



Defence Force Discipline Act 1982

Act No. 152 of 1982 as amended

This compilation was prepared on 19 December 2006
taking into account amendments up to Act No. 159 of 2006

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

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

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An Act relating to the discipline of the Defence Force and for related purposes

Part I—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Defence Force Discipline Act 1982*.

2 Commencement [see Note 1]

- (1) Part I and Part XI shall come into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act shall come into operation on a date to be fixed by Proclamation.

3 Interpretation

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

accused person means a person who has been charged with a service offence.

active service, in relation to a member of the Defence Force, means:

- (a) service by the member in connection with operations against the enemy;
- (b) service by the member with a force specified in a declaration by the Governor-General that is in force under subsection 4(1); or
- (c) service by the member in an area specified in a declaration by the Governor-General that is in force under subsection 4(2).

aircraft includes any machine that can derive support in the atmosphere from the reactions of the air.

airman means a member of the Australian Air Force, not being an officer.

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allied force means a force of another country that is acting in co-operation with the Defence Force.

ancillary offence, in relation to an offence against this Act or the regulations, means an offence against:

- (a) section 11.1, 11.4 or 11.5 of the *Criminal Code*; or
- (b) section 6 of the *Crimes Act 1914*;

that relates to that other offence.

ancillary Territory offence, in relation to another Territory offence (the ***first Territory offence***), means an offence against:

- (a) section 11.1, 11.4 or 11.5 of the *Criminal Code*; or
- (b) section 6 of the *Crimes Act 1914*; or
- (c) section 44, 47 or 48 of the *Criminal Code 2002* of the Australian Capital Territory; or
- (d) section 181 of the *Crimes Act 1900* of the Australian Capital Territory; or
- (e) a provision of a law in force in the Jervis Bay Territory (other than a Commonwealth law) that is prescribed for the purposes of this paragraph (see subsection (3A));

that relates to the first Territory offence.

another country means a country other than Australia.

appoint includes re-appoint.

appropriate authority:

- (a) in relation to proceedings before a court martial, means:
 - (i) the Registrar of Military Justice; or
 - (ii) the President of the court martial;
- (b) in relation to proceedings before a Defence Force magistrate, means:
 - (i) the Registrar of Military Justice; or
 - (ii) the Defence Force magistrate; or
- (c) in relation to proceedings before a summary authority, means the summary authority.

Australia, when used in a geographical sense, includes the external Territories.

authorized officer means an officer, or an officer included in a class of officers, authorized, in writing, by the Chief of the Defence Force or a service chief for the purposes of the provision in which the expression occurs.

charge means a charge of a service offence.

Chief Judge Advocate means the Chief Judge Advocate appointed under section 188A.

civil court means a federal court or a court of a State or Territory.

civil court offence means:

- (a) an offence against a law of the Commonwealth (other than a service offence); or
- (b) an offence against a law of a State or Territory.

civil detention facility means a police station or any other premises in which persons in custody awaiting trial in a civil court may lawfully be detained.

competent reviewing authority has the meaning given by section 150A.

constable means a member, or a special member, of the Australian Federal Police or a member of the police force of a State or Territory.

convicted person means a person convicted of a service offence by a service tribunal, a reviewing authority or the Defence Force Discipline Appeal Tribunal.

custodial offence means:

- (a) an offence against subsection 54A(1) or (2); or
- (b) an offence that:
 - (i) is an ancillary offence in relation to an offence against subsection 54A(1) or (2); and
 - (ii) was committed by a person at a time when the person was a detainee.

custodial punishment means a punishment of a kind referred to in subsection 68A(1).

custody means custody under this Act.

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defence civilian means a person (other than a defence member) who:

- (a) with the authority of an authorized officer, accompanies a part of the Defence Force that is:
 - (i) outside Australia; or
 - (ii) on operations against the enemy; and
- (b) has consented, in writing, to subject himself or herself to Defence Force discipline while so accompanying that part of the Defence Force.

Defence Force Discipline Appeal Tribunal means the Defence Force Discipline Appeal Tribunal constituted under the *Defence Force Discipline Appeals Act 1955*.

Defence Force magistrate means a Defence Force magistrate appointed under section 127.

defence member means:

- (a) a member of the Permanent Navy, the Regular Army or the Permanent Air Force; or
- (b) a member of the Reserves who:
 - (i) is rendering continuous full-time service; or
 - (ii) is on duty or in uniform.

Deputy Judge Advocate General means a Deputy Judge Advocate General appointed under section 179.

detainee means a person who is undergoing a punishment of detention in a detention centre.

detention centre means a place, not being a prison, that is operated by the Defence Force as a place for the detention of persons on whom punishments of detention have been imposed.

Director of Military Prosecutions means the Director of Military Prosecutions appointed under section 188GF.

elective punishment means a punishment set out in column 2 of Table A or B in Schedule 3.

enemy person means a person who is:

- (a) a representative or agent of the enemy; or
- (b) a member of:

- (i) an armed force of a body politic that constitutes the enemy; or
- (ii) an armed force or other force that constitutes the enemy.

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

general order means:

- (a) a Defence Instruction (General), a Defence Instruction (Navy), a Defence Instruction (Army) or a Defence Instruction (Air Force);
- (b) any other order, instruction or directive issued by, or under the authority of, the Chief of the Defence Force or a service chief; or
- (c) a general, standing, routine or daily order in force with respect to a part of the Defence Force.

hearing, in relation to a service tribunal, includes the announcement of the verdict of the tribunal and the taking of action by the tribunal under Part IV in relation to a convicted person.

institution, in relation to the Defence Force or an allied force, means a mess, club, band, canteen or other institution of the Defence Force or of the allied force, as the case may be.

judge advocate, in relation to a court martial, means the judge advocate of the court martial.

Judge Advocate General means the Judge Advocate General appointed under section 179.

judge advocates' panel means the panel referred to in subsection 196(1).

legal officer means an officer who is a legal practitioner.

legal practitioner means a person who is enrolled as a barrister, a solicitor, a barrister and solicitor or a legal practitioner of a civil court.

medical practitioner means a person who is registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners.

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member below non-commissioned rank means a member of the Defence Force who is not an officer, a warrant officer or a non-commissioned officer.

mutiny means a combination between persons who are, or of whom at least 2 are, members of the Defence Force:

- (a) to overthrow lawful authority in the Defence Force or in an allied force; or
- (b) to resist such lawful authority in such a manner as to prejudice substantially the operational efficiency of the Defence Force or of, or of a part of, an allied force.

non-commissioned officer means:

- (a) a sailor holding a rank not higher than the rank of chief petty officer and not lower than the rank of leading seaman;
- (b) a soldier holding a rank not higher than the rank of staff sergeant and not lower than the rank of lance-corporal; or
- (c) an airman holding a rank not higher than the rank of flight sergeant and not lower than the rank of corporal.

officer means:

- (a) in relation to the Australian Navy—a person appointed as an officer of the Australian Navy, including a person who holds the rank in the Australian Navy of Acting Sub-Lieutenant or of Midshipman; and
- (b) in relation to the Australian Army and the Australian Air Force—a person appointed as an officer of the Australian Army or the Australian Air Force.

old system offence means an offence under previous service law that was committed by a member of the Defence Force at any time during the period of 3 years that ended on the day immediately before the proclaimed date.

order includes:

- (a) a general order; and
- (b) a command given to a member of the Defence Force by a superior officer.

overseas court means a court of a place outside Australia that has jurisdiction to try charges of offences against the law of that place.

overseas offence means an offence against a law of a place outside Australia.

place of confinement means:

- (a) a civil detention facility; or
- (b) a detention centre.

police member means:

- (a) a service police officer; or
- (b) a sailor, soldier or airman who is a member of a police corps or service.

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

President, in relation to a court martial, means the President of the court martial.

previous service law means the following laws as in force at any time during the period of 3 years that ended on the day immediately before the proclaimed date:

- (a) the *Naval Defence Act 1910* and regulations in force under that Act;
- (b) the *Defence Act 1903* in its application to and in relation to the Australian Navy and the members of the Australian Navy;
- (c) where any law of the United Kingdom applied during that period to or in relation to the Australian Navy or the members of the Australian Navy—that law in that application;
- (d) the *Defence Act 1903* and the regulations in force under that Act in their application to and in relation to the Australian Army and the members of the Australian Army;
- (e) where any law of the United Kingdom applied during that period to or in relation to the Australian Army or the members of the Australian Army—that law in that application;
- (f) the *Air Force Act 1923* and regulations in force under that Act;

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- (g) the *Defence Act 1903* in its application to and in relation to the Australian Air Force and the members of the Australian Air Force;
- (h) where any law of the United Kingdom applied during that period to or in relation to the Australian Air Force or the members of the Australian Air Force—that law in that application.

prisoner means a convicted person on whom a punishment of imprisonment has been imposed.

proclaimed date means the date fixed for the purposes of subsection 2(2).

property includes:

- (a) real property; and
- (b) personal property; and
- (c) money; and
- (d) a thing in action or other intangible property; and
- (e) electricity; and
- (f) a wild creature that is:
 - (i) tamed; or
 - (ii) ordinarily kept in captivity; or
 - (iii) reduced (or in the course of being reduced) into the possession of a person.

public place, in relation to a service offence, includes a place that at the time of the commission of the offence:

- (a) was used by the public; or
- (b) was open to the public, whether or not on the payment of money.

punishment includes a combination of punishments.

receive, in relation to property, includes handle, retain, remove, dispose of or realize the property.

Registrar of Military Justice means the Registrar of Military Justice appointed under section 188FB.

relevant Territory offence, in relation to an offence against section 61, means the Territory offence on which the offence against section 61 is based.

reparation order means an order under section 84.

Reserves means the Naval Reserve, the Army Reserve and the Air Force Reserve.

restitution order means an order under section 83.

review means a review by a commanding officer, by a reviewing authority, or by the Chief of the Defence Force or a service chief, in accordance with Part IX, of the proceedings of a service tribunal.

reviewing authority means a reviewing authority appointed under section 150.

rules of procedure means rules of procedure in force under section 149.

sailor means a member of the Australian Navy, not being an officer.

service chief means the Chief of Navy, the Chief of Army or the Chief of Air Force.

service land means land (including a building or other structure) used or occupied by:

- (a) the Defence Force;
- (b) an allied force; or
- (c) an institution of the Defence Force or of an allied force.

service offence means:

- (a) an offence against this Act or the regulations;
- (b) an offence that:
 - (i) is an ancillary offence in relation to an offence against this Act or the regulations; and
 - (ii) was committed by a person at a time when the person was a defence member or a defence civilian; or
- (c) an old system offence.

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service police officer means an officer who is a member of a police corps or service, and includes a provost marshal and a deputy provost marshal.

service property means property used by, or in the possession or under the control of:

- (a) the Defence Force;
- (b) an allied force; or
- (c) an institution of the Defence Force or of an allied force;

and **service aircraft**, **service armoured vehicle**, **service missile**, **service ship**, **service vehicle** and **service weapon** have corresponding meanings.

service tribunal means a court martial, a Defence Force magistrate or a summary authority.

ship means a vessel or boat of any description, and includes:

- (a) any floating structure; and
- (b) any air cushion vehicle.

soldier means a member of the Australian Army, not being an officer.

subordinate summary authority means a subordinate summary authority appointed under subsection 105(2).

summary authority means:

- (a) a superior summary authority;
- (b) a commanding officer; or
- (c) a subordinate summary authority.

superior authority means a superior authority appointed under section 5A.

superior officer, in relation to a member of the Defence Force, means another member of the Defence Force who holds a higher rank, or a higher relative rank, in the Defence Force than the member, and includes any other member of the Defence Force who, by virtue of his or her office or appointment, is entitled to exercise command over the member.

superior summary authority means a superior summary authority appointed under subsection 105(1).

Territory offence means:

- (a) an offence against a law of the Commonwealth in force in the Jervis Bay Territory other than this Act or the regulations; or
- (b) an offence punishable under any other law in force in the Jervis Bay Territory (including any unwritten law) creating offences or imposing criminal liability for offences.

Note 1: Paragraph (a) of this definition includes an offence (an ***ancillary Territory offence***) against section 11.1 (attempt), section 11.4 (incitement) or section 11.5 (conspiracy) of the *Criminal Code* or section 6 (accessory after the fact) of the *Crimes Act 1914* in relation to another Territory offence within the meaning of that paragraph.

Note 2: Paragraph (b) of this definition includes an offence (an ***ancillary Territory offence***) against section 44 (attempt), section 47 (incitement) or section 48 (conspiracy) of the *Criminal Code 2002* of the Australian Capital Territory or section 181 (accessory after the fact) of the *Crimes Act 1900* of the Australian Capital Territory in relation to another Territory offence within the meaning of that paragraph.

Note 3: The laws of the Australian Capital Territory in force in the Jervis Bay Territory apply, and Chapter 2 of the *Criminal Code* does not apply, for the purpose of determining criminal liability for offences referred to in paragraph (b) of this definition.

the enemy means a body politic or an armed force engaged in operations of war against Australia or an allied force and includes any force (including mutineers and pirates) engaged in armed hostilities against the Defence Force or an allied force.

warrant officer means a sailor, soldier or airman who holds the rank of warrant officer.

- (2) A reference in this Act to the Defence Force shall be read as including a reference to a part of that Force.
- (3) A reference in this Act to an arm of the Defence Force shall be read as a reference to the Australian Navy, the Australian Army or the Australian Air Force, as the case may be.
- (3A) Before the Governor-General makes a regulation prescribing a provision of a law for the purposes of paragraph (e) of the definition of ***ancillary Territory offence*** in subsection (1), the Minister must be satisfied that the provision is equivalent to, or has the same effect as, a provision referred to in paragraph (c) or (d) of that definition.

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- (4) For the purposes of subparagraph (b)(ii) of the definition of *defence member* in subsection (1):
- (a) a member of the Reserves is taken to be on duty from the time appointed for him or her to report to, or to attend at, a specified place for any naval, military or air force service that he or she is required to render by or under the *Defence Act 1903*, the *Naval Defence Act 1910* or the *Air Force Act 1923* until he or she is released or discharged from that service; and
 - (b) a member of the Reserves is taken to be on duty while acting, or purporting to act, in his or her capacity as a member of the Reserves.
- (5) A member of the Defence Force who is serving in a rank or grade to which the member has not been duly appointed or promoted shall, while so serving in that rank or grade, be deemed, for the purposes of this Act, to hold that rank or grade.
- (6) A member of the Defence Force who holds a rank temporarily (however described) shall, while so holding that rank, be deemed, for the purposes of this Act, to hold that rank.
- (7) For the purposes of this Act, a person's membership of the Defence Force is not affected by reason only of the person's attachment to, or allotment for duty with:
- (a) the armed forces of another country;
 - (b) a force raised or organized by the United Nations or another international body; or
 - (c) a Peacekeeping Force within the meaning of Part IV of the *Veterans' Entitlements Act 1986*.
- (8) For the purposes of this Act, a comparison of the severity of a combination of punishments with that of a single punishment or of another combination of punishments shall be made as follows:
- (a) any punishment on one side of the comparison that is the same as a punishment on the other side of the comparison shall be disregarded;
 - (b) if, after the operation of paragraph (a), 2 or more punishments remain for consideration on either side of the comparison, regard shall be had only to the more severe, or the most severe, of the punishments so remaining on that side.

- (9) A reference in this Act to the amount of a convicted person's pay for a specific number of days (including a person who has no pay entitlement in respect of the day on which he or she was convicted) shall be read as a reference to an amount that is the product of:
- (a) the amount that is to be taken, for the purposes of this Act, to be the amount of daily rate of pay applicable in relation to a class of persons in which the person is included, being an amount ascertained in accordance with regulations that are in force for the purposes of this paragraph and are applicable in respect of the day on which the person was so convicted; and
 - (b) the number of days specified in the reference.
- (10) Regulations made for the purposes of paragraph (9)(a) may provide for an amount of daily rate of pay to be ascertained by reference to a provision of any other regulations under any Act as in force at a particular time or as in force from time to time, or any determination under section 58B or 58H of the *Defence Act 1903* as in force at a particular time or as in force from time to time.
- (11) A reference to a commanding officer in a provision of this Act that confers a power on a commanding officer includes:
- (a) a reference to an officer performing the duties and functions of a commanding officer by virtue of:
 - (i) a direction given by means of a Defence Instruction (Navy), a Defence Instruction (Army) or a Defence Instruction (Air Force); or
 - (ii) an order, instruction or directive issued by, or under the authority of, the Chief of the Defence Force or a service chief; and
 - (b) a reference to an officer appointed under subsection 5(1) whose instrument of appointment under that section authorizes the officer to exercise that power;
- but does not include a reference to an officer in respect of whom a determination relating to the exercise of that power is in force under subsection 5(3).
- (12) A reference in this Act to a person who is on guard duty shall be read as including a reference to a person who:
- (a) is posted or ordered to patrol; or
 - (b) is a member of a guard or other party mounted or ordered to patrol;

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for the purpose of:

- (c) protecting any person, any premises or place or any ship, vehicle, aircraft or other thing;
 - (d) preventing or controlling access to, or egress from, any premises or place or any ship, vehicle, aircraft or other thing;
or
 - (e) regulating traffic by land or water.
- (15) For the purposes of any law of the Commonwealth other than this Act, an offence against this Act or the regulations shall not be taken not to be an offence against a law of the Commonwealth by reason that it forms part of the law regulating the relationship between the Commonwealth and members of the Defence Force and other persons.
- (16) Where:
- (a) a detainee is granted leave of absence from a detention centre; and
 - (b) the detainee refuses or fails to return to the detention centre before the end of the leave of absence;
- the detainee shall be taken, for the purposes of this Act, to have escaped from custody and from the detention centre.
- (17) A reference in a provision of this Act to the officer in charge of a detention centre is a reference to the officer who is responsible for the administration of the detention centre, and includes a reference to a member of the Defence Force, or to a member of the Defence Force included in a class of members of the Defence Force, authorized by a commanding officer, in writing, for the purposes of the provision in relation to the detention centre.
- (18) The provisions of this Act in so far as they protect the individual are in addition to, and not in derogation of, any rights and freedoms of the individual, whether under the law of the Commonwealth or of a State or Territory, and this Act is not intended to exclude or limit the operation of any law of the Commonwealth or of a State or Territory providing for those rights and freedoms in so far as it is capable of operating concurrently with this Act.

4 Declaration of active service for disciplinary purposes

- (1) The Governor-General may, by writing under his or her hand, declare a specified force to be on active service for the purposes of this Act.
- (2) The Governor-General may, by writing under his or her hand, declare the members of the Defence Force who are serving in a specified area to be on active service for the purposes of this Act.
- (3) A copy of a declaration made under subsection (1) or (2) shall be published in the *Gazette*.

5 Commanding officers for disciplinary purposes

- (1) For the purposes of this Act, the Chief of the Defence Force or a service chief or an authorized officer may, by instrument in writing, appoint an officer to exercise all the powers conferred on a commanding officer by or under this Act or such of those powers as are specified in the instrument of appointment.
- (2) An instrument of appointment under subsection (1) takes effect on the date of the instrument or on such later date as is specified in the instrument.
- (3) For the purposes of this Act, the Chief of the Defence Force or a service chief or an authorized officer may, by instrument in writing, determine that a commanding officer shall not exercise the powers conferred on a commanding officer by or under this Act or such of those powers as are specified in the instrument.
- (4) A determination under subsection (3) takes effect on the date of the instrument or on such later date as is specified in the determination.

5A Appointment of superior authority

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 superior authority for the purpose of:

- (a) representing the interests of the Defence Force in relation to charges that are being considered by the Director of Military Prosecutions for possible trial by a Defence Force magistrate or a court martial; and

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- (b) exercising the powers and performing the functions conferred on superior authorities by or under this Act or the regulations.

6 Further provision with respect to certain members of the Defence Force

- (1) In this section, *prescribed class*, in relation to members of the Defence Force, means any of the following classes of such members:
 - (a) chaplains;
 - (b) members who have not attained the age of 18 years;
 - (c) members receiving instruction or training.
- (2) The regulations may make further provision relating to the discipline of members of the Defence Force included in a prescribed class and, in particular, may make provision for:
 - (a) the exemption of those members from any provision of this Act, other than this section; and
 - (b) the modification of any provision of this Act, other than this section or subsection 68(1) or 68A(1), so far as it relates to those members.
- (3) Regulations made by virtue of subsection (2) shall not modify a provision of this Act so as to increase the severity of the punishment provided by this Act for a service offence.

7 Prisoners of war

- (1) This Act (including the regulations and the rules of procedure) applies to, and in relation to, prisoners of war as if prisoners of war were members of the Defence Force and also defence members.
- (2) The regulations may make further provision relating to the discipline of prisoners of war and, in particular, may make provision for:
 - (a) the exemption of prisoners of war from any provision of this Act, other than this section; and
 - (b) the modification of any provision of this Act, other than this section or subsection 68(1) or 68A(1), so far as it relates to prisoners of war.

- (2A) Regulations made by virtue of subsection (2) shall not modify a provision of this Act so as to increase the severity of the punishment provided by this Act for a service offence.
- (3) The operation of this section is subject to the Convention and to the *Geneva Conventions Act 1957*.
- (4) In this section:

Convention means the Third Convention, within the meaning of the *Geneva Conventions Act 1957*, being that Convention as having effect subject to and in accordance with any reservation or declaration referred to in subsection 5(3) of that Act.

prisoner of war means a protected prisoner of war as defined in subsection 5(2) of the *Geneva Conventions Act 1957* for whom Australia is responsible.

8 Extension to external Territories

This Act extends to every external Territory.

9 Extra-territorial operation of Act

The provisions of this Act apply, according to their tenor, both in and outside Australia but do not apply in relation to any person outside Australia unless that person is a defence member or a defence civilian.

Part II—Criminal liability

10 Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all service offences, other than old system offences.

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

11 Recklessness and negligence in relation to a member of the Defence Force

- (1) Where a member of the Defence Force is charged with a service offence arising out of activities (in this subsection referred to as *the relevant activities*) upon which the member was engaged in the course of the member's duty or in accordance with the requirements of the Defence Force, a service tribunal, in deciding whether the member, by act or omission, behaved recklessly shall have regard to the fact that the member was engaged in the relevant activities in the course of the member's duty or in accordance with the requirements of the Defence Force, as the case may be.
- (2) Where a member of the Defence Force is charged with a service offence arising out of activities (in this subsection referred to as *the relevant activities*) upon which the member was engaged in the course of the member's duty or in accordance with the requirements of the Defence Force, a service tribunal, in deciding whether the member, by act or omission, behaved negligently, shall, to the extent that it is required, for that purpose, to have regard to the standard of care of a reasonable person, have regard to the standard of care that would have been exercised by a reasonable person who:
 - (a) was a member of the Defence Force with the same training and experience in the Defence Force or other armed force as the member charged; and
 - (b) was engaged in the relevant activities in the course of the member's duty or in accordance with the requirements of the Defence Force, as the case may be.

- (3) This section does not, except to the extent expressly provided, affect, modify or alter the application of Chapter 2 of the *Criminal Code* to service offences.
- (3A) In particular, subsections (1) and (2) merely provide for matters to which a service tribunal must have regard in deciding whether a member was reckless, or negligent. They do not alter the definitions of *recklessness* and *negligence* in sections 5.4 and 5.5 of the *Criminal Code*.
- (3B) Subsections (1) and (2) do not limit the matters to which a service tribunal may have regard.
- (4) In this section, *service offence* does not include an old system offence.

14 Act or omission in execution of law etc.

A person is not liable to be convicted of a service offence by reason of an act or omission that:

- (a) was in execution of the law; or
- (b) was in obedience to:
 - (i) a lawful order; or
 - (ii) an unlawful order that the person did not know, and could not reasonably be expected to have known, was unlawful.

Part III Offences

Division 1 Offences relating to operations against the enemy

Section 15

Part III—Offences

Division 1—Offences relating to operations against the enemy

15 Abandoning or surrendering a post etc.

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person has a duty to defend or destroy a place, post, service ship, service aircraft or service armoured vehicle; and
 - (b) the person knows of that duty; and
 - (c) the person abandons or surrenders to the enemy the place or thing mentioned in paragraph (a).

Maximum punishment: Imprisonment for 15 years.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

15A Causing the capture or destruction of a service ship, aircraft or vehicle

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct causes the capture or destruction by the enemy of a service ship, service aircraft or service armoured vehicle; and
 - (c) by engaging in the conduct, the person intends to bring about that result.

Maximum punishment: Imprisonment for 15 years.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

15B Aiding the enemy while captured

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person is captured by the enemy; and
 - (b) the person serves with the enemy, aids the enemy in prosecuting hostilities or measures likely to influence morale or aids the enemy in any other manner that is not authorised by international law.

Maximum punishment: Imprisonment for life.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

15C Providing the enemy with material assistance

- (1) A person who is a defence member or a defence civilian is guilty of an offence if the person provides the enemy with, or permits or enables the enemy to have access to, arms, ammunition, vehicles, supplies of any description or any other thing likely to assist the enemy.

Maximum punishment: Imprisonment for life.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

15D Harbours enemies

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person harbours or protects another person; and
 - (b) that other person is an enemy person; and
 - (c) that other person is not a prisoner of war; and
 - (d) the first-mentioned person knows that the other person is an enemy person.

Maximum punishment: Imprisonment for 15 years.

Part III Offences

Division 1 Offences relating to operations against the enemy

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- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

15E Offences relating to signals and messages

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:

(a) the person is engaged on service in connection with operations against the enemy; and

(b) the person:

(i) gives a signal, message or other communication that the person knows to be false; or

(ii) alters or interferes with a signal, message or other communication; or

(iii) alters or interferes with apparatus for giving or receiving a signal, message or other communication.

Maximum punishment: Imprisonment for 15 years.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

15F Failing to carry out orders

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:

(a) the person:

(i) is ordered by his or her superior officer to prepare for, or to carry out, operations against the enemy; or

(ii) is otherwise under orders to prepare for, or to carry out, operations against the enemy; and

(b) the person does not use his or her utmost exertions to carry those orders into effect.

Maximum punishment: Imprisonment for 15 years.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.
-

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

15G Imperilling the success of operations

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person engages in any conduct; and
 - (b) the conduct imperils the success of operations against the enemy.

Maximum punishment: Imprisonment for 15 years.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

16 Communicating with the enemy

- (1) A person who is a defence member or a defence civilian is guilty of an offence if the person communicates with, or gives intelligence to, the enemy.

Maximum punishment: Imprisonment for 15 years.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

16A Failing to report information received from the enemy

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person receives information from the enemy; and
 - (b) the person does not make the information known to proper authority; and
 - (c) the information is likely to be directly or indirectly useful in operations against the enemy; and
 - (d) the person knows or could reasonably be expected to know that the information is likely to be directly or indirectly useful in operations against the enemy.

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Maximum punishment: Imprisonment for 15 years.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

16B Offence committed with intent to assist the enemy

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person engages in conduct that constitutes an offence against any of sections 15 to 16A (other than section 15B or 15C); and
 - (b) the person engages in that conduct with intent to assist the enemy.

Maximum punishment: Imprisonment for life.

- (2) In paragraph (1)(a), strict liability applies to the physical element of circumstance, that the conduct constitutes an offence against the section concerned.

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

17 Leaving a post, abandoning equipment or otherwise failing to perform duty

- (1) A defence member is guilty of an offence if the member is engaged on service in connection with operations against the enemy and:
- (a) the member:
 - (i) has a duty to be at a post, position or other place; and
 - (ii) leaves the post, position or place; or
 - (b) the member abandons his or her weapons or other equipment; or
 - (c) the member does not properly perform his or her duty in any other manner in attacking or defending against the enemy.

Maximum punishment: Imprisonment for 5 years.

- (2) It is a defence if the member proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

(3) In this section:

equipment includes vehicles, ammunition, instruments and tools.

18 Endangering morale

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person spreads a report; and
 - (b) the report relates to operations against the enemy; and
 - (c) by spreading the report the person intends to create despondency or unnecessary alarm.

Maximum punishment: Imprisonment for 2 years.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person is engaged on service in connection with operations against the enemy; and
 - (b) the person spreads a report; and
 - (c) the report relates to operations against the enemy; and
 - (d) by spreading the report the person intends to create despondency or unnecessary alarm.

Maximum punishment: Imprisonment for 5 years.

19 Conduct after capture by the enemy

- (1) A defence member is guilty of an offence if:
- (a) the member is captured by the enemy; and
 - (b) any reasonable steps are available to the member to rejoin his or her force; and
 - (c) the member does not take those steps.

Maximum punishment: Imprisonment for 5 years.

- (2) A defence member is guilty of an offence if:
- (a) the member and another person are captured by the enemy; and

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Division 1 Offences relating to operations against the enemy

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- (b) any reasonable steps are available to the other person to rejoin his or her force; and
- (c) the member prevents or discourages the other person from taking those steps.

Maximum punishment: Imprisonment for 5 years.

- (3) A defence member is guilty of an offence if:
- (a) the member is captured by the enemy; and
 - (b) the member engages in conduct with the intention of securing favourable treatment for himself or herself; and
 - (c) the conduct is detrimental to other persons also captured by the enemy.

Maximum punishment: Imprisonment for 5 years.

- (4) A defence member is guilty of an offence if:
- (a) the member is captured by the enemy; and
 - (b) the member is in a position of authority over other persons also captured by the enemy; and
 - (c) the member ill-treats those other persons.

Maximum punishment: Imprisonment for 5 years.

Division 2—Mutiny, desertion and unauthorised absence

20 Mutiny

- (1) A defence member who takes part in a mutiny is guilty of an offence.

Maximum punishment: Imprisonment for 10 years.

- (2) A defence member is guilty of an offence if:
- (a) the member takes part in a mutiny; and
 - (b) the mutiny's object, or one of its objects, is the refusal or avoidance of duty or service in connection with operations against the enemy or the impeding of the performance of such a duty or service.

Maximum punishment: Imprisonment for life.

21 Failing to suppress mutiny

- (1) A defence member is guilty of an offence if:
- (a) a mutiny is taking place or is intended; and
 - (b) the member knows that fact; and
 - (c) the member does not take reasonable steps:
 - (i) to suppress or prevent the mutiny; or
 - (ii) to report to proper authority without delay that the mutiny is taking place or is intended.

Maximum punishment: Imprisonment for 2 years.

- (2) A defence member is guilty of an offence if:
- (a) a mutiny is taking place or is intended; and
 - (b) the member knows that fact; and
 - (c) the member knows, or could reasonably be expected to know, that the mutiny's object, or one of its objects, is:
 - (i) the refusal or avoidance of duty or service in connection with operations against the enemy; or
 - (ii) the impeding of the performance of such duty or service; and
 - (d) the member does not take reasonable steps:

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Division 2 Mutiny, desertion and unauthorised absence

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- (i) to suppress or prevent the mutiny; or
- (ii) to report to proper authority without delay that the mutiny is taking place or is intended.

Maximum punishment: Imprisonment for 5 years.

22 Desertion

- (1) A defence member is guilty of an offence if the member:
- (a) is on active service or has been warned for active service; and
 - (b) without leave, and with the intention of avoiding that service, departs from, or does not attend at, his or her place of duty.

Maximum punishment: Imprisonment for 5 years.

- (2) A defence member is guilty of an offence if:
- (a) the member is absent without leave; and
 - (b) the member engages in conduct; and
 - (c) the conduct manifests an intention to avoid active service.

Maximum punishment: Imprisonment for 5 years.

23 Absence from duty

- (1) A defence member is guilty of an offence if the member:
- (a) is required to attend for duty; and
 - (b) does not attend for the duty.

Maximum punishment: Imprisonment for 12 months.

- (2) A defence member is guilty of an offence if the member:
- (a) is required to perform a duty; and
 - (b) ceases to perform the duty before he or she is permitted to do so.

Maximum punishment: Imprisonment for 12 months.

- (3) An offence under this section is an offence of strict liability.

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

- (4) It is a defence to a charge under this section if the person proves that he or she had a reasonable excuse for engaging in the relevant conduct.

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

24 Absence without leave

- (1) A defence member who is absent without leave is guilty of an offence.

Maximum punishment: Imprisonment for 12 months.

- (2) An offence under subsection (1) is an offence of strict liability.

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

- (3) It is a defence if the member proves that he or she was absent due to circumstances not reasonably within the member's control.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

Division 3—Insubordination and violence

25 Assaulting a superior officer

- (1) A defence member is guilty of an offence if:
- (a) the member assaults a person; and
 - (b) that person is a superior officer.

Maximum punishment: Imprisonment for 2 years.

- (2) Strict liability applies to paragraph (1)(b).

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

- (3) It is a defence if the member proves that he or she neither knew, nor could reasonably be expected to have known, that the person against whom the offence is alleged to have been committed was a superior officer.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

26 Insubordinate conduct

- (1) A defence member is guilty of an offence if:
- (a) the member engages in conduct that is threatening, insubordinate or insulting to a person; and
 - (b) the person is a superior officer.

Maximum punishment: Imprisonment for 6 months.

- (2) A defence member is guilty of an offence if:
- (a) the member uses language that is threatening, insubordinate or insulting about a person; and
 - (b) the language is used in that person's presence; and
 - (c) the person is a superior officer.

Maximum punishment: Imprisonment for 6 months.

- (3) An offence against this section is an offence of strict liability.

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

- (4) It is a defence to a charge under this section if the person proves that he or she neither knew, nor could reasonably be expected to have known, that the person against whom the offence is alleged to have been committed was a superior officer.

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

27 Disobeying a lawful command

- (1) A defence member is guilty of an offence if:
- (a) a person gives the member a lawful command; and
 - (b) the person giving the command is a superior officer; and
 - (c) the member disobeys the command.

Maximum punishment: Imprisonment for 2 years.

- (2) Strict liability applies to paragraphs (1)(b) and (c).

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

- (3) It is a defence if the member proves that he or she neither knew, nor could reasonably be expected to have known, that the person who gave the command was a superior officer.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

28 Failing to comply with a direction in relation to a ship, aircraft or vehicle

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person is in or near a service ship, service aircraft or service vehicle; and
 - (b) the person is given a lawful direction by, or with the authority of, the person in command of the ship, aircraft or vehicle; and
 - (c) the direction:
 - (i) relates to the sailing or handling of the ship, the flying or handling of the aircraft or the handling of the vehicle; or
 - (ii) affects the safety of the ship, aircraft or vehicle or of the persons on board the ship, aircraft or vehicle; and

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- (d) the first-mentioned person does not comply with the direction.

Maximum punishment: Imprisonment for 2 years.

- (2) Strict liability applies to paragraph (1)(d).

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

- (3) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

29 Failing to comply with a general order

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:

- (a) a lawful general order applies to the person; and
(b) the person does not comply with the order.

Maximum punishment: Imprisonment for 12 months.

- (2) An offence under subsection (1) is an offence of strict liability.

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

- (3) It is a defence if the member proves that he or she neither knew, nor could reasonably be expected to have known, of the order.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

30 Assaulting a guard

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:

- (a) the person assaults another person; and
(b) that other person is a member of the Defence Force or of an allied force; and
(c) that other person is on guard duty.

Maximum punishment: Imprisonment for 2 years.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if:

- (a) the person is engaged on service in connection with operations against the enemy; and
- (b) the person assaults another person; and
- (c) that other person is a member of the Defence Force or of an allied force; and
- (d) that other person is on guard duty.

Maximum punishment: Imprisonment for 5 years.

31 Obstructing a police member

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person obstructs another person; and
 - (b) that other person:
 - (i) is a police member acting in the performance of his or her duty; or
 - (ii) is lawfully exercising authority under or on behalf of a service police officer.

Maximum punishment: Imprisonment for 12 months.

- (2) A defence member is guilty of an offence if:
- (a) the member is called on to assist another person; and
 - (b) that other person:
 - (i) is a police member acting in the performance of his or her duty; or
 - (ii) is lawfully exercising authority under or on behalf of a service police officer; and
 - (c) the member refuses to assist that other person.

Maximum punishment: Imprisonment for 12 months.

- (3) In paragraphs (1)(b) and (2)(b), strict liability applies to the physical element of circumstance, that the person was a police member, or a person lawfully exercising authority under or on behalf of a service police officer.

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

- (4) It is a defence to a charge under this section if the person proves that he or she neither knew, nor could reasonably be expected to have known, that the other person was a police member, or a

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person lawfully exercising authority under or on behalf of a service police officer, as the case requires.

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

32 Person on guard or on watch

- (1) A defence member is guilty of an offence if the member is on guard duty or on watch and the member:
- (a) sleeps at the member's post or on watch; or
 - (b) is not on duty at a post but sleeps when the member's duty requires him or her to be awake; or
 - (c) is intoxicated (see subsection (5)); or
 - (d) leaves his or her post before being regularly relieved or otherwise absents himself or herself from a place where it is the member's duty to be.

Maximum punishment: Imprisonment for 12 months.

- (2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

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

- (3) A defence member is guilty of an offence if the member:
- (a) is engaged on service in connection with operations against the enemy; and
 - (b) is on guard duty or on watch; and
 - (c) engages in conduct that constitutes an offence against subsection (1).

Maximum punishment: Imprisonment for 5 years.

- (4) Strict liability applies to paragraph (3)(c).

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

- (5) For the purposes of this section, a person is *intoxicated* if, and only if, the person's faculties are, because of the person being under the influence of intoxicating liquor or a drug (other than a drug administered by, or taken in accordance with the directions of, a person lawfully authorised to administer the drug), so impaired that the person is unfit to be entrusted with the person's duty or with any duty that the person may be called on to perform.

- (6) It is a defence if a person charged with an offence under this section proves that he or she had a reasonable excuse for engaging in the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (6). See section 13.4 of the *Criminal Code*.

33 Assault, insulting or provocative words etc.

A person who is a defence member or a defence civilian is guilty of an offence if the person is on service land, in a service ship, service aircraft or service vehicle or in a public place and the person:

- (a) assaults another person; or
- (b) creates a disturbance or takes part in creating or continuing a disturbance; or
- (c) within the view or hearing of another person, engages in conduct that is obscene; or
- (d) uses insulting or provocative words to another person.

Maximum punishment: Imprisonment for 6 months.

34 Assaulting a subordinate

- (1) A defence member is guilty of an offence if:
- (a) the member assaults or ill-treats a person; and
 - (b) the person is a member of the Defence Force who is of subordinate rank to the member.

Maximum punishment: Imprisonment for 2 years.

- (2) Strict liability applies to paragraph (1)(b).

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

- (3) It is a defence if the member proves that he or she neither knew, nor could reasonably be expected to have known, that the other person was a member of the Defence Force of subordinate rank to the member.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

Division 4—Offences relating to performance of duty

35 Negligence in performance of a duty

- (1) A person who is a defence member is guilty of an offence if:
 - (a) the person is required, because of his or her office or appointment, to perform a duty; and
 - (b) the person engages in conduct; and
 - (c) that conduct results in a failure to perform the duty to the required standard.

Penalty: Imprisonment for 3 months.

- (2) Negligence applies to paragraph (1)(c).
- (3) In this section:

required standard, in relation to performing a duty, means the standard to which a reasonably capable and careful defence member of the same training and experience would perform the duty.

36 Dangerous conduct

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct is in or in connection with:
 - (i) the operation, handling, servicing or storage; or
 - (ii) the giving of directions with respect to the operation, handling, servicing or storage;of a ship, aircraft or vehicle or a weapon, missile, explosive or other dangerous thing or equipment; and
 - (c) the conduct causes, or is likely to cause, the death of or grievous bodily harm to another person; and
 - (d) the first-mentioned person knows of the matter mentioned in paragraph (c); and
 - (e) where the person mentioned in paragraph (c) is an enemy person—the conduct is not in the execution of the first-mentioned person's duty.

Maximum punishment: Imprisonment for 10 years.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct is in or in connection with:
 - (i) the operation, handling, servicing or storage; or
 - (ii) the giving of directions with respect to the operation, handling, servicing or storage;of a ship, aircraft or vehicle or a weapon, missile, explosive or other dangerous thing or equipment; and
 - (c) the conduct causes, or is likely to cause, the death of or grievous bodily harm to another person; and
 - (d) the first-mentioned person is reckless as to the matter mentioned in paragraph (c); and
 - (e) where the person mentioned in paragraph (c) is an enemy person—the conduct is not in the execution of the first-mentioned person's duty.

Maximum punishment: Imprisonment for 5 years.

- (3) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct is in or in connection with:
 - (i) the operation, handling, servicing or storage; or
 - (ii) the giving of directions with respect to the operation, handling, servicing or storage;of a ship, aircraft or vehicle or a weapon, missile, explosive or other dangerous thing or equipment; and
 - (c) the conduct causes, or is likely to cause, the death of or grievous bodily harm to another person; and
 - (d) the first-mentioned person is negligent as to the matter mentioned in paragraph (c); and
 - (e) where the person mentioned in paragraph (c) is an enemy person—the conduct is not in the execution of the first-mentioned person's duty.

Maximum punishment: Imprisonment for 2 years.

Section 36A

36A Unauthorised discharge of weapon

A person who is a defence member or a defence civilian is guilty of an offence if:

- (a) the person engages in conduct; and
- (b) the conduct causes, or contributes to, the discharge of a weapon; and
- (c) the discharge of the weapon is not authorised.

Penalty: Imprisonment for 6 months.

