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

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

JOINT COMMITTEE OF PUBLIC ACCOUNTS

ONE HUNDRED AND THIRD REPORT

FINANCIAL REGULATIONS

JOINT COMMITTEE OF PUBLIC ACCOUNTS

SEVENTH COMMITTEE

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The Senate and the House of Representatives appointed their
Members on 22nd February, 1967.

(1) Appointed 23rd August, 1967.

(2) Deceased 2nd August, 1967.

DUTIES OF THE COMMITTEE

Section 8 of the Public Accounts Committee Act 1951-1966 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 Parliament by the Auditor-General in pursuance of sub-section (1.) of section fifty-three of the Audit Act 1901-1950;
- (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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ONE HUNDRED AND THIRD REPORT

FINANCIAL REGULATIONS

Chapter 1

Introduction

During its Inquiry into the Reports of the Auditor-General for the financial year 1958-59, Your Committee examined the basis of comments that had been made regarding delays that had occurred in the promulgation of amendments to the Naval Reserve and related Regulations, the Financial Regulations administered by the Department of the Army, and Air Force Regulations.

P.P. No. 84
of 1960

2. The situation that Your Committee's investigation disclosed caused grave concern. It found that the persistence with which the Departments of the Navy, Army and Air had pursued a course over many years of making unlawful payments to service personnel, had most important implications. Not only had there been a serious breakdown in the administrative machinery of Government, but there was also an acceptance of the right to act outside the strict requirements of the law. While the Committee recognised that staff problems had existed in the Service Departments concerned, it assessed that one factor of much greater importance had been the priority accorded to the task of keeping the pay regulations up to date. Another came from a failure to deal with pay regulations alone by associating them with other amendments or reviews of regulations. Your Committee expressed 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. Accordingly, Your Committee recommended:-

P.P. No. 84
of 1960

- (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.

3. Your Committee also stated that although evidence was presented showing that the staffing of the Drafting Division of the Attorney-General's Department had been seriously depleted for some years, adequate action had not been taken to overcome the shortage. Your Committee therefore recommended that immediate attention should be given to this matter by the Department and the Public Service Board.

P.P. No. 84
of 1960

4. In the subsequent Treasury Minute of 6th November, 1963 relating to this matter, Your Committee was informed that in order to avoid a recurrence of the delays in amending pay regulations, the Parliamentary Draftsman would give priority to future alterations to rates of pay and allowances. The Public Service Board and the Service Departments had reviewed the administrative machinery involved in the preparation of legislative amendments and concluded that no staffing alterations in the Service Departments were necessary. The Service Departments had advised that regulations had been drafted in a form to facilitate amendments to rates of pay and allowances. Also, the Prime Minister had drawn Your Committee's conclusions to the attention of Ministers and had asked them to bring to the notice of departmental officers the need to comply with the law, to observe promptly legislative requirements and to keep their Ministers fully informed on these matters.

P.P. No. 45
of 1964

5. Discussion had taken place between the Attorney-General's Department and the Public Service Board with a view to establishing a modern classification structure which should enable the Department to recruit and retain the legal staff required for the adequate fulfilment of its responsibilities. The Public Service Board, in consultation with the Department, reviewed the organisation of the Department's Central Office, including the Parliamentary Drafting Division and the State Offices and organisational changes were subsequently introduced. The new establishment of positions was said to reflect the Board and Departmental view on appropriate work-value relationships between the Central Office and the State Offices and within the legal divisions of the Department. Increases in salary classifications were also granted to the legal staff.

P.P. No. 45
of 1964

6. In view of Your Committee's findings in its Fiftieth Report and the action taken subsequently, as disclosed by the relevant Treasury Minute, Your Committee decided early in 1968 that, as some seven years had elapsed since its previous inquiry in this area of administration, it should examine the current position in relation to the Service Departments Financial Regulations. Accordingly, Your Committee sought submissions from the Departments of the Navy, Army and Air in respect of outstanding amendments to their financial regulations as at 18th March, 1968.

7. Hearings based on the Submissions received were held at Parliament House, Canberra, on:-

Tuesday, 30th April, 1968	Monday, 9th September, 1968
Monday, 6th May, 1968	Tuesday, 10th September, 1968
Tuesday, 7th May, 1968	Wednesday, 11th September, 1968

8. The following witnesses were sworn and examined by Your Committee:

Department of Air

Mr. J. W. Knight - Senior Executive Officer,
(Legal.)

Department of the Army

Mr. J. McD. Aitken - Branch Secretary (A)
Mr. A. E. Barnsley - Paymaster-in-Chief
Mr. C. A. Miller - Branch Secretary (Q.M.G.)
Mr. B. White - Secretary

Attorney-General's Department

Mr. J. Q. Evens, C.B.E. - Parliamentary Draftsman
Mr. E. J. Hook - Secretary
Mr. J. Monro - Senior Assistant Parliamentary
Draftsman

Department of the Navy

Mr. R. Anderson - Head of Naval Personnel
Branch
Mr. T. J. Keely - Chief Executive Officer,
General Services Branch
Mr. A. H. Preston - Clerk, General Services
Branch.

9. During its Inquiry Your Committee was assisted by the following Observers:

Auditor-General's Office - (Mr. G. V. Barrell
(Mr. R. G. Parker)
Public Service Board - (Mr. G. H. Vanthoff
Department of the Treasury - (Mr. C. Monaghan
(Mr. I. H. Reid.

