

SOP 10 - REMUNERATION AND ALLOWANCES FOR TDLS DUTIES

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AIM

1. The aim of this SOP is to:
 - a. confirm the requirements in relation to the eligibility of RLOs to perform TDLS Duties;
 - b. confirm the procedures in relation to how TDLS Duties are to be allocated and remunerated; and
 - c. confirm the administrative requirements in relation to the administration of TDLS Duties, payments and allowances;
 - d. provide guidance to Authorising Officers on authorising Sessional Fee Duties;
 - e. establish procedures to encourage the allocation of Sessional Fee Duties fairly between RLOs.

PART ONE - ELIGIBILITY FOR TDLS DUTIES

2. RLOs become eligible for payment at reserve training day rate if on the Active List for their Service (General list for Air Force), or if approved to undertake training under s.32A of the *Naval Defence Act 1910*, s.50 of the *Defence Act 1903* or s.4J of the *Air Force Act 1923*.
3. Members of the Inactive Reserve can only perform TDLS Duties if a 32A or DA 50 document has been raised for them.
4. Div 1 of Part 4 of Chapter 2 of Defence Determination 2000/1 of 6 Jan 00 (“the Sessional Fee Determination”) sets out the types of duties for which a sessional fee may be paid (“Sessional Fee Duties”).
5. RLOs are entitled to payment of sessional fees only if:
 - a. the RLO is personally eligible to receive sessional fees; and

- b. the duties carried out satisfy the work eligibility criteria detailed in the Sessional Fee Determination.

6. In summary, two approvals are required before an RLO may be eligible for sessional fees.

7. The first approval is personal eligibility, i.e., whether the RLO 'would otherwise be engaged in a private professional capacity as a barrister or solicitor during usual working hours'. This requirement must be approved centrally by TDLS. All RLOs who believe they are eligible for sessional fees must obtain an approval signed by the DGTDLs. Those RLOs who are eligible and have not obtained such an approval should forward a minute to the Finance Section, seeking approval of their individual eligibility for the payment of sessional fees.

8. The second approval is work eligibility, i.e., whether the provisions of the Sessional Fee Determination cover the TDLS Duties being undertaken by RLOs. Under the arrangements for approval of TDLS Duties done by RLOs using the forms below, the eligibility of the TDLS Duties must be the focus of the approval by the Authorising Officer.

9. The rate of payment for the sessional fee is set out in the Sessional Fee Determination. It should be noted that DGTDLs determines the rate to be paid to any RLO who is authorised to perform Sessional Fee Duties on one matter for more than 5 days. RLOs should not assume that the full rate will be paid for Sessional Fee Duties in excess of 5 days. Authorising Officers are not authorised to give any guarantee as to the amount of the rate until it is determined by DGTDLs on each occasion.

10. Requirements for payment of Sessional Fee Duties are dealt with in greater detail in Parts Five, Six and Seven below.

PART TWO - ALLOCATION OF TDLS DUTIES

Form R1

11. Form 1 is annex A.

12. No TDLS Duties may be performed by an RLO without a Form R1 having first been raised by an Authorising Officer. The only exception is Tas Region, where the RSSRs perform the role of the Authorising Officer for the purposes of this SOP in relation to their subordinates, whether a member of the same Service or not.

13. R1 is the form to be used by every Authorising Officer authorising an RLO to perform TDLS Duties. Commanders of ships/units/bases/commands to which RLOs may be posted, or for whom an RLO may perform work, are not authorised to approve TDLS Duties.

14. Both sides of the Form 1 should be copied onto a double sided form, for use by RLOs. The reverse side of the Form R1 contains instructions for completion.

15. As detailed on the reverse side of the Form 1, the Authorising Officer authorising the TDLS Duties is to send a copy of the front page of the Form 1 to the Finance Section (Facsimile No. (02) 6265 1521) once it has been issued to the RLO. The immediate purpose of this action is to enable TDLS to keep track of authorisations and, if necessary, to query individual cases. The longer-term benefit is to enable budgetary planning, and permit TDLS to properly manage the funds for which it is accountable.