36B Negligent discharge of weapon

A person who is a defence member or a defence civilian is guilty of an offence if:

- (a) the person engages in conduct; and
- (b) the conduct causes, or contributes to, the discharge of a weapon; and
- (c) the person is negligent as to that result.

Penalty: Imprisonment for 6 months.

37 Intoxicated while on duty etc.

- (1) A defence member is guilty of an offence if:
 - (a) the member is on duty, or reports or should report for duty; and
 - (b) the member is intoxicated (see subsection (3)).

Maximum punishment: Imprisonment for 6 months.

- (2) An offence under this section is an offence of strict liability.

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

- (3) For the purposes of this section, a person is *intoxicated* if, and only if, the person's faculties are, because of the person being under the influence of intoxicating liquor or a drug (other than a drug administered by, or taken in accordance with the directions of, a person lawfully authorised to administer the drug), so impaired that the person is unfit to be entrusted with the person's duty or with any duty that the person may be called on to perform.

38 Malingering

- (1) A defence member is guilty of an offence if, with intent to make or keep himself or herself unfit for duty or service, the member:
- (a) injures himself or herself or causes or permits himself or herself to be injured; or
 - (b) by act or omission, causes himself or herself to suffer from a sickness or disability or prolongs or aggravates a sickness or disability from which he or she is suffering.

Maximum punishment: Imprisonment for 12 months.

- (2) A defence member is guilty of an offence if:
- (a) the member represents himself or herself to be suffering from a physical or mental condition; and
 - (b) the member makes the representation with intent to avoid duty or service; and
 - (c) the representation is false; and
 - (d) the member knows that the representation is false.

Maximum punishment: Imprisonment for 12 months.

Division 5—Offences relating to ships, vehicles, aircraft and weapons

39 Loss of, or hazard to, service ship

- (1) A defence member is guilty of an offence if:
- (a) the member engages in conduct; and
 - (b) the conduct causes or allows a service ship to be lost, stranded or hazarded; and
 - (c) the member intends that the conduct will have that result.

Maximum punishment: Imprisonment for 5 years.

- (2) A defence member is guilty of an offence if:
- (a) the member engages in conduct; and
 - (b) the conduct causes or allows a service ship to be lost, stranded or hazarded; and
 - (c) the member is reckless as to whether the conduct will have that result.

Maximum punishment: Imprisonment for 2 years.

- (3) A defence member is guilty of an offence if:
- (a) the member engages in conduct; and
 - (b) the conduct causes or allows a service ship to be lost, stranded or hazarded; and
 - (c) the member is negligent as to whether the conduct will have that result.

Maximum punishment: Imprisonment for 6 months.

40 Driving while intoxicated

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person drives a service vehicle in any place, whether a public place or not; and
 - (b) the person is under the influence of intoxicating liquor or a drug to such an extent as to be incapable of having proper control of the vehicle.

Maximum punishment: Imprisonment for 12 months.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person drives a vehicle on service land; and
 - (b) the person is under the influence of intoxicating liquor or a drug to such an extent as to be incapable of having proper control of the vehicle.

Maximum punishment: Imprisonment for 12 months.

- (3) An offence under this section is an offence of absolute liability.

Note: For *absolute liability*, see section 6.2 of the *Criminal Code*.

40A Dangerous driving

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person drives a service vehicle in any place, whether a public place or not; and
 - (b) the person does so at a speed, or in a manner, dangerous to another person in that place.

Maximum punishment: Imprisonment for 6 months.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person drives a vehicle on service land; and
 - (b) the person does so at a speed, or in a manner, dangerous to another person on that land.

Maximum punishment: Imprisonment for 6 months.

- (3) Absolute liability applies to paragraphs (1)(a) and (2)(a).

Note: For *absolute liability*, see section 6.2 of the *Criminal Code*.

- (4) Strict liability applies to paragraphs (1)(b) and (2)(b).

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

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40C Driving a service vehicle for unauthorised purpose

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person:
 - (i) drives a service vehicle in any place, whether a public place or not; and
 - (ii) is not authorised to drive that vehicle; or
 - (b) the person uses a service vehicle for an unauthorised purpose.

Maximum punishment: Imprisonment for 3 months.

- (2) An offence under this section is an offence of strict liability.

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

- (3) It is a defence to a charge under subsection (1) if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

40D Driving without due care or attention etc.

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person drives a service vehicle in any place, whether a public place or not; and
 - (b) the person does so without due care and attention or without reasonable consideration for another person in that place.

Maximum punishment:

- (c) if the person is a member of the Defence Force—a fine of the amount of the member's pay for 7 days; or
 - (d) in any other case—a fine of \$100.
- (2) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person drives a vehicle on service land; and
 - (b) the person does so without due care and attention or without reasonable consideration for another person on that land.

Maximum punishment:

- (c) if the person is a member of the Defence Force—a fine of the amount of the member's pay for 7 days; or
 - (d) in any other case—a fine of \$100.
- (3) An offence under this section is an offence of absolute liability.

Note: For *absolute liability*, see section 6.2 of the *Criminal Code*.

41 Low flying

- (1) A defence member is guilty of an offence if:
- (a) the member flies a service aircraft; and
 - (b) by or in accordance with a lawful general order, there is a minimum height at which the member is authorised to fly; and
 - (c) the height at which the member flies is less than that minimum height; and
 - (d) the member is reckless or negligent as to the matter in paragraph (c).

Maximum punishment: Imprisonment for 12 months.

- (2) Strict liability applies to paragraph (1)(b).

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

- (3) It is a defence if the member proves that he or she neither knew, nor could reasonably be expected to have known, of the general order.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

42 Inaccurate certification in relation to ships, aircraft, vehicles etc.

A person who is a defence member or a defence civilian is guilty of an offence if:

- (a) the person gives a certificate, makes or signs a document or makes an entry in a document; and
- (b) the certificate, document or entry relates to any matter affecting the safety or efficiency of a service ship, service aircraft, service vehicle, service missile or service weapon; and

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- (c) the person does not take reasonable care to ensure the accuracy of the certificate, document or entry.

Maximum punishment: Imprisonment for 12 months.

Division 5A—Property offences

Subdivision A—Service property offences

43 Destroying or damaging service property

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct results in the destruction of, or damage to, service property; and
 - (c) the person intends that result.

Maximum punishment: Imprisonment for 5 years.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct results in the destruction of, or damage to, service property; and
 - (c) the person is reckless as to that result.

Maximum punishment: Imprisonment for 2 years.

- (3) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct results in the destruction of, or damage to, service property; and
 - (c) the person is negligent as to that result.

Maximum punishment: Imprisonment for 6 months.

- (4) It is a defence to a charge under subsection (1) if the person proves that he or she had a reasonable excuse for engaging in the relevant conduct.

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

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44 Losing service property

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person loses any property; and
 - (b) the property is, or forms part of, service property issued for the person's use, or entrusted to the person's care, in connection with the person's duties.

Maximum punishment: Imprisonment for 6 months.

- (2) Absolute liability applies to paragraph (1)(a).

Note: For *absolute liability*, see section 6.2 of the *Criminal Code*.

- (3) It is a defence if the person proves that he or she took reasonable steps for the safe-keeping of the lost property.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

45 Unlawful possession of service property

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person is in possession of service property; and
 - (b) the person has no lawful authority for being in possession of the property.

Maximum punishment: Imprisonment for 6 months.

- (2) An offence under subsection (1) is an offence of strict liability.

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

- (3) It is a defence if the person proves that he or she:

- (a) was not aware that he or she was in possession of the property; or
- (b) was not aware that the property was service property; or
- (c) had a reasonable excuse for his or her possession of the property without authority.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

Subdivision B—Possession of property suspected of having been unlawfully obtained

46 Possession of property suspected of having been unlawfully obtained

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person is in possession of property; and
 - (b) the property may reasonably be suspected of having been unlawfully obtained.

Maximum punishment: Imprisonment for 6 months.

- (2) An offence under subsection (1) is an offence of strict liability.

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

- (3) It is a defence if the person proves that he or she:
- (a) was not aware that he or she was in possession of the property; or
 - (b) was not aware of the circumstances by reason of which that property may reasonably be suspected of having been unlawfully obtained; or
 - (c) had a reasonable excuse for his or her possession of the property.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

- (4) It is a defence if the person proves that the property was not unlawfully obtained.

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

Subdivision C—Fraudulent conduct

47 When property belongs to a person

- (1) For the purposes of this Subdivision, property *belongs to* a person if, and only if:
- (a) the person has possession or control of the property; or

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- (b) the person has a proprietary right or interest in the property, other than an equitable interest arising only from:
 - (i) an agreement to transfer an interest; or
 - (ii) an agreement to grant an interest; or
 - (iii) a constructive trust.
- (2) Subsection (1) has effect subject to subsections 134.1(9) and (10) of the *Criminal Code* (which deal with money transfers).

47A Dishonesty

For the purposes of this Subdivision, *dishonest* means:

- (a) dishonest according to the standards of ordinary people; and
- (b) known by the defendant to be dishonest according to the standards of ordinary people.

Note: In the case of the offence of theft, see also section 47D.

47B Determination of dishonesty to be a matter for the trier of fact

In a prosecution for an offence against this Subdivision, the determination of dishonesty is a matter for the trier of fact.

47C Theft

- (1) A person who is a defence member or a defence civilian is guilty of an offence if the person dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property.

Maximum punishment: Imprisonment for 5 years.

- (2) For the purposes of this Act, an offence against subsection (1) is to be known as the offence of theft.

47D Special rules about the meaning of dishonesty

- (1) For the purposes of this Subdivision, a person's appropriation of property belonging to another is taken not to be dishonest if the person appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.

- (2) However, the rule in subsection (1) does not apply if the person appropriating the property held it as trustee or personal representative.
- (3) For the purposes of this Subdivision, a person's appropriation of property belonging to another may be dishonest even if the person or another person is willing to pay for the property.

47E Appropriation of property

- (1) For the purposes of this Subdivision, any assumption of the rights of an owner to ownership, possession or control of property, without the consent of the person to whom it belongs, amounts to an appropriation of the property. This includes, in a case where a person has come by property (innocently or not) without committing theft, any later such assumption of rights without consent by keeping or dealing with it as owner.
- (2) For the purposes of this Subdivision, if property, or a right or interest in property, is, or purports to be, transferred or given to a person acting in good faith, a later assumption by the person of rights which the person had believed himself or herself to be acquiring does not, because of any defect in the transferor's title, amount to an appropriation of the property.

47F Theft of land or things forming part of land

- (1) For the purposes of this Subdivision, a person cannot commit theft of land, except in the following cases:
 - (a) the case where the person appropriates anything forming part of the land by severing it or causing it to be severed;
 - (b) the case where:
 - (i) the person is a trustee or personal representative, or is authorised (by power of attorney, as liquidator of a company or otherwise) to sell or dispose of land belonging to another; and
 - (ii) the person appropriates the land, or anything forming part of it, by dealing with it in breach of the confidence reposed in the person.
- (2) For the purposes of this section, *land* does not include incorporeal hereditaments.

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47G Trust property

- (1) For the purposes of this Subdivision, if property is subject to a trust, the persons to whom the property belongs include any person who has a right to enforce the trust.
- (2) Accordingly, for the purposes of this Subdivision, an intention to defeat the trust is an intention to deprive any such person of the property.

47H Obligation to deal with property in a particular way

For the purposes of this Subdivision, if:

- (a) a person receives property from or on account of another; and
- (b) the person is under a legal obligation to the other to retain and deal with that property or its proceeds in a particular way;

the property or proceeds belong (as against the person) to the other.

47J Property obtained because of fundamental mistake

- (1) For the purposes of this Subdivision, if:
 - (a) a person gets property by another's fundamental mistake; and
 - (b) the person is under a legal obligation to make restoration (in whole or in part) of the property or its proceeds;then, to the extent of that obligation, the property or proceeds belong (as against the person) to the person entitled to restoration.
- (2) For the purposes of this Subdivision, an intention not to make restoration is:
 - (a) an intention to permanently deprive the person so entitled of the property or proceeds; and
 - (b) an appropriation of the property or proceeds without the consent of the person entitled to restoration.
- (3) For the purposes of this section, a *fundamental mistake* is:
 - (a) a mistake about the identity of the person getting the property; or
 - (b) a mistake as to the essential nature of the property; or

(c) a mistake about the amount of any money if the person getting the money is aware of the mistake at the time of getting the money.

(4) In this section:

money includes anything that is equivalent to money. For this purpose, cheques, negotiable instruments and electronic funds transfers are taken to be equivalent to money.

47K Property of a corporation sole

For the purposes of this Subdivision, property of a corporation sole belongs to the corporation despite a vacancy in the corporation.

47L Property belonging to 2 or more persons

If property belongs to 2 or more persons, a reference in this Subdivision to the person to whom the property belongs is a reference to all of those persons.

47M Intention of permanently depriving a person of property

(1) For the purposes of this Subdivision, if:

- (a) a person appropriates property belonging to another without meaning the other permanently to lose the thing itself; and
- (b) the person's intention is to treat the thing as the person's own to dispose of regardless of the other's rights;

the person has the intention of permanently depriving the other of it.

(2) For the purposes of this section, a borrowing or lending of a thing amounts to treating the thing as the borrower's or lender's own to dispose of regardless of another's rights if, and only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.

(3) For the purposes of this section, if:

- (a) a person has possession or control (lawfully or not) of property belonging to another; and
- (b) the person parts with the property under a condition as to its return that the person may not be able to perform; and

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(c) the parting is done for purposes of the person's own and without the other's authority;

the parting is taken to amount to treating the property as the person's own to dispose of regardless of the other's rights.

Note: See also paragraph 47J(2)(a).

47N General deficiency

- (1) For the purposes of this Subdivision, a person may be convicted of theft of all or any part of a general deficiency in money even though the deficiency is made up of any number of particular sums of money that were appropriated over a period of time.
- (2) For the purposes of this Subdivision, a person may be convicted of theft of all or any part of a general deficiency in property other than money even though the deficiency is made up of any number of particular items of property that were appropriated over a period of time.

47P Receiving

- (1) A person who is a defence member or a defence civilian is guilty of an offence if the person dishonestly receives stolen property, knowing or believing the property to be stolen.

Maximum punishment: Imprisonment for 5 years.

- (2) For the purposes of this Act, an offence against subsection (1) is to be known as the offence of receiving.

Stolen property

- (3) For the purposes of this section, property is *stolen property* if, and only if:
 - (a) it is original stolen property (as defined by subsection (5)); or
 - (b) it is previously received property (as defined by subsection (6)); or
 - (c) it is tainted property (as defined by subsection (8)).

This subsection has effect subject to subsections (4) and (7).

- (4) For the purposes of this section, *stolen property* does not include land obtained in the course of an offence against a law of the

Commonwealth, a State or a Territory that involves obtaining property by deception (however described).

Original stolen property

- (5) For the purposes of this section, ***original stolen property*** is:
- (a) property, or a part of property, that:
 - (i) was appropriated in the course of theft (whether or not the property, or the part of the property, is in the state it was in when it was so appropriated); and
 - (ii) is in the possession or custody of the person who so appropriated the property; or
 - (b) property, or a part of property, that:
 - (i) was otherwise unlawfully obtained (whether or not the property, or the part of the property, is in the state it was in when it was so obtained); and
 - (ii) is in the possession or custody of the person who so obtained the property or the person for whom the property was so obtained.

Previously received property

- (6) For the purposes of this section, ***previously received property*** is property that:
- (a) was received in the course of an offence against subsection (1); and
 - (b) is in the possession or custody of the person who received the property in the course of that offence.
- (7) For the purposes of this section, property ceases to be original stolen property or previously received property:
- (a) after the property is restored:
 - (i) to the person from whom it was appropriated or obtained; or
 - (ii) to other lawful possession or custody; or
 - (b) after:
 - (i) the person from whom the property was appropriated or obtained ceases to have any right to restitution in respect of the property; or

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- (ii) a person claiming through the person from whom the property was appropriated or obtained ceases to have any right to restitution in respect of the property.

Tainted property

- (8) For the purposes of this section, ***tainted property*** is property that:
 - (a) is (in whole or in part) the proceeds of sale of, or property exchanged for:
 - (i) original stolen property; or
 - (ii) previously received property; and
 - (b) if subparagraph (a)(i) applies—is in the possession or custody of:
 - (i) if the original stolen property was appropriated in the course of theft (whether in contravention of this Act or of another law)—the person who so appropriated the original stolen property; or
 - (ii) if the original stolen property was otherwise unlawfully obtained—the person who so obtained the property or the person for whom the property was so obtained; and
 - (c) if subparagraph (a)(ii) applies—is in the possession or custody of the person who received the previously received property in the course of an offence against subsection (1).

Money transfers

- (9) For the purposes of this section, if, as a result of the application of subsection 134.1(9) or (10) of the *Criminal Code*, an amount credited to an account held by a person is property obtained in the course of an offence against section 134.1 of the *Criminal Code*:
 - (a) while the whole or any part of the amount remains credited to the account, the property is taken to be in the possession of the person; and
 - (b) if the person fails to take such steps as are reasonable in the circumstances to secure that the credit is cancelled—the person is taken to have received the property; and
 - (c) subsection (7) of this section does not apply to the property.

Note: Subsections 134.1(9) and (10) of the *Criminal Code* deal with money transfers.

Receiving property stolen before commencement

- (10) For the purposes of this section:
- (a) it is to be assumed that section 47C of this Act had been in force at all times before the commencement of this section; and
 - (b) property that was appropriated or obtained at a time before the commencement of this section does not become ***original stolen property*** unless the property was appropriated or obtained in circumstances that (apart from paragraph (a)) amounted to an offence against a law of the Commonwealth, a State or a Territory in force at that time.

Definition

- (11) In this section:

account has the same meaning as in section 133.1 of the *Criminal Code*.

Subdivision D—Looting

48 Looting

- (1) A person who is a defence member or a defence civilian is guilty of an offence if, in the course of operations against the enemy, or in the course of operations undertaken by the Defence Force for the preservation of law and order or otherwise in aid of the civil authorities, the person:
- (a) takes any property that has been left exposed or unprotected; or
 - (b) takes any property from the body of a person who has been killed or from a person who has been wounded, injured or captured; or
 - (c) takes any vehicle, equipment or stores captured from or abandoned by the enemy.

Maximum punishment: Imprisonment for 5 years.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person receives property; and

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- (b) the property has been taken in circumstances constituting an offence against subsection (1); and
- (c) the person knows of those circumstances.

Maximum punishment: Imprisonment for 5 years.

- (3) It is a defence to a charge under this section if the person proves that he or she took or received the property for the service of the Commonwealth or had other reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

Division 6—Arrest, custody and proceedings before service tribunals

49 Refusing to submit to arrest

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person is ordered into arrest; and
 - (b) the order is lawful; and
 - (c) the person disobeys the order.

Maximum punishment: Imprisonment for 12 months.

- (2) Strict liability applies to paragraphs (1)(b) and (c).

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

- (3) It is a defence if the person proves that he or she neither knew, nor could reasonably be expected to have known, that the other person was acting lawfully.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

49A Assault against arresting person

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person assaults another person; and
 - (b) the other person:
 - (i) has a power of arrest over him or her under section 89 and is arresting, or attempting to arrest, him or her in the exercise of that power; or
 - (ii) is carrying out, or attempting to carry out, an order for his or her arrest under section 89; or
 - (iii) is arresting, or attempting to arrest, him or her under a warrant under section 88 or 90; or
 - (iv) has him or her in custody.

Maximum punishment: Imprisonment for 12 months.

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- (2) In paragraph (1)(b), strict liability applies to the physical element of circumstance, that the conduct mentioned in that paragraph is lawful.

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

- (3) It is a defence if the person proves that he or she neither knew, nor could reasonably be expected to have known, that the other person was acting lawfully.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

50 Delaying or denying justice

- (1) A defence member is guilty of an offence if:
- (a) a person is in custody on a charge; and
 - (b) the member is required by or under this Act to take action to have the charge dealt with in accordance with this Act; and
 - (c) the member does not take the action.

Maximum punishment: Imprisonment for 12 months.

- (2) A defence member is guilty of an offence if:
- (a) a person in custody is entitled to be released; and
 - (b) the member is required by or under this Act to take action to release, or to order the release of, the person; and
 - (c) the member does not take the action.

Maximum punishment: Imprisonment for 12 months.

- (3) It is a defence to a charge under this section if the member proves that he or she had a reasonable excuse for not taking the required action.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

51 Escaping from custody

A person who is a defence member or a defence civilian is guilty of an offence if the person escapes from custody.

Maximum punishment: Imprisonment for 2 years.

52 Giving false evidence

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person has been sworn or affirmed as a witness in proceedings before a service tribunal; and
 - (b) the person makes a false statement in those proceedings; and
 - (c) the person knows the statement to be false or does not believe it to be true; and
 - (d) the statement is material in those proceedings.

Maximum punishment: Imprisonment for 5 years.

- (2) A person is not liable to be convicted of an offence under this section only on the evidence of one witness as to the falsity of the statement alleged to be false.

53 Contempt of service tribunal

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person has been served, as provided for by the rules of procedure, with a summons to appear, or has been ordered to appear, as a witness before a service tribunal; and
 - (b) the person:
 - (i) fails to appear as required by the summons or order; or
 - (ii) fails to appear and report himself or herself from day to day and has not been excused or released by the tribunal from further attendance.

Maximum punishment: Imprisonment for 6 months.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if the person is appearing as a witness before a service tribunal and the person:
- (a) refuses or fails to take an oath or make an affirmation when lawfully required to do so; or
 - (b) refuses or fails to answer a question that the person is lawfully required to answer by the tribunal; or
 - (c) refuses or fails to produce a document that the person was required to produce by a summons served on the person, as provided for by the rules of procedure, or by an order.

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Maximum punishment: Imprisonment for 6 months.

- (3) It is a defence to a charge under subsection (1) or (2) if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

- (4) A person who is a defence member or a defence civilian is guilty of an offence if the person:
- (a) insults a member of a court martial, a judge advocate, a Defence Force magistrate or a summary authority in or in relation to the exercise of his or her powers or functions as such a member, judge advocate, magistrate or authority; or
 - (b) interrupts the proceedings of a service tribunal; or
 - (c) creates a disturbance or takes part in creating or continuing a disturbance in or near a place where a service tribunal is sitting; or
 - (d) engages in any other conduct that would, if a service tribunal were a court of record, constitute a contempt of that court.

Maximum punishment: Imprisonment for 6 months.

- (5) If an offence under subsection (4) is committed by a person in relation to a service tribunal that is a court martial or a Defence Force magistrate, during proceedings before the tribunal, the tribunal, if it considers it expedient to do so, may then and there order that the person be taken into custody and call on the person to show cause why the person should not be convicted of the offence.
- (6) If a service tribunal convicts a person under subsection (5), the maximum punishment for the offence is detention for 21 days.
- (7) An offence under this section is an offence of strict liability.

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

54 Unlawful release etc. of person in custody

- (1) A defence member is guilty of an offence if:
- (a) a person has been delivered into a member's custody or the member has a duty to guard a person; and

(b) by act or omission, the member intentionally allows the person to escape.

Maximum punishment: Imprisonment for 2 years.

- (2) A defence member is guilty of an offence if:
- (a) a person has been delivered into a member's custody or the member has a duty to guard a person; and
 - (b) the member releases the person; and
 - (c) the member has no authority to release the person.

Maximum punishment: Imprisonment for 2 years.

- (3) A person who is a defence member or a defence civilian is guilty of an offence if the person intentionally facilitates the escape of a person from custody or a place of confinement.

Maximum punishment: Imprisonment for 12 months.

- (4) A person who is a defence member or a defence civilian is guilty of an offence if, with intent to facilitate an escape from a place of confinement of another person, the first-mentioned person conveys anything into that place.

Maximum punishment: Imprisonment for 12 months.

Division 6A—Custodial offences

54A Custodial offences

- (1) A detainee who:
 - (a) makes any unnecessary noise;
 - (b) commits a nuisance;
 - (c) is idle, careless or negligent at work;
 - (d) without lawful authority, converses or otherwise communicates with another person (whether or not a detainee);
 - (e) without lawful authority, gives any thing to, or receives any thing from, another person (whether or not a detainee);
 - (f) without lawful authority, has in his or her possession any thing; or
 - (g) without lawful authority, enters or leaves his or her cell;is guilty of an offence.
- (2) A detainee who, while on leave of absence from a detention centre, refuses or fails to comply with a condition of the grant of the leave of absence is guilty of an offence.
- (2A) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (3) It is a defence if a person charged with a custodial offence proves that he or she had a reasonable excuse for engaging in the behaviour to which the charge relates.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.
- (4) The maximum punishment for a custodial offence is segregated confinement for 10 days.
- (5) Subsection (4) has effect notwithstanding anything contained in section 64.
- (6) If a person (other than a detainee) commits an offence against subsection (1) or (2) of this section by virtue of section 11.2 of the *Criminal Code*, that section has effect as if the maximum

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punishment for an offence against subsection (1) or (2) of this section were imprisonment for 10 days.

Division 7—Miscellaneous offences

55 Falsifying service documents

- (1) A person who is a defence member or a defence civilian is guilty of an offence if, with intent to make a gain for the person or another person or with intent to deceive, or to cause loss, damage or injury to, another person:
- (a) the person makes or signs a service document that is false in a material particular; or
 - (b) the person makes in a service document an entry that is false in a material particular; or
 - (c) the person alters a service document so that the document is false in a material particular; or
 - (d) the person engages in conduct that results in the suppression of, the defacing of, the making away with or the destruction of a service document, or a part of a service document, that it is the person's duty to preserve or produce; or
 - (e) the person does not make an entry in a service document that it is the person's duty to make so that the document is rendered false in a material particular.

Maximum punishment: Imprisonment for 2 years.

- (2) In subsection (1):

service document means a document belonging or pertaining to, or connected with, the Defence Force.

56 False statement in relation to application for a benefit

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person makes a statement, (whether orally, in a document or in any other way); and
 - (b) the statement:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the statement is misleading; and

- (c) the person knows of the matter mentioned in paragraph (b);
and
- (d) the statement is made in, in connection with, or in support of,
an application for:
 - (i) a grant, payment or allotment of money or an
allowance; or
 - (ii) leave of absence; or
 - (iii) any other benefit or advantage;
for the person or another person; and
- (e) the application arises out of, or is based on, membership of,
or service in or in connection with, the Defence Force.

Maximum punishment: Imprisonment for 12 months.

- (2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i)
if the statement is not false or misleading in a material particular.

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

- (3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii)
if the statement did not omit any matter or thing without which the
statement is misleading in a material particular.

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

- (4) A person who is a defence member or a defence civilian is guilty
of an offence if:
 - (a) the person makes a statement (whether orally, in a document
or in any other way); and
 - (b) the statement:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the statement is
misleading; and
 - (c) the person is reckless as to the matter mentioned in
paragraph (b); and
 - (d) the statement is made in, in connection with, or in support of,
an application for:
 - (i) a grant, payment or allotment of money or an
allowance; or
 - (ii) leave of absence; or
 - (iii) any other benefit or advantage;

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for the person or another person; and

- (e) the application arises out of, or is based on, membership of, or service in or in connection with, the Defence Force.

Maximum punishment: Imprisonment for 6 months.

- (5) Subsection (4) does not apply as a result of subparagraph (4)(b)(i) if the statement is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3) of the *Criminal Code*.

- (6) Subsection (4) does not apply as a result of subparagraph (4)(b)(ii) if the statement did not omit any matter or thing without which the statement is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6). See subsection 13.3(3) of the *Criminal Code*.

- (7) In this section:

benefit includes any advantage and is not limited to property.

57 False statement in relation to appointment or enlistment

- (1) A person is guilty of an offence if, in or in connection with an application for the person's appointment to or enlistment in the Defence Force:

- (a) the person:

(i) is required to answer a question set out in a document required to be completed in relation to the person's appointment or enlistment; and

(ii) with intent to deceive, makes a false answer to the question; or

- (b) with intent to deceive, the person gives any false information or document in relation to the person's appointment or enlistment; or

- (c) with intent to deceive, the person does not disclose, if and when lawfully required to do so, particulars of any prior service in the Defence Force;

and as a result of that application, the person is appointed to or enlisted in the Defence Force.

Maximum punishment: Imprisonment for 3 months.

- (2) A defence member is guilty of an offence if:
- (a) the member:
 - (i) is required to answer a question set out in a document required to be completed in relation to the person's appointment or enlistment; and
 - (ii) with intent to deceive, makes a false answer to the question; or
 - (b) with intent to deceive, the member gives any false information or document in relation to the person's appointment or enlistment; or
 - (c) with intent to deceive, the member does not disclose, if and when lawfully required to do so, particulars of any prior service in the Defence Force.

Maximum punishment: Imprisonment for 3 months.

58 Unauthorised disclosure of information

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person discloses information; and
 - (b) there is no lawful authority for the disclosure; and
 - (c) the disclosure is likely to be prejudicial to the security or defence of Australia.

Maximum punishment: Imprisonment for 2 years.

- (2) Strict liability applies to paragraph (1)(c).

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

- (3) It is a defence if the person proves that he or she neither knew, nor could reasonably be expected to have known, that the disclosure of the information was likely to be prejudicial to the security or defence of Australia.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

59 Dealing in or possession of narcotic goods

- (1) A person who is a defence member or a defence civilian is guilty of an offence if the person:
- (a) is outside Australia; and

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- (b) sells, or deals or traffics in, narcotic goods; and
- (c) knows the nature of the goods.

Maximum punishment: Imprisonment for 10 years.

- (2) It is a defence to a charge under subsection (1) if the person proves that he or she had lawful authority for the conduct mentioned in paragraph (1)(b).

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

- (3) A person who is a defence member or a defence civilian is guilty of an offence if the person:
- (a) is outside Australia; and
 - (b) is in possession of narcotic goods; and
 - (c) knows that he or she possesses those goods and knows their nature.

Maximum punishment:

- (d) if the offence is committed in relation to:
 - (i) a substance other than cannabis; or
 - (ii) a quantity of cannabis exceeding 25 grams in mass; imprisonment for 2 years; or
 - (e) if the convicted person is a member of the Defence Force and the offence is committed in relation to a quantity of cannabis not exceeding 25 grams in mass:
 - (i) in the case of a first offence—a fine of the amount of the member's pay for 14 days; or
 - (ii) in the case of a second or later offence—dismissal from the Defence Force; or
 - (f) in any other case—a fine of \$100.
- (4) It is a defence to a charge under subsection (3) if the person proves that he or she had lawful authority for possessing the narcotic goods.

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

- (5) A person who is a defence member or a defence civilian is guilty of an offence if the person:
- (a) is outside Australia; and

- (b) administers to himself or herself narcotic goods other than cannabis.

Maximum punishment: Imprisonment for 2 years.

- (6) A person who is a defence member or a defence civilian is guilty of an offence if the person uses cannabis, whether within or outside Australia.

Maximum punishment:

- (a) if the convicted person is a member of the Defence Force:
- (i) in the case of a first offence—a fine of the amount of the member's pay for 14 days; or
 - (ii) in the case of a second or later offence—dismissal from the Defence Force; or
- (b) in any other case—a fine of \$100.
- (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 cannabis not exceeding 25 grams in mass; and
 - (c) knows that he or she possesses the cannabis and knows its nature.

Maximum punishment:

- (d) in the case of a first offence—a fine of the amount of the member's pay for 14 days; or
 - (e) in the case of a second or later offence—dismissal from the Defence Force.
- (8) It is a defence to a charge under subsection (7) if the member proves that he or she had lawful authority for possessing the cannabis.

Note: The defendant bears a legal burden in relation to the matter in subsection (8). See section 13.4 of the *Criminal Code*.

- (9) In this section:

cannabis means a cannabis plant, whether living or dead, and includes, in any form, any flower or fruiting tops, leaves, seeds, stalks or any other part of a cannabis plant or cannabis plants and any mixture of parts of a cannabis plant or cannabis plants, but does not include cannabis resin or cannabis fibre.

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narcotic goods has the same meaning as in the *Customs Act 1901*.

60 Prejudicial conduct

- (1) A defence member is guilty of an offence if the member engages in conduct that is likely to prejudice the discipline of, or bring discredit on, the Defence Force.

Maximum punishment: Imprisonment for 3 months.

- (2) An offence under this section is an offence of strict liability.

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

- (3) It is a defence if the member proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

Division 8—Offences based on Territory offences

61 Offences based on Territory offences

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
 - (a) the person engages in conduct in the Jervis Bay Territory;
and
 - (b) engaging in that conduct is a Territory offence.
- (2) A person who is a defence member or a defence civilian is guilty of an offence if:
 - (a) the person engages in conduct in a public place outside the Jervis Bay Territory; and
 - (b) engaging in that conduct would be a Territory offence, if it took place in a public place in the Jervis Bay Territory.
- (3) A person who is a defence member or a defence civilian is guilty of an offence if:
 - (a) the person engages in conduct outside the Jervis Bay Territory (whether or not in a public place); and
 - (b) engaging in that conduct would be a Territory offence, if it took place in the Jervis Bay Territory (whether or not in a public place).
- (4) The maximum punishment for an offence against this section is:
 - (a) if the relevant Territory offence is punishable by a fixed punishment—that fixed punishment; or
 - (b) otherwise—a punishment that is not more severe than the maximum punishment for the relevant Territory offence.
- (5) Strict liability applies to paragraphs (1)(b), (2)(b) and (3)(b).

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

- (6) To avoid doubt, section 10 of this Act does not have the effect that Chapter 2 of the *Criminal Code* applies to the law in force in Jervis Bay, for the purpose of determining whether an offence against this section has been committed.

Note: Section 10 of this Act applies Chapter 2 of the *Criminal Code* to the content of this section, but not to the content of the law in force in

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Division 8 Offences based on Territory offences

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Jervis Bay. To determine, for the purposes of this section, whether Chapter 2 of the Code applies to Jervis Bay law, it is necessary to consult Jervis Bay law.

Division 9—Miscellaneous

62 Commanding or ordering a service offence to be committed

- (1) A defence member is guilty of an offence if:
- (a) the member commands or orders a person to engage in conduct; and
 - (b) the conduct would constitute the commission of a service offence.

Maximum punishment:

- (c) if the last-mentioned offence is punishable by a fixed punishment—that fixed punishment; or
 - (d) otherwise—a punishment that is not more severe than the maximum punishment for the last-mentioned offence.
- (2) Strict liability applies to paragraph (1)(b).

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

63 Consent for proceedings for certain offences

- (1) Except with the consent of the Director of Public Prosecutions, proceedings under this Act shall not be instituted for:
- (a) an offence against section 61 that is alleged to have been committed in Australia and in relation to which the relevant Territory offence is:
 - (i) treason, murder, manslaughter or bigamy;
 - (ia) an offence against section 51, 52, 53, 54 or 55 of the *Crimes Act 1900* of the Australian Capital Territory, in its application to the Jervis Bay Territory, as amended or affected by Ordinances in force in that Territory;
 - (ii) an offence in respect of which proceedings could not be brought in the Jervis Bay Territory without the consent of a Minister, the Director of Public Prosecutions or a person authorised by the Director of Public Prosecutions to give consent; or
 - (iii) an offence prescribed for the purposes of this section; or

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- (b) an offence against section 61 that is based on an ancillary Territory offence in relation to a Territory offence referred to in paragraph (a).
- (2) Notwithstanding that a consent has not been given as required by this section to the institution of proceedings against a person for an offence:
- (a) a warrant for the arrest of the person for the offence may be issued in accordance with Part V;
 - (b) the person may be arrested for the offence, and kept in custody, or otherwise dealt with, in accordance with Part V; and
 - (c) the person may be charged with the offence in accordance with Part V;
- but no further steps in the proceedings shall be taken until such consent is obtained.

64 Punishment for ancillary offences

Where a service offence:

- (a) is an ancillary offence in relation to another offence (other than an offence against section 61); and
 - (b) is punishable otherwise than by a fixed punishment;
- then, notwithstanding anything contained in the *Crimes Act 1914*, the punishment for that service offence is a punishment not more severe than the maximum punishment for that offence.

65 Maximum punishment for old system offence

The maximum punishment for an old system offence is the maximum punishment (in this section referred to as *the old system punishment*) provided for that offence by previous service law or, if the old system punishment is specified in column 1 of Schedule 1, the punishment that is specified in column 2 of that Schedule opposite to the reference to the old system punishment.

Part IV—Punishments and orders

66 Punishment or order to be in respect of a particular conviction

- (1) Each punishment imposed, and each order made, by a service tribunal shall be imposed or made, as the case may be, in respect of a particular conviction and no other conviction.
- (2) In this section, *order* means a restitution order, a reparation order or an order under subsection 75(1).

67 Authorised punishments

- (1) A court martial or a Defence Force magistrate shall not impose a punishment in respect of a conviction except in accordance with this Part and Schedule 2.
- (2) A summary authority shall not impose a punishment in respect of a conviction except in accordance with this Part, Schedule 3 and Schedule 3A.

68 Scale of punishments

- (1) Subject to sections 68A and 68C, the only punishments that may be imposed by a service tribunal on a convicted person are, in decreasing order of severity, as follows:
 - (a) imprisonment for life;
 - (b) imprisonment for a specific period;
 - (c) dismissal from the Defence Force;
 - (d) detention for a period not exceeding 2 years;
 - (e) reduction in rank;
 - (f) forfeiture of service for the purposes of promotion;
 - (g) forfeiture of seniority;
 - (h) fine, being a fine not exceeding:
 - (i) where the convicted person is a member of the Defence Force—the amount of his or her pay for 28 days; or
 - (ii) in any other case—\$500;
 - (j) severe reprimand;

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- (k) restriction of privileges for a period not exceeding 14 days;
 - (m) stoppage of leave for a period not exceeding 21 days;
 - (n) extra duties for a period not exceeding 7 days;
 - (na) extra drill for not more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days;
 - (p) reprimand.
- (2) 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 member of the Defence Force, that are to flow from the imposition by a service tribunal on that member of any of the following punishments:
- (a) reduction in rank;
 - (b) forfeiture of service for the purposes of promotion;
 - (c) forfeiture of seniority;
 - (d) restriction of privileges for a period;
 - (e) stoppage of leave for a period;
 - (f) extra duties for a period;
 - (g) extra drill for a period.
- (3) The commanding officer of a convicted person subject to a punishment specified in paragraph (2)(d) or (f) may moderate the consequences of that punishment in relation to the convicted person 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.
- (4) Notwithstanding that a convicted person is subject to a punishment of stoppage of leave, the commanding officer of the person may, if he or she is satisfied that it is appropriate to do so, grant leave of absence to the person.

68A Scale of custodial punishments

- (1) The only punishments that may be imposed by a service tribunal on a person convicted of a custodial offence are, in decreasing order of severity, as follows:
- (a) segregated confinement for a period not exceeding 10 days;
 - (b) confinement to cell for a period not exceeding 10 days;
 - (c) extra drill for a period not exceeding 6 days;

- (d) restriction of custodial privileges for a period not exceeding 14 days.
- (2) 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 detainee, that are to flow from the imposition by a service tribunal on that detainee of any custodial punishment.
- (3) The officer in charge of a detention centre in which a detainee subject to a custodial punishment is undergoing a punishment of detention may moderate the consequences of the custodial punishment in relation to the detainee in such manner as the officer thinks 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.

68C Custodial punishments may be imposed for certain non-custodial service offences

- (1) Subject to subsection 71(4), where a person is convicted of a service offence to which this subsection applies, a service tribunal may, in lieu of imposing a punishment of a kind referred to in subsection 68(1), impose a custodial punishment on the person in respect of the conviction.
- (2) Subsection (1) applies to a service offence that:
 - (a) is:
 - (i) an offence against section 23, 25, 26, 27, 29, 33, 43, 51 or 60; or
 - (ii) an offence that is an ancillary offence in relation to an offence referred to in subparagraph (i); and
 - (b) was committed by a person at a time when the person was a detainee.

69 Punishment not to be more severe than maximum punishment

The punishment that may be imposed by a service tribunal upon a convicted person in respect of a service offence is a punishment that is not more severe than the maximum punishment for that offence.

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70 Sentencing principles

- (1) A service tribunal, in determining what action under this Part should be taken in relation to a convicted person, shall have regard to:
 - (a) the principles of sentencing applied by the civil courts, from time to time; and
 - (b) the need to maintain discipline in the Defence Force.
- (2) In so far as the principles referred to in paragraph (1)(a) require the taking into account of any mitigating or aggravating circumstances, the circumstances to be so taken into account in relation to a convicted person shall include:
 - (a) the person's rank, age and maturity;
 - (b) the person's physical and mental condition;
 - (c) the person's personal history;
 - (d) the absence or existence in the person's case of previous convictions for service offences, civil court offences and overseas offences;
 - (e) if the service offence involves a victim, the person's relationship with the victim;
 - (f) the person's behaviour before, during and after the commission of the service offence; and
 - (g) any consequential effects of the person's conviction or proposed punishment.
- (3) Where a service tribunal has, in accordance with subsection (1), determined to impose a fine on a convicted person, the tribunal, in fixing the amount of the fine, shall have regard to the following additional factors:
 - (a) the means of the person; and
 - (b) the effect of the fine on the person's ability to meet any reparation orders that the tribunal may wish to make.
- (4) For the purposes of subsection (1) the principles referred to in paragraph (a) of that subsection shall be deemed to include:
 - (a) the principle that the period (if any) that a convicted person has spent in custody before action is taken under this Part by a service tribunal in relation to the person should be taken into account by the service tribunal in determining the length

of the period of any punishment of imprisonment or detention that it imposes on the person; and

- (b) the principle that, where the offence of which the convicted person is convicted was an offence against section 11.1 of the *Criminal Code* and the attempt that constitutes the offence was voluntarily abandoned, the fact and the circumstances of that abandonment should be taken into account in mitigation of any punishment to be imposed in respect of the offence.
- (5) In the application of paragraph (2)(d) to a convicted person who is not a detainee, a conviction of the person by a summary authority that resulted in the imposition of a custodial punishment on the person shall be disregarded.

