive not have been issued in stages . . . in order that each point would be resolved once and for all?—(Mr. See) That could have meant up to a dozen progressive directives. In addition to that, we found, having solved, as we thought one particular aspect or facet of the problem, that that led to another, and, on occasions, we had to go back and review our previous decisions in order to make the initial decision cover the whole of the problem.”

20. Formal pressure on the Treasury for the issue of the directive was first exerted by the Authority in June, 1959, and the matter was later taken up by the Minister for National Development with the Treasurer. Details of correspondence relevant to the delay which had passed up to 6th April, 1960, the day of Your Committee's inquiry, are as follows:—

Committee  
document.  
A.G.R. 18.

Date of Letter.	Details.
26th June, 1959 . .	.. From the Commissioner of the Authority to the Secretary to the Treasury—on the need for an early directive or if this could not be prepared immediately suggesting the issue of an interim directive on the tentative terms agreed upon between the Authority's and Treasury's officers.
27th August, 1959	.. From the Commissioner to the Secretary to the Treasury—on the possible delay in certification of the Financial Statements by the Auditor-General because of the lack of a directive.
31st August, 1959	.. To the Commissioner from the Acting Secretary to the Treasury—acknowledging the Authority's letter of 27th August, 1959 and hopeful that a directive would be completed <i>within a few weeks</i> .*
9th October, 1959	.. From the Commissioner to the Acting Secretary to the Treasury—referring to previous letters on the delay in the issue of the directive.
14th December, 1959	.. From the Minister for National Development to the Treasurer—on the reference by the Auditor-General in his report on the Authority's Financial Statements for 1956–57 and 1957–58, to the delay in the issue of a directive.
31st December, 1959	.. To the Minister for National Development from the Treasurer—acknowledging the letter of 14th December, 1959, regretting the delay and advising he would endeavour to ensure the issue of a directive at <i>an early date</i> .*
28th March, 1960	.. From the Minister for National Development to the Treasurer—drawing attention to the previous letter of 14th December, 1959, and continued delay in the issue of a directive.

\* Committee's italics.



21. It will be noted that as early as August, 1959, the Treasury was "hopeful that a directive would be completed within a few weeks", but over six months later in a formal statement to Your Committee dated 18th March, 1960, the Treasury said—

"... Some of the issues involved in the preparation of a Financial Directive are extremely complex. A considerable amount of preparatory work has, however, been done and general agreement has been reached with the Authority's officers on most points. Some points of detail still remain to be finalized, but it is hoped that it will be possible to submit a draft Financial Directive to the Treasurer in the near future."

Exhibit  
No. 50/3,  
page 2.

22. Meanwhile the Auditor-General and the Audit Office also had not been inactive in this matter. The Treasury had been approached and the Auditor-General himself had personally made representations to the Secretary to the Treasury. As well, the Auditor-General in his report to the Minister for National Development (dated 25th November, 1959) on the financial statements for the years 1956-57 and 1957-58 drew attention to the lack of a directive. He did so again in his report to the Minister dated 3rd March, 1960, on the financial statements for the financial year ended 30th June, 1959, and outlined some of the effects of the delay.

Q. 56.

#### FINANCIAL DIRECTIVE BY THE TREASURER.

"In my report to you on the financial statements for 1956-57 and 1957-58, I referred to the delay in the issue of the new directive by the Treasurer covering—

10th Report,  
S.M.A.,  
P.P. No. 18 of  
1959.

- (a) the terms of advances made to the Authority since the date on which the Authority first commenced to sell power, viz., 21st February, 1955;
- (b) the terms on which interest shall be paid to the Commonwealth; and
- (c) the terms on which advances shall be repaid to the Commonwealth.

The directive has still not been issued. As a consequence, interest charges to the date of this balance-sheet may require revision if the directive, when issued, does not confirm the Authority's assumptions as to what its precise terms cover.

As mentioned in my report on 25th November, 1959, although a tentative agreement has been reached between the Treasury and the Authority on the terms to be contained in the directive, it does not provide a completely satisfactory basis for compilation of the financial statements or my report thereon as—

- (a) the terms as finally determined by the Treasurer may not be as anticipated; and
- (b) there is some doubt as to whether certain of the anticipated terms can, in fact, be determined by the Treasurer in accordance with the provisions of section 25 (2.) of the *Snowy Mountains Hydro-electric Power Act 1949-1958* whilst 'having regard to the provisions of clause fifteen of the Agreement'."

23. On 28th March, 1960, the Minister wrote to the Auditor-General as follows:—

"I am concerned that the financial directive has still not been issued. As you are aware I wrote to the Treasurer about this matter on 14th December, 1959, after receiving your Report on the Authority's financial statements for the years ended 30th June, 1957 and 1958. The Treasurer informed me by letter of 31st December, 1959, that he would endeavour to ensure that the directive was issued at an early date. In view of your present Report I have again written to the Treasurer."

Exhibit  
No. 50/2.

See paragraph  
20 above.

24. Your Committee pursued this question of delay with the Treasury at the public hearings on 5th April, 1960. We accept the contention that there was little point in issuing the new directive until the major complexities in the application of the Agreement had been resolved and the task of recasting the accounts mainly completed. However, by August, 1959, the Treasury was able to inform the Authority that it was hopeful that the directive would be ready "within a few weeks". Thus the requirement since then has been for the Treasury to draft the directive for the consideration of and issue by the Treasurer, a task which the Treasury said was a major operation mainly because of the conditions attached to advances by the Commonwealth of which there could be fifty each year.

Qs. 19-25.

25. We were assured that the delay which had occurred was not due to any indifference on the part of the Treasury; it had been caused by pressure of other work and commitments in the Branch of the Treasury concerned, the Banking, Trade and Industry Branch. The First Assistant Secretary in charge of this Branch at the time, Mr. J. F. Nimmo, said that the basic work in the preparation of the directive would fall to one man, Mr. J. H. Garrett, Assistant Secretary (who also gave evidence before us). Mr. Garrett assessed that he would need a full week, free of other duties, to prepare a draft of the directive after which it would be necessary to consider it with the Authority and the Audit Office before submitting it to the Treasurer for approval. Mr. Garrett indicated, however, that other requirements had prevented him from devoting the time necessary to prepare the draft. This was confirmed by Mr. Nimmo.

