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DGADFLS DIRECTIVE NO 2/2008

LEGAL TASKING OF RESERVE LEGAL OFFICERS – AUTHORISATION AND CLAIM FOR PAYMENT PROCEDURES FOR RESERVE PAY AND SESSIONAL FEE DUTIES

Introduction

1. This Directive replaces DGADFLS Directives 1/2005 on the legal tasking of Reserve Legal Officers (RLOs).

Purpose

2. The purpose of this directive is to:
 - a. direct your attention to the changes to the Legal Officer Sessional Fee Determination, including:
 - i) changes to duties which attract sessional fees (enclosures 1 and 2), and
 - ii) changes to Forms R1 and R2 concerning duties which attract sessional fees; and
 - b. remind you of the existing requirements concerning Training Day attendances.
3. New versions of Forms R1 and R2 (enclosures 3 and 4) are attached. Permanent Legal Officers (PLOs) are to use these forms for all legal tasking of RLOs. PLOs should note that R1s are not required for non-legal duty such as reserve training nights and Steyr shoots.

Changes to the Legal Officer Sessional Fee

4. There have been substantial changes to the Legal Officer Sessional Fee Determination. These changes include:
 - a. the elimination of the 0900 to 1700 Monday to Friday limit on duties for which sessional fees may be paid,

- b. the elimination of the half Sessional Fee rate - all duties attracting sessional fees are compensated equally depending on the professional status of the claimant,
- c. the elimination of the requirement that advice to an ADF Commander be "urgent",
- d. the expansion of duties for which sessional fees may be paid to include new military justice roles arising from the changes to the DFDA contained in the *Defence Legislation Amendment Act 2008*,
- e. the expansion of the types of duties, requiring specialist legal skills, for which sessional fees may be paid, including Inquiry Officer and Inquiry Assistant functions and dispute resolution services, and
- f. the expansion of duties for which sessional fees may be paid to include preparation time for some duties.

5. These changes have been accompanied by a complete review of how Defence Legal (DL) assesses and authorises duties for which sessional fees may be paid. I require PLOs to be diligent and exercise care in approving duties that may attract sessional fee compensation. Approvals should only be made using the new Forms R1 and R2 which are now available on the Defence Legal website and intranet site. There is also now a requirement for an annual review of the eligibility of RLOs who claim sessional fees. The annual review will generally coincide with the commencement of the new Financial Year.

Eligibility

6. **Training Days.** RLOs are eligible for payment of Reserve training days if on the Active list (General list for Air Force) or if approved to undertake training under section 32A of the *Naval Defence Act 1910*, section 50 of the *Defence Act 1903* or section 4J of the *Air Force Act 1923*.

7. **Sessional Fees.** RLOs are entitled to payment of sessional fees if:

- a. the RLO is personally eligible to receive sessional fees,
- b. the RLO's name appears on an 'eligibility to receive sessional fees list' issued by DL,
- c. the duty is authorised using an R1 before the duty is performed, and
- d. the work carried out satisfies the criteria for duties that attract sessional fees detailed in the Legal Officer Sessional Fee Determination (enclosure 1).

8. **Personal Eligibility.** Before a RLO is eligible to receive sessional fees, a RLO must have their personal eligibility endorsed by DGADFLS. The criterion for this endorsement is that they would 'otherwise be engaged in a private professional capacity as a barrister or solicitor'. Any RLO seeking recognition for personal eligibility to receive sessional fees should refer to DGADFLS Directive 3/2008 (Enclosure 5). The names of all RLOs whose eligibility is endorsed by DGADFLS appear on a list promulgated by DL. This list is provided to each DL office separately to this Directive. Those RLOs who do not have DGADFLS endorsement and wish to seek it should send in a minute, together with their Statutory Declaration in the approved form, by mail to the Deputy Finance Manager, Defence Legal, CP2-4-037, Campbell Park Offices, Canberra ACT 2600.

9. **Work Eligibility.** Once a RLO's personal eligibility has been endorsed, consideration must be given to whether the work being undertaken comes within the provisions of the Determination. The Sessional Fee or Training Rate Duty Matrix (Enclosure 2) provides guidance on the appropriate remuneration for legal duties.

10. **Payment Rate.** Members will be compensated at the sessional rate of \$1,215 per day (\$1822.50 for QC/SC) for the first five days of sessional work undertaken. When the service exceeds five days DGADFLS must set the rate to be paid for the days exceeding the initial five. RLOs should not assume that the \$1,215 rate will be paid for work in excess of five days and PLOs are not to guarantee any rate until it is determined by the DGADFLS on each occasion. To facilitate this process PLOs are to request a rate be struck by a covering minute to DGADFLS. The covering minute addressed to DGADFLS should be forwarded to DL Finance Office and must include the:

- a. status of counsel (ie Senior or Junior counsel) and length of time as counsel or date of admission;
- b. availability of counsel generally to perform duty;
- c. function that needs to be performed and why it cannot be performed by a PLO;
- d. expected duration of the duty;
- e. expertise or skill of the member;
- f. normal market daily fee at which counsel is briefed ; and
- g. importance of the matter, including any special sensitivity.

