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**All ADF Permanent and Reserve Legal Officers
Support Staff (Legal Offices)**

**DGADFLS DIRECTIVE 1/2005
LEGAL TASKING OF RESERVE LEGAL OFFICERS – NEW AUTHORISATION
AND CLAIM FOR PAYMENT PROCEDURES**

Introduction

1. I am concerned that there remains some inconsistency and ambiguity on the authorisation and claims for payment procedures to be employed for the legal tasking of Reserve legal officers (LOs). Accordingly I am issuing this directive to provide better guidance on those procedures and to promote consistency, uniformity and equality across the spectrum of legal duties and the regions.

Purpose

2. The purpose of this directive is to inform you of:
 - a. the eligibility requirements for payment of Reserve pay and sessional fees; and
 - b. the procedures that are to take effect from the 1 Apr 05.
3. In addition, new versions of Forms R1 and R2 (Enclosures 3 and 4) are attached. **Permanent LOs are to use these forms for all legal tasking of Reserve LOs.** Permanent LO's should note that R1's are not required for **non legal** duty such as reserve training nights, steyr shoots etc.

Eligibility

4. Reserve LOs become 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*.
5. Reserve LOs are entitled to payment of sessional fees only if:
 - a. the LO is **personally eligible** to receive sessional fees;

- b. the work carried out satisfies the **work eligibility criteria** detailed in Determination 2003/21 Chapter 2, Part 7, Division 1 (Enclosure 1); and
- c. there is a R1 authorising the duty **prior** to the duty being performed.

6. Therefore two approvals are required before a Reserve LO may be eligible for sessional fees. The first approval is **personal eligibility**, ie, whether the LO 'would otherwise be engaged in a private professional capacity as a barrister or solicitor during usual working hours'. This must be approved centrally by the DGADFLS. All Reserve LOs who believe they are eligible for sessional fees need to have an approval signed by the DGADFLS. Those LOs who do not have such an approval should send in a minute (Attention: Jenny Deal) or e-mail jennifer.deal@defence.gov.au seeking approval of their individual eligibility. The list of personally eligible Reserve Legal Officers will be provided to each legal office separately to this Directive.

7. The second approval is **work eligibility**, ie, whether the work being done by the Reserve LO is covered by the provisions of the Determination. The Sessional Fee or Training Rate Type of Duty Matrix (Enclosure 2) provides guidance on the appropriate remuneration for specified legal duties.

8. If both eligibilities are satisfied DGADFLS is required to decide the rate to be paid to any Reserve LO who is authorised to work on a matter for **more than 5 days**. Reserve LOs should not assume that the full rate will be paid for work in excess of 5 days and Permanent LOs can give no guarantee as to the amount of the rate until it is determined by the DGADFLS (who is required to have regards to advice provided by the Attorney Generals Department) on each occasion. To facilitate this process Permanent LOs are to provide DGADFLS with the following information in relation to the Reserve LO:

- a. Status of counsel (ie Senior or Junior counsel) and length of time as counsel and or date of admission;
- b. The availability of counsel generally to perform duty;
- c. The function that needs to be performed;
- d. The expected duration of the duty;
- e. The expertise or skill of the member;
- f. The normal market daily fee at which counsel is briefed ; and
- g. Generally the importance of the matter, including any special sensitivity.

9. It must be remembered that the sessional fee is only payable between 0900 and 1700 Monday to Friday and as such only legal duty performed during this period can be paid at the sessional rate. Permanent LO's should note that in most cases a combination of sessional rate and training day rate should be authorised. Permanent LO's should consider in consultation with the Reserve LO how much of the duty will need to be performed between 0900 and 1700 Monday to Friday and how much can be performed after hours or on weekends and should complete the Form R1 accordingly.

Form R1

10. Only Permanent LOs (CAPT (E) and above and including reservists performing Continuous Full Time Service) can authorise work which attracts sessional remuneration. Form R1 is to be used by Permanent LO authorising legal service by a Reserve LO (Commanding Officers are no longer empowered to authorise such services). Form R1's for Judge Advocate and Defence Force Magistrate and Section 154 Officer duties will be authorised by the Office of the Judge Advocate General in Canberra.