Q. 68.

Q. 34.

Q. 34.

Q. 70.

26. We asked whether assistance could be given to Mr. Garrett or whether some other persons could be allotted the job but Mr. Nimmo referred to a shortage "of capable staff". We asked Mr. Nimmo whether an increase in staff had been sought.

Q. 47.

Q. 47.

"COMMITTEE MEMBER: Can you, Mr. Nimmo, tell the Committee if this very important section, in which you are involved with Mr. Garrett, has current requests for an increase in its highly qualified staff?—(Mr. Nimmo) Not at the present moment."

Q. 89.



Q. 90. Mr. Nimmo went on to say that the Branch had been passing through an exceptional period of work associated with banking legislation and other major policy matters but that it seemed the Branch was now approaching a more normal flow of work. Later Mr. Nimmo said—

Q. 119. “Perhaps I should say that unofficially I did raise our particular staffing difficulties on a more or less informal basis with the Chairman of the Public Service Board and he said, ‘This is something where you are faced with an abnormal flow of work. See if you can get along by rearranging the duties within the branch’. I did not press it as perhaps I should have, but that is what we have been trying to do to get done things which had to be done.”

27. Mr. Nimmo admitted that the matter of issuing the directive had become one of urgency and said—

Q. 69. “. . . As far as Mr. Garrett’s work is concerned, at the present moment, unless the Treasurer suddenly said that he wanted another draft of a Cabinet submission or other notes prepared, this is right at the top of the priorities for Mr. Garrett’s work.”

Q. 45. 28. The senior Treasury representative told us that he thought it was “absolutely essential” that the Treasurer’s directive should be submitted in time for the preparation of the 1959–60 accounts. On the basis of this and other evidence given by him Your Committee had reason to expect that the directive would be issued at a reasonably early date. But in fact this has not occurred and the delay has continued notwithstanding the very strong representations from the Minister for National Development, the Authority, the Auditor-General and the Audit Office.

29. In reply to our request for advice whether the directive had since been issued, the Treasury informed us by memorandum dated 27th September, 1960, as follows:—

“I refer to your memorandum dated 8th September concerning the public hearings conducted by the Joint Committee of Public Accounts on 5th April last with regard to certain aspects of the accounts of the Snowy Mountains Hydro-electric Authority.

Committee  
Document  
A.G.R. 57.

Unfortunately, a determination under section 25 (2) of the *Snowy Mountains Hydro-electric Power Act 1949–1958* (that is, a determination of the terms on which advances by the Treasurer to the Authority are made) has not yet been issued by the Treasurer.

Considerable progress in the drafting of a determination has, however, been made. I might say that, owing to the continuing pressure of work on matters demanding more immediate attention, this progress has been achieved only because the responsible Treasury officer devoted part of his recreation leave to the work.

The work that has been undertaken to date confirms the view expressed by the Treasury officers at the Committee’s public hearings on 5th April that the preparation of the determination would be a task of considerable complexity. It is also regarded by the Treasury as a task of considerable importance because the determination will have a major bearing on the calculation of the price of Snowy Mountains power to the States of New South Wales and Victoria (in respect of which annual payments may eventually be of the order of £20,000,000). For this reason we are anxious to ensure that the determination will incorporate thoroughly sound principles expressed in detailed but clear and unambiguous terms.

Attached for the Committee’s information is a copy of a draft document that has resulted from our work to date.\* This document should be regarded as nothing more than a first, and incomplete, draft. Some sections still have to be drafted, and substantial revision of and additions to the existing draft sections will undoubtedly prove to be necessary. The document is, however, made available to the Committee on a without prejudice basis at this stage in order that the Committee might be able to form some appreciation of the complexity of the task.

Pending further work on the draft determination in the Treasury, a copy of the attached document was sent informally to the Business Manager of the Snowy Mountains Authority on 29th August, with a request that he put in hand a critical examination of it. It is understood that the Business Manager hopes to let us have his preliminary comments in the near future. When these are received, it is envisaged that further detailed discussions with officers of the Authority, and also with officers of the Audit Office, will be held. Because the determination will have the status of a legal document and also because technical drafting aspects are proving to present some difficulty, we propose in addition to ask the Attorney-General’s Department to examine the complete draft before it is submitted to the Treasurer.

This timetable means that, regrettably, it will not be possible for the determination to be issued before presentation of the Authority’s accounts for 1959–60 to Parliament. (It is understood that these accounts are now almost ready for presentation). The determination will, however, certainly be issued—subject only to the obtaining of the Treasurer’s approval—well before preparation of the Authority’s accounts for 1960–61.”

Q. 75. 30. While that memorandum draws attention to problems which will delay the issuing of the directive still further, the evidence available to your Committee indicates that an initial delay from August, 1959 of at least eight months occurred before work on preparation of the draft of the directive commenced within the Treasury. The responsibility for this delay lies with the Department of the Treasury, the Department’s explanation of the causes being an abnormal flow of work and a shortage of “capable” staff within the Branch concerned. In saying this, we cast no reflection on the individual officer upon whom the responsibility for

\* The document covered approximately 13 pages in double spaced typing.



drafting the directive rested. It was made abundantly clear to Your Committee that he had not been permitted the time required to prepare the first draft of the directive—although we find it hard to believe that the Treasury could not have found the means whereby he could have been relieved of other duties so as to allow him the week or so he considered necessary to do this work.

31. However, accepting the Treasury's claim that the shortage of capable staff and pressure of other work in the particular Branch have been such that the officer concerned could not be made available to work on the directive (finally he did it during part of his annual recreation leave) then the Treasury was remiss in not taking positive steps to meet this problem.

(d) CONCLUSION.