71 Restrictions on power to impose punishments

- (1) A service tribunal shall not impose a punishment of imprisonment on a member of the Defence Force whom it has convicted of a service offence unless the tribunal also imposes on that member in respect of that conviction the punishment of dismissal from the Defence Force.
- (1A) A service tribunal must not impose on a non-commissioned officer whom it has convicted of a service offence a punishment of detention unless the tribunal also imposes the punishment of reduction in rank to a rank below non-commissioned rank.
- (2) A service tribunal shall not impose a punishment of detention on a member of the Defence Force whom it has convicted of a service offence if the member, at the time of conviction, had not attained the age of 18 years.
- (3) A service tribunal shall not impose a punishment of detention on a member of the Defence Force whom it has convicted of a service offence if it also imposes the punishment of dismissal from the Defence Force in respect of that conviction or another conviction.
- (4) A service tribunal shall not impose a custodial punishment on a person who is not a detainee.
- (5) A custodial punishment imposed on a detainee shall not extend beyond the period during which the detainee is undergoing a punishment of detention in a detention centre.

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72 Application of certain provisions of *Crimes Act 1914*

- (1) Sections 16, 19A to 19AZD (other than section 19AH), 20, 20A and 20AA of the *Crimes Act 1914* apply to a service tribunal that imposes a punishment of imprisonment for a specific period on a convicted person as if:
 - (a) the service tribunal were a court exercising jurisdiction in or in relation to the Jervis Bay Territory; and
 - (b) the person were convicted in that Territory.
- (2) The fixing of a non-parole period by a service tribunal under the provisions of the *Crimes Act 1914* as applied by virtue of subsection (1) to the service tribunal shall be taken, for the purposes of this Act, to be an order fixing that non-parole period made by the service tribunal under this Part.

73 Imposition of fines

- (1) A service tribunal that imposes a punishment of a fine shall specify in the decision imposing the punishment the amount of money that is the amount of the fine.
- (2) Where a service tribunal convicts a person of 2 or more service offences and imposes 2 or more punishments, being or including fines, the sum of the amounts of those fines shall not exceed the amount of the most severe fine that the tribunal could impose on the person for any one of the service offences of which the person has been so convicted.

74 Concurrent or cumulative punishments

- (1) In this section, *prescribed punishment* means a punishment of any of the following kinds:
 - (a) imprisonment for a specific period;
 - (b) detention;
 - (c) restriction of privileges;
 - (d) stoppage of leave;
 - (e) extra duties;
 - (f) segregated confinement;
 - (g) confinement to cell;
 - (h) extra drill;

- (j) restriction of custodial privileges.
- (2) Subject to this section, where:
- (a) a service tribunal convicts a person of 2 or more service offences and imposes 2 or more prescribed punishments;
 - (b) a service tribunal convicts of a service offence a person who is already subject to a prescribed punishment (not being a punishment that is suspended) and, on that conviction, imposes another prescribed punishment;
 - (c) a service tribunal convicts of a service offence a person who is already subject to a prescribed punishment (being a punishment that is suspended) and, on that conviction, revokes that suspension and also imposes another prescribed punishment; or
 - (d) a service tribunal convicts a person of a service offence that was committed during the period to which an undertaking given by the person in accordance with subsection 75(2) relates and, on that conviction, imposes:
 - (i) a prescribed punishment for the service offence to which the conviction relates; and
 - (ii) a prescribed punishment for the service offence in relation to which the undertaking was given;
- the punishments so imposed (including, where applicable, the punishment referred to in paragraph (c) the suspension of which is revoked) shall be concurrent.
- (3) Where a service tribunal imposes a punishment of imprisonment for a specific period for a service offence and also a punishment of imprisonment for life for another service offence, the punishments shall be concurrent.
- (4) Subject to subsection (5), where:
- (a) a service tribunal convicts a person of 2 or more service offences and imposes 2 or more prescribed punishments that are of the same kind;
 - (b) a service tribunal convicts of a service offence a person who is already subject to a prescribed punishment (not being a punishment that is suspended) and, on that conviction, imposes another prescribed punishment that is of the same kind as the prescribed punishment to which the person is already subject;

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- (c) a service tribunal convicts of a service offence a person who is already subject to a prescribed punishment (being a punishment that is suspended) and, on that conviction, revokes that suspension and also imposes another prescribed punishment that is of the same kind as the suspended punishment; or
- (d) a service tribunal convicts a person of a service offence that was committed during the period to which an undertaking given by the person in accordance with subsection 75(2) relates and, on that conviction, imposes:
 - (i) a prescribed punishment for the service offence to which the conviction relates; and
 - (ii) a prescribed punishment that is of the same kind as the prescribed punishment referred to in subparagraph (i) for the service offence in relation to which the undertaking was given;

the tribunal may order that all or any of the punishments so imposed (including, where applicable, the punishment referred to in paragraph (c) the suspension of which is revoked) shall be cumulative.

(4A) Subject to this section, where:

- (a) a service tribunal convicts of a service offence a person who is already subject to a prescribed punishment (being a punishment that is suspended) and, on that conviction:
 - (i) recommends to a reviewing authority, under subsection 80(3), that the suspension be revoked by the reviewing authority; and
 - (ii) imposes another prescribed punishment; and
- (b) the reviewing authority revokes the suspension under subsection 80(4);

the punishments so imposed (including the punishment the suspension of which is revoked) shall be concurrent.

(4B) Subject to subsection (5), where:

- (a) a service tribunal convicts of a service offence a person who is already subject to a prescribed punishment (being a punishment that is suspended) and, on that conviction:
 - (i) recommends to a reviewing authority, under subsection 80(3), that the suspension be revoked by the reviewing authority;

- (ii) imposes another prescribed punishment that is of the same kind as the suspended punishment; and
 - (iii) recommends to the reviewing authority that the punishments be made cumulative; and
 - (b) the reviewing authority revokes the suspension under subsection 80(4);
the reviewing authority may order that the punishments so imposed (including the punishment the suspension of which is revoked) shall be cumulative.
- (5) A service tribunal or a reviewing authority that has revoked a suspension of a punishment on the recommendation of a service tribunal shall not order that prescribed punishments shall 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 tribunal 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 tribunal.
- (6) Where:
- (a) a person is convicted by a service tribunal of a service offence committed by the person while serving a punishment of detention; and
 - (b) the service tribunal imposes on the person for that service offence a punishment of detention;
- that last-mentioned punishment shall commence at the expiration of the period of detention that the person was serving when the offence was committed.

75 Conviction without punishment

- (1) Instead of imposing a punishment on a convicted person, a service tribunal may make an order that the conviction be recorded as a conviction without punishment.
- (2) As a condition of making an order under subsection (1), a service tribunal may require the convicted person to give an undertaking that he or she will be of good behaviour for a period of 12 months.

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76 Breach of undertaking to be of good behaviour

- (1) Where:
- (a) a person has, in accordance with subsection 75(2), given an undertaking that he or she will be of good behaviour for a period of 12 months; and
 - (b) a service tribunal convicts the person of a service offence that was committed during that period;
- the tribunal may, subject to section 131, if it is satisfied that, by reason of the person's commission of that offence, the person has failed to be of good behaviour, take action under this Part in relation to the person for the service offence in relation to which that undertaking was given.
- (2) A service tribunal, before taking action under subsection (1), shall hear evidence relevant to the determination of what action should be taken.

77 Taking other offences into consideration

- (1) Where a convicted person requests a court martial or a Defence Force magistrate to take into consideration, for the purposes of this Part, any other service offence:
- (a) that is similar to the service offence of which the person has been convicted;
 - (b) that the tribunal has jurisdiction to try; and
 - (c) that the person admits having committed;
- the court martial or the Defence Force magistrate, with the consent of the prosecution, may take the other service offence into consideration.
- (2) A court martial or a Defence Force magistrate shall not impose a separate punishment or make a separate order under subsection 75(1) in respect of a service offence that it has taken into consideration under subsection (1).
- (3) Where:
- (a) a court martial or a Defence Force magistrate does not take a service offence into consideration under subsection (1) by reason of:
 - (i) the withholding of consent by the prosecution; or
 - (ii) the rejection of the convicted person's request; or

- (b) a reviewing authority, under subsection 162(2), annuls the taking into consideration by a court martial or a Defence Force magistrate of a service offence;

an admission under and for the purposes of paragraph (1)(c) in relation to that service offence is not admissible as evidence in:

- (c) any other proceeding before a service tribunal in respect of that service offence; or
- (d) any proceeding in a civil court in respect of a civil court offence that is substantially the same offence as that service offence.

78 Suspension of detention

- (1) Subject to this section, a service tribunal that imposes a punishment of detention may make an order suspending that punishment.
- (2) Where a service tribunal imposes on a person 2 or more punishments of detention in respect of 2 or more service offences, the service tribunal shall not make an order suspending any of those punishments unless it also makes an order suspending the other punishment or the other punishments.
- (3) Where a service tribunal makes an order suspending a punishment of detention, the punishment does not begin, and shall not be put into execution, while the suspension remains in force.

79 Suspension of fines

- (1) A service tribunal that imposes on a member of the Defence Force a punishment of a fine may make an order suspending the whole or a part of that punishment.
- (2) A service tribunal that imposes on a person who is not a member of the Defence Force a punishment of a fine of an amount not less than \$100 may make an order suspending the whole or a part of that punishment.
- (3) Where a service tribunal makes an order suspending a fine in whole or in part, the fine, or such part of the fine as is suspended, does not take effect while the suspension remains in force.

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80 Revocation of suspension of punishment

- (1) Subject to subsection (2), where a person convicted of a service offence by a service tribunal is already subject to a punishment that is suspended, the tribunal may revoke the suspension and, in that event, the punishment that was suspended shall, subject to subsections 172(1) and (2), take effect as if it had been imposed at the time of the revocation.
- (2) A service tribunal shall not revoke the suspension of a punishment if the tribunal would not have had power to impose the punishment if it had convicted the person of the service offence for which the punishment was imposed.
- (3) Where, by virtue of subsection (2), a service tribunal is not empowered to revoke a suspension that it considers should be revoked, the tribunal may recommend to a reviewing authority that the suspension be revoked by that authority.
- (4) Where, under subsection (3), a service tribunal recommends to a reviewing authority that a suspension of a punishment be revoked, the authority may revoke the suspension and, in that event, the punishment that was suspended shall, subject to subsections 172(1) and (2), take effect as if it had been imposed at the time of the revocation.

81 Remission of suspended punishment

- (1) Where:
 - (a) a punishment imposed on a member of the Defence Force has been suspended and that suspension has not been revoked;
and
 - (b) the member ceases to be a member of the Defence Force;that punishment is remitted.
- (2) Where a punishment of detention has been suspended and that suspension has not been revoked, that punishment is remitted at the expiration of:
 - (a) a period of 12 months; or
 - (b) a period equal to the period for which the punishment of detention was imposed;

whichever is the greater period, commencing on the date of the order under subsection 78(1) or 162(8) suspending that punishment.

- (3) Where a punishment of a fine has been suspended in whole or in part and that suspension has not been revoked, that punishment, or so much of that punishment as is suspended, is remitted at the expiration of a period of 12 months commencing on the date of the order under section 79 suspending that punishment.

82 Remission of punishment of detention on imprisonment

Where a service tribunal imposes a punishment of imprisonment on a convicted person who is already subject to a punishment of detention (whether or not that punishment has been suspended), that punishment of detention, or such part of that punishment of detention as has not been served, is remitted.

83 Restitution orders

- (1) Where a person is convicted by a service tribunal of a service offence that involved the unlawful obtaining of property by the convicted person, the tribunal, instead of, or in addition to, imposing a punishment or making an order under subsection 75(1), may:
 - (a) if the whole or any part of the property so unlawfully obtained is in the custody or control of the prosecution—order the property to be repaid or restored to the person appearing to the tribunal to be its owner; or
 - (b) if any property (other than money) appearing to the tribunal to have been obtained by the conversion or exchange of any of the property so unlawfully obtained is in the custody or control of the prosecution—order the property to be delivered to the person appearing to the tribunal to be the owner of the property so unlawfully obtained.
- (2) Where:
 - (a) a person is convicted by a service tribunal of a service offence that involved the unlawful obtaining of property by the convicted person;
 - (b) it appears to the tribunal that:

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- (i) some or all of the property so unlawfully obtained was given by the convicted person to another person in exchange for other property; and
- (ii) the other person did not know, at the time of the exchange, that the property received by the other person in the exchange had been unlawfully obtained; and
- (c) the whole or a part of the property given by the other person in the exchange is in the custody or control of the prosecution;

the service tribunal may order that, on the restitution by the other person of the property received by the other person in the exchange to the person appearing to the tribunal to be its owner, the property in the custody or control of the prosecution be restored to the other person.

- (3) This section applies in relation to a service offence that has been taken into consideration by a service tribunal under section 77 in determining the appropriate punishment for a service offence of which a person has been convicted by the tribunal as if the tribunal had convicted the person of the service offence so taken into consideration.
- (4) Nothing in this section affects any right that a person may have to recover any property delivered or paid in pursuance of an order under this section from the person to whom the property has been so delivered or paid.

84 Reparation orders

- (1) Where a person is convicted by a service tribunal of a service offence, the tribunal may, instead of, or in addition to, imposing a punishment or making an order under subsection 75(1), order the person to pay such amount as it thinks just by way of reparation to a person who has sustained loss or damage through or by reason of that service offence.
- (2) Where a person is convicted by a service tribunal that is a summary authority, the amount or the sum of the amounts that that person may be ordered to pay by that tribunal under this section shall not exceed:
 - (a) where the person is a member of the Defence Force—the amount of the person's pay for 14 days; or

- (b) in any other case—5 times the maximum fine that that tribunal could impose on the person.
- (3) In making an order under this section, a service tribunal may order payment to be made either in one sum or by instalments.
- (4) This section applies in relation to a service offence that has been taken into consideration by a service tribunal under section 77 in determining the appropriate punishment for a service offence of which a person has been convicted by the tribunal as if the tribunal had convicted the person of the service offence so taken into consideration.
- (5) Nothing in this section affects any right or remedy that a person may have, apart from this section, in respect of any loss or damage occasioned by a service offence.

85 Payment of fines

- (1) A service tribunal may order that a fine shall be paid either in one sum or by instalments.
- (2) A fine is payable to the Commonwealth.

Part V—Summons, arrest, custody and suspension from duty

86 Interpretation

In this Part, *authorized officer* includes a commanding officer.

86A Oaths, affirmations and affidavits

- (1) An authorized officer may administer oaths and affirmations for the purposes of this Part.
- (2) The forms of oaths and affirmations administered by an authorized officer for the purposes of this Part shall be as prescribed.
- (3) An affidavit to be used for the purposes of this Part may be sworn before an authorized officer.
- (4) This section shall not be taken to limit, by implication, the classes of persons who may administer oaths and affirmations for the purposes of this Part or before whom affidavits to be used for the purposes of this Part may be sworn or affirmed.

87 Summons and order in the nature of summons

- (1) Where an authorized member of the Defence Force believes, on reasonable grounds, that a person has committed a service offence, the authorized member may:
 - (a) if the person is a defence member:
 - (i) charge the defence member with the service offence;
 - (ii) cause a copy of the charge to be given to the defence member; and
 - (iii) order the defence member to appear before a summary authority at a specified time and place to be dealt with in accordance with section 110 or 111; or
 - (b) whether or not the person is a defence member—cause to be prepared a summons directed to the person specifying the service offence that the person is alleged to have committed and requiring the person to appear before a commanding

officer at a time and place specified in the summons to be dealt with in accordance with section 110; or

- (c) if the authorized member is the Director of Military Prosecutions, do one of the following:
- (i) if the charge is a charge that is within the jurisdiction of a superior summary authority or a commanding officer to try—refer the charge to a superior summary authority or a commanding officer for trial under section 106 or 107;
 - (ii) request the Registrar of Military Justice to refer the charge to a Defence Force magistrate for trial;
 - (iii) request the Registrar of Military Justice to convene a court martial to try the charge.

Note: A charge referred to a Defence Force magistrate must be referred to the magistrate nominated by the Judge Advocate General: see subsection 129C(1).

- (1A) To avoid doubt, the powers of the Director of Military Prosecutions under paragraph (1)(c) are in addition to, and not in substitution for, his or her powers under paragraphs (1)(a) and (b).
- (2) A summons under paragraph (1)(b) shall be served on the person to whom it is directed in a manner specified in the regulations.
- (3) Where a summons relating to a service offence is served on a person in accordance with subsection (2), the person shall be taken, for the purposes of this Act, to have been charged with the offence.
- (4) A superior officer may order an accused person, being a defence member, to appear before a service tribunal for any purpose relating to the charge against the person.
- (5) The appropriate authority may summon an accused person (whether or not a defence member), in a manner provided for in the rules of procedure, to appear before a service tribunal for any purpose relating to the charge against the person.
- (6) In this section:

authorized member of the Defence Force means:

- (a) the Director of Military Prosecutions; or
- (b) a member of the Defence Force, or a member of the Defence Force included in a class of members of the Defence Force,

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authorized, in writing, by a commanding officer for the purposes of this section.

88 Arrest, summons etc. where accused person not present at hearing before service tribunal

- (1) Where an accused person is not present at a hearing before a service tribunal (otherwise than by reason of an order under subsection 139(2)), an authorized officer or the Registrar of Military Justice may:
 - (a) if the accused person is a defence member—order the accused person to appear before the service tribunal for any purpose relating to the charge against the person; or
 - (b) whether or not the accused person is a defence member:
 - (i) cause to be prepared a summons directed to the accused person requiring the person to appear before the service tribunal at a time and place specified in the summons for a purpose specified in the summons relating to the charge against the person; or
 - (ii) issue a warrant for the arrest of the accused person.
- (1A) The Registrar of Military Justice may carry out an action under subsection (1) only if a judge advocate or a Defence Force magistrate directs the Registrar of Military Justice to carry out the action.
- (2) A summons under paragraph (1)(b) shall be served on the person to whom it is directed in a manner specified in the regulations.
- (3) A warrant issued under subsection (1) shall:
 - (a) specify the name of the accused person concerned and the service offence the subject of the charge; and
 - (b) state that the warrant is issued because the accused person was not present at a hearing before the service tribunal specified in the warrant.
- (4) A constable or a member of the Defence Force may, in execution of a warrant issued in accordance with subsection (1), arrest the accused person named in the warrant.
- (5) A warrant issued under subsection (1) shall specify a date after which the warrant ceases to have effect.

89 Arrest without warrant

- (1) A member of the Defence Force may, without warrant, arrest a person over whom the member has a power of arrest if, and only if, the member believes on reasonable grounds:
- (a) that the person has committed, or is committing, a service offence;
 - (b) that the arrest of the person is necessary in order to achieve one or more of the following purposes:
 - (i) the purpose of ensuring the appearance of the person before a service tribunal in respect of the service offence;
 - (ii) the purpose of preventing a continuation of or repetition of the service offence or the commission of a further service offence;
 - (iii) the purpose of preventing the concealment, loss or destruction of evidence of, or relating to, the service offence;
 - (iv) the purpose of preserving the safety or welfare of the person; and
 - (c) that proceedings under section 87 against the person in respect of the offence would not effectively achieve that purpose or those purposes.
- (2) For the purposes of subsection (1):
- (a) an officer has a power of arrest over:
 - (i) a sailor, soldier or airman;
 - (ii) an officer in respect of whom he or she is a superior officer; or
 - (iii) a defence civilian;
 - (b) a warrant officer or a non-commissioned officer has a power of arrest over a sailor, soldier or airman in respect of whom he or she is a superior officer;
 - (c) a member of:
 - (i) the regulating staff;
 - (ii) the staff of the officer of the watch; or
 - (iii) the staff of the officer of the day;of a ship or establishment of the Australian Navy has a power of arrest over any sailor;

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- (d) a police member or a person lawfully exercising authority under or on behalf of a service police officer has, subject to the regulations, a power of arrest over any person; and
 - (e) where the service offence concerned is mutiny or a service offence involving disorderly or violent behaviour:
 - (i) an officer has a power of arrest over any other officer; and
 - (ii) a warrant officer or a non-commissioned officer has a power of arrest over any other sailor, soldier or airman.
- (3) A power of arrest under subsection (1) may be exercised:
- (a) personally;
 - (b) by ordering the person concerned into arrest; or
 - (c) by giving an order for the arrest of the person concerned.
- (4) Nothing in subsection (1) authorizes the arrest, without warrant, of a person who is not a defence member or a defence civilian.
- (5) A constable may, without warrant, arrest a person who the constable believes, on reasonable grounds, is escaping from custody or has escaped from custody to which the person is still liable.

90 Arrest under warrant

- (1) Subject to this section, where an authorized officer:
- (a) is satisfied by information on oath or affirmation that there are reasonable grounds for suspecting that a person has committed a service offence; and
 - (b) believes on reasonable grounds that proceedings under section 87 would not be effective;
- the authorized officer may issue a warrant for the arrest of the person.
- (2) An authorized officer shall not issue a warrant under subsection (1) for the arrest of a person for a service offence unless:
- (a) an affidavit of the informant has been furnished to the authorized officer setting out the reasons for which the issue of the warrant is sought (including the reasons why it is believed that the person has committed the service offence and the reasons why it is claimed that proceedings under section 87 would not be effective);

- (b) the informant or some other person has furnished to the authorized officer, on oath or affirmation, such further information (if any) as the authorized officer requires concerning the reasons for which the issue of the warrant is sought; and
 - (c) the authorized officer is satisfied, after considering the affidavit and any such further information, that there are reasonable grounds for the issue of the warrant.
- (3) Where an authorized officer issues a warrant under subsection (1), the officer shall indicate, by writing under the officer's hand, on the affidavit referred to in subsection (2), which of the reasons specified in that affidavit, and any other reasons, the officer has relied on as justifying the issue of the warrant.
 - (4) A warrant issued under subsection (1) shall specify the name of the person concerned and the service offence that the person is alleged to have committed.
 - (5) A constable or a member of the Defence Force may, in execution of a warrant issued in accordance with subsection (1), arrest the person named in the warrant.
 - (6) A warrant issued under subsection (1) shall specify a date after which the warrant ceases to have effect.

91 Power to enter to make arrest

- (1) Subject to subsection (3), where a constable has, under a warrant issued under this Act, power to arrest a person, the constable may enter any premises, by force if necessary, at any time of the day or night for the purpose of arresting the person, and may search the premises for the person, if the constable believes on reasonable grounds that the person is on the premises.
- (2) Subject to subsection (3), where, by virtue of subsection 89(5), a constable may, without warrant, arrest a person, the constable may enter any premises, by force if necessary, at any time of the day or night for the purpose of arresting the person, and may search the premises for the person, if the constable believes on reasonable grounds that the person is on the premises.
- (3) Subsections (1) and (2) do not authorize a constable to enter premises at any time during the period commencing at 9 o'clock in

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an evening and ending at 6 o'clock in the next following morning for the purpose of arresting a person if the constable believes, on reasonable grounds, that it will be practicable to arrest the person, either on the premises or elsewhere, at any other time.

92 Use of force in making arrest

- (1) A person shall not, in the course of arresting another person under this Act, use more force, or subject the other person to greater indignity, than is necessary to make the arrest or to prevent the escape of the other person after the other person has been arrested.
- (2) A person:
 - (a) shall not, in the course of arresting another person under this Act, do an act likely to cause the death of, or grievous bodily harm to, the other person unless the person making the arrest believes on reasonable grounds that the doing of that act is necessary to protect life or to prevent serious injury to any other person (including the person making the arrest); and
 - (b) without limiting the application of paragraph (a), shall not, in the course of so arresting another person who is attempting to escape arrest by fleeing, do such an act unless the other person has, if practicable, been called upon to surrender and the person making the arrest believes on reasonable grounds that the other person cannot be apprehended in any other manner.

93 Persons to be informed of grounds of arrest

- (1) A person who arrests another person for a service offence shall inform the other person, at the time of the arrest, of the service offence for which the other person is arrested.
- (2) A person who arrests another person for a service offence shall be taken to have complied with subsection (1) if the person informs the other person of the substance of the service offence for which the other person is arrested, and it is not necessary for the person to do so in language of a precise or technical nature.
- (3) Subsection (1) does not apply to or in relation to the arrest of a person:

- (a) if that person ought, by reason of the circumstances in which the person is arrested, to know the substance of the service offence for which the person is arrested; or
- (b) if that person makes it impracticable, by reason of his or her actions, for the person making the arrest to inform him or her of the service offence for which the person is arrested.

94 Civil detention of arrested person

- (1) A constable may detain a person arrested (whether by himself or herself or by another constable) under this Act at a civil detention facility for such time as is reasonably necessary to enable the arrested person to be delivered into the custody of a police member or an authorized officer.
- (2) Where:
 - (a) a person has been arrested under this Act and is in the custody of a member of the Defence Force; and
 - (b) a commanding officer or the senior member of the escort of the arrested person certifies, in writing, that it is necessary for the arrested person to be detained in a place of detention and that no suitable place of detention controlled by the Defence Force is reasonably available for the purpose;a constable may detain the arrested person in a civil detention facility for a period not exceeding 7 days.

95 Avoidance of delay after arrest

- (1) Where a member of the Defence Force:
 - (a) arrests a person under this Act; or
 - (b) receives into his or her custody a person who has been arrested under this Act;the member shall, as soon as practicable, take all reasonable steps in the member's power to ensure that the arrested person is delivered into the custody of a commanding officer.
- (2) Where a person has been delivered into the custody of a commanding officer, the commanding officer or an officer authorized, in writing, by the commanding officer shall, unless the person has been arrested in execution of a warrant issued under section 88, before the expiration of the period of 24 hours after the person has been delivered into the custody of the commanding

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officer, either charge the person with a service offence or release the person from custody.

- (3) Where a person is charged with a service offence in accordance with subsection (2), the commanding officer shall forthwith cause a copy of the charge to be given to the person.
- (4) Where a person is charged with a service offence in accordance with subsection (2), the commanding officer shall, as soon as practicable, cause proceedings to be commenced for dealing with the charge and, if no such proceedings are commenced before the expiration of a period of 48 hours after the person has been delivered into the custody of the commanding officer, the commanding officer shall, at the expiration of that period, report, in writing, to a superior authority and the Director of Military Prosecutions his or her reasons for not causing those proceedings to be commenced.
- (5) Where a person remains in the custody of the commanding officer for a period of 8 days or more without the charge against the person having been dealt with, the commanding officer shall, at the expiration of the first 8 day period of such custody and, thereafter, at the expiration of each subsequent 8 day period of such custody, report, in writing, to a superior authority and the Director of Military Prosecutions his or her reasons for the delay in dealing with the charge.
- (6) For the purposes of subsection (5), a charge that is dealt with by a summary authority by referring it to another summary authority shall be deemed not to have been dealt with.
- (7) If due to the exigencies of service it is not reasonably practicable for the commanding officer to make a report in accordance with subsection (5) on the date on which that report is due, he or she shall make that report as soon as it becomes reasonably practicable to do so and shall state in that report why it was not reasonably practicable to report on the due date.
- (8) Where a person remains in custody for 30 days and the charge against the person has not been dealt with within the meaning of subsection (5), the superior authority to whom a report under subsection (5) or subsection (7) has been made shall notify the Director of Military Prosecutions and the Chief of the Defence

Force, a service chief or an authorized officer of the reasons why the charge has not been dealt with.

- (9) Upon receipt of a notification in accordance with subsection (8), the Chief of the Defence Force, the service chief or the authorized officer shall, unless he or she is satisfied that it is proper that the person should continue in custody, order the release of the person from custody.

95A Search of persons in custody in custodial facilities

- (1) Where:

- (a) a person (in this section referred to as the *accused person*) is in custody on a charge in a custodial facility; and
- (b) an authorized person in relation to the custodial facility believes that it is necessary to do so for the purpose of ascertaining whether there is concealed on the accused person or in the accused person's clothing:
 - (i) a weapon or other thing capable of being used to:
 - (A) inflict death or bodily injury; or
 - (B) assist him or her to escape from custody; or
 - (ii) any thing that is likely to affect the security or discipline of the custodial facility;

the authorized person may direct an authorized member in relation to the custodial facility to search the accused person and the clothing that the accused person is wearing.

- (2) The search shall be conducted in accordance with the following provisions:
- (a) the search shall be conducted in the presence of at least 2 other persons who are authorized persons, or authorized members, in relation to the custodial facility;
 - (b) the search shall not be conducted in the presence of a person who is not an authorized person, or an authorized member, in relation to the custodial facility;
 - (c) the accused person shall not be searched by, or in presence of, a person who is not of the same sex as the accused person.
- (3) The authorized member directed to conduct the search may:
- (a) require the accused person to remove any clothing that the accused person is wearing;

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- (b) if the accused person refuses or fails to comply with such a requirement—remove the clothing;
 - (c) use such reasonable force as is necessary to conduct the search; and
 - (d) seize any weapon or thing of a kind referred to in paragraph (1)(b) found as in the course of the search.
- (4) In this section:
- authorized member**, in relation to a custodial facility, means a member of the Defence Force, or a member of the Defence Force included in a class of members of the Defence Force, appointed by a commanding officer, in writing, to be an authorized member or authorized members, as the case may be, in relation to the custodial facility.
- authorized person**, in relation to a custodial facility, means a member of the Defence Force, or a member of the Defence Force included in a class of members of the Defence Force, appointed by a commanding officer, in writing, to be an authorized person or authorized persons, as the case may be, in relation to the custodial facility.
- custodial facility** means a place or facility:
- (a) under the control of the Defence Force; and
 - (b) at or in which a person in custody on a charge is detained.

96 Time limitation on charges

- (1) A person shall not be charged with:
- (a) an offence against this Act (other than section 61) or the regulations; or
 - (b) a service offence that is an ancillary offence in relation to an offence referred to in paragraph (a);
- after the expiration of a period of 5 years after the time at which the offence is alleged to have been committed.
- (2) Notwithstanding anything in subsection (1), a person may be charged with:
- (a) an offence against any of sections 15 to 16B, section 20 or section 22; or

- (b) a service offence that is an ancillary offence in relation to an offence referred to in paragraph (a);
at any time.
- (3) A reference in subsection (1) to a period shall be read as not including a reference to a period during which the person:
- (a) was a prisoner of war;
 - (b) was absent without leave; or
 - (c) was serving a sentence of imprisonment.
- (4) A person shall not be charged with an offence against section 61 if the time that has elapsed since the offence is alleged to have been committed equals or exceeds the period of time that would bar trial by, or institution of proceedings in, a court exercising jurisdiction in or in relation to the Jervis Bay Territory for the relevant Territory offence.
- (5) A person shall not be charged with, or tried for, an old system offence if the person could not have been charged with, or tried for, as the case may be, that offence if the provisions of previous service law imposing a time limitation on such a charge or trial were still in force.
- (6) A person who has ceased to be a member of the Defence Force or a defence civilian shall not be charged with a service offence unless:
- (a) the period that has elapsed since the person so ceased does not exceed 6 months; and
 - (b) the maximum punishment for the service offence is imprisonment for a period of 2 years or a punishment that is more severe than that punishment.

97 Release from custody

- (1) A commanding officer or an officer authorized, in writing, by a commanding officer may at any time release from custody a person charged with a service offence and may impose on that person, in relation to that release, such conditions and restrictions, being conditions or restrictions of a kind authorized by the Chief of the Defence Force or a service chief, by instrument in writing, for the purposes of this section, as he or she considers necessary.

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- (2) An officer referred to in subsection (1) may at any time vary or revoke a condition or restriction in force in relation to a person under this section.
- (3) An officer who:
 - (a) imposes a condition or restriction under subsection (1) on a person; or
 - (b) varies or revokes a condition or restriction in force in relation to a person under this section;shall cause the imposition, variation or revocation to be notified to the person as soon as practicable.
- (4) A person released under subsection (1) may again be taken into custody if, and only if:
 - (a) the person is in breach of a condition or restriction in force in relation to the person under this section; or
 - (b) the person is arrested for another service offence.
- (5) A condition or restriction in force in relation to a person under this section ceases to have effect if:
 - (a) a summary authority or the Director of Military Prosecutions directs that the charge against the person be not proceeded with;
 - (b) the person is acquitted or convicted of the service offence charged; or
 - (c) the charge against the person is dismissed.

98 Suspension from duty on suspicion of offence etc.

- (1) Where a member of the Defence Force is charged with a service offence, a civil court offence or an overseas offence, an authorized officer may, by notice in writing served on the member, suspend the member from duty.
- (2) Where an authorized officer suspects on reasonable grounds that a member of the Defence Force has committed a service offence and orders an investigation, an authorized officer may, by notice in writing served on the member, suspend the member from duty.
- (3) Where a member of the Defence Force is suspended from duty under subsection (1), the suspension ceases:

- (a) if the charge is not proceeded with or the prosecution of the charge is abandoned—at the time the member is notified to that effect; or
 - (b) in any other case—on the termination of the proceedings before the service tribunal, the civil court or the overseas court hearing the charge.
- (4) Where a member of the Defence Force is suspended from duty under subsection (2), the suspension ceases on the completion of the investigation referred to in that paragraph unless the member concerned is charged with a service offence.
 - (5) Where on the completion of an investigation referred to in subsection (2) the member concerned is charged with a service offence, the suspension of the member under that subsection continues as a suspension of the member under subsection (1).
 - (6) A notice under subsection (1) or (2) shall be served in a manner specified in the regulations.

99 Suspension from duty after conviction

- (1) Where a service tribunal imposes upon a member of the Defence Force a punishment that does not take effect unless it is approved by a reviewing authority, the service tribunal or a reviewing authority may, by notice in writing served on the member, suspend the member from duty pending the decision of the reviewing authority.
- (2) Where a member of the Defence Force is convicted of a service offence, a civil court offence or an overseas offence, an authorized officer may, by notice in writing served on the member, suspend the member from duty pending a decision as to the termination of the member's service.
- (3) A notice under subsection (1) or (2) shall be served in a manner specified in the regulations.

100 Effect of custody or suspension from duty

- (1) A member of the Defence Force is not required to perform any duty of the member's office or appointment (other than such duties as may be necessary to relieve the member of that office or

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appointment) during any period of custody or any period of suspension from duty under section 98 or 99.

- (2) Subject to subsection (3), a member of the Defence Force who is suspended from duty under subsection 98(1) or section 99 is not entitled to remuneration in respect of the period of suspension.
- (3) If a member of the Defence Force is suspended from duty under subsection 98(1) or section 99, the relevant authority may, at any time, on application by the member or otherwise, direct that the member receive remuneration during the whole, or a specified part, of the period of suspension.
- (4) A direction may only be given under subsection (3) if the relevant authority is satisfied that the member is suffering, or has suffered, hardship as a result of the suspension.
- (5) For the purposes of subsection (3), the relevant authority is:
 - (a) in the case of a suspension under subsection 98(1) or 99(2)—an authorised officer; or
 - (b) in the case of a suspension under subsection 99(1)—the service tribunal by which the suspension was imposed or a reviewing authority.
- (6) A member of the Defence Force who is suspended from duty under subsection 98(1) or section 99 is entitled to engage in employment outside the Defence Force during any period of suspension in respect of which the member is not receiving remuneration.
- (7) This section does not affect any requirement to perform a duty, or any remuneration entitlement, of a member of the Defence Force who is undergoing a punishment of detention.
- (8) In this section, **remuneration** has the same meaning as in Division 1 of Part IIIA of the *Defence Act 1903*.

Part VI—Investigation of service offences

Division 1—Preliminary

101 Interpretation

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

confession includes any admission or incriminating statement.

interview, in relation to a person, includes asking the person questions in the course of investigating a service offence.

investigating officer means:

- (a) a police member; or
- (b) an officer, warrant officer or non-commissioned officer (not being a police member) engaged in the investigation of a service offence.

relevant act, in relation to a service offence, means:

- (a) an act or omission that constituted, or was done or omitted to be done, as the case requires, in connection with, the commission of the service offence; or
- (b) an act or omission believed by an investigating officer investigating the service offence to have constituted, or to have been done or omitted to have been done, as the case requires, in connection with, the commission of the service offence.

relevant person, in relation to a relevant act, means a person who was seen by another person doing or omitting to do, as the case requires, the relevant act.

serious service offence means a service offence punishable by a maximum punishment, or a fixed punishment, of imprisonment for life or a period exceeding 6 months.

suspect, in relation to a relevant act, means a person whom an investigating officer investigating the service offence in relation to the relevant act believes may be a person who did or omitted to do, as the case requires, the relevant act.

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tape recording includes sound recording and video recording.

telephone includes telex, radio or similar facilities.

witness, in relation to a relevant act, means a person who saw another person doing or omitting to do, as the case requires, the relevant act.

- (2) For the purposes of this Part, a person is in custody in respect of a service offence if the person is being detained as a person charged with the service offence or as a person arrested for, but not yet charged with, the service offence.
- (3) If a person is not in custody in respect of a particular service offence (in this subsection referred to as *the relevant service offence*), but:
 - (a) is in custody, or is undergoing detention or imprisonment, in respect of another service offence or is in custody for another reason; or
 - (b) in connection with the investigation of the relevant service offence, is in the company of an investigating officer; and an investigating officer concerned in the investigation of the relevant service offence:
 - (c) in the case of a person to whom paragraph (a) applies—has come to the belief, or has given the person reasonable grounds for believing that the person has come to the belief, that it is probable that the person committed the relevant service offence; or
 - (d) in the case of a person to whom paragraph (b) applies—would not allow the person to leave, or has given the person reasonable grounds for believing that the person would not be allowed to leave, if the person wished to do so;then, unless the contrary intention appears, the provisions of this Part have effect as if the person were in custody in respect of the relevant service offence.
- (4) Unless the contrary intention appears, a reference in this Part to custody includes a reference to custody that was unlawfully commenced or is being unlawfully continued.
- (5) Unless the contrary intention appears, a reference in this Part to a service offence includes a reference to a service offence that an

investigating officer has reasonable grounds for believing is being, has been, or will be committed.

- (6) Without prejudice to the interpretation of a provision of this Act (other than a provision of this Part):
 - (a) it is the duty of an investigating officer to comply with the provisions of this Part in exercising his or her powers, or performing his or her duties, as an investigating officer; and
 - (b) where an investigating officer contravenes a provision of this Part that is applicable to the officer—the contravention is not punishable as a service offence unless a penalty is provided by this Act or the regulations in respect of the contravention.
- (7) Nothing in subsection (6) shall be taken to affect:
 - (a) the operation of any provision of this Act or the regulations relating to the exclusion of evidence; or
 - (b) any civil proceedings.

101AA Oaths, affirmations and affidavits

- (1) An authorized officer may administer oaths and affirmations for the purposes of this Part.
- (2) The forms of oaths and affirmations administered by an authorized officer for the purposes of this Part shall be as prescribed.
- (3) An affidavit to be used for the purposes of this Part may be sworn before an authorized officer.
- (4) This section shall not be taken to limit, by implication, the classes of persons who may administer oaths and affirmations for the purposes of this Part or before whom affidavits to be used for the purposes of this Part may be sworn or affirmed.

Division 2—Duties of investigating officers when interviewing suspects

101A Interpretation

Where the investigating officer in charge of investigating a service offence has grounds for believing that a person who is in custody in respect of the service offence has committed another service offence, the person shall, for the purposes of this Division, be deemed to be in custody in respect of both of the service offences.

101B Investigating officer may question persons

- (1) Where an investigating officer who is investigating a service offence believes that a person (including a person believed by the investigating officer to have committed the service offence) may be able to furnish information that may assist the investigating officer in his or her investigation of the service offence, the investigating officer may, subject to this Part, ask the person questions relevant to his or her investigation of the service offence.
- (2) A person who is asked a question by an investigating officer under subsection (1) is not required to answer the question.

101C Questioning and cautioning of person in custody

- (1) Where a person is in custody, an investigating officer shall not ask the person any questions or ask the person to do any thing, for a purpose connected with the investigation of a service offence, unless the investigating officer has told the person his or her name and rank.
- (2) Where, at or after the time when a person comes into custody in respect of a service offence, an interview of the person in connection with the service offence is being conducted by an investigating officer, the investigating officer shall not:
 - (a) ask the person any questions, or ask the person to do any thing, for a purpose connected with the investigation of the service offence; or

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- (b) cause or permit another person to ask the person any questions, or ask the person to do any thing, for a purpose connected with the investigation of the service offence; unless an investigating officer has, at or since the commencement of the interview cautioned the person that he or she does not have to say or do anything, but that anything the person does say or do may be used in evidence.
- (2A) A caution for the purpose of subsection (2) must be given in, or translated into, a language in which the person being cautioned is able to communicate with reasonable fluency, but need not be given in writing.
- (2B) An investigating officer who is required by subsection (2) to caution a person must, if practicable, tape record the giving of the caution and the person's response (if any).
- (2C) If:
- (a) an investigating officer cautions a person under this section; and
 - (b) the giving of the caution and the person's response (if any) to the caution are not tape recorded;
- then, in any proceedings before a service tribunal, the prosecution has the burden of proving that it was not practicable to tape record the giving of the caution or the person's response (if any) to the caution.
- (3) Subsection (2) does not apply in relation to asking a person to take part in an identification parade conducted in accordance with section 101N.