11. All R1's are to be completed at the time of tasking and before duty is undertaken. The Permanent LO who is tasking the Reserve LO is to forward to the Defence Legal Finance Section (Canberra) immediately on issue to the Reserve LO and prior to the duty being undertaken. This enables the Finance Section to keep track of authorisations and, if necessary, to query individual cases. It also assists budgetary planning and permits the DL to manage properly the funds for which it is accountable.

12. A key aspect of the procedures is that a Reserve LO will be able to receive payment only if a copy of the completed R1 form, predating the date of the duty undertaken, is attached to his or her 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 Section.

Form R2

13. Form R2 is used by Reserve LOs only when claiming 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, see Enclosures 5 and 6).

14. The R2 forms have been developed so as to make it as simple as possible to complete and verify quickly. Its adoption and use by all Reserve LOs will ensure a consistent and comprehensive data set for management purposes.

Legal Assistance

15. It should be noted that except in urgent cases, Reserve LOs should only provide legal assistance to ADF members at the training day rate of pay (even if this means undertaking duty outside working hours). In urgent cases, the circumstances should be described in sufficient detail by the Authorising Officer and attached to this Form R1.

16. It is recognised that there will be circumstances, such as a member's imminent deployment, in which legal aid must be given during working hours. Provision is made for those exceptional circumstances, however, detailed reasons must be given. These circumstances must relate to the ADF member's circumstances, rather than those of the Reserve LO who is to provide the advice. It should be noted that "urgent" implies that the work should be carried out immediately or within a very short timeframe. It will be difficult to justify urgency in circumstances where the Reserve LO does not complete work within 48 hours of tasking. Any legal assistance provided must comply with the policy in DI(G) PERS 12-1.

Travel

17. In the interests of efficiency and as travel funds are limited and therefore taskings for Reserve LOs should normally be restricted to those LOs who live in the area where the duty is to be performed. As with legal assistance (paragraph 15) reasons must be given by authorising Permanent LOs for approving legal duty by an out of area Reserve LO (including duty as a Defending Officer).

18. Accordingly it will be necessary for each legal office to review arrangements for the provision of legal assistance. If Reserve LOs prefer to see members on non-urgent legal aid during working hours that is permitted. Of course, payment will remain at the training rate of pay.

Summary

19. All Permanent LOs have a responsibility to ensure that:

- a. when tasking a Reserve Legal Officer for legal duties a Form R1 is completed prior to the work being undertaken;
- b. the Reserve LO is personally eligible for sessional remuneration prior to tasking them for sessional duties IAW Enclosure ;
- c. all sessional duties in excess of five (5) days are to be forwarded to DGADFLS to determine a rate of remuneration prior to the duty being undertaken;
- d. all extensions of authorised duty is recorded on the Form R1;
- e. they check the Form R2 is true and correct (including confirming that service claimed is within the authorised timeframe); and
- f. before tasking any Reserve LO for Training Day duty, they check the Reserve LO has sufficient allocation to meet the duty and if more than five (5) the Head of Category is informed.

20. All Reserve LOs have a responsibility to ensure that:

- a. they do not commence a duty without a signed Form R1;
- b. they do not commence sessional work in excess of five (5) days without receipt of an authorised rate remuneration from DGADFLS; and
- c. they do not accept tasking for Training Days in excess of their current allocation of days.

21. All Command Legal Officers and Reserve Heads of Panels are to ensure that all subordinate legal officers within their Commands/Panels are made aware of this Directive and are to provide confirmation in writing to me by 1 March 2005 that this action has been taken.

22. This directive replaces DGDLO Memorandum 2000/2.

23. If you have any queries on the detail of this Directive my contact officer is Shani Kercher who can be contacted on (02) 6266 8929.

ORIGINAL SIGNED

S.J. HARVEY
AIRCDRE
DGADFLS

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17 Mar 05

Enclosures:

1. Determination 2003/21 Chapter 2, Part 7, Division 1
2. [Sessional Fee or Training Rate Type of Duty Matrix](#)
3. [Form R1](#)
4. [Form R2](#)
5. Form AB 157, Navy Reserve Attendance Diary
6. AD264, Attendance Record Reserve Forces