



Defence Legislation Amendment Act 2008

No. 6, 2008

**An Act to amend legislation relating to defence, and
for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	3
Schedule 1—Election for trial by the Australian Military Court		4
Part 1—Main amendments		4
<i>Defence Force Discipline Act 1982</i>		4
Part 2—Consequential amendments		17
<i>Defence Force Discipline Act 1982</i>		17
Schedule 2—Appeals to the Australian Military Court		18
Part 1—Main amendments		18
<i>Defence Force Discipline Act 1982</i>		18
Part 2—Consequential amendments		29
<i>Defence Force Discipline Act 1982</i>		29
<i>Defence Force Discipline Appeals Act 1955</i>		30
Schedule 3—Evidence in summary proceedings		32
<i>Defence Force Discipline Act 1982</i>		32
Schedule 4—Review of summary proceedings		35
Part 1—Main amendments		35
<i>Defence Force Discipline Act 1982</i>		35
Part 2—Consequential amendments		43
<i>Defence Force Discipline Act 1982</i>		43
Schedule 5—Offences and punishments		46
Part 1—Amendments of offences		46
<i>Defence Force Discipline Act 1982</i>		46
Part 2—Amendments of punishments		51
<i>Defence Force Discipline Act 1982</i>		51
Schedule 6—Minor disciplinary infringements		53
<i>Defence Force Discipline Act 1982</i>		53

Schedule 7—Other amendments	58
Part 1—Powers of the Director of Military Prosecutions	58
<i>Defence Force Discipline Act 1982</i>	58
<i>Defence Force Discipline Appeals Act 1955</i>	59
Part 2—Powers of the Provost Marshal Australian Defence Force	63
<i>Defence Force Discipline Act 1982</i>	63
Part 3—Jurisdiction of summary authorities	64
<i>Defence Force Discipline Act 1982</i>	64
Part 4—Trials by summary authorities	66
<i>Defence Force Discipline Act 1982</i>	66
Part 4A—Trials by the Australian Military Court	69
<i>Defence Force Discipline Act 1982</i>	69
Part 5—Amendments relating to the Registrar of the Australian Military Court	71
<i>Defence Force Discipline Act 1982</i>	71
Part 6—Miscellaneous amendments relating to the Australian Military Court	72
<i>Defence Force Discipline Act 1982</i>	72
Part 7—Rights and duties of legal officers	73
<i>Defence Act 1903</i>	73
Part 8—Technical amendments	74
<i>Defence Act 1903</i>	74
<i>Defence Force Discipline Act 1982</i>	74
<i>Defence Force Discipline Appeals Act 1955</i>	74
Schedule 8—Application, saving and transitional provisions	75



Defence Legislation Amendment Act 2008

No. 6, 2008

An Act to amend legislation relating to defence, and for related purposes

[Assented to 20 March 2008]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Defence Legislation Amendment Act 2008*.

2 Commencement

- (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.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	20 March 2008
2. Schedules 1 to 6	On the day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent.	20 September 2008
3. Schedule 7, Parts 1 and 2	The day on which this Act receives the Royal Assent.	20 March 2008
4. Schedule 7, Part 3	On the day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent.	20 September 2008
5. Schedule 7, items 24 to 26	On the day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent.	20 September 2008
6. Schedule 7, items 27 and 28	The day on which this Act receives the Royal Assent.	20 March 2008
7. Schedule 7, items 29 and 30	On the day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent.	20 September 2008
8. Schedule 7, Parts 4A, 5, 6 and 7	The day on which this Act receives the Royal Assent.	20 March 2008
9. Schedule 7, item 38	Immediately after the commencement of item 7 of Schedule 2 to the <i>Defence Legislation Amendment Act 2006</i> .	11 December 2006
10. Schedule 7, item 39	Immediately after the commencement of item 59 of Schedule 1 to the <i>Defence Legislation Amendment Act 2006</i> .	1 October 2007

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
11. Schedule 7, items 40 to 44	The day on which this Act receives the Royal Assent.	20 March 2008
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
13. Schedule 8	The day on which this Act receives the Royal Assent.	20 March 2008

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Election for trial by the Australian Military Court

Part 1—Main amendments

Defence Force Discipline Act 1982

1 Subsection 3(1)

Insert:

Schedule 1A offence means:

- (a) an offence specified in Schedule 1A; or
- (b) an offence that is an ancillary offence in relation to an offence referred to in paragraph (a).

2 After section 111A

Insert:

111B Accused person may elect to be tried by the Australian Military Court—election before commencement of trial

- (1) At the commencement of dealing with a charge against an accused person, the summary authority must give the person an opportunity to elect, in accordance with section 111C, to have the charge tried by the Australian Military Court.

Note 1: If the summary authority is dealing with an accused person in respect of 2 or more charges (the *linked charges*) that arise from the same facts or circumstances, and the accused person makes an election to have one or more of the linked charges tried by the Australian Military Court, the summary authority must refer that charge or those charges and, unless the Director of Military Prosecutions agrees otherwise, any other linked charge to the Director of Military Prosecutions: see subsection 111C(3).

Note 2: If the summary authority is dealing with 2 or more accused persons together, the summary authority must give each accused person an opportunity to make an election in accordance with section 111C.

Note 3: If a charge is tried by the Australian Military Court because of an election under subsection 111C(1), the charge will be tried by a Military Judge alone: see subsection 132AB(2A).

- (2) Subsection (1) does not apply in relation to:
-

- (a) a charge of a prescribed offence; or
 - (b) a charge of any other service offence that:
 - (i) arises from the same facts and circumstances as a prescribed offence; and
 - (ii) is being dealt with together with that offence; or
 - (c) a charge of a Schedule 1A offence (other than a Schedule 1A offence covered by paragraph (b)), unless the accused person is:
 - (i) an officer of or below the rank of rear admiral but above the rank of lieutenant commander; or
 - (ii) an officer of or below the rank of major-general but above the rank of major; or
 - (iii) an officer of or below the rank of air vice-marshal but above the rank of squadron leader.
- (3) The accused person must be given an opportunity to obtain legal advice in relation to the election if a legal officer is reasonably available to give such advice.

111C Decision by accused person whether to elect to be tried by the Australian Military Court—decision before commencement of trial

When election decision must be made

- (1) If, under section 111B, a summary authority gives an accused person an opportunity to elect to have a charge tried by the Australian Military Court, the accused person must decide whether or not to make the election:
 - (a) within 24 hours after the opportunity to make the election is given; or
 - (b) if the exigencies of service do not permit the person to make the decision within that time—within such longer period (not exceeding 14 days) as the summary authority allows.
- (2) The summary authority must ensure that a decision under subsection (1) is recorded in writing.

Decision to elect to have charge tried by the Australian Military Court

- (3) If the accused person elects to have the charge tried by the Australian Military Court, the summary authority must:
- (a) refer the charge (the ***first charge***) to the Director of Military Prosecutions; and
 - (b) unless the Director of Military Prosecutions agrees otherwise, refer any other charge (including a charge in respect of a Schedule 1A offence) against the accused person that is linked to the first charge, and that is being dealt with together with the first charge, to the Director of Military Prosecutions; and
 - (c) inform the Registrar that the charge or charges have been referred to the Director of Military Prosecutions.
- (4) For the purposes of paragraph (3)(b), a charge (the ***first charge***) against a person is linked to another charge against the person if the first charge and the other charge arise from the same facts or circumstances.

Decision not to elect to have charge tried by the Australian Military Court

- (5) If:
- (a) the accused person:
 - (i) does not elect to have the charge tried by the Australian Military Court; or
 - (ii) does not make a decision within the time allowed under subsection (1); and
 - (b) the charge is not referred to the Director of Military Prosecutions under paragraph (3)(b);
- the summary authority must deal with the charge.

Withdrawal of election

- (6) An accused person who has elected to have a charge tried by the Australian Military Court may withdraw the election at any time before a date is fixed for hearing by the Court.
- (7) If an accused person withdraws an election to have a charge tried by the Australian Military Court:

- (a) the Director of Military Prosecutions must inform the Registrar; and
- (b) the Director of Military Prosecutions must refer the charge, and any other charge referred to the Director of Military Prosecutions under paragraph (3)(b), to a summary authority; and
- (c) the summary authority must deal with the charge or charges.

3 Section 131

Repeal the section, substitute:

131 Accused person may elect to be tried by the Australian Military Court—election during trial

- (1) This section applies to a trial by a superior summary authority, or a commanding officer, of a charge of a Schedule 1A offence (other than a custodial offence).
- (2) However, this section does not apply in relation to an accused person who is an officer referred to in paragraph 111B(2)(c).
- (3) If, during the trial, the summary authority considers:
 - (a) that the evidence adduced by the prosecution is sufficient to support the charge; and
 - (b) that, if the accused person were convicted, it would be appropriate to impose an elective punishment on the person;the summary authority must, before making a finding in relation to the charge, give the accused person an opportunity to elect, in accordance with section 131AA, to have the charge tried by the Australian Military Court.

Note 1: If the summary authority considers that it would be appropriate to impose elective punishments in relation to 2 or more charges that are being tried together, the summary authority must give the accused person an opportunity to make an election in relation to each charge. If the accused person makes an election to have one or more of those charges tried by the Australian Military Court, the summary authority must refer that charge or those charges and, unless the Director of Military Prosecutions agrees otherwise, any other linked charge to the Director of Military Prosecutions: see subsection 131AA(3).

Note 2: If the summary authority considers that it would be appropriate to impose, on 2 or more accused persons who are being tried together, elective punishments in relation to one or more charges, the summary

authority must give each accused person an opportunity to make an election in relation to each of those charges.

Note 3: If a charge is tried by the Australian Military Court because of an election under subsection 131AA(1), the charge will be tried by a Military Judge alone: see subsection 132AB(2A).

Note 4: See section 67 and Schedule 3 (in particular, subclauses 1(3) and (4) and 2(2) and (3) of that Schedule) in relation to the punishments that a superior summary authority or a commanding officer may impose on a person convicted of a Schedule 1A offence.

- (4) The accused person must be given an opportunity to obtain legal advice in relation to the election if a legal officer is reasonably available to give such advice.

131AA Decision by accused person whether to elect to be tried by the Australian Military Court—decision during trial

When election decision must be made

- (1) If, under section 131, a summary authority gives an accused person an opportunity to elect to have a charge of a Schedule 1A offence tried by the Australian Military Court, the accused person must decide whether or not to make the election:
- (a) within 24 hours after the opportunity to make the election is given; or
 - (b) if the exigencies of service do not permit the person to make the decision within that time—within such longer period (not exceeding 14 days) as the summary authority allows.
- (2) The summary authority must ensure that a decision under subsection (1) is recorded in writing.