101D Cautioning once decision to charge or summon has been made

- (1) After an investigating officer has decided to charge a person with a service offence, to seek the issue of a summons against a person for a service offence or to recommend that a person be so charged or that a summons be so sought:
- (a) an investigating officer must not ask the person any question, or request the person to do anything, for a purpose connected with the investigation of the service offence unless the investigating officer or another investigating officer has cautioned the person that he or she does not have to say or do

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anything, but that anything the person does say or do may be used in evidence; and

- (b) the investigating officer who made the decision must take reasonable steps to ensure that paragraph (a) is not contravened.
- (2) A caution for the purpose of paragraph (1)(a) must be given in, or translated into, a language in which the person being cautioned is able to communicate with reasonable fluency, but need not be given in writing.
 - (3) An investigating officer who is required by subsection (1) to caution a person must, if practicable, tape record the giving of the caution and the person's response (if any).
 - (4) If:
 - (a) an investigating officer cautions a person under this section; and
 - (b) the giving of the caution and the person's response (if any) to the caution are not tape recorded;then in any proceedings before a service tribunal, the prosecution has the burden of proving that it was not practicable to tape record the giving of the caution or the person's response (if any) to the caution.
 - (5) Subsection (1) does not apply in relation to asking a person to take part in an identification parade.

101E Access to friend, relative and legal practitioner

- (1) Subject to section 101G, if a person is in custody in respect of a service offence, an investigating officer concerned in the investigation of the offence must, before starting to question the person, inform the person that he or she may:
 - (a) communicate, or attempt to communicate, with a friend or relative to inform that person of his or her whereabouts; and
 - (b) communicate, or attempt to communicate, with a legal practitioner of the person's choice and arrange, or attempt to arrange, for a legal practitioner of the person's choice to be present during the questioning;and the investigating officer must defer the questioning for a reasonable time to allow the person to make, or attempt to make,

the communication and, if the person has arranged for a legal practitioner to be present, to allow the legal practitioner to attend the questioning.

- (2) Subject to section 101G, if a person in custody in respect of a service offence wishes to communicate with a friend, relative or legal practitioner, the investigating officer holding the person in custody must:
 - (a) as soon as practicable, give the person reasonable facilities to enable the person to do so; and
 - (b) in the case of a communication with a legal practitioner—allow the legal practitioner or a clerk of the legal practitioner to communicate with the person in circumstances in which, as far as practicable, the communication will not be overheard.
- (3) Subject to section 101G, if a person in custody in respect of a service offence arranges for a legal practitioner to be present during the questioning, the investigating officer holding the person in custody must:
 - (a) allow the person to consult with the legal practitioner in private and provide reasonable facilities for that consultation; and
 - (b) allow the legal practitioner to be present during the questioning and to give advice to the person, but only while the legal practitioner does not unreasonably interfere with the questioning.

101F Lists of legal officers

- (1) In this section, *prescribed place* means a place prescribed for the purposes of this section.
- (2) Subject to and in accordance with the regulations, the Chief of the Defence Force shall establish and, so far as it is reasonably practicable to do so, update at such intervals as the Chief of the Defence Force thinks appropriate, a list, in relation to each prescribed place, of the names of legal officers who are willing to assist persons who are in custody at, or in the vicinity of, the prescribed place.
- (2A) The Chief of the Defence Force may delegate his or her powers under subsection (2) to a member of the Defence Force who holds

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a rank that is not lower than the naval rank of captain, or the rank of colonel or group captain.

- (3) Where a person is in custody in respect of a service offence at, or in the vicinity of, a prescribed place, an investigating officer shall furnish to the person a copy of the list of the names of legal officers kept in relation to the prescribed place if:
 - (a) the person, to the knowledge of the investigating officer, seeks to communicate, but is unable to communicate, with a legal practitioner of the person's choice; or
 - (b) the investigating officer has reasonable grounds for believing that the person wishes to communicate with a legal practitioner but does not know of a legal practitioner whom the person could consult.
- (4) The requirements of subsection (3) apply only if, and to the extent that, the exigencies of service permit.
- (5) A reference in this section to a person in custody in respect of a service offence shall be read:
 - (a) as not including a reference to a person who is undergoing a punishment of detention or imprisonment in respect of the service offence or is in custody under subsection 172(3A), (4) or (5) in respect of the service offence; and
 - (b) as including a reference to a person (other than a person referred to in paragraph (a)) who is being, or will be, interviewed by an investigating officer in connection with the investigation of the service offence and has been given a caution of a kind referred to in subsection 101C(2).

101G Exceptions to requirements of section 101E

- (1) Subject to subsections (2), (3) and (4), if a requirement imposed on an investigating officer by section 101E is expressed to be subject to this section, the requirement does not apply if, and so long as, the investigating officer has reasonable grounds for believing that:
 - (a) compliance with the requirement is likely to result in:
 - (i) an accomplice of the person taking steps to avoid apprehension; or
 - (ii) the concealment, fabrication or destruction of evidence or the intimidation of a witness; or

- (b) if the requirement relates to the deferral of questioning—the questioning is so urgent, having regard to the safety of other people, that it should not be delayed by compliance with that requirement.
- (2) If the application of subsection (1) results in:
- (a) preventing or delaying the person communicating with a legal practitioner of his or her choice; or
 - (b) preventing or delaying a legal practitioner of the person's choice attending at any questioning;
- the investigating officer must offer the services of another legal practitioner and, if the person accepts the offer, make the necessary arrangements.
- (3) If a requirement referred to in subsection (1) relates to things done by or in relation to a legal practitioner:
- (a) subsection (1) applies only in exceptional circumstances; and
 - (b) if subsection (1) applies, the investigating officer must comply with the requirement as soon as possible after subsection (1) ceases to apply.
- (4) If a requirement referred to in subsection (1) relates to things done by or in relation to a legal practitioner, subsection (1) only applies if an appropriate officer has authorised the application of subsection (1) and has made a record of the investigating officer's grounds for belief.
- (5) An appropriate officer, for the purposes of subsection (4) is:
- (a) if the person in custody is a member of the Australian Navy—a member of the Australian Navy holding the rank of Commander or a higher rank; or
 - (b) if the person in custody is a member of the Australian Army—a member of the Australian Army holding the rank of Lieutenant-Colonel or a higher rank; or
 - (c) if the person in custody is a member of the Australian Air Force—a member of the Australian Air Force holding the rank of Wing Commander or a higher rank.

101H Treatment of persons in custody

- (1) A person shall, while in custody in respect of a service offence, be treated with humanity and with respect for human dignity.

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Division 2 Duties of investigating officers when interviewing suspects

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- (2) A person shall not, while in custody in respect of a service offence, be subjected to cruel, inhuman or degrading treatment.
- (3) Where a member of the Defence Force responsible for the custody of a person:
 - (a) is informed by the person that the person wishes to be provided with medical treatment in respect of illness or an injury; or
 - (b) has reasonable grounds for believing that the person wishes to be provided with, or requires, medical treatment in respect of illness or an injury;the member of the Defence Force shall, forthwith, take such reasonable action as is necessary to provide the person with medical treatment.
- (4) Where a person is in custody in respect of a service offence, the investigating officer in charge of investigating the service offence shall take all reasonable steps to ensure that the person is provided with reasonable refreshments and reasonable access to toilet facilities.
- (5) Where a person who is in custody in respect of a service offence is to be brought before a service tribunal while still in custody, the investigating officer in charge of investigating the service offence shall take all reasonable steps to ensure that the person is provided with facilities to wash or shower, and with the opportunity to obtain, and change into, other clothes, before the person is brought before the service tribunal.
- (6) Where an investigating officer has reasonable grounds for believing that a person in custody is unable, by reason of inadequate knowledge of the English language or any physical disability, to communicate orally with reasonable fluency in the English language, the investigating officer shall not ask the person any questions in connection with the investigation of a service offence unless:
 - (a) a person competent to act as interpreter is present and acts as interpreter during the questioning;
 - (b) the investigating officer questions the person in a language in which both the investigating officer and the person are able to communicate with reasonable fluency, or by any other

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- means by which the investigating officer and the person are able to communicate with reasonable proficiency; or
- (c) the investigating officer has reasonable grounds for believing that it is necessary to question the person otherwise than in accordance with paragraph (a) or (b) without delay in order to avoid danger of the death of, or serious injury to, any person or serious damage to property.
- (7) The provisions of subsection (1) or (2) shall not be taken to be contravened by the taking of any action by an investigating officer in accordance with section 101L or by the taking of necessary custodial measures.

Division 3—Confessions

101J Admissibility of confessional evidence

- (1) Evidence of a confession made by a person in the presence of an investigating officer is not admissible in proceedings against the person for a service offence unless the service tribunal, or, in the case of a court martial, the judge advocate of the court martial, is satisfied that the confession was made voluntarily.
- (2) For the purposes of subsection (1), a confession that is obtained from a person in consequence of:
 - (a) the use of physical violence, or a threat of physical violence, to any person; or
 - (b) the making of a promise, threat or other inducement (not being physical violence or a threat of physical violence) likely to cause the person to make a confession that is untrue; shall be deemed not to be made voluntarily.

101JA Tape recording of confessions and admissions

- (1) If a person who is being interviewed as a suspect (whether under arrest or not) makes a confession or admission to a police member, the confession or admission is inadmissible as evidence against the person in proceedings for a service offence unless:
 - (a) if the confession or admission was made in circumstances where it was reasonably practicable to tape record the confession or admission—the questioning of the person and anything said by the person during that questioning was tape recorded; or
 - (b) in any other case:
 - (i) at the time of the interview of the person or as soon as practicable afterwards, a record in writing was made, either in English or in another language used by the person in the interview, of the things said by or to the person in the course of the interview; and
 - (ii) as soon as practicable after the record was made, it was read to the person in the language used by him or her in the interview and a copy of the record was made available to the person; and

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- (iii) the person was given the opportunity to interrupt the reading at any time for the purpose of drawing attention to any error or omission that he or she claimed had been made in or from the record and, at the end of the reading, the person was given the opportunity to state whether he or she claimed that there were any errors in or omissions from the record in addition to any to which he or she had drawn attention in the course of the reading; and
 - (iv) a tape recording was made of the reading referred to in subparagraph (ii) and of everything said by or to the person as a result of compliance with subparagraph (iii), and the requirements of subsection (2) were observed in respect of that recording; and
 - (v) before the reading referred to in subparagraph (ii), an explanation, in accordance with the form set out in subsection (6), was given to the person of the procedure that would be followed for the purposes of compliance with that subparagraph and subparagraphs (iii) and (iv).
- (2) If the questioning, confession or admission, or the confirmation of a confession or admission, of a person is recorded as required under this section, the police member concerned must, without charge:
- (a) if the recording is a sound recording only or a video recording only—make the recording or a copy of it available to the person or his or her legal representative within 7 days after the making of the recording; and
 - (b) if both a sound recording and a video recording were made—make the sound recording or a copy of it available to the person or his or her legal representative within 7 days after the making of the recording, and notify the person or his or her legal representative that an opportunity will be provided, on request, for viewing the video recording; and
 - (c) if a transcript of the tape recording is prepared—make a copy of the transcript available to the person or his or her legal representative within 7 days after the preparation of the transcript.
- (3) In proceedings for a service offence, evidence to which this section applies may be admitted even if the requirements of this section have not been complied with, or there is insufficient evidence of

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compliance with those requirements, if, having regard to the nature of and the reasons for the non-compliance or insufficiency of evidence and any other relevant matters, the service tribunal, or, in the case of a court martial, the judge advocate of the court martial, is satisfied that, in the special circumstances of the case, admission of the evidence would not be contrary to the interests of justice.

- (4) In proceedings for a service offence, evidence to which this section applies may be admitted even if a provision of subsection (2) has not been complied with if, having regard to the reasons for the non-compliance and any other relevant matters, the service tribunal, or, in the case of a court martial, the judge advocate of the court martial, is satisfied that it was not practicable to comply with that provision.
- (5) If the judge advocate of a court martial permits evidence to be given under subsection (3) or (4), the judge advocate must inform the members of the court martial of the non-compliance with the requirements of this section, or of the absence of sufficient evidence of compliance with those requirements, as the case may be, and give the members such warning about the evidence as he or she thinks appropriate in the circumstances.
- (6) The explanation referred to in subparagraph (1)(b)(v) is to be in accordance with the following form:

When you were interviewed by [*name of police member*], a written record was made of what you said, and what was said to you, in the interview. The record was made *at the time of the interview *as soon as practicable after the interview. It is in *English *the language you used at the interview. You will be given a copy.

I am now going to read it to you in [*language*], the language you used in the interview.

You have the right to interrupt the reading at any time if you think there is something wrong with the record. At the end of the reading, you have the right to tell me about anything else you think is wrong with the record, as well as the things you mentioned during the reading.

A tape recording will be made of the reading of the record and of everything you say, and everything said to you, during the reading and at the end. You will be given a copy of that

tape recording and, if a transcript is made, a copy of that transcript.

*Delete whichever is not applicable.

101K Admissibility of oral confessions

- (1) Subject to subsection (10), in proceedings against a person (in this section referred to as the *accused*) before a service tribunal in respect of a serious service offence, evidence by an investigating officer who is not a police member of a confession made by the accused in his or her presence, after the proclaimed date, is not admissible on behalf of the prosecution unless the requirements of subsection (2), (3) or (4) are complied with in respect of the interview during which the confession is alleged to have been made.
- (2) This subsection is complied with in respect of an interview:
 - (a) if 2 sound recordings of everything said by and to the accused during the interview are made by the one multiple sound recording apparatus; or
 - (b) where a multiple sound recording apparatus is not available at the place of interview for use by the investigating officer conducting the interview—if one sound recording of everything said by and to the accused during the interview is made by a sound recording apparatus and a copy of the sound recording is made as soon as practicable thereafter;and the requirements of subsections (5) and (6) are observed in respect of the sound recordings.
- (3) This subsection is complied with in respect of an interview if, at the time of the interview or as soon as practicable thereafter, a record in writing is made, either in English or in another language used by the accused during the interview, of everything said by and to the accused during the interview and:
 - (a) the record, with or without alteration, is acknowledged, in writing in the prescribed manner, by the accused to be a full and correct record and a copy of the record as so acknowledged is given to him or her; and
 - (b) if the language used by the accused during the interview is a language other than English but the record is made in English—the record is read to the accused, in the language

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used by the accused during the interview, before he or she so acknowledges it.

- (4) This subsection is complied with in respect of an interview if:
- (a) at the time of the interview or as soon as practicable thereafter, a record in writing is made, either in English or in another language used by the accused during the interview, of everything said by and to the accused during the interview;
 - (b) as soon as practicable after the record is made, the record is read to the accused in the language used by the accused during the interview and a copy of the record is given to the accused;
 - (c) the accused is given the opportunity to interrupt the reading at any time for the purpose of drawing attention to any error or omission that the accused claims has been made in or from the record and, at the end of the reading, the accused is given the opportunity of stating whether the accused claims that there are any errors in or omissions from the record, in addition to any to which the accused has drawn attention during the reading;
 - (d) either:
 - (i) 2 sound recordings are made by the one multiple sound recording apparatus of the reading referred to in paragraph (b) and of everything said by and to the accused as a result of compliance with paragraph (c) and the requirements of subsections (5) and (6) are observed in respect of the sound recordings; or
 - (ii) an appropriate witness is present when the requirements of paragraphs (b) and (c) are complied with and:
 - (A) a record in writing is made of everything said by and to the accused as a result of compliance with paragraph (c) while it is being said or as soon as practicable thereafter; and
 - (B) the appropriate witness signs a certificate in the prescribed form certifying that paragraphs (b) and (c) were complied with in his or her presence and that the record is a full and correct record; and
 - (e) before conducting the reading referred to in paragraph (b), an explanation, in accordance with the prescribed form, is given to the accused of the procedure that will be followed for the
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purpose of compliance with that paragraph and paragraphs (c) and (d).

- (5) Where 2 sound recordings are made as referred to in paragraph (2)(a) or subparagraph (4)(d)(i), the investigating officer in charge of the making of the sound recordings shall:
- (a) hand one of the sound recordings to the accused;
 - (b) inform the accused that the other sound recording will be retained by the Defence Force and may be used in evidence; and
 - (c) advise the accused to make arrangements for the safe-keeping of the sound recording handed to him or her so that it will be available for comparison with the sound recording retained by the Defence Force and, if requested to do so by the accused, afford the accused an opportunity of making arrangements for the safe-keeping of the sound recording on his or her behalf.
- (6) Where a sound recording has been handed to a person in accordance with subsection (5), the investigating officer in charge of the investigation shall, upon request, provide, as soon as practicable, reasonable facilities to the accused or the accused's legal practitioner to enable the sound recording to be reproduced in sound.
- (7) For the purposes of subsection (1), the requirements of subsection (4) shall be taken to be complied with in respect of an interview if, where the explanation referred to in paragraph (4)(e) is given to the accused after paragraph (4)(a) has been complied with in respect of the interview, the actions of the accused prevent the following of the procedure that would, but for this subsection, be required to be followed for the purposes of compliance with paragraphs (4)(b), (c) and (d).
- (8) In proceedings against a person before a service tribunal, the burden of satisfying the service tribunal, or, in the case of a court martial, the judge advocate of the court martial, that, in relation to evidence to which this section applies, the requirements of this section have been complied with lies on the prosecution.
- (9) Subject to the power of a service tribunal, or, in the case of a court martial, the judge advocate of the court martial, to exclude evidence:

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- (a) on the ground of unfairness to the accused;
 - (b) on the ground that it is evidence of a confession not shown to have been made voluntarily; or
 - (c) otherwise in the interests of justice;
- the prosecution is not prevented from leading evidence of a confession by reason only of anything said by the accused, during, or at the end of, the reading to the accused of a record in writing containing the confession, concerning the accuracy of the record, but this subsection does not prevent a judge advocate from directing the members of a court martial with respect to the weight to be accorded to the statement as evidence.
- (10) A service tribunal, or, in the case of a court martial, the judge advocate of the court martial, may admit evidence of a confession notwithstanding that the requirements of this section have not been complied with, or that there is insufficient evidence of compliance with those requirements, if, having regard to the nature of, and the reasons for, the non-compliance or insufficiency of evidence and any other relevant matters, the service tribunal or the judge advocate, as the case may be, is satisfied that, in the special circumstances of the case, admission of the evidence would not be contrary to the interests of justice.
 - (11) Where the judge advocate of a court martial, in pursuance of subsection (10), permits evidence to be given before the members of the court martial, the judge advocate shall, if he or she considers that the interests of justice so require, inform the members of the court martial of the non-compliance with the requirements of this section, or of the absence of sufficient evidence of compliance with those requirements, and give the members of the court martial such warning concerning the evidence as he or she thinks appropriate in the circumstances.
 - (12) A reference in this section to a multiple sound recording apparatus is a reference to a sound recording apparatus:
 - (a) capable of making 2 or more recordings of the same sound at the one time; or
 - (b) that, at the same time as, or immediately after, it makes one recording, automatically makes a copy of the recording.

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- (13) A reference in this section to an interview includes a reference to any occasion on which anything is said by the accused in the presence of an investigating officer.
- (14) A reference in subsection (4) to an appropriate witness is a reference to:
- (a) a person included in a prescribed class of persons;
 - (b) a legal practitioner advising the accused; or
 - (c) a relative or friend of the accused who is present at the reading referred to in paragraph (4)(b) at the request or with the approval of the accused.

Division 4—Other investigative action

101L Fingerprints, photographs etc.

- (1) An investigating officer who is an officer or warrant officer may take, or cause to be taken, prints of the hands, fingers, feet or toes, sound recordings of the voice, samples of the handwriting, or photographs, of a person who is in lawful custody in respect of a service offence if:
 - (a) the investigating officer believes on reasonable grounds that it is necessary to do so for the purpose of establishing who the person is or of identifying the person as the person who committed the service offence or of providing evidence of, or relating to, the service offence;
 - (b) the investigating officer believes on reasonable grounds that the person has committed another service offence and the prints, recordings, samples or photographs are to be taken for the purpose of identifying the person as the person who committed the other service offence or of providing evidence of, or relating to, the other service offence; or
 - (c) the investigating officer has the consent in writing of the person to do so.
- (2) Except as provided in subsection (1) or in accordance with an approval under subsection (4), or for the purposes of section 101K or subsection 101N(5), an investigating officer shall not:
 - (a) take, or cause to be taken, a print, recording, sample or photograph of a kind referred to in subsection (1) in respect of a person who is in custody in respect of a service offence; or
 - (b) require any other person to submit to the taking of any such print, recording, sample or photograph.
- (3) An investigating officer who is an officer or warrant officer may:
 - (a) make application to an authorized officer in person; or
 - (b) if it is impracticable for the investigating officer to make application to an authorized officer in person—make application to an authorized officer by telephone;

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for approval to take, or cause to be taken, prints of the hands, fingers, feet or toes, sound recordings of the voice, samples of the handwriting, or photographs, of:

- (c) a person who is in lawful custody in respect of a service offence; or
 - (d) a person against whom proceedings have been instituted under section 87 in respect of a service offence.
- (4) The authorized officer may, if he or she thinks it proper in all the circumstances, give his or her approval, in writing, to the taking of the prints, recordings, samples or photographs, as the case may be.
- (5) Where the application was made to the authorized officer by telephone, the authorized officer shall cause the instrument of approval to be forwarded to the applicant.
- (6) An investigating officer may use such reasonable force as may be necessary in acting in accordance with subsection (1) or in pursuance of an approval of an authorized officer under subsection (4).

101M Identification by means of photographs

- (1) Where a suspect in relation to a relevant act in relation to a service offence is in custody, an investigating officer investigating the service offence shall not show a photograph of a person, or a series of photographs of persons, to a witness to the relevant act for the purpose of ascertaining, or obtaining evidence of, the identity of a relevant person in relation to the relevant act unless:
- (a) the suspect has refused to take part in an identification parade; or
 - (b) the holding of an identification parade would be:
 - (i) unfair to the suspect; or
 - (ii) impracticable in all the circumstances.
- (2) Where an investigating officer investigating a service offence shows a photograph of a person, or a series of photographs of persons, to a witness to a relevant act in relation to the service offence for the purpose of ascertaining, or obtaining evidence of, the identity of a relevant person in relation to the relevant act, the investigating officer:

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- (a) shall not, in doing so, act unfairly towards a suspect in relation to the relevant act or suggest to the witness that a particular photograph is the photograph of such a suspect or of a person who is being sought by the police or by the Defence Force in respect of a civil court offence, an overseas offence or a service offence;
 - (b) shall keep, or cause to be kept, a record identifying each photograph or series of photographs that is shown to the witness; and
 - (c) shall, upon application by a suspect in relation to the relevant act:
 - (i) provide the suspect with a copy of the record so kept; and
 - (ii) afford the suspect a reasonable opportunity to inspect each photograph or series of photographs shown to the witness.
- (3) Where a suspect in relation to a relevant act in relation to a service offence is in custody, an investigating officer investigating the service offence shall not show a picture of the kind known as an *Identikit* picture or a picture of a similar kind, or a series of pictures of the kind known as an *Identikit* picture or a series of pictures of a similar kind, to a witness to the relevant act for the purpose of assisting the witness to describe the features of a relevant person in relation to the relevant act.
- (4) Nothing in subsection (3) precludes an investigating officer from obtaining the assistance of a witness to a relevant act in relation to a service offence in the preparation of a picture of the kind known as an *Identikit* picture or a picture of a similar kind.
- (5) Where, after an investigating officer investigating a service offence has shown a witness to a relevant act in relation to the service offence a picture or series of pictures for the purpose of assisting the witness to describe the features of a relevant person in relation to the relevant act, a suspect in relation to the relevant act comes into custody, the investigating officer in charge of investigating the service offence shall, unless it is impracticable to do so, cause the witness to attend an identification parade in relation to the suspect.
- (6) Where, after a witness to a relevant act in relation to a service offence has been shown a picture or series of pictures for the

purpose of assisting the witness to describe the features of a relevant person in relation to the relevant act, a person is charged with the service offence, the investigating officer in charge of investigating the service offence shall, upon application by the person, provide the person with particulars of the picture or series of pictures that was shown to the witness and the comments (if any) of the witness concerning the picture or series of pictures.

- (7) Where a suspect in relation to a relevant act in relation to a service offence is in custody and an investigating officer investigating the service offence believes on reasonable grounds that a person who is not in custody is a relevant person in relation to the relevant act:
- (a) subsection (1) shall not be taken to prevent an investigating officer from showing a photograph of a person, or a series of photographs of persons, to a witness to the relevant act for the purpose of ascertaining, or obtaining evidence of, the identity of the other person; and
 - (b) subsection (3) shall not be taken to prevent an investigating officer from showing a picture of the kind known as an *Identikit* picture or a picture of a similar kind, or a series of pictures of the kind known as an *Identikit* picture or a series of pictures of a similar kind, to a witness to the relevant act for the purpose of assisting the witness to describe the features of a relevant person in relation to the relevant act (other than the suspect).

101N Identification parades

- (1) An investigating officer investigating a service offence shall not cause or permit an identification parade to be held for the purpose of ascertaining whether a witness to a relevant act in relation to the service offence can identify a suspect in relation to the relevant act as a relevant person in relation to the relevant act unless the suspect has agreed to the holding of the parade and has been informed by an investigating officer in writing in a language in which the suspect is reasonably fluent and, if practicable, orally in such a language:
- (a) that the suspect is entitled to refuse to agree to the holding of the parade;
 - (b) that, if the suspect does not agree to the holding of the parade and take part in the parade, evidence may be given, in any

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- proceedings with respect to the service offence, of any identification of the suspect by the witness as a result of:
- (i) having seen a photograph or series of photographs; or
 - (ii) having seen the suspect otherwise than during an identification parade;
- (c) that, if the suspect does take part in the identification parade, evidence may be given, in any proceedings with respect to the service offence:
- (i) of any identification made by the witness;
 - (ii) of any doubts expressed by the witness, during or immediately following the holding of the parade; and
 - (iii) of any unfairness in the conducting of the parade; and
- (d) that the suspect may have present, during the holding of the parade, a legal practitioner or other person of his or her choice if arrangements can be made for the legal practitioner or other person to be present within a reasonable time.
- (2) Where the investigating officer informs the suspect as provided in subsection (1), the investigating officer shall ask the suspect to sign an acknowledgment, in accordance with the prescribed form, of the fact that the suspect has been so informed and of the date on which, and the time at which, the suspect was so informed.
- (3) Where it is necessary, in proceedings with respect to a service offence, for a service tribunal to determine whether an investigating officer has informed a person as provided in subsection (1) and an acknowledgment of the kind referred to in subsection (2), signed by the person, is not produced in evidence, the service tribunal shall presume, unless the contrary is proved, that the person was not so informed.
- (4) Where an identification parade is held in relation to a suspect in relation to a relevant act in relation to a service offence, for the purpose of ascertaining whether a witness to the relevant act can identify the suspect as a relevant person in relation to the relevant act, the investigating officer responsible for conducting the parade:
- (a) shall arrange and conduct the parade in such a manner as will not unfairly prejudice the suspect; and
 - (b) shall, as far as the investigating officer is able to do so, ensure that nothing in the arranging and conducting of the parade, or in what happens during the conducting of the

parade, suggests, or is likely to suggest, to the witness which of the persons included in the parade is the suspect.

- (5) The investigating officer responsible for conducting the identification parade shall:
- (a) cause:
 - (i) at least one photograph, if practicable in colour, to be taken of the identification parade while it is being conducted; or
 - (ii) a videotape recording of the parade to be taken; and
 - (b) cause to be recorded particulars of:
 - (i) what happens during the parade (including particulars of any words spoken by the witness and of any doubts expressed, and any gestures made, by the witness); and
 - (ii) the name, address and occupation of each person (other than the suspect) who is included in the parade and consents to the recording of those particulars.
- (6) The suspect is entitled, upon request to the investigating officer responsible for conducting the identification parade, to be provided with:
- (a) if a photograph of the identification parade has been taken in pursuance of paragraph (5)(a)—a copy of the photograph;
 - (b) if a videotape recording of the identification parade has been taken in pursuance of paragraph (5)(a)—reasonable facilities to enable the videotape recording to be reproduced in images and, if practicable, sound; and
 - (c) a copy of the record made in pursuance of subparagraph (5)(b)(i).

101P Searches of arrested persons

- (1) An investigating officer may, upon lawfully taking a person into custody in respect of a service offence, search the person, the clothing the person is wearing and any property under his or her immediate control if the investigating officer believes on reasonable grounds that it is necessary to do so:
- (a) for the purpose of ascertaining whether there is concealed on the person, in his or her clothing or in that property a weapon or other thing capable of being used to:
 - (i) inflict death or bodily injury; or

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- (ii) assist the person to escape from custody; or
 - (b) for the purpose of preventing the concealment, loss or destruction of evidence of, or relating to, the service offence.
- (2) Subsection (1) does not authorize the investigating officer to remove, or to require the person to remove, any clothing that the person is wearing.
- (3) The investigating officer may seize:
 - (a) any weapon or other thing of a kind referred to in paragraph (1)(a); or
 - (b) any thing that the investigating officer has reasonable grounds to believe is a thing:
 - (i) with respect to which a service offence has been committed;
 - (ii) that will afford evidence of the commission of a service offence; or
 - (iii) that was used, or is intended to be used, for the purpose of committing a service offence;being a weapon or thing found in the course of the search.
- (4) Nothing in this section shall be taken to affect the operation of section 95A or 178A.

101Q Medical examinations

- (1) An investigating officer may arrange for a medical practitioner to examine a person in lawful custody in respect of a service offence for the purpose of securing evidence of, or relating to, the service offence if, and only if, the investigating officer believes on reasonable grounds that the examination is likely to provide such evidence and:
 - (a) the person has given his or her consent in writing; or
 - (b) an authorized officer has, under subsection (4), approved the examination.
- (2) An investigating officer may arrange for a medical practitioner to take a specimen from a person in lawful custody in respect of a service offence for the purpose of having the specimen analysed or otherwise examined if, and only if, the investigating officer believes on reasonable grounds that analysis or other examination

of the specimen is likely to provide evidence of, or relating to, the service offence and:

- (a) the person has given his or her consent in writing; or
 - (b) an authorized officer has, under subsection (4), approved the taking of the specimen.
- (3) An investigating officer may:
- (a) make application to an authorized officer in person; or
 - (b) if it is impracticable for the investigating officer to make application to an authorized officer in person—make application to an authorized officer by telephone;
- for an approval for the purpose of subsection (1) or (2).
- (4) The authorized officer may, if he or she is satisfied that the investigating officer has reasonable grounds for the belief referred to in subsection (1) or (2), whichever is applicable, give his or her approval by instrument in writing.
- (4A) The authority conferred by subsection (4) on an authorised officer only extends to the giving of approval in respect of a medical examination of a kind, or the taking of a specimen, that is reasonably necessary for the purpose of obtaining evidence relating to the presence or absence of a narcotic substance in the blood or urine of a person.
- (4B) In subsection (4A), **narcotic substance** has the same meaning as in the *Customs Act 1901*.
- (4C) In considering whether to give approval under subsection (4), an authorised officer may take into account the physical health of the person to whom the application for approval relates.
- (5) Where the application was made to the authorized officer by telephone, the authorized officer shall cause the instrument of approval to be forwarded to the investigating officer.
- (6) Before arranging for a medical practitioner to examine a person in lawful custody or to take a specimen from such a person, an investigating officer shall inquire whether the person wishes to have a medical practitioner of the person's choice present during the examination or the taking of the specimen, as the case may be, and, if the person states that the person does so wish, shall:

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- (a) provide reasonable facilities to enable the person to arrange for a medical practitioner of the person's choice to be so present; and
 - (b) unless it would be impracticable to do so—arrange for the examination to be made or the specimen to be taken, as the case may be, at a time when the medical practitioner chosen by the person can be present.
- (7) Subsection (6) does not apply in relation to a person in custody in respect of a service offence where an investigating officer believes on reasonable grounds that, if the examination of the person or the taking of a specimen from the person, as the case requires, is delayed until a time when a medical practitioner chosen by the person can be present, evidence of, or relating to, the service offence may be lost or destroyed or may otherwise disappear.
- (8) An investigating officer may use such reasonable force as is necessary to take a person to a medical practitioner for the purpose of an examination of the person in accordance with subsection (1) or the taking of a specimen from the person in accordance with subsection (2), as the case requires.
- (9) Where, in accordance with this section, a medical practitioner examines a person in lawful custody in respect of a service offence or takes a specimen from such a person and:
 - (a) no proceedings in respect of the service offence, or a related service offence, are instituted against the person:
 - (i) within a period of 12 months after the examination is made or the specimen is taken, as the case may be; or
 - (ii) if that period is extended under subsection (10)—within that period as from time to time so extended; or
 - (b) proceedings in respect of the service offence, or a related service offence, are instituted within that period, but a service tribunal acquits the person of a charge of the service offence, or a related service offence, or dismisses such a charge;the person having the custody of the report of the examination or the report of the analysis or other examination of the specimen, as the case may be, and any investigating officer having the custody of a copy of such a report, shall cause it to be destroyed.
- (10) An authorized officer may, upon application by a person having the custody of the report of an examination by a medical

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practitioner of a person in lawful custody in respect of a service offence, or of the report of an analysis or other examination of a specimen taken from such a person, or by an investigating officer having the custody of a copy of such a report, and upon being satisfied, by information on oath or affirmation, that there are special reasons for doing so, extend, in respect of the examination or the analysis or other examination of the specimen, as the case may be, the period referred to in subparagraph (9)(a)(i), or that period as previously extended under this subsection.

- (11) Where a person in lawful custody in respect of a service offence is examined by a medical practitioner in accordance with subsection (1), or a specimen is taken from such a person in accordance with subsection (2), an investigating officer concerned in the investigation of the service offence, shall, upon application by the person, cause the person to be provided with a copy of the report of the medical practitioner in respect of the examination or the report of the analysis or other examination of the specimen, as the case may be.
- (12) Where a medical practitioner makes an examination of a person, or takes a specimen from a person, in pursuance of arrangements duly made, or purporting to be duly made, by an investigating officer under this section, proceedings do not lie against the medical practitioner, or against any other person acting under his or her direction or otherwise assisting him or her, in respect of anything reasonably done in good faith by the medical practitioner or by the other person for the purpose of making the examination or taking the specimen, as the case may be.
- (13) Nothing in this section:
- (a) prevents a medical practitioner from examining, or taking a specimen from, a person at the request of the person or for the purpose of treating the person for illness or an injury; or
 - (b) affects the power of a service tribunal, or, in the case of a court martial, the judge advocate of the court martial, to exclude evidence obtained through unreasonable force or inhuman treatment.
- (14) In this section, *specimen*, in relation to a person, includes a sample of, or taken from, the body of the person.

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- (15) In the application of this section to a person who is in custody at a place outside Australia, a reference to a medical practitioner includes a reference to a person who is registered or licensed as a medical practitioner under:
- (a) a law of that place; or
 - (b) a law of a prescribed place;
- being a law that provides for the registration or licensing of medical practitioners.

101QA Offence of refusing to submit to medical examination etc.

(1) If:

- (a) a person is in lawful custody in respect of a service offence; and
- (b) an investigating officer has arranged for a medical practitioner to examine the person for the purpose of securing evidence of, or relating to, the service offence; and
- (c) either:
 - (i) the person has given his or her consent in writing to the examination; or
 - (ii) an authorised officer has, under subsection 101Q(4), approved the examination; and
- (d) the investigating officer has informed the person that refusal or failure by him or her to submit to the examination will constitute an offence; and
- (e) after having been so informed, the person refuses or fails to submit to the examination;

the person is guilty of an offence for which the maximum punishment is imprisonment for 6 months.

- (1A) It is a defence to a charge under subsection (1) if the person proves that he or she had a reasonable excuse for refusing or failing to submit to the examination.

Note: The defendant bears a legal burden in relation to the matter in subsection (1A). See section 13.4 of the *Criminal Code*.

(2) If:

- (a) a person is in lawful custody in respect of a service offence; and
- (b) an investigating officer has arranged for a medical practitioner to take a specimen from the person; and

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- (c) the officer believes on reasonable grounds that analysis or other examination of the specimen is likely to provide evidence of, or relating to, the service offence; and
 - (d) either:
 - (i) the person has given his or her consent in writing to the taking of the specimen; or
 - (ii) an authorised officer has, under subsection 101Q(4), approved the taking of the specimen; and
 - (e) the investigating officer has informed the person that refusal or failure by him or her:
 - (i) to submit to the taking of the specimen; or
 - (ii) to do any act reasonably necessary to enable the specimen to be taken;will constitute an offence; and
 - (f) after being so informed, the person:
 - (i) refuses or fails to submit to the taking of the specimen; or
 - (ii) refuses or fails to do an act reasonably necessary to enable the specimen to be taken;the person is guilty of an offence for which the maximum punishment is imprisonment for 6 months.
- (2A) It is a defence to a charge under subsection (2) if the person proves that he or she had a reasonable excuse for refusing or failing to do the act mentioned in subparagraph (2)(f)(i) or (ii).
- Note: The defendant bears a legal burden in relation to the matter in subsection (2A). See section 13.4 of the *Criminal Code*.
- (3) It is a reasonable excuse for the purposes of subsection (1A) or (2A) that a person has a medical condition that may be aggravated by the conduct of the medical examination or the taking of the specimen, as the case requires.
 - (4) Nothing in this section renders a person guilty of an offence for refusing to submit to a medical examination or the taking of a specimen to the extent that the person proves that the examination or the taking of the specimen, as the case may be, was not reasonably necessary for the purpose of obtaining evidence relating to the presence or absence of a narcotic substance in the blood or urine of a person.

Part VI Investigation of service offences

Division 4 Other investigative action

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

- (5) In subsection (4), *narcotic substance* has the same meaning as in the *Customs Act 1901*.

101R Application of Division

This Division shall not be taken to prohibit an investigating officer from taking investigative action of a kind not referred to in this Division where the taking of that action is not inconsistent with a provision of this Division.

Division 5—Rights of persons charged with service offences

101S Persons to be cautioned

Immediately after a person in custody is charged with a service offence, the investigating officer in charge of investigating the service offence shall caution the person, or cause the person to be cautioned, in a language in which the person is reasonably fluent, in writing, and also, if practicable, orally, that the person is not obliged to, but may if the person wishes to do so, answer any questions, or do any thing, asked of the person by an investigating officer and that anything said or done by the person may be used in evidence.

101T Questioning of persons charged with service offences

- (1) An investigating officer shall not, after a person is charged with, or summoned in respect of, a service offence, ask the person any question in relation to the service offence other than:
 - (a) a question with respect to an ambiguity in an answer previously made by the person to a question asked of the person by an investigating officer, being a question asked before the person was charged with, or summoned in respect of, the service offence or duly asked in accordance with this section after the person was so charged;
 - (b) a question with respect to an ambiguity in a statement made by the person, whether before or after the person was charged with, or summoned in respect of, the service offence; or
 - (c) a question necessary to assist the investigating officer in dealing with an emergency.
- (2) Subsection (1) shall not be taken to prevent an investigating officer from asking a person who has been charged with, or summoned in respect of, a service offence, whether the person wishes to make a statement with respect to any information or other evidence of, or relating to, the service offence, that, at the time when the person was so charged or summoned, was not in the possession of any investigating officer concerned in the investigation of the offence, but nothing in this subsection shall be taken to permit an

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investigating officer to ask such a person any further question other than a question with respect to an ambiguity in a statement referred to in this subsection.

- (3) Immediately before an investigating officer asks a person who has been charged with, or summoned in respect of, a service offence any questions relating to the service offence, the investigating officer shall give the person a caution of the kind referred to in section 101S or draw the attention of the person to the caution previously given to the person in accordance with that section, as the case requires.
- (4) Where a person who has been charged with, or summoned in respect of, a service offence voluntarily proposes to make, or commences to make, a statement to an investigating officer in relation to the service offence (including a statement of the kind referred to in subsection (2)), the investigating officer shall caution the person in a language in which the person is reasonably fluent, in writing, and also, if practicable, orally, before the person commences to make the statement or, if it is not practicable to do so, as soon as practicable after the person commences to make the statement, that the person is not obliged to, but may if the person wishes, make a statement and that the statement may be used in evidence.

101U Persons charged with same service offence

- (1) Where, after 2 or more persons have been charged with the same service offence, one of those persons furnishes to an investigating officer a written statement in relation to the service offence, not being a statement made jointly with the other person or all the other persons, as the case may be, charged with the service offence, the investigating officer to whom the statement is furnished may cause a copy of the statement to be furnished to the other person or each of the other persons, as the case may be, charged with the service offence who did not join in making the statement, but shall not, subject to subsection (2), read the statement to the other person or any of those other persons, as the case may be, or invite, either orally or otherwise, the other person or any of those other persons, as the case may be, to comment on the statement.