Chapter 2

Departments of the Navy, Army and Air

10. An examination of the Submissions tendered by the Departments of the Navy, Army and Air, showed that as at 18th March, 1968, the number of outstanding amendments to Financial Regulations totalled thirty-four for the Department of the Army, twenty-seven for the Department of the Navy and eight for the Department of Air. The periods for which these amendments had been outstanding from the date of the commencement of their formulation is shown in Table No. 1.

Exhibits 103/1
to 5 and
Committee File
1968/2.

Table No. 1

Service Departments

Outstanding Amendments to Financial Regulations
As at 18th March, 1968

Period Outstanding	Department		
	Army	Navy	Air
	(No. of Regulations)		
Less than 1 year	7	11	4
1 year but less than 2 years	9	8	2
2 years but less than 3 years	9	1	-
3 years but less than 4 years	3	2	-
4 years but less than 5 years	3	2	2
5 years but less than 6 years	2	2	-
6 years but less than 7 years	-	1	-
7 years and over	1	-	-
Total	34	27	8

Source: Departments of Navy, Army, and Air.

11. Of the sixty-nine proposed amendments outstanding as at 18th March, 1968, fifty-seven were held by the Attorney-General's Department and the remaining thirteen were held by the respective Service Departments.

Exhibits 103/1
to 5

12. The evidence tendered showed that a wide range of factors have impeded the processing of regulations. In some cases, the Attorney-General's Department had been requested to draft regulations that, on examination, proved to be inconsistent with existing statutes. In other cases, proposals had been put forward which were not suitable for implementation by way of regulation but required amendment to existing statutes.

Qs. 34, 326 and
385

13. Instances were also revealed where proposed changes in regulations were attendant upon decisions being taken on matters of Government policy. An example of this was given by the Parliamentary Draftsman in relation to a proposed regulation concerning an increase in fees. He informed us that the proposal had been submitted at a time when the matter of achieving uniformity in the fees payable to witnesses was under consideration as a matter of Government policy. Until that policy had crystallised to a point where the fees that were to be paid was known, it was not possible to proceed with the drafting of a regulation. We were also informed by departmental witnesses that delays had occurred in departmental correspondence, particularly where the matters concerned were of a complex nature and required consideration by senior officers.

Qs. 53 and 642

Q. 41

14. Staffing problems in the Service Departments were also instanced as causes of delay in the processing of regulations. In one case it was evident that while a draft statutory rule had been provided by the Attorney-General's Department to the Department of the Navy in October, 1965, no further instructions had been forwarded by that Department until May, 1967. We were informed by the witness that the delay had occurred in a branch of the Department that had been heavily overworked but had been reorganised recently in conjunction with the Public Service Board.

Qs. 69, 142 and
143

15. During the course of our Inquiry, cases were noted where delays had arisen because the matters concerned had escaped attention in the Service Departments. In one case, a file had been mislaid for a period of four months. In view of this we examined the Service Departments regarding the forms of control exercised in the processing of proposed amendments to regulations. We were informed that the Department of the Navy maintains a central control on a monthly basis in order to keep regulation changes under close surveillance. The Department submitted in confidence a copy of a recent monthly report which showed, in each case, the nature of the proposed amendment, the date of reference to the Parliamentary Draftsman and the history of subsequent developments. The witness informed us, however, that following our inquiries, some laxity had been discovered in the control of the relevant files within the Department and an instruction had been issued to ensure that the control arrangements are administered effectively.

Qs.113 to 119,
137 to 139,
181 to 191,
203 and 288

Q.203 and
Committee
File 1968/2

16. The witness representing the Department of the Army informed us that, in addition to maintaining liaison with the Parliamentary Draftsman on outstanding amendments to regulations, the Department conducts a quarterly review of outstanding legislation in which it re-arranges priorities, if necessary, on a basis of urgency.

Qs.513 to 516

17. We were informed by the witness representing the Department of Air that some proposals forwarded to the Parliamentary Draftsman require a continual system of resubmission within the Department. Changes in the paycode, which involve 22,000 air force staff and which are subject to press publicity were quoted as examples of such cases where the urgency of the necessary changes requires the use of the resubmission system. Files relating to regulations which contain the relevant instructions, remain with the Senior Executive Officer (Legal) at all times and are subject to resubmission based on changes that are made to priorities. The witness did not consider that any supplementary system would necessarily obviate errors. He added that within the Department there are vested interests in the processing of amendments to regulations. For example, the Personnel Branch, which controls conditions of service, is vitally interested in getting allowances paid quickly. These interested groups maintain

Qs.624 to 634

pressure on the Senior Executive Officer (Legal) to ensure that amendments are processed.

18. In view of the significant position of the Attorney-General's Department in the drafting of amendments to regulations we questioned the Parliamentary Draftsman in relation to the state of affairs existing in his office. We were informed that there is a delay in dealing with these amendments in the Drafting Division and that the position is not essentially different from that disclosed during our previous Inquiry in 1960. It was explained that, with the authority of the Attorney-General, all incoming subordinate legislation is generally dealt with in the order in which it is received either initially or subsequently, unless the matter is one of particular urgency in which case it is given priority over other matters. The Parliamentary Draftsman added that, due to staffing problems in the Drafting Division, there has been for many years, a waiting period ranging from six to twelve months before the Division is able to process an item of subordinate legislation. It was explained that the Senior Assistant Parliamentary Draftsman is responsible for administering a priority list for such legislation and the period that a draft regulation had been waiting attention in the Drafting Division would be one factor taken into account in deciding its priority position. However, it was stated that the Senior Assistant Parliamentary Draftsman is subject to pressure from various quarters in relation to the determination of priorities. Sometimes these pressures are difficult to resist. Nevertheless the higher the priority accorded to a recent proposed regulation, the lower the priority that must be accorded to other proposed regulations. Qs.57 to 66, and 160 to 165