Decision to elect to have charge tried by the Australian Military Court

- (3) If the accused person elects to have the charge tried by the Australian Military Court, the summary authority must:
- (a) refer the charge (the ***first charge***) to the Director of Military Prosecutions; and
 - (b) unless the Director of Military Prosecutions agrees otherwise, refer any other charge against the accused person that is linked to the first charge, and that is being tried together with the first charge, to the Director of Military Prosecutions; and

- (c) inform the Registrar that the charge or charges have been referred to the Director of Military Prosecutions.
- (4) For the purposes of paragraph (3)(b), a charge (the *first charge*) against a person is linked to another charge against the person if the first charge and the other charge arise from the same facts or circumstances.

Decision not to elect to have charge tried by the Australian Military Court

- (5) If:
- (a) the accused person:
 - (i) does not elect to have the charge tried by the Australian Military Court; or
 - (ii) does not make a decision within the time allowed under subsection (1); and
 - (b) the charge is not referred to the Director of Military Prosecutions under paragraph (3)(b);
- the summary authority must proceed with the trial of the charge.

Withdrawal of election

- (6) An accused person who has elected to have a charge tried by the Australian Military Court may withdraw the election at any time before a date is fixed for hearing by the Court.
- (7) If an accused person withdraws an election to have a charge tried by the Australian Military Court:
- (a) the Director of Military Prosecutions must inform the Registrar; and
 - (b) the Director of Military Prosecutions must refer the charge, and any other charge referred to the Director of Military Prosecutions under paragraph (3)(b), to the summary authority referred to in subsection 131(1); and
 - (c) the summary authority must proceed with the trial of the charge or charges.

Punishments that may be imposed by summary authority

- (8) If:
-

Schedule 1 Election for trial by the Australian Military Court

Part 1 Main amendments

- (a) under subsection (5) or (7), a summary authority proceeds with the trial of a charge of a Schedule 1A offence; and
- (b) the summary authority convicts the accused person of the offence;

the summary authority may impose an elective punishment on the convicted person in respect of the offence.

4 After subsection 132AB(2)

Insert:

- (2A) If the charge was referred to the Australian Military Court for trial because of an election by the accused person under subsection 111C(1) or 131AA(1), the charge is to be tried by a Military Judge alone.

4A Subsection 132AB(3)

Omit “subsection (2) does not apply”, substitute “neither subsection (2) nor (2A) applies”.

5 Before Schedule 1

Insert:

Schedule 1A—Certain disciplinary offences

Note: See subsection 3(1).

Item	Offence against:	Subject matter
1	Subsection 23(1)	Absence from duty
2	Subsection 23(2)	Absence from duty
3	Subsection 24(1)	Absence without leave
4	Subsection 26(1)	Insubordinate conduct
5	Subsection 26(2)	Insubordinate conduct
6	Subsection 27(1)	Disobeying a lawful command
7	Subsection 29(1)	Failing to comply with a general order
8	Subsection 32(1)	Person on guard or on watch
9	Subsection 35(1)	Negligence in performance of a duty
10	Subsection 37(1)	Intoxicated while on duty etc.

Item	Offence against:	Subject matter
11	Subsection 54A(1)	Custodial offences
12	Subsection 54A(2)	Custodial offences
13	Subsection 60(1)	Prejudicial conduct
14	Subsection 60(1A)	Prejudicial conduct

6 Schedule 3

Repeal the Schedule, substitute:

Schedule 3—Punishments that may be imposed by a summary authority

Note: See section 67.

1 Punishments that may be imposed by a superior summary authority

Punishments that may be imposed on certain officers

- (1) A superior summary authority may impose a punishment set out in column 2 of an item of Table A of this Schedule on an officer referred to in column 1 of that item who has been convicted of an offence.

Table A—Punishments that may be imposed by a superior summary authority on certain officers

Item	Column 1 Convicted person	Column 2 Punishment
1	Officer: (a) of or below the rank of rear admiral but above the rank of lieutenant commander; or (b) of or below the rank of major-general but above the rank of major; or (c) of or below the rank of air vice-marshal but above the	Fine not exceeding the amount of the convicted person's pay for 7 days Severe reprimand Reprimand

Schedule 1 Election for trial by the Australian Military Court

Part 1 Main amendments

Table A—Punishments that may be imposed by a superior summary authority on certain officers

Item	Column 1 Convicted person	Column 2 Punishment
	rank of squadron leader	

Punishments that may be imposed on other persons

- (2) A superior summary authority may impose an elective punishment, or a punishment set out in column 3 of an item of Table B of this Schedule, on a person referred to in column 1 of that item who has been convicted of an offence (other than a Schedule 1A offence).
- (3) A superior summary authority may impose a punishment set out in column 3 of an item of Table B of this Schedule on a person referred to in column 1 of that item who has been convicted of a Schedule 1A offence.
- (4) A superior summary authority may impose an elective punishment on a person referred to in column 1 of an item of Table B of this Schedule who has been convicted of a Schedule 1A offence (other than a custodial offence) only in accordance with subsection 131AA(8).

Table B—Punishments that may be imposed by a superior summary authority on other persons

Item	Column 1 Convicted person	Column 2 Elective punishment	Column 3 Other punishment
1	Officer of or below the rank of lieutenant commander, major or squadron leader Warrant officer	Fine exceeding the amount of the convicted person's pay for 7 days but not exceeding the amount of the convicted person's pay for 14 days	Fine not exceeding the amount of the convicted person's pay for 7 days Severe reprimand Reprimand
2	Person who is not a member of the Defence Force	Fine exceeding \$100 but not exceeding \$250	Fine not exceeding \$100

2 Punishments that may be imposed by a commanding officer

- (1) A commanding officer may impose an elective punishment, or a punishment set out in column 3 of an item of Table C of this Schedule, on a person referred to in column 1 of that item who has been convicted of an offence (other than a Schedule 1A offence).
- (2) A commanding officer may impose a punishment set out in column 3 of an item of Table C of this Schedule on a person referred to in column 1 of that item who has been convicted of a Schedule 1A offence.
- (3) A commanding officer may impose an elective punishment on a person referred to in column 1 of an item of Table C of this Schedule who has been convicted of a Schedule 1A offence (other than a custodial offence) only in accordance with subsection 131AA(8).

Table C—Punishments that may be imposed by a commanding officer on convicted persons

Item	Column 1 Convicted person	Column 2 Elective punishment	Column 3 Other punishment
1	Officer of or below the naval rank of lieutenant, the rank of captain in the Army or the rank of flight lieutenant Warrant officer	Fine exceeding the amount of the convicted person's pay for 7 days but not exceeding the amount of the convicted person's pay for 14 days	Fine not exceeding the amount of the convicted person's pay for 7 days Severe reprimand Reprimand
2	Non-commissioned officer	Reduction in rank by one rank or, in the case of a corporal of the Army, reduction in rank by one or 2 ranks Forfeiture of seniority Fine exceeding the amount of the convicted person's pay for 7 days but not exceeding the amount	Fine not exceeding the amount of the convicted person's pay for 7 days Severe reprimand Reprimand

Schedule 1 Election for trial by the Australian Military Court

Part 1 Main amendments

Table C—Punishments that may be imposed by a commanding officer on convicted persons

Item	Column 1 Convicted person	Column 2 Elective punishment	Column 3 Other punishment
		of the convicted person's pay for 14 days	
3	Member below non-commissioned rank who, at the time he or she committed the service offence of which he or she has been convicted, was on active service	Detention for a period exceeding 14 days but not exceeding 42 days Fine exceeding the amount of the convicted person's pay for 14 days but not exceeding the amount of the convicted person's pay for 28 days	Detention for a period not exceeding 14 days Fine not exceeding the amount of the convicted person's pay for 14 days Severe reprimand Restriction of privileges for a period not exceeding 14 days Extra duties for a period not exceeding 7 days Extra drill for not more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days Reprimand
4	Member below non-commissioned rank who, at the time he or she committed the service offence of which he or she has been convicted, was not on active service	Detention for a period exceeding 7 days but not exceeding 28 days Fine exceeding the amount of the convicted person's pay for 7 days but not exceeding the amount of the convicted person's pay for 28 days	Detention for a period not exceeding 7 days Fine not exceeding the amount of the convicted person's pay for 7 days Severe reprimand Restriction of privileges for a period not exceeding 14 days Extra duties for a

Table C—Punishments that may be imposed by a commanding officer on convicted persons

Item	Column 1 Convicted person	Column 2 Elective punishment	Column 3 Other punishment
			period not exceeding 7 days Extra drill for not more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days Reprimand
5	Person who is not a member of the Defence Force	Fine exceeding \$100 but not exceeding \$250	Fine not exceeding \$100

3 Punishments that may be imposed by a subordinate summary authority

A subordinate summary authority may impose a punishment set out in column 2 of an item of Table D of this Schedule on a person referred to in column 1 of that item who has been convicted of an offence.

Table D—Punishments that may be imposed by a subordinate summary authority on convicted persons

Item	Column 1 Convicted person	Column 2 Punishment
1	Non-commissioned officer of, or below, the rank of leading seaman or corporal	Fine not exceeding the amount of the convicted person's pay for 3 days Severe reprimand Reprimand
2	Member below non-commissioned rank	Fine not exceeding the amount of the convicted person's pay for 3 days Severe reprimand Restriction of privileges for a period not exceeding 7 days

Schedule 1 Election for trial by the Australian Military Court
Part 1 Main amendments

Table D—Punishments that may be imposed by a subordinate summary authority on convicted persons

Item	Column 1 Convicted person	Column 2 Punishment
		Stoppage of leave for a period not exceeding 7 days
		Extra duties for a period not exceeding 7 days
		Extra drill for not more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days
		Reprimand

Part 2—Consequential amendments

Defence Force Discipline Act 1982

7 Subsection 3(1) (definition of *elective punishment*)

Omit “column 2 of Table A or B”, substitute “column 2 of an item of Table B or C”.

8 Subsection 76(1)

Omit “section 131”, substitute “subsection (3)”.

9 At the end of section 76

Add:

- (3) The only action that a service tribunal may take under this Part, in relation to a person for a service offence in relation to which an undertaking was given under subsection 75(2), is action that could have been taken under this Part in relation to the person by the service tribunal that convicted the person of the service offence.

10 Subsection 103(1)

Omit “or 131(4)”.