- (2) Where a person to whom a copy of a statement is furnished in accordance with subsection (1) is unable for any reason to read the copy of the statement, the investigating officer shall:
- (a) in a case where the person is not reasonably fluent in the language in which the statement is written—cause the statement to be translated into a language in which the person is reasonably fluent and cause a copy of the translation to be furnished to the person and, if the person is unable to read the copy of the translation and the person consents, read the copy of the translation, or cause the copy of the translation to be read, to the person; or
 - (b) in any other case—if the person consents, read the copy of the statement, or cause the copy of the statement to be read, to the person.
- (3) Where a person to whom a copy of a statement is furnished in accordance with subsection (1) voluntarily proposes to make, or commences to make, a statement to an investigating officer in relation to the relevant service offence by way of comment on the first-mentioned statement, the investigating officer shall caution the person in a language in which the person is reasonably fluent, in writing, and also, if practicable, orally, before the person commences to make the statement or, if it is not practicable to do so, as soon as practicable after the person commences to make the statement, that the person is not obliged to, but may if the person wishes, make a statement and that the statement may be used in evidence.
- (4) A reference in this section to a written statement includes a reference to a record in writing of an interview, being an interview in respect of which subsection 101K(3) has been complied with.

Division 6—Search and seizure

101V Interpretation

- (1) For the purposes of this Division, a thing is connected with a particular service offence if it is:
 - (a) a thing with respect to which the service offence has been committed;
 - (b) a thing that will afford evidence of the commission of the service offence; or
 - (c) a thing that was used, or is intended to be used, for the purpose of committing the service offence.
- (2) A reference in a provision of this Division other than subsection 101W(3) to land or premises is a reference to service land or premises on service land (other than land or premises in Australia occupied by, or comprising, married quarters), as the case requires.
- (3) A reference in a provision of this Division other than subsection 101W(3) to a ship, aircraft or vehicle is a reference to:
 - (a) a service ship, service aircraft or service vehicle, as the case requires; or
 - (b) a ship, aircraft or vehicle, as the case requires, on service land.

101W Search and seizure

- (1) An investigating officer may search a defence member or defence civilian, or clothing being worn by, or property under the immediate control of, a defence member or defence civilian, and may seize any thing found in the course of the search that the investigating officer believes on reasonable grounds to be connected with a service offence if, and only if, the search and seizure is made by the investigating officer:
 - (a) in pursuance of a search warrant issued under section 101X or 101Y;
 - (b) in accordance with section 101P or 101Z; or
 - (c) after obtaining, in accordance with section 101ZA, the consent of the defence member or defence civilian, as the case may be, to the search.

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- (2) An investigating officer may enter upon land, or upon or into premises or a ship, aircraft or vehicle, and may search the land, premises, ship, aircraft or vehicle and may seize any thing found in the course of the search that the investigating officer believes on reasonable grounds to be connected with a service offence if, and only if, the entry, search and seizure is made by the investigating officer:
- (a) in pursuance of a search warrant issued under section 101X or 101Y;
 - (b) in accordance with section 101Z; or
 - (c) after obtaining, in accordance with section 101ZA, the consent of the occupier of the land or premises or of the person in charge of the ship, aircraft or vehicle, as the case may be, to the entry.
- (3) An investigating officer may:
- (a) enter upon land, not being land referred to in subsection (2), or upon or into premises or a ship, aircraft or vehicle, not being premises or a ship, aircraft or vehicle referred to in subsection (2);
 - (b) search the land, premises, ship, aircraft or vehicle; and
 - (c) seize any thing found in the course of the search that the investigating officer believes on reasonable grounds to be connected with a service offence;
- if, and only if, the entry, search and seizure are made by the investigating officer after obtaining, in accordance with section 101ZA, the consent of the occupier of the land or premises or of the person in charge of the ship, aircraft or vehicle, as the case may be, to the entry.

101X Search warrants

- (1) Where an information on oath or affirmation is laid before an authorized officer alleging that there are reasonable grounds for suspecting that a thing of a particular kind connected with a particular service offence may be found on a defence member or defence civilian, or in clothing being worn by, or property under the immediate control of, a defence member or defence civilian, and the information sets out those grounds, the authorized officer may issue a search warrant authorizing an investigating officer

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named in the warrant, with such assistance as he or she thinks necessary and if necessary by force:

- (a) to search the defence member or defence civilian, as the case may be, and clothing being worn by, and property under the immediate control of, the defence member or defence civilian, as the case may be, for things of that kind; and
 - (b) to seize any thing of that kind found in the course of the search that he or she believes on reasonable grounds to be connected with the service offence.
- (2) Where an information on oath or affirmation is laid before an authorized officer alleging that there are reasonable grounds for suspecting that there may be, at that time or within the next following 24 hours, upon any land or upon or in any premises, ship, aircraft or vehicle, a thing of a particular kind connected with a particular service offence, and the information sets out those grounds, the authorized officer may issue a search warrant authorizing an investigating officer named in the warrant, with such assistance as he or she thinks necessary and if necessary by force:
- (a) to enter upon the land or upon or into the premises, ship, aircraft or vehicle, as the case may be;
 - (b) to search the land, premises, ship, aircraft or vehicle, as the case may be, for things of that kind; and
 - (c) to seize any thing of that kind found in the course of the search that he or she believes on reasonable grounds to be connected with the service offence.
- (3) An authorized officer shall not issue a warrant under subsection (1) or (2) unless:
- (a) the informant or some other person has given to the authorized officer, either orally or by affidavit, such further information (if any) as the authorized officer requires concerning the grounds on which the issue of the warrant is being sought; and
 - (b) the authorized officer is satisfied that there are reasonable grounds for issuing the warrant.
- (4) There shall be stated in a warrant issued under this section:
- (a) in the case of a warrant issued under subsection (1):

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- (i) a statement of the purpose for which the warrant is issued, which shall include a reference to the nature of the service offence in relation to which the search is authorized;
 - (ii) a description of the kind of things authorized to be seized; and
 - (iii) a date, not being later than one month after the day on which the warrant is issued, upon which the warrant ceases to have effect; and
- (b) in the case of a warrant issued under subsection (2):
- (i) a statement of the purpose for which the warrant is issued, which shall include a reference to the nature of the service offence in relation to which the entry and search are authorized;
 - (ii) whether entry is authorized to be made at any time of the day or night or only during specified hours of the day or night;
 - (iii) a description of the kind of things authorized to be seized; and
 - (iv) a date, not being later than one month after the day on which the warrant is issued, upon which the warrant ceases to have effect.
- (5) Where:
- (a) in the course of searching, in accordance with a warrant issued under this section or section 101Y, for things connected with a particular service offence, being things of a kind specified in the warrant, an investigating officer finds:
 - (i) any thing that he or she believes on reasonable grounds to be connected with the service offence, although not of the kind specified in the warrant; or
 - (ii) any thing that he or she believes on reasonable grounds to be connected with another service offence; and
 - (b) the investigating officer believes on reasonable grounds that it is necessary to seize that thing in order to:
 - (i) prevent its concealment, loss or destruction; or
 - (ii) its use in committing, continuing or repeating a service offence;
- the warrant shall be deemed to authorize the investigating officer to seize that thing.

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- (6) An investigating officer acting in accordance with a warrant issued under subsection (1) may:
 - (a) require a person to remove any clothing that the person is wearing; and
 - (b) if the person refuses or fails to comply with the requirement—remove the clothing.
- (7) A person shall not be searched by, or in the presence of, a person who is not of the same sex as the first-mentioned person.

101Y Search warrants may be granted by telephone

- (1) Where, by reason of circumstances of urgency, an investigating officer considers it necessary to do so, the investigating officer may make application to an authorized officer, by telephone, for a search warrant.
- (2) Before making the application, the investigating officer shall prepare an information of the kind referred to in subsection 101X(1) or (2), as the case requires, being an information that sets out the grounds on which the issue of the warrant is being sought, but may, if it is necessary to do so, make the application before the information has been sworn or affirmed.
- (3) Where, upon application under subsection (1), an authorized officer is satisfied, after having:
 - (a) considered the terms of the information prepared in accordance with subsection (2); and
 - (b) had given to him or her such further information (if any) as he or she requires concerning the grounds on which the issue of the warrant is being sought;that there are reasonable grounds for issuing the warrant, the authorized officer shall complete and sign a search warrant of such a kind as he or she would have issued under section 101X if the application had been made in accordance with that section.
- (4) Where an authorized officer signs a warrant under subsection (3):
 - (a) the authorized officer shall:
 - (i) inform the investigating officer of:
 - (A) the terms of the warrant; and
 - (B) the date on which, and the time at which, it was signed; and

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- (ii) record on the warrant his or her reasons for granting the warrant; and
- (b) the investigating officer shall:
 - (i) complete a form of warrant in the terms furnished to him or her by the authorized officer; and
 - (ii) write on the form of warrant:
 - (A) the name of the authorized officer; and
 - (B) the date on which, and the time at which, the warrant was signed.
- (5) Where an investigating officer completes a form of warrant in accordance with paragraph (4)(b), the investigating officer shall, not later than the day next following the date of expiry of the warrant, send to the authorized officer who signed the warrant the form of warrant and the information duly sworn or affirmed by him or her in connection with the issue of the warrant.
- (6) Upon receipt of the form of warrant and information, the authorized officer shall attach to them the warrant.
- (7) A form of warrant duly completed by an investigating officer in accordance with paragraph (4)(b) is, if it is in the terms of the warrant signed by the authorized officer, authority for any search, seizure or entry that the warrant so signed authorizes.
- (8) Where it is material, in any action or proceeding, for a civil court or service tribunal to be satisfied that a search, seizure or entry was authorized by this section, and a warrant signed by an authorized officer in accordance with this section authorizing the search, seizure or entry is not produced in evidence, the civil court or service tribunal, as the case may be, shall presume, unless the contrary is proved, that the search, seizure or entry was not authorized by such a warrant.

101Z Searches in emergencies

- (1) An investigating officer may:
 - (a) search a defence member or defence civilian, or clothing being worn by, or property under the immediate control of, a defence member or defence civilian, whom the investigating officer believes on reasonable grounds to be carrying anything connected with a service offence; or

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- (b) enter upon land, or upon or into premises or a ship, aircraft or vehicle, on or in which the investigating officer believes on reasonable grounds that any thing connected with a service offence is situated and search the land, premises, ship, aircraft or vehicle, as the case may be;
- and may seize any such thing found in the course of the search if:
- (c) the investigating officer believes on reasonable grounds that it is necessary to do so in order to:
 - (i) prevent its concealment, loss or destruction; or
 - (ii) prevent its use in committing, continuing or repeating a service offence; and
 - (d) the search or entry and search, as the case may be, is made in circumstances of such seriousness and urgency as to require and justify immediate search or entry and search, as the case may be, without the authority of a warrant issued under section 101X or 101Y.
- (2) Where an investigating officer believes on reasonable grounds that a defence member or defence civilian is, without lawful authority or reasonable excuse, carrying an offensive weapon, or any thing connected with a serious service offence, the investigating officer may:
- (a) stop the defence member or defence civilian;
 - (b) search the defence member or defence civilian, and the clothing being worn by, and property under the immediate control of, the defence member or defence civilian, as the case may be; and
 - (c) seize any such weapon or thing found in the course of the search.
- (3) Where an investigating officer believes on reasonable grounds that an offensive weapon, or any thing connected with a serious service offence, is in a ship, aircraft or vehicle, the investigating officer may:
- (a) stop the ship, aircraft or vehicle;
 - (b) enter upon or into the ship, aircraft or vehicle;
 - (c) search the ship, aircraft or vehicle; and
 - (d) seize any such weapon or thing found in the course of the search.

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- (4) An investigating officer conducting a search in accordance with paragraph (1)(a) may:
 - (a) require a person to remove any clothing that the person is wearing; and
 - (b) if the person refuses or fails to comply with the requirement—remove the clothing.
- (5) A person shall not be searched by, or in the presence of, a person who is not of the same sex as the first-mentioned person.
- (6) In subsections (2) and (3), *offensive weapon* means any thing:
 - (a) made or adapted for use for causing death or bodily injury; or
 - (b) intended by the person having it for such use.

101ZA Consent to search

- (1) Before obtaining the consent of a person for the purposes of section 101W, an investigating officer shall inform the person that the person may refuse to give his or her consent.
- (2) An investigating officer who obtains the consent of a person for the purposes of section 101W shall ask the person to sign an acknowledgement, in accordance with the prescribed form:
 - (a) of the fact that the person has been informed that the person may refuse to give his or her consent;
 - (b) of the fact that the person has voluntarily given his or her consent; and
 - (c) of the date on which, and the time at which, the person gave his or her consent.
- (3) A search or entry and search, as the case requires, by an investigating officer by virtue of the consent of a person is not lawful unless the person concerned voluntarily consented to the search or entry and search, as the case may be.
- (4) Where it is material, in any action or proceeding, for a civil court or service tribunal to be satisfied of the voluntary consent of a person for the purposes of section 101W and an acknowledgment of the kind referred to in subsection (2) signed by the person is not produced in evidence, the civil court or service tribunal, as the case may be, shall presume, unless the contrary is proved, that the person did not give such a voluntary consent.

Division 7—Exclusion of evidence

101ZB Exclusion of evidence illegally obtained

- (1) Where, in proceedings before a service tribunal in respect of a service offence, upon objection being taken to the admission of evidence on the ground that the evidence was obtained in contravention of, or in consequence of a contravention of, a provision of this Part, the service tribunal, or, in the case of a court martial, the judge advocate of the court martial, is satisfied, on the balance of probabilities but having regard to any provision of this Act or the regulations relating to proof of particular matters, that the evidence was so obtained, the service tribunal or judge advocate, as the case may be, shall not admit the evidence unless the service tribunal or judge advocate, as the case may be, is of the opinion that:
 - (a) admission of the evidence would substantially benefit the public interest in the administration of justice; and
 - (b) this benefit would outweigh any prejudice to the rights and freedoms of any person, including the accused person, that has occurred, or is likely to occur, as a result of the contravention or the admission of the evidence.
- (2) The matters that the service tribunal or judge advocate, as the case may be, may have regard to in deciding whether to admit the evidence include:
 - (a) the seriousness of the service offence, the urgency and difficulty of detecting the offender and the need to preserve evidence of the facts;
 - (b) the nature and seriousness of the contravention;
 - (c) the effect that admission of the evidence in the particular circumstances of the case is likely to have on the operation of the provisions of this Part;
 - (d) the effect (if any) of the contravention on the cogency of the evidence so obtained; and
 - (e) the extent to which the evidence might have been obtainable lawfully.
- (3) This section is in addition to, and not in substitution for, any other law or rule under which a service tribunal, or, in the case of a court

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martial, the judge advocate of the court martial, may refuse to admit evidence.

- (4) Subsection (3) shall not be taken to authorize a service tribunal or judge advocate, in proceedings in respect of a service offence, to refuse to admit a statement in evidence on the ground that an investigating officer contravened the rules known as the Judge's Rules.
- (5) Nothing in this section derogates from the application of section 101J or 101K.

Division 8—Application of Part

101ZC Application of Part

Nothing in this Part shall be taken to limit or restrict, by implication:

- (a) any action that may be taken, in accordance with any other law of the Commonwealth or the law of a State or Territory, for a purpose not connected with the investigation of a service offence; or
- (b) any action that a constable, or any other person who is not an investigating officer, may take, in accordance with any other law of the Commonwealth or the law of a State or Territory, for the purpose of investigating a service offence.

Part VII—Service tribunals

Division 1—Director of Military Prosecutions

103 Courses open to Director of Military Prosecutions

- (1) Where a charge is referred to the Director of Military Prosecutions under subsection 105A(2), paragraph 109(b) or 110(1)(d), subsection 129A(3), 130(5) or 131(4), section 131A or subsection 141(8), 145(1) or (3) or 194(7), the Director of Military Prosecutions may:
- (a) direct that the charge be not proceeded with;
 - (b) if the charge is a charge that is within the jurisdiction of a superior summary authority or a commanding officer to try (other than a charge referred under subsection 145(1) or (3))—refer the charge to the superior summary authority or the commanding officer for trial;
 - (c) request the Registrar of Military Justice to refer the charge to a Defence Force magistrate for trial; or
 - (d) request the Registrar of Military Justice to convene a general court martial or a restricted court martial to try the charge.

Note 1: See also paragraph 87(1)(c) for additional powers that may be exercised by the Director of Military Prosecutions in relation to a charge.

Note 2: A charge referred to a Defence Force magistrate must be referred to the magistrate nominated by the Judge Advocate General: see subsection 129C(1).

- (2) Where:
- (a) a reviewing authority under section 160 or 166 orders a new trial of a person; or
 - (b) the Defence Force Discipline Appeal Tribunal or the Federal Court of Australia, under the *Defence Force Discipline Appeals Act 1955* orders a new trial of a person;
- the Director of Military Prosecutions may:
- (c) if the charge is a charge that is within the jurisdiction of a superior summary authority or a commanding officer to try (other than a charge to which an order under section 166

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relates)—refer the charge to the superior summary authority or the commanding officer for trial;

- (d) request the Registrar of Military Justice to refer the charge to a Defence Force magistrate for trial; or
- (e) request the Registrar of Military Justice to convene a general court martial or a restricted court martial to try the charge.

Note: A charge referred to a Defence Force magistrate must be referred to the magistrate nominated by the Judge Advocate General: see subsection 129C(1).

- (3) Nothing in subsection (2) requires the Director of Military Prosecutions to proceed with a new trial of a person unless the Director of Military Prosecutions is satisfied that there is sufficient cogent evidence to justify a new trial of the person.

- (4) Where under section 131:

- (a) an accused person elects to be tried by a Defence Force magistrate; and
- (b) the summary authority refers the charge to the Director of Military Prosecutions;

the Director of Military Prosecutions may:

- (c) direct that the charge be not proceeded with;
- (d) request the Registrar of Military Justice to refer the charge to a Defence Force magistrate for trial; or
- (e) if no Defence Force magistrate is available or if the Director of Military Prosecutions considers that it would be more appropriate for the charge to be dealt with by a court martial—request the Registrar of Military Justice to convene a general court martial or a restricted court martial to try the charge.

Note: A charge referred to a Defence Force magistrate must be referred to the magistrate nominated by the Judge Advocate General: see subsection 129C(1).

- (5) Where under section 131:

- (a) an accused person elects to be tried by a court martial; and
- (b) the summary authority refers the charge to the Director of Military Prosecutions;

the Director of Military Prosecutions may:

- (c) direct that the charge be not proceeded with; or

- (d) request the Registrar of Military Justice to convene a general court martial or a restricted court martial to try the charge.
- (6) Where under section 131:
- (a) a convicted person elects to be punished by a Defence Force magistrate; and
 - (b) the summary authority refers the conviction to the Director of Military Prosecutions;
- the Director of Military Prosecutions may:
- (c) request the Registrar of Military Justice to refer the case to a Defence Force magistrate to take action under Part IV in relation to the convicted person; or
 - (d) if no Defence Force magistrate is available or if the Director of Military Prosecutions considers that it would be more appropriate for the matter to be dealt with by a court martial—request the Registrar of Military Justice to convene a general court martial or a restricted court martial to take action under Part IV in relation to the convicted person.

Note: A case referred to a Defence Force magistrate must be referred to the magistrate nominated by the Judge Advocate General: see subsection 129C(2).

- (7) Where under section 131:
- (a) a convicted person elects to be punished by a court martial; and
 - (b) the summary authority refers the conviction to the Director of Military Prosecutions;
- the Director of Military Prosecutions must request the Registrar of Military Justice to convene a general court martial or a restricted court martial to take action under Part IV in relation to the convicted person.

Division 2—Summary authorities

104 Interpretation

In this Division, *prescribed offence* means:

- (a) an offence against section 61 in relation to which the relevant Territory offence is:
 - (i) treason, murder, manslaughter or bigamy; or
 - (ii) an offence against section 51, 52, 53, 54 or 55 of the *Crimes Act 1900* of the Australian Capital Territory, in its application to the Jervis Bay Territory, as amended or affected by Ordinances in force in that Territory; or
 - (iii) an offence prescribed for the purposes of this subparagraph; or
 - (iv) an ancillary Territory offence in relation to a Territory offence referred to in subparagraph (i), (ii) or (iii); or
- (b) a service offence prescribed for the purposes of this paragraph; or
- (c) a service offence that is an ancillary offence in relation to an offence referred to in paragraph (b).

105 Appointment of certain summary 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 superior summary authority.
- (2) A commanding officer may, by instrument in writing, appoint an officer, or each officer included in a class of officers, to be a subordinate summary authority.

105A Referral of charge to Director of Military Prosecutions before dealing with charge under section 109, 110 or 111

- (1) This section applies if:
 - (a) a person has been charged with a service offence; and
 - (b) the charge has not yet been dealt with under section 109, 110 or 111.

- (2) The person's commanding officer, or a superior officer in relation to the person's commanding officer, may refer the charge to the Director of Military Prosecutions.
- (3) Subject to paragraph 103(1)(b), if a charge is referred to the Director of Military Prosecutions under this section, the charge must not be dealt with under section 109, 110 or 111.

Note: Under paragraph 103(1)(b), the Director of Military Prosecutions may refer a charge that is referred to him or her under this section to a superior summary authority or a commanding officer for trial.

106 Jurisdiction of superior summary authority

A superior summary authority has jurisdiction to try a charge against:

- (a) an officer who is 2 or more ranks junior to him or her, being an officer of or below the rank of lieutenant-commander, major or squadron-leader;
 - (b) a warrant officer; or
 - (c) a person who is not a member of the Defence Force;
- in respect of a service offence that is not a prescribed offence.

107 Jurisdiction of commanding officer

- (1) A commanding officer has jurisdiction to deal with any charge against any person.
- (2) A commanding officer has jurisdiction to try a charge against:
 - (a) a member of the Defence Force who is 2 or more ranks junior to him or her, being a member of or below the naval rank of lieutenant, the military rank of captain or the rank of flight lieutenant; or
 - (b) a person who is not a member of the Defence Force;in respect of a service offence that is not a prescribed offence.

108 Jurisdiction of subordinate summary authority

- (1) A subordinate summary authority has jurisdiction to deal with a charge against a member of the Defence Force who is not an officer in respect of a service offence of a kind notified, in writing, to the authority by the commanding officer who appointed him or her.

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- (1A) A subordinate summary authority has jurisdiction to deal with a charge against a prescribed officer in respect of a service offence of a kind notified, in writing, to the authority by the commanding officer who appointed him or her.
- (2) A subordinate summary authority has jurisdiction to try a charge against a member of the Defence Force of, or below, the rank of leading seaman or corporal in respect of a service offence (other than a prescribed offence) of a kind notified, in writing, to the authority by the commanding officer who appointed him or her.
- (3) A subordinate summary authority has jurisdiction to try a charge against a prescribed officer in respect of a service offence (other than a prescribed offence) of a kind notified, in writing, to the authority by the commanding officer who appointed him or her.
- (4) In this section, *prescribed officer* means an officer who is:
 - (a) included in a prescribed class of officers; and
 - (b) receiving instruction or training.

109 Dealing with a charge by superior summary authority

A superior summary authority to whom a charge is referred by a commanding officer under paragraph 110(1)(c) may:

- (a) make a decision to try the charge under section 106; or
- (b) refer the charge to the Director of Military Prosecutions.

110 Dealing with a charge by commanding officer

- (1) In dealing with a charge, a commanding officer may:
 - (a) where the charge is within his or her jurisdiction to try under subsection 107(2)—make a decision to try the charge under that subsection;
 - (b) where the charge is not within his or her jurisdiction to try under subsection 107(2) and he or she is of the opinion that there is insufficient evidence to support the charge—direct that the charge be not proceeded with;
 - (c) where the charge is within the jurisdiction of a superior summary authority to try under section 106—refer the charge to a superior summary authority;
 - (d) refer the charge to the Director of Military Prosecutions; or

- (e) where it is desirable in the interests of justice or for any other reason—refer the charge to be dealt with by another commanding officer.
- (2) A commanding officer may refer a charge under paragraph (1)(c) or (d) whether or not the charge is within his or her jurisdiction to try under subsection 107(2).

111 Dealing with charge by subordinate summary authority

- (1) Unless a commanding officer otherwise directs in a particular case or in relation to a class of cases in which the particular case is included, a charge of a service offence that a subordinate summary authority has jurisdiction to deal with under subsection 108(1) or (1A) shall be dealt with by that authority in accordance with subsection (2).
- (2) In dealing with a charge, a subordinate summary authority may:
 - (a) where the charge is within his or her jurisdiction to try under subsection 108(2) or (3)—make a decision to try the charge under subsection 108(2) or (3), as the case requires;
 - (b) where the charge is not within his or her jurisdiction to try under subsection 108(2) or (3) and he or she is of the opinion that there is insufficient evidence to support the charge—direct that the charge be not proceeded with; or
 - (c) whether or not the charge is within his or her jurisdiction to try under subsection 108(2) or (3)—refer the charge to the commanding officer of the authority or to another subordinate summary authority.

111A Proceedings by way of dealing with a charge

- (1) A summary authority may, if he or she thinks it desirable to do so, hear evidence in relation to a charge for the purpose of determining, under section 109, 110 or 111, the manner in which the charge is to be dealt with, but, if he or she does so, nothing in this subsection precludes him or her from trying the charge.
- (2) Without limiting the generality of subsection 146(2), regulations made by virtue of that subsection may make provision for and in relation to the admissibility, in proceedings before a service tribunal (including proceedings by way of trying a charge), of

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evidence adduced in proceedings before a summary authority for the purpose referred to in subsection (1).

112 Discontinuance

Where a summary authority, after commencing to deal with a charge:

- (a) refers the charge under paragraph 110(1)(c) or (e) or 111(2)(c) or subsection 141(9) to another summary authority;
- (b) is unable to conclude the hearing of the charge because of death, illness, transfer or other circumstances; or
- (c) considers that it would not be in the interests of justice to continue;

a summary authority who subsequently deals with the charge shall deal with the charge afresh.

113 Powers of officer in command of detachment

- (1) Subject to such limitations and restrictions as are determined, in writing, by the Chief of the Defence Force or a service chief or by an authorized officer, in relation to a specified detachment or a detachment included in a specified class of detachments, an officer in command of a detachment has, and may exercise, in relation to a member of the detachment, the powers under this Part of a commanding officer.
- (2) In this section, *detachment* means an organized body of members of the Defence Force that is declared by an authorized officer, by instrument in writing, to be a detachment for the purposes of this section, and includes an organized body of members of the Defence Force that is so separated from the unit of the Defence Force to which it belongs that the commanding officer of the unit could not effectively exercise disciplinary powers with respect to that body of members.

Division 3—Courts martial

114 Types of court martial

- (1) A court martial shall be either a general court martial or a restricted court martial.
- (2) A general court martial shall consist of a President and not less than 4 other members.
- (3) A restricted court martial shall consist of a President and not less than 2 other members.

115 Jurisdiction of court martial

- (1) A court martial has, subject to section 63 and to subsection (1A) of this section, jurisdiction to try any charge against any person.
- (1A) A court martial does not have jurisdiction to try a charge of a custodial offence.
- (2) A court martial has jurisdiction to take action under Part IV in relation to a convicted person if it has been convened under subsection 103(6) or (7) or 125(6) or 129A(4) for that purpose.
- (3) A court martial, before taking action under subsection (2), shall hear evidence relevant to the determination of what action should be taken.

116 Eligibility to be member of court martial

- (1) For the purposes of this Act, a person is eligible to be a member, or a reserve member, of a court martial if, and only if:
 - (a) the person is an officer;
 - (b) the person has been an officer for a continuous period of not less than 3 years or for periods amounting in the aggregate to not less than 3 years; and
 - (c) the person holds a rank that is not lower than the rank held by the accused person (being a member of the Defence Force) or by any of the accused persons (being members of the Defence Force).

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- (2) For the purposes of this Act, an officer is eligible to be President of a court martial if, and only if, the officer holds a rank that is not lower than:
 - (a) in the case of a general court martial—the naval rank of captain or the rank of colonel or group captain; or
 - (b) in the case of a restricted court martial—the rank of commander, lieutenant-colonel or wing commander.
- (2A) Subsection (2) does not apply in relation to a person who becomes President of a court martial in pursuance of:
 - (a) an appointment made by virtue of paragraph 124(1)(e); or
 - (b) subsection 126(1).
- (3) The requirements set out in paragraph (1)(c) and subsection (2) apply only if, and to the extent that, the exigencies of service permit.

117 Eligibility to be judge advocate

For the purposes of this Act, a person is eligible to be the judge advocate of a court martial if, and only if, the person is a member of the judge advocates' panel.

119 Convening order

- (1) The Registrar of Military Justice must, in an order convening a court martial:
 - (a) appoint:
 - (i) the President and the other members;
 - (ii) an adequate number of reserve members; and
 - (iii) the judge advocate; and
 - (b) fix, or provide for the fixing of, the time and place for the assembling of the court martial.

Note: The Registrar of Military Justice must not appoint a person as the judge advocate of a court martial unless the person has been nominated by the Judge Advocate General: see section 129B.

- (2) At any time before a court martial assembles to try a charge, the Registrar of Military Justice may:
 - (a) vary the order convening the court martial; or

- (b) make an order under subsection (1) convening a new court martial.

120 Convening order to be notified to accused person

- (1) The Registrar of Military Justice must, as soon as practicable after he or she makes an order convening a court martial for the purpose of trying an accused person (including an order made by virtue of subsection 119(2)), cause a copy of that order to be given to the accused person.
- (2) If an order convening a court martial is subsequently varied, the Registrar of Military Justice must notify the accused person accordingly.

121 Objection on ground of ineligibility etc.

At any time before a court martial is sworn or affirmed, the accused person may lodge an objection with the Registrar of Military Justice to any member or reserve member of the court martial or to the judge advocate on the ground that the member or judge advocate:

- (a) is ineligible;
- (b) is, or is likely to be, biased; or
- (c) is likely to be thought, on reasonable grounds, to be biased.

122 Notification of belief of bias

A member or reserve member, or the judge advocate, of a court martial who believes himself or herself:

- (a) to be biased, or likely to be biased; or
 - (b) likely to be thought, on reasonable grounds, to be biased;
- shall notify the Registrar of Military Justice forthwith.

123 Substitution of members etc.

At any time before a court martial is sworn or affirmed, the Registrar of Military Justice may revoke the appointment of an officer to be a member or reserve member of the court martial or the judge advocate and appoint an officer to be a member or reserve member or the judge advocate, as the case may be, in the place of that first-mentioned officer.

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Note: The Registrar of Military Justice must not appoint a person as the judge advocate of a court martial unless the person has been nominated by the Judge Advocate General: see section 129B.

124 Replacement of members etc.

- (1) Where, after a court martial has assembled but before it is sworn or affirmed, the judge advocate:
 - (a) finds that a member of the court martial who has not appeared at the place of assembly is not, or is not likely to be, available;
 - (b) upholds an objection entered under subsection 141(2) to a member of the court martial; or
 - (c) finds that, for some other reason, a member of the court martial should be excused from further attendance as such a member;the judge advocate shall:
 - (d) where the member concerned is not the President—appoint a reserve member in the place of that member;
 - (e) where the member concerned is the President and the next senior member is not more than one rank junior to the President—appoint that next senior member to be the President in the place of the member concerned; or
 - (f) where the member concerned is the President and the next senior member is more than one rank junior to the President—report the situation to the Registrar of Military Justice and request the Registrar of Military Justice to appoint a President in the place of the member concerned.
- (2) Where, after a court martial has assembled but before it is sworn or affirmed, the judge advocate finds that there are insufficient members and reserve members properly to constitute the court martial, the judge advocate shall report the situation to the Registrar of Military Justice and request the Registrar of Military Justice to appoint as many new members or new reserve members, or both, as the Registrar of Military Justice considers necessary.
- (3) Where the judge advocate upholds an objection entered under subsection 141(3) to himself or herself, he or she shall report the situation to the Registrar of Military Justice and request the Registrar of Military Justice to appoint another judge advocate in his or her place.

Note: The Registrar of Military Justice must not appoint a person as a judge advocate of a court martial unless the person has been nominated by the Judge Advocate General: see section 129B.

125 Dissolution of court martial

- (1) Where, after a court martial has assembled but before it is sworn or affirmed, the judge advocate considers that by reason of the exigencies of service or for any other reason it is desirable to do so, he or she may direct the Registrar of Military Justice to dissolve the court martial.
- (2) Where:
 - (a) at any time after a court martial is sworn or affirmed, there is an insufficient number of members properly to constitute the court martial; or
 - (b) at any time after the accused person's plea of guilty or not guilty has been recorded by a court martial, the judge advocate is unable to attend;the Registrar of Military Justice must dissolve the court martial.
- (3) Where, at any time after a court martial is sworn or affirmed, the judge advocate considers that, in the interests of justice, the court martial should be dissolved, the judge advocate must direct the Registrar of Military Justice to dissolve the court martial.
- (4) Where:
 - (a) a court martial has adjourned the hearing of the proceedings before it; and
 - (b) the judge advocate considers that, by reason of the exigencies of service, it will not be practicable to continue the hearing of the proceedings at a later date;the judge advocate must direct the Registrar of Military Justice to dissolve the court martial.
- (5) Where a court martial is dissolved under subsection (1), (2), (3) or (4), the Director of Military Prosecutions may request the Registrar of Military Justice to convene another court martial in its stead.
- (6) Where a court martial is dissolved as mentioned in subsection (2), (3) or (4) after it has convicted a person but before it has taken action under Part IV in relation to the convicted person, the

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Registrar of Military Justice may convene another court martial for the purpose of taking such action.

- (7) A court martial, before taking action under subsection (6), shall hear evidence relevant to the determination of what action should be taken.
- (8) For the purposes of this Part, a member of a court martial convened under subsection (6) shall not be taken to be biased by reason only of his or her having been a member of the court martial that was dissolved as mentioned in that subsection.

126 Inability to attend after plea

- (1) Where the President is unable to attend at any time after the accused person's plea of not guilty or guilty has been recorded by a court martial, the next senior member shall become the President of the court martial and the first-mentioned President shall take no further part in the proceedings.
- (2) Where a member of a court martial is unable to attend at any time after the accused person's plea of not guilty or guilty has been recorded by a court martial, that member shall take no further part in the proceedings.

Division 4—Defence Force magistrates

127 Appointment of Defence Force magistrates

- (1) The Judge Advocate General may, by instrument in writing, appoint officers to be Defence Force magistrates.
- (2) An officer is not eligible to be a Defence Force magistrate unless the officer is a member of the judge advocates' panel.

Note: A member of the judge advocates' panel is appointed for a maximum period of 3 years but is eligible for reappointment: see subsection 196(2A).

128 Oath or affirmation of Defence Force magistrate

- (1) A Defence Force magistrate shall, before proceeding to discharge the duties of his or her office, make and subscribe an oath or affirmation in accordance with the form in Schedule 4.
- (2) An oath or affirmation under this section shall be made before the Judge Advocate General or an officer authorized, in writing, by the Judge Advocate General for the purpose.

129 Jurisdiction and powers of Defence Force magistrate

- (1) A Defence Force magistrate has the same jurisdiction and powers as a restricted court martial (including the powers of the judge advocate of a restricted court martial).
- (2) A Defence Force magistrate has jurisdiction to take action under Part IV in relation to a convicted person if the case has been referred to the magistrate under subsection 103(6) or 129A(4) for that purpose.
- (3) A Defence Force magistrate, before taking action under subsection (2), shall hear evidence relevant to the determination of what action should be taken.

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129A Discontinuance of proceedings before Defence Force magistrate etc.

- (1) If a charge or case has been referred to a Defence Force magistrate under subparagraph 87(1)(c)(ii), section 103 or subsection (4) of this section, the Registrar of Military Justice must terminate the reference if:
 - (a) at a time before the Defence Force magistrate commences to try the charge or hear the case, it appears to the Registrar of Military Justice that, by reason of the exigencies of service, or for any other reason, it is desirable to terminate the reference; or
 - (b) at a time after the Defence Force magistrate commences to try the charge or hear the case:
 - (i) it appears to the Defence Force magistrate that it would not be in the interests of justice for the Defence Force magistrate to continue; and
 - (ii) the Defence Force magistrate directs the Registrar of Military Justice to terminate the reference.
- (2) Where:
 - (a) a charge or case has been referred to a Defence Force magistrate under subparagraph 87(1)(c)(ii), section 103 or subsection (4) of this section; and
 - (b) at a time after the Defence Force magistrate commences to try the charge or hear the case, the Defence Force magistrate is unable to conclude the trial of the charge or the hearing of the case because of death, illness, the exigencies of service or other circumstances;the Registrar of Military Justice must terminate the reference.
- (3) Where a reference of a charge is terminated by the Registrar of Military Justice under subsection (1) or (2) at a time before the dismissal of the charge or the acquittal or conviction of the accused person, the charge shall, by virtue of the termination of the reference, be taken to have been referred to the Director of Military Prosecutions.
- (4) Where:
 - (a) a reference of a charge is terminated under subsection (1) or (2) after the conviction of the accused person and before

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action has been taken under Part IV in relation to the person;
or

- (b) a reference of a case is terminated under subsection (1) or (2) before action has been taken under Part IV in relation to the convicted person;

the Registrar of Military Justice may:

- (c) refer the charge or case, as the case may be, to a Defence Force magistrate to take action under Part IV in relation to the person; or
- (d) if no Defence Force magistrate is available or the Director of Military Prosecutions considers that it would be more appropriate for the matter to be dealt with by a court martial—convene a general court martial or a restricted court martial to take action under Part IV in relation to the person.

Note: A charge or case referred to a Defence Force magistrate must be referred to the magistrate nominated by the Judge Advocate General: see section 129C.

Division 5—Nomination of Defence Force magistrates and members of courts martial

129B Appointment of members of courts martial

- (1) The Registrar of Military Justice must not appoint a person as:
 - (a) the President of a court martial; or
 - (b) a member or reserve member of a court martial; or
 - (c) a judge advocate of a court martial;if the Registrar of Military Justice believes the person to be:
 - (d) biased or likely to be biased; or
 - (e) likely to be thought, on reasonable grounds, to be biased.
- (2) The Registrar of Military Justice must not appoint a person as a judge advocate of a court martial unless the Judge Advocate General has nominated that person for that position.
- (3) The appropriate service chief must make available, for the purposes of a court martial, a defence member who is appointed to be a member of that court martial.

129C Judge Advocate General to nominate Defence Force magistrates

- (1) The Registrar of Military Justice must not refer a charge to a Defence Force magistrate unless the Judge Advocate General has nominated the magistrate to try the charge.
- (2) The Registrar of Military Justice must not refer a case to a Defence Force magistrate to take action under Part IV in relation to a convicted person unless the Judge Advocate General has nominated the magistrate to take action in relation to the person.

Part VIII—Procedure of service tribunals

Division 1—Trial by summary authority

130 Trial by summary authority

- (1) A summary authority shall try a charge in accordance with the following provisions:
 - (a) the authority, before hearing any evidence on the charge, shall ask the accused person whether he or she pleads guilty or not guilty to the charge and, if the accused person pleads guilty and the authority is satisfied that the accused person understands the effect of that plea, the authority shall convict the accused person;
 - (b) if the accused person pleads not guilty or the authority is not satisfied that the accused person, in pleading guilty, understands the effect of that plea, the authority shall record a plea of not guilty and proceed to hear the evidence on the charge;
 - (c) if the authority, after hearing the evidence on the charge adduced by the prosecution, is of the opinion that that evidence is insufficient to support the charge, the authority shall dismiss the charge;
 - (d) if the authority, after hearing the evidence on the charge adduced by the prosecution, is of the opinion that that evidence is sufficient to support the charge, the authority shall proceed with the trial;
 - (e) if the authority finds that the charge is not proved, the authority shall dismiss the charge;
 - (f) if the authority finds the charge proved, the authority shall convict the accused person;
 - (g) if the authority convicts the accused person, the authority shall take action under Part IV in relation to the convicted person.
- (2) Where the accused person:
 - (a) refuses to plead; or
 - (b) does not plead intelligibly;

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the summary authority shall record a plea of not guilty and proceed accordingly in accordance with subsection (1).

- (3) Where an accused person who has pleaded not guilty withdraws his or her plea and pleads guilty, the summary authority shall, if it is satisfied that the accused person understands the effect of that plea, substitute a plea of guilty for the plea of not guilty and proceed accordingly in accordance with subsection (1).
- (3A) Nothing in subsection (1) shall be taken to require the summary authority, in trying a charge in accordance with that subsection, to form either an opinion of the kind referred to in paragraph (1)(c) or an opinion of the kind referred to in paragraph (1)(d) unless:
 - (a) the accused person has submitted that the summary authority should form an opinion of the first-mentioned kind; or
 - (b) the interests of justice require that the summary authority should form an opinion of the first-mentioned kind.
- (4) A summary authority, before taking action under paragraph (1)(g), shall hear evidence relevant to the determination of what action should be taken.
- (5) A summary authority trying a charge may, at any stage of the trial, refer the charge to the Director of Military Prosecutions if the summary authority considers that it is desirable, in the interests of justice, that the charge be so referred.
- (6) Subsection (5) does not affect the operation of any other provision of this Act.

