

Reprint
as at 1 July 2009

**Armed Forces Discipline (Legal
Services Fees and Allowances)
Regulations 1991**

(SR 1991/80)

Armed Forces Discipline (Legal Services Fees and Allowances) Regulations
1991: revoked, on 1 July 2009, by regulation 30(1)(b) of the Armed Forces
Discipline Regulations 2008 (SR 2008/236).

PURSUANT to section 205(1)(c) of the Armed Forces Discipline Act 1971 (as substituted by section 3 of the Armed Forces Discipline Amendment Act (No 2) 1988 and amended by section 105(1) of the Defence Act 1990), Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

These regulations are administered in the New Zealand Defence Force.

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1 Title and commencement

- (1) These regulations may be cited as the Armed Forces Discipline (Legal Services Fees and Allowances) Regulations 1991.
- (2) These regulations shall come into force on the 24th day of June 1991.

2 Interpretation

In these regulations, unless the context otherwise requires,—

The Act means the Armed Forces Discipline Act 1971

Base hourly rate of remuneration has the meaning given to it by regulation 4 of these regulations

Certified scale of fees means the certified scale of fees payable under these regulations prepared by the Chief of Defence Force in accordance with regulations 5 of these regulations

Certifying officer means an officer so designated for the purposes of these regulations by the Chief of Defence Force

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

Counsel and Judge advocate: these definitions were inserted, as from 1 October 1997, by regulation 2(3) Armed Forces Discipline (Legal Services Fees and Allowances) Amendment Regulations 1997 (SR 1997/181).

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

Counsel and Judge advocate: these definitions were inserted, as from 1 October 1997, by regulation 2(3) Armed Forces Discipline (Legal Services Fees and Allowances) Amendment Regulations 1997 (SR 1997/181).

Judge Advocate General means the Judge Advocate General of the Armed Forces appointed under section 203 of the Act; and includes any barrister or solicitor of the High Court appointed as Deputy Judge Advocate General of the Armed Forces under section 203A of the Act

Judge Advocate General: this definition was amended, as from 1 October 1997, by regulation 2(1) Armed Forces Discipline (Legal Services Fees and Allowances) Amendment Regulations 1997 (SR 1997/181) by substituting the words “barrister or solicitor of the High Court” for the word “practitioner”.

Legal Staff Officer means any member of the territorial forces so designated; and includes any member of the territorial forces designated as Assistant Legal Staff Officer

Practitioner *[Revoked]*

Practitioner: this definition was revoked, as from 1 October 1997, by regulation 2(2) Armed Forces Discipline (Legal Services Fees and Allowances) Amendment Regulations 1997 (SR 1997/181).

[Revoked]

Year means a period of 12 months commencing on the 1st day of July.

Year: this definition was amended, as from 31 March 1995, by regulation 2 Armed Forces Discipline (Legal Services Fees and Allowances) Regulations 1991, Amendment No 1 (SR 1995/65) by substituting the word “July” for the word “April”.

3 Application of regulations

- (1) These regulations apply to all work done by any of the persons specified in subclause (2) of this regulation on or after the 1st day of July 1991.
- (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.
- (3) Nothing in these regulations applies to any work done by any member of the regular forces.

Subclause (2) was substituted, as from 1 October 1997, by regulation 3 Armed Forces Discipline (Legal Services Fees and Allowances) Amendment Regulations 1997 (SR 1997/181).

4 Base hourly rate of remuneration

For the purposes of these regulations, the base hourly rate of remuneration for work done in any year shall be the same as the senior hourly rate of remuneration determined by the Solicitor-General under regulation 4 of the Crown Solicitors Regulations 1994¹ for work done in that year.

Regulation 4 was amended, as from 31 March 1995, by regulation 3 Armed Forces Discipline (Legal Services Fees and Allowances) Regulations 1991, Amendment No 1 (SR 1995/65) by substituting the words “the Crown Solicitors Regulations 1994” for the words “the Crown Solicitors Regulations 1987”.