11. Attached to this information should be a Counsel Fee Application Form, this form together with Forms R1 and R2 can be downloaded from the DL internet site at <http://intranet.defence.gov.au/dsg/sites/LegalResources>.

Form R1

12. Only PLOs of the rank of CAPT (E) and above and reservists performing Continuous Full Time Service can authorise work which attracts sessional fee compensation. Form R1 is to be used by PLOs authorising legal service by a RLO (Commanding Officers are not empowered to authorise such services). All Forms R1 are to be completed at the time of tasking and before duty is undertaken. The PLO tasking the RLO is to forward the R1 to Defence Legal Finance (by fax 02-62664795) before the duty is undertaken. The RLO should satisfy themselves that this has been done before commencing duty. This enables the Finance office to keep track of authorisations and if necessary to query individual cases. It also assists budgetary planning and permits the DL to properly manage funds.

13. A key aspect of the procedures is that a RLO will be able to receive payment only if a copy of the completed Form R1, predating the date of the duty undertaken, is attached to the claim. In this way the authorisation can be verified both by the approving officer and, when the claim relates to sessional fees, by the Finance office.

Form R2

14. Form R2 is used by RLOs only for payment for service at sessional rates. The Reserve Attendance Diary applicable for the individual's Service should be used for claiming payment for Training Days (AB157 for Navy and AD264 for Army and Air Force). Form R2 has been developed so as to make it as simple as possible to complete and verify quickly. Its adoption and use by all RLOs will ensure a consistent and comprehensive data set for management purposes.

Legal Assistance

15. It should be noted that as a general rule RLOs should provide legal assistance to ADF members at the training day rate of pay. Any legal assistance provided must comply with the policy in DI(G) PERS 12-1.

Travel

16. In the interests of efficiency, taskings for RLOs should usually be restricted to those RLOs who live in the area where the duty is to be performed. Accordingly, it will be necessary for each legal office to review arrangements for the provision of legal assistance. If RLOs prefer to see members on legal assistance matters during working hours that is permitted. Of course, payment will remain at the training day rate of pay.

Summary

17. All PLOs are to ensure that:

- a. before tasking RLOs to undertake duties which attract sessional fees:
 - i) the RLO is entitled to sessional fee compensation;
 - ii) they have certified on the Form R1 that the tasking could not be readily undertaken by a PLO and justify that conclusion, and
 - iii) a Form R1 is completed;
- b. all R1 approvals for duties attracting sessional fees in excess of five days are forwarded to DGADFLS to determine a rate of remuneration before the duty is undertaken;
- c. all extensions of authorised duty are recorded on the Form R1;
- d. they check the Form R2 is true and correct (including confirming that service claimed is within the authorised timeframe) and that it is attached to a copy of the appropriate R1; and
- e. before tasking any RLO for training day duty, they check the RLO has sufficient allocation of training days to meet the duty and if it is for more than five days that the Head of Category is informed.

18. All RLOs are to ensure that they:
- a. do not commence a duty without a signed R1;
 - b. do not commence duties for which they expect to receive compensation at the sessional fee rate without:
 - i. DGADFLS endorsement of their eligibility to receive sessional fees; and
 - ii. where the duty is expected to, or does, exceed five days, receipt of an authorised rate of remuneration from DGADFLS; and
 - c. do not accept tasking for Training Days that exceeds their current allocation of training days.
19. All Command Legal Officers or equivalent (including SOL HQAC, FLO, SO1 Legal CDF Office, CLA NHQ, CLA AHQ, SO LEGAL AFHQ, SLA MSC and DLEGAL HQJOC) and Reserve Heads of Panels are to ensure that the subordinate legal officers within their Commands/Panels are aware of this Directive and are to provide confirmation in writing to me by 31 Oct 2008 that this action has been taken.
20. If you have any queries on the detail of this directive my contact officer is GPCAPT Alan Hemmingway on (02) 62663318.

Original Signed

V.M. McCONACHIE

Commodore, RAN

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25 September 2008

Enclosures:

1. Legal Officer Sessional Fee Determination (as at 20 Sep 2008)
2. Sessional Fee or Training Rate Duty Matrix (revised)
3. Form R1 (revised)
4. Form R2 (revised)
5. DGADFLS Directive 3/2008 – Employment of RLOs concerning personal eligibility to receive Sessional Fees (revised)

Distribution:

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