130A Special proceedings before examining officers

- (1) Subject to the rules of procedure, a commanding officer may, at any stage of dealing with or trying a charge, direct an officer to hear evidence in relation to the charge.
- (2) An officer directed under subsection (1) to hear evidence in relation to a charge shall be a legal officer.
- (3) The requirement set out in subsection (2) applies only if the exigencies of service permit.
- (4) Sections 52 and 53, subsection 87(5) and sections 138, 139, 146, 147, 148, 149 and 193 of this Act and Part VIII of the *Defence Act*

1903 have effect in relation to an officer directed under subsection (1) of this section to hear evidence in relation to a charge (in this subsection referred to as *the examining officer*) and to proceedings before the examining officer as if the examining officer were the commanding officer and those proceedings were proceedings before the commanding officer.

- (5) Without limiting the generality of subsection 146(2), regulations made by virtue of that subsection may make provision for and in relation to the admissibility, in proceedings before a service tribunal, of evidence adduced in proceedings before an officer directed under subsection (1) to hear evidence in relation to a charge.

131 Election of trial or punishment

- (1) Where on a trial of a charge a summary authority is of opinion:
- (a) that the evidence adduced by the prosecution is sufficient to support the charge; and
 - (b) that, in the event of his or her convicting the accused person, he or she is likely to impose an elective punishment;

the summary authority shall give the accused person an opportunity to elect to be tried by a court martial or by a Defence Force magistrate.

- (2) Where:
- (a) an accused person is given an opportunity, in accordance with subsection (1), to elect to be tried by a court martial or by a Defence Force magistrate but fails to do so; or
 - (b) an accused person elects to be tried by a court martial or by a Defence Force magistrate but the summary authority considers that the exigencies of service do not permit such a trial without undue delay;

the summary authority shall proceed with the trial of the accused person.

- (2A) Where:
- (a) a summary authority convicts a person under paragraph 130(1)(a) of an offence; and
 - (b) the summary authority is of the opinion that an elective punishment should be imposed on the person for the offence;

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the summary authority shall give the person an opportunity to elect to be punished by a court martial or by a Defence Force magistrate for the offence.

(2B) Where:

(a) a person convicted of an offence by a summary authority is given an opportunity, in accordance with subsection (2A), to elect to be punished by a court martial or by a Defence Force magistrate for the offence but fails to do so; or

(b) a person convicted of an offence by a summary authority elects under subsection (2A) to be punished by a court martial or by a Defence Force magistrate for the offence but the summary authority considers that the exigencies of service do not permit the convening of a court martial or the reference of the conviction to a Defence Force magistrate;

the summary authority shall take action under Part IV in relation to the convicted person.

(3) Where a summary authority proposes, in accordance with section 76, to impose on a person an elective punishment for a service offence in relation to which an undertaking was given by the person under subsection 75(2), the summary authority shall give the person an opportunity to elect to be punished by a court martial or by a Defence Force magistrate for that service offence and for the other service offence of which the person has been convicted by the summary authority.

(4) Where an accused person makes an election under subsection (1), (2A) or (3), then, subject to paragraph (2)(b), the summary authority shall refer the charge or the conviction, as the case may be, to the Director of Military Prosecutions.

(5) A person who has elected to be tried or punished by a court martial or by a Defence Force magistrate may, by notice to the Registrar of Military Justice, withdraw his or her election at any time before the order convening the court martial is signed or before a date is fixed for hearing by a Defence Force magistrate.

(6) Where, in accordance with subsection (5), a person withdraws an election to be tried by a court martial or by a Defence Force magistrate, the summary authority shall proceed with the trial of the person.

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- (7) Where:
- (a) a summary authority proceeds with the trial of a person in accordance with subsection (2) or (6) and convicts the person;
 - (b) a person convicted by a summary authority is given an opportunity, in accordance with subsection (2A) or (3), to elect to be punished by a court martial or by a Defence Force magistrate but fails to do so;
 - (ba) a person convicted by a summary authority elects under subsection (2A) to be punished by a court martial or by a Defence Force magistrate but the summary authority considers that the exigencies of service do not permit the convening of a court martial or the reference of the conviction to a Defence Force magistrate; or
 - (c) in accordance with subsection (5), a person convicted by a summary authority withdraws an election to be punished by a court martial or by a Defence Force magistrate;
- the summary authority may proceed to impose an elective punishment on the convicted person.
- (8) A summary authority shall not impose an elective punishment except in accordance with this section.

131A Reference of charge to Director of Military Prosecutions

Where on a trial of a charge a superior summary authority or commanding officer is of the opinion:

- (a) that the evidence adduced by the prosecution is sufficient to support the charge; and
- (b) that, in the event of his or her convicting the accused person, he or she would be precluded by a provision of this Act from taking such action under Part IV in relation to the accused person as he or she considers to be warranted by that evidence;

the superior summary authority or commanding officer, as the case may be, shall terminate the trial and refer the charge to the Director of Military Prosecutions.

Division 2—Trial by court martial or Defence Force magistrate

132 Trial by court martial

- (1) A court martial shall try a charge in accordance with the following provisions:
 - (a) before the court martial commences to hear the evidence on the charge, the judge advocate shall ask the accused person whether he or she pleads guilty or not guilty to the charge and, if the accused person pleads guilty and the judge advocate is satisfied that the accused person understands the effect of that plea, the court martial shall convict the accused person;
 - (b) if the accused person pleads not guilty or if the judge advocate is not satisfied that the accused person, in pleading guilty, understands the effect of that plea, the court martial shall record a plea of not guilty and proceed to hear the evidence on the charge;
 - (c) if the judge advocate, after hearing the evidence on the charge adduced by the prosecution, rules that that evidence is insufficient to support the charge, the court martial shall dismiss the charge;
 - (d) if the judge advocate, after hearing the evidence on the charge adduced by the prosecution, rules that that evidence is sufficient to support the charge, the court martial shall proceed with the trial;
 - (e) if the court martial finds the accused person not guilty, the court martial shall acquit the accused person;
 - (f) if the court martial finds the accused person guilty, the court martial shall convict the accused person;
 - (g) if the court martial convicts the accused person, the court martial shall take action under Part IV in relation to the convicted person.
- (2) Where an accused person:
 - (a) refuses to plead; or
 - (b) does not plead intelligibly;

the court martial shall record a plea of not guilty and proceed accordingly in accordance with subsection (1).

- (3) Where, under paragraph (1)(a), an accused person pleads guilty to a service offence that is one (other than the first) of 2 or more charges stated in the charge sheet in the alternative, the court martial shall:
 - (a) if the Director of Military Prosecutions notifies the court martial that he or she does not object to the acceptance of the plea—accept the plea and proceed accordingly in accordance with subsection (1); or
 - (b) in any other case—record a plea of not guilty and proceed accordingly in accordance with subsection (1).
- (4) Where an accused person who has pleaded not guilty withdraws his or her plea and pleads guilty, the court martial shall, if the judge advocate is satisfied that the accused person understands the effect of that plea, substitute a plea of guilty for the plea of not guilty and proceed accordingly in accordance with subsection (1).
- (4A) Nothing in subsection (1) shall be taken to require the judge advocate to give either a ruling of the kind referred to in paragraph (1)(c) or a ruling of the kind referred to in paragraph (1)(d) unless:
 - (a) the accused person has submitted that the judge advocate should give a ruling of the first-mentioned kind; or
 - (b) the interests of justice require that the judge advocate should give a ruling of the first-mentioned kind.
- (5) A court martial, before taking action under paragraph (1)(g), shall hear evidence relevant to the determination of what action should be taken.

133 Determination of questions by court martial

- (1) Subject to section 134, in any proceeding before a court martial:
 - (a) the President shall preside; and
 - (b) every question shall be determined by the members of the court martial.
- (2) Every question determined by the members of the court martial shall be decided by a majority of the votes of the members.

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- (3) Subject to subsections (4) and (5), in the case of an equality of votes on any question referred to in subsection (2), the President has a casting vote.
- (4) In the case of an equality of votes on the question whether an accused person is guilty or not guilty of a service offence, the court martial shall find the accused person not guilty.
- (5) In the case of an equality of votes on the question whether an accused person, at the time of the act or omission the subject of the charge, was suffering from such unsoundness of mind as not to be responsible, in accordance with law, for that act or omission, the court martial shall find that the person was, at that time, suffering from such unsoundness of mind.
- (6) Notwithstanding anything contained in this Act, the members of a court martial:
 - (a) in determining the question whether an accused person:
 - (i) is guilty or not guilty of a service offence; or
 - (ii) at the time of the act or omission the subject of the charge, was suffering from such unsoundness of mind as not to be responsible, in accordance with law, for that act or omission; or
 - (b) in determining what action shall be taken under Part IV in relation to a convicted person;shall sit without any other person present.

134 Powers of judge advocate

- (1) In proceedings before a court martial, the judge advocate shall give any ruling, and exercise any discretion, that, in accordance with the law in force in the Jervis Bay Territory, would be given or exercised by a judge in a trial by jury.
- (2) Where, for any purpose in connection with the giving of a ruling, or the exercise of a discretion, by a judge in a trial by jury in the Jervis Bay Territory, the judge would, in accordance with the law in force in that Territory, sit in the absence of the jury, the judge advocate shall, for any purpose in connection with the giving of such a ruling, or the exercise of such a discretion, by the judge advocate, sit without the members of the court martial.

- (3) Notwithstanding subsections (1) and (2), in a proceeding before a court martial, the members of the court martial shall determine what action shall be taken under Part IV in relation to a convicted person, but the judge advocate shall give a ruling on any question of law arising in connection with the making of such a determination.
- (4) A ruling given by the judge advocate in accordance with subsection (1) or (3) and a decision made by the judge advocate under subsection 141(5) or (6) is binding on the court martial.
- (5) The judge advocate when sitting without the members of a court martial may exercise such of the powers of the court martial or the President as are necessary for the performance of his or her duties.
- (6) The powers conferred on the judge advocate by this section are in addition to any other powers conferred on the judge advocate by any other provision of this Act, the regulations or the rules of procedure.

135 Trial by Defence Force magistrate

- (1) A Defence Force magistrate shall try a charge in accordance with the following provisions:
 - (a) before the Defence Force magistrate commences to hear the evidence on the charge, the Defence Force magistrate shall ask the accused person whether he or she pleads guilty or not guilty to the charge and, if the accused person pleads guilty and the Defence Force magistrate is satisfied that the accused person understands the effect of that plea, the Defence Force magistrate shall convict the accused person;
 - (b) if the accused person pleads not guilty or if the Defence Force magistrate is not satisfied that the accused person, in pleading guilty, understands the effect of that plea, the Defence Force magistrate shall record a plea of not guilty and proceed to hear the evidence on the charge;
 - (c) if the Defence Force magistrate, after hearing the evidence on the charge adduced by the prosecution, rules that that evidence is insufficient to support the charge, the Defence Force magistrate shall dismiss the charge;
 - (d) if the Defence Force magistrate, after hearing the evidence on the charge adduced by the prosecution, rules that that

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evidence is sufficient to support the charge, the Defence Force magistrate shall proceed with the trial;

- (e) if the Defence Force magistrate finds the accused person not guilty, the Defence Force magistrate shall acquit the accused person;
- (f) if the Defence Force magistrate finds the accused person guilty, the Defence Force magistrate shall convict the accused person;
- (g) if the Defence Force magistrate convicts the accused person, the Defence Force magistrate shall take action under Part IV in relation to the convicted person.

- (2) Where an accused person:
 - (a) refuses to plead; or
 - (b) does not plead intelligibly;

the Defence Force magistrate shall record a plea of not guilty and proceed accordingly in accordance with subsection (1).

- (3) Where, under paragraph (1)(a), an accused person pleads guilty to a service offence that is one (other than the first) of 2 or more charges stated in the charge sheet in the alternative, the Defence Force magistrate shall:

- (a) if the Director of Military Prosecutions notifies the Defence Force magistrate that he or she does not object to the acceptance of the plea—accept the plea and proceed accordingly in accordance with subsection (1); or
- (b) in any other case—record a plea of not guilty and proceed accordingly in accordance with subsection (1).

- (4) Where an accused person who has pleaded not guilty withdraws his or her plea and pleads guilty, the Defence Force magistrate shall, if the Defence Force magistrate is satisfied that the accused person understands the effect of that plea, substitute a plea of guilty for the plea of not guilty and proceed accordingly in accordance with subsection (1).

- (4A) Nothing in subsection (1) shall be taken to require the Defence Force magistrate to give either a ruling of the kind referred to in paragraph (1)(c) or a ruling of the kind referred to in paragraph (1)(d) unless:

- (a) the accused person has submitted that the Defence Force magistrate should give a ruling of the first-mentioned kind;
or
 - (b) the interests of justice require that the Defence Force magistrate should give a ruling of the first-mentioned kind.
- (5) A Defence Force magistrate, before taking action under paragraph (1)(g), shall hear evidence relevant to the determination of what action should be taken.

136 Representatives of parties before court martial or Defence Force magistrate

A person shall not represent a party before a court martial or a Defence Force magistrate unless the person is:

- (a) where the trial is held in Australia—a member of the Defence Force or a legal practitioner; or
- (b) where the trial is held in a place outside Australia—a person referred to in paragraph (a) or a person qualified to practise before the courts of that place.

137 Representation of accused person

- (1) The Chief of the Defence Force must if, and to the extent that, the exigencies of service permit, cause an accused person awaiting trial by a court martial or by a Defence Force magistrate to be afforded the opportunity to be represented at the trial, and to be advised before the trial, by a legal officer.
- (2) An accused person who is advised or represented in accordance with subsection (1) shall be so advised or represented without expense to the accused person.
- (3) Nothing in this section prevents the operation of any scheme of legal aid, advice or assistance under a law of the Commonwealth or of a State or Territory.
- (4) The Chief of the Defence Force may delegate his or her powers under subsection (1) to a member of the Defence Force who holds a rank that is not lower than the naval rank of captain, or the rank of colonel or group captain.

Division 3—General

138 Procedural powers

- (1) For the purposes of a proceeding before a service tribunal, the service tribunal may:
 - (a) take evidence on oath or affirmation; and
 - (b) adjourn a hearing from time to time and from place to place as appears to the tribunal to be necessary or expedient having regard to the administration of justice or the exigencies of service.
- (2) For the purposes of the hearing of a proceeding before a service tribunal, the appropriate authority may summon a person, in a manner provided for in the rules of procedure, to appear before the tribunal to give evidence and to produce such documents (if any) as are referred to in the summons.
- (3) For the purposes of the hearing of a proceeding before a service tribunal, a superior officer may order a defence member to appear before the tribunal to give evidence and to produce such documents (if any) as are referred to in the order.
- (4) A service tribunal or, if the service tribunal is a court martial, the President of the court martial:
 - (a) may require a person appearing before the tribunal to give evidence either to take an oath or to make an affirmation; and
 - (b) may administer, or cause to be administered, an oath or affirmation to a person so appearing before the tribunal.
- (5) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence given by the person will be true.

139 Accused person to be present at hearing

- (1) Subject to subsection (2), a hearing before a service tribunal shall be held in the presence of the accused person.
- (2) Where a service tribunal or, in the case of a court martial, the President, considers that, by reason of the disorderly behaviour of

the accused person, it is impossible to continue the hearing in his or her presence, the tribunal or, in the case of a court martial, the President may order that the accused person be removed from the place of hearing and held in custody elsewhere.

- (3) The President shall not make an order under subsection (2) unless the President has first consulted the judge advocate.

140 Public hearings

- (1) Subject to this section, the hearing of proceedings before a court martial or a Defence Force magistrate shall be in public.
- (2) In proceedings before a court martial or a Defence Force magistrate, the President of the court martial or the Defence Force magistrate may, if the President considers it necessary in the interests of the security or defence of Australia, the proper administration of justice or public morals:
- (a) order that some or all of the members of the public shall be excluded during the whole or a specified part of the proceedings; or
 - (b) order that no report of, or relating to, the whole or a specified part of the proceedings shall be published.
- (3) The President of a court martial shall not make an order under subsection (2) unless the President has first consulted the judge advocate.
- (4) Where proceedings before a court martial or a Defence Force magistrate are held in a secure place, the appropriate service chief shall cause such steps to be taken as will permit the public to have reasonable access, subject to an order (if any) in force under subsection (2), to the proceedings.
- (5) In subsection (4), *secure place* means a place the entry to which is controlled by guards who are constables or members of the Defence Force.

141 Applications and objections

- (1) At any time before an accused person is asked to plead at a trial by a service tribunal, the accused person:
- (a) may do any one or more of the following:

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- (i) apply for an adjournment on the ground that he or she has not had an adequate opportunity to prepare his or her defence or to choose a person to represent or advise the accused person;
 - (ii) apply to secure the attendance of witnesses or additional witnesses on his or her behalf;
 - (iii) if he or she is charged with more than one service offence, apply for each charge to be heard separately;
 - (iv) if he or she is charged with one or more other persons, apply to be dealt with separately on the ground that he or she would otherwise be prejudiced in his or her defence;
 - (v) make such other applications as he or she considers relevant in connection with the trial; and
- (b) may enter an objection to the charge on any ground, including any of the following grounds:
- (i) that, by virtue of section 144, he or she is not liable to be tried by the service tribunal for the service offence with which he or she has been charged;
 - (ii) that the charge was made in contravention of section 96;
 - (iii) that he or she has, in the exercise of the royal prerogative of mercy, been pardoned for the service offence with which he or she has been charged or for a civil court offence that is substantially the same offence;
 - (iv) that the charge does not disclose a service offence or is otherwise wrong in law;
 - (v) that the service tribunal does not have jurisdiction.
- (2) At any time before a court martial is sworn or affirmed, the accused person may enter an objection to any member or reserve member of the court martial on the ground that the member:
- (a) is ineligible;
 - (b) is, or is likely to be, biased; or
 - (c) is likely to be thought, on reasonable grounds, to be biased.
- (3) At any time before an accused person is asked to plead at a trial by a court martial, the accused person may enter an objection to the judge advocate on the ground that the judge advocate:
- (a) is ineligible;
 - (b) is, or is likely to be, biased; or

- (c) is likely to be thought, on reasonable grounds, to be biased.
- (4) At any time before an accused person is asked to plead at a trial by a service tribunal other than a court martial, the accused person may:
- (a) enter an objection to the service tribunal on the ground that the service tribunal is ineligible; or
 - (b) except in the case of a trial by a summary authority, enter an objection to the service tribunal on the ground that the service tribunal:
 - (i) is, or is likely to be, biased; or
 - (ii) is likely to be thought, on reasonable grounds, to be biased;
- but nothing in this subsection shall be taken, by implication, to authorize trial by a summary authority who:
- (c) is, or is likely to be, biased; or
 - (d) is likely to be thought, on reasonable grounds, to be biased.
- (4A) For the purposes of this section, a summary authority is not to be regarded:
- (a) as biased; or
 - (b) as likely to be biased;
- in relation to the trial of an accused person merely because the summary authority is the commanding officer of the accused person.
- (4B) For the purposes of this section, the circumstance that a summary authority is the commanding officer of an accused person is not, without more, a reasonable ground for thinking that, in relation to the trial of the accused person, the summary authority is biased.
- (5) Where:
- (a) an accused person makes an application under paragraph (1)(a); and
 - (b) in the case of a court martial, the judge advocate, or in any other case, the service tribunal is satisfied that the interests of justice require that the application be granted;
- the service tribunal or the judge advocate, as the case may be, shall grant the application.

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- (6) Where:
- (a) an accused person enters an objection under paragraph (1)(b) or subsection (2), (3) or (4); and
 - (b) in the case of a court martial, the judge advocate, or in any other case, the service tribunal is satisfied that the accused person has substantiated his or her objection;
- the service tribunal or the judge advocate, as the case may be, shall allow the objection.
- (7) An application or objection under subsection (1), (2) or (3) with respect to a trial by a court martial may be notified to the judge advocate of the court martial at any time after the making of the order convening the court martial and, on the notification of such an application or objection, the judge advocate shall sit without the members of the court martial for a hearing of that application or objection.
- (8) Where a Defence Force magistrate or a judge advocate grants an application, or allows an objection, under this section, the Defence Force magistrate or the judge advocate may refer the charge against the accused person to the Director of Military Prosecutions.
- (9) Where a summary authority grants an application, or allows an objection, under this section, the summary authority may refer the charge against the accused person to another summary authority.

141A Amendment of charges

- (1) Where it appears to:
- (a) a summary authority, before dealing with or trying a charge or at any stage of dealing with or trying a charge;
 - (b) the Director of Military Prosecutions, at any stage when a charge is before him or her under section 103;
 - (c) the judge advocate of a court martial, before the court martial tries a charge or at any stage of the trial of a charge; or
 - (d) a Defence Force magistrate, before trying a charge or at any stage of trying a charge;
- that, for any reason, the charge should be amended, the summary authority, Director of Military Prosecutions, judge advocate or Defence Force magistrate, as the case may be, shall make such amendment of the charge as he or she thinks necessary unless the

amendment cannot be made without injustice to the accused person.

- (2) In subsection (1), **amendment** includes the addition of a charge or the substitution of a charge for another charge.

142 Alternative offences

- (1) For the purposes of this section:
- (a) an offence against this Act (other than section 61) is an alternative offence in relation to another such offence if the first-mentioned offence is specified in column 2 of Schedule 6 opposite to the reference to the other offence in column 1 of that Schedule;
 - (b) an offence against section 11.1 of the *Criminal Code*, being a service offence that is an ancillary offence in relation to an offence against this Act (other than section 61) or the regulations is an alternative offence in relation to that offence against this Act or the regulations;
 - (ba) an offence against section 61 that is based on an ancillary Territory offence against section 11.1 of the *Criminal Code*, or section 44 of the *Criminal Code 2002* of the Australian Capital Territory, in relation to another Territory offence (the **first Territory offence**), is an alternative offence in relation to another offence against section 61 that is based on the first Territory offence;
 - (c) an offence against section 61 is an alternative offence in relation to another such offence if the relevant Territory offence in relation to the first-mentioned offence is an alternative offence in relation to the relevant Territory offence in relation to the other offence against section 61;
 - (d) a Territory offence is an alternative offence in relation to another Territory offence if a court exercising jurisdiction in or in relation to the Jervis Bay Territory could, in a trial of a person on a charge of the other Territory offence, convict the person of the first-mentioned Territory offence; and
 - (e) an old system offence is an alternative offence in relation to another old system offence if, in accordance with previous service law, a court martial could, in a trial of a person on a charge of the other old system offence, have convicted the person of the first-mentioned old system offence.

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- (2) Where a service tribunal acquits a person of a service offence but is satisfied beyond reasonable doubt of facts that prove that the person is guilty of another service offence that is an alternative offence in relation to the offence of which the person has been acquitted, the service tribunal may convict the person of that other offence.
- (3) Where:
- (a) a person is charged with a service offence;
 - (b) the person pleads not guilty to the charge but guilty to another service offence that is an alternative offence in relation to the first-mentioned service offence; and
 - (c) the prosecution consents to the acceptance of the last-mentioned plea;
- the trial shall proceed as if the person:
- (d) had been charged with the other service offence;
 - (e) had pleaded guilty to a charge of the other service offence; and
 - (f) had not been charged with the first-mentioned offence.

143 Condonation no bar to proceedings

Proceedings under this Act for a service offence shall not be barred on the ground of condonation of the offence.

144 Previous acquittal or conviction

- (1) Where a person has been acquitted or convicted of a service offence, the person is not liable to be tried by a service tribunal for the same offence or for an offence that is substantially the same offence.
- (2) Where, under section 77, a court martial or a Defence Force magistrate has taken a service offence into consideration in relation to a convicted person, the person is not liable to be tried by a service tribunal for the same offence or for an offence that is substantially the same offence.
- (3) Where:
- (a) a person has been acquitted or convicted by a civil court of a civil court offence; or

- (b) a person has been acquitted or convicted by an overseas court of an overseas offence;
the person is not liable to be tried by a service tribunal for a service offence that is substantially the same offence.
- (3A) If a defence member has been dealt with by a discipline officer under Part IXA in respect of an act or omission constituting a disciplinary infringement for the purposes of that Part, the member is not liable to be tried by a service tribunal for a service offence arising out of the same act or omission.
- (3B) For the purpose of subsection (3A), the exercise by a discipline officer of the power conferred by subsection 169F(3) does not constitute dealing with a defence member under Part IXA.
- (4) For the purposes of this section:
- (a) the dismissal of a charge under section 130, 132 or 135 shall be deemed to be an acquittal of the service offence the subject of the charge;
 - (b) the dismissal of a charge under previous service law shall be deemed to be an acquittal of the service offence the subject of the charge;
 - (c) a direction under section 103, 110 or 111 that a charge be not proceeded with shall be deemed not to be an acquittal of the service offence the subject of the charge; and
 - (d) the dismissal of a charge of a civil court offence against a person, or the discharge of a person in proceedings on a charge of a civil court offence, by a civil court, under section 19B of the *Crimes Act 1914* or any corresponding provision of a law of a State or Territory, shall be deemed to be an acquittal of the offence.

145 Unsoundness of mind

- (1) Where a summary authority considers that an accused person, by reason of mental impairment, may not be able to understand the proceedings against him or her and accordingly may be unfit to stand trial, the authority shall refer the charge to the Director of Military Prosecutions.
- (2) Where a court martial or a Defence Force magistrate is satisfied that an accused person, by reason of mental impairment, is not able

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to understand the proceedings against him or her and accordingly is unfit to stand trial, the court martial or the Defence Force magistrate shall so find and shall direct that the person be kept in strict custody until the pleasure of the Governor-General is known.

- (3) Where, in a trial of a charge by a summary authority of an accused person, evidence is adduced that shows, or tends to show, that the accused person, at the time of the act or omission the subject of the charge, was suffering from such mental impairment as not to be responsible, in accordance with law, for that act or omission, the authority shall refer the charge to the Director of Military Prosecutions.
- (4) Where, in a trial of a charge by a court martial or a Defence Force magistrate, the court martial or the Defence Force magistrate finds that the accused person, at the time of the act or omission the subject of the charge, was suffering from such mental impairment as not to be responsible, in accordance with law, for that act or omission, the court martial or the Defence Force magistrate shall find the accused person not guilty on the ground of mental impairment and shall acquit the person of the charge on the ground of mental impairment.
- (5) Where an accused person is acquitted by a court martial or a Defence Force magistrate of a charge on the ground of mental impairment, the court martial or the Defence Force magistrate shall record the ground of the acquittal and shall direct that the accused person be kept in strict custody until the pleasure of the Governor-General is known.

145A Notice of alibi

- (1) Where the Registrar of Military Justice:
 - (a) convenes a court martial to try a charge; or
 - (b) refers a charge to a Defence Force magistrate for trial;the Registrar of Military Justice must:
 - (c) inform the accused person of the requirements of subsections (2), (3) and (5); and
 - (d) give a copy of this section to the accused person.
- (2) In a trial of a charge by a court martial or Defence Force magistrate, the accused person shall not, without the leave of the

judge advocate of the court martial or the Defence Force magistrate, as the case requires, adduce evidence in support of an alibi or assert in any statement made by him or her otherwise than on oath or affirmation that he or she has an alibi unless, before the end of the period of 14 days commencing on the day of the making of the order convening the court martial or the referring of the charge to the Defence Force magistrate, as the case requires, he or she gives notice of particulars of the alibi.

- (3) In a trial of a charge by a court martial or Defence Force magistrate, the accused person shall not, without the leave of the judge advocate of the court martial or the Defence Force magistrate, as the case requires, call a person to give evidence in support of an alibi unless:
- (a) the notice given under subsection (2) includes the name and address of the person or, if the name or address of the person is not known to the accused person at the time he or she gives the notice, all information then in his or her possession that may be of material assistance in ascertaining the identity of, or in locating, the person;
 - (b) if the name or address of the person is not included in the notice—the judge advocate of the court martial or the Defence Force magistrate, as the case may be, is satisfied that, before giving notice, the accused person took, and, after giving the notice, the accused person continued to take, all reasonable steps to ascertain the name and address of the person;
 - (c) if the name or address of the person is not included in the notice, but the accused person subsequently ascertains the name or address of the person or receives information that may be of material assistance in ascertaining the identity of, or in locating, the person—the accused person forthwith gives notice of the name, address or other information, as the case may be; and
 - (d) if the accused person is notified by or on behalf of the prosecution that the person has not been found by the name, or at the address, given by the accused person—the accused person forthwith gives notice of all information that is then in his or her possession that may be of material assistance in ascertaining the identity of, or in locating, the person and, if the accused person subsequently receives any such

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information, the accused person forthwith gives notice of the information.

- (4) Evidence to disprove an alibi may, subject to any direction by the judge advocate of a court martial or a Defence Force magistrate, be adduced before or after evidence is adduced in respect of the alibi.
- (5) A notice under this section shall be given in writing to the Director of Military Prosecutions and the Registrar of Military Justice.
- (6) In this section, *evidence in support of an alibi* means evidence tending to show that by reason only of the presence of the accused person at a particular place, or in a particular area, at a particular time the accused person was not, or was unlikely to have been, at the place where the service offence is alleged to have been committed at the time of the alleged commission of the service offence.

146 Rules of evidence

- (1) Subject to regulations in force under subsection (2), the rules of evidence in force in the Jervis Bay Territory apply to proceedings before a service tribunal as if:
 - (a) the tribunal were a court exercising jurisdiction in or in relation to that Territory; and
 - (b) the proceedings were criminal proceedings in such a court.
- (2) The regulations may make rules of evidence to be applied in relation to proceedings before a service tribunal that are in addition to or in substitution for, or that modify, the rules of evidence that, apart from the regulations, would apply in relation to such proceedings by virtue of subsection (1).

147 Judicial notice of service matters

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, a service tribunal shall take judicial notice of all matters within the general service knowledge of the tribunal or of its members.

148 Record of proceedings to be kept

A service tribunal shall keep a record of its proceedings and shall include in that record such particulars as are provided for by the rules of procedure.

149 Rules of procedure

The Judge Advocate General may, by legislative instrument, make rules of procedure, not inconsistent with this Act (including the regulations), providing for or in relation to the practice and procedure to be followed by service tribunals and, in particular, providing for or in relation to:

- (a) the attendance of witnesses; and
- (b) the production of documents; and
- (c) the administration of oaths and affirmations; and
- (d) the forms to be used for or in relation to the purposes of proceedings before a service tribunal; and
- (e) the service of any process of a service tribunal; and
- (f) charge sheets in proceedings before a service tribunal; and
- (fa) the manner of taking the votes of the members of a court martial; and
- (g) the manner and form of charges brought before a service tribunal; and
- (h) the recording of proceedings of a service tribunal; and
- (i) the duties of the Registrar of Military Justice.

Part IX—Review of proceedings of service tribunals

Division 1—Appointment of reviewing authorities

150 Appointment of reviewing authorities

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 purpose of reviewing proceedings of service tribunals (whether all service tribunals or service tribunals of a specified kind) and exercising any other powers and functions that are conferred on reviewing authorities by this Act or the regulations.

150A Meaning of *competent reviewing authority*

A reviewing authority is a *competent reviewing authority* for the purposes of reviewing the proceedings of a service tribunal that relate to a particular charge 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.

Division 2—Automatic and other reviews

151 Preliminary automatic review by commanding officer

- (1) As soon as practicable after a subordinate summary authority convicts a person of a service offence, the authority shall transmit the record of the proceedings to the commanding officer of the authority.
- (2) Subject to this section, the commanding officer shall, as soon as practicable after receiving the record referred to in subsection (1), review the proceedings in accordance with this Part and, for that purpose, the commanding officer shall be deemed to be a reviewing authority.
- (3) The commanding officer may, but is not required to, obtain a report under section 154.
- (4) The commanding officer shall, as soon as practicable after completing the review of the proceedings, transmit the record of the proceedings and a report of the results of that review to a legal officer.
- (5) The legal officer shall, as soon as practicable after receiving the record of the proceedings and the report referred to in subsection (4), consider that record and report and may, if the legal officer thinks fit, transmit that record and report to a reviewing authority.
- (6) If the legal officer does not transmit the record of proceedings and the report of the results of the review to a reviewing authority, the commanding officer must give written notice of the results of the review to the person who was convicted of the service offence.

152 Automatic review by reviewing authority

- (1) As soon as practicable after a service tribunal (other than a subordinate summary authority) convicts a person of a service offence or gives a direction in relation to a person under subsection 145(2) or (5), the service tribunal shall transmit the record of the proceedings to a competent reviewing authority.

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- (2) A reviewing authority shall, as soon as practicable after receiving a record of proceedings under subsection (1) or subsection 151(5), review the proceedings in accordance with this Part.
- (3) After reviewing the proceedings, the reviewing authority must give the person who was convicted of the service offence, or who was the person in relation to whom a direction under subsection 145(2) or (5) was given, written notice of the results of the review.

153 Review on petition to reviewing authority

- (1) Where a service tribunal convicts a person of a service offence or gives a direction in relation to a person under subsection 145(2) or (5), the person may lodge with a competent reviewing authority a petition for a review of the proceedings concerned.
 - (1A) The person must lodge the petition within 30 days after:
 - (a) if a commanding officer reviews the proceedings of the service tribunal under section 151 and gives the person notice of the results of the review under subsection 151(6)—the notice is given; or
 - (b) in any other case—the person is given notice of the results of the review under subsection 152(3);unless the reviewing authority extends the period during which the petition may be lodged.
 - (1B) If the reviewing authority extends the period during which the petition may be lodged, the petition must be lodged within that extended period.
- (2) Where:
 - (a) a person appeals, or applies for leave to appeal, to the Defence Force Discipline Appeal Tribunal; and
 - (b) the Tribunal dismisses the appeal or the application for leave to appeal;the person may, within 60 days after that dismissal or such further period as a competent reviewing authority allows, lodge with the reviewing authority a petition for a review of the proceedings of the service tribunal the subject of that appeal or application for leave to appeal.

- (3) A petition under subsection (1) or (2) shall set out the grounds on which the petitioner relies for the exercise of the power of review in accordance with this Part.
- (4) On receipt of a petition under subsection (1) or (2), a reviewing authority shall, as soon as practicable and, in any event, within 30 days after the receipt:
 - (a) review the proceedings in accordance with this Part having regard to the grounds set out in the petition; and
 - (b) notify the petitioner, in writing, of the result of that review.
- (5) Notwithstanding anything in subsection (4), a reviewing authority shall not, in a review of proceedings referred to in subsection (2), exercise any of his or her powers under Division 3 or 4 other than his or her powers under section 162.

154 Report to be obtained before commencement of review

- (1) A reviewing authority shall not commence a review without first obtaining a report on the proceedings from:
 - (a) in the case of a conviction, or a direction given under subsection 145(2) or (5), by a court martial or Defence Force magistrate—a legal officer appointed, by instrument in writing, for the purposes of this section by the Chief of the Defence Force or a service chief on the recommendation of the Judge Advocate General; or
 - (b) in any other case—a legal officer.
- (1A) An appointment under paragraph (1)(a) is for the period, not exceeding 3 years, specified in the instrument of appointment.
- (1B) A legal officer appointed under paragraph (1)(a) may be reappointed for a further period or periods.
- (2) Subject to subsection (4), a reviewing authority, in making a review, is bound by any opinion on a question of law set out in a report obtained under subsection (1).
- (3) A reviewing authority may refer a report obtained under subsection (1) to the Judge Advocate General or, if the Judge Advocate General so directs, to a Deputy Judge Advocate General.

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- (4) On a reference under subsection (3) of a report, the Judge Advocate General or the Deputy Judge Advocate General may dissent from any opinion on a question of law set out in the report and, if he or she does so, he or she shall furnish to the reviewing authority, in writing, his or her own opinion on that question, which opinion is binding on the reviewing authority.

155 Further review

- (1) A review by a reviewing authority does not prevent a further review of the proceedings concerned by the Chief of the Defence Force or a service chief if it appears to the Chief of the Defence Force or the service chief that there are sufficient grounds for a further review.
- (2) Subject to subsection (3), the Chief of the Defence Force or a service chief shall conduct a further review under subsection (1) in accordance with this Part and, for that purpose, the Chief of the Defence Force or the service chief shall be deemed to be a reviewing authority.
- (3) The Chief of the Defence Force or a service chief shall not commence a review without first obtaining a report on the proceedings from the Judge Advocate General or, if the Judge Advocate General so directs, from a Deputy Judge Advocate General.
- (4) The Chief of the Defence Force or a service chief, in making a review, is bound by any opinion on a question of law set out in a report obtained under subsection (3).

156 Effect on reviews of appeals to Defence Force Discipline Appeal Tribunal

- (1) Subject to subsection (2), where, at any time before or after a reviewing authority commences to review proceedings of a service tribunal that have resulted in a conviction or a prescribed acquittal, the convicted person or the prescribed acquitted person, as the case may be, lodges an appeal, or an application for leave to appeal, to the Defence Force Discipline Appeal Tribunal, the reviewing authority shall not exercise any of his or her powers under Division 3 or 4 in relation to that review.

- (2) Where the Defence Force Discipline Appeal Tribunal dismisses the appeal, or the application for leave to appeal, the reviewing authority may proceed with a review, not being a review under section 153, but shall not exercise any of his or her powers under Division 3 or 4 other than his or her powers under section 162.
- (3) In this section, *prescribed acquitted person* means a person who has been acquitted of a service offence by a court martial or a Defence Force magistrate on the ground of unsoundness of mind.

Division 3—Action on review of proceedings that have resulted in a conviction

157 Interpretation

In this Division, *review* means a review under this Part of proceedings of a service tribunal that have resulted in a conviction.

158 Quashing of conviction etc.

- (1) Subject to subsection (5), where in a review it appears to the reviewing authority:
 - (a) that the conviction is unreasonable, or cannot be supported, having regard to the evidence;
 - (b) that, as a result of a wrong decision on a question of law, or of mixed law and fact, the conviction was wrong in law and that a substantial miscarriage of justice has occurred;
 - (c) that there was a material irregularity in the course of the proceedings 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 reviewing authority shall quash the conviction.
- (2) Subject to subsection (5), where in a review it appears to the reviewing authority that there is evidence that:
 - (a) was not reasonably available during the proceedings;
 - (b) is likely to be credible; and
 - (c) would have been admissible in the proceedings;the reviewing authority shall receive and consider that evidence and, if the reviewing authority considers that the conviction cannot be supported having regard to that evidence, the reviewing authority shall quash the conviction.
- (3) Subject to subsection (5), where in a review the reviewing authority is satisfied that, at the time of the act or omission the subject of the charge, the convicted person was suffering from such unsoundness of mind as not to be responsible, in accordance with law, for that act or omission, the reviewing authority shall:

- (a) quash the conviction;
 - (b) substitute for the conviction so quashed an acquittal on the ground of unsoundness of mind; and
 - (c) direct that the person be kept in strict custody until the pleasure of the Governor-General is known.
- (4) Where in a review it appears to the reviewing authority that the court martial or the Defence Force magistrate should have found that the convicted person, by reason of unsoundness of mind, was not able to understand the proceedings against him or her and accordingly was unfit to stand trial, the reviewing authority shall quash the conviction and direct that the person be kept in strict custody until the pleasure of the Governor-General is known.
- (5) A reviewing authority shall not quash a conviction under subsection (3) or (4) if there are grounds for quashing the conviction under subsection (1) or (2).

159 Person deemed to have been acquitted

For the purposes of this Act, where a reviewing authority 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 shall be deemed to have been acquitted of the offence.

160 New trial

- (1) Where in a review the reviewing authority:
- (a) quashes a conviction that was recorded within the preceding 6 months; and
 - (b) considers that, in the interests of justice, the person who was convicted should be tried again for the service offence of which the person was convicted;
- the reviewing authority may order a new trial of the person for that offence.
- (2) An order under subsection (1) for the new trial of a person lapses unless the new trial commences within a period of 6 months commencing on the day on which the order is made.
- (3) Where a reviewing authority makes an order under subsection (1) for a new trial of a person, the reviewing authority may make such

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further orders for the custody of the person pending the new trial as the authority thinks appropriate.

161 Substitution of conviction of alternative offence

- (1) Where in a review the reviewing authority quashes the conviction of a person of a service offence (in this section referred to as *the original offence*) but considers:
 - (a) that the service tribunal could in the proceedings 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 service tribunal did not record a finding; and
 - (b) that the service tribunal, by reason of the finding of the service tribunal 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 reviewing authority may substitute for the conviction of the original offence a conviction of the other offence.
- (2) Where under subsection (1) a reviewing authority substitutes for the conviction of the original offence a conviction of another service offence, the reviewing authority may take such action in relation to the convicted person as could have been taken under Part IV by the service tribunal that convicted the convicted person of the original offence if that service tribunal had convicted him or her of that other service offence, but the reviewing authority:
 - (a) shall not impose a punishment for that other service offence or make a reparation order with respect to that other service offence unless a punishment was imposed for the original offence or a reparation order was made with respect to the original offence, as the case may be; and
 - (b) shall not impose a punishment for that other service offence that is more severe than the punishment that was imposed for the original offence and shall not make a reparation order with respect to that other service offence that is for an

amount that exceeds the amount of the reparation order that was made with respect to the original offence.