16. An RLO will receive payment only if a copy of the completed Form R1 is attached to his or her claim for payment (Form R2-see annex B). In this way the authorisation can be verified by both the approving Authorising Officer and, the Finance Section when the claim relates to sessional fees.
17. Guidance on the circumstances under which a Authorising Officer should authorise Sessional Fee Duties appears in Part Five of this SOP.
18. Duty travel (other than on posting orders) for RLOs should be limited as far as possible. Accordingly, duties allocated to RLOs that do not involve a posting order should, save in exceptional circumstances, be restricted to those RLOs who live in the area where the duty is to be performed. Reasons must be given by the authorising Authorising Officer approving duty by an out-of-area RLO.
19. Accordingly it will be necessary for each PLO to review arrangements for the provision of legal aid. If RLOs prefer to see ADF members on non-urgent legal aid during working hours that is permitted. Payment will be made at the training day rate of pay.
20. If there is any change in the duty required of an RLO after the issue of an R1, a further Form R1 is to be completed.
21. The Authorising Officer must forward every completed Form R1 to the RLO.
22. The Finance Section records all details from Form R1 into its database; and analyses potential demand/supply trends in relation to the requesting office/officer and RLO service provider; categories of authorised duties; amount of time requested; and an estimate of expenditure. The Finance Section is to provide monthly reports to TDLS management.

PART THREE - REMUNERATION FOR TDLS DUTIES

23. RLOs are remunerated on two bases. First, by payment at training day rates, and secondly, through payment of the sessional fee for Sessional Fee Duties. The sessional fee is established as "*Defence Determination 2000/1 of 6 January 2000*". A copy of the Determination is at annex C.
24. Training day rates are payable for all duties other than Sessional Fee Duties. Training day rates apply to all RLOs according to their rank and classification. RLOs are able to identify current rates of pay through the following internet website:

www.defence.gov.au/dpe
25. On the right hand margin click on "*Pay Conditions, Personnel Policy & Human Resources*". This site will also be of assistance in determining correct pay scales in DFDA matters.
26. Guidance on the payment of fees for Sessional Fee Duties appears in Part Five, Six and Seven of this SOP.

PART FOUR - TDLS REQUIREMENTS FOR PROCESSING OF TRAINING DAY PAYMENTS

27. This part sets out the procedures for payment for TDLS Duties other than Sessional Fee Duties, and applies DGDLO Memorandum 2000/2 Financial Management – Use of the Reserves – New Authorisation and Invoicing Procedures.

28. In order to simplify the payment of training days for Financial Year 2002/2003 all claims for payment for TDLS Duties are processed through Finance Section.

29. All claims for training day payments must be lodged on a Form AB157 (Reserve Attendance Diary) and certified by the Authorising Officer who authorised the TDLS Duties. A copy of Form AB157 is annexed at annex D. Any claim for payment for TDLS Duties must also have the authorising R1 (see annex A).

30. The specific hours worked on each day claimed are to be listed on the form, for example 0930-1415 Monday 15 Jul 02. This is particularly important when duty at sessional and training rates are claimed on the same day. It should be noted that the periods for which payment at training day rates can be made to RLOs are as follows:

- a. more than 1hr but less than 2 hrs is 1/6 of a day
- b. more than 2hrs but less than 3hrs is 1/3 of a day
- c. more than 3hrs but less than 6hrs is ½ of a day and
- d. 6 hours or more is a day.

30. Once the Authorising Officer has signed the claim it is sent by the Authorising Officer to the TDLS Finance , R8-1-004, Russell Offices, Canberra ACT 2600.

31. Authorising Officers should ensure that all RLOs and paralegal staff are aware of the pay cut off dates each month and that all claims are forwarded to TDLS in a timely manner. A schedule of the Cut Off Dates is published annually by the Finance Section. All claims for payment at training day rates should be forwarded as soon as work on each matter is completed. For example if the R1 authorises 3 days at sessional rate for a DFM and 3 days at training day rate for preparation, the claims for both sessional and training days should be forwarded by the RLO to the Authorising Officer at the same time.