19. The Parliamentary Draftsman indicated that the Drafting Division maintains a list of all outstanding subordinate legislation matters. The list had, in the past, been revised on a monthly basis but it had been found that a review each two months was adequate. During these reviews the Parliamentary Draftsman and the Senior Assistant Parliamentary Draftsman assess whether or not any apparent undue delay has occurred in dealing with a particular matter. As the drafting section has no information available to it regarding the

records of departments requesting amendments to regulations, it would be a considerable task to endeavour to reconcile departmental lists with those of the Drafting Division, particularly where there is a difference of language as to what departments and the Drafting Division regard as a subordinate legislative matter. In this connection it was explained that the Drafting Division may regard one statutory rule as a matter whereas the Department concerned might have a number of separate files on the subject and might regard them each as a separate matter.

Q.287

20. As staffing problems appeared to constitute a major cause of delay within the Drafting Division in the processing of regulations we questioned the Parliamentary Draftsman in relation to his problems in this area and obtained specific submissions from him and from the Secretary of the Attorney-General's Department. The evidence in respect of these submissions is reported on in Chapter 3.

21. A further matter arising from the evidence taken in this Inquiry concerned the question of whether or not proposals relating to regulations should be approved by the relevant Ministers prior to drafting. In this regard the witness representing the Department of the Navy informed us that proposed regulations put forward for drafting by his Department at the time of our Inquiry had been approved at the Permanent Head level. Unless a major matter was involved, proposed amendments would not be submitted to the Minister prior to drafting. The evidence also showed that in the case of the Department of Air, proposed amendments to regulations which are in line with previous policy are not submitted to the Minister for concurrence prior to drafting. In other cases, however, Ministerial approval is obtained. The Secretary, Department of the Army, informed us that, some parts of the submission made to us by his Department gave information on proposals that had been settled at departmental level between the Service Departments and the Department of the Treasury after lengthy discussions but had not, at that stage been considered or approved by Ministers or by the Government. He stated that if the matter had been one such as the recent total, overall increase in the general pay code or pay structure of the Services, either ministerial approval at the level of the Treasurer and Ministers for

Qs.292 to 294

Qs.618 and 619

Committee File
1968/2 and
Q.766

Q.766

the Army, Navy, Air and Defence, or at Cabinet level, would have been obtained before drafting was commenced. Equally, however, where a matter is one such as a change in travelling allowance following a change in travelling allowance levels in the Commonwealth Public Service, the Department would assume that ministerial and Executive Council approval would follow the agreement between the Service Departments and the Treasury. In those cases, such approval would be obtained on the regulations drafted by the Parliamentary Draftsman. He expressed the view that in such cases there is far less waste of highly important time if the draft regulation is obtained and submitted for approval and executive action through the Minister and the Executive Council.

22. The Parliamentary Draftsman informed us, however, that the Drafting Division would be sensitive regarding any instructions it received involving matters of a major or semi-major policy nature. It would not accept such instructions as final without obtaining a decision on the policy issues involved. The Parliamentary Draftsman indicated that in the area of Bills no Bill would be drafted until Cabinet had determined its requirements. However, not all regulations are submitted to Cabinet and he expressed the view that it is not necessary that all regulations should be submitted to Ministers before drafting, but there are some areas in which the Drafting Division would expect to receive a ministerial decision prior to proceeding with drafting work. He also expressed the view, that some regulations that the Drafting Division is requested to draft would be eliminated should prior ministerial authority be sought.

Q.295

Q.536

Chapter 3

Attorney-General's Department

23. We were informed by the Parliamentary Draftsman that the drafting Division has not been able to obtain and retain sufficient recruits to fill its authorised staffing establishment. Following the Inquiry by Your Committee in 1960, the then Acting Secretary of the Attorney-General's Department prepared a scheme to re-organise the Department. This was approved by the then Attorney-General and also by the then Secretary on his return to Australia and was submitted to the Public Service Board. He stated, however, that the Public Service Board had been unable to accept the proposals. The Public Service Board Observer, Mr. Vanthoff, explained to us that the proposals concerned had covered both organisation and salary matters. In regard to the organisation aspect the Board was aware, at that time, of the problems that existed but felt that a more fundamental review of the structure was required. The Board did, in fact, approve some strengthening of the middle and upper ranges of the Department's staffing at that stage, but sought an appropriate and more detailed review of the Department's whole structure. The Parliamentary Draftsman informed us that at a later stage, discussions extending over a period of about 12 months were held between the Public Service Board and the then Secretary and Senior Officers of the Department. As a result of these discussions a re-organisation and reclassification of the Department was obtained. The Public Service Board Observer, Mr. Vanthoff, indicated that this review actually took place in 1962. At that time the structure that was introduced, apart from the salary issue, represented an agreement between the Board and the Department as to an appropriate arrangement to meet the Department's needs.

Exhibit 103/6
& Qs. 694 &
697

24. The Department informed the Public Service Board that while it accepted the re-organisation, it was unable to agree with the salaries proposed and the reasons for this were submitted in some detail to the Board. The Department also submitted to the Public Service Board information concerning the salaries of Legal Officers in the United Kingdom Civil Service.