162 Review of action under Part IV

- (1) Where in a review it appears to the reviewing authority that the action taken by a service tribunal under Part IV (whether by the imposition of a punishment or the making of an order or both) in relation to a convicted person:
 - (a) is wrong in law; or
 - (b) is excessive;the reviewing authority shall quash the punishment or revoke the order or both quash the punishment and revoke the order, as the case may be.
- (2) Where:
 - (a) a court martial or a Defence Force magistrate has taken a service offence into consideration in relation to a convicted person under section 77 and the conviction of the convicted person is quashed; or
 - (b) a reviewing authority considers that a court martial or a Defence Force magistrate, in purporting to take a service offence into consideration in relation to a convicted person under section 77, exceeded the powers conferred by that section;the reviewing authority shall annul the taking into consideration of that service offence and, thereupon, that service offence shall be deemed not to have been taken into consideration by the court martial or Defence Force magistrate.
- (3) Where in a review it appears to the reviewing authority that a summary authority has imposed an elective punishment on a convicted person otherwise than in accordance with section 131, the reviewing authority shall quash the punishment.
- (4) Where in a review it appears to the reviewing authority that a summary authority:
 - (a) has continued a trial of a person under paragraph 131(2)(b) in circumstances where the exigencies of service would have permitted trial by a court martial or by a Defence Force magistrate without undue delay; and

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- (b) as a result of that trial, has convicted the person of a service offence and imposed an elective punishment;
the reviewing authority shall quash that punishment.
- (4A) Where in a review it appears to the reviewing authority that a summary authority has imposed an elective punishment on a convicted person by virtue of paragraph 131(2B)(b) in circumstances where the exigencies of service would have permitted the convening of a court martial or the reference of the conviction to a Defence Force magistrate, the reviewing authority shall quash that punishment.
- (5) Where a reviewing authority quashes a punishment or revokes an order under subsection (1), (3), (4) or (4A) 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 service tribunal that convicted the convicted person of the service offence of which he or she was convicted, but the reviewing authority shall not:
- (a) impose a punishment that is more severe than the punishment that was imposed by the service tribunal;
 - (b) if the punishment imposed by the service tribunal was a custodial punishment—impose a punishment other than a custodial punishment;
 - (c) if the punishment imposed by the service tribunal was not a custodial punishment—impose a custodial punishment; or
 - (d) if the service tribunal made a reparation order—make a reparation order for an amount that exceeds the amount of the reparation order that was made by the service tribunal.
- (6) Where in a review it appears to the reviewing authority that a service tribunal has imposed a punishment of imprisonment on a convicted person and has not fixed a non-parole period during which the person is not to be eligible to be released on parole under the provisions of the *Crimes Act 1914* in their application, by virtue of subsection 72(1) of this Act, to the service tribunal, the reviewing authority may fix such a non-parole period.
- (7) Section 72 applies in relation to the fixing of a non-parole period under subsection (6) as if the reviewing authority were the service tribunal concerned.

- (8) Where in a review it appears to the reviewing authority that a service tribunal that has imposed a punishment of detention on a convicted person should have made an order under subsection 78(1) suspending that punishment, the reviewing authority may, if he or she thinks fit, make an order suspending that punishment or such part of that punishment as has not been served.
- (9) Where a reviewing authority makes an order suspending a punishment of detention or such part of a punishment of detention as has not been served, the punishment, or that part of the punishment, does not begin, and shall not be put into execution, while the suspension is in force.

Division 4—Action on review of proceedings that have resulted in an acquittal on the ground of unsoundness of mind

163 Interpretation

In this Division, *review* means a review under this Part of proceedings before a court martial or a Defence Force magistrate that have resulted in a prescribed acquittal.

164 Quashing of prescribed acquittal etc.

- (1) Subject to subsection (4), where in a review it appears to the reviewing authority:
 - (a) that the prescribed acquittal is unreasonable, or cannot be supported, having regard to the evidence;
 - (b) that, as a result of a wrong decision on a question of law, or of mixed law and fact, the prescribed acquittal was wrong in law and that a substantial miscarriage of justice has occurred;
 - (c) that there was a material irregularity in the course of the proceedings and that a substantial miscarriage of justice has occurred; or
 - (d) that, in all the circumstances of the case, the prescribed acquittal is unsafe or unsatisfactory;the reviewing authority shall quash the prescribed acquittal.
- (2) Subject to subsection (4), where in a review it appears to the reviewing authority that there is evidence that:
 - (a) was not reasonably available during the proceedings;
 - (b) is likely to be credible; and
 - (c) would have been admissible in the proceedings;the reviewing authority shall receive and consider that evidence and, if the reviewing authority considers that the prescribed acquittal cannot be supported having regard to that evidence, the reviewing authority shall quash the prescribed acquittal.
- (3) Where in a review it appears to the reviewing authority that the service tribunal should have found that the person, by reason of unsoundness of mind, was unable to understand the proceedings

against him or her and accordingly was unfit to stand trial, the reviewing authority shall quash the prescribed acquittal and direct that the person be kept in strict custody until the pleasure of the Governor-General is known.

- (4) A reviewing authority shall not quash a prescribed acquittal under subsection (1) or (2) if there are grounds for quashing the prescribed acquittal under subsection (3).

165 Person deemed to have been acquitted

For the purposes of this Act, where a reviewing authority quashes a prescribed acquittal of a person of a service offence and does not give a direction under subsection 164(3) with respect to the person or order a new trial of the person for the offence, the person shall be deemed to have been acquitted of the offence without qualification.

166 New trial

- (1) Where in a review the reviewing authority:
- (a) quashes a prescribed acquittal that was recorded within the preceding 6 months; and
 - (b) considers that, in the interests of justice, the person who was acquitted should be tried again for the service offence of which the person was acquitted;
- the reviewing authority may order a new trial of the person for that offence.
- (2) An order under subsection (1) lapses unless the new trial commences within a period of 6 months commencing on the day on which the order is made.
- (3) Where a reviewing authority makes an order under subsection (1) for a new trial of a person, the reviewing authority may make such further orders for the custody of the person pending the new trial as the authority thinks appropriate.

Division 5—Action on review of certain punishments and orders that are subject to approval by reviewing authority

167 Interpretation

In this Division, *review* means a review of a punishment specified in section 172 or of an order specified in that section.

168 Approved punishment or order to take effect as determined

Where in a review the reviewing authority approves a punishment or an order, the reviewing authority shall determine when the punishment or order is to take effect.

169 Punishments or orders not approved to be quashed or revoked

- (1) Where in a review the reviewing authority does not approve a punishment or an order, the reviewing authority shall quash the punishment or revoke the order, as the case may be.
- (2) Where a 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 service tribunal that convicted the convicted person of the service offence of which he or she was convicted, but the reviewing authority shall not:
 - (a) impose a punishment that is more severe than the punishment that was imposed by the service tribunal;
 - (b) if the punishment imposed by the service tribunal was a custodial punishment—impose a punishment other than a custodial punishment;
 - (c) if the punishment imposed by the service tribunal was not a custodial punishment—impose a custodial punishment; or
 - (d) if the service tribunal made a reparation order—make a reparation order for an amount that exceeds the amount of the reparation order that was made by the service tribunal.

Part IXA—Special procedures relating to certain minor disciplinary infringements

169A Definitions

In this Part:

disciplinary infringement means an act or omission that constitutes:

- (a) an offence against section 23, 27 or 29, subsection 32(1), section 35 or section 60; or
- (b) an offence against section 24 in relation to an absence without leave for a period not exceeding 3 hours.

officer cadet means a defence member who holds:

- (a) in the Navy—the rank of midshipman; or
- (b) in the Army or the Air Force—the rank of officer cadet.

relevant officer means a member of the Defence Force who holds a rank of non-commissioned officer or a higher rank.

169B Appointment of discipline officers

A commanding officer may, in writing, appoint officers or warrant officers to be discipline officers.

169C Jurisdiction of discipline officer

A discipline officer has jurisdiction to deal with a defence member who is an officer cadet or holds a rank below non-commissioned rank in respect of a disciplinary infringement if:

- (a) the defence member has not been charged under this Act with a service offence arising out of the act or omission that constitutes the infringement; and
- (b) the member has elected to be dealt with by a discipline officer; and
- (c) the member has not withdrawn the election; and
- (d) the discipline officer holds his or her appointment from the commanding officer of the member.

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169D Issue of infringement notice

- (1) If a relevant officer has reasonable grounds for believing that a defence member who is an officer cadet or holds a rank below non-commissioned rank has committed a disciplinary infringement, the relevant officer may give the defence member an infringement notice in relation to the infringement.
- (2) An infringement notice is a notice that:
 - (a) gives particulars of the infringement to which the notice relates; and
 - (b) informs the member to whom it is given of:
 - (i) the member's right to elect to be dealt with, in relation to the infringement, by a discipline officer if the member admits the infringement; and
 - (ii) the period within which an election must be made; and
 - (iii) the penalties that may be imposed by a discipline officer; and
 - (iv) the power of a relevant officer to refer a matter for action under section 87.
- (3) An infringement notice must be in accordance with a form approved by the Chief of the Defence Force.
- (4) A relevant officer does not have authority to give an infringement notice to a defence member unless the relevant officer is authorised in writing by the commanding officer of the member to give such notices.
- (5) A relevant officer does not have authority to give an infringement notice to a defence member in relation to a disciplinary infringement unless the notice is given as soon as is reasonably practicable after the relevant officer first has reasonable grounds for believing that the member has committed the infringement.

169E Election to be dealt with by discipline officer

- (1) If a defence member has been given an infringement notice, the member may elect to be dealt with, in relation to the disciplinary infringement to which the notice relates, by a discipline officer.
 - (2) If a defence member elects to be dealt with, in relation to a disciplinary infringement, by a discipline officer, the member is to
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be taken, for the purpose of being so dealt with but for no other purpose, to have admitted the infringement.

- (3) An election may only be made within the period specified in the infringement notice.
- (4) If:
 - (a) a defence member has been given an infringement notice in relation to a disciplinary infringement; and
 - (b) the defence member has not made an election within the period specified in the notice;a relevant officer may refer the matter to an authorised member of the Defence Force to be dealt with according to section 87.
- (5) A defence member may, at any time before a punishment is imposed, withdraw an election.

169F Powers of discipline officer

- (1) A discipline officer may impose on a defence member, in respect of a disciplinary infringement, any one of the following punishments:
 - (a) a fine not exceeding the amount of the member's pay for one day;
 - (b) restriction of privileges for a period not exceeding 2 days;
 - (c) stoppage of leave for a period not exceeding 3 days;
 - (d) extra duties for a period not exceeding 3 days;
 - (e) extra drill for not more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days;
 - (f) a reprimand.
- (2) A discipline officer may decide not to impose a punishment in respect of a disciplinary infringement that the discipline officer considers trivial.
- (3) If a discipline officer thinks a disciplinary infringement is too serious to be dealt with under this Part, the discipline officer may decline to deal with the defence member under this Part.
- (4) A discipline officer exercising jurisdiction under this section is not to be taken to be a service tribunal for the purposes of this Act.

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- (5) A discipline officer must not impose a punishment except in accordance with this Part.

169FA Commencement of punishments

- (1) Subject to this Part, a punishment imposed by a discipline officer takes effect immediately and a punishment for a specific period commences on the day on which it is imposed.
- (2) A discipline officer who imposes a punishment for a specific period may impose the punishment for a period beginning on a specified day no later than 14 days after the day on which the punishment is imposed.

169G Procedure before discipline officer

- (1) Subject to this section, the procedure followed by a discipline officer is to be in accordance with any requirements prescribed by the regulations.
- (2) A defence member who elects to be dealt with by a discipline officer is not to be represented before the discipline officer.
- (3) A defence member who elects to be dealt with by a discipline officer may, when he or she appears before the discipline officer, call witnesses and present evidence in relation to anything relevant to the exercise by the discipline officer of his or her powers under subsection 169F(1), (2) or (3).

169H Destruction of records

- (1) In this section, *relevant record* means any part of a record that is kept by any means under a law of the Commonwealth and relates to a person's service as a member of the Defence Force.
- (2) Any part of a relevant record that relates, in any way, to:
- (a) the making by a defence member of an election; or
 - (b) anything done by a discipline officer under subsection 169F(1) or (2) as a result of the making of an election;

must be destroyed at the end of a period of 12 months beginning on the day on which the election was made or, if anything was done

by a discipline officer under subsection 169F(1) or (2) as a result of the making of the election, the day on which the thing was so done.

169J This Part not a bar to action under other provisions

A defence member is not prevented from being dealt with under any other Part in respect of a service offence merely because the offence arises out of an act or omission that constitutes a disciplinary infringement for the purposes of this Part.

Part X—Execution and enforcement of punishments and orders

170 Warrants of commitment

- (1) Subject to this section, an authorized officer may:
 - (a) issue a warrant for the commitment of a prisoner to a prison in a State or Territory; or
 - (b) issue a warrant for the commitment of a detainee to a detention centre.
- (2) A warrant issued under subsection (1) shall specify:
 - (a) the name of the prisoner or detainee;
 - (b) the place to which the prisoner or detainee is to be committed; and
 - (c) the punishment that has been imposed on the prisoner or detainee.
- (3) A warrant under subsection (1) may require all police members and members and special members of the Australian Federal Police, or a specified member of the Defence Force who is not a police member, to convey the prisoner or detainee specified in the warrant to such prison or detention centre as is specified in the warrant and there to deliver him or her into the custody of the officer in charge of the prison or detention centre or some other officer doing duty at the prison or detention centre, and the warrant may be executed by any police member or member or special member of the Australian Federal Police or the member of the Defence Force specified in the warrant, as the case requires.
- (4) Where a person is delivered into custody at a prison or detention centre in pursuance of a warrant under subsection (1), the person may, subject to this Act, be detained in that prison or any other prison in the same State or Territory as the first-mentioned prison, or that or any other detention centre, as the case requires, for as long as his or her detention is necessary for the execution of the punishment by reason of which the warrant was issued.

- (5) In this section, *detainee* means a convicted person on whom a punishment of detention has been imposed.

171 Commencement of punishments and orders

- (1) Subject to this Act, a punishment imposed, or an order made, by a service tribunal, a reviewing authority or the Defence Force Discipline Appeal Tribunal takes effect forthwith and a punishment for a specific period commences on the day on which it is imposed.
- (1A) A summary authority who imposes a punishment for a specific period may impose the punishment for a period beginning on a specified day no later than 14 days after the day on which the punishment is imposed.
- (2) Subject to section 72, where 2 or more punishments are to be cumulative, they shall take effect one after the other in accordance with the order in which they are recorded.

172 Punishments and orders subject to approval

- (1) The following punishments imposed by a service tribunal do not take effect unless approved by a reviewing authority:
- (a) imprisonment for life;
 - (b) imprisonment for a specific period;
 - (c) dismissal from the Defence Force;
 - (d) segregated confinement for a period exceeding 3 days;
 - (e) confinement to cell for a period exceeding 3 days;
 - (f) extra drill for a period exceeding 3 days;
 - (g) restriction of custodial privileges for a period exceeding 7 days.
- (2) The following punishments when imposed by a summary authority do not take effect unless approved by a reviewing authority:
- (a) detention;
 - (b) reduction in rank;
 - (c) forfeiture of seniority;
 - (d) a fine imposed on a member of the Defence Force that exceeds the amount of his or her pay for 14 days.

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- (3) A restitution order or a reparation order imposed by a service tribunal does not take effect unless approved by a reviewing authority.
- (3A) A person on whom a punishment of imprisonment for life or imprisonment for a specific period is imposed may be kept in custody pending approval under subsection (1) of the punishment and, if the punishment is approved, any day on which the person was so kept in custody counts as a day of that imprisonment.
- (4) A person on whom a punishment of dismissal from the Defence Force is imposed may be kept in custody pending approval under subsection (1) of the punishment.
- (5) A person on whom a punishment of detention is imposed by a summary authority may be kept in custody pending approval under subsection (2) of the punishment and, if the punishment is approved, any day on which the person was so kept in custody counts as a day of that detention.

173 Suspension of operation of restitution orders and reparation orders

- (1) Subject to subsection (2), the operation of a restitution order or a reparation order, being a restitution order or a reparation order made by a court martial or a Defence Force magistrate, is suspended:
 - (a) until the expiration of the period during which, under the *Defence Force Discipline Appeals Act 1955*, an application for leave to appeal, or an appeal, against 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 an application for leave to appeal, or an appeal, against the conviction is duly lodged—until the application is finally dismissed or is withdrawn or the appeal is finally determined or abandoned.
- (2) Where a reviewing authority is satisfied that the title to the property in relation to which a restitution order is made is not in dispute, the reviewing authority may direct that subsection (1) shall not apply in relation to the order.

- (3) Where the operation of a restitution order or a reparation order is suspended by virtue of subsection (1), the order does not take effect if the conviction in relation to which the order is made is quashed on appeal.

174 Recovery of fines etc.

- (1) The amount that is due and payable of any fine imposed on a person under this Act or the *Defence Force Discipline Appeals Act 1955* may be:
- (a) recovered by deduction from any pay, wages or salary payable to the person by the Commonwealth; or
 - (b) without prejudice to recovery in accordance with paragraph (a), recovered by action in a civil court of competent jurisdiction as a debt due to the Commonwealth.
- (2) An amount that is due and payable under any reparation order made against a person may be recovered as follows:
- (a) the amount may be recovered by deduction from any pay, wages or salary payable to the person by the Commonwealth and an amount equal to the amount so recovered may be paid by the Commonwealth to the person in whose favour the reparation order was made; or
 - (b) without prejudice to recovery in accordance with paragraph (a), the amount may be recovered by action in a civil court of competent jurisdiction as a debt due to the person in whose favour the reparation order was made.
- (3) Where any fine or reparation is directed to be paid by instalments and default is made in the payment of any instalment, all instalments then remaining unpaid thereupon become due and payable.
- (4) Nothing in this section affects any right or remedy that a person may have, apart from this section, in respect of any loss or damage occasioned by an offence.

175 Evidence of fine etc.

- (1) An authorized officer, or a person appointed or engaged under the *Public Service Act 1999* performing duties in the Department, may issue a certificate stating that:

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- (a) a specified amount of a fine is due and payable by a specified person under this Act or the *Defence Force Discipline Appeals Act 1955*; or
 - (b) a specified amount is due and payable by a specified person under a reparation order.
- (2) A certificate purporting to be issued under subsection (1) and purporting to be signed by an authorized officer, or a person appointed or engaged under the *Public Service Act 1999* performing duties in the Department, shall be received in any civil court without further proof and is *prima facie* evidence of the facts stated in it.

176 Stay of execution of punishment

Where a service tribunal has imposed a punishment on a convicted person and the convicted person:

- (a) lodges a petition under section 153 with respect to the conviction or punishment; or
- (b) notifies a reviewing authority that he or she has appealed, or applied for leave to appeal, under the *Defence Force Discipline Appeals Act 1955* against the conviction;

the reviewing authority may order that the execution of the punishment shall be stayed in whole or in part pending the determination of the appeal or petition.

177 Unlawful absence

Where a convicted person becomes unlawfully at large during the period of his or her detention or imprisonment, the time during which the convicted person is unlawfully at large shall be deemed not to be time spent in serving that detention or imprisonment.

Part XA—Detainees and detention centres

178 Interpretation

In this Part, *member of the staff*, in relation to a detention centre, means a member of the Defence Force on the staff of a detention centre.

178A Search of detainees

- (1) Where the officer in charge of a detention centre believes that it is necessary to do so for the purpose of ascertaining whether there is concealed on a detainee of the detention centre, or in his or her clothing, any thing that the detainee is not authorized to have in his or her possession, the officer in charge of the detention centre may direct a member of the staff of the detention centre to search the detainee and the clothing that the detainee is wearing.
- (2) The search shall be conducted in accordance with the following provisions:
 - (a) the search shall be conducted in the presence of at least 2 other members of the staff of the detention centre;
 - (b) the search shall not be conducted in the presence of a person who is not the officer in charge, or a member of the staff, of the detention centre;
 - (c) the detainee shall not be searched by, or in the presence of, a person who is not of the same sex as the detainee.
- (3) The member of the staff of the detention centre directed to conduct the search may:
 - (a) require the detainee to remove any clothing that the detainee is wearing;
 - (b) if the detainee refuses or fails to comply with such a requirement—remove the clothing;
 - (c) use such reasonable force as is necessary to conduct the search; and
 - (d) seize any thing of the kind referred to in subsection (1) found in the course of the search.

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178B Fingerprints, photographs etc. of detainees

- (1) Where the officer in charge of a detention centre believes that it is necessary to do so, a member of the staff of the detention centre may take prints of the hands, fingers, feet or toes, or photographs, of a detainee of the detention centre.
- (2) The member of the staff of the detention centre may use such reasonable force as may be necessary in acting in accordance with subsection (1).
- (3) A copy of a print or photograph taken under subsection (1) shall not be given to a person (other than the officer in charge, or a member of the staff of, the detention centre) except in accordance with the approval, in writing, of an authorized officer.

178C Leave of absence of detainees

- (1) Subject to any directions, in writing, of the Chief of the Defence Force or a service chief, the officer in charge of a detention centre may, in writing grant leave of absence to a detainee of the detention centre on such conditions (if any) as he or she thinks fit.
- (2) Any day on which a detainee of a detention centre is on leave of absence from the detention centre counts as a day of the detainee's punishment of detention.

178D Regulations relating to detention centres

The regulations may make provision for or in relation to:

- (a) the remission of punishments of detention of detainees; and
- (b) the conduct and administration of detention centres.

Part XI—Judge Advocate General, Deputy Judge Advocates General, Chief Judge Advocate and Registrar of Military Justice

Division 1—Judge Advocate General and Deputy Judge Advocates General

179 Judge Advocate General and Deputy Judge Advocates General

- (1) There shall be a Judge Advocate General, who shall be appointed by the Governor-General to hold his or her appointment either on a full-time basis or on a part-time basis.
- (2) The Governor-General may appoint one or more Deputy Judge Advocates General, who shall be so appointed to hold their appointments either on a full-time basis or on a part-time basis.
- (3) The Judge Advocate General shall have such functions, powers and duties as are conferred on the Judge Advocate General by this Act or any other law.
- (4) A Deputy Judge Advocate General shall exercise or perform such of the functions, powers or duties of the Judge Advocate General as the Judge Advocate General directs.

180 Qualifications for appointment

- (1) A person shall not be appointed as the Judge Advocate General unless the person is or has been a Justice or Judge of a federal court or of a Supreme Court of a State or Territory.
- (2) A person shall not be appointed as a Deputy Judge Advocate General unless:
 - (a) the person is or has been a Justice or Judge of a federal court or of a Supreme Court of a State or Territory; or
 - (b) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years.
- (3) A defence member may be appointed as the Judge Advocate General or as a Deputy Judge Advocate General.

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181 Appointment of Judge Advocate General or Deputy Judge Advocate General not to affect tenure etc.

- (1) The appointment of the holder of a judicial office as the Judge Advocate General or a Deputy Judge Advocate General, or service by the holder of a judicial office as the Judge Advocate General or a Deputy Judge Advocate General, does not affect his or her tenure of that judicial office or his or her rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of that judicial office and, for all purposes, his or her service as the Judge Advocate General or a Deputy Judge Advocate General shall be taken to be service as the holder of that judicial office.
- (2) In subsection (1), *judicial office* means an office of Justice of the High Court or of Judge of a court created by the Parliament.

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

- (1) The Minister may, for the purpose of appointing to the office of Judge Advocate General or Deputy Judge Advocate General a person who is the holder of a judicial office of a State or of the Northern Territory, enter into such arrangement with the appropriate Minister of that State or that Territory, as the case may be, as is necessary to secure that person's services.
- (2) An arrangement under subsection (1) may provide for the Commonwealth to reimburse a State or the Northern Territory with respect to the services of the person to whom the arrangement relates.
- (3) In this section:

Minister, in relation to the Northern Territory, means a person holding an office referred to in section 34 of the *Northern Territory (Self-Government) Act 1978*.

183 Terms and conditions of appointment etc.

- (1) The Judge Advocate General or a Deputy Judge Advocate General holds office for such period, not exceeding 7 years, as is specified in the instrument of the Judge Advocate General's appointment.

- (3) The Judge Advocate General or a Deputy Judge Advocate General holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

184 Oath or affirmation of Judge Advocate General and Deputy Judge Advocate General

- (1) The Judge Advocate General or a Deputy Judge Advocate General shall, before proceeding to discharge the duties of his or her office, make and subscribe an oath or affirmation in accordance with the form in Schedule 4.
- (2) An oath or affirmation under this section shall be made:
 - (a) in the case of the Judge Advocate General—before a Judge of the Federal Court of Australia; or
 - (b) in the case of a Deputy Judge Advocate General—before a Judge of the Federal Court of Australia or the Supreme Court of a State or Territory.

185 Remuneration etc.

- (1) Subject to this section, the Judge Advocate General or a Deputy Judge Advocate General shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, he or she shall be paid such remuneration as is prescribed.
- (2) The Judge Advocate General and a Deputy Judge Advocate General shall be paid such allowances as are prescribed.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.
- (4) If a person who is a Justice or Judge of a federal court or of a Supreme Court of a State or Territory is appointed as the Judge Advocate General or as a Deputy Judge Advocate General, he or she is not, while he or she receives salary or annual allowance as such a Justice or Judge, entitled to remuneration under this Act.
- (5) In the case of a defence member who is the Judge Advocate General or a Deputy Judge Advocate General, if the remuneration to which he or she would be entitled as the Judge Advocate

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General or as a Deputy Judge Advocate General exceeds the pay to which he or she is entitled as a defence member, he or she is to receive, in respect of his or her office as the Judge Advocate General or as a Deputy Judge Advocate General, only an amount equal to the excess.

186 Termination of appointment

- (1) The Governor-General may terminate the appointment of the Judge Advocate General or a Deputy Judge Advocate General (not being a Justice or Judge of a federal court or of a Supreme Court of a State or Territory) by reason of the misbehaviour or physical or mental incapacity of the Judge Advocate General or the Deputy Judge Advocate General, as the case may be.
- (2) If the Judge Advocate General or a Deputy Judge Advocate General (not being a Justice or Judge of a federal court or of a Supreme Court of a State or Territory) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, the Governor-General shall terminate the appointment of the Judge Advocate General or the Deputy Judge Advocate General, as the case may be.
- (3) A Judge Advocate General or a Deputy Judge Advocate General who is a Justice or Judge of a federal court or of a Supreme Court of a State or Territory ceases to hold office if he or she no longer holds office as such a Justice or Judge.
- (4) A Deputy Judge Advocate General who is not a Justice or Judge of a federal court or of a Supreme Court of a State or Territory ceases to hold office if he or she ceases to be a legal practitioner.

187 Resignation

The Judge Advocate General or a Deputy Judge Advocate General may resign his or her office by writing signed by him or her and delivered to the Governor-General.

188 Acting Judge Advocate General or Deputy Judge Advocate General

- (1) The Minister may appoint a person who is eligible for appointment as Judge Advocate General or a Deputy Judge Advocate General:
 - (a) to act as Judge Advocate General or a Deputy Judge Advocate General, as the case may be, during a vacancy in the office concerned, whether or not an appointment has previously been made to that office; or
 - (b) to act as the Judge Advocate General or a Deputy Judge Advocate General, as the case may be, during any period, or during all periods, when the Judge Advocate General or a Deputy Judge Advocate General is absent from duty or from Australia, or is, for any other reason, unable to perform the functions of his or her office;but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.
- (2) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
- (3) The Minister may:
 - (a) subject to this Act, determine the terms and conditions of appointment including remuneration and allowances, of a person acting as Judge Advocate General or a Deputy Judge Advocate General; and
 - (b) terminate such an appointment at any time.
- (4) Where a person is acting as Judge Advocate General or a Deputy Judge Advocate General in accordance with paragraph (1)(b) and the office of Judge Advocate General or a Deputy Judge Advocate General becomes vacant while that person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.
- (5) The appointment of a person to act as Judge Advocate General or a Deputy Judge Advocate General ceases to have effect if the person resigns his or her appointment by writing signed by the person and delivered to the Minister.

Part XI Judge Advocate General, Deputy Judge Advocates General, Chief Judge Advocate and Registrar of Military Justice

Division 1 Judge Advocate General and Deputy Judge Advocates General

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- (6) While a person is acting as Judge Advocate General or a Deputy Judge Advocate General, the person has and may exercise all the powers, and shall perform all the functions, of the Judge Advocate General or a Deputy Judge Advocate General, as the case may be, under this Act.
- (7) The appointment of a person under subsection (1) is not invalidated, and shall not be called in question, by reason of a defect or irregularity in or in connection with the person's appointment.
- (8) The validity of anything done by a person purporting to act under subsection (1) shall not be called in question on the ground that the occasion for the person's appointment had not arisen, that there is a defect or irregularity in or in connection with the person's appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

Division 2—Chief Judge Advocate

188A Chief Judge Advocate

- (1) The Judge Advocate General may, by instrument in writing, appoint an officer to be the Chief Judge Advocate.
- (2) The appointment is for the period, not exceeding 5 years, specified in the instrument of appointment.
- (3) A Chief Judge Advocate may be reappointed for a further period or periods, but must not hold office for a total of more than 10 years.

188B Role of the Chief Judge Advocate

- (1) The Chief Judge Advocate is to provide administrative assistance to the Judge Advocate General.
- (2) Subject to subsection (3), the Judge Advocate General may, by signed instrument, delegate all or any of his or her powers to the Chief Judge Advocate.
- (3) The Judge Advocate General must not delegate his or her powers under any of the following provisions to the Chief Judge Advocate:
 - (a) subsection 127(1);
 - (b) subsection 154(4);
 - (c) subsection 196(2).
- (4) The Chief Judge Advocate is, in the exercise of a delegated power or function, subject to the direction and control of the Judge Advocate General.

188C Eligibility requirements

A person is not eligible to be the Chief Judge Advocate unless the person is:

- (a) an officer holding a rank not lower than the naval rank of commodore or the rank of brigadier or air commodore; and
- (b) a member of the judge advocates' panel.

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188D Resignation

The Chief Judge Advocate may resign his or her office by giving to the Judge Advocate General a signed notice of resignation.

188E Remuneration

- (1) The Chief Judge Advocate is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, he or she is to be paid the remuneration that is prescribed.
- (2) The Chief Judge Advocate is to be paid the allowances that are prescribed.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

Division 3—The Registrar of Military Justice

188F Registrar of Military Justice

There is to be a Registrar of Military Justice.

188FA Functions of the Registrar of Military Justice

- (1) The function of the Registrar of Military Justice is to assist the Judge Advocate General and the Chief Judge Advocate by providing administrative and management services in connection with charges and trials under this Act.
- (2) In addition to his or her functions under subsection (1), the Registrar of Military Justice also has:
 - (a) the functions conferred on the Registrar of Military Justice by or under this Act or any other law of the Commonwealth; and
 - (b) such other functions as are prescribed by the regulations.

188FB Appointment of the Registrar of Military Justice

- (1) The Registrar of Military Justice is to be appointed by the Minister by written instrument.
- (2) The Registrar of Military Justice holds office on a full-time basis.
- (3) The Registrar of Military Justice holds office on the terms and conditions (if any) in respect of matters not provided for by this Act that are determined by the Minister.

188FC Qualifications for appointment

A person must not be appointed as the Registrar of Military Justice unless:

- (a) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years; and
- (b) the person is a member of the Permanent Navy, the Regular Army or the Permanent Air Force or is a member of the Reserves who is rendering continuous full-time service; and

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- (c) the person holds a rank not lower than the naval rank of captain or the rank of colonel or group captain.

188FD Tenure

- (1) The Registrar of Military Justice holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (2) The Registrar of Military Justice is eligible for reappointment.

188FE Resignation

The Registrar of Military Justice may resign his or her appointment by giving the Minister a written resignation.

188FF Oath or affirmation

- (1) The Registrar of Military Justice must, before proceeding to discharge the duties of his or her office, make and subscribe an oath or affirmation in accordance with the form in Schedule 4.
- (2) An oath or affirmation under this section is to be made before:
- (a) the Judge Advocate General; or
 - (b) a Deputy Judge Advocate General; or
 - (c) the Chief Judge Advocate.

188FG Remuneration

- (1) Subject to this section, the Registrar of Military Justice is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, he or she is to be paid the remuneration that is prescribed.
- (2) The Registrar of Military Justice is to be paid the allowances that are prescribed.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

188FH Leave of absence

- (1) The Registrar of Military Justice has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Registrar of Military Justice leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

188FI Outside employment

The Registrar of Military Justice must not:

- (a) engage in practice as a legal practitioner outside the duties of his or her office; or
- (b) without the approval of the Minister, engage in paid employment outside the duties of his or her office.

188FJ Termination of appointment

- (1) The Minister may terminate the appointment of the Registrar of Military Justice for:
 - (a) misbehaviour; or
 - (b) physical or mental incapacity.
- (2) The Minister must terminate the appointment of the Registrar of Military Justice if the Registrar of Military Justice:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) engages in practice as a legal practitioner outside the duties of his or her office; or
 - (d) without the approval of the Minister, engages in paid employment outside the duties of his or her office; or
 - (e) fails, without reasonable excuse, to comply with his or her obligations under section 188FK.
- (3) The Registrar of Military Justice ceases to hold office if:
 - (a) he or she ceases to be enrolled as a legal practitioner; or

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- (b) he or she is no longer:
 - (i) a member of the Permanent Navy, the Regular Army or the Permanent Air Force; or
 - (ii) a member of the Reserves who is rendering continuous full-time service.

188FK Standing obligation to disclose interests

- (1) The Registrar of Military Justice must disclose any interest that the Registrar of Military Justice has if that interest could conflict with the proper performance of the functions of his or her office. Disclosure is required whether or not there is any particular matter under consideration that gives rise to an actual conflict of interest.
- (2) Subsection (1) applies to interests:
 - (a) whether direct or indirect, and whether or not pecuniary; and
 - (b) whether acquired before or after the person's appointment.
- (3) The disclosure must be by notice in writing given to the Minister as soon as practicable after the Registrar of Military Justice becomes aware of the potential for conflict of interest.

188FL Acting appointments

- (1) The Minister may appoint a person to act as the Registrar of Military Justice:
 - (a) during a vacancy in the office, whether or not an appointment has previously been made to that office; or
 - (b) during any period, or during all periods, when the Registrar of Military Justice is absent from duty or from Australia, or is, for any other reason, unable to perform the functions of his or her office.
- (2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

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- (3) The Minister must not appoint a person to act as the Registrar of Military Justice unless:
- (a) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years; and
 - (b) the person is a member of the Permanent Navy, the Regular Army or the Permanent Air Force or is a member of the Reserves who is rendering continuous full-time service; and
 - (c) the person holds a rank not lower than lieutenant commander, major or squadron leader.

188FM Delegation

The Registrar of Military Justice may delegate all or any of his or her powers and functions to:

- (a) a defence member holding the rank of lieutenant commander, major or squadron leader; or
- (b) a person whose classification level appears in Group 5 or a higher Group of Schedule 1 to the Classification Rules under the *Public Service Act 1999*; or
- (c) a person who is acting in a position usually occupied by a person with a classification level of the kind mentioned in paragraph (b).

Part XIA—Director of Military Prosecutions

Division 1—Establishment and functions of the Director of Military Prosecutions

188G Director of Military Prosecutions

There is to be a Director of Military Prosecutions.

188GA Functions of the Director of Military Prosecutions

- (1) The Director of Military Prosecutions has the following functions:
 - (a) to carry on prosecutions for service offences in proceedings before a Defence Force magistrate or a court martial, whether or not instituted by the Director of Military Prosecutions;
 - (b) to seek the consent of the Director of Public Prosecutions as required by section 63;
 - (c) to make statements or give information to particular persons or to the public relating to the exercise of powers or the performance of duties or functions under this Act;
 - (d) to represent the service chiefs in proceedings before the Defence Force Discipline Appeal Tribunal;
 - (e) to do anything incidental or conducive to the performance of any of the preceding functions.
- (2) In addition to his or her functions under subsection (1), the Director of Military Prosecutions also has:
 - (a) the functions conferred on the Director of Military Prosecutions by or under this Act or any other law of the Commonwealth; and
 - (b) such other functions as are prescribed by the regulations.

188GB Appearances by and on behalf of Director of Military Prosecutions

In a trial of a charge by a court martial or a Defence Force magistrate, the Director of Military Prosecutions:

- (a) may appear in person; or

- (b) if the Director of Military Prosecutions so authorises, may be represented by:
 - (i) if the trial is held in Australia—a member of the Defence Force or a legal practitioner; or
 - (ii) if the trial is held in a place outside Australia—a person referred to in subparagraph (i) or a person qualified to practise before the courts of that place.

188GC Right of Director of Military Prosecutions and staff to practise in their official capacity

The Director of Military Prosecutions, or a person assisting the Director of Military Prosecutions who is a legal officer, is, in his or her official capacity:

- (a) entitled to practise as a barrister, solicitor, or barrister and solicitor, in a federal court or in a court of a State or Territory; and
- (b) entitled to all the rights and privileges of a barrister, solicitor, or barrister and solicitor, as the case may be, in that court; whether or not he or she would, but for this section, be entitled to practise in that court.

188GD Undertakings by the Director of Military Prosecutions

- (1) The Director of Military Prosecutions may, if he or she considers it appropriate to do so, give to a person an undertaking that:
 - (a) an answer that is given, or a statement or disclosure that is made, by the person in the course of giving evidence in proceedings for a service offence; or
 - (b) the fact that the person discloses or produces a document or other thing in proceedings for a service offence; or
 - (c) any information, document or other thing that is obtained as a direct or indirect consequence of an answer that is given, a statement or disclosure that is made, or a document or other thing that is disclosed or produced in proceedings for a service offence;will not be used in evidence against the person in any other proceedings for a service offence.

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- (2) If the Director of Military Prosecutions gives an undertaking under subsection (1):
- (a) an answer that is given, or a statement or disclosure that is made, by the person in the course of giving evidence in the proceedings; or
 - (b) the fact that the person discloses or produces a document or other thing in the proceedings; or
 - (c) any information, document or other thing that is obtained as mentioned in paragraph (1)(c);
- as the case may be, is not admissible in evidence against the person in any other proceedings for a service offence, other than proceedings in respect of the falsity of evidence given by the person.
- (3) The Director of Military Prosecutions may, if he or she considers it appropriate to do so, give to a person an undertaking that the person will not be prosecuted:
- (a) for a specified service offence; or
 - (b) in respect of specified acts or omissions that constitute, or may constitute, a service offence.
- (4) If the Director of Military Prosecutions gives an undertaking to a person under subsection (3), no prosecution may be instituted against the person in respect of the specified service offence or a service offence in respect of the specified acts or omissions.
- (5) An undertaking under subsection (3) may be subject to any conditions that the Director of Military Prosecutions considers appropriate.

188GE Directions and guidelines by the Director of Military Prosecutions

- (1) The Director of Military Prosecutions may, by legislative instrument, give directions, or provide guidelines, in relation to the prosecution of service offences to:
- (a) a person who is an investigating officer within the meaning of Part VI; or
 - (b) any other person who institutes or carries on prosecutions for service offences.

- (2) Without limiting the generality of subsection (1), directions or guidelines under that subsection may relate to particular cases and may specify:
- (a) a service offence, being an offence a matter relating to which is to be referred to the Director of Military Prosecutions for the institution or carrying on of a prosecution for that offence; or
 - (b) a class of service offences, being offences matters relating to which are to be referred to the Director of Military Prosecutions for the institution or carrying on of prosecutions for those offences.
- (3) The Director of Military Prosecutions must give to the Minister a copy of each direction given or guideline provided under subsection (1).

Note: The annual report prepared by the Director of Military Prosecutions for a year under section 196B must include a copy of each direction given or guideline provided under this section in the year, and a copy of each direction given or guideline provided under this section as in force at the end of that year.

Division 2—Administrative provisions about the Director of Military Prosecutions

188GF Appointment of the Director of Military Prosecutions

- (1) The Director of Military Prosecutions is to be appointed by the Minister by written instrument.
- (2) The Director of Military Prosecutions holds office on a full-time basis.
- (3) The Director of Military Prosecutions holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

188GG Qualifications for appointment

A person must not be appointed as the Director of Military Prosecutions unless:

- (a) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years; and
- (b) the person is a member of the Permanent Navy, the Regular Army or the Permanent Air Force or is a member of the Reserves who is rendering continuous full-time service; and
- (c) the person holds a rank not lower than the naval rank of commodore or the rank of brigadier or air commodore.

188GH Tenure

- (1) The Director of Military Prosecutions holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (2) The Director of Military Prosecutions is eligible for reappointment, but must not hold office for a total of more than 10 years.

188GI Resignation

The Director of Military Prosecutions may resign his or her appointment by giving the Minister a written resignation.

188GJ Oath or affirmation

- (1) The Director of Military Prosecutions must, before proceeding to discharge the duties of his or her office, make and subscribe an oath or affirmation in accordance with the form in Schedule 4.
- (2) An oath or affirmation under this section is to be made before:
 - (a) the Judge Advocate General; or
 - (b) a Deputy Judge Advocate General; or
 - (c) the Chief Judge Advocate.

188GK Remuneration

- (1) The Director of Military Prosecutions is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, he or she is to be paid the remuneration that is prescribed.
- (2) The Director of Military Prosecutions is to be paid the allowances that are prescribed.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

188GL Leave of absence

- (1) The Director of Military Prosecutions has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Director of Military Prosecutions leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

188GM Outside employment

The Director of Military Prosecutions must not:

- (a) engage in practice as a legal practitioner outside the duties of his or her office; or
- (b) without the approval of the Minister, engage in paid employment outside the duties of his or her office.

