



Defence Force Discipline Appeals Act 1955

Act No. 16 of 1955 as amended

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The text of any of those amendments not in force on that date is
appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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An Act to provide for appeals from courts martial and Defence Force magistrates to a Defence Force Discipline Appeal Tribunal

Part I—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Defence Force Discipline Appeals Act 1955*.

2 Commencement [see Note 1]

This Act shall come into operation on a date to be fixed by Proclamation.

4 Interpretation

(1) In this Act, unless the contrary intention appears:

appeal means an appeal to the Tribunal under this Act.

appellant means a person who appeals, or applies for leave to appeal under this Act to the Tribunal.

Australia includes the Territories to which this Act extends.

charge means a charge of a service offence.

conviction means a conviction by a court martial or a Defence Force magistrate.

convicted person means a person who has been convicted by a court martial or a Defence Force magistrate.

court martial means a court martial convened under the Defence Force Discipline Act 1982.

court of summary jurisdiction, in relation to a Territory, includes a court of that Territory sitting as a court for the making of summary orders or the summary punishment of offences under the law of the Territory.

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court order means:

- (a) an order made by the Australian Military Court under subsection 75(1) of the *Defence Force Discipline Act 1982*; or
- (b) an order made by the Australian Military Court under section 83 of that Act; or
- (c) an order made by the Australian Military Court under section 84 of that Act;

but does not include an order made in an appeal under Part IX of the *Defence Force Discipline Act 1982*.

Defence Force magistrate means a Defence Force magistrate appointed under section 127 of the *Defence Force Discipline Act 1982*.

member or ***member of the Tribunal*** means a member of the Tribunal, and includes the President and Deputy President.

prescribed acquittal means an acquittal of a service offence by a court martial or a Defence Force magistrate on the ground of unsoundness of mind.

prescribed acquitted person means a person who has been acquitted of a service offence by a court martial or a Defence Force magistrate on the ground of unsoundness of mind.

review and ***reviewing authority*** have the same respective meanings as they have in the *Defence Force Discipline Act 1982*.

service offence has the same meaning as it has in the *Defence Force Discipline Act 1982*.

service tribunal has the same meaning as it has in the *Defence Force Discipline Act 1982*.

the Deputy President means the Deputy President of the Tribunal, and includes a member appointed to act as Deputy President under subsection (5) of section 7.

the President means the President of the Tribunal.

the Registrar means the Registrar of the Tribunal, and includes a deputy of the Registrar appointed under subsection (2) of section 19.

the Tribunal means the Defence Force Discipline Appeal Tribunal constituted under this Act.

- (2) For the purposes of this Act, where, in a review under Part VIIIA of the *Defence Force Discipline Act 1982* of the proceedings before a court martial or a Defence Force magistrate, the reviewing authority:

- (a) substitutes for the conviction of a service offence a prescribed acquittal of that service offence or a conviction of another service offence; or
- (b) takes such action in relation to the convicted person as could have been taken under Part IV of that Act by the court martial or the Defence Force magistrate;

the conviction or prescribed acquittal so substituted or the action so taken, as the case may be, shall be deemed to have been made or taken, as the case may be, by the court martial or the Defence Force magistrate.

5 Extension of Act to Territories

This Act extends to all the Territories.

5A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Part II—Defence Force Discipline Appeal Tribunal

6 Defence Force Discipline Appeal Tribunal

For the purposes of this Act, there shall be a Tribunal to be known as the Defence Force Discipline Appeal Tribunal.

7 Constitution of Tribunal

- (1) The Tribunal shall consist of a President, a Deputy President and such other persons as are appointed to be members of the Tribunal in pursuance of this Act.
- (2) The President, Deputy President and other members of the Tribunal shall be appointed by the Governor-General by commission.
- (3) A member of the Tribunal shall be appointed for such period as the Governor-General determines, but shall be eligible for re-appointment.
- (3A) A person who has attained the age of 70 years shall not be appointed as a member of the Tribunal and a person shall not be appointed as a member of the Tribunal for a period that extends beyond the day on which the person will attain the age of 70 years.
- (4) In the event of the absence, through illness or otherwise, or the suspension of the President, or of a vacancy in the office of President, the Deputy President has all the powers and shall perform all the duties of President during the absence, suspension or vacancy.
- (5) In the event of the absence, through illness or otherwise, or the suspension of the Deputy President, or of a vacancy in the office of Deputy President, the Governor-General may appoint another member, being a member who is qualified to be appointed as Deputy President, to act as Deputy President during the absence, suspension or vacancy.

8 Qualification of members

- (1) A person is not qualified to be appointed as President or Deputy President unless the person is a Justice or Judge of a federal court or of the Supreme Court of a State or Territory.
- (2) Subject to the last preceding subsection, a person is not qualified to be appointed as a member unless:
 - (a) the person is qualified to be appointed as President of the Tribunal; or
 - (b) the person is a Judge of a District Court of a State or of a County Court of a State.
- (3) The President or the Deputy President ceases to hold office if he or she no longer holds office as a Justice or Judge of a federal court or of a Supreme Court of a State or Territory.
- (4) Subject to the last preceding subsection, a member of the Tribunal ceases to hold office if he or she no longer holds office as:
 - (a) a Justice or Judge of a federal court or of a Supreme Court of a State or Territory; or
 - (b) a Judge of a District Court of a State or of a County Court of a State.

8A Appointment of Judge as member of Tribunal not to affect tenure etc.

- (1) The appointment of the holder of a judicial office as a member of the Tribunal, or service by the holder of a judicial office as a member of the Tribunal whether the appointment was or is made or the service occurred or occurs before or after the commencement of this section, does not affect, and shall be deemed never to have affected, his or her tenure of that judicial office or his or her rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of that judicial office and, for all purposes, his or her service, whether before or after the commencement of that section, as a member of the Tribunal shall be taken to have been, or to be, service as the holder of that judicial office.
- (2) In this section, *judicial office* means an office of Justice of the High Court or Judge of a court created by the Parliament.

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8B Arrangement for appointment of the holder of a judicial office of a State or the Northern Territory

- (1) The Governor-General may, for the purposes of appointing to an office of member of the Tribunal a person who is the holder of a judicial office of a State or of the Northern Territory, enter into such arrangement with the Governor of that State or the Administrator of that Territory, as the case may be, as is necessary to secure that person's services.
- (2) An arrangement in subsection (1) may provide for the Commonwealth to reimburse a State or the Northern Territory with respect to the services of the person to whom the arrangement relates.

9 Oath or affirmation of allegiance

Each member shall, before proceeding to discharge the duties of his or her office, take before the Governor-General or a Justice or Judge of a federal court or of the Supreme Court of a State or Territory an oath or make an affirmation in accordance with the form of oath or affirmation in the Schedule.

10 Remuneration and allowances of members and deputies

- (1) The President, Deputy President and other members shall be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) The President, Deputy President and other members shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973-1974*.

11 Removal and suspension of members from office

- (1) The Governor-General may remove a member from office upon an address praying for the removal of the member being presented to the Governor-General by each House of the Parliament in the same session of the Parliament.
- (2) A member may be suspended from office by the Governor-General.

- (3) The Minister shall cause to be laid before each House of the Parliament a statement of the grounds of suspension within seven sitting days of that House after the suspension.
- (4) The member shall be restored to office by the Governor-General unless each House of the Parliament, within fifteen sitting days of that House after the statement has been laid before it, declares by resolution that the member ought to be removed from office.
- (5) If each House within that time so declares, the member shall be removed from office by the Governor-General accordingly.
- (6) A member shall not be removed from office except as provided by this section.

12 Leave of absence and resignation

- (1) The Minister may grant leave of absence to a member upon such terms and conditions as to remuneration or otherwise as the Minister determines.
- (2) A member may resign his or her office by writing under his or her hand addressed to the Governor-General, but the resignation is not effective unless and until it has been accepted by the Governor-General.