The Parliamentary Draftsman informed us that the United Kingdom authorities had experienced the same difficulties in obtaining Draftsmen as had been experienced in the Attorney-General's Department and they had been able to persuade the salary fixing authorities in the United Kingdom that the salaries for the Drafting Officers should be higher than those of other Legal Officers. He indicated, however, that notwithstanding the increases granted for Draftsmen in the United Kingdom there is still a shortage of Draftsmen in that country.

Exhibit 103/6
and Q.699

25. The Parliamentary Draftsman stated that a hearing had been conducted subsequently by the Public Service Arbitrator on a claim by the Commonwealth Legal Professional Officers' Association. This resulted in the annual salaries of the Parliamentary Draftsman being increased as from 18th October, 1962, from \$11,316 to \$11,666; the First Assistant Parliamentary Draftsman from \$9,616 to \$10,026 and Assistant Parliamentary Draftsman from \$8,616 to \$9,026. However, he believed that the function of the Arbitrator is to do industrial justice and not to provide terms and conditions of employment that will assist recruitment. In this regard, the Public Service Board Observer, Mr. Vanthoff, confirmed that over the years Arbitrators have taken the view that recruitment supply and demand is not, in fact, their area of interest and if a shortage of staff exists, the Arbitrators are not justified in going beyond the salaries that are considered appropriate, having regard to the work value of the positions to be filled.

26. The Parliamentary Draftsman informed us that the Public Service Board's re-organisation of 28th May, 1962, amalgamated the then existing positions of Legal Officer Grade 1, Legal Officer Grade 2 and Legal Officer Grade 3 into one position designated as Legal Officer and provided, inter alia, a minimum salary for an admitted practitioner. This was continued by later determinations and reclassifications made in September, 1965, and November, 1967.

Exhibit 103/6

27. The 1962 re-organisation also provided an increase in the non-professional structure of the Department by the provision of Professional Assistants i.e. a person under-going a course in Law

Exhibit 103/6,
Qs. 740 and 741

and who had completed a part of that course. The Secretary of the Department indicated that the appointing of such assistants has proved helpful in the field in which they have been appointed. No such assistants, however, have been appointed to the Drafting Division. He explained that the reason for that is as much directed towards the Professional Assistant himself as to the Department. Professional Assistants should be given a reasonable opportunity of obtaining a fairly broad experience insofar as the Department could provide it for him. If he were capable of learning, at that stage, the work of the Draftsman he would obtain only a very specialised idea of the nature of general legal work.

28. In 1965 the Secretary of the Attorney-General's Department held discussions with the Public Service Board to reduce the number of increments in the Legal Officer range. The Secretary of the Department informed us that it had been hoped during the re-organisation of 1962 that recruitment would be improved because the Department would be able to offer a situation in which, if an officer met the requirements of the Department, he would eventually reach the top of a long salary range. Experience of this arrangement however showed that in some respects it was hindering rather than assisting recruitment in the sense that officers became more concerned with the length of time that it would take them to reach the top of the range than by the prospect of the certainty of salary increase as they proceed through it. Arising from this approach to the Public Service Board a new determination of September, 1965, provided for an officer to begin on the minimum salary for an admitted practitioner and to reach the maximum of the range after six years' service.

Exhibit 103/6
and Q.705

29. The Parliamentary Draftsman informed us that at the end of 1966 the Secretary of the Attorney-General's Department made proposals to the Public Service Board for a reclassification of the Third Division Legal Officer positions in the Department and, following lengthy negotiations with the Board, reclassifications amounting to approximately \$300 for all of the officers in the Legal Officer, Senior Legal Officer and Principal Legal Officer grades were approved with effect from the

Exhibit 103/6,
Qs.708,713 &
714

30th November, 1967. In regard to this adjustment the Secretary of the Department informed us that the increases agreed to by the Public Service Board were considerably below those that had been sought. In this regard the Public Service Board Observer, Mr. Vanthoff, stated that the proposals concerned related to a large and important professional category in the Public Service structure. A considerable amount of material had been submitted by the Secretary of the Attorney-General's Department in support of the salary review that he had requested for Third Division Legal Staff in his Department. The Board devoted some time to checking the information supplied, in amplifying it in certain ways and in examining other information that it regarded as of more relevance in some ways than some of the matters that had been put forward by the Department. This examination represented an attempt to reach a solidly based position which was defensible so far as the Public Service Board was concerned when examining other professional categories but which, at the same time, would give reasonable justice to the claims made by the Secretary of the Department.

30. In his submission the Parliamentary Draftsman informed us that since 1950 the Drafting Division had recruited forty-six officers of whom thirty-three had left the Division. Of these officers, seventeen had left after about one year's service, five after two years' service, three after three years' service, one after four years' service and seven after 5 years' service or longer. Exhibit 103/

31. The Parliamentary Draftsman submitted information relating specifically to changes made in the legal professional establishment of the Parliamentary Drafting Division subsequent to 28th May, 1962. This showed that the approved positions had been increased from eighteen at that date to twenty-four as at 30th May, 1968. In addition six positions of Clerical Assistant had been created and filled to provide assistance to professional officers in work not requiring professional skill and knowledge. In regard to this establishment, the Secretary of the Attorney-General's Department stated that if the Drafting Division were able to obtain a number of officers equivalent to the present drafting establishment it would be able to maintain almost the whole of its ordinary work providing that each one of the officers employed was fully efficient. He stated, however, that there is a considerable lag in the drafting of statutory legislation. In

Exhibit 103/6
& Qs. 717 to
721

order to overcome that lag it would be necessary for the staff of the Drafting Division to be increased. Secondly, he stated that in the Legal Officer and Senior Legal Officer ranges, the Division has a number of vacancies and in the Legal Officer range it has a number of officers who, as yet have not had the necessary experience to carry out the work. The Parliamentary Draftsman added that if he were able to obtain experienced officers to fill the establishment of the Drafting Division it would probably be possible for the establishment to be reduced. However, by far the greater proportion of the base grade Legal Officers in the Drafting Division are not able to carry out the whole of the work that they ought to be doing, mainly because of a lack of personality, type of mind, training and general legal background required to enable them to do it.

