



Determination No. 39 of 1989

Determination under Section 58B of the Defence Act 1903

I, PETER FREDERICK MORRIS, the Minister of State for Industrial Relations, hereby make the following Determination under section 58B of the *Defence Act 1903*.

Dated 10 April 1989.

PETER MORRIS

Minister of State for Industrial Relations

Citation

1. This Determination may be cited as Determination 0109, *Legal Officer's Professional Fee*.

Definitions

2. In this Determination, unless a contrary intention appears -

"legal officer" means an officer of the Australian Naval Reserve, Australian Army Reserve or Australian Air Force Reserve who is, or is eligible to be, a barrister or solicitor of the High Court or of the Supreme Court of a State or Territory, but does not include an officer who is a Judge of the Federal Court or a Judge of a court of a State or Territory;

"Professional Fee" means the Legal Officer's Professional Fee;

"usual working hours" means the period between 0900 hours and 1700 hours on a Monday, Tuesday, Wednesday, Thursday or Friday which is not a public holiday in the State or Territory in which the legal officer resides.

that legal officer shall be paid a Professional Fee in accordance with the provisions of this Determination.

Calculations of Professional Fee

5. Subject to clauses 6, 7 and 8, the Professional Fee to be paid in respect of duty described in clause 4 shall be calculated to the nearest whole dollar and -

- (a) in respect of a legal officer's appearance as a Prosecutor or Defending Officer before a Summary Authority, or provision of legal advice pursuant to paragraph 4(e) - shall be one half of the daily or hourly rate specified in paragraph (b), whichever is appropriate; and
- (b) in respect of the performance of any other duty specified in clause 4 shall be -
 - (i) a daily rate of \$635.00;
 - (ii) an hourly rate of one sixth of the daily rate specified in sub-paragraph (b)(i); or
 - (iii) where the legal officer is a Queen's Counsel, one and one half of the daily or hourly rate of the Professional Fee specified in sub-paragraphs (b)(i) and (b)(ii), whichever is appropriate.

Conditions which apply to Payment of Professional Fee

6. Where a legal officer performs duty specified in sub-paragraph 4(a), 4(b) or 4(c), a payment of the Professional Fee shall be deemed to include payment for any preparation made in respect of that duty, and payment -

- (a) in respect of proceedings on any one day involving 3 hours or less than 3 hours' duty shall be made at the hourly rate not exceeding 3 hours;
- (b) in respect of proceedings on any one day involving more than 3 hours' duty shall be made at the daily rate; and
- (c) in respect of any one day of duty shall not exceed the payment for one day at the daily rate.

7. Where, in relation to duties performed pursuant to sub-paragraph 4(d), 4(e) or 4(f), the time taken in the provision of legal advice and assistance comprise a number of instances each less than 1 hour, such times shall be aggregated each calendar month and payment shall be made for such aggregate at the applicable hourly rate calculated to the nearest half hour.

8. The provisions of this Determination do not apply to a particular duty undertaken under sub-paragraph 4(a), 4(b) or 4(c) which exceeds 5 consecutive days or an aggregate of 5 days.

EXPLANATORY STATEMENT

DETERMINATION NO. 39 OF 1989

ISSUED BY THE AUTHORITY OF THE MINISTER FOR INDUSTRIAL RELATIONS

UNDER SECTION 58B OF THE DEFENCE ACT 1903

Section 58B of the Defence Act 1903 allows the Minister to make determinations on conditions of service for the members of the Defence Force.

Determination 0109, Legal Officer's Professional Fee, provides for the payment of an allowance to Reserve Legal Officers. Such officers are appointed to supplement the activities of the Regular Legal Officers in the Defence Force. This Determination permits payment of sessional rates to Reserve Legal Officers when they are performing legal duties in a period during which they would otherwise be engaged in a private professional capacity.

Clause 4 of this determination specifies the duties for which the Professional Fee may be paid and clause 5 specifies the amount payable. Clauses 6 to 8 of this determination set out the qualifying conditions which apply to payment of the Professional Fee in certain circumstances. Clause 3 provides for the appointment of approving authorities for the purposes of the determination.

The date of effect of this determination is 10 April 1989