

## Division 1: Legal officer sessional fee

### 4.8.3 Purpose

Legal officer sessional fee compensates Reserve legal officers for the following.

- a. For certain professional work they perform for the ADF.
- b. For practice costs associated with the duties in paragraph a.

**Examples:** Telephone calls, facsimile transmissions, postage and photocopying.

### 4.8.3A Definition

This table outlines the definition used in this Division.

Term	Definition in this Division
Court of Inquiry	'Court of Inquiry' has the same meaning as in regulation 3 of the <i>Defence (Inquiry) Regulations 1985</i> .

### 4.8.4 Members this Division applies to

This Division applies to a legal officer who is a member of the Reserves.

### 4.8.5 Duties attracting a sessional fee

1. A legal officer is entitled to a sessional fee if all the following conditions are met.
  - a. The legal officer performs legal duties in the ADF when they would otherwise be working in a private professional capacity as a barrister or solicitor.
  - b. **Any of the following persons approves a period of the duty described in the table at paragraph c, before it is performed.**
    - i. **CDF.**
    - ii. **Director General Australian Defence Force Legal Services.**

- c. The legal officer performs one or more of the duties described in the following table.

Item	Duties
1.	<p>Military duty as a counsel or assistant counsel performing any of the following duties.</p> <ul style="list-style-type: none"> <li>a. Appearing before a summary authority.</li> <li>b. Any of the following duties performed in relation to a Court Martial or Defence Force Magistrate proceeding. <ul style="list-style-type: none"> <li>i. Appearing in the proceeding.</li> <li>ii. Participating in a pre-trial directions hearing.</li> <li>iii. Participating in a case management conference.</li> </ul> <p><b>Examples:</b> Conferences conducted in person or by telephone conference</p> <li>iv. Participating in a stay application in relation to a punishment or order.</li> </li></ul> <li>c. Providing legal services related to paragraphs a and b.</li> <li>d. Providing legal services relating to a petition or request for review to a reviewing authority, including a punishment review pursuant to the Military Justice (Interim Measures) Act No. 2 2009.</li> <p><b>Examples:</b> Drafting legal advice, applications, submissions and petitions. Providing advice to a member on the merits of electing trial by a court martial or Defence Force Magistrate.</p>
1A.	<p>Military duty as a Judge Advocate or Defence Force Magistrate in a disciplinary proceeding.</p>
1B.	<p>Providing legal services relating to the preparation or provision of a report under section 154 of the Defence Force Discipline Act 1982.</p>
2.	<p>Military duty as a legal officer assisting a Court of Inquiry.</p>
3.	<p>Military duty as a legal officer representing or assisting in the representation of a person before a Court of Inquiry.</p> <p>In this item, <b>person</b> includes a person who has died.</p> <p><b>Authority:</b> Regulations 33 or 121 of the <i>Defence (Inquiry) Regulations 1985</i></p>

Item	Duties
4.	<p>Providing legal services to an ADF commander where all of the following requirements are met.</p> <p>a. The services are of any of the following types.</p> <p>i. Providing legal advice.</p> <p><b>Examples:</b> Undertaking legal reviews under the <i>Defence Force Discipline Act 1982</i> and the <i>Defence (Inquiries) Regulations 1985</i></p> <p>Preparation time is not paid for this duty. <b>See:</b> Subclause 2.</p> <p>ii. Providing dispute resolution services.</p> <p><b>Examples:</b> Mediation, facilitation, negotiation, conflict coaching, conciliation and arbitration.</p> <p>iii. Acting as an inquiry officer or as an inquiry assistant.</p> <p><b>Authority:</b> Regulation 69 of the <i>Defence (Inquiry) Regulations 1985</i></p> <p>b. The services require legal skills.</p> <p>c. The services relate to duties and responsibilities of a member in that command.</p>
5.	<p>Giving legal advice to a member on matters arising from their service in the ADF.</p> <p><b>Examples:</b></p> <p>1. Giving legal advice to a member concerning proceedings under the <i>Defence Force Discipline Act 1982</i>.</p> <p>2. Giving legal advice to a member concerning a redress of grievance pursuant to Part 15 of the <i>Defence Force Regulations 1952</i>.</p> <p>Preparation time is not paid for this duty. <b>See:</b> Subclause 2.</p>
6.	<p>Giving legal advice to a defence civilian or former member in either of the following circumstances.</p> <p>a. The defence civilian or former member is being investigated in connection with disciplinary action or possible disciplinary action under the <i>Defence Force Discipline Act 1982</i>.</p> <p>b. The defence civilian or former member has been charged with an offence under the <i>Defence Force Discipline Act 1982</i>.</p> <p>In this item, <b>defence civilian</b> has the same meaning as in the <i>Defence Force Discipline Act 1982</i>.</p> <p>Preparation time is not paid for this duty. <b>See:</b> Subclause 2.</p>