32. In a subsequent submission the Secretary of the Attorney-General's Department informed us that the occupant of one of the recently created positions in the Drafting Division - a position of Principal Legal Officer - was required to take charge of all of the publications for which the Division is responsible and to undertake some legal drafting. This position had been filled by directing an officer from the Executive Division of the Department who had previous experience in this field to act in the position. This move had relieved some senior officers of the obligation to devote part of their time to supervisory activities in the Drafting Division but had caused problems to arise in the Executive Division because the officer transferred was one of outstanding qualities. In regard to this transfer the Parliamentary Draftsman stated that the transferring to the position of Principal Legal Officer of an officer who had no previous experience of drafting could only be regarded as experimental. He had accepted the arrangement on the proposition that an officer lacking previous drafting experience might be able to learn to handle drafting work successfully. This had yet to be proved.

Exhibit 103/7.
Qs. 743 & 744

33. A second position that had been created was one of Senior Assistant Parliamentary Draftsman to take charge of the Australian

Capital Territory "cell" of draftsmen. One of the Senior Assistant Parliamentary Draftsmen had been transferred to this new position and his place in the Drafting Division had been taken by transferring a Senior Assistant Secretary in the Executive Branch to the Parliamentary Drafting Division. Exhibit 103/7

34. The Secretary stated that, arising from these developments the Drafting Division has gained three officers above the rank of Legal Officer, viz., a Senior Legal Officer, a Principal Legal Officer and an Assistant Parliamentary Draftsman. The consequence of these three appointments however, will not be of such significance to the rate of drafting subordinate legislation generally as might appear, because of the number of draftsmen for the Australian Capital Territory laws has been augmented by the addition of a Senior Assistant Parliamentary Draftsman and is now operating more effectively as a separate unit. Both the Secretary of the Department and the Parliamentary Draftsman hoped that the changed staffing will have some effect on the general back-log of subordinate legislation. Exhibit 103/7

35. A further recent development to which the Secretary of the Department referred related to action that is in train to appoint three new Legal Officers following the advertisement of vacant positions. He stated that in one case, an officer who has applied for a position has sought to transfer from a Deputy Crown Solicitor's Office while the other two are to be appointed from outside the Commonwealth Public Service. He added, however, that it is too early to form a judgment as to whether this development will do more than balance certain expected losses in the Legal Officer ranks in the Parliamentary Drafting Division.

36. In regard to the work of the Parliamentary Drafting Division the Secretary of the Department expressed the need to stress the fact that unless the group of officers drafting subsidiary legislation is to be rigidly separated from the group drafting Bills, it will always be likely that when urgent demands for Bills arise during a Session, officers will be taken from the former group to supplement the latter. The Public Service

Board Observer, Mr. Vanthoff, indicated that this possibility had been considered, among other factors, during the review conducted in 1962. In fact it was not regarded as being an appropriate arrangement of work in the Drafting Division and was therefore not considered further. He expressed the view that there is a flexibility and an ease of training and that the work of subordinate legislation and Bills is sufficiently inter-related that to establish a rigid division between the two areas of work would seem to have obvious weaknesses and very little to support it. The Secretary of the Department also claimed that the Drafting Division has a proud record in meeting the demand for draft Bills and that this has not been achieved without considerable effort by all of the officers concerned.

Exhibit 103/7
& C.746

37. In connection with the problem of subordinate legislation, the Secretary of the Department suggested that there are several ways in which the back-log of drafting could be overcome. First, the number of well-qualified draftsmen engaged on the task could be increased. On this aspect the Department tendered a confidential submission. Secondly, lawyers outside the Commonwealth Public Service could be employed under contract to draft regulations. Thirdly, unqualified officers in the various departments could be given the task of drafting subsidiary legislation. Finally, the avenues for reducing the amount of subordinate legislation could be explored.

Exhibit 103/7

38. So far as the allocation of drafting work to qualified legal practitioners outside the Commonwealth Public Service is concerned, the Secretary informed us that, by direction of the Attorney-General and on the suggestion of the resident judge, the Department had recently made arrangements for the drafting of the Australian Capital Territory Supreme Court Companies rules by a prominent Sydney Counsel who was concerned in the drafting of the corresponding rules for the New South Wales Supreme Court. The Attorney-General had also requested that consideration be given to placing at least one proposed Ordinance with Counsel for drafting. On the general question

of the use of Counsel, however, the Secretary of the Attorney-General's Department indicated that in August, 1964, the Public Service Board had written to the Department as a consequence of discussions before the Public Accounts Committee of a lag in drafting Bills and Ordinances in the Northern Territory. The Board made several suggestions for what they termed a "crash programme" including the employment of suitable persons on contract. On receipt of the Board's memorandum arrangements were made for the Parliamentary Draftsman to visit Darwin to examine the arrangements for drafting legislation.