11 Subsection 103(4)

Omit “Where under section 131”, substitute “If under subsection 111C(1) or 131AA(1)”.

12 At the end of paragraph 103(4)(c)

Add “or”.

13 Subsection 103(5)

Repeal the subsection.

14 Subsections 118(3) and (4)

Repeal the subsections.

Schedule 2—Appeals to the Australian Military Court

Part 1—Main amendments

Defence Force Discipline Act 1982

1 Subsection 67(1)

Omit “The”, substitute “Subject to sections 166, 167 and 167A, the”.

2 Subsections 115(3) and (4)

Repeal the subsections, substitute:

- (3) The Australian Military Court has jurisdiction to hear and determine appeals from decisions of summary authorities (including a decision relating to a charge of a custodial offence).

Note: Part IX deals with appeals to the Australian Military Court.

3 Subsection 116(1)

After “Australian Military Court”, insert “(including the Court’s jurisdiction to hear and determine appeals from decisions of summary authorities)”.

4 Subsection 118(2)

Repeal the subsection, substitute:

Nomination of Military Judge to try charge or hear appeal

- (2) The Chief Military Judge must nominate the Military Judge who is:
- (a) to try a charge referred to the Australian Military Court; or
 - (b) to hear and determine an appeal to the Australian Military Court.

5 Before section 132A

Insert:

132 Application of Division

This Division does not apply to an appeal to the Australian Military Court from a decision of a summary authority.

Note: Part IX deals with appeals to the Australian Military Court.

6 Subdivision A of Division 3 of Part VIII (heading)

Repeal the heading, substitute:

Subdivision A—General provisions relating to trials

7 Before section 138

Insert:

137A Application of Subdivision

This Subdivision does not apply to an appeal to the Australian Military Court from a decision of a summary authority.

Note: Part IX deals with appeals to the Australian Military Court.

8 After subparagraph 149A(a)(x)

Insert:

(xa) matters relating to appeals to the Court; and

9 Part IX

Repeal the Part, substitute:

Part IX—Appeals to the Australian Military Court

Division 1—Definitions

160 Definitions

In this Part:

appeal means an appeal to the Australian Military Court under this Part.

appellant means a person who has lodged an appeal.

Part IV order means a restitution order, a reparation order or an order made under subsection 75(1).

Division 2—Bringing of appeals

161 Appeals to the Australian Military Court

- (1) A person who has been convicted of a service offence by a summary authority may appeal to the Australian Military Court against:
 - (a) his or her conviction; or
 - (b) a punishment imposed, or a Part IV order made, by the summary authority in respect of his or her conviction.
- (2) An appeal to the Australian Military Court:
 - (a) must specify the grounds on which the appeal is brought; and
 - (b) must be lodged with the Registrar or with such other person as is prescribed:
 - (i) within the appropriate period; or
 - (ii) within such longer period as the Court, either before or after the expiration of the appropriate period, allows.
- (3) For the purposes of subparagraph (2)(b)(i) and subject to subsections (4) and (5), the *appropriate period* is:
 - (a) if the appeal is against a conviction—the period of 14 days beginning on the day of the conviction; or
 - (b) if the appeal is against a punishment or a Part IV order—the period of 14 days beginning on the day on which the punishment or the Part IV order takes effect.

Note: Some punishments and orders under Part IV do not take effect unless they are approved by a reviewing authority: see subsections 172(2) and (3).
- (4) If a summary authority has reopened proceedings in response to a request by a reviewing authority under section 153:
 - (a) the convicted person may not appeal to the Australian Military Court in relation to the proceedings until after the summary authority has completed dealing with the reopened proceedings; and
 - (b) for the purposes of subparagraph (2)(b)(i), the *appropriate period* is:

- (i) if the appeal is against the person's conviction—the period of 14 days beginning on the day on which, under Part VIIIA, the person is given notice of the results of the review of the proceedings (including the reopening of the proceedings); or
 - (ii) if the appeal is against a punishment imposed on the person or a Part IV order made in relation to the person—the period of 14 days beginning on the day on which the punishment or the Part IV order takes effect.
- (5) If a reviewing authority gives a convicted person a notice under subsection 155(2) recommending that the person consider appealing to the Australian Military Court against the conviction, or any punishment imposed or order made under Part IV in respect of the conviction, then, for the purposes of subparagraph (2)(b)(i), the *appropriate period* is the period of 14 days beginning on the date on which the notice is given.

Division 3—Determination of appeals

162 Quashing of conviction—conviction unreasonable etc.

If, in an appeal against a conviction by a summary authority, it appears to the Australian Military Court:

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

the Court must allow the appeal and quash the conviction.

163 Quashing of conviction—new evidence available

- (1) If, in an appeal against a conviction by a summary authority, it appears to the Australian Military Court that there is evidence that:

- (a) was not reasonably available during the proceedings before the summary authority; and
 - (b) is likely to be credible; and
 - (c) would have been admissible in the proceedings before the summary authority;
- the Court must receive and consider that evidence.
- (2) If:
- (a) the Australian Military Court receives and considers evidence under subsection (1); and
 - (b) it appears to the Court that the conviction cannot be supported having regard to that evidence;
- the Court must allow the appeal and quash the conviction.

164 Quashing of conviction—person suffering from mental impairment

- (1) Subject to subsection (3), if, in an appeal against a conviction by a summary authority, it appears to the Australian Military Court that the summary authority should have found that the appellant, by reason of mental impairment, was not able to understand the proceedings against him or her and, accordingly, was unfit to stand trial, the Court must:
- (a) allow the appeal; and
 - (b) quash the conviction; and
 - (c) direct that the appellant be kept in strict custody until the pleasure of the Governor-General is known.
- (2) Subject to subsection (3), if, in an appeal against a conviction by a summary authority, it appears to the Australian Military Court that, at the time of the act or omission to which the conviction relates, the appellant was suffering from such mental impairment as not to be responsible, in accordance with law, for that act or omission, the Court must:
- (a) allow the appeal and quash the conviction; and
 - (b) substitute for the conviction an acquittal on the ground of mental impairment; and
 - (c) direct that the appellant be kept in strict custody until the pleasure of the Governor-General is known.

- (3) The Australian Military Court must not quash a conviction under this section if there are grounds for quashing the conviction under section 162 or 163.

165 Australian Military Court may order new trial

- (1) If, in an appeal, the Australian Military Court quashes a conviction of a person of a service offence, the Court 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 service offence.
- (2) If the Australian Military Court orders a new trial of a person under subsection (1), the trial must be by the Australian Military Court.

Note: Division 2 of Part VIII deals with trials by the Australian Military Court.

- (3) If the Australian Military Court orders a new trial of a person under subsection (1), the Court must make such further orders for the custody of the person pending the new trial as the Court considers appropriate.

165A Person taken to have been acquitted

For the purposes of this Act, if the Australian Military Court quashes a conviction of a person of a service offence and does not order a new trial of the person for the offence, the person is taken to have been acquitted of the offence.

166 Substitution of conviction for alternative offence

- (1) If, in an appeal, the Australian Military Court quashes a conviction of a person of a service offence (the *original offence*) but considers:
- (a) that the summary authority that convicted the person could have found the person guilty of another offence, being:
- (i) a service offence that is an alternative offence, within the meaning of section 142, 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 summary authority did not record a finding; and

- (b) that the summary authority, because of its 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 offence;
- the Australian Military Court may substitute for the conviction of the original offence a conviction of the other offence.
- (2) If, under subsection (1), the Australian Military Court substitutes for the conviction of the original offence a conviction of another service offence, the Court may take such action under Part IV, in relation to the convicted person, as the summary authority that convicted the person could have taken under that Part if the summary authority had convicted the person of the other service offence.
- (3) However, the Australian Military Court must not do any of the following under subsection (2):
- (a) impose a punishment for the other service offence unless the summary authority had imposed a punishment for the original offence;
 - (b) make a reparation order with respect to the other service offence unless the summary authority had made a reparation order with respect to the original offence;
 - (c) if the summary authority had imposed a punishment (the *original punishment*) for the original offence—impose a punishment for the other service offence that is more severe than the original punishment;
 - (d) if the summary authority had made a reparation order (the *original reparation order*) with respect to the original offence—make a reparation order with respect to the other service offence that is for an amount that exceeds the amount of the original reparation order.

167 Powers of Court in an appeal against a punishment

- (1) In an appeal by a convicted person against a punishment imposed on the person by a summary authority, the Australian Military Court, in its discretion, may confirm, quash or vary the punishment.
- (2) If the Australian Military Court quashes the punishment:
- (a) the punishment does not take effect; and

- (b) the Court may take such action under Part IV (including imposing a punishment or making an order or both) in relation to the convicted person as the summary authority could have taken under that Part in relation to the person.
- (3) If the Australian Military Court varies the punishment, the punishment takes effect as varied.
- (4) The Australian Military Court must not vary a punishment imposed on a convicted person by a summary authority in such a way that the varied punishment would not be a punishment that the summary authority could have imposed on the person under Part IV.

167A Powers of Court in an appeal against a Part IV order

- (1) In an appeal by a convicted person against a Part IV order made in relation to the person by a summary authority, the Australian Military Court, in its discretion, may confirm, revoke or vary the order.
- (2) If the Australian Military Court revokes the Part IV order:
 - (a) the order does not take effect; and
 - (b) the Court may take such action under Part IV (including imposing a punishment or making an order or both) in relation to the convicted person as the summary authority could have taken under that Part in relation to the person.
- (3) If the Australian Military Court varies the Part IV order, the order takes effect as varied.
- (4) The Australian Military Court must not vary a Part IV order made in relation to a convicted person by a summary authority in such a way that the varied order would not be an order that the summary authority could have made in relation to the person under Part IV.

167B Frivolous or vexatious appeals

If the Australian Military Court dismisses an appeal on the grounds that the appeal was frivolous or vexatious, the Court may order that any punishment of detention imposed on the appellant in the proceedings in relation to which the appeal was brought must be taken to commence on the day the appeal is dismissed.

Division 4—General provisions relating to appeals

168 Representation of parties in an appeal

- (1) Subject to subsection (2), sections 136 and 137 apply in relation to an appeal as if:
 - (a) references to a trial were references to an appeal; and
 - (b) references to an accused person were references to an appellant.

Note: Section 188GB deals with appearances by or on behalf of the Director of Military Prosecutions in proceedings before the Australian Military Court.

- (2) Subsection 137(1) applies in relation to an appeal as if the reference to an accused person awaiting trial by the Australian Military Court were a reference to an appellant in an appeal before the Australian Military Court.