32. In addition, (for Army) TDLS is to be notified of RLOs who have a current DA 50 for FY02/03 and notified every time a new DA 50 is raised. This will ensure that an activity code is allocated and that claims can be processed as soon as they are received.

33. The contact person for enquiries about these procedures is the Finance Section (Ph (02) 6266 7670).

PART FIVE - SESSIONAL FEE DUTIES – GUIDANCE FOR AUTHORISING OFFICERS

34. The Sessional Fee Determination sets out the Sessional Fee Duties.

35. Part 2.4.2 of the Sessional Fee Determination provides that Sessional Fee Duties include the following duties:

(“Assisting Duties”)

- a. appearing as assistant prosecutor or assistant defending officer in a court-martial or before a Defence Force magistrate; or

- b. assisting a legal practitioner or lawyer who is appearing for the CDF, a Service chief or a person authorised by a president or appointing authority to appear before a general Court of Inquiry, a Board of Inquiry or a combined Board of Inquiry;
- c. assisting a legal practitioner or lawyer who is appearing to assist a general Court of Inquiry, a Board of Inquiry or a combined Board of Inquiry;

("Advice to Commander")

- a. providing legal advice concerning the duties of the commander to the Commander of part of the Defence Force;

("Advice to Member")

- a. providing legal advice to a member of the Defence Force.

36. Para 2.4.3(a) of the Sessional Fee Determination requires that, for a sessional fee to be paid, amongst other things, the CDF must have approved the relevant duties. In most cases, the authority of the CDF to approve duties for the purpose of para 2.4.3 of the Sessional Fee Determination will have been delegated to the Authorising Officer who requests the performance of the duty.

37. This part of these SOPs provides guidance to Authorising Officers on:

- a. the circumstances under which; and
- b. the extent to which,

they should authorise payment of a sessional fee in the circumstances referred to in this part.

Assisting Duties

38. A sessional fee should not be approved for Assisting Duties where the main reason for appointing an assistant is to provide training for the assistant. In those cases, the assistant should be paid at the training day rate.

Advice to Commander

39. In most cases Authorising Officers should authorise payment of a sessional fee for any formal written advice to a commander or for advice which is required on an urgent basis. Generally, payment of a sessional fee should not be authorised where the advice is routine advice or advice on a minor matter and is not required on an urgent basis.

Advice to Member

40. Payment of a sessional fee should not generally be authorised in the following circumstances:

- a. for preparation of wills or powers of attorney;
- b. for advice given to members in a legal aid clinic type situation, whether that advice is about military or civilian matters; and

- c. for any advice given to members about civilian matters, other than urgent matters having a direct adverse impact on the members ship/unit/base/command.

41. Payment of a sessional fee may be authorised where an RLO sees a Defence member on other than a casual basis for the dedicated purpose of giving the Defence member legal advice on an urgent, complex or sensitive military matter, or on a civilian matter having a direct adverse impact on the members ship/unit/base/command.

PART SIX – SESSIONAL FEE DUTIES - RESTRICTIONS

42. In addition to the requirements of the Sessional Fee Determination, these SOPs provide for some restrictions on the allocation of Sessional Fee Duties.

43. It is important that Authorising Officers recognise the need to fairly allocate Sessional Fee Duties between RLOs who may appropriately perform those duties. This serves many purposes including:

- a. enhancing equity between RLOs;
- b. broadening the resource base available to ADF by allowing a greater number of RLOs to gain relevant experience; and
- c. minimising the risk of allegations of cronyism.

44. An Authorising Officer must not allocate a Sessional Fee Duty to an RLO (and that RLO must not accept a Sessional Fee Duty from the Authorising Officer) after that RLO has performed Sessional Fee Duties for a period in excess of thirty (30) days in any financial year without first complying with the provisions of this Part Six of this SOP. This restriction does not apply to duty allocated to a Judge Advocate, Defence Force Magistrate or Section 154 Reporting Officer.