39. In December, 1964, the Secretary of the Department wrote to the Public Service Board discussing the action that had been taken and indicating that the use of qualified persons on a contract basis had proved discouraging in its results. Suitable work not necessarily emanating from Darwin had been given to them, but none had been returned to the Department at that time. It was indicated that legislative drafting is a specialised form of legal work. In many cases the close contact that is necessary between the instructing Department and the Draftsman prevents drafting work from being given to people outside Canberra or Darwin. However, a number of Counsel had been approached and it was stated that they were prepared to attempt drafting work. Following other correspondence the Secretary of the Department informed the Public Service Board on 1st July, 1965, that he intended to furnish a report on the results of the experiment. The Parliamentary Draftsman stated that while the matter had not been overlooked in the Drafting Division, difficulties have arisen in preparing a suitable report due to arrears in current work. He indicated that the results of remitting drafting work to legal practitioners in private practice had proved to be expensive, inconvenient to the client department and unsatisfactory and disappointing as far as the drafting itself was concerned.

Exhibit 103/7,
Qs. 730 to 735,
747 and 748

40. In regard to the possibility that the drafting of subordinate legislation might be undertaken by departments rather than by the Drafting Division the Secretary of the Attorney-General's Department stated that while there are some arguments in favour of such a course, the arguments against it are very much stronger. He indicated that in the Public Service Board's circular of 1962 there

had been a section which referred to a conscious decision that all work requiring a legal officer would be carried out in the Attorney-General's Department and that all positions requiring a qualified lawyer would be created in that Department. Apart from this there is the fundamental difficulty that the actual drafting itself is only one part of the draftsman's task. An even more important part of that task is the associated work including the testing of the details of the legislative scheme and the consideration of questions of constitutional and statutory power. He expressed the view that it is very largely due to this important associated work that the drafting of subordinate legislation is in arrears. He added that if instructing departments were to prepare preliminary drafts for the guidance of the Drafting Division it is possible that they could mislead the draftsman as to their requirements. The Secretary claimed that the draftsman can proceed with drafting work more quickly if he is informed in plain language by the instructing departments of their requirements.

Exhibit 103/7,
Qs. 749 & 750

41. The Secretary of the Department also considered the further possibility that the instructing departments might undertake the whole of the drafting of subordinate legislation. In this regard he stated that ever since the then Attorney-General, the Honourable R. G. Menzies, gave an undertaking that the Attorney-General's Department would vouch for the validity of all subordinate legislation, successive Attorneys-General have looked to the Parliamentary Drafting Division to implement that undertaking. Under present arrangements, a set of regulations drafted by the Attorney-General's Department is based on the proposition that it is constitutionally legal and within the regulation making power in the Act of the Parliament. That type of assurance could not be given to the Parliament if the regulations were drafted wholly in the instructing department.

Exhibit 103/7
& Q. 750

42. The Parliamentary Draftsman, however, expressed the view that if departments were able to obtain the services of officers who could draft satisfactorily, he would be very glad to have them in the Drafting Division of the Attorney-General's Department. The difficulty is in finding the officers concerned and it would prove just as difficult to find a draftsman to work in an instructing department as it would be to find a draftsman to work in the Attorney-General's

Qs. 751 & 752

Department. He added that the drafting position would improve if an improvement occurred in the form of the instructions that client departments give to the Parliamentary Draftsman. He informed us that in the past 5 years there had been a noticeable decline in the standard of instructions given by almost all departments.

43. In connection with the possibility that the amount of subordinate legislation could be reduced, the Secretary of the Attorney-General's Department stated that in November, 1964, the Attorney-General had suggested to the Minister for the Navy that some of the matters covered by the Defence Financial Regulations were the counter-parts of matters to which effect was given in the Commonwealth Public Service by administrative determinations. The Secretary expressed the opinion that some quite significant contribution to the solution of the problems in this field of Defence Financial Regulations might be made in this way. In other fields this has already been done but in other areas there might not be any real scope for the adoption of this course.

Exhibit 103/7

Chapter 4

Conclusions and Findings

(a) Conclusions

44. In 1960 Your Committee examined the causes of delays that had been reported by the Auditor-General in the processing of financial regulations. Arising from that Inquiry Your Committee recommended that early action be taken to ensure that departments would in future comply with the law by ceasing to make payments prior to the necessary amendment of enabling regulations, would observe legislative requirements promptly and would keep their Ministers fully informed in regard to these matters. Your Committee also recommended that the Public Service Board and other authorities involved should ensure that adequate administrative machinery is available to permit the expeditious drafting of regulations and that immediate attention should be given to the staffing problems in the Drafting Division of the Attorney-General's Department. Although the subsequent Treasury Minute showed that appropriate action by the authorities concerned had followed these recommendations, Your Committee felt that, after a period of some seven years, it should examine again the position in relation to the Defence Departments' Financial Regulations.

P.P. No. 84
of 1960

45. Our Inquiry revealed that as at 18th March, 1968, there were sixty-nine proposed amendments to the financial regulations concerned, of which twenty-eight had been outstanding for two years or longer and a further nineteen had been outstanding for more than one year. Inquiries made as at the date of this Report, however, showed that of the sixty-nine matters referred to, no less than forty-five had been tabled in the Parliament subsequent to our Inquiry, while eight had been withdrawn or were under consideration for withdrawal.