168A Hearings

- (1) The Australian Military Court may determine an appeal:
 - (a) by holding a hearing; or
 - (b) by considering, without holding a hearing, the documents or other material provided to the Court in relation to the appeal.However, the Court must hold a hearing if it appears to the Court that the issues for determination cannot be adequately determined in the absence of the parties.
- (2) For the purpose of determining an appeal, the Australian Military Court may order a party to the appeal or the Director of Military Prosecutions to produce such documents or other information as the Court specifies in the order.
- (3) If the Australian Military Court decides to hold a hearing for the purpose of determining an appeal, the hearing must, subject to subsection (4), be held in the presence of the appellant.
- (4) If:
 - (a) the Australian Military Court decides to hold a hearing for the purpose of determining an appeal; and

(b) the Court considers that, by reason of the disorderly behaviour of the appellant, it is impossible to continue the hearing in his or her presence;
the Court may order that the appellant be removed from the place of hearing and be held in custody elsewhere.

168B Evidence

- (1) Section 146A applies to an appeal in the same way as it applies to proceedings before a summary authority.
- (2) For the purposes of subsection (1):
 - (a) references to proceedings before a summary authority are to be read as references to an appeal before the Australian Military Court; and
 - (b) references to a summary authority are to be read as references to the Australian Military Court; and
 - (c) in subsection 146A(1), the words “(including proceedings for the purpose referred to in subsection 111A(1))” are to be omitted.

168C Judicial notice of service matters

In determining an appeal, the Australian Military Court must take judicial notice of all matters within the general service knowledge of the Court.

168D Record of proceedings to be kept

- (1) The Australian Military Court:
 - (a) must keep a record of an appeal determined by the Court; and
 - (b) must include in that record such particulars as are required by the rules of procedure.
- (2) A record referred to in subsection (1) must not be made publicly available but may be published for service purposes in accordance with the rules of procedure.

168E Use of video and audio links

Subdivision B of Division 3 of Part VIII applies to appeal proceedings before the Australian Military Court.

10 Section 188GB

Omit “a trial of a charge by”, substitute “proceedings before”.

11 Subparagraphs 188GB(b)(i) and (ii)

Omit “trial is”, substitute “proceedings are”.

12 At the end of subsection 191(1)

Add:

; or (e) the determination or dismissal of an appeal under Part IX.

Part 2—Consequential amendments

Defence Force Discipline Act 1982

13 Subsection 3(1) (definition of *prescribed acquittal*)

Repeal the definition.

14 Subsections 71(1A), (2) and (3)

Omit “whom it has”, substitute “who has been”.

15 After subsection 103(2)

Insert:

- (2A) If, under section 165, the Australian Military Court orders a new trial of a person, the Director of Military Prosecutions may request the Registrar to refer the charge that was the subject of the proceedings to which the appeal relates to the Australian Military Court for a new trial.

16 Subsection 103(3)

After “(2)”, insert “or (2A)”.

17 At the end of subsection 144(1)

Add:

- Note: If a person has been convicted of a service offence by a summary authority, the Australian Military Court may, in an appeal against the conviction, quash the conviction and order a new trial of the person for the offence: see section 165.

18 After section 172

Insert:

172A Suspension of operation of restitution orders and reparation orders made by a summary authority

- (1) The operation of a restitution order or a reparation order made by a summary authority is suspended:
- (a) until the expiration of the period in which, under Part IX, an appeal to the Australian Military Court against the order, or

the conviction in relation to which the order was made, may be lodged, but not in any case beyond the time specified in paragraph (b); and

- (b) if such an appeal is lodged—until the appeal is finally determined or abandoned.
- (2) If, in relation to a restitution order, the summary authority is satisfied that the title to the property in relation to which the order is made is not in dispute, the summary authority may direct that subsection (1) is not to apply to the order.
- (3) If the operation of a restitution order or a reparation order is suspended under subsection (1), the order does not take effect if the conviction in relation to which the order is made is quashed on appeal.

Note: The heading to section 173 is altered by adding at the end “**made by the Australian Military Court**”.

19 Subsection 176(1)

Repeal the subsection, substitute:

- (1) If:
- (a) a summary authority has imposed a punishment on a convicted person; and
- (b) the convicted person notifies the summary authority that he or she has appealed to the Australian Military Court under Part IX against the conviction or the punishment;
- the summary authority must order that the execution of the punishment be stayed, in whole or in part, pending the determination of the appeal.

20 Subsection 194(1)

Omit “or 158”, substitute “or 164”.

Defence Force Discipline Appeals Act 1955

21 Section 4 (at the end of the definition of *convicted person*)

Add “(other than under Part IX of the *Defence Force Discipline Act 1982*)”.

22 Section 4 (at the end of the definition of *conviction*)

Add “(other than under Part IX of the *Defence Force Discipline Act 1982*)”.

23 Section 4 (at the end of the definition of *court order*)

Add:

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

24 Section 4 (definition of *prescribed acquittal*)

After “Court”, insert “(other than under Part IX of the *Defence Force Discipline Act 1982*)”.

25 Section 4 (definition of *prescribed acquitted person*)

After “Court”, insert “(other than under Part IX of the *Defence Force Discipline Act 1982*)”.

26 Section 4 (at the end of the definition of *punishment*)

Add “(other than under Part IX of that Act)”.

Schedule 3—Evidence in summary proceedings

Defence Force Discipline Act 1982

1 At the end of subsection 111A(1)

Add:

Note: A summary authority is not bound by the rules of evidence and may hear any evidence that it considers to be of assistance and relevance in proceedings for the purpose referred to in this subsection: see section 146A.

2 Subsection 111A(2)

Omit “Without limiting the generality of subsection 146(2), regulations made by virtue of that subsection”, substitute “The regulations”.

3 Subsection 146(1)

Omit “proceedings before a service tribunal”, substitute “a trial by the Australian Military Court”.

Note: The heading to section 146 is replaced by the heading “**Evidence in trials by the Australian Military Court**”.

4 Paragraph 146(1)(a)

Omit “the tribunal”, substitute “the Australian Military Court”.

5 Paragraph 146(1)(b)

Omit “the proceedings were criminal proceedings”, substitute “the trial were a criminal proceeding”.

6 Subsection 146(2)

Omit “proceedings before a service tribunal”, substitute “trials by the Australian Military Court”.

7 Subsection 146(2)

Omit “such proceedings”, substitute “such trials”.

8 After section 146

Insert:

146A Evidence etc. in proceedings before a summary authority

- (1) This section applies to proceedings before a summary authority (including proceedings for the purpose referred to in subsection 111A(1)).
 - (2) The summary authority:
 - (a) must comply with:
 - (i) the rules of natural justice; and
 - (ii) the Summary Authority Rules; and
 - (b) consistently with those rules:
 - (i) must act with as little legal formality or legal technicality as possible, while ensuring fairness; and
 - (ii) is, subject to this Act, not bound by the rules of evidence (whether statutory or common law), but must comply with the basic principles of those rules relating to relevance, reliability, weight and probative value; and
 - (iii) may admit any documents or call any witnesses that the summary authority considers to be of assistance and relevance; and
 - (iv) may give such weight as the summary authority considers appropriate to any evidence admitted under subparagraph (iii), having regard to the importance of the evidence in the proceedings and its probative value.
- Note: The Summary Authority Rules may make provision in relation to the giving of testimony and other evidence: see paragraph 149(aa).
- (3) Nothing in this section allows a person to be compelled to testify against himself or herself, or to give particular evidence, in proceedings before a summary authority, if doing so might tend to incriminate the person or expose the person to a penalty.
 - (4) This section does not affect the law relating to legal professional privilege.

9 Section 147

Repeal the section, substitute:

147 Judicial notice of service matters

- (1) In addition to the matters of which judicial notice may be taken by a court under the rules of evidence referred to in section 146, the Australian Military Court must take judicial notice of all matters within the general service knowledge of:
 - (a) the Court; and
 - (b) if the proceedings are before a military jury—the jury.
- (2) In proceedings before a summary authority, the summary authority must take judicial notice of all matters within the general service knowledge of the summary authority.

10 Section 149

Omit “Judge Advocate General”, substitute “Chief Military Judge”.

11 Paragraph 149(a)

After “attendance”, insert “and compellability”.

12 After paragraph 149(a)

Insert:

- (aa) the giving of testimony and other evidence; and

Schedule 4—Review of summary proceedings

Part 1—Main amendments

Defence Force Discipline Act 1982

1 At the end of section 149

Add:

- ; and (i) the reopening of proceedings of a summary authority on request by a reviewing authority.

2 After Part VIII

Insert:

Part VIIIA—Review of proceedings of summary authorities

Division 1—Interpretation and application

150 Meaning of *reviewing authority* and *competent reviewing authority*

Appointment of reviewing authorities

- (1) The Chief of the Defence Force or a service chief may, by instrument in writing, appoint an officer, or each officer included in a class of officers, to be a ***reviewing authority*** for the purposes of:
 - (a) reviewing proceedings of summary authorities; and
 - (b) exercising any other powers and functions that are conferred on reviewing authorities by this Act or the regulations.

Competent reviewing authorities

- (2) A reviewing authority is a ***competent reviewing authority*** for the purposes of reviewing the proceedings of a summary authority only if the reviewing authority did not exercise any of the powers

or perform any of the functions of a superior authority in relation to the charge that is the subject of the proceedings.

150A Application of Part

This Part applies in relation to proceedings of a summary authority that have resulted in a conviction of a person of a service offence.

Division 2—Automatic review by reviewing authority

151 Review of proceedings of subordinate summary authority

Powers and duties of commanding officer

- (1) As soon as practicable after a subordinate summary authority convicts a person of a service offence, the subordinate summary authority must give the record of the proceedings to the commanding officer of the subordinate summary authority.
- (2) The commanding officer must review the proceedings in accordance with this Part and, for that purpose, the commanding officer is taken to be a reviewing authority.
- (3) The commanding officer may, but is not required to, obtain legal advice on the proceedings from a legal officer.
- (4) After completing the review of the proceedings, the commanding officer must give to a legal officer:
 - (a) the record of the proceedings; and
 - (b) a report setting out:
 - (i) the results of the review; and
 - (ii) if the proceedings were reopened by the subordinate summary authority under section 153—the action taken by the subordinate summary authority in dealing with the reopened proceedings; and
 - (iii) the reasons for any delay in conducting the review.
- (5) The commanding officer must complete the review of the proceedings and give the documents referred to in paragraphs (4)(a) and (b) to a legal officer:
 - (a) within 30 days after the commanding officer receives the record referred to in subsection (1); or

- (b) if this is not possible due to the exigencies of service—as soon as practicable after the end of that period.