14 Sittings of the Tribunal

- (1) Sittings of the Tribunal shall be held at such times and places, which may include places outside Australia, as the President determines.
- (2) The President shall preside at all sittings of the Tribunal at which he or she is present.
- (3) At a sitting of the Tribunal at which the President is not present, the Deputy President, if present, shall preside.
- (4) At a sitting of the Tribunal at which neither the President nor the Deputy President is present, a member appointed for that purpose by the President shall preside.
- (5) A member who is not qualified to be appointed as President shall not be appointed under the last preceding subsection to preside at a

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sitting of the Tribunal other than a sitting held for the purposes of an appeal or matter in relation to which the President has given a direction under subsection (2) of the next succeeding section.

- (6) The determination of a question before the Tribunal shall be according to the opinion of the majority of the members exercising the powers of the Tribunal in relation to that question.
- (7) The Tribunal constituted by one or more members may sit and exercise the powers of the Tribunal notwithstanding that the Tribunal constituted by one or more other members is at the same time sitting and exercising those powers.

15 Exercise of powers of Tribunal

- (1) Except as otherwise provided in this Act, the powers of the Tribunal shall not be exercised:
 - (a) except by an uneven number of members, being a number of not less than three; and
 - (b) unless at least one of those members is the President, the Deputy President or a member who is qualified to be appointed as President.
- (2) Where an appeal, or a matter preliminary or incidental to an appeal, is to be heard in a place outside Australia, the President may, if he or she thinks fit, direct that paragraph (b) of the last preceding subsection shall not apply in relation to the appeal or matter.

15A Reserved decision

- (1) Where any proceeding, after being fully heard before the Tribunal, is ordered to stand for decision, it is not necessary for all the members before whom it was heard to be present together to declare their opinions thereon but the opinion of any one of them may be reduced to writing and may be made public by any other of them at any subsequent sitting of the Tribunal.
- (2) In any such case the question shall be decided in the same manner, and the decision of the Tribunal shall have the same force and effect, as if the member whose opinion is so made public had been present at the sitting of the Tribunal and declared his or her opinion in person.

16 Member ceasing to sit on an appeal

- (1) Where:
- (a) the hearing of an appeal, or of a matter preliminary or incidental to an appeal, has been commenced before the Tribunal but, before the appeal or matter has been finally determined, a member sitting on the hearing has ceased to be a member or, for any reason, has ceased to sit on the hearing; and
 - (b) the remaining members sitting on the hearing are not less than 3 in number and, except in the case of an appeal or matter in relation to which the President has given a direction under subsection (2) of the last preceding section, include the President, the Deputy President or a member who is qualified to be appointed as President;

the Tribunal constituted by the remaining members may, if the hearing has not been completed, complete the hearing and, if a majority of those members concur in the decision, but not otherwise, determine the appeal or matter.

- (2) If, for any reason, the Tribunal constituted by the remaining members does not complete the hearing or determine the appeal or matter, the Tribunal constituted in accordance with the last preceding section shall, subject to the next succeeding section, hear and determine the appeal or matter and, for that purpose, may have regard to the evidence given, the arguments adduced and the reasons for any decision given during the previous hearing.

17 Single member may determine certain matters

- (1) The powers of the Tribunal may be exercised by a single member with respect to:
- (a) the granting of leave to appeal to the Tribunal against a conviction or a prescribed acquittal;
 - (b) the extension of the period within which, under this Act, an appeal or an application for leave to appeal to the Tribunal is required to be lodged;
 - (c) the granting of legal aid to an appellant under the regulations;
 - (d) the granting of leave to an appellant to be present at the hearing of an appeal or matter under this Act;

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- (e) the allowance of remuneration and allowances under subsection (2) of section 34;
 - (f) the giving of a direction under subsection (1) of section 37 for the payment of a sum or sums by Australia to an appellant or the making of an order under subsection (3) of that section for the payment of costs; or
 - (g) a prescribed matter of practice or procedure.
- (2) A person affected by a decision of a single member of the Tribunal given with respect to a matter referred to in paragraph (a), (b), (c) or (d) of the last preceding subsection may, within the prescribed period, appeal to the Tribunal constituted in accordance with section 15 from that decision, and the Tribunal so constituted shall hear and determine the matter.

18 Sittings of Tribunal to be in public

- (1) Except when the Tribunal is dealing with a matter of procedure or is deliberating, proceedings of the Tribunal shall, subject to the next succeeding subsection, be held in public.
- (2) At a sitting of the Tribunal, the member presiding at the sitting, or, if the Tribunal is constituted by a single member exercising the powers of the Tribunal under the last preceding section, that member, may, if he or she considers it necessary in the interests of the defence of Australia, the proper administration of justice or public morals:
 - (a) order that some or all of the members of the public shall be excluded during the whole or a part of the sitting; or
 - (b) order that no report of or relating to the whole or a specified part of the proceedings of the Tribunal at the sitting shall be published.

19 The Registrar

- (1) There shall be a Registrar of the Tribunal, who shall be appointed by the Attorney-General.
- (2) The Attorney-General may appoint such Deputy Registrars as are necessary.
- (3) The Registrar and a Deputy Registrar shall have respectively such powers, duties and functions as are prescribed.

- (4) The Registrar and any Deputy Registrar shall be persons engaged under the *Public Service Act 1999*.

Part III—Appeals to the Tribunal

Division 1—Bringing of appeals

20 Appeals to Tribunal

- (1) Subject to this Act, a convicted person or a prescribed acquitted person may appeal to the Tribunal against his or her conviction or his or her prescribed acquittal but an appeal on a ground that is not a question of law may not be brought except by leave of the Tribunal.
- (2) An appeal does not lie to the Tribunal against a prescribed acquittal if, in the proceedings before the court martial or the Defence Force magistrate that resulted in the prescribed acquittal, evidence of the unsoundness of mind of the prescribed acquitted person was adduced by the defence.

21 Time for lodging appeals etc.

- (1) An appeal, or an application for leave to appeal, to the Tribunal under this Act:
 - (a) shall specify the grounds on which the appeal is brought or the leave to appeal is sought; and
 - (b) shall be lodged with the Registrar, or with such other person as is prescribed, within the appropriate period, or within such further period as the Tribunal, either before or after the expiration of the appropriate period, allows.
- (2) In subsection (1), *appropriate period*, in relation to proceedings before a service tribunal that have resulted in a conviction or a prescribed acquittal, means the period of 30 days commencing immediately after:
 - (a) the day on which the results of a review under section 152 of the *Defence Force Discipline Act 1982* of the proceedings are notified to the convicted person or the prescribed acquitted person; or
 - (b) the last day of the period of 30 days after the conviction or prescribed acquittal;whichever is earlier.

22 Frivolous or vexatious appeals

Where:

- (a) the Tribunal dismisses an appeal against a conviction or an application for leave to appeal against a conviction; and
- (b) it appears to the Tribunal that the appeal or application was frivolous or vexatious;

the Tribunal may order that any punishment of imprisonment or detention imposed on the appellant or applicant in the proceedings in relation to which the appeal or application was brought shall be taken to commence on the day on which the Tribunal dismisses the appeal or application.

Division 2—Determination of appeals

23 Quashing of conviction etc.

(1) Subject to subsection (5), where in an appeal it appears to the Tribunal:

- (a) that the conviction or the prescribed acquittal is unreasonable, or cannot be supported, having regard to the evidence;
- (b) that, as a result of a wrong decision on a question of law, or of mixed law and fact, the conviction or the prescribed acquittal was wrong in law and that a substantial miscarriage of justice has occurred;
- (c) that there was a material irregularity in the course of the proceedings before the court martial or the Defence Force magistrate and that a substantial miscarriage of justice has occurred; or
- (d) that, in all the circumstances of the case, the conviction or the prescribed acquittal is unsafe or unsatisfactory;

it shall allow the appeal and quash the conviction or the prescribed acquittal.

(2) Subject to subsection (5), where in an appeal it appears to the Tribunal that there is evidence that:

- (a) was not reasonably available during the proceedings before the court martial or the Defence Force magistrate;
- (b) is likely to be credible; and
- (c) would have been admissible in the proceedings before the court martial or the Defence Force magistrate;

it shall receive and consider that evidence and, if it appears to the Tribunal that the conviction or the prescribed acquittal cannot be supported having regard to that evidence, it shall allow the appeal and quash the conviction or the prescribed acquittal.