46. As the evidence showed, a wide range of factors had impeded the processing of regulations. In some cases, the

Attorney-General's Department had been requested to draft regulations that proved, on examination, to be inconsistent with existing Statutes or which were attendant upon decisions being taken on matters of Government policy. Having regard to the problems confronting the Drafting Division of the Attorney-General's Department, Your Committee believes that instructing departments have a responsibility to ensure that proposed amendments to regulations are valid in their intention and that their promulgation would not be hindered by reason of Government policy considerations. We consider that these requirements could best be met by consultation between the instructing departments and the Drafting Division at the earliest possible opportunity in the development of proposed amendments. We view with concern the opinion expressed by the Parliamentary Draftsman that, over the past five years, there has been a noticeable decline in the standard of instructions given to his Division by almost all departments. We believe that departments should make strenuous efforts to improve the quality of their instructions put forward for drafting and that they would be assisted in this regard by early consultation with the Drafting Division.

47. So far as the instructing departments are concerned, the evidence showed in the case of the departments that were examined, that arrangements for maintaining a check on outstanding amendments to regulations vary widely. We consider that all departments should examine carefully their administrative arrangements in this regard to ensure that regulation changes are kept under close and efficient surveillance.

48. A further matter revealed in evidence and involving the instructing departments is their reluctance to seek Ministerial approval to changes in regulations prior to drafting, except where significant policy issues are involved. In this regard we note the views of the Parliamentary Draftsman that while it would not be necessary for all proposed amendments to regulations to be submitted to Ministers prior to drafting there are some areas in which the Drafting Division would expect to receive a

ministerial decision prior to proceeding with drafting work and that some regulations that the Drafting Division is requested to draft would be eliminated if prior ministerial authority were to be sought. We believe that guidance on this point should be obtained by instructing departments from the Drafting Division at the earliest opportunity in the formulation of proposed amendments to regulations.

49. So far as the Attorney-General's Department and the Drafting Division in particular are concerned, the evidence taken confirmed that the Department and the Public Service Board have made strenuous efforts since our previous inquiry in 1960, to overcome the problems that then existed. In 1962 a new organisation structure was approved for the Department and, based on experience, this was varied in 1965 to meet more adequately the Department's needs.

50. While it appears that the Department was unable to agree with the salary classifications determined by the Public Service Board in 1962, reclassifications of salary were subsequently obtained in 1967 although they continued to remain considerably below the level that had been sought by the Department. In regard to the level of salary applying to draftsmen in particular we noted with interest that while in the United Kingdom the salaries of Drafting Officers had been increased vis a vis other Legal Officers, a shortage of draftsmen had persisted in that country.

51. In connection with the problems within the Drafting Division of the Department we noted the view expressed by the Secretary of the Department that in order to overcome the considerable lag that exists in the drafting of statutory legislation it would be necessary for the staff of the Drafting Division, which has a number of vacancies, to be increased. On the other hand, the Parliamentary Draftsman indicated that if he were able to obtain experienced officers to fill the establishment of the Drafting Division, it would probably be possible for that establishment to be reduced.

52. On the basis of confidential evidence submitted by the Department it appears that the problem of obtaining sufficient Parliamentary Draftsmen is not so much one of creating drafting positions within the Establishment of the Department as that of attracting to a career service, members of a traditionally individualistic profession which is said to regard drafting work as uninteresting in nature. We believe that a useful purpose would be served in this regard if the Department were to present to undergraduates in the Faculties of Law in the universities an indication of the opportunities available to them in the field of legal drafting with a clear appreciation of the challenging and imaginative nature of the work involved. We further believe that the universities themselves should be invited to participate in this approach and in the development of special training arrangements that were referred to in confidence. We also consider that the Department itself should explore fully the possibility of providing a more formalised method of training for Parliamentary Draftsmen after they have been recruited. This might well involve the substitution of full-time training in place of the "on the job" training which is evidently practised exclusively at present.

53. While we recognise that legislative drafting is highly specialised work we believe that this applies also to other areas of law practised by the Attorney-General's Department and we do not consider that the problems confronting the Drafting Division itself would be more readily solved by a fundamental restructuring of the Department along the lines suggested to us in confidential evidence. Indeed, the present structural arrangement has enabled officers to be transferred to the Drafting Division in an effort to strengthen it, from other Divisions of the Department. Although the benefits to be derived from these transfers have yet to be demonstrated, we believe that the Department should persist with its experiment and, if necessary, should transfer officers into and out of the Drafting Division at any level as the circumstances appear to warrant. We believe that, in practice, the restructuring of the Department would reduce the flexibility at present available to the Permanent Head of the Department to effect such transfers.

54. Although the possibility has been considered of separating the officers engaged in the drafting of subsidiary legislation from those engaged in the drafting of Bills we agree with the views expressed by the Public Service Board that the work involved in these two areas is sufficiently inter-related that the establishment of a division between them would have obvious weaknesses. In particular, it would appear that such a division would hamper rather than assist in the solution of the total drafting problem by introducing an element of rigidity in the use of professional staff resources in the Drafting Division where the availability of fully efficient staff is already evidently inadequate.

55. Although earlier attempts to have drafting work undertaken by qualified legal practitioners outside the Commonwealth Public Service have evidently not shown great promise, it appears that arrangements have been made recently for the drafting of the Australian Capital Territory Supreme Court Companies Rules by a prominent Sydney Counsel and further consideration has been given to placing at least one proposed Ordinance with Counsel for drafting. Your Committee believes that until such time as the staffing problems of the Drafting Division have been resolved the placing of selected drafting work with well qualified Counsel who have been chosen carefully on the basis of demonstrated capacity and experience should be continued.