32. In the financial year ended 30th June, 1960 advances amounting to £28,250,000 were made by the Commonwealth to the Authority making a total of £162,683,249 since the financial year 1949–50. In the view of Your Committee it is of paramount importance that the terms on which these advances have been, and others will be, made should be formally determined as early as possible.

33. It disturbs Your Committee greatly that, in the face of the legislative requirements and the grave concern obviously felt in many quarters about the absence of this directive, the Department of the Treasury could persist for so long in deferring its preparation.

34. Delays such as this should not occur and action should be taken by the Treasury to ensure that matters of this importance can be handled promptly in the future.

### CHAPTER III.—DEPARTMENTS OF THE NAVY, ARMY AND AIR DEFENCE FORCES PAY REGULATIONS.

(a) INTRODUCTION.

35. In this inquiry Your Committee followed up comments made in paragraphs 123, 124 and 129 of the Annual Report of the Auditor-General for the year ended 30th June, 1959. Hearings were conducted on 3rd May and 6th June (in private). Persons who gave evidence were—

Mr. H. C. Newman, C.B.E.	..	Auditor-General for the Commonwealth.
Mr. J. Q. Ewens, C.B.E.	..	Acting Secretary, Attorney-General's Department.
Mr. C. L. S. Hewitt	..	First Assistant Secretary, Department of the Treasury.
Mr. E. S. Lightly	..	Assistant Commissioner, Public Service Board.
Mr. C. M. Colgan	..	Director, Department of the Navy.
Mr. E. J. Mulrooney	..	Assistant Secretary, Department of Air.
Mr. W. H. Leng	..	Assistant Secretary, Department of the Army.

36. The comments of the Auditor-General which provided the basis for our investigations read as follows:—

(Paragraph 123—Department of the Navy)—

*“ Naval Reserve and Related Regulations.*

Pay, allowances and other entitlements of members of the various Reserves comprising the Citizen Naval Forces are prescribed in regulations under the *Naval Defence Act 1910–1952*.

In recent years approval has been given to vary the rates of certain emoluments but amending Statutory Rules have not been promulgated. A departmental committee is presently revising all regulations made under the Naval Defence Act, including the regulations for the various Reserves, but it is not anticipated the review will be completed before 1960. In the meantime, increased payments beyond the scope of current regulations are being made without statutory authority.”

(Paragraph 124—Department of the Army)—

*“ Financial Regulations.*

Reference has been made in my last three Reports to delay in the promulgation of revised regulations governing financial matters.

Amendments, effective from July, 1958, arising from a review of pay conditions of the services, have been incorporated in draft regulations already prepared. Although the Department expects that the issue of revised regulations will be finalized at an early date, they were not promulgated when this Report was prepared.”



## (Paragraph 129—Department of Air)—

“ *Air Force Regulations.*

Regulations promulgated under the provisions of the *Air Force Act* 1923–1956 prescribe pay and allowances and conditions of service of members of the Royal Australian Air Force.

It was mentioned in my 1957–58 Report that for a considerable time the Department had not taken action to incorporate in the current Air Force Regulations, variations in rates of pay and allowances.

Although this matter received departmental attention during the year, the required amending Statutory Rules had not been promulgated when this Report was prepared.

Attention is drawn to the fact that increased payments beyond the scope of current regulations are being made without statutory authority.”

Some reference had been made to these or related matters each year since the 1955–56 Report, the first submitted by the present Auditor-General, Mr. H. C. Newman, C.B.E.

37. Our investigations established that, over a number of years, substantial amounts in pay and allowances in excess of the rates prescribed by Regulations had been paid to members of the Defence Forces without lawful authority. The situation as disclosed to Your Committee as at 31st March, 1960, was—

(i) *Department of the Navy.*—£1,913,000 paid to permanent naval personnel between 1958 and 31st March, 1960.

Approximately £500,000 paid to Naval Reserve personnel since 1952.

(ii) *Department of the Army.*—An estimated £99,600,000 paid to Army personnel between 1947 and 31st March, 1960.

(iii) *Department of Air.*—An estimated £5,870,281 paid to Air Force personnel between 1956 and 31st March, 1960.

The majority, if not all, of these unlawful payments to members of the Defence Forces ceased in June, 1960, when Regulations were made prescribing the current rates of pay and allowances.\*

38. The payments listed were unlawful in the sense that, as the rates of pay concerned were prescribed by or were required to be prescribed by Regulation, payments in excess of the prescribed rates were made without authority, even though the government may have approved of the increased rates of payment and the funds necessary for payment appropriated by the Parliament. In a memorandum to Your Committee dated 29th April, 1960, the Acting Secretary, Attorney-General's Department, said—

Exhibit  
No. 50/33.

“ I refer to your memorandum dated 19th April, 1960, requesting urgent advice in relation to a question that has arisen out of an examination by the Public Accounts Committee of the observations made by the Auditor-General in his report for the financial year 1958–59 concerning the Financial (Military) Regulations, and so much of the Naval Reserve Regulations and the Air Force Regulations as related to the pay and allowances of members of those Forces.

Exhibits  
Nos. 50/35, 38  
and 41.

2. You forwarded with your memorandum copies of statements provided to the Committee by the Departments respectively responsible for the administration of the Regulations that were commented on by the Auditor-General. It appears from those statements that, during the financial year 1958–59, members of the Naval Reserve Forces, the Army and the Air Force were paid pay and allowances at rates in excess of the rates provided for in regulations made under the Naval Defence Act, the Defence Act and the Air Force Act, respectively. It also appears from the statement provided by the Department of the Navy that since 4th December, 1959, members of the Permanent Naval Forces have been paid pay and allowances at rates in excess of those prescribed in the Naval Financial Regulations.

3. The question upon which the Committee seeks advice is whether the payments of pay and allowances to members of these Services at rates in excess of those prescribed in the appropriate Regulations have been made with lawful authority. In my opinion, the payments have been made without lawful authority to the extent to which they have exceeded payments calculated at rates fixed by the appropriate Regulations.