Powers and duties of legal officer

- (6) As soon as practicable after receiving the record of the proceedings and the report referred to in subsection (4), the legal officer:
 - (a) must consider the record and report; and
 - (b) may, if the legal officer considers it appropriate, give the record and report to a competent reviewing authority.

Further review by competent reviewing authority

- (7) If the legal officer gives the record of the proceedings and the report to a competent reviewing authority under subsection (6), the reviewing authority:
 - (a) must, as soon as practicable after receiving the record and report, review the proceedings in accordance with this Part; and
 - (b) after reviewing the proceedings, must give written notice of the results of the review to:
 - (i) the commanding officer; and
 - (ii) the person who was convicted of the service offence.

Note: A reviewing authority may not, under paragraph (7)(a), request the subordinate summary authority to reopen the proceedings: see paragraph 153(1)(a).

Notice of results of review

- (8) A commanding officer who receives a notice under paragraph (7)(b) must, as soon as practicable after receiving the notice, give written notice of the results of the review to the subordinate summary authority.
- (9) If the legal officer does not give the record of the proceedings and the report of the results of the review to a competent reviewing authority under subsection (6):
 - (a) the legal officer must notify the commanding officer of this fact; and
 - (b) the commanding officer must give written notice of the results of the review to:
 - (i) the subordinate summary authority; and

- (ii) the person who was convicted of the service offence.

152 Review of proceedings of superior summary authority or commanding officer

Powers and duties of reviewing authority

- (1) As soon as practicable after a summary authority (other than a subordinate summary authority) convicts a person of a service offence, the summary authority must give the record of the proceedings to a competent reviewing authority.
- (2) The reviewing authority must review the proceedings in accordance with this Part.
- (3) Before reviewing the proceedings, the reviewing authority must obtain legal advice on the proceedings from a legal officer.
- (4) The reviewing authority must complete the review:
 - (a) within 30 days after receiving the record referred to in subsection (1); or
 - (b) if this is not possible due to the exigencies of service—as soon as practicable after the end of that period.

Notice of results of review

- (5) After reviewing the proceedings, the reviewing authority must give written notice of the results of the review to:
 - (a) the summary authority; and
 - (b) the person who was convicted of the service offence.

Exception

- (6) This section does not apply to proceedings before a superior summary authority if the superior summary authority has no reviewing authority of a higher rank.

Note: In the case referred to in subsection (6), the convicted person could lodge an appeal to the Australian Military Court under Part IX.

153 Reviewing authority must request summary authority to reopen proceedings to correct punishment error

- (1) This section applies to:
-

- (a) a review, under section 151, by a commanding officer (the *reviewing authority*) of the proceedings of a subordinate summary authority; or
 - (b) a review, under section 152, by a competent reviewing authority of the proceedings of a superior summary authority or a commanding officer.
- (2) If the reviewing authority considers that the action taken by the summary authority under Part IV (whether the imposition of a punishment or the making of an order or both) in relation to the convicted person is beyond the power of the summary authority, the reviewing authority must request the summary authority, in writing, to reopen the proceedings.
- (3) If the reviewing authority requests the summary authority to reopen the proceedings, the summary authority must reopen the proceedings.

153A Procedures for dealing with reopened proceedings

- (1) This section applies if a summary authority reopens proceedings in response to a request by a reviewing authority under section 153.
- (2) The summary authority must notify the convicted person that the proceedings are to be reopened.
- (3) The summary authority must, as the case requires:
 - (a) impose a less severe punishment on the convicted person; or
 - (b) if the summary authority had made a reparation order (the *original reparation order*)—make a reparation order for an amount that is less than the amount of the original reparation order.
- (4) As soon as practicable after the summary authority completes dealing with the proceedings under subsection (3), the summary authority must give the record of the proceedings to the reviewing authority that requested the summary authority to reopen the proceedings.
- (5) Subject to subsection 161(4), this section does not affect the right of the convicted person to appeal to the Australian Military Court in relation to the proceedings.

Note: Part IX deals with appeals to the Australian Military Court.

154 Effect on review of appeal to the Australian Military Court

If:

- (a) a person who is convicted of a service offence by a summary authority lodges an appeal to the Australian Military Court in relation to the proceedings; and
 - (b) the appeal is lodged before a reviewing authority has completed reviewing the proceedings under this Part;
- the reviewing authority must not request the summary authority to reopen the proceedings.

Note: Part IX deals with appeals to the Australian Military Court.

155 Reviewing authority may recommend that convicted person appeal to the Australian Military Court

- (1) This section applies to a review of the proceedings of a summary authority if the reviewing authority (including a commanding officer referred to in subsection 151(1)) considers:
 - (a) that, having regard to the evidence, the conviction is unreasonable or cannot be supported; or
 - (b) that, as a result of a wrong decision on a question of law, or of mixed law and fact, the conviction was wrong in law and that a substantial miscarriage of justice has occurred; or
 - (c) that any action taken by the summary authority under Part IV (whether imposing a punishment or making an order or both) in relation to the convicted person is wrong in law or is excessive or otherwise unreasonable; or
 - (d) that there was a material irregularity in the course of the proceedings and that a substantial miscarriage of justice has occurred; or
 - (e) that, in all the circumstances of the case, the conviction is unsafe or unsatisfactory.
- (2) The reviewing authority must give a notice in writing to the convicted person:
 - (a) recommending that the person consider appealing to the Australian Military Court against the conviction, or any punishment imposed or order made under Part IV, as the case requires; and
 - (b) setting out the reasons for the recommendation.

Note: Part IX deals with appeals to the Australian Military Court. If the convicted person is given a notice under this subsection, the convicted person has 14 days, beginning on the day on which the notice is given, to lodge an appeal to the Australian Military Court against the conviction or any punishment imposed or order made under Part IV: see subsection 161(5).

- (3) If the reviewing authority gives a notice to the convicted person under subsection (2), the reviewing authority must give a copy of the notice to the person's commanding officer.
- (4) The convicted person must be given an opportunity to obtain legal advice in relation to an appeal if a legal officer is reasonably available to give such advice.

Division 3—Review of certain punishments and orders that are subject to approval by reviewing authority

156 Application of Division

This Division applies to a review of the proceedings of a summary authority if the summary authority:

- (a) has imposed a punishment referred to in subsection 172(2);
or
- (b) has made a restitution order or a reparation order.

157 Reviewing authority must approve or not approve punishment or order

The reviewing authority must approve or not approve the punishment or order.

158 Approved punishment or order to take effect as determined

If the reviewing authority approves the punishment or order, the reviewing authority must determine when the punishment or order is to take effect.

159 Punishments or orders not approved to be quashed or revoked

- (1) If the reviewing authority does not approve the punishment or order, the reviewing authority must quash the punishment or revoke the order, as the case may be.

- (2) If the reviewing authority quashes a punishment or revokes an order under subsection (1) in relation to a convicted person, the reviewing authority may take such action in relation to the convicted person as could have been taken under Part IV by the summary authority that convicted the person.
- (3) However, the reviewing authority must not do any of the following under subsection (2):
 - (a) impose a punishment that is more severe than the punishment that was imposed by the summary authority;
 - (b) if the punishment imposed by the summary authority was a custodial punishment—impose a punishment other than a custodial punishment;
 - (c) if the punishment imposed by the summary authority was not a custodial punishment—impose a custodial punishment;
 - (d) if the summary authority made a reparation order—make a reparation order for an amount that exceeds the amount of the reparation order that was made by the summary authority.

Part 2—Consequential amendments

Defence Force Discipline Act 1982

3 Subsection 3(1) (definition of *competent reviewing authority*)

Omit “section 150A”, substitute “subsection 150(2)”.

4 Subsection 3(1) (definition of *convicted person*)

Omit “, a reviewing authority”.

5 Subsection 3(1) (definition of *review*)

Repeal the definition, substitute:

review means a review by a commanding officer or a reviewing authority, in accordance with Part VIIIA, of the proceedings of a summary authority.

6 Subsection 3(1) (definition of *reviewing authority*)

Omit “section 150”, substitute “subsection 150(1)”.

7 Paragraph 74(4A)(a)

Omit “service tribunal”, substitute “summary authority”.

8 Subparagraph 74(4A)(a)(i)

Before “reviewing authority” (first occurring), insert “competent”.

9 Paragraph 74(4B)(a)

Omit “service tribunal”, substitute “summary authority”.

10 Subparagraph 74(4B)(a)(i)

Before “reviewing authority” (first occurring), insert “competent”.

11 Subsection 74(5)

Omit “or a reviewing authority that has revoked a suspension of a punishment on the recommendation of a service tribunal”.

12 After subsection 74(5)

Insert:

- (5A) A reviewing authority that has revoked the suspension of the whole or a part of a punishment under subsection 80(4), on the recommendation of a summary authority, must not order that prescribed punishments are to be cumulative if the effect of the order would be that the person convicted would be subject to punishment for a total period that exceeds the period of operation of the most severe punishment (being a punishment of the same kind as the first-mentioned punishments) that the summary authority could impose on the person for the service offence, or any one of the service offences, of which the person has been convicted by the summary authority.

13 Subsection 80(2)

Omit “service tribunal shall”, substitute “summary authority must”.

14 Subsection 80(2)

Omit “the tribunal”, substitute “the authority”.

15 Subsection 80(3)

Omit “service tribunal”, substitute “summary authority”.

16 Subsection 80(3)

Omit “the tribunal may recommend to a reviewing authority”, substitute “the summary authority may recommend to a competent reviewing authority”.

17 Subsection 80(4)

Omit “a service tribunal recommends to a reviewing authority”, substitute “a summary authority recommends to a competent reviewing authority”.

18 Subsection 81(2)

Omit “or 162(8)”.

19 Subsection 99(1)

Omit “service tribunal” (wherever occurring), substitute “summary authority”.

20 Paragraph 100(5)(b)

Omit “service tribunal”, substitute “summary authority”.

21 Subsection 103(2)

Repeal the subsection, substitute:

- (2) If, under the *Defence Force Discipline Appeals Act 1955*, the Defence Force Discipline Appeal Tribunal or the Federal Court of Australia orders a new trial of a person, the Director of Military Prosecutions may request the Registrar to refer the charge to the Australian Military Court for trial.