(3) Subject to subsection (5), where in an appeal against a conviction it appears to the Tribunal that, at the time of the act or omission the subject of the charge, the appellant was suffering from such unsoundness of mind as not to be responsible, in accordance with law, for that act or omission, the Tribunal shall:

- (a) allow the appeal and quash the conviction;
 - (b) substitute for the conviction so quashed an acquittal on the ground of unsoundness of mind; and
 - (c) direct that the person be kept in strict custody until the pleasure of the Governor-General is known.
- (4) Where in an appeal it appears to the Tribunal that the court martial or the Defence Force magistrate should have found that the appellant, by reason of unsoundness of mind, was not able to understand the proceedings against him or her and accordingly was unfit to stand trial, the Tribunal shall allow the appeal, quash the conviction or prescribed acquittal and direct that the appellant be kept in strict custody until the pleasure of the Governor-General is known.
- (5) The Tribunal shall not quash a conviction under subsection (3) or (4) if there are grounds for quashing the conviction under subsection (1) or (2).
- (6) Section 194 of the *Defence Force Discipline Act 1982* applies to a direction under subsection (3) or (4) of this section as if that direction were a direction to which that section applied.

24 New trial

Where the Tribunal quashes a conviction, or a prescribed acquittal, of a person of a service offence, the Tribunal may, if it considers that in the interests of justice the person should be tried again, order a new trial of the person for the offence.

25 Custody of person pending new trial

Where the Tribunal under section 24 makes an order for the new trial of a person, the Tribunal may make such further orders for the custody of the person pending the new trial as the Tribunal thinks appropriate.

26 Substitution of conviction for alternative offence

- (1) Where the Tribunal quashes the conviction of a person of a service offence (in this section referred to as *the original offence*) but considers:

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- (a) that the court martial or the Defence Force magistrate could in the proceedings have found the person guilty of another service offence, being:
 - (i) a service offence that is an alternative offence, within the meaning of section 142 of the *Defence Force Discipline Act 1982*, in relation to the original offence; or
 - (ii) a service offence with which the person was charged in the alternative and in respect of which the court martial or the Defence Force magistrate did not record a finding; and
 - (b) that the court martial or the Defence Force magistrate, by reason of its or his or her finding that the person was guilty of the original offence, must have been satisfied beyond reasonable doubt of facts that prove that the person was guilty of the other service offence;
- the Tribunal may substitute for the conviction of the original offence a conviction of the other service offence.
- (2) Where under subsection (1) the Tribunal substitutes for the conviction of the original offence a conviction of another service offence, the Tribunal may take such action in relation to the convicted person as could have been taken under Part IV of the *Defence Force Discipline Act 1982* by court martial or the Defence Force magistrate that convicted the convicted person of the original offence if the court martial or Defence Force magistrate had convicted him or her of that other service offence, but the Tribunal:
 - (a) shall not impose a punishment for that other service offence or make a reparation order with respect to that other service offence unless a punishment was imposed for the original offence or a reparation order was made with respect to the original offence, as the case may be; and
 - (b) shall not impose a punishment for that other service offence that is more severe than the punishment that was imposed for the original offence and shall not make a reparation order with respect to that other service offence that is for an amount that exceeds the amount of the reparation order that was made with respect to the original offence.
 - (3) Where, under subsection (2), the Tribunal imposes a punishment of imprisonment or detention, that punishment shall, unless the Tribunal otherwise directs, be deemed to have commenced from

the time from which it would have commenced if it had been imposed in the proceedings from which the appeal was brought.

Division 3—Incidental powers of Tribunal

31 Supplementary powers

- (1) For the purposes of proceedings before the Tribunal under this Part, the Tribunal may:
 - (a) appoint a person (who may be a member of the Tribunal) to receive evidence on behalf of the Tribunal and allow the admission of evidence given before, and of documents, books or writings produced to, a person so appointed;
 - (b) summon a person, who would have been a compellable witness at the trial by the court martial or the Defence Force magistrate, by writing under the hand of a member of the Tribunal, to attend the Tribunal or a person appointed by the Tribunal to receive evidence on behalf of the Tribunal, at a time and place named in the summons, and then and there to give evidence and to produce any documents, books or writings in the person's custody or control which the person is required by the summons to produce;
 - (c) receive the evidence, if tendered, of any witness, including the appellant, who is a competent but not compellable witness and, on the application of the appellant, of the husband or wife of the appellant in a case where the evidence of the husband or wife could not have been given at the trial except on such an application;
 - (d) where a question arising on an appeal involves prolonged examination of documents or accounts, or a scientific or local investigation, being an examination or investigation which cannot, in the opinion of the Tribunal, conveniently be conducted before the Tribunal—order the reference of the question for inquiry and report to a special commissioner appointed by the Tribunal and act upon the report of the commissioner so far as the Tribunal thinks fit to adopt it; and
 - (e) where it appears to the Tribunal that special knowledge of a matter is required for the proper determination of an appeal—appoint a person with that special knowledge to act as assessor to the Tribunal.

- (2) A summons under paragraph (b) of the last preceding subsection may be served personally or by being left at the usual place of abode of the person named in the summons.

32 Arrest of witness for failing to appear

- (1) Where a person who has been summoned under paragraph (b) of subsection (1) of the last preceding section to attend the Tribunal, or to attend a person appointed to receive evidence on behalf of the Tribunal, fails to attend or appear before the Tribunal or that person as required by the summons, a member of the Tribunal may, on proof by statutory declaration of the service of the summons, issue a warrant for the apprehension of that person.
- (2) A warrant so issued authorizes the apprehension of the person and his or her being brought before the Tribunal, or before the person appointed to receive evidence on behalf of the Tribunal, as the case may be, and his or her detention in custody for that purpose until he or she is released by order of a member of the Tribunal.
- (3) A warrant so issued may be executed by a person who is a member or special member of the Australian Federal Police or a member of a Police Force of a State or Territory, or by any person to whom it is addressed, and the person executing the warrant has power to break and enter any place, building or vessel for the purpose of executing the warrant.
- (4) The apprehension of a person under this section does not relieve him or her from any liability incurred by him or her by reason of his or her failure to attend before the Tribunal or the person appointed to receive evidence on behalf of the Tribunal.

33 Power to examine upon oath

- (1) A member of the Tribunal, or a person appointed by the Tribunal to receive evidence on behalf of the Tribunal, may administer an oath to a person appearing as a witness before the Tribunal or the person so appointed, whether the witness has been summoned or appears without being summoned, and that member or any other member of the Tribunal, or the person so appointed, may examine the witness upon oath.

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- (2) A witness to be examined before the Tribunal, or before a person appointed to receive evidence on behalf of the Tribunal, may make an affirmation in lieu of taking an oath.
- (3) An affirmation so made is of the same force and effect, and entails the same liabilities, as an oath.

34 Payment of witnesses, special commissioners etc.

- (1) A witness attending before the Tribunal, or before a person appointed to receive evidence on behalf of the Tribunal, shall be paid such allowances as are fixed by or under the regulations.
- (2) A person appointed under paragraph (a) of subsection (1) of section 31 to receive evidence on behalf of the Tribunal, a special commissioner to whom a question is referred under paragraph (d) of that subsection and a person appointed under paragraph (e) of that subsection to act as assessor shall be paid such remuneration and allowances as the Tribunal, subject to the regulations, allows.
- (3) The claim of a person to an allowance or remuneration under this section, certified by the Registrar, shall be paid by the Minister for Finance out of moneys provided by the Parliament for the purpose.

35 Warrants

- (1) The Tribunal may, by writing under the hand of a member of the Tribunal, issue any warrant necessary for the enforcement of any action taken in relation to an appellant by the Tribunal.
- (2) Section 170 of the *Defence Force Discipline Act 1982* applies in relation to a warrant issued under subsection (1) of this section as if it were issued under subsection 170(1) of that Act.

36 Tribunal may obtain reports to assist in determination of appeals

Where, upon the hearing of an appeal under this Act against a conviction or a prescribed acquittal by a court martial or a Defence Force magistrate, the Tribunal thinks it necessary or expedient in the interests of justice to do so, the Tribunal may direct such steps to be taken as are necessary to obtain from the person who was the judge advocate of the court martial or from the Defence Force magistrate, a report giving his or her opinion upon the case, or

upon a point arising in the case, or containing a statement as to any facts the ascertainment of which appears to the Tribunal to be material for the purpose of the determination of the appeal.