45. RLOs are responsible for keeping themselves informed of the number of days spent in the performance of Sessional Fee Duties in each financial year. An Authorising Officer, before allocating a Sessional Fee Duty to an RLO should satisfy themselves (including, where appropriate by requiring the RLO to confirm in writing) that the RLO has not at that time performed Sessional Fee Duties for a period in excess of 30 days in that financial year.

46. An Authorising Officer wishing to allocate a Sessional Fee Duty to an RLO covered by this Part Six may only do so if:

- a. the need to do so outweighs the interests of the ADF in having Sessional Fee Duties allocated fairly between other RLOs who may appropriately perform those duties; and
- b. the Authorising Officer first obtains the approval in writing of the NPM to the allocation of those duties.

47. The request for approval must be made in writing or, in urgent cases, may be made verbally but must be confirmed in writing. A copy of the written request/confirmation must be forwarded by the Authorising Officer to the RSSR in the Authorising Officers Region.

48. The request from the Authorising Officer must set out the basis on which the Authorising Officer is of the opinion that the requirements of para 46(a) are met.

49. In considering a request under this part, the NPM must:
- a. consult with the RSSR in the Region where the Authorising Officer making the request is posted; and
 - b. have regard to whether the need to allocate the Sessional Fee Duty to the relevant RLO outweighs the interests of the ADF in having Sessional Fee Duties allocated fairly between other RLOs who may appropriately perform those duties.
50. In dealing with a request under this part, the NPM may:
- a. approve the request;
 - b. reject the request; or
 - c. approve the request on such conditions as the NPM sees fit.

PART SEVEN – SESSIONAL FEE DUTIES - PUBLICATION

51. As soon as practicable after the end of each financial year, the NPM must publish in a manner which the NPM sees fit, a disclosure document (the “Annual Sessional Fees Report”) in accordance with this part.
52. The Annual Sessional Fees Report must:
- a. be generally in the format of the table set out in para 2.14 e. of the Reserve Review Report;
 - b. not identify individual RLOs;
 - c. be available for distribution to all RLOs; and
 - d. must, in addition to disclosing payment of sessional fees, include particulars of any other remuneration, compensation or expense reimbursement arrangement entered into with any RLO which is in addition to or in lieu of payment of either a sessional fee or at the training day rate.

This form is not to be completed by a RLO for attendance at normal unit/headquarters parades or exercises.

In order to obtain payment for other Reserve duties performed, this form is to be completed by all RLOs concerned, whether claiming sessional rates or training day rates. Other forms of invoice will not be actioned.

Part A:

“Name of Case/Matter” – If ADF member, mention only the member’s rank and name. If advice given to ADF or other Defence unit, insert “Re:” before name of matter.

“Details of Function” – When relevant, use “Legal Aid to ADF Member” or “Advice to Unit” as appropriate. In latter case, state name of unit. Advice to Unit can only be claimed at sessional rates if the advice is for the Commanding Officer or organisational head of the unit and

only if advice is prepared or provided during usual working hours. **Otherwise, claim is to be made at training day rate.**

Part B:

“Weekend or Out of Hours Legal Duties” – These refer to the same types of duties as the legal duties which, were they carried out between 0900 and 1700 hrs on a working day, would be paid at sessional rates.

“Details of Type of Duty” – Use “Legal Aid to ADF Member” or “Advice to Unit” as appropriate. In latter case, state name of unit.

“Claim certified correct” - If available, the permanent legal officer who signed the Duty Authorisation form (Form R1) initiating the tasking should sign this form. If not available, another qualified legal officer may sign. Only legal officers in the permanent force are qualified legal officers.

A copy of the completed Duty Authorisation form (Form R1) is to be attached to the Claim for Payment form. If claiming for duty requested by more than one legal officer, please attach copies of all relevant Form R1s

[Please see Forms](#)

Part 7 Reserve Forces — fees, bonuses and gratuities

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July 2001 Chapter 2 – Part 7 – 1

Division 1 Legal officer sessional fee

Purpose

G2.1 Sessional fees for Reserve legal officers are intended to compensate for certain professional work performed on behalf of the Services.