Schedule 5—Offences and punishments

Part 1—Amendments of offences

Defence Force Discipline Act 1982

1 Paragraph 59(1)(b)

Omit “narcotic goods”, substitute “a prohibited drug”.

Note 1: The heading to section 59 is altered by omitting “**narcotic goods**” and substituting “**prohibited drugs**”.

Note 2: The following heading to subsection 59(1) is inserted “*Selling, dealing or trafficking in a prohibited drug—defence member or defence civilian outside Australia*”.

2 Paragraph 59(1)(c)

Omit “goods”, substitute “drug”.

3 Paragraph 59(3)(b)

Omit “narcotic goods”, substitute “a prohibited drug”.

Note: The following heading to subsection 59(3) is inserted “*Possessing a prohibited drug—defence member or defence civilian outside Australia*”.

4 Paragraph 59(3)(c)

Omit “those goods and knows their”, substitute “that drug and knows its”.

5 Subsection 59(3) (penalty)

Repeal the penalty, substitute:

Maximum punishment:

(d) if the offence is committed in relation to:

(i) a prohibited drug other than cannabis; or

(ii) a quantity of cannabis exceeding the prescribed quantity of that drug;

imprisonment for 2 years; or

(e) if the offence is committed in relation to a quantity of cannabis not exceeding the prescribed quantity of that drug and the convicted person is a defence member:

- (i) for a first offence—a fine of the amount of the member’s pay for 14 days; or
- (ii) for a second or later offence—dismissal from the Defence Force; or
- (f) if the offence is committed in relation to a quantity of cannabis not exceeding the prescribed quantity of that drug and the convicted person is a defence civilian—a fine of \$100.

6 Subsection 59(4)

Omit “narcotic goods”, substitute “prohibited drug”.

7 Paragraph 59(5)(b)

Repeal the paragraph, substitute:

- (b) administers, or causes or permits to be administered, to himself or herself, a prohibited drug.

Note: The following heading to subsection 59(5) is inserted “*Administering a prohibited drug—defence member or defence civilian outside Australia*”.

8 Subsection 59(5) (penalty)

Repeal the penalty, substitute:

Maximum punishment:

- (c) if the offence is committed in relation to a prohibited drug other than cannabis—imprisonment for 2 years; or
- (d) if the offence is committed in relation to cannabis and the convicted person is a defence member:
 - (i) for a first offence—a fine of the amount of the member’s pay for 14 days; or
 - (ii) for a second or later offence—dismissal from the Defence Force; or
- (e) if the offence is committed in relation to cannabis and the convicted person is a defence civilian—a fine of \$100.

9 Subsections 59(6) and (7)

Repeal the subsections, substitute:

- (5A) It is a defence to a charge under subsection (5) if the person proves that he or she had lawful authority for the conduct mentioned in paragraph (5)(b).

Administering a prohibited drug—defence member or defence civilian in Australia

- (6) A person who is a defence member or a defence civilian is guilty of an offence if the person:
- (a) is in Australia; and
 - (b) administers, or causes or permits to be administered, to himself or herself a prohibited drug.

Maximum punishment:

- (c) if the offence is committed in relation to a prohibited drug other than cannabis and the convicted person is a defence member—imprisonment for 2 years; or
 - (d) if the offence is committed in relation to cannabis and the convicted person is a defence member:
 - (i) for a first offence—a fine of the amount of the member’s pay for 14 days; or
 - (ii) for a second or later offence—dismissal from the Defence Force; or
 - (e) if the convicted person is a defence civilian—a fine of \$100.
- (6A) It is a defence to a charge under subsection (6) if the person proves that he or she had lawful authority for the conduct mentioned in paragraph (6)(b).

Possessing non-trafficable quantity of a prohibited drug—defence member in Australia

- (7) A defence member is guilty of an offence if the member:
- (a) is in Australia; and
 - (b) is in possession of a quantity of a prohibited drug not exceeding the prescribed quantity of that drug; and
 - (c) knows that he or she possesses that drug and knows its nature.

Maximum punishment:

- (d) if the offence is committed in relation to a prohibited drug other than cannabis—imprisonment for 2 years; or
- (e) if the offence is committed in relation to cannabis:
 - (i) for a first offence—a fine of the amount of the member’s pay for 14 days; or

- (ii) for a second or later offence—dismissal from the Defence Force.

10 Subsection 59(8)

Omit “cannabis”, substitute “prohibited drug”.

11 Subsection 59(9)

Repeal the subsection, substitute:

Definitions

- (9) In this section:

cannabis means:

- (a) a living cannabis plant; or
- (b) cannabis resin; or
- (c) any other form of cannabis (including flowering or fruiting tops, leaves, seeds or stalks, but not including cannabis fibre).

controlled drug has the same meaning as in Part 9.1 of the *Criminal Code*.

controlled plant has the same meaning as in Part 9.1 of the *Criminal Code*.

prescribed quantity, in relation to a prohibited drug, means:

- (a) for a narcotic substance that is a controlled drug or a controlled plant in relation to which there is a trafficable quantity specified under the *Criminal Code*—the trafficable quantity so specified for that substance; or
- (b) for any other prohibited drug—50 grams.

prohibited drug means:

- (a) a narcotic substance (as defined by subsection 4(1) of the *Customs Act 1901*); or
- (b) an anabolic steroid (within the meaning of Part 5 of the *Poisons and Drugs Act 1978* of the Australian Capital Territory).

12 Subsection 60(1)

Omit “engages in conduct”, substitute “does an act”.

13 After subsection 60(1)

Insert:

- (1A) A defence member is guilty of an offence if:
- (a) the member omits to perform an act; and
 - (b) the omission is likely to prejudice the discipline of, or bring discredit on, the Defence Force.

Maximum punishment: Imprisonment for 3 months.

14 Subsection 60(2)

Omit “under this section”, substitute “against subsection (1) or (1A)”.

15 Subsection 60(3)

After “defence”, insert “to a charge under subsection (1)”.

16 Subsection 60(3)

Omit “conduct”, substitute “act”.

17 At the end of section 60

Add:

- (4) It is a defence to a charge under subsection (1A) if the member proves that he or she had a reasonable excuse for omitting to perform the relevant act.

Note: The defendant bears a legal burden in relation to the matter in subsection (4). See section 13.4 of the *Criminal Code*.

18 Schedule 6 (after table item 20)

Insert:

20A	Offence against section 36A	Offence against section 36B
20B	Offence against section 36B	Offence against section 36A

Part 2—Amendments of punishments

Defence Force Discipline Act 1982

19 Paragraph 74(2)(b)

Before “suspended”, insert “wholly”.

20 Paragraph 74(2)(c)

After “suspended”, insert “in whole or in part”.

21 Paragraph 74(4)(b)

Before “suspended”, insert “wholly”.

22 Paragraph 74(4)(c)

After “is suspended”, insert “in whole or in part”.

23 Paragraph 74(4A)(a)

After “suspended”, insert “in whole or in part”.

24 Paragraph 74(4B)(a)

After “suspended”, insert “in whole or in part”.

25 Subsection 78(1)

After “suspending”, insert “the whole or a part of”.

26 Subsection 78(2)

After “suspending” (wherever occurring), insert “the whole or a part of”.

27 Subsection 78(3)

After “suspending”, insert “the whole or a part of”.

28 Subsection 78(3)

After “the punishment”, insert “, or such part of the punishment as is suspended,”.

29 Subsection 80(1)

After “is suspended”, insert “(whether in whole or in part)”.

30 Subsection 80(1)

After “the punishment”, insert “, or such part of the punishment,”.

31 Subsection 80(2)

After “suspension of”, insert “the whole or a part of”.

32 Subsection 80(4)

After “suspension of”, insert “the whole or a part of”.

33 Subsection 80(4)

After “the punishment”, insert “, or such part of the punishment,”.

34 Paragraph 81(1)(a)

After “suspended”, insert “in whole or in part”.

35 Subsection 81(2)

After “suspended”, insert “in whole or in part”.

36 Subsection 81(2)

After “that punishment” (first occurring), insert “, or such part of that punishment as has been suspended,”.

37 Subsection 81(2)

After “that punishment” (second occurring), insert “or that part of that punishment”.

38 Section 82

After “that punishment” (first occurring), insert “, or a part of that punishment,”.

Schedule 6—Minor disciplinary infringements

Defence Force Discipline Act 1982

1 Section 169A

Insert:

discipline officer means a discipline officer appointed under section 169B.

2 Section 169A

Insert:

junior officer means:

- (a) in the Navy—an officer who holds a rank of or below the rank of lieutenant (other than a person who holds the rank of midshipman); or
- (b) in the Army—an officer who holds a rank of or below the rank of captain; or
- (c) in the Air Force—an officer who holds a rank of or below the rank of flight lieutenant.

3 Section 169A

Insert:

prescribed defence member means:

- (a) in the Navy—a member of the Defence Force who holds a rank of or below the rank of lieutenant; or
- (b) in the Army—a member of the Defence Force who holds a rank of or below the rank of captain; or
- (c) in the Air Force—a member of the Defence Force who holds a rank of or below the rank of flight lieutenant;

but does not include a warrant officer covered by a determination in force under section 169BA.

4 Section 169A

Insert:

relevant discipline officer, in relation to a prescribed defence member, has the meaning given by section 169BB.

5 After section 169B

Insert:

169BA Service chief may exempt certain warrant officers

- (1) A service chief may determine, in writing, that a specified warrant officer, or a warrant officer included in a specified class of warrant officers, is not a *prescribed defence member* for the purposes of this Part.
- (2) A determination under subsection (1) is not a legislative instrument.

169BB Relevant discipline officers

The following table sets out who is a *relevant discipline officer* in relation to a prescribed defence member.

Item	Prescribed defence member	Relevant discipline officer
1	Junior officer	Discipline officer who is at least one rank senior to the prescribed defence member
2	Officer cadet	Any discipline officer
3	Warrant officer Non-commissioned officer	Discipline officer who holds a rank not lower than lieutenant commander, major or squadron leader
4	Member below non-commissioned rank	Any discipline officer

6 Section 169C

Omit “A discipline officer has jurisdiction to deal with a defence member who is an officer cadet or holds a rank below non-commissioned rank”, substitute “A relevant discipline officer, in relation to a prescribed defence member, has jurisdiction to deal with that member”.

7 Paragraph 169C(a)

Omit “defence”.

8 Subsection 169D(1)

Omit “defence member who is an officer cadet or holds a rank below non-commissioned rank”, substitute “prescribed defence member”.

9 Subsections 169D(4) and (5)

Before “defence member”, insert “prescribed”.