37 Costs

- (1) Where the Tribunal allows an appeal, it may, if it thinks fit, direct the payment by the Commonwealth to the appellant of such sums as appear to the Tribunal reasonably sufficient to compensate the appellant for expenses properly incurred by him or her in the prosecution of his or her appeal, and any proceedings preliminary or incidental to the appeal, or in carrying on his or her defence against the charge or charges out of which the appeal arose.
- (2) The Minister for Finance shall pay to an appellant, out of moneys provided by the Parliament for the purpose, any sum which the Commonwealth is directed to pay to the appellant under subsection (1).
- (3) Where the Tribunal dismisses an appeal or an application for leave to appeal, it may, if it thinks fit, order the appellant to pay to the Commonwealth the whole or any part of the costs of the appeal or application, including allowances paid to a witness under section 34 and the costs of copying or transcribing any documents for the use of the Tribunal.
- (4) An order made under the last preceding subsection may be enforced in such manner as is prescribed.

38 Restitution orders and reparation orders

The Tribunal may, by order, on an appeal against a conviction upon which a restitution order or reparation order within the meaning of the *Defence Force Discipline Act 1982* was made, annul or vary that order notwithstanding that the conviction is not quashed and:

- (a) if the order is annulled—it does not take effect; or
- (b) if the order is varied—it takes effect as varied.

Division 4—Miscellaneous

39 Representation of appellants and hearing of appeals

- (1) An appellant may be represented at the hearing of his or her appeal before the Tribunal, or of a matter preliminary or incidental to the appeal, by a legal practitioner.
- (2) The Tribunal may hear and determine an appeal, or a matter preliminary or incidental to an appeal, notwithstanding the absence of the appellant.
- (3) An appellant is entitled to be present at the hearing of his or her appeal, or of a matter preliminary or incidental to the appeal:
 - (a) in a case in which the regulations so provide; or
 - (b) in any other case—with the leave of the Tribunal.
- (4) In this section, *legal practitioner* means a barrister or solicitor of the High Court or of the Supreme Court of a State or Territory and, in relation to the hearing of an appeal, or of a matter preliminary or incidental to an appeal, at a place outside Australia, includes a person authorized by law to practice as a legal practitioner at that place.

40 Protection and immunity of members of Tribunal and of certain other persons

- (1) A member of the Tribunal, a person appointed under paragraph (a) of subsection (1) of section 31 to receive evidence on behalf of the Tribunal, a special commissioner to whom a question is referred under paragraph (d) of that subsection and a person appointed under paragraph (e) of that subsection to act as assessor have, in the exercise of their respective powers and the performance of their respective functions under this Act, the same protection and immunity as a Justice of the High Court.
- (2) A barrister or solicitor appearing before the Tribunal has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

- (3) An appellant appearing before the Tribunal has the same protection and immunity as a person who has been convicted of an indictable offence and has appealed to the High Court against the conviction has in appearing before the High Court on the appeal.
- (4) Subject to this Act, a witness summoned to attend or appearing before the Tribunal has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities in any civil or criminal proceedings, as a witness in proceedings before the High Court.

41 Person deemed to have been acquitted

For the purposes of the *Defence Force Discipline Act 1982*:

- (a) where the Tribunal quashes a conviction of a service offence and does not order a new trial of the person for the offence, the person shall be deemed to have been acquitted of the offence; and
- (b) where the Tribunal quashes a prescribed acquittal of a person of a service offence and does not give a direction with respect to the person under subsection 23(4) or order a new trial of the person for the offence, the person shall be deemed to have been acquitted of the offence without qualification.

42 Defence of appeals

The Chief of the Defence Force or a service chief shall arrange the undertaking of the defence of an appeal under this Act.

Part IV—Offences in relation to Tribunal

43 Failure to attend or produce documents

- (1) A person served with a summons under this Act to attend the Tribunal, or to attend a person appointed to receive evidence on behalf of the Tribunal, shall not:
 - (a) fail to attend the Tribunal or the person so appointed; or
 - (b) fail to produce any document, book or writing in the person's custody or control which the person was required by the summons to produce.

Penalty: \$1,000 or imprisonment for 6 months.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

44 Duty of witness to continue in attendance

- (1) A person who has been summoned under this Act to attend the Tribunal, or to attend a person appointed to receive evidence on behalf of the Tribunal, as a witness shall appear and report himself or herself from day to day unless excused, or until released from further attendance, by a member of the Tribunal or the person so appointed.

Penalty: \$1,000 or imprisonment for 6 months.

- (2) Subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

45 Refusal to be sworn or give evidence

- (1) A person appearing as a witness before the Tribunal, or before a person appointed to receive evidence on behalf of the Tribunal, shall not:
- (a) refuse or fail to be sworn or to make an affirmation; or
 - (b) refuse or fail to answer a question which the person is required to answer by a member of the Tribunal or the person appointed to receive evidence on behalf of the Tribunal, as the case may be.

Penalty: \$1,000 or imprisonment for 6 months.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

46 Offences against the Tribunal

A person shall not:

- (a) intentionally insult or disturb the Tribunal;
- (b) interrupt the proceedings of the Tribunal;
- (c) use insulting language towards the Tribunal or a member of the Tribunal; or
- (d) by writing or speech use words calculated:
 - (i) to influence improperly the Tribunal or a witness before the Tribunal; or
 - (ii) to bring the Tribunal or a member of the Tribunal into disrepute.

Penalty: \$1,000 or imprisonment for 6 months.

47 Orders under section 18

A person shall not contravene or fail to comply with an order made in pursuance of section 18.

Penalty: \$1,000 or imprisonment for 6 months.

Section 48

48 Offences punishable by courts of summary jurisdiction

- (1) Subject to the succeeding provisions of this section:
 - (a) the several courts of summary jurisdiction of the States are invested with federal jurisdiction; and
 - (b) jurisdiction is conferred on the several courts of summary jurisdiction of the Territories;with respect to offences against the preceding provisions of this Part whether committed within or outside Australia.
- (2) The jurisdiction invested in or conferred on courts of summary jurisdiction by the last preceding subsection is invested or conferred within the limits (other than limits having effect by reference to the places at which offences are committed) of their several jurisdictions, whether those limits are as to subject-matter or otherwise.
- (3) The jurisdiction with which a court of summary jurisdiction of a State is invested by this section is subject to the conditions and restrictions specified in subsection (2) of section 39 of the *Judiciary Act 1903-1955*.
- (4) Nothing in this section affects jurisdiction invested in or conferred on courts other than courts of summary jurisdiction by the *Judiciary Act 1903-1955* or by or under any other Act.
- (5) Except as provided by this section, the *Judiciary Act 1903-1955* applies in relation to offences with respect to which jurisdiction is invested or conferred by this section.

50 Contempt of the Tribunal

- (1) A person who contravenes or fails to comply with a provision of section 43, 44, 45, 46 or 47 is, in addition to being guilty of an offence, also guilty of a contempt of the Tribunal.
- (2) Upon application made by the Attorney-General:
 - (a) in the case of a contempt of the Tribunal committed in a State or an internal Territory—to the Supreme Court of that State or Territory; or

- (b) in the case of a contempt of the Tribunal committed elsewhere than in a State or an internal Territory—to the Supreme Court of any State or Territory;
the contempt is punishable by the court to which the application was made as if it were a contempt of that court.
- (3) Subject to this section, proceedings in respect of a contempt of the Tribunal shall be instituted, carried on, heard and determined in accordance with the laws applicable to and in relation to the punishment of contempts in the court to which the application by the Attorney-General was made.
- (4) In so far as any such law is incapable of application, whether by reason of the Constitution or otherwise, a Judge of the court to which the application by the Attorney-General was made may give a direction as to the manner of instituting, carrying on, hearing or determining a proceeding referred to in the last preceding subsection and, in that case, the proceeding shall be instituted, carried on, heard or determined, as the case may be, in accordance with the direction.
- (6) The penalty which a court is empowered to impose in respect of a contempt of the Tribunal is the penalty which would have been applicable in respect of the offence constituting the contempt if proceedings in respect of the offence had been taken otherwise than under this section.
- (7) A person guilty of an offence referred to in subsection (1) may be punished either under this section or otherwise but shall not be punished twice for the same offence.
- (8) The several Supreme Courts of the States are invested with federal jurisdiction, and jurisdiction is conferred on the several Supreme Courts of the Territories, to hear and determine proceedings, instituted in accordance with subsection (2), in respect of a contempt of the Tribunal.