2. Items in the table in paragraph 1.c include preparation time spent on legal tasks.

**Examples:** Proofing witnesses, taking instructions, settling agreed facts, reading transcripts, preparing submissions.

**Non-example:** Travelling to the place of duty.

**Exceptions:**

Preparation time will not be paid in association with the following duties.

1. Duties in subparagraph a.i of item 4 of the table in paragraph 1.c.
2. Duties in item 5 of the table in paragraph 1.c.
3. Duties in item 6 of the table in paragraph 1.c.

**Example:** A legal officer provides legal advice to an ADF commander about one of her members. The legal officer is not entitled to be compensated for preparation time.

#### **4.8.6 Sessional fee not payable**

1. This clause applies in any period for which a legal officer is entitled to pay as a Reserve member and also performs duties that meet conditions for payment of the sessional fee set out in subclause 4.8.5.
2. If the member's Reserve salary for the period is less than the amount of sessional fee that would be payable for the same period, the member may elect in writing to be paid the higher amount of sessional fee under this Division instead of the salary.

**Notes:**

1. This clause does not affect the member's entitlement to Reserve allowance payable under DFRT Determination No. 22 of 2008, Reserve Allowance.
2. To avoid doubt, a member may be paid a combination of salary and sessional fee for a day, but is not entitled to payment for more than 6 hours duty in total for that day.
3. If the member is approved to perform a period of duty for Reserve salary and not also given an express approval for that period of duty for the purpose of this Division, the member cannot later elect to be paid legal officer sessional fee under clause 4.8.6.

**Examples:**

1. A member who elects to take a full day's sessional fee for three or more hours duty cannot claim Reserve salary for the same day.
2. A member who takes a full day's Reserve salary for six or more hours duty cannot claim sessional fee for additional hours on that same day.

#### 4.8.7 Amount of sessional fee

1. A legal officer who performs duty in a matter described in the following table is entitled to a sessional fee, calculated at the rate set out in the table, for a period of up to 5 days.

Item	If the member performs...	for...	the member is to be paid...
1.	Any of the following duties described in any of the following parts of the table in paragraph 4.8.5.1.c a. Paragraph a of table item 1. b. Paragraph b of table item 1. c. Table item 1A. d. Table item 2. e. Table item 3. <b>See:</b> Clause 4.8.5, Duties attracting a sessional fee	less than three hours in a day	\$202.50 an hour.
		three or more hours in a day	\$1215 a day.
2.	Any of the following duties. a. Duties described in any of the following parts of the table in paragraph 4.8.5.1.c. i. Paragraph c of table item 1. ii. Paragraph d of table item 1. iii. Table item 1B iv. Table item 4 v. Table item 5. vi. Table item 6. b. Preparation time associated with duties described in any of the following parts of the table in paragraph 4.8.5.1.c. i. Any of table items 1, 2 or 3 ii. Table item 4. <b>Exception:</b> Subparagraph a.i of table item 4. <b>See:</b> Clause 4.8.5, Duties attracting a sessional fee	less than six hours in a day	\$202.50 an hour.
		six or more hours in a day	\$1215 a day.

2. The following arrangements apply to a member who performs a particular duty described in subclause 1 for more than five days. The days do not have to be consecutive.

Item	Day	Rate
1.	Days 1 to 5	In accordance with subclause 1.
2.	Day 6 and beyond	<p>A daily rate of sessional fee for the sixth and subsequent days that CDF or the Director General Australian Defence Force Legal Services consider reasonable, having regard to the advice of the Attorney-General's Department.</p> <p>For periods of less than a day, the hourly rate of sessional fee is one-sixth of the determined daily fee.</p> <p>Sessional fee may also be paid for periods that are less than whole hours on a pro rata basis.</p>

3. Duties performed by member who is a Senior Counsel or Queen's Counsel are to be paid at 1.5 times the amount that would otherwise be payable.