10 Subsections 169E(1) and (2)

Before “defence member”, insert “prescribed”.

11 Paragraph 169E(4)(a)

Before “defence member”, insert “prescribed”.

12 Subsection 169E(5)

Before “defence member”, insert “prescribed”.

13 Subsection 169F(1)

Repeal the subsection, substitute:

Punishments that may be imposed in respect of disciplinary infringements

- (1) A relevant discipline officer, in relation to a prescribed defence member referred to in column 1 of an item of the following table, may impose on the prescribed defence member, in respect of a disciplinary infringement, a punishment set out in column 2 of that item.

Punishments that may be imposed in respect of disciplinary infringements		
Item	Column 1	Column 2
	Prescribed defence member	Punishment
1	Junior officer Warrant officer Non-commissioned officer	Fine not exceeding the amount of the defence member’s pay for one day Reprimand
2	Officer cadet Member below non-commissioned	Fine not exceeding the amount of the defence member’s pay for one

Schedule 6 Minor disciplinary infringements

Punishments that may be imposed in respect of disciplinary infringements		
Item	Column 1	Column 2
	Prescribed defence member	Punishment
	rank	day Restriction of privileges for a period not exceeding 2 days Stoppage of leave for a period not exceeding 3 days Extra duties for a period not exceeding 3 days Extra drill for no more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days Reprimand

Note: The following heading to subsection 169F(2) is inserted “*Other powers*”.

14 After section 169FA

Insert:

169FB Consequences of punishments

- (1) The Chief of the Defence Force or a service chief may, by legislative instrument, make rules with respect to the consequences, in relation to a prescribed defence member, that are to flow from the imposition by a discipline officer on that member of any of the following punishments:
 - (a) restriction of privileges;
 - (b) stoppage of leave;
 - (c) extra duties;
 - (d) extra drill.
- (2) The commanding officer of a prescribed defence member who is subject to a punishment referred to in paragraph (1)(a) or (c) may moderate the consequences of that punishment in relation to the member in such manner as the commanding officer considers appropriate, having regard to the particular circumstances of the case and to any directions, in writing, of the Chief of the Defence Force or a service chief.

- (3) A direction made under subsection (2) is not a legislative instrument.
- (4) Even if a prescribed defence member is subject to a punishment of stoppage of leave, the commanding officer of the member may, if he or she is satisfied that it is appropriate to do so, grant leave of absence to the member.

15 Subsections 169G(2) and (3)

Before “defence member”, insert “prescribed”.

16 After section 169G

Insert:

169GA Report by discipline officer

- (1) As soon as practicable after the end of each month, a discipline officer must give a report in accordance with subsection (2) to the discipline officer’s commanding officer.
- (2) The report must be in writing and must contain the following information:
 - (a) the name of each prescribed defence member dealt with, in relation to a disciplinary infringement, by the discipline officer in the month to which the report relates;
 - (b) the nature of the disciplinary infringement in relation to which each prescribed defence member referred to in paragraph (a) was dealt with;
 - (c) the punishment (if any) that was imposed in respect of each of those disciplinary infringements.

Note: A report under this section is a *relevant record* for the purposes of section 169H.

17 Paragraph 169H(2)(a)

Before “defence member”, insert “prescribed”.

18 Section 169J

Before “defence member”, insert “prescribed”.

Schedule 7—Other amendments

Part 1—Powers of the Director of Military Prosecutions

Defence Force Discipline Act 1982

1 Subsection 87(1A)

Repeal the subsection, substitute:

- (1A) To avoid doubt, the Director of Military Prosecutions:
- (a) may exercise any or all of the powers referred to in paragraphs (1)(a), (b) and (c); and
 - (b) may exercise the power referred to in paragraph (1)(c) in addition to, or instead of, the powers referred to in paragraphs (1)(a) and (b).

2 At the end of Division 1 of Part VII

Add:

103A Director of Military Prosecutions may decide that class 3 offence is to be tried by Military Judge alone

- (1) This section applies in relation to a charge of a class 3 offence if:
- (a) the charge is to be tried by the Australian Military Court; and
 - (b) the charge is not to be tried together with a charge of a class 1 offence or a class 2 offence.
- (2) The Director of Military Prosecutions may, if he or she considers it appropriate in the circumstances, decide that the charge is to be tried by a Military Judge alone.

Note 1: If 2 or more charges of class 3 offences against an accused person are being dealt with together, the Director of Military Prosecutions may make a decision under subsection (2) in relation to any or all of the charges.

Note 2: If 2 or more accused persons are being dealt with together in respect of one or more charges of a class 3 offence, the Director of Military Prosecutions may make a decision under subsection (2) in relation to any or all of the charges against any or all of the accused persons.

Note 3: The maximum punishment that may be imposed on a person who is convicted of a class 3 offence that is tried by a Military Judge alone, because of a decision by the Director of Military Prosecutions under subsection (2), is imprisonment for a period of 6 months: see clause 2 of Schedule 2.

- (3) If the Director of Military Prosecutions makes a decision under subsection (2), he or she must inform the Registrar of this decision.

4 After clause 1 of Schedule 2

Insert:

2. The Australian Military Court must not impose any of the following punishments on a person convicted of a class 3 offence if the offence was tried by a Military Judge alone in accordance with subsection 132AB(2):
- (a) imprisonment for life;
 - (b) imprisonment for a period exceeding 6 months;
 - (c) detention for a period exceeding 6 months.

Defence Force Discipline Appeals Act 1955

5 Subsection 15(2)

Repeal the subsection, substitute:

- (2) If:
- (a) a question of law referred to the Tribunal under section 19A is to be heard in a place outside Australia; or
 - (b) 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 (1)(b) does not apply in relation to the reference, appeal or matter.

6 Section 16

Repeal the section, substitute:

16 Member ceasing to sit on a hearing of a matter

- (1) This section applies if:
- (a) the hearing of a matter has been commenced before the Tribunal but, before the 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 number of remaining members sitting on the hearing is not less than 3; and
 - (c) except in the case of a matter in relation to which the President has given a direction under subsection 15(2), the remaining members include the President, the Deputy President or a member who is qualified to be appointed as President.
- (2) The Tribunal constituted by the remaining members may, if the hearing has not been completed:
- (a) complete the hearing; and
 - (b) if a majority of those members concur in the decision, but not otherwise, determine the matter.
- (3) If, for any reason, the Tribunal constituted by the remaining members does not complete the hearing or determine the matter:
- (a) the Tribunal constituted in accordance with section 15 must, subject to section 17, hear and determine the matter; and
 - (b) for that purpose, the Tribunal may have regard to the evidence given, the arguments adduced and the reasons for any decision given during the previous hearing.
- (4) In this section:
- matter* means:
- (a) a question of law referred to the Tribunal under section 19A; or
 - (b) an appeal; or
 - (c) a matter preliminary or incidental to an appeal.

7 Part III (heading)

Repeal the heading, substitute:

Part III—References and appeals to the Tribunal

8 Before Division 1 of Part III

Insert:

Division 1A—References of questions of law

19A Director of Military Prosecutions may refer question of law to the Tribunal

- (1) After the completion of a trial by the Australian Military Court under the *Defence Force Discipline Act 1982*, the Director of Military Prosecutions may refer a question of law that arose in the trial to the Tribunal for decision.
- (2) A reference under subsection (1) must be lodged with the Registrar, or with such other person as is prescribed, within 60 days after the completion of the trial by the Australian Military Court.
- (3) The Tribunal has jurisdiction to hear and determine a question of law referred to it under subsection (1).

9 Paragraph 31(1)(e)

Before “an appeal”, insert “a question of law referred to the Tribunal under section 19A or”.

10 Section 36

Omit “an appeal under this Act”, substitute “a question of law referred to the Tribunal under section 19A, or an appeal”.

Note: The heading to section 36 is altered by inserting “**references or**” before “**appeals**”.

11 Section 36

After “heard the case”, insert “to which the reference or appeal relates”.

12 Section 36

Before “the appeal”, insert “the question of law or”.

13 At the end of paragraphs 60(a) to (f)

Add “and”.

14 After paragraph 60(g)

Insert:

Schedule 7 Other amendments

Part 1 Powers of the Director of Military Prosecutions

- (ga) for making provision for or in relation to the furnishing to the Tribunal, for the purposes of a question of law referred to the Tribunal under section 19A, of:
- (i) a record of the proceedings of the Australian Military Court to which the reference relates; and
 - (ii) documents that were before the Australian Military Court in connection with those proceedings; and

Part 2—Powers of the Provost Marshal Australian Defence Force

Defence Force Discipline Act 1982

15 Subsection 3(1)

Insert:

Provost Marshal Australian Defence Force means the person holding the position of Provost Marshal Australian Defence Force, and includes any person acting in that position.

16 After Division 6 of Part VI

Insert:

Division 6A—Referral of serious service offences

101ZAA Provost Marshal may refer serious service offence to Director of Military Prosecutions

If a person is charged with a serious service offence, the Provost Marshal Australian Defence Force may, at the completion of the investigation of the offence and if he or she considers it appropriate to do so, refer the charge of the offence to the Director of Military Prosecutions.

17 Subsection 103(1)

Before “subsection 105A(2)”, insert “section 101ZAA,”.

Part 3—Jurisdiction of summary authorities

Defence Force Discipline Act 1982

18 Paragraph 106(a)

Omit “the rank of lieutenant-commander, major or squadron-leader;”, substitute “the rank of rear admiral, major-general or air vice-marshal; or”.

19 At the end of section 106

Add:

Note: A superior summary authority may be disqualified from trying a charge against a person because of subsection 108A(1).

20 At the end of section 107

Add:

Note: A commanding officer may be disqualified from trying a charge against a person because of subsection 108A(1).

21 At the end of subsections 108(2) and (3)

Add:

Note: A subordinate summary authority may be disqualified from trying a charge against a person because of subsection 108A(1).

22 After section 108

Insert:

108A Disqualification of summary authority from trying a charge

- (1) A summary authority must not try a charge of a service offence against a person if the summary authority was involved in:
 - (a) the investigation of the offence; or
 - (b) the issuing of a warrant for the arrest of the person; or
 - (c) charging the person with the offence.
- (2) If a summary authority is not permitted to try a charge of a service offence against a person because of subsection (1), the summary

authority must refer the charge to another summary authority,
being a summary authority who:

- (a) has jurisdiction to try the charge; and
- (b) is not prevented from trying the charge because of
subsection (1).