Part V—References and appeals from the Tribunal to the Federal Court of Australia

51 Reference of questions of law to Federal Court of Australia

- (1) The Tribunal may, of its own motion or at the request of appellant or Chief of the Defence Force or a service chief, refer a question of law arising in a proceeding before the Tribunal, not being a proceeding before a single member exercising the powers of the Tribunal, to the Federal Court of Australia for decision.
- (2) The Federal Court of Australia has jurisdiction to hear and determine a question of law referred to it under this section, and that jurisdiction shall be exercised by that Court constituted as a Full Court.
- (3) Where a question of law involved in a decision in respect of a proceeding before the Tribunal has been referred to the Federal Court of Australia under this section, the Tribunal shall not, in that proceeding:
 - (a) give a decision to which the question is relevant while the reference is pending; or
 - (b) proceed in a manner, or make a decision, that is inconsistent with the opinion of the Federal Court of Australia on the question.

52 Appeal to Federal Court of Australia from decisions of the Tribunal

- (1) An appellant or Chief of the Defence Force or a service chief may appeal to the Federal Court of Australia on a question of law involved in a decision of the Tribunal in respect of an appeal under this Act, not being a decision given by a single member exercising the powers of the Tribunal.
- (2) An appeal under subsection (1) shall be instituted not later than the twenty-eighth day after the day on which a copy of a document setting out the terms of the decision of the Tribunal is furnished to the person or within such further time as the Federal Court of

Australia (whether before or after the expiration of that day) allows.

- (3) The Federal Court of Australia has jurisdiction to hear and determine matters arising under this section with respect to which appeals are instituted in that Court in accordance with this section and that jurisdiction shall be exercised by that Court constituted as a Full Court.
- (4) The Federal Court of Australia shall hear and determine the appeal and may make such order as it thinks appropriate by reason of its decision.
- (5) Without limiting by implication the generality of subsection (4), the orders that may be made by the Federal Court of Australia on an appeal include:
 - (a) an order affirming or setting aside the decision of the Tribunal;
 - (b) an order remitting the case to be heard and decided again by the Tribunal in accordance with the directions of the Court;
 - (c) an order granting a new trial by a court martial or a Defence Force magistrate; and
 - (d) where the Court sets aside a decision of the Tribunal quashing a conviction or quashing a prescribed acquittal—an order reinstating the conviction or the prescribed acquittal, as the case may be.

53 Custody orders and sending of documents to the Federal Court of Australia

Where a question of law is referred to the Federal Court of Australia in accordance with section 51 or an appeal is instituted in that Court in accordance with section 52:

- (a) the Tribunal may make such orders for the custody of the person to whose conviction or prescribed acquittal that reference or appeal relates as the Tribunal thinks appropriate pending the decision of the Court on the reference or appeal, as the case may be;
- (b) the Tribunal shall cause to be sent to that Court all documents and other records relating to the proceeding before the Tribunal to which the reference or appeal relates; and

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- (c) at the conclusion of the proceeding before the Federal Court of Australia in relation to the reference or appeal, that Court shall cause the documents to be returned to the Tribunal.

54 Record of proceedings of Tribunal to be kept

A record of proceedings before the Tribunal shall be kept for the purposes of this Part.

Part VI—Miscellaneous

58 Effect of this Act on Royal prerogative of mercy

- (1) Nothing in this Act affects the Royal prerogative of mercy.

60 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular:

- (a) for regulating the practice and procedure of the Tribunal; and
- (b) for prescribing fees to be charged in respect of proceedings under this Act; and
- (c) for prescribing the forms to be used for the purposes of this Act; and
- (d) for making provision for or in relation to the granting of legal aid to appellants and persons who desire to appeal to the Tribunal under this Act; and
- (f) for prescribing the manner in which an appellant in custody is to be taken and kept in custody at, and brought back from, a place at which he or she is entitled to be present for the purposes of this Act or to which the Tribunal or a member of the Tribunal may order him or her to be taken for the purpose of any proceedings of the Tribunal; and
- (g) for making provision for or in relation to the furnishing to the Tribunal, for the purposes of an appeal, or an application for leave to appeal, under this Act against a conviction or a prescribed acquittal by a court martial or a Defence Force magistrate, of:
 - (i) a record of the proceedings of the court martial or Defence Force magistrate; and
 - (ii) a record of any review with respect to the proceedings of the court martial or Defence Force magistrate; and
 - (iii) documents that were before the court martial, Defence Force magistrate or reviewing authority in connection

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with the proceedings, or the review of the proceedings,
as the case may be; and

- (h) for prescribing penalties, not exceeding a fine of \$500 or imprisonment for 3 months, or both, for offences against the regulations; and
- (i) for investing courts of summary jurisdiction of the States with federal jurisdiction, and conferring jurisdiction on courts of summary jurisdiction of the Territories, with respect to offences against the regulations, whether committed within or outside Australia.

The Schedule

Section 9

OATH

I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors according to law, that I will well and truly serve Her in the office of President (*or* Deputy President *or* member *as the case may be*) of the Defence Force Discipline Appeal Tribunal and that I will faithfully and impartially perform the duties of that office.

SO HELP ME GOD!

AFFIRMATION

I, A.B., do solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors according to law, that I will well and truly serve Her in the office of President (*or* Deputy President *or* member *as the case may be*) of the Defence Force Discipline Appeal Tribunal and that I will faithfully and impartially perform the duties of that office.

Table of Acts**Notes to the *Defence Force Discipline Appeals Act 1955*****Note 1**

The *Defence Force Discipline Appeals Act 1955* as shown in this compilation comprises Act No. 16, 1955 amended as indicated in the Tables below.

For application, saving or transitional provisions made by Schedules 2–4 of the *Military Justice (Interim Measures) Act (No. 1) 2009*, see Act No. 91, 2009.

All other relevant information pertaining to application, saving or transitional provisions prior to 6 April 2001 is not included in this compilation. For subsequent information see Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Courts-Martial Appeals Act 1955</i>	16, 1955	8 June 1955	1 June 1957 (see <i>Gazette</i> 1957, p. 1501)	
<i>Statute Law Revision (Decimal Currency) Act 1966</i>	93, 1966	29 Oct 1966	1 Dec 1966	—
<i>Statute Law Revision Act 1973</i>	216, 1973	19 Dec 1973	31 Dec 1973	Ss. 9(1) and 10
<i>Defence Force Re-organization Act 1975</i>	96, 1975	9 Sept 1975	Part VII (ss. 111–122): 9 Feb 1976 (see <i>Gazette</i> 1975, No. G42, p. 2) (a)	Ss. 118(2) and 119(2)
<i>Administrative Changes (Consequential Provisions) Act 1978</i>	36, 1978	12 June 1978	12 June 1978	—
<i>Jurisdiction of Courts (Miscellaneous Amendments) Act 1979</i>	19, 1979	28 Mar 1979	Parts II–XVII (ss. 3–123): 15 May 1979 (see <i>Gazette</i> 1979, No. S86) Remainder: Royal Assent	S. 124
<i>Australian Federal Police (Consequential Amendments) Act 1979</i>	155, 1979	28 Nov 1979	19 Oct 1979 (see s. 2(1) and <i>Gazette</i> 1979, No. S206)	S. 2(2)
<i>Australian Federal Police (Consequential Amendments) Act 1980</i>	70, 1980	28 May 1980	28 May 1980	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Statute Law Revision Act 1981</i>	61, 1981	12 June 1981	Part IX (ss. 24, 25): (b)	—
<i>Defence Force (Miscellaneous Provisions) Act 1982</i>	153, 1982	31 Dec 1982	3 July 1985 (see s. 2 and <i>Gazette</i> 1985, No. S255)	Ss. 17(2), 22(2), (3), 35 and 36
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i>	65, 1985	5 June 1985	S. 3: (c)	—
<i>Law and Justice Legislation Amendment Act (No. 2) 1992</i>	23, 1992	6 May 1992	6 May 1992	—
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 4 (item 65): Royal Assent (d)	—
<i>Defence Legislation Amendment Act (No. 1) 1997</i>	1, 1997	19 Feb 1997	Schedules 1 and 3: 30 Apr 1997 (see <i>Gazette</i> 1997, No. S91) Remainder: Royal Assent	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (item 369): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (e)	—
<i>Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001</i>	24, 2001	6 Apr 2001	S. 4(1), (2) and Schedule 23: (f)	S. 4(1) and (2) [see Table A]
<i>Defence Legislation Amendment Act 2006</i>	159, 2006	11 Dec 2006	Schedule 1: 1 Oct 2007 Remainder: Royal Assent	Sch. 1 (items 255–262) [see Table A]
as amended by				
<i>Statute Law Revision Act 2008</i>	73, 2008	3 July 2008	Schedule 2 (item 5): (h)	—
<i>Defence Legislation Amendment Act 2008</i>	6, 2008	20 Mar 2008	Schedule 2 (items 21–26): 20 Sept 2008 Schedule 7 (items 5–14) and Schedule 8 (items 1, 2, 4, 8): Royal Assent Schedule 7 (item 45): (g)	Sch. 8 (items 1, 2, 4, 8) [see Table A]
<i>Statute Law Revision Act 2008</i>	73, 2008	3 July 2008	Schedule 4 (item 247): 4 July 2008	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Military Justice (Interim Measures) Act (No. 1) 2009</i>	91, 2009	22 Sept 2009	Schedule 1 (items 182–248) and Schedules 2–4: Royal Assent	Schs. 2–4 [see Note 1]