2.4.1 Application

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

2.4.2 Duties for which sessional fee may be paid

(1) A legal officer is entitled to a sessional fee, worked out under clause 2.4.3, if the legal officer:

- (a) performs legal duties in the Defence Force in a period for which the legal officer would otherwise be engaged in a private professional capacity as a barrister or solicitor during usual working hours; and
- (b) performs 1 or more of the following duties:
 - (i) military duty as a Judge Advocate or Defence Force Magistrate in a disciplinary proceeding or military duty in appearing before a Court Martial, Defence Force Magistrate or a Summary Authority as a prosecutor or defending officer, or as an assistant to a prosecutor or defending officer;
 - (ii) military duty as a legal officer assisting a Court or Board of Inquiry or representing a member, or assisting in the representation of a member before such a Court or Board;
 - (iii) military duty as an examining officer under an appointment made under the *Defence Force Discipline Act 1982* or representing a member in proceedings before an examining officer;
 - (iv) giving urgent legal advice concerning the performance of military duties to a commander of an element of the Defence Force;
 - (v) giving legal advice to a member, with approval of the CDF;
 - (vi) attending and giving legal assistance to a member who has requested the assistance of a legal practitioner while being questioned by an investigating officer in accordance with a caution issued under the *Defence Force Discipline Act 1982*.

(2) However, subclause (1) does not apply to a legal officer in relation to duty mentioned in subparagraph (1) (b) (i), (ii), or (iii) if the performance of that duty for a particular matter exceeds 5 days (whether or not consecutive).

(3) Duty mentioned in subparagraph (1) (b) (i), (ii) or (iii) does not include time spent in preparation for the duty.

(4) In this clause, **usual working hours**, for a legal officer, means the period between 9 am and 5 pm on a Monday, Tuesday, Wednesday, Thursday or Friday, unless the day is a public holiday in the State or Territory in which the legal officer lives.

CDF authorised person: ADF legal officer in the Permanent Forces not below CAPT (E).

G2.2 Fees for legal officers are not payable when they are entitled to a day's pay for Reserve service, such as duty in respect of staff appointments, annual training commitments, evening parades, seminars, conferences, lectures and the normal legal aid services given outside the normal civilian professional hours.

2.4.3 Amount of sessional fee

(1) A sessional fee is:

(a) for appearing as a prosecutor or defending officer before a Summary Authority, or for giving legal advice as mentioned in subparagraph 2.4.2 (1) (b) (v) — the amount worked out to the nearest dollar at half the relevant rate; and

(b) otherwise:

(i) for a legal officer who is a Senior Counsel or Queen's Counsel — the amount worked out to the nearest dollar at the relevant rate multiplied by 1.5; and

(ii) for any other legal officer — the amount worked out to the nearest dollar at the relevant rate.

(2) In this clause, **relevant rate** means the relevant rate under clause 2.4.4.

2.4.4 Relevant rate

(1) For clause 2.4.3, the **relevant rate** for a sessional fee is:

(a) a daily rate of \$1,215; and

(b) an hourly rate of one-sixth of the daily rate.

(2) If duty mentioned in subparagraph 2.4.2 (1) (b) (iv), (v) or (vi) is performed by a legal officer for a number of periods in a calendar month, each of less than 1 hour, the relevant rate is the hourly rate for the sum of the periods in the month (worked out to the nearest half hour).

(3) For subclause (1):

(a) the **daily rate** applies:

- (i) for duty mentioned in subparagraph 2.4.2 (1) (b) (i), (ii) or (iii) — for duty of more than 3 hours on any 1 day; and
- (ii) otherwise — for duty of more than 6 hours on any 1 day; and

(b) an **hourly rate** of one-sixth of the daily rate applies for duty of at least 1 hour on any 1 day but for a total period equal to or less than the hours for the relevant daily rate mentioned in paragraph (a).

2.4.5 Amount of sessional fee for duty in excess of 5 days

If the performance of duty for a particular matter exceeds 5 days (whether or not consecutive), the member is entitled to an amount of sessional fee that the CDF considers reasonable in the circumstances, having regard to advice from the Attorney-General's Department.

CDF authorised person: Director General the Defence Legal Service.