56. Your Committee has given careful consideration to the question of whether instructing departments might either prepare initial drafts of the proposed amendments to regulations for the Parliamentary Draftsman, or might prepare proposed amendments to regulations in final form. However, in view of the undertaking given by a previous Attorney-General that the Attorney-General's Department would vouch for the validity of all subordinate legislation; the complexity of drafting work and the problems that would arise in securing suitably qualified officers to occupy appropriate positions in the instructing departments, we have come to the conclusion that the Attorney-General's Department should continue as the sole drafting authority on behalf of Commonwealth Departments for subsidiary legislation.

57. Finally we have considered the proposal put to us that the volume of subordinate legislation requiring drafting could be reduced if a greater use were to be made of administrative determinations. The evidence taken in this regard suggests that, apart from contributions that could be made in the field of Defence Financial Regulations, there is probably little scope available in other areas of the administration for the use of this device. Your Committee is of the firm opinion that the principle inherent in the use of financial regulations should be preserved.

(b) Findings

58. Your Committee finds that:

1. Instructing departments should ensure that proposed amendments to regulations are consistent with existing Statutes and in accordance with Government policy. (Para. 46)
2. Instructing departments should make strenuous efforts to improve the quality of their instructions put forward for drafting. (Para. 46).
3. Instructing departments should ensure that appropriate Ministerial approval has been obtained before issuing drafting instructions to the Parliamentary Draftsman. (Para. 48)
4. To facilitate Findings 1. to 3. above, instructing departments should consult with the Parliamentary Drafting Division of the Attorney-General's Department at the earliest opportunity in the development of proposed amendments to regulations. (Para. 46).
5. Instructing departments should examine their administrative arrangements to ensure that proposed changes to regulations are kept under close and efficient surveillance. (Para. 47).
6. The Attorney-General's Department should present to under-graduates in the Faculties of Law in the universities, an indication of the opportunities available to them in the field of legal drafting with a clear appreciation of the challenging and imaginative nature

of the work involved. The assistance of the universities should also be sought in this regard. (Para. 52).

7. The Attorney-General's Department should explore fully the possibility of providing a more formalised method of training for Parliamentary Draftsmen subsequent to recruitment. (Para. 52).
8. The Attorney-General's Department should persist with its experiment of transferring officers to the Drafting Division from other Divisions. (Para. 53).
9. Maximum flexibility of staff allocation between the drafting of Bills and the drafting of subsidiary legislation should be maintained within the Drafting Division. (Paras. 53 and 54.).
10. Until the staffing problems within the Drafting Division have been resolved the placing of selected drafting work with well qualified Counsel who have been chosen carefully on the basis of demonstrated capacity and experience should be continued. (Para. 55).
11. The Attorney-General's Department should continue as the sole drafting authority for subsidiary legislation on behalf of Commonwealth Departments. (Para. 56).
12. The principle inherent in the use of financial regulations should be preserved. (Para. 57.).

For and on behalf of the Committee,



DAVID N. REID

Secretary,

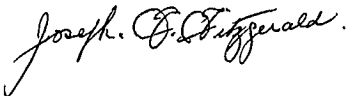
Joint Committee of Public Accounts,
Parliament House,
CANBERRA A.C.T.

26th November, 1968.



RICHARD CLEAVER

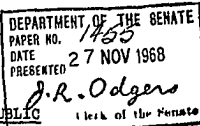
Chairman



Appendix No. 1

Index to Exhibits

<u>Exhibit No.</u>	<u>Title</u>
1.	Submission by the Department of the Navy.
2.	Submission by the Department of the Army (Confidential).
3.	Submission by the Department of the Army.
4.	Submission by the Department of Air.
5.	Additional Submission by the Department of Air.
6.	Submission by Attorney-General's Department concerning Salaries, etc., of Legal Officers.
7.	Supplementary Submission by the Secretary to the Attorney-General's Department.
8.	Submission by Attorney-General's Department - Efforts to Increase Staff of the Parliamentary Drafting Division (Confidential).



STATEMENT BY THE GOVERNMENT OF THE REPUBLIC
OF VIET-NAM.

In its constant search for peace, the Government of the Republic of Viet-Nam has been discussing with the U.S. Government during the past weeks the ground rules and arrangements for the new meetings in Paris which would enable the Government of the Republic of Viet-Nam to send its delegation to Paris to engage in direct and serious talks with the Hanoi delegation, toward the ending of communist aggression and the establishment of a just, secure, and guaranteed peace in Viet-Nam.

2. As a result of these discussions the United States Government has submitted to the Government of the Republic of Viet-Nam a statement. By mutual agreement, that statement is being made public in both Saigon and Washington at this time.

3. In that statement, we find that the major points in the message of the President of the Republic before the Joint Session of the National Assembly on November 2nd, and the two-side formula proposed by the Government of the Republic of Viet-Nam on November 8th, have been given satisfaction in their essential aspects.

4. The sovereignty of the Republic of Viet-Nam has been respected.

5. The Governments of the other allied nations have been consulted and wholeheartedly support the agreements achieved through the close co-operation between the U.S. Government and the Government of the Republic of Viet-Nam.

6. Once again, the solidarity between the Government of the Republic of Viet-Nam and allied governments has been eloquently demonstrated in the face of the intransigent attitude of North Viet-Nam and its auxiliary forces.

7. Therefore, the Government of the Republic of Viet-Nam decides that it is prepared to participate in the new talks in Paris with the Hanoi delegation to show the good will of the Republic of Viet-Nam and to test the good faith of Hanoi.