4. The authority for the prescribing of rates of pay of members of the Defence Force is to be found in section 124 (1.) (d) of the *Defence Act* 1903–1956. So far as material, that section provides—

‘ (1.) The Governor-General may make regulations . . . . .  
prescribing matters providing for and in relation to—

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

5. The Defence Force consists of the Naval, Military and Air Forces of the Commonwealth (see *Defence Act*, section 30). In addition, section 5 of the Naval Defence Act provides that section 124 (as well as a number of other sections) of the *Defence Act* is to continue to apply to the Naval Forces. Section 3 of the *Air Force Act* contains a corresponding provision for the application of that section to the Air Force.

6. In view of the provisions referred to in the last two preceding paragraphs, it seems to me that any amounts paid over and above those fixed by the Regulations that have been made are paid without authority.”

\* Statutory Rules 1960, Nos. 51, 52 and 53.



39. The Acting Secretary, Attorney-General's Department, Mr. J. Q. Ewens, C.B.E., elaborated upon this opinion in evidence before us on 3rd May and 6th June, 1960. In explaining the meaning of the word "unlawful" in this context he said—

(Mr. Ewens) "... It is not unlawful in the sense that there is any criminal action on which a prosecution can be taken, but it is unlawful in the sense that the money was paid without authority because a legal basis for the payment did not exist, and to that extent it was made without lawful authority." Q. 960.

(Mr. Ewens) "... the word, 'unlawful' is rather ambiguous. No one suggests that there has been any criminality in what has been done in this instance. No one could be charged with an offence. But in the circumstances I have mentioned there is no doubt that in strict law the payments are made without a complete chain of legal authority, and to that extent they are unlawful." Q. 1744.

Regarding the fact that Parliament had appropriated sufficient money to permit the payments he said—

(Mr. Ewens) "... In giving the opinion that I have submitted to the Committee, I considered carefully the question whether the payments could be considered as authorized by reason of the fact that Parliament had apparently appropriated enough money to make these payments at rates above the rates set out in the regulations, and after a lot of careful thought about that I came to the conclusion that, notwithstanding that appropriation, the payments were nevertheless made without authority. ... Of course, no Treasurer, or no Minister, can set aside the law, and if the true position is that under the Defence Act the rates of pay have to be prescribed by regulations, then they have to be prescribed by the regulations, and no other authority or person has any jurisdiction to say otherwise. I think that answers the question." Q. 978.

He said also—

(Mr. Ewens) "... No department or Minister or other authority has power to set aside or go beyond the terms of an act of Parliament, whether it is a Service department or any other department." Q. 984.

40. During our hearing the question was raised whether Regulation 6 of the Financial (Military) Regulations (S.R. No. 110 of 1947) provided the necessary authority for the payments made to Army personnel. The Regulation reads—

"The Minister may, with the concurrence of the Treasurer, authorize any expenditure not covered by these Regulations, provided that the necessary funds have been made available by parliamentary appropriation, or by the Treasurer in anticipation of parliamentary appropriation." Power of Minister to authorize expenditure.

(A somewhat similar Regulation appears in the Air Force Regulations as Regulation 512 but not in the Naval Financial Regulations.)

However Mr. Ewens informed us that in his opinion "... Regulation 6 (did) not ... as a matter of law authorize the Minister to increase amounts that are prescribed elsewhere in the Regulations." This view has since been confirmed in a written opinion furnished the Department of the Treasury by the Secretary, Attorney-General's Department on 11th October, 1960. Q. 990. See paragraph 60 below.

41. Your Committee's investigations in this matter have been directed towards—

- (i) the practice persistently adopted in the three Service Departments over a number of years of paying higher rates of pay and allowances in anticipation of the amendment of regulations; and
- (ii) the long delays associated with the making and amending of the regulations concerned.

Regarding (i), although only the Army and Air were concerned (as at 31st March, 1960), with payments made without authority which extended back beyond 1950, a similar situation had earlier obtained in the case of the Department of the Navy. Regulation 269 of the Naval Financial Regulations (Statutory Rule No. 88 of 1956) validated payments made between 1st July, 1947 and 5th December, 1956. Similarly Regulation 27 in Statutory Rule No. 36 of 1955 which amended the Air Force Regulations, validated certain payments made between the 6th October, 1949 and the 1st June, 1955. Notwithstanding, both these Departments subsequently made other payments in excess of prescribed rates in anticipation of amendments to the Regulations.

#### (b) DEPARTMENT OF THE ARMY.

42. In 1947 Financial (Military) Regulations (Statutory Rule No. 110 of 1947) were made repealing the Military Financial Regulations and the War Financial (Military) Regulations. The new Regulations, comparatively few in number (42 only), were of a stop-gap nature and were designed to cover the essentials of pay and allowances pending the preparation of more comprehensive Regulations. We were told that it had been intended to Exhibit No. 50/39. para. 5.



keep the Financial (Military) Regulations amended up to date and to this end three separate draft amendments were sent to the Attorney-General's Department in 1950. About these draft amendments the Department of the Army said—

Exhibit  
No. 50/39,  
para. 7.

"The departmental file does not disclose what was done by the Attorney-General's Department on receipt of these draft amendments . . . The departmental file gives no indication as to the reason for the abandonment of further attempts to keep the existing regulations amended, and no currently serving member of the staff is aware of what happened. It is not improbable that the Attorney-General's Department was, at the time, overwhelmed with a mass of similar requests for revision of draft statutory amendments, and there may have been some tacit agreement that it would be more rewarding to concentrate on the new regulations in the expectation that these would soon be ready for promulgation. However this is surmise only".

In evidence before us the Department of the Army representative further said—

Q. 1228.

" . . . I think the situation was that the department was attempting to persist with the amending of regulations but that as a result of perhaps informal discussions with the Treasury and the Attorney-General's Department they were persuaded, or were themselves convinced, that it was better policy to push on with new regulations and get them through rather than keep the old regulations also amended".

No further attempt was made to amend the Financial (Military) Regulations to provide the necessary legal authority to increase the rates of pay of Army personnel (although two minor amendments were made in 1952 and 1956) until after Your Committee pursued the matter with the Department and the Treasury in April and May of this year.