Act Notes

- (a) The *Defence Force Discipline Appeals Act 1955* was amended by Part VII (sections 111–122) only of the *Defence Force Re-organization Act 1975*, section 2 of which provides as follows:
2. This Part shall come into operation on the day on which this Act receives the Royal Assent, and the remaining provisions of this Act shall come into operation on such date as is, or such respective dates as are, fixed by Proclamation.
- (b) The *Defence Force Discipline Appeals Act 1955* was amended by Part IX (sections 24 and 25) only of the *Statute Law Revision Act 1981*, subsection 2(5) of which provides as follows:
- (5) Part IX shall be deemed to have come into operation on 19 October 1979.
- (c) The *Defence Force Discipline Appeals Act 1955* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsections 2(1) and (17) of which provide as follows:
- (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.
 - (17) The amendment of the heading to Part II of the *Defence Force Discipline Appeals Act 1955* made by this Act shall come into operation, or be deemed to have come into operation, as the case requires, immediately after the commencement of the *Defence Force (Miscellaneous Provisions) Act 1982*.
- In pursuance of subsection 2(1), the date of commencement was 3 July 1985.
In pursuance of subsection 2(17), the date of commencement was 3 July 1985 (see *Gazette* 1985, No. S255).
- (d) The *Defence Force Discipline Appeals Act 1955* was amended by Schedule 4 (item 65) only of the *Statute Law Revision Act 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (e) The *Defence Force Discipline Appeals Act 1955* was amended by Schedule 1 (item 369) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
 - (2) Subject to this section, this Act commences at the commencing time.
- (f) The *Defence Force Discipline Appeals Act 1955* was amended by Schedule 23 only of the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:
- (1) Subject to this section, this Act commences at the later of the following times:
 - (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;
- Item 15 commenced on 24 May 2001.
- (g) Subsection 2(1) (item 12) of the *Defence Legislation Amendment Act 2008* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Act Notes**Commencement information**

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
12. Schedule 7, item 45	Immediately after the commencement of item 230 of Schedule 1 to the <i>Defence Legislation Amendment Act 2006</i> .	1 October 2007

(h) Subsection 2(1) (item 48) of the *Statute Law Revision Act 2008* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
48. Schedule 2, item 5	Immediately after the time specified in the <i>Defence Legislation Amendment Act 2006</i> for the commencement of item 235 of Schedule 1 to that Act.	1 October 2007

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Title	am. No. 153, 1982; No. 159, 2006; No. 91, 2009
Part I	
S. 1	am. No. 153, 1982
S. 3	rep. No. 216, 1973
S. 4	am. No. 216, 1973; No. 96, 1975; No. 153, 1982; No. 159, 2006; No. 6, 2008; No. 91, 2009
S. 5	am. No. 216, 1973
S. 5A	ad. No. 24, 2001
Part II	
Heading to Part II	rs. No. 65, 1985
S. 6	am. No. 153, 1982
S. 7	am. No. 153, 1982; No. 159, 2006
S. 8	am. No. 216, 1973; No. 153, 1982; No. 159, 2006
S. 8A	ad. No. 153, 1982 am. No. 159, 2006
S. 8B	ad. No. 153, 1982
S. 9	am. No. 96, 1975; No. 153, 1982; No. 159, 2006
S. 10	rs. No. 96, 1975 am. No. 43, 1996
S. 12	am. No. 23, 1992; No. 159, 2006
S. 13	am. No. 216, 1973 rs. No. 96, 1975 rep. No. 65, 1985
S. 14	am. No. 159, 2006
S. 15	am. No. 159, 2006; No. 6, 2008; No. 91, 2009
S. 15A	ad. No. 153, 1982 am. No. 159, 2006
S. 16	rs. No. 6, 2008; No. 91, 2009
S. 17	am. No. 96, 1975; No. 153, 1982; No. 159, 2006; No. 91, 2009
S. 18	am. No. 96, 1975; No. 159, 2006
S. 19	rs. No. 153, 1982 am. No. 146, 1999
Part III	
Heading to Part III	rs. No. 6, 2008; No. 91, 2009
Div. 1A of Part III	ad. No. 6, 2008 rep. No. 91, 2009
S. 19A	ad. No. 6, 2008 rep. No. 91, 2009

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 1	
Div. 1 of Part III	rs. No. 153, 1982
S. 20	am. No. 96, 1975 rs. No. 153, 1982 am. No. 159, 2006; No. 91, 2009
S. 21	am. No. 216, 1973; No. 96, 1975 rs. No. 153, 1982 am. No. 159, 2006; No. 91, 2009
S. 22	rs. No. 153, 1982; No. 159, 2006; No. 91, 2009
Division 2	
Div. 2 of Part III	rs. No. 153, 1982
S. 23	rs. No. 153, 1982 am. No. 159, 2006; No. 91, 2009
Ss. 24, 25	rs. No. 153, 1982
S. 26	rs. No. 153, 1982 am. No. 159, 2006; No. 6, 2008; No. 91, 2009
S. 27	rep. No. 153, 1982 ad. No. 159, 2006 rep. No. 91, 2009
Ss. 28–30	rep. No. 153, 1982
Division 3	
S. 31	am. No. 153, 1982; No. 159, 2006; No. 6, 2008; No. 91, 2009
S. 32	am. No. 216, 1973; No. 70, 1980; No. 61, 1981; No. 159, 2006
S. 33	am. No. 96, 1975
S. 34	am. No. 96, 1975; No. 36, 1978
S. 35	rs. No. 153, 1982 am. No. 159, 2006; No. 91, 2009
Heading to s. 36	am. No. 6, 2008 rs. No. 91, 2009
S. 36	rs. No. 153, 1982 am. No. 159, 2006 (as am. by 73, 2008); No. 6, 2008 rs. No. 91, 2009
S. 37	am. No. 96, 1975; No. 36, 1978; No. 153, 1982; No. 159, 2006; No. 91, 2009
S. 38	am. No. 96, 1975 rs. No. 153, 1982
Division 4	
Heading to s. 39	am. No. 159, 2006; No. 91, 2009
S. 39	am. No. 216, 1973; No. 159, 2006; No. 91, 2009
S. 40	am. No. 96, 1975; No. 159, 2006; No. 91, 2009
S. 41	rs. No. 153, 1982
Heading to s. 42	am. No. 159, 2006; No. 91, 2009
S. 42	am. No. 96, 1975 rs. No. 153, 1982 am. No. 1, 1997; No. 159, 2006; No. 91, 2009