23 At the end of paragraph 141(1)(b)

Add:

- ; (vi) in the case of a trial by a summary authority—that the
summary authority is not permitted to try the charge
because of subsection 108A(1).

Part 4—Trials by summary authorities

Defence Force Discipline Act 1982

24 Subsection 103(1)

Before “130(5)”, insert “129(2) or”.

25 Before section 130

Insert:

129 Time within which trial must be commenced

- (1) The trial of a charge of a service offence that is to be tried by a summary authority:
 - (a) must be commenced:
 - (i) as soon as practicable within the period of 3 months after the accused person is charged with the service offence; or
 - (ii) if the exigencies of service or other circumstances do not permit the trial to be commenced within this period—within a longer period as allowed by a superior authority; and
 - (b) must be completed as soon as practicable.
- (2) If a summary authority that is to try a charge does not commence the trial within the period allowed under paragraph (1)(a), the summary authority must refer the charge to the Director of Military Prosecutions.

26 Paragraph 130(1)(a)

Repeal the paragraph, substitute:

- (a) if the accused person is present at the hearing:
 - (i) the authority, before hearing any evidence on the charge, must ask the accused person whether he or she pleads guilty or not guilty to the charge; and
 - (ii) if the accused person pleads guilty and the authority is satisfied that the accused person understands the effect

of that plea—the authority must, subject to subsection 131(3), convict the accused person;

(aa) if:

- (i) the accused person has pleaded guilty to the charge in writing; and
- (ii) the authority has made an order under subsection 139(4) (permitting the accused person not to be present at the hearing);

the authority must convict the accused person;

27 Section 130A

Repeal the section.

28 At the end of Division 1 of Part VIII

Add:

131B Conviction by summary authority to have effect for service purposes only

- (1) If a person has been convicted by a summary authority of a service offence:
 - (a) the conviction has effect for service purposes only; and
 - (b) the person is not required to disclose to any person, for any purpose (other than a service purpose), the fact that the person was convicted of the offence.
- (2) This section applies to a conviction by a summary authority whether the conviction occurs before or after the commencement of this section.

29 Subsection 139(1)

Omit “subsection (2)”, substitute “subsections (2) and (5)”.

Note: The following heading to subsection 139(1) is inserted “*General rule*”.

30 At the end of section 139

Add:

Exception—trial by summary authority

- (3) If:

Schedule 7 Other amendments

Part 4 Trials by summary authorities

- (a) a charge is to be tried by a summary authority; and
 - (b) because of exceptional circumstances, the accused person is unable to attend the hearing of the charge; and
 - (c) the accused person pleads guilty to the charge in writing before the hearing;
- the accused person may apply in writing to the summary authority for an order permitting the accused person not to be present at the hearing.
- (4) The summary authority may make an order permitting the accused person not to be present at the hearing if the authority:
 - (a) is satisfied that the accused person understands the effect of the plea; and
 - (b) considers that exceptional circumstances exist.
 - (5) If the summary authority makes an order under subsection (4), the summary authority must proceed with the trial of the charge by considering, without holding a hearing, the documents or other material provided to the summary authority in relation to the charge.

Part 4A—Trials by the Australian Military Court

Defence Force Discipline Act 1982

30A Subsection 122(1)

Repeal the subsection, substitute:

- (1) A military jury must comprise:
 - (a) for a trial of one or more charges if at least one of the charges is of a class 1 offence—12 members; or
 - (b) for any other trial—6 members.

30B Section 132A

Repeal the section, substitute:

132A Trial of class 1 offences etc.

- (1) This section applies to the trial of one or more charges if at least one of the charges is of a class 1 offence.
- (2) The trial is to be by a Military Judge and military jury.

132AA Trials of class 2 offences etc.

- (1) This section applies to the trial of one or more charges if:
 - (a) at least one of the charges is of a class 2 offence; and
 - (b) none of the charges is of a class 1 offence.
- (2) The trial is to be by a Military Judge and military jury, unless:
 - (a) if one accused person only is to be tried—the accused person elects to have the charge, or (if 2 or more charges are to be tried together) all the charges, tried by a Military Judge alone; or
 - (b) if 2 or more accused persons are to be tried together—all the accused persons elect to have the charge, or (if 2 or more charges are to be tried together) all the charges, tried by a Military Judge alone.

- (3) If the accused person, or all the accused persons, make an election under subsection (2), the trial is to be by a Military Judge alone.

132AB Trials of class 3 offences

- (1) This section applies to a charge of a class 3 offence, unless section 132A or 132AA applies to the charge.
- (2) If the Director of Military Prosecutions has decided, under subsection 103A(2), that the charge is to be tried by a Military Judge alone, the charge is to be tried by a Military Judge alone.

Note: The maximum punishment that may be imposed on a person who is convicted of a class 3 offence that is tried by a Military Judge alone, because of a decision by the Director of Military Prosecutions under subsection 103A(2), is imprisonment for a period of 6 months: see clause 2 of Schedule 2.

- (3) If subsection (2) does not apply to the charge, the trial is to be by a Military Judge alone, unless:
- (a) if one accused person only is to be tried—the accused person elects to have the charge, or (if 2 or more charges are to be tried together) all the charges, tried by a Military Judge and military jury; or
 - (b) if 2 or more accused persons are to be tried together—any of the accused persons elects to have the charge, or (if 2 or more charges are to be tried together) all the charges, tried by a Military Judge and military jury.
- (4) If the accused person, or any of the accused persons, makes an election under subsection (3), the charge is to be tried by a Military Judge and military jury.

Part 5—Amendments relating to the Registrar of the Australian Military Court

Defence Force Discipline Act 1982

31 Subsection 3(1) (paragraph (a) of the definition of *appropriate authority*)

Repeal the paragraph, substitute:

- (a) in relation to proceedings before the Australian Military Court, means:
 - (i) the Chief Military Judge or a Military Judge; or
 - (ii) the Registrar; or

32 At the end of subsection 141(8)

Add “or the Registrar”.

33 Subsection 175(1)

Omit “An”, substitute “The Registrar, an”.

34 Subsection 175(2)

After “signed by”, insert “the Registrar,”.

Part 6—Miscellaneous amendments relating to the Australian Military Court

Defence Force Discipline Act 1982

35 Subparagraph 149A(a)(iii)

Omit “in relation to trial by military jury”, substitute “by an accused person under subsection 132AA(2) or 132AB(3)”.

36 After subsection 171(1A)

Insert:

- (1B) If the Australian Military Court imposes the punishment of dismissal from the Defence Force on a member of the Defence Force who has been convicted of a service offence, the Court may order that the dismissal is to take effect on a day specified in the order, being a day no later than 30 days after the day on which the punishment is imposed.
- (1C) A person on whom a punishment of dismissal from the Defence Force is imposed may be kept in custody until the dismissal takes effect.

Part 7—Rights and duties of legal officers

Defence Act 1903

37 After section 122A

Insert:

122B Exercise of rights and discharge of duties and obligations by legal officers

- (1) A legal officer acting in that capacity is entitled to exercise his or her professional rights, and discharge his or her professional duties and obligations, in accordance with the generally accepted rights, duties and obligations applying to legal practitioners.

- (2) In this section:

legal officer has the same meaning as in the *Defence Force Discipline Act 1982*.

legal practitioner has the same meaning as in the *Defence Force Discipline Act 1982*.

Part 8—Technical amendments

Defence Act 1903

38 Subsection 124(2C)

After “the board of inquiry,”, insert “the Chief of the Defence Force commission of inquiry,”.

Defence Force Discipline Act 1982

39 Subparagraph 87(1)(c)(ii)

Omit “trial;”, substitute “trial.”.

40 Schedule 6 (cell at table item 23, column 2)

Omit “(a) Offence against subsection 40B(1)”.

41 Schedule 6 (cell at table item 23, column 2)

Omit “(b)”.

42 Schedule 6 (cell at table item 24, column 2)

Omit “(a) Offence against subsection 40B(2)”.

43 Schedule 6 (cell at table item 24, column 2)

Omit “(b)”.

44 Schedule 6 (table items 25 and 26)

Repeal the items.

Defence Force Discipline Appeals Act 1955

45 Subsection 26(2)

Omit “the the”, substitute “the”.

Schedule 8—Application, saving and transitional provisions

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
 - (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.

3 Application of amendments of offences and disciplinary infringements

- (1) The amendments made by the following provisions of this Act apply in relation to acts and omissions that take place on or after the commencement day:
 - (a) Part 1 of Schedule 5;
 - (b) Schedule 6.
- (2) For the purposes of this item, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the commencement day, the act or omission is alleged to have taken place before the commencement day.

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.

4A Application of amendments to trials by the Australian Military Court of multiple charges or accused persons together

The amendments made by items 2, 30A and 30B of Schedule 7 to this Act apply in relation to a charge of a service offence against an accused person that is to be tried by the Australian Military Court if, before the commencement of those items, the accused person:

- (a) had not made an election in relation to the charge under subsection 132A(2) or (3) of the *Defence Force Discipline Act 1982*, as in force before the commencement of those items; and
- (b) had not been asked to plead in relation to the charge.

5 Summary Authority Rules

Rules made by the Judge Advocate General under section 149 of the old DFDA that were in force immediately before the commencement day continue in force on and after that day as if they had been made by the Chief Military Judge under section 149 of the *Defence Force Discipline Act 1982* as amended by item 10 of Schedule 3 to this Act.

6 Proceedings before examining officers

- (1) If, before the repeal of section 130A of the *Defence Force Discipline Act 1982* by item 27 of Schedule 7 to this Act:
 - (a) a legal officer had started to hear evidence in relation to a charge under that section; but
 - (b) the officer had not completed hearing the evidence;the officer must complete hearing the evidence in relation to the charge as if the repeal had not happened.
- (2) If, before the repeal of section 130A of the *Defence Force Discipline Act 1982* by item 27 of Schedule 7 to this Act:
 - (a) a commanding officer had, under that section, given a legal officer a direction to hear evidence in relation to a charge; but
 - (b) the legal officer had not started to hear the evidence;the direction is taken not to have been made.

7 Appointments of reviewing authorities

An appointment made under section 150 of the old DFDA that was in force immediately before the commencement day continues in force on and after that day as if the appointment had been made under subsection 150(1) of the *Defence Force Discipline Act 1982* as inserted by item 2 of Schedule 4 to this Act.

8 Regulations may deal with transitional, saving or application matters

Schedule 8 Application, saving and transitional provisions

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.

*[Minister's second reading speech made in—
House of Representatives on 20 February 2008
Senate on 13 March 2008]*

(33/08)