See paragraph  
below.

43. On the 6th June, 1960, the Department of the Army forwarded to the Attorney-General's Department for urgent consideration a draft Statutory Rule amending the Financial (Military) Regulations. The Statutory Rule, No. 51 of 1960, was promulgated on 30th June, 1960.

Exhibit  
No. 50/39,  
para. 6.  
Qs. 1204-1208.

44. The Department of Army appears to have been in no doubt as to the need to have the entitlements of members of the Defence Forces expressed by statutory authority and so informed the Department of the Treasury in 1951, nor did the Department consider that Regulation 6 of the Financial (Military) Regulations provided the necessary authority to make payments in excess of prescribed rates of pay without amendment of the Regulations.

Exhibit  
No. 50/38  
para. 5.  
Exhibit  
No. 50/39  
paras. 10 and  
11.

45. Since 1949 the Department has been endeavouring to produce complete Military Financial Regulations "mutually acceptable to the Department of the Treasury, the Attorney-General's Department and the Army itself". Between July, 1951, and August, 1953, the draft was under consideration by the Treasury. In December, 1953, the draft was forwarded to the Attorney-General's Department, which returned a preliminary re-draft in March, 1956. Following further discussions between Army, the Treasury and the Attorney-General's Department a printed proof was obtained in November, 1956.

46. For the next twelve months the draft Regulations were under consideration again by the Department of the Army which consulted the Parliamentary Draftsman about certain matters. In November, 1957, the Regulations were submitted to the Department of the Treasury for approval but further action was then deferred pending the outcome of the review of the Pay Code then being undertaken. Finally, after further consideration by both the Treasury and the Department, a revised draft, with accompanying explanatory notes, was forwarded to the Parliamentary Draftsman on 29th March, 1960.

47. The new Military Financial Regulations have not yet been promulgated.

Q. 1210-1216.

48. One of the reasons given by the Department of the Army for the delay in preparing new Military Financial Regulations was the difficulty in obtaining and having available at the appropriate time competent staff who could deal with work of this nature. Even though the staff position progressively eased, as late as 1957, staff difficulties still had not been overcome. Another reason put forward for the delay was that, in the earlier stages, priority was given in the Treasury and the Attorney-General's Department to the review of and the drafting of new Naval Financial Regulations.

See also  
paragraph 62  
below.

49. Possibly, for a task of this nature, and bearing in mind that other Regulations (the Financial (Military) Regulations) were fully operative, there was not undue delay in the Department of the Army. However, the failure of the Department to keep amended up to date the Financial (Military) Regulations, which were specifically made to provide the necessary statutory authority for payment of pay and allowances pending the issue of new Military Financial Regulations, was inexplicable. The Statutory Rule 1960, No. 51, amending the Financial (Military) Regulations covered four pages and required only a little over three weeks to process from the time it was submitted to the Parliamentary Draftsman.



## (c) DEPARTMENT OF THE NAVY.

50. At the time of our inquiry in May, 1960, we established that increased rates of pay were being paid without lawful authority to members of both the permanent and reserve naval forces. The comments of the Auditor-General, made in 1959 before the advent of the December, 1959, marginal increases, drew attention to irregularities in payments to members of the reserve forces only. However, it appears certain that irregular payments were being made to members of the permanent forces from 1958.

51. Five separate sets of regulations make provision for payment of pay and allowances to members of the naval forces. They are—

(i) *Permanent Forces*—

Naval Financial Regulations (S.R. 1956 No. 88 as amended).

(ii) *Reserve Forces*—

Fleet Reserve Regulations (S.R. 1926 No. 61 as amended).

Naval Reserve (sea going) Regulations (S.R. 1938 No. 58 as amended).

Naval Volunteer Reserve Regulations (S.R. 1926 No. 1 as amended).

These three sets of Reserve Regulations (subject to some qualifications) provide for members to receive pay and allowances at the rates prescribed in the Naval Financial Regulations for corresponding ranks and ratings in the permanent Naval Force (sea going). Although the Department claimed that no unlawful payments were being made to members subject to these three sets of Regulations it is possible that such payments have occurred when the rates paid to members of permanent forces have been in excess of prescribed rates.

Naval Reserve Regulations (S.R. 1931 No. 35 as amended).

These Regulations provide that in time of war or national emergency, members subject to these Regulations should be paid at rates of pay and allowances prescribed for a member of corresponding rank or rating in the permanent naval forces (sea going) but prescribe the rates of pay for any training performed in time of peace. The peace time pay rates, as prescribed in the Regulations, were inserted in 1941; current payments, in excess of those rates, are being made on Ministerial approval.

52. Neither the Naval Financial Regulations nor the Reserve Regulations include a provision along the lines of Financial (Military) Regulation 6 or Air Force Regulation 512, which the Department of the Treasury had regarded as providing the means for making payments in excess of prescribed rates to Army and Air Force personnel. The Department of the Navy appeared to accept that Treasury approval was sufficient authority for payment and went so far as to say it felt obliged to make payments in excess of prescribed rates on the receipt of a direction to do so. We asked this Department whether the attention of the Minister had been drawn to the necessity to amend regulations to provide for increased rates of pay. We were advised—

“It is not the practice of the Secretary to the Department of the Navy to discuss the matter of the regulations with the Minister every time there is an amendment to rates of pay.

Committee  
document,  
A.G.R. 53.

However, the Permanent Head does make known to the Minister in general that while increases in rates of pay are made as soon as Treasury approval to make them is given (and which is subject to funds being made available from Treasurer's advance pending Parliamentary Appropriation by means of Additional Estimates) the date of issue of the actual regulations specifying the rates payable is largely out of control of the Department of the Navy and usually occurs some time after the increases in pay are made.”

53. As previously mentioned, new Naval Financial Regulations were made in December, 1956. Approval to pay marginal increases from 4th December, 1959, was received by the Department of the Navy on 22nd January, 1960. An approach to the Attorney-General's Department regarding amending regulations was made on 8th April, and the regulations were promulgated on 29th June, 1960. The amendments were not confined to those associated with the marginal increases in pay.