5 Certified scale of fees

- (1) The Chief of Defence Force shall, before the commencement of each year, prepare and certify a scale of all fees payable

¹ SR 1994/142

under these regulations, and shall forward a copy to each certifying officer.

- (2) Notwithstanding anything in subclause (1) of this regulation, the Chief of Defence Force shall, before the 1st day of July 1991, prepare and certify, for the purposes of work done in the period beginning on the 1st day of July 1991 and ending with the close of the 31st day of March 1992, a scale of all fees payable under these regulations, and shall forward a copy to each certifying officer.

Subclause (1) was amended, as from 31 March 1995, by regulation 4 Armed Forces Discipline (Legal Services Fees and Allowances) Regulations 1991, Amendment No 1 (SR 1995/65) by substituting the words “of all” for the word “ofall”.

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.

Regulations 6 to 10 were substituted, and regulations 6A and 7A were inserted, as from 1 October 1997, by regulation 4 Armed Forces Discipline (Legal Services Fees and Allowances) Amendment Regulations 1997 (SR 1997/181).

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.

Regulations 6 to 10 were substituted, and regulations 6A and 7A were inserted, as from 1 October 1997, by regulation 4 Armed Forces Discipline (Legal Services Fees and Allowances) Amendment Regulations 1997 (SR 1997/181).

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.

Regulations 6 to 10 were substituted, and regulations 6A and 7A were inserted, as from 1 October 1997, by regulation 4 Armed Forces Discipline (Legal Services Fees and Allowances) Amendment Regulations 1997 (SR 1997/181).

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.

Regulations 6 to 10 were substituted, and regulations 6A and 7A were inserted, as from 1 October 1997, by regulation 4 Armed Forces Discipline (Legal Services Fees and Allowances) Amendment Regulations 1997 (SR 1997/181).

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.

Regulations 6 to 10 were substituted, and regulations 6A and 7A were inserted, as from 1 October 1997, by regulation 4 Armed Forces Discipline (Legal Services Fees and Allowances) Amendment Regulations 1997 (SR 1997/181).

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.

Regulations 6 to 10 were substituted, and regulations 6A and 7A were inserted, as from 1 October 1997, by regulation 4 Armed Forces Discipline (Legal Services Fees and Allowances) Amendment Regulations 1997 (SR 1997/181).

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.

Regulations 6 to 10 were substituted, and regulations 6A and 7A were inserted, as from 1 October 1997, by regulation 4 Armed Forces Discipline (Legal Services Fees and Allowances) Amendment Regulations 1997 (SR 1997/181).

11 Travelling expenses

The following travelling expenses shall be allowed to any person specified in regulation 3(2) of these regulations required to travel more than 5 kilometres from his or her usual place of business in connection with any work to which these regulations apply.

- (a) Fares paid for public transport, subject to the production of receipts for fares exceeding 10 percent of the base hourly rate of remuneration, and not fixed by law or readily ascertainable:

- (b) A car allowance, where a private car is used, at the rate from time to time prescribed by the State Services Commission as payable to employees of the Public Service:
- (c) Subsistence expenses reasonably incurred by any such person during the period of absence from his or her residence, subject to the production of a receipt for any item exceeding 10 percent of the base hourly rate of remuneration, plus an incidentals allowance for each day or part of a day, at the rate prescribed by the State Services Commission as payable to employees of the Public Service:
- (d) The cost paid for hiring a rental car, if that cost, together with subsistence expenses under this regulation and the special allowance provided for in regulation 12 of these regulations, does not exceed the total of the fares, subsistence expenses, and special allowance that would have been payable if public transport had been used.

12 Special allowance for travelling time

- (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.

Regulation 12 was substituted, as from 1 October 1997, by regulation 5 Armed Forces Discipline (Legal Services Fees and Allowances) Amendment Regulations 1997 (SR 1997/181).

13 Other expenses

The fees prescribed in these regulations are inclusive of all charges for receiving instructions, preparation, correspondence, research, reports, and attendances; but other necessary expenses, such as toll charges, are payable to the extent that the certifying officer is satisfied that such expenses are fair and reasonable both as to nature and cost.