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part IV	
S. 43	am. No. 93, 1966; No. 153, 1982; No. 24, 2001; No. 159, 2006
S. 44	am. No. 93, 1966; No. 153, 1982; No. 24, 2001; No. 73, 2008
S. 45	am. No. 93, 1966; No. 153, 1982; No. 24, 2001; No. 159, 2006
S. 46	am. No. 93, 1966; No. 153, 1982; No. 24, 2001
S. 47	am. No. 93, 1966; No. 96, 1975; No. 153, 1982
S. 48	am. No. 216, 1973; No. 96, 1975
S. 49	am. No. 96, 1975 rep. No. 153, 1982
S. 50	am. No. 216, 1973; No. 96, 1975; No. 19, 1979
Part V	
Heading to Part V	am. No. 19, 1979
Part V	rs. No. 153, 1982
S. 51	am. No. 96, 1975; No. 19, 1979 rs. No. 153, 1982 am. No. 1, 1997; No. 159, 2006; No. 91, 2009
S. 52	am. No. 19, 1979 rs. No. 153, 1982 am. No. 1, 1997; No. 159, 2006; No. 91, 2009
Ss. 53, 54	am. No. 19, 1979 rs. No. 153, 1982
S. 55	am. No. 19, 1979 rep. No. 153, 1982
S. 56	am. No. 96, 1975; No. 19, 1979 rep. No. 153, 1982
S. 57	rep. No. 153, 1982
Part VI	
S. 58	am. No. 153, 1982
S. 59	rep. No. 96, 1975
S. 60	am. No. 93, 1966; No. 216, 1973; No. 96, 1975; No. 153, 1982; No. 159, 2006; No. 6, 2008; No. 91, 2009
The Schedule	
The Schedule	am. No. 153, 1982

Table A

Table A

Application, saving or transitional provisions

Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001 (No. 24, 2001)

4 Application of amendments

- (1) Subject to subsection (3), each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Defence Legislation Amendment Act 2006 (No. 159, 2006)

Schedule 1

255 Definitions

In this Part:

commencement day means the day on which this Schedule commences.

new DFDA means the *Defence Force Discipline Act 1982* as amended by this Schedule.

new law means the *Defence Force Discipline Act 1982* and the *Defence Force Discipline Appeals Act 1955* as amended by this Schedule.

old DFDA means the *Defence Force Discipline Act 1982* as in force immediately before the commencement day.

256 Application of amendments

- (1) The amendments made by this Schedule apply in relation to a service offence committed by a person on or after the commencement day.

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- (2) The amendments made by this Schedule also apply in relation to a service offence committed by a person before the commencement day if, before the commencement day, the person had not been charged with the offence under the old DFDA.

257 Before commencement day, Director of Military Prosecutions requested trial by court martial or Defence Force magistrate

Trial by court martial

- (1) Subitem (2) applies if, before the commencement day:
- (a) the Director of Military Prosecutions requested the Registrar of Military Justice to convene a court martial to try a charge of a service offence that was committed by a person before the commencement day; and
 - (b) the Registrar of Military Justice either:
 - (i) had not convened the court martial; or
 - (ii) had convened the court martial, but the person had not been asked to plead at the trial.
- (2) If this subitem applies, then:
- (a) if a court martial had been convened before the commencement day—on the commencement day, the court martial is taken to have been dissolved; and
 - (b) on the commencement day, the Director of Military Prosecutions:
 - (i) is taken to have withdrawn the request; and
 - (ii) is taken to have requested the Registrar of the Australian Military Court to refer the charge to the Australian Military Court for trial; and
 - (c) on and after the commencement day, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

Trial by Defence Force magistrate

- (3) Subitem (4) applies if, before the commencement day:
- (a) the Director of Military Prosecutions requested the Registrar of Military Justice to refer a charge of a service offence that

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- was committed by a person before the commencement day to a Defence Force magistrate for trial; and
- (b) the Registrar of Military Justice:
- (i) had not referred the charge; or
 - (ii) had referred the charge, but the person had not been asked to plead at the trial.
- (4) If this subitem applies, then:
- (a) if the charge had been referred to a Defence Force magistrate before the commencement day—on the commencement day, the reference is taken to have been terminated; and
 - (b) on the commencement day, the Director of Military Prosecutions:
 - (i) is taken to have withdrawn the request; and
 - (ii) is taken to have requested the Registrar of the Australian Military Court to refer the charge to the Australian Military Court for trial; and
 - (c) on and after the commencement day, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

Elections for trial by court martial or Defence Force magistrate

- (5) If:
- (a) before the commencement day, a person made an election under subsection 131(1) of the old DFDA to have a charge against him or her tried by a court martial or Defence Force magistrate; and
 - (b) because of subitem (2) or (4), the Director of Military Prosecutions is taken to have requested the Registrar of the Australian Military Court to refer the charge to the Australian Military Court for trial;
- the person may withdraw the election by written notice to the Registrar of the Australian Military Court at any time before a date is fixed for hearing by the Court.

258 Before commencement day, trial by court martial or Defence Force magistrate discontinued*Trial by court martial*

- (1) Subitem (2) applies if, before the commencement day:
- (a) a court martial convicted a person of a service offence committed before the commencement day, but the court martial had not taken action under Part IV of the old DFDA; and
 - (b) the court martial was dissolved under section 125 of the old DFDA before the court martial had taken such action; and
 - (c) under subsection 125(6) of the old DFDA, the Registrar of Military Justice:
 - (i) had not convened a new court martial for the purpose of taking such action; or
 - (ii) had convened a new court martial for the purpose of taking such action, but the new court martial had not begun to hear evidence relevant to determining what action should be taken.
- (2) If this subitem applies, then:
- (a) if a new court martial was convened before the commencement day—on the commencement day, the new court martial is taken to have been dissolved; and
 - (b) on the commencement day, the Director of Military Prosecutions is taken to have requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action under Part IV of the new DFDA in relation to the person; and
 - (c) on and after the commencement day, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

Trial by Defence Force magistrate

- (3) Subitem (4) applies if, before the commencement day:
- (a) a charge of, or conviction for, a service offence that was committed by a person before the commencement day was referred to a Defence Force magistrate; and

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- (b) a Defence Force magistrate:
 - (i) in relation to a charge—had convicted the person of the offence, but had not taken action under Part IV of the old DFDA; or
 - (ii) in relation to a conviction—had not taken action under Part IV of the old DFDA; and
 - (c) the reference was terminated under section 129A of the old DFDA before action had been taken under Part IV; and
 - (d) under subsection 129A(4) of the old DFDA, the Registrar of Military Justice either:
 - (i) referred the conviction to another Defence Force magistrate to take action under Part IV of the old DFDA; or
 - (ii) convened a court martial to take action under Part IV of the old DFDA; and
 - (e) the new Defence Force magistrate or court martial had not begun to hear evidence relevant to determining what action should be taken.
- (4) If this subitem applies, then:
- (a) if the conviction was referred to another Defence Force magistrate before the commencement day—on the commencement day, the reference is taken to have been terminated; and
 - (b) if a court martial was convened before the commencement day—on the commencement day, the court martial is taken to have been dissolved; and
 - (c) on the commencement day, the Director of Military Prosecutions is taken to have requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action under Part IV of the new DFDA in relation to the person; and
 - (d) on and after the commencement day, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

259 Before commencement day, Director of Military Prosecutions requested imposition of punishment by court martial or Defence Force magistrate

Punishment imposed by court martial

- (1) Subitem (2) applies if, before the commencement day:
- (a) the Director of Military Prosecutions requested the Registrar of Military Justice to convene a court martial to take action under Part IV of the old DFDA in relation to a conviction for a service offence that was committed by a person before the commencement day; and
 - (b) the Registrar of Military Justice:
 - (i) had not convened the court martial; or
 - (ii) had convened the court martial, but the court martial had not begun to hear evidence relevant to determining what action should be taken.
- (2) If this subitem applies, then:
- (a) if a court martial had been convened before the commencement day—on the commencement day, the court martial is taken to have been dissolved; and
 - (b) on the commencement day, the Director of Military Prosecutions is taken to have:
 - (i) withdrawn the request; and
 - (ii) requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action under Part IV of the new DFDA in relation to the person; and
 - (c) on and after the commencement day, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