54. In the case of the four sets of Naval Reserve Regulations, draft Statutory Rules were forwarded by the Navy to the Treasury between 1954 and 1956. At the time of our inquiry the Treasury had been unable to deal with these matters to conclusion because of other commitments. The Treasury said—

“Draft amendments to various regulations covering the Reserve Forces were referred by Navy to Treasury as early as July, 1948. These were considered and agreed. By memorandum of 25th August, 1952, Navy were requested to submit amendments to the various regulations which related to each of the four Reserve Forces and to combine them in a single schedule.

Exhibit  
No. 50/32.  
page 2.



The request for co-ordination of related Reserve Force amendments to regulations was not followed however and unco-ordinated submissions for amendments were received from time to time. Because of concentration of experienced staff upon then current reviews of the Permanent Force Naval Financial and Military Financial Regulations and subsequent complete reviews of the pay-code and retirement benefits, work associated with the review of draft amendments of Reserve Regulations has until recently been deferred."

At the hearings on 6th June, the Treasury in further explanation of the delay, said—

Q. 1706.

"... there is a limit to what available people can do and I should think the fault here, if it is a fault, is that officers who are competent in this field have, over the years, done other work which has been considered to be of greater priority than this."

55. There is one other matter to which we wish to draw attention. In its formal statement to the Committee the Department of the Navy said, in relation to payments to members of the Reserve Forces—

Exhibit  
No. 50/41.

"It is necessary to point out that as the Statutory Rules stand at present they provide for payment to Naval Reserve Forces, except in the case of the Royal Australian Naval Reserve, of pay and allowances applicable to the Permanent Naval Forces (Sea-Going).

By Treasury decision from time to time the rates payable were varied in general to a lesser amount. For this reason it is incorrect to assume that the rates being paid by Treasury decision are all higher than as provided in the Statutory Rules."

This suggests that, by administrative direction, some members could have been paid less than their legal entitlement. The matter might be immediately investigated by the Departments of the Navy and the Treasury and appropriate action taken in the event of any under-payments being disclosed.

#### (d) DEPARTMENT OF AIR.

56. Pay and allowances for Air Force personnel are dealt with in Part XI. of the Air Force Regulations (S.R. 1927 No. 16 as amended). Prior to Statutory Rule 1960 No. 52, which prescribed the current rates of pay and allowances, the last substantial amendment of this Part of the Regulations was made in 1955 (S.R. 1955 No. 36). However, that amendment did not then bring up to date all pay and allowance regulations.

57. The Department of Air informed us that, in 1956, it was decided to consolidate all the amendments to Part XI. of the Regulations then pending. This work was completed and Treasury concurrence to the draft obtained by December, 1956. (However, the proposed amendments were not forwarded by the Department of Air to the Attorney-General's Department). At this point, the Department of Air considered it appropriate to re-mark the Regulations but after the first draft had been completed (April, 1957) shortages in staff developed which caused any further work to be deferred until October, 1959. Draft amendments, which included the new rate of pay following the marginal increases, were forwarded to the Parliamentary Draftsman on 12th February, 1960. The amending regulations were promulgated on 30th June, 1960 and included amendments not associated with the marginal increases in pay.

Q. 1161.  
See paragraph  
39 above.

58. The Department did not claim (as did the Treasury) to have relied on Air Force Regulation 512 to provide the necessary authority for increased payments in the absence of amending regulations. But the departmental representative who appeared before us did claim that the Department had not broken the law, on the grounds that instructions to make the payments had been given by the Treasury and that amounts appropriated by the Parliament had been available from which to make the payments.

#### (e) DEPARTMENT OF THE TREASURY.

Q. 1707.

Federal  
Guide,  
August, 1958,  
page 34.

59. At the departmental level the Treasury, through its Defence Division, has the responsibility to co-ordinate the pay and conditions of the Services. It provides the Chairman of the Treasury Finance Committee, the functions of which are "consideration from the joint-Service aspect, of policy matters affecting conditions of service of personnel of the Defence Forces". The three civilian permanent heads of the Departments of the Navy, Army and Air are the other members of this Committee.

Exhibit  
No. 50/32.

60. On the question whether payments in excess of prescribed rates had been made with lawful authority, the Treasury said, in respect of payments to Army and Air Force personnel, that reliance had been placed on Financial (Military) Regulation 6, and Air Force Regulation 512. While accepting this, Your Committee note—

Exhibit  
No. 50/39

(i) In December, 1950, the Department of the Army had informed the Treasury that the legal position was that a member should have his current entitlements expressed by statutory authority and that it would be necessary for any Financial (Military) Regulation which was not current to be amended accordingly.



- (ii) It had been found necessary to include a special Regulation (No. 27) in the Statutory Rule which amended the Air Force Regulations in 1955 (S.R. 1955 No. 36) validating payments made to Air Force personnel between the 6th October, 1949 and 1st June, 1955, notwithstanding the existence of Air Force Regulation 512.
- (iii) The wording of Financial (Military) Regulation 6 and Air Force Regulation 512 is such that we would have expected it to have created a doubt in the mind of the experienced public servant whether these Regulations provided a means lawfully to make payments in excess of prescribed rates.

However, it was not until the 3rd June, 1960, that an approach was made to the Attorney-General's Department by the Treasury for an interpretation of Financial (Military) Regulation 6. In an opinion dated 11th October, 1960, a copy of which was forwarded to Your Committee, the Secretary, Attorney-General's Department, informed the Treasury as follows:—

See paragraph 40 above.

"I refer to your memorandum dated 3rd June, 1960, in which you have raised a question involving the interpretation of regulation 6 of the Financial (Military) Regulations (Statutory Rules 1947, No. 110).

Attorney-General's Department memorandum No. 60/3136.

After discussions with your officers, the form of the question has been amended slightly but the substance of it is unaltered. The question, as amended, and the short answer I would give to it are as follows:—

Q. When Parliament has, for the purpose of payment of pay and allowances to members of Military Forces, appropriated an amount sufficient to make payments at rates in excess of those specifically provided for in Financial (Military) Regulations, does regulation 6 of those Regulations empower the Minister, with the concurrence of the Treasurer, to authorize the payment of pay and allowances at rates in excess of those specifically provided for in the Regulations?

