



ARMED FORCES DISCIPLINE (LEGAL SERVICES FEES AND ALLOWANCES) AMENDMENT REGULATIONS 1997

MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 1st day of September 1997

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 205 (1) (c) of the Armed Forces Discipline Act 1971, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, makes the following regulations.

ANALYSIS

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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Armed Forces Discipline (Legal Services Fees and Allowances) Amendment Regulations 1997, and are part of the Armed Forces Discipline (Legal Services Fees and Allowances) Regulations 1991* (“the principal regulations”).

(2) These regulations come into force on 1 October 1997.

2. Interpretation—(1) Regulation 2 of the principal regulations is amended by omitting from the definition of the term “Judge Advocate General” the word “practitioner”, and substituting the words “barrister or solicitor of the High Court”.

(2) Regulation 2 of the principal regulations is amended by revoking the definition of the term “practitioner”.

(3) Regulation 2 of the principal regulations is amended by inserting, after the definition of the term “certifying officer”, the following definitions:

“‘Counsel’ means a barrister or solicitor of the High Court who is appointed to represent a party to proceedings before a court-martial or the Courts Martial Appeal Court; but does not include a Legal Staff Officer:

“‘Judge advocate’ means a person appointed by or on behalf of the Judge Advocate General to represent the Judge Advocate General at a court-martial under section 127 of the Act.”.

3. Application of regulations—Regulation 3 of the principal regulations is amended by revoking subclause (2), and substituting the following subclause:

“(2) Subject to subclause (3), these regulations apply to—

“(a) All work done by the Judge Advocate General in respect of any matter arising out of or relating to service law, including work by way of assistance with the administration of the Act; and

“(b) All work done by a judge advocate in relation to preparing for, or attending, a court-martial; and

“(c) All work done by counsel in relation to preparing for, or attending, a court-martial; and

“(d) All work done by counsel appointed to represent the Chief of Defence Force under section 15 of the Courts Martial Appeals Act 1953; and

“(e) All work done by any Legal Staff Officer in respect of any matter arising out of or relating to service law; and

“(f) All work done by any person engaged from time to time by or under the authority of the Chief of Defence Force to lecture in respect of any matter arising out of or relating to service law.”

4. New regulations substituted—The principal regulations are amended by revoking regulations 6 to 10, and substituting the following regulations:

6. Classification of counsel—If any work to which these regulations apply is done by counsel, the Chief of Defence Force must determine whether that person is to be regarded for the purposes of these regulations as senior counsel, intermediate counsel, or junior counsel.

“6A. **Power to prescribe maximum number of hours**—Subject to regulation 18, the Chief of Defence Force may prescribe the maximum number of hours in respect of which fees may be claimed under these regulations for any particular work or class of work.

“7. **Remuneration of Judge Advocate General**—(1) Subject to subclause (2), remuneration at the rate per hour of the base hourly rate of remuneration is payable to the Judge Advocate General for work to which these regulations apply.

“(2) The remuneration payable to the Judge Advocate General for core work is at the rate per hour of 130% of the base hourly rate of remuneration.

“(3) For the purposes of subclause (2), “core work” means—

“(a) All work done in relation to the preparation of advice requested by a reviewing authority under section 152 (3) of the Act; and

“(b) All work done in relation to the investigation of a complaint under section 49 of the Defence Act 1990; and

“(c) All legal advice on any other matter arising out of or relating to service law, including the administration of the Act.

“7A. **Remuneration of judge advocates**—(1) Subject to subclause (2), the remuneration payable to a judge advocate for work to which these regulations apply is at the rate per hour of 110% of the base hourly rate of remuneration.

“(2) The remuneration payable to a judge advocate for attendance in respect of any court-martial is at the rate of 440% of the base hourly rate of remuneration for each half day or part of a half day.

“8. **Remuneration of counsel**—(1) Subject to subclause (2), the remuneration payable to counsel for work to which these regulations apply is at the following rate per hour:

“(a) In the case of senior counsel, the base hourly rate of remuneration:

“(b) In the case of intermediate counsel, 80% of the base hourly rate of remuneration:

“(c) In the case of junior counsel, 65% of the base hourly rate of remuneration.

“(2) The remuneration payable to counsel for attendance in respect of any court-martial is at the rate prescribed for that counsel by subclause (1), multiplied in each case by 4 for each half day or part of a half day.

“9. **Remuneration of Legal Staff Officers**—The remuneration payable to a Legal Staff Officer for work to which these regulations apply is at the following rate for each day or part of a day:

“(a) In the case of a lieutenant commander in the Navy, a major in the Army, or a squadron leader in the Air Force, the base hourly rate of remuneration:

“(b) In the case of a lieutenant in the Navy, a captain in the Army, or a flight lieutenant in the Air Force, 75% of the base hourly rate of remuneration:

“(c) In the case of a sub lieutenant in the Navy, a lieutenant in the Army, or a flying officer in the Air Force, 63% of the base hourly rate of remuneration.

“10. **Remuneration of lecturers**—The remuneration payable to a lecturer for work to which these regulations apply is at the base hourly rate of remuneration for each day or part of a day.”

5. Special allowance for travelling time—The principal regulations are amended by revoking regulation 12, and substituting the following regulation:

“12. (1) For each hour occupied on any day in travelling in respect of any work to which these regulations apply, a special allowance at the following rate will be allowed in addition to the travelling expenses provided for by regulation 11:

“(a) In the case of the Judge Advocate General, a judge advocate, or senior counsel, 66% of the base hourly rate of remuneration:

“(b) In the case of intermediate counsel, 53% of the base hourly rate of remuneration:

“(c) In the case of junior counsel, 43% of the base hourly rate of remuneration.

“(2) The special allowance is not payable in addition to any other payment for preparation or otherwise in respect of the same time.”

6. Certification of claim—Regulation 15 of the principal regulations is amended by revoking paragraph (c), and substituting the following paragraph:

“(c) If there is no appropriate fee provided for in these regulations, the fee claimed is, in the certifying officer’s opinion, fair and reasonable and does not exceed,—

“(i) In the case of the Judge Advocate General 130% of the base hourly rate of remuneration:

“(ii) In the case of a judge advocate, 110% of the base hourly rate of remuneration:

“(iii) In the case of senior counsel, the base hourly rate of remuneration:

“(iv) In the case of intermediate counsel, 80% of the base hourly rate of remuneration:

“(v) In the case of junior counsel, 65% of the base hourly rate of remuneration—

for each hour actually involved; but nothing in this paragraph applies to any fees claimed by a Legal Staff Officer or a lecturer.”

7. Transitional provision in respect of certified scale of fees—Despite regulation 5 (1) of the principal regulations, the Chief of Defence Force must, before 1 October 1997, prepare and certify, for the purposes of work done in the period beginning on 1 October 1997 and ending with the close of 30 June 1998, a scale of all fees payable under these regulations, and must forward a copy to each certifying officer.

MARIE SHROFF,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 October 1997, amend the Armed Forces Discipline (Legal Services Fees and Allowances) Regulations 1991.

In particular, the regulations revise the fees and allowances payable for professional legal services rendered, on or after 1 October 1997, by civilians in respect of courts-martial proceedings and other matters relating to service law.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 4 September 1997.

These regulations are administered in the Ministry of Defence.