Punishment imposed by Defence Force magistrate

- (3) Subitem (4) applies if, before the commencement day:
- (a) the Director of Military Prosecutions requested the Registrar of Military Justice to refer a conviction for a service offence that was committed by a person before the commencement day to a Defence Force magistrate to take action under Part IV of the old DFDA; and

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- (b) the Registrar of Military Justice:
 - (i) had not referred the conviction; or
 - (ii) had referred the conviction, but the Defence Force magistrate had not begun to hear evidence relevant to determining what action should be taken.
- (4) If this subitem applies, then:
 - (a) if the conviction had been referred to a Defence Force magistrate before the commencement day—on the commencement day, the reference is taken to have been terminated; and
 - (b) on the commencement day, the Director of Military Prosecutions is taken to have:
 - (i) withdrawn the request; and
 - (ii) requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action under Part IV of the new DFDA in relation to the person; and
 - (c) on and after the commencement day, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

Elections to be punished by court martial or Defence Force magistrate

- (5) If:
 - (a) before the commencement day, a person made an election under subsection 131(2A) or (3) of the old DFDA to be punished by a court martial or Defence Force magistrate in relation to his or her conviction; and
 - (b) because of subitem (2) or (4), the Director of Military Prosecutions is taken to have requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action;the person may withdraw the election by written notice to the Registrar of the Australian Military Court at any time before a date is fixed for hearing by the Court.

260 On or after the commencement day, Director of Military Prosecutions requests trial by court martial or Defence Force magistrate

Trial by court martial

- (1) Subitem (2) applies if, on or after the commencement day, the Director of Military Prosecutions requests the Registrar of Military Justice to convene a court martial to try a charge of a service offence that was committed by a person before the commencement day.
- (2) If this subitem applies, then:
 - (a) immediately after the request is made, the Director of Military Prosecutions:
 - (i) is taken to have withdrawn the request; and
 - (ii) is taken to have requested the Registrar of the Australian Military Court to refer the charge to the Australian Military Court for trial; and
 - (b) after the request is made, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

Trial by Defence Force magistrate

- (3) Subitem (2) applies if, on or after the commencement day, the Director of Military Prosecutions requests the Registrar of Military Justice to refer a charge of a service offence that was committed by a person before the commencement day to a Defence Force magistrate for trial.
 - (4) If this item applies, then:
 - (a) immediately after the request is made, the Director of Military Prosecutions:
 - (i) is taken to have withdrawn the request; and
 - (ii) is taken to have requested the Registrar of the Australian Military Court to refer the charge to the Australian Military Court for trial; and
 - (b) after the request is made, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.
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Elections made for trial by court martial or Defence Force magistrate

- (5) If:
- (a) after the commencement day, a person makes an election under subsection 131(1) of the old DFDA to have a charge against him or her tried by a court martial or Defence Force magistrate; and
 - (b) because of subitem (2) or (4), the Director of Military Prosecutions is taken to have requested the Registrar of the Australian Military Court to refer the charge to the Australian Military Court for trial;
- the person may withdraw the election by written notice to the Registrar of the Australian Military Court at any time before a date is fixed for hearing by the Court.

261 On or after commencement day, trial by court martial or Defence Force magistrate discontinued

Trial by court martial

- (1) Subitem (2) applies if, on or after the commencement day:
- (a) the Registrar of Military Justice dissolves a court martial under section 125 of the old DFDA; and
 - (b) the dissolution happens:
 - (i) after the court martial has convicted a person of a service offence committed before the commencement day; and
 - (ii) before the court martial has taken action under Part IV of the old DFDA in relation to the person.
- (2) If this subitem applies, then:
- (a) immediately after the court martial is dissolved, the Director of Military Prosecutions is taken to have requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action under Part IV of the new DFDA in relation to the person; and
 - (b) after the court martial is dissolved, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

Trial by Defence Force magistrate

- (3) Subitem (4) applies if, on or after the commencement day:
- (a) the Registrar of Military Justice terminates a reference to a Defence Force magistrate under section 129A of the old DFDA in relation to a charge of, or conviction for, a service offence that was committed by a person before the commencement day; and
 - (b) the termination happens:
 - (i) in relation to a charge—after the person has been convicted but before the Defence Force magistrate has taken action under Part IV of the old DFDA in relation to the person; and
 - (ii) in relation to a conviction—before the Defence Force magistrate has taken action under Part IV of the old DFDA in relation to the person.
- (4) If this subitem applies, then:
- (a) immediately after the reference is terminated, the Director of Military Prosecutions is taken to have requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action under Part IV of the new DFDA in relation to the person; and
 - (b) after the reference is terminated, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

262 On or after the commencement day, Director of Military Prosecutions requests imposition of punishment by court martial or Defence Force magistrate

Punishment imposed by court martial

- (1) Subitem (2) applies if, on or after the commencement day, the Director of Military Prosecutions requests the Registrar of Military Justice to convene a court martial to take action under Part IV of the old DFDA in relation to a conviction for a service offence that was committed before the commencement day.
- (2) If this subitem applies, then:
- (a) immediately after the request is made, the Director of Military Prosecutions:

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- (i) is taken to have withdrawn the request; and
 - (ii) is taken to have requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action under Part IV of the new DFDA; and
- (b) after the request is made, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

Punishment imposed by Defence Force magistrate

- (3) Subitem (4) applies if, on or after the commencement day, the Director of Military Prosecutions requests the Registrar of Military Justice to refer a conviction for a service offence that was committed by a person before the commencement day to a Defence Force magistrate to take action under Part IV of the old DFDA in relation to the person.
- (4) If this subitem applies, then:
- (a) immediately after the request is made, the Director of Military Prosecutions:
 - (i) is taken to have withdrawn the request; and
 - (ii) is taken to have requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action under Part IV of the new DFDA; and
 - (b) after the request is made, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

Elections made for punishment by court martial or Defence Force magistrate

- (5) If:
- (a) after the commencement day, a person makes an election under subsection 131(2A) or (3) of the old DFDA to be punished by a court martial or Defence Force magistrate in relation to his or her conviction; and
 - (b) because of subitem (2) or (4), the Director of Military Prosecutions is taken to have requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action;

the person may withdraw the election by written notice to the Registrar of the Australian Military Court at any time before a date is fixed for hearing by the Court.

Defence Legislation Amendment Act 2008 (No. 6, 2008)

Schedule 8

1 Definitions

In this Schedule:

commencement day means the day on which Schedules 1 to 6 to this Act commence.

main amendments made by this Act means the amendments and repeals made by the following provisions of this Act:

- (a) Schedule 1;
- (b) Schedule 2;
- (c) Schedule 3;
- (d) Schedule 4;
- (e) Part 2 of Schedule 5;
- (f) Part 3 of Schedule 7;
- (g) items 24 to 26, 29 and 30 of Schedule 7.

old DFDA means the *Defence Force Discipline Act 1982* as in force immediately before the commencement day.

old law means the *Defence Force Discipline Act 1982* and the *Defence Force Discipline Appeals Act 1955* as in force immediately before the commencement day.

2 Application of main amendments made by this Act

- (1) The main amendments made by this Act apply in relation to a service offence committed by a person on or after the commencement day.
- (2) The main amendments made by this Act also apply in relation to a service offence committed by a person before the commencement day if, before the commencement day:
 - (a) the person had not been charged with the offence under the old DFDA; or

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- (b) the person had been charged with the offence under the old DFDA but no action to deal with the charge had been taken under the old DFDA.

4 Continued application of old law to proceedings in progress before commencement day

- (1) This item applies if, before the commencement day:
 - (a) a person had been charged with a service offence under the old DFDA; and
 - (b) proceedings dealing with the charge of the offence had been commenced under the old DFDA; and
 - (c) those proceedings (including any appeal to the Defence Force Discipline Appeal Tribunal) had not been finally determined under the old law.
- (2) Despite the main amendments made by this Act, and subject to subitem (3), the old law continues to apply after the commencement day in relation to the proceedings, including any review under Part IX of the old DFDA, as if those amendments had not been made.
- (3) A review of the proceedings must not be commenced under section 155 of the old DFDA after the end of 31 December 2008.

8 Regulations may deal with transitional, saving or application matters

The Governor-General may make regulations dealing with matters of a transitional, saving or application nature relating to amendments and repeals made by this Act.