A. No.

Regulation 6 of the Financial (Military) Regulations is as follows:—

'6. The Minister may, with the concurrence of the Treasurer, authorize any expenditure not covered by these Regulations, provided that the necessary funds have been made available by parliamentary appropriation, or by the Treasurer in anticipation of parliamentary appropriation.'

Other regulations specifically prescribe the rates at which pay and certain allowances are to be paid to members of the Military Forces.

The answer to the question raised in this matter turns on the meaning to be given to the expression 'expenditure not covered by these Regulations'. The expression is no doubt imprecise, but when regulation 6 is read in the setting of the Regulations as a whole there can, in my view, be no warrant for regarding a provision in this form as authorizing the overriding of other provisions of the Regulations in which particular matters are dealt with in express terms. The position would, it seems, be otherwise if the regulation were expressed to operate notwithstanding anything contained elsewhere in the Regulations. As regulation 6 stands, however, the expression under consideration, in my view, bears the meaning 'expenditure in relation to matters for which no other express provision is made in these Regulations'.

Since the Regulations expressly prescribe the rates at which pay and certain allowances are to be paid to members of the Defence Forces, it follows, in my view, that the Minister cannot under regulation 6 vary those rates. This, I think, is so even though the amount appropriated in any year for the purpose of payment of pay and allowances to members of the Military Forces may be sufficient to cover payment of pay and allowances at rates in excess of those specifically prescribed.

The Financial (Military) Regulations were recently amended by Statutory Rules 1960, No. 51. Regulation 6 of Statutory Rules 1947, No. 110, was not, however, affected. Accordingly, the views expressed in this memorandum apply equally in relation to the Financial (Military) Regulations both before and after the recent amendments."

61. While the responsibility to co-ordinate rested with the Treasury, the responsibility for ensuring that the regulations concerned were amended resided with the Service Departments. The Treasury indicated that the delay in promulgating the regulations had caused it a great deal of concern and in 1954 the Assistant Secretary in charge of the Treasury Defence Division wrote personally to the Secretary, Attorney-General's Department, about these delays.

Q. 1780.  
Committee Document No. A.G.R. 54.  
See paragraph 68 below.

62. The Treasury also made the point that if instructions were received from the Government to make payments in advance of the promulgation of Regulations then a Department had little option but to carry out those instructions. However, having heard the evidence placed before Your Committee, the Treasury agreed that the correct approach was to promulgate the regulations before making payments. Moreover, it seems that, but for the insistence of the Treasury (which resulted in the early issue of amendments to the Financial (Military) Regulations (S.R. 1960, No. 51)), the Department of the Army would have



See paragraph  
49 above.

maintained the practice of many years of making payments in excess of prescribed rates pending the promulgation of new Military Financial Regulations. On 6th June, 1960, the Department of the Army wrote to the Attorney-General's Department as follows:—

“ On 29th March I forwarded to the Parliamentary Draftsman copies of our new draft of Military Financial Regulations which replaces Financial (Military) Regulations (Statutory Rules 1947, No. 110). This draft includes the present rates of pay applicable to the Permanent Military Forces.

A memorandum dated 27th May has been received from the Department of the Treasury regarding the pay of Senior Service appointments, in our case the Chief of the General Staff and lieutenant generals. The Treasury asked, in view of the recent consideration by the Parliamentary Joint Committee of Public Accounts to payments not covered by regulations, as to what action was proposed to amend the existing regulations to cover payments at the new rates. In a later advice dated 2nd June the Treasury stated ‘ Before any payment can be made in terms of the Cabinet approval advised in my memorandum of 13th April it will be necessary for these regulations (refers to regulations 6A and 7 of Financial (Military) Regulations) to be ended ’.

Particulars of the new rates payable to these officers were given on 6th May to the Parliamentary Draftsman for insertion in the appropriate regulation in the new draft.

However in view of the Treasury request it seems mandatory that the new rates of pay must be inserted in the old regulations. As it will be some time before the new draft is considered and gazetted I attach for urgent action draft Statutory Rule amending Financial (Military) Regulations.”

63. We were informed also by the Treasury that the practice of anticipating regulations was not confined to the Service Departments; that it existed in other areas of Government administration. About this the Treasury representative said—

Q. 1770.

“ I think that since 1939 the (public) service as a whole has been trying to do far more than it is able to do; that it has been trying to work at a pace and rate that just cannot go on. Here is a good example of it.”

64. We also raised with the Treasury the inaccuracy of certain notations in the Schedule of Salaries and Allowances in the Estimates and the Appropriation Bills which indicated that payments of Defence Forces pay and allowances would be at rates fixed by Regulation. The notations do not appear in the Schedule to the Estimates for the year ended 30th June, 1961.

#### (f) THE PUBLIC SERVICE REGULATIONS.

65. The Public Service also received increased rates of pay as from the 3rd December, 1959. Statutory Rule 1960 No. 12 which amended the Public Service Regulations to provide for increases in salary, was approved by the Governor-General on the 22nd January, 1960, and comprised 66 pages. In comparison, the sizes of the three Statutory Rules concerned with Defence Forces pay were—

	No. of pages.
S.R. 1960 No. 51 (Army) .. .. .	4
S.R. 1960 No. 52 (Air Force) .. .. .	22
S.R. 1960 No. 53 (Navy) .. .. .	15
	—
	41
	—

See paragraphs  
53–57 above.

66. As previously mentioned, the Statutory Rules amending the Air Force Regulations and the Naval Financial Regulations were not confined to variations associated with the marginal increases in pay. The Public Service Board informed us that there had been no difficulty whatsoever in having the amending Public Service Regulations promulgated promptly—

Q. 1628.

(Mr. Lightly) “ Discussions took place with an officer of the Attorney-General's Department on the form in which it was to be set out and with his concurrence it was set out in draft form and vetted by him. From the date on which it was sent over in what I might call a final and official form until the date on which it was approved by the Governor-General, only three days elapsed.”