14 Claims for fees

Any person having a claim for fees or expenses under these regulations shall, on the completion of the work to which the claim relates, set out full particulars of the claim in a voucher to be prepared and signed by the person, and shall forward the voucher to a certifying officer.

15 Certification of claim

Subject to regulations 16 and 18 of these regulations, the certifying officer shall certify that the fees or expenses claimed are payable under these regulations, in the following circumstances.

- (a) The certifying officer is satisfied that the fees claimed are correct in accordance with the certified scale of fees:
- (b) These regulations required the fees to be fixed by reference to a maximum, and the fee claimed does not exceed the maximum specified in the certified scale of fees, and is, in the certifying officer's opinion, fair and reasonable:
- (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.

Regulation 15(c) was substituted, as from 1 October 1997, by regulation 6 Armed Forces Discipline (Legal Services Fees and Allowances) Amendment Regulations 1997 (SR 1997/181).

16 Power to approve lesser fee

If, in the opinion of the certifying officer, the time involved or the nature of the service actually performed does not justify the payment of the full fees set out in the certified scale of fees, or the work occasioned in any transaction or proceeding is reduced by the fact that the transaction or proceeding is one of a number or series of transactions or proceedings that are similar or that arise out of the same set of circumstances, the certifying officer shall approve such lesser fee as he or she considers fair and reasonable, and shall so certify on the voucher.

17 Payment of claim

The certifying officer shall forward the voucher so certified to the Chief of Defence Force or any other officer authorised for the purpose of this regulation, who, if satisfied that the services charged for have been duly performed, shall so certify and arrange payment.

18 Power to refer claim to Solicitor-General

(1) If either—

- (a) The fee claimed exceeds the amount that, in the opinion of the certifying officer, could properly be claimed under regulation 15 of these regulations, and is claimed by reason of exceptional circumstances; or
(b) The certifying officer doubts whether the fee is a proper fee for him or her to certify,—

the certifying officer shall refer the voucher, with a memorandum setting forth his or her reasons, to the Solicitor-General, and the Solicitor-General may authorise such fee as the Solicitor-General considers fair and reasonable.

- (2) In any special case where the Chief of Defence Force considers that any fee payable under these regulations is inadequate or excessive having regard to exceptional circumstances, the Chief of Defence Force may refer the matter to the Solicitor-General for review, and the Solicitor-General may authorise such fee as the Solicitor-General considers fair and reasonable.

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 24 June 1991, are made under section 205(1)(c) of the Armed Forces Discipline Act 1971. They prescribe the fees and allowances payable for professional legal services rendered, on or after 1 July 1991, by civilians in connection with courts-martial proceedings and other matters relating to service law.

At present, such payments are determined by the Chief of Defence Force, with applications being made to the Solicitor-General for additional payments. *Regulations 4 and 5* provide for the establishment of a scale of fees, relative to those payable under the Crown Solicitors Regulations 1987. Those regulations require the Solicitor-General, in each year, to determine what is called the senior hourly rate of remuneration. Under *regulation 4* of these regulations, this figure is the base hourly rate of remuneration for work to which these regulations apply. Other fees are then expressed as a percentage of the base hourly rate, in accordance with a person's classification under the regulations as senior, intermediate, or junior.

Regulations 11 to 13 provide for the payment of various allowances and expenses, including transport, travelling time, and subsistence costs incurred in connection with work to which these regulations apply.

**Armed Forces Discipline (Legal Services
Fees and Allowances) Regulations 1991**

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Notes

1 *General*

This is an eprint of the Armed Forces Discipline (Legal Services Fees and Allowances) Regulations 1991. It incorporates all the amendments to the regulations as at 1 July 2009. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 *About this eprint*

This eprint has not been officialised. For more information about officialisation, please see “Making online legislation official” under “Status of legislation on this site” in the About section of this website.

3 *List of amendments incorporated in this eprint (most recent first)*

Armed Forces Discipline Regulations 2008 (SR 2008/236): regulation 30(1)(b)