In advance of the Regulations, the Public Service Board informed Departments of the new rates in two circulars, P.S.B. Circular 1959/21 of 31st December, 1959, and P.S.B. Circular 1960/2 of the 15th January, 1960. In the first circular, the Board, under the heading “ Date of Effect ”, stated that the new rates notified were payable from the 3rd December, 1959. In the second circular, in relation to allowances prescribed in the Second Schedule of the Regulations, the Board stated “ in anticipation of the Governor-General's approval, payment of the new rates should be made on and from the 3rd December, 1959 . . . ”. However, in the Board's knowledge, no payments were made before the 28th January, 1960, by which time the Regulations had been approved by the Governor-General.

Q. 1629a.



67. The rapidity with which the Public Service Regulations were amended to provide for marginal increases in pay illustrates that, when competent staff are available and an appropriate priority is accorded to the task, the legal necessity first to promulgate regulations before effecting payments to personnel will not cause significant delay.

(g) THE ATTORNEY-GENERAL'S DEPARTMENT.

68. Earlier we have noted that in 1954 the Assistant Secretary, Treasury Defence Division, wrote personally to the Secretary, Attorney-General's Department, about the delay in the promulgation of certain Defence Regulations. In replying on 22nd April, 1954, the Secretary of the Attorney-General's Department explained that the Parliamentary Drafting Division of the Department had been so heavily pressed with work that it had not been able to do much more than keep abreast of regulations which had some substantial claim to be dealt with urgently or were needed to give effect to some important matter of Government policy. He said also that the staff available in the Parliamentary Drafting Division had been below the authorized establishment for some years and that it had proved very difficult to recruit new staff with suitable qualifications.

See paragraph 61 above.

Committee document No. A.G.R. 54.

69. While the situation appears to have eased to some extent since then, we were informed that the position still remained where the Drafting Division was unable to undertake the immediate revision of any draft regulations that were sent to it and that approximately three or four months would pass before a start could be made on any particular task unless some special priority was attached to it. We were told that the Division was still operating well below the establishment of officers approved by the Public Service Board, the reason for this being that the conditions of employment were not sufficiently attractive. In the view of the Attorney-General's Department there had to be a substantial increase in the level of salaries in the Department to overcome the loss of officers to other Departments or to positions outside the Public Service.

Q. 976.

Q. 1783.  
Q. 1673.

70. It was agreed before Your Committee that the initial responsibility for staffing the Department rested with the permanent head and we were told that, except in an informal way, the Department's problems had not been placed before the Board. We were advised by the Public Service Board representative that there had been discussions on an informal basis between the permanent head of the Attorney-General's Department and the Chairman and other members of the Public Service Board regarding the rates of pay for legal officers but that it was the Board's view that there was no justification for giving higher rates of pay for the appropriate grade of legal work.

Q. 1762.

Q. 1790.

Q. 1676.

Q. 1803.

71. In regard to the pay regulations of the Defence Forces the Attorney-General's Department suggested that there was some room for simplifying the regulations and indicated also that one of the problems and one of the causes of delay in the past had been that amendments to the Regulations to provide for increases in pay had not been confined to pay but frequently involved as well variations in conditions and other matters.

Q. 1747.

Q. 1002.

(h) CONCLUSION.

72. The situation which Your Committee's investigations have disclosed causes us grave concern; the persistence with which the Departments of Navy, Army and Air have pursued a course over many years of making unlawful payments to service personnel, has most important implications. Not only has there been a serious breakdown in the administrative machinery of government but also an acceptance of the right to act outside the strict requirements of the law.

73. While not rejecting the plea that staff problems have existed in the Service Departments concerned we do not accept these as the main reason for the delay in promulgating amending pay regulations. In our assessment, one factor of much greater importance has been the priority accorded the task of keeping the pay regulations up to date; another came from not dealing with pay regulations amendments alone—of associating them with other amendments or reviews of regulations.

74. Your Committee have no doubt that, had there been at all times an insistence upon compliance with the law, the administrative resources would have been found readily to promulgate amended pay regulations so as not to delay unduly the payment of increases to service personnel.

75. We have some evidence that action in anticipation of legislative authority has not been confined to the Departments of Navy, Army and Air. Accordingly, corrective measures should not be restricted to those departments alone but applied over the whole area of government.

See paragraphs  
67 to 71 above.

See P.P. No. 78  
of 1959,  
Chapter IV.

76. Although evidence was presented showing that the staffing of the drafting branch of the Attorney-General's Department had been seriously depleted for some years, adequate action had not been taken to overcome the shortage. (This lack of action to correct a serious area of weakness in the Attorney-General's Department is similar to a situation found and reported upon by Your Committee in the Forty-Third Report.) Immediate attention should be given to this matter by the Department and the Public Service Board.

77. We recommend also—

- (i) that appropriate and early steps be taken by the Government so that departments, in future—
  - (a) will comply with the law;
  - (b) will observe promptly legislative requirements; and
  - (c) will keep their Ministers fully informed in these matters.
- (ii) that the Public Service Board and other authorities involved make certain that administrative machinery is available that will permit the expeditious drafting of regulations.
- (iii) while not proposing that the prescription of Defence Forces rates of pay and major allowances should be discontinued, the regulations might be reviewed to ensure that they are in such a form as to facilitate amendment.

78. We have noted that in Statutory Rules 1960 Nos. 51, 52 and 53, it was sought to validate payments made without lawful authority to members of the Defence Forces. On 4th October, 1960, the Senate determined its attitude towards the validating regulations concerned\*.

For and on behalf of the Committee,

F. J. DAVIS,

Chairman.

R. C. DAVEY,  
for Secretary,

Joint Committee of Public Accounts,  
Parliament House, Canberra, A.C.T.  
20th October, 1960.

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\* Regulation 6 of S.R. 1960, No. 51; Regulation 30 of S.R., 1960, No. 52 and Regulation 36 of S.R. 1960, No. 53.