Section 188GN

188GN Termination of appointment

- (1) The Minister may terminate the appointment of the Director of Military Prosecutions for:
 - (a) misbehaviour; or
 - (b) physical or mental incapacity.
- (2) The Minister must terminate the appointment of the Director of Military Prosecutions if the Director of Military Prosecutions:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) engages in practice as a legal practitioner outside the duties of his or her office; or
 - (d) without the approval of the Minister, engages in paid employment outside the duties of his or her office; or
 - (e) fails, without reasonable excuse, to comply with his or her obligations under section 188GO.
- (3) The Director of Military Prosecutions ceases to hold office if:
 - (a) he or she ceases to be enrolled as a legal practitioner; or
 - (b) he or she is no longer:
 - (i) a member of the Permanent Navy, the Regular Army or the Permanent Air Force; or
 - (ii) a member of the Reserves who is rendering continuous full-time service.

188GO Standing obligation to disclose interests

- (1) The Director of Military Prosecutions must disclose any interest that the Director of Military Prosecutions has if that interest could conflict with the proper performance of the functions of his or her office. Disclosure is required whether or not there is any particular matter under consideration that gives rise to an actual conflict of interest.
- (2) Subsection (1) applies to interests:
 - (a) whether direct or indirect, and whether or not pecuniary; and

- (b) whether acquired before or after the person's appointment.
- (3) The disclosure must be by notice in writing given to the Minister as soon as practicable after the Director of Military Prosecutions becomes aware of the potential for conflict of interest.

188GP Acting appointments

- (1) The Minister may appoint a person to act as the Director of Military Prosecutions:
 - (a) during a vacancy in the office, whether or not an appointment has previously been made to that office; or
 - (b) during any period, or during all periods, when the Director of Military Prosecutions is absent from duty or from Australia, or is, for any other reason, unable to perform the functions of his or her office.
- (2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.
- (3) The Minister must not appoint a person to act as the Director of Military Prosecutions unless:
 - (a) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years; and
 - (b) the person is a member of the Permanent Navy, the Regular Army or the Permanent Air Force or is a member of the Reserves who is rendering continuous full-time service; and
 - (c) the person holds a rank not lower than the naval rank of commander or the rank of lieutenant-colonel or wing commander.

188GQ Staff

The staff necessary to assist the Director of Military Prosecutions are to be the following:

Part XIA Director of Military Prosecutions

Division 2 Administrative provisions about the Director of Military Prosecutions

Section 188GQ

- (a) defence members made available for the purpose by the appropriate service chief;
- (b) persons engaged under the *Public Service Act 1999* and made available for the purpose by the Secretary of the Department.

Division 3—Other matters

188GR Delegation

The Director of Military Prosecutions may delegate all or any of his or her powers to a defence member mentioned in paragraph 188GQ(a) who is a legal officer.

Part XII—Miscellaneous

189 Royal prerogative of mercy

Nothing in this Act limits or affects the royal prerogative of mercy.

190 Jurisdiction of civil courts in relation to offences

- (1) Subject to the Constitution, a civil court does not have jurisdiction to try a charge of a service offence.
- (2) Subject to subsection (4), the jurisdiction of a civil court to try a charge of a civil court offence is not affected by this Act.
- (4) A civil court does not have jurisdiction to try a charge of a civil court offence that:
 - (a) is an ancillary offence in relation to an offence against this Act (other than section 61) or the regulations; and
 - (b) was committed by a person at a time when the person was a defence member or a defence civilian.

191 Evidentiary certificate

- (1) An authorized officer may issue a certificate setting out such facts as the authorised officer considers relevant with respect to:
 - (a) the acquittal or conviction of a person of a service offence;
 - (b) the dismissal of a charge of a service offence against a person under section 130, 132 or 135;
 - (c) the dismissal of a charge of an offence against a person under previous service law; or
 - (d) the taking of a service offence into consideration in relation to a person under section 77.
- (2) A certificate purporting to be issued under subsection (1) and purporting to be signed by an authorized officer shall be received in evidence in any civil court or service tribunal without further proof and is *prima facie* evidence of the facts stated in it.

192 Evidence of warrant of commitment

An instrument purporting to be a warrant of commitment under section 170 and purporting to be signed by an authorized officer shall be received in evidence in any civil court without further proof and is *prima facie* evidence of the facts stated in it.

193 Protection of members of courts martial etc.

- (1) A member of a court martial, a judge advocate, a Defence Force magistrate, a summary authority or a reviewing authority has, in the performance of his or her duties as such a member, judge advocate, magistrate or authority, as the case may be, the same protection and immunity as a Justice of the High Court.
- (1A) The Judge Advocate General has, in the performance of his or her duties as the Judge Advocate General, the same protection and immunity as a Justice of the High Court.
- (2) A legal practitioner or other person appearing before a service tribunal on behalf of a party has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.
- (3) Subject to this Act, a person summoned to attend or appearing before a service tribunal as a witness has the same protection as a witness in proceedings in the High Court.
- (4) An action, suit or proceeding does not lie against:
 - (a) the Director of Military Prosecutions or a person assisting the Director of Military Prosecution; or
 - (b) the Registrar of Military Justice or a person assisting the Registrar of Military Justice;in relation to an act done or omitted to be done in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, conferred by or under this Act or any other law of the Commonwealth.

194 Persons found to be of unsound mind

- (1) Where a direction has been given under section 145, 158 or 164 that a person be kept in strict custody until the pleasure of the Governor-General is known, the Governor-General may, by

Section 194

writing signed by him or her, order that the person be detained in safe custody in such place and in accordance with such directions, if any, as the Governor-General specifies in the order.

- (2) The Governor-General may, from time to time, by writing signed by him or her, vary an order made under subsection (1), either as to the place specified in the order or the directions so specified, or as to both, in such manner as the person thinks fit.
- (3) The Governor-General may, by writing signed by him or her, order that a person detained in safe custody in pursuance of an order made under subsection (1) (being a person who, by reason of unsoundness of mind, has been acquitted of the service offence with which he or she was charged) be released from custody either unconditionally or subject to such conditions as are specified in the order.
- (4) Where the Governor-General orders that a person be released from custody subject to conditions, the Governor-General may, at any time, by writing signed by him or her:
 - (a) vary or revoke any or all of the conditions or impose additional conditions; or
 - (b) revoke the order.
- (5) Where an order in respect of a person under subsection (3) is revoked or the person fails to comply with a condition of such an order, the person may, without warrant, be arrested by any constable and may be detained in safe custody in accordance with the order made in respect of the person under subsection (1) as if the order under subsection (3) had not been made.
- (6) Upon the Governor-General making an order under subsection (3) that a person be released from custody unconditionally or upon the Governor-General revoking all the conditions subject to which a person has been released from custody in pursuance of an order made under that subsection, the order made under subsection (1) in respect of the person ceases to have effect.
- (7) Where an order is made under subsection (1) in respect of a person who, by reason of unsoundness of mind, is unfit to be tried, he or she shall be detained until the Governor-General is satisfied by the certificate in writing of not less than 2 medical practitioners that the person has become of sound mind and is fit to be tried, and,

upon the Governor-General being so satisfied, the Governor-General may, by writing signed by him or her, refer the charge to the Director of Military Prosecutions and, pending the decision of the Director of Military Prosecutions under section 103, order the removal of the person to such custody as is specified in the order.

- (8) For the purposes of the preceding provisions of this section, ***Governor-General*** means the Governor-General acting with the advice of the Attorney-General.
- (9) The Governor-General may make arrangements with the Governor of a State or the Administrator of the Northern Territory for or in relation to the detention in institutions maintained by the State or the Northern Territory, as the case may be, of persons in respect of whom orders are made under subsection (1).

194A Persons required as witnesses before service tribunals

Where:

- (a) a person (in this section referred to as the ***prisoner***) who is required as a witness before a service tribunal is undergoing a sentence of imprisonment in a State or Territory other than the State or Territory in which the service tribunal is to sit during the period when the prisoner will be so required as a witness; and
- (b) the prisoner is produced in the last-mentioned State or Territory in pursuance of an instrument, issued under the rules of procedure, directed to the person in charge of the prison where the prisoner is undergoing the sentence of imprisonment;

then:

- (c) the prisoner, while in the last-mentioned State or Territory in pursuance of the instrument, shall be deemed to be undergoing the sentence of imprisonment; and
- (d) the person in whose custody the prisoner is placed has the same powers, in relation to the detention or disposition of the prisoner, as the person to whom the instrument was directed has in the first-mentioned State or Territory.

195 Supply of record of proceedings

- (1) Subject to this section, a person who has been tried by a court martial or a Defence Force magistrate is, upon application made to the Attorney-General before the expiration of a period of 10 years commencing on the date of the delivery of the verdict in the trial and upon the payment of the prescribed fee (if any), entitled to be supplied with a copy of the record of the proceedings of the trial.
- (2) Subject to this section, where a person tried by a court martial or a Defence Force magistrate has died before the expiration of a period of 10 years commencing on the date of the delivery of the verdict in the trial, his or her legal personal representative or, subject to subsection (3), a person approved by the Attorney-General as that person's representative is, upon application made to the Attorney-General before the expiration of a period of 1 year commencing on the date of the death of the deceased person and upon the payment of the prescribed fee (if any), entitled to be supplied with a copy of the record of the proceedings of the trial.
- (3) If there is a legal personal representative of a deceased person, the Attorney-General shall not approve a person as a representative of a deceased person unless the Attorney-General is satisfied that the legal personal representative has declined to take action in relation to the making of the application under subsection (2).
- (4) Nothing in this section authorizes, or requires, the supply of a copy of the record of evidence the publication of which was prohibited by an order under subsection 140(2).
- (5) Nothing in this section affects the power of a civil court to make an order for the discovery of documents or the giving of evidence in, or the production of documents to, a civil court.
- (6) Where the record of the proceedings of a trial to which an application under subsection (1) or (2) relates is held by the Chief of the Defence Force or a service chief, the Attorney-General may make arrangements with the Chief of the Defence Force or the service chief for the supply of a copy of the record to the applicant.

196 Judge advocates' panel

- (1) There shall be a panel of officers to be known as the judge advocates' panel.

Section 196A

- (2) The Chief of the Defence Force or a service chief may, by writing signed by the Chief of the Defence Force or the service chief, appoint officers nominated by the Judge Advocate General to be members of the judge advocates' panel.
- (2A) An appointment under subsection (2) is for the period specified in the instrument of appointment. However, if the specified period exceeds 3 years, the appointment is for a period of 3 years.
- (2B) An officer appointed under subsection (2) may be reappointed for a further period or periods.
- (3) An officer is not eligible for appointment to the judge advocates' panel unless the officer is enrolled as a legal practitioner and has been so enrolled for not less than 5 years.
- (4) The Judge Advocate General shall require an officer appointed under subsection (2) to make and subscribe an oath or affirmation in accordance with the form in Schedule 5.
- (5) An oath or affirmation under subsection (4) shall be made before the Judge Advocate General or an officer authorized, in writing, by the Judge Advocate General for the purpose.

196A Annual report relating to Defence Force discipline law

- (1) The Judge Advocate General shall, as soon as practicable after each 31 December, prepare and furnish to the Minister a report relating to:
 - (a) the operation of this Act, the regulations and the rules of procedure; and
 - (b) the operation of any other law of the Commonwealth or of the Australian Capital Territory in so far as that law relates to the discipline of the Defence Force;during the year ending on that 31 December.
- (2) The Minister shall cause a copy of a report furnished to the Minister under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.
- (3) A report under subsection (1) shall set out such statistical information as the Judge Advocate General considers appropriate.

Section 196B

- (4) The first report under subsection (1) shall relate to the period commencing on the proclaimed date and expiring on the next succeeding 31 December.

196B Annual report relating to the operations of the Director of Military Prosecutions

- (1) The Director of Military Prosecutions must, as soon as practicable after each 31 December, prepare and give to the Minister, for presentation to the Parliament, a report relating to the operations of the Director of Military Prosecutions during the year ending on that 31 December.
- (2) A report under subsection (1) must:
- (a) set out such statistical information as the Director of Military Prosecutions considers appropriate; and
 - (b) include:
 - (i) a copy of each direction given or guideline provided under subsection 188GE(1) during the year to which the report relates; and
 - (ii) a copy of each such direction or guideline as in force at the end of that year.
- (3) The first report under subsection (1) is to relate to the period beginning on the day on which this section commences and ending on the next 31 December.

197 Regulations

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations shall not prescribe a punishment for a person convicted of an offence under the regulations other than:
- (a) where the convicted person is a member of the Defence Force—a punishment referred to in paragraph 68(1)(h), (j), (k), (m), (n) or (p); or
 - (b) in any other case—a punishment referred to in paragraph 68(1)(h).

Schedule 1—Corresponding punishments

Section 65B

Item	Column 1 Punishment in accordance with previous service law	Column 2 Corresponding punishment under this Act
1	Penal servitude	Imprisonment for a specific period
2	Dismissal with disgrace from Her Majesty's Service	Imprisonment for 2 years
3	Cashiering Dismissal from Her Majesty's Service	Dismissal from the Defence Force

Schedule 2—Punishments that may be imposed by a court martial or a Defence Force magistrate

Section 67

1. Subject to clause 2, a court martial or a Defence Force magistrate may impose punishments on convicted persons in accordance with the table in this Schedule.
2. A restricted court martial or a Defence Force magistrate shall not impose any of the following punishments:
 - (a) imprisonment for life;
 - (b) imprisonment for a period exceeding 6 months;
 - (c) detention for a period exceeding 6 months.

TABLE OF PUNISHMENTS

Column 1	Column 2
Convicted Person	Punishment
Officer	Imprisonment Dismissal from the Defence Force Reduction in rank Forfeiture of service for the purposes of promotion Forfeiture of seniority Fine of an amount not exceeding the amount of the convicted person's pay for 28 days Severe reprimand Reprimand
Member of the Defence Force who is not an officer	Imprisonment Dismissal from the Defence Force Detention for a period not exceeding 2 years Reduction in rank Forfeiture of seniority Fine not exceeding the amount of the convicted person's pay for 28 days Severe reprimand Reprimand

Punishments that may be imposed by a court martial or a Defence Force magistrate
Schedule 2

Column 1	Column 2
Convicted Person	Punishment
Person who is not a member of the Defence Force	Imprisonment Fine of an amount not exceeding \$500.

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

[see Table B]

Section 67

1. Subject to section 131, a superior summary authority may impose punishments on convicted persons in accordance with Table A in this Schedule.
2. Subject to section 131, a commanding officer may impose punishments on convicted persons in accordance with Table B in this Schedule.
3. A subordinate summary authority may impose punishments on convicted persons in accordance with Table C in this Schedule.

TABLE A—SUPERIOR SUMMARY AUTHORITY

Column 1 Convicted person	Column 2 Elective punishment	Column 3 Other punishment
Officer of or below the rank of lieutenant commander, major or squadron leader or 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
Person who is not a member of the Defence Force	Fine exceeding \$100 but not exceeding \$250	Fine not exceeding \$100

TABLE B—COMMANDING OFFICER

Column 1 Convicted person	Column 2 Elective punishment	Column 3 Other punishment
Officer of or below the rank of lieutenant in the Navy, captain in the Army or flight lieutenant or 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

Column 1	Column 2	Column 3
Convicted person	Elective punishment	Other punishment
Non-commissioned officer of the Australian Navy	Reduction in rank by not more than one rank Forfeiture of seniority	Fine not exceeding the amount of the convicted person's pay for 28 days Severe reprimand Stoppage of leave for a period not exceeding 21 days Reprimand
Non-commissioned officer of the Australian Army or the Australian Air Force	Reduction in rank by not more than one rank or, in the case of a corporal of the Australian 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 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

Schedule 3 Punishments that may be imposed by a summary authority

Column 1	Column 2	Column 3
Convicted person	Elective punishment	Other punishment
Member below non-commissioned rank in the Navy		Detention for a period not exceeding 42 days Reduction in rank Forfeiture of seniority Fine not exceeding the amount of the convicted person's pay for 28 days Severe reprimand Restriction of privileges for a period not exceeding 14 days Stoppage of leave for a period not exceeding 21 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

Column 1	Column 2	Column 3
Convicted person	Elective punishment	Other punishment
Member below non-commissioned rank in the Army or the Air Force who, at the time he or she committed the service offence of which he or she has been convicted, was on active service	<p>Detention for a period exceeding 14 days but not exceeding 42 days</p> <p>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</p>	<p>Detention for a period not exceeding 14 days</p> <p>Fine not exceeding the amount of the convicted person's pay for 14 days</p> <p>Severe reprimand</p> <p>Restriction of privileges for a period not exceeding 14 days</p> <p>Extra duties for a period not exceeding 7 days</p> <p>Extra drill for not more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days</p> <p>Reprimand</p>
Member below non-commissioned rank in the Army or the Air Force who, at the time he or she committed the service offence of which he or she has been convicted, was not on active service	<p>Detention for a period exceeding 7 days but not exceeding 28 days</p> <p>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</p>	<p>Detention for a period not exceeding 7 days</p> <p>Fine not exceeding the amount of the convicted person's pay for 7 days</p> <p>Severe reprimand</p> <p>Restriction of privileges for a period not exceeding 14 days</p> <p>Extra duties for a period not exceeding 7 days</p> <p>Extra drill for not more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days</p> <p>Reprimand</p>
Person who is not a member of the Defence Force	Fine exceeding \$100 but not exceeding \$250	Fine not exceeding \$100

Schedule 3 Punishments that may be imposed by a summary authority

TABLE C—SUBORDINATE SUMMARY AUTHORITY

Column 1 Subordinate Summary Authority	Column 2 Convicted Person	Column 3 Punishment
A subordinate summary authority who is— (a) an officer of the Navy of or above the rank of commander; or (b) an officer of the Navy of or above the rank of lieutenant holding an appointment of Executive Officer of a ship or naval establishment	Sailor of the rank of leading seaman	Fine not exceeding the amount of the convicted person's pay for 7 days Severe reprimand Stoppage of leave for a period not exceeding 21 days Reprimand
	Sailor below the rank of leading seaman	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 Stoppage of leave for a period not exceeding 21 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
Any subordinate summary authority	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

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

Column 1 Subordinate Summary Authority	Column 2 Convicted Person	Column 3 Punishment
	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 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

Schedule 3A—Punishments that may be imposed by a summary authority on detainees convicted of certain offences

Section 67

1. A commanding officer may impose punishments on persons convicted of custodial offences, or service offences to which subsection 68C(1) applies, in accordance with Table A in this Schedule.
2. A subordinate summary authority may impose punishments on persons convicted of custodial offences, or service offences to which subsection 68C(1) applies, in accordance with Table B in this Schedule.

TABLE A—COMMANDING OFFICER

Segregated confinement for a period not exceeding 10 days
Confinement to cell for a period not exceeding 10 days
Extra drill for a period not exceeding 6 days
Restriction of custodial privileges for a period not exceeding 14 days

TABLE B—SUBORDINATE SUMMARY AUTHORITY

Segregated confinement for a period not exceeding 3 days
Confinement to cell for a period not exceeding 3 days
Extra drill for a period not exceeding 3 days
Restriction of custodial privileges for a period not exceeding 7 days

Schedule 4

Sections 128, 184, 188FF and 188GJ

OATH

I, *A.B.*, do swear that I will well and truly serve Her Majesty in the office of _____ and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will: So help me God!

AFFIRMATION

I, *A.B.*, do solemnly and sincerely promise and declare that I will well and truly serve Her Majesty in the office of _____ and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will.

Schedule 5

Section 196

OATH

I, *A.B.*, do swear that I will well and truly serve Her Majesty in the office of judge advocate and I will do right to all manner of people according to law, without fear or favour, affection or ill-will: So help me God!

AFFIRMATION

I, *A.B.*, do solemnly and sincerely promise and declare that I will well and truly serve Her Majesty in the office of judge advocate and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will.

Schedule 6—Alternative offences

Section 142

Item	Column 1 Offence	Column 2 Alternative offence
1	Offence against section 16B relating to an act or omission	Offence against section 15, 15A, 15D, 15E, 15F, 15G, 16 or 16A relating to that act or omission
3	Offence against subsection 18(2)	Offence against subsection 18(1)
4	Offence against subsection 20(1)	Offence against subsection 21(1)
5	Offence against subsection 20(2)	Offence against subsection 21(2)
6	Offence against section 22	Offence against section 24
6A	Offence against section 23	Offence against section 24
7	Offence against section 24	Offence against section 23
8	Offence against section 25	Offence against section 33 relating to an act or omission of the kind referred to in paragraph 33(a) or (b)
9	Offence against section 26	Offence against section 33 relating to an act or omission of the kind referred to in paragraph 33(b) or (d)
10	Offence against subsection 30(1)	Offence against section 33 relating to an act or omission of the kind referred to in paragraph 33(a) or (b)
11	Offence against subsection 30(2)	(a) Offence against subsection 30(1) (b) Offence against section 33 relating to an act or omission of the kind referred to in paragraph 33(a) or (b)
12	Offence against subsection 31(1)	Offence against section 33 relating to an act or omission of the kind referred to in paragraph 33(a) or (b)

Schedule 6 Alternative offences

Item	Column 1 Offence	Column 2 Alternative offence
13	Offence against subsection 32(1) relating to an act or omission of the kind referred to in paragraph 32(1)(c)	Offence against section 37 relating to being intoxicated on duty
14	Offence against subsection 32 (1) relating to an act or omission of the kind referred to in paragraph 32(1)(d)	Offence against section 23
15	Offence against subsection 32(3) relating to an act or omission	Offence against subsection 32(1) relating to that act or omission
16	Offence against subsection 32(3) relating to an act or omission of the kind referred to in paragraph 32(1)(c)	Offence against subsection 37(1) relating to being intoxicated on duty
17	Offence against subsection 32(3) relating to an act or omission of the kind referred to in paragraph 32(1) d)	Offence against section 23
18	Offence against section 34	Offence against section 33 relating to an act or omission of the kind referred to in paragraph 33(a) or (b)
19	Offence against subsection 36(1)	(a) Offence against subsection 36(2) (b) Offence against subsection 36(3)
20	Offence against subsection 36(2)	Offence against subsection 36(3)
21	Offence against subsection 39(1)	(a) Offence against subsection 39(2) (b) Offence against subsection 39(3)
22	Offence against subsection 39(2)	Offence against subsection 39(3)
23	Offence against subsection 40A(1)	(a) Offence against subsection 40B(1) (b) Offence against subsection 40D(1)
24	Offence against subsection 40A(2)	(a) Offence against subsection 40B(2) (b) Offence against subsection 40D(2)
25	Offence against subsection 40B(1)	Offence against subsection 40D(1)

Item	Column 1 Offence	Column 2 Alternative offence
26	Offence against subsection 40B(2)	Offence against subsection 40D(2)
27	Offence against subsection 43(1)	(a) Offence against subsection 43(2) (b) Offence against subsection 43(3)
28	Offence against subsection 43(2)	Offence against subsection 43(3)
29	Offence against section 46	Offence against section 45
30	Offence against section 47C	(a) Offence against section 47P (b) Offence against section 45 (c) Offence against section 46
31	Offence against subsection 48(1)	Offence against subsection 48(2)
31A	Offence against subsection 56(1)	Offence against subsection 56(4)
32	Offence against subsection 59(1)	Offence against subsection 59(3)

Table of Acts**Notes to the *Defence Force Discipline Act 1982*****Note 1**

The *Defence Force Discipline Act 1982* as shown in this compilation comprises Act No. 152, 1982 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 22 March 2001 is not included in this compilation. For subsequent information *see* Table A.

The *Defence Force Discipline Act 1982* was modified by the *Defence Force Discipline Regulations 1985* (1985 No. 125) *see* Table B.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Defence Force Discipline Act 1982</i>	152, 1982	31 Dec 1982	Parts I (ss. 1–9) and XI (ss. 179–188): Royal Assent Remainder: 3 July 1985 (<i>see Gazette</i> 1985, No. S255)	
<i>Defence Legislation Amendment Act 1984</i>	164, 1984	25 Oct 1984	Ss. 1, 2, 16–19, Part XIV (ss. 115, 116) and s.120: Royal Assent Ss. 23–70 and 72–78: 3 July 1985 (<i>see s. 2(4)</i> and <i>Gazette</i> 1985, No. S255) S. 71: 31 Dec 1982 (<i>see s. 2(3)</i>) Ss. 82, 83, 85 and 87–89: 1 July 1983 Ss. 84 and 86: 1 Oct 1972 Part XI (ss. 108, 109): 1 Jan 1985 Part XV (ss.117–119): 1 Aug 1984 (<i>see s. 2(8)</i> and <i>Gazette</i> 1984, No. S292) S. 121: 1 Jan 1982 Remainder: 22 Nov 1984	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i>	65, 1985	5 June 1985	S. 3: 3 July 1985 (a)	S. 7
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1985</i>	193, 1985	16 Dec 1985	S. 3: Royal Assent (b)	S. 16
<i>Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986</i>	28, 1986	19 May 1985	S. 61: Royal Assent Remainder: 22 May 1986 (see <i>Gazette</i> 1986, No. S225)	—
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1986</i>	76, 1986	24 June 1986	S. 3: (c)	S. 9
<i>Defence Legislation Amendment Act 1987</i>	65, 1987	5 June 1987	Ss. 1–3, 9, 10, 13(1), 23–25, 26(1), 27, 29, 31, 33–36, 42–45, 48, 49, 52–58, 61(1), 62, 69(1), Parts IX and X (ss. 71–78): Royal Assent S. 37(1) and Part IV (ss. 50, 51): 10 Nov 1977 (see s. 2(3)) Ss. 37(2) and 38–41: 3 July 1985 Ss. 46 and 47: 19 June 1973 (see s. 2(2)) Remainder: 1 July 1988 (see <i>Gazette</i> 1988, No. S173)	S. 34(2)
<i>Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988</i>	99, 1988	2 Dec 1988	2 Dec 1988	—
<i>Defence Legislation Amendment Act (No. 2) 1988</i>	104, 1988	6 Dec 1988	Part IV (ss. 20–23): Royal Assent (d)	S. 23(2)
<i>Crimes Legislation Amendment Act (No. 2) 1989</i>	4, 1990	17 Jan 1990	S. 34: 17 July 1990 (e)	—
<i>Defence Legislation Amendment Act 1990</i>	75, 1990	22 Oct 1990	S. 3: Royal Assent (f)	—
<i>Crimes Legislation Amendment Act 1991</i>	28, 1991	4 Mar 1991	S. 74(1): Royal Assent (g)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Defence Legislation Amendment Act 1995</i>	43, 1995	15 June 1995	Schedule 2 (items 1–28, 31–34) and Schedule 7: Royal Assent (<i>h</i>) Schedule 2 (items 29, 30): 1 Nov 1995 (see <i>Gazette</i> 1995, No. S361) (<i>h</i>)	—
as amended by				
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 3 (items 21–23): 15 June 1995 (<i>ha</i>)	—
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 2 (items 50, 51): (<i>l</i>) Schedule 4 (items 63, 64) and Schedule 5 (items 49, 50): Royal Assent (<i>i</i>)	—
<i>Defence Legislation Amendment Act (No. 1) 1996</i>	56, 1996	8 Nov 1996	Schedule 1 (items 1–3): 28 May 1992 Remainder: Royal Assent	Sch. 1 (item 4)
<i>Defence Legislation Amendment Act (No. 1) 1997</i>	1, 1997	19 Feb 1997	Schedule 2 (items 120–126, 138, 139): Royal Assent (<i>j</i>)	—
as amended by				
<i>Defence Legislation Amendment Act (No. 1) 1999</i>	116, 1999	22 Sept 1999	Schedule 6 (item 2): (<i>ja</i>)	—
<i>Defence Legislation Amendment Act (No. 1) 1999</i>	116, 1999	22 Sept 1999	Schedule 4: Royal Assent (<i>k</i>)	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (item 368): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (<i>l</i>)	—
<i>Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001</i>	10, 2001	22 Mar 2001	Schedule 2 (items 35–39, 94, 95): 19 Apr 2001 (<i>m</i>)	Sch. 2 (items 94, 95) [see Table A]
<i>Defence Legislation Amendment (Application of Criminal Code) Act 2001</i>	141, 2001	1 Oct 2001	Schedule 1 (items 1–111): 15 Dec 2001 Schedule 1 (item 112): (<i>n</i>) Remainder: Royal Assent	S. 4 [see Table A] S. 2(2) (am. by 135, 2003, Sch. 2 (item 28))

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
as amended by				
<i>Statute Law Revision Act 2002</i>	63, 2002	3 July 2002	Schedule 2 (item 10): (na)	—
<i>Defence Legislation Amendment Act 2003</i>	135, 2003	17 Dec 2003	Schedule 2 (item 28): (nb)	—
<i>Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001</i>	159, 2001	1 Oct 2001	29 Oct 2001	Sch. 1 (item 97) [see Table A]
<i>Defence Legislation Amendment Act 2003</i>	135, 2003	17 Dec 2003	Schedule 1: 14 Jan 2004	Sch. 1 (item 48) [see Table A]
<i>Defence Legislation Amendment Act (No. 1) 2005</i>	121, 2005	6 Oct 2005	Schedule 5: (o) Remainder: Royal Assent	—
<i>Defence Legislation Amendment Act (No. 2) 2005</i>	142, 2005	12 Dec 2005	Schedule 1 (items 1, 3–99, 106, 107, 109–114): 12 June 2006 Schedule 1 (items 2, 100–105, 108, 115): Royal Assent	Sch. 1 (items 114, 115) [see Table A]
<i>Defence Legislation Amendment Act 2006</i>	159, 2006	11 Dec 2006	Schedule 1 (items 1–19, 36–202, 255–264): [see Note 2 and Table A] Schedule 2 (items 1–5): Royal Assent	Sch. 1 (items 255–264) and Sch. 2 (item 2) [see Table A]

Act Notes

- (a) The *Defence Force Discipline Act 1982* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(16) of which provides as follows:
- (16) Section 7 and the amendments of the *Defence Force Discipline Act 1982* made by this Act shall come into operation on the day on which this Act receives the Royal Assent or, if Part II of that first-mentioned Act is not in force on the day immediately before the day on which this Act receives the Royal Assent, immediately after that Part comes into operation.
- (b) The *Defence Force Discipline Act 1982* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1985*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (c) The *Defence Force Discipline Act 1982* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1986*, subsections 2(1) and (8) of which provide as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (8) The amendments of sections 86A and 101AA of the *Defence Force Discipline Act 1982* made by this Act shall be deemed to have come into operation on 3 July 1985.
- (d) The *Defence Force Discipline Act 1982* was amended by Part IV (sections 20–23) only of the *Defence Legislation Amendment Act (No. 2) 1988*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (e) The *Defence Force Discipline Act 1982* was amended by section 34 only of the *Crimes Legislation Amendment Act (No. 2) 1989*, subsections 2(13) and (14) of which provide as follows:
- (13) Subject to subsection (14), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
- (14) If a provision referred to in subsection (13) does not commence under that subsection within the period of 6 months beginning on the day it receives the Royal Assent, it commences on the first day after the end of that period.
- (f) The *Defence Force Discipline Act 1982* was amended by section 3 only of the *Defence Legislation Amendment Act 1990*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (g) The *Defence Force Discipline Act 1982* was amended by subsection 74(1) only of the *Crimes Legislation Amendment Act 1991*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (h) The *Defence Force Discipline Act 1982* was amended by the *Defence Legislation Amendment Act 1995*, subsections 2(1) and (2) of which provide as follows:
- (1) Except as indicated in subsections (2), (3) and (4), this Act commences on the day on which it receives the Royal Assent.
- (2) Schedule 1 (except items 3 and 11.3), items 29 and 30 of Schedule 2, and Schedule 5 commence on a day to be fixed by Proclamation.
- (ha) The *Defence Legislation Amendment Act 1995* was amended by Schedule 3 (items 21–23) only of the *Statute Law Revision Act 1996*, subsection 2(3) of which provides as follows:
- (3) Each item in Schedule 3 is taken to have commenced when the Act containing the provision amended by the item received the Royal Assent.

Act Notes

- (i) The *Defence Force Discipline Act 1982* was amended by Schedule 2 (items 50, 51), Schedule 4 (items 63, 64) and Schedule 5 (items 49, 50) only of the *Statute Law Revision Act 1996*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
 - (2) Each item in Schedule 2 commences or is taken to have commenced (as the case requires) at the time specified in the note at the end of the item.
- Items 50 and 51 are taken to have commenced immediately after the commencement of section 179 of the *Defence Force Discipline Act 1982*.
Section 179 commenced on 31 December 1982.
- (j) The *Defence Force Discipline Act 1982* was amended by Schedule 2 (items 120–126, 138 and 139) only of the *Defence Legislation Amendment Act (No. 1) 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (ja) The *Defence Legislation Amendment Act (No. 1) 1997* was amended by Schedule 6 (item 2) only of the *Defence Legislation Amendment Act (No. 1) 1999*, subsection 2(5) of which provides as follows:
- (5) Item 2 in Schedule 6 is taken to have commenced immediately after the commencement of Schedule 2 to the *Defence Legislation Amendment Act (No. 1) 1997*.
- (k) The *Defence Force Discipline Act 1982* was amended by Schedule 4 only of the *Defence Legislation Amendment Act (No. 1) 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (l) The *Defence Force Discipline Act 1982* was amended by Schedule 1 (item 368) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999* subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
 - (2) Subject to this section, this Act commences at the commencing time.
- (m) The *Defence Force Discipline Act 1982* was amended by Schedule 2 (items 35–39) only of the *Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the 28th day after the day on which it receives the Royal Assent.
- (n) Subsection 2(3) of the *Defence Legislation Amendment (Application of Criminal Code) Act 2001* provides as follows:
- (3) Part 2 of Schedule 1 is taken to have commenced immediately after the commencement of item 35 of Schedule 2 to the *Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001*.
- Schedule 2 (item 35) commenced on 19 April 2001.

Act Notes

(na) Subsection 2(1) (item 39) of the *Statute Law Revision Act 2002* provides as follows:

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
39. Schedule 2, item 10	Immediately after the time specified in the <i>Defence Legislation Amendment (Application of Criminal Code) Act 2001</i> for the commencement of item 41 of Schedule 1 to that Act	15 December 2001

(nb) Subsection 2(1) (item 9) of the *Defence Legislation Amendment Act 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
9. Schedule 2, item 28	Immediately after the commencement of section 2 of the <i>Defence Legislation Amendment (Application of Criminal Code) Act 2001</i>	1 October 2001

(o) Subsection 2(1) (item 3) of the *Defence Legislation Amendment Act (No. 1) 2005* provides as follows:

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

Provision(s)	Commencement	Date/Details
3. Schedule 5	Immediately after the commencement of section 3 of the <i>Legislative Instruments Act 2003</i> .	1 January 2005

Table of Amendments**Table of Amendments**

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

Provision affected	How affected
Part I	
S. 3	am. No. 164, 1984; No. 28, 1986; No. 65, 1987; No. 104, 1988; No. 28, 1991; No. 43, 1995; No. 56, 1996; No. 1, 1997; Nos. 10 and 141, 2001; No. 135, 2003; Nos. 121 and 142, 2005
S. 4	am. No. 43, 1995
S. 5.....	am. No. 1, 1997
S. 5A	ad. No. 142, 2005
Ss. 6, 7	am. No. 164, 1984
Part II	
S. 10.....	rs. No. 141, 2001
S. 11	am. No. 43, 1995; No. 141, 2001 (as am. by No. 63, 2002)
S. 12	am. No. 28, 1991 rep. No. 141, 2001
S. 13	am. No. 43, 1995 rep. No. 141, 2001
Part III	
Division 1	
Div. 1 of Part III	rs. No. 141, 2001
S. 15	am. No. 164, 1984; No. 43, 1995 rs. No. 141, 2001
Ss. 15A–15G.....	ad. No. 141, 2001
S. 16.....	am. No. 164, 1984; No. 43, 1995 rs. No. 141, 2001
Ss. 16A, 16B.....	ad. No. 141, 2001
S. 17	am. No. 43, 1995 rs. No. 141, 2001
S. 18.....	rs. No. 141, 2001
S. 19	am. No. 43, 1995 rs. No. 141, 2001
Division 2	
Div. 2 of Part III	rs. No. 141, 2001
Ss. 20, 21.....	rs. No. 141, 2001
S. 22	am. No. 164, 1984; No. 43, 1995 rs. No. 141, 2001
Ss. 23, 24	am. No. 43, 1995 rs. No. 141, 2001
Division 3	
Div. 3 of Part III	rs. No. 141, 2001
S. 25.....	rs. No. 141, 2001
Ss. 26–29	am. No. 43, 1995 rs. No. 141, 2001

Table of Amendments

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

Provision affected	How affected
S. 30.....	rs. No. 141, 2001
Heading to s. 31	am. No. 43, 1995 rs. No. 141, 2001
S. 31	am. No. 43, 1995 rs. No. 141, 2001
S. 32	am. No. 164, 1984; No. 43, 1995 rs. No. 141, 2001
S. 33.....	rs. No. 141, 2001
Heading to s. 34	am. No. 135, 2003
S. 34.....	am. No. 43, 1995 rs. No. 141, 2001 am. No. 135, 2003
Division 4	
Div. 4 of Part III	rs. No. 141, 2001
S. 35.....	am. No. 43, 1995 rs. No. 141, 2001; No. 135, 2003
S. 36.....	am. No. 43, 1995 rs. No. 141, 2001
S. 36A	ad. No. 43, 1995 rs. No. 141, 2001; No. 135, 2003
S. 36B	ad. No. 135, 2003
Ss. 37, 38	am. No. 43, 1995 rs. No. 141, 2001
Division 5	
Div. 5 of Part III	rs. No. 141, 2001
S. 39.....	rs. No. 141, 2001
S. 40	am. No. 43, 1995 rs. No. 141, 2001
S. 40A	ad. No. 141, 2001
S. 40B	ad. No. 141, 2001 rep. No. 135, 2003
Ss. 40C, 40D.....	ad. No. 141, 2001
S. 41.....	am. No. 43, 1995 rs. No. 141, 2001
S. 42.....	rs. No. 141, 2001
Division 5A	
Div. 5A of Part III.....	ad. No. 141, 2001
Subdivision A	
S. 43.....	rs. No. 141, 2001
S. 44	am. No. 164, 1984; No. 43, 1995 rs. No. 141, 2001
S. 45	am. No. 43, 1995 rs. No. 141, 2001
Subdivision B	
S. 46	am. No. 43, 1995 rs. No. 141, 2001

Table of Amendments

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

Provision affected	How affected
Subdivision C	
S. 47	am. No. 43, 1995 rs. No. 141, 2001
Ss. 47A–47H.....	ad. No. 141, 2001
Ss. 47J–47N, 47P.....	ad. No. 141, 2001
Subdivision D	
S. 48	am. No. 164, 1984 rs. No. 141, 2001
Division 6	
Div. 6 of Part III.....	rs. No. 141, 2001
S. 49	am. No. 43, 1995 rs. No. 141, 2001
S. 49A.....	ad. No. 141, 2001
S. 50.....	am. No. 43, 1995 rs. No. 141, 2001
S. 51.....	rs. No. 141, 2001
Ss. 52–54	am. No. 43, 1995 rs. No. 141, 2001
Division 6A	
Div. 6A of Part III.....	ad. No. 164, 1984
S. 54A	ad. No. 164, 1984 am. No. 43, 1995; No. 141, 2001
Note to s. 54A(3).....	ad. No. 141, 2001
Division 7	
Div. 7 of Part III.....	rs. No. 141, 2001
Ss. 55–57	am. No. 43, 1995 rs. No. 141, 2001
S. 58.....	rs. No. 141, 2001
S. 59	am. No. 43, 1995 rs. No. 141, 2001
S. 60.....	rs. No. 141, 2001
Division 8	
Div. 8 of Part III.....	rs. No. 141, 2001
S. 61	am. No. 28, 1991; No. 43, 1995 rs. No. 141, 2001
Division 9	
S. 62.....	rs. No. 141, 2001
S. 63	am. No. 75, 1990; No. 28, 1991; No. 43, 1995; No. 56, 1996; No. 121, 2005
S. 64.....	am. No. 121, 2005
Part IV	
S. 67	am. No. 164, 1984
S. 68	am. No. 164, 1984; No. 43, 1995; No. 1, 1997; No. 121, 2005
S. 68A	ad. No. 164, 1984 am. No. 1, 1997; No. 121, 2005

Table of Amendments

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

Provision affected	How affected
S. 68B	ad. No. 164, 1984 am. No. 193, 1985; Nos. 99 and 104, 1988 rep. No. 121, 2005
S. 68C	ad. No. 164, 1984 am. No. 43, 1995
S. 70.....	am. No. 164, 1984; No. 43, 1995; No. 141, 2001
S. 71.....	am. No. 164, 1984; No. 43, 1995
S. 72	rs. No. 4, 1990 am. No. 28, 1991; No. 135, 2003
S. 74	am. No. 164, 1984; No. 43, 1995
Ss. 75–77	am. No. 43, 1995
S. 79	am. No. 43, 1995
S. 80	am. No. 164, 1984
S. 83	am. No. 43, 1995
S. 84	am. No. 164, 1984; No. 99, 1988
Part V	
S. 86A	ad. No. 65, 1985 am. No. 76, 1986
S. 87	am. No. 164, 1984; No. 43, 1995; No. 142, 2005
S. 88	am. No. 43, 1995; No. 142, 2005
S. 89	am. No. 43, 1995; No. 43, 1996
S. 90	am. No. 43, 1995
Ss. 92, 93	am. No. 43, 1995
S. 94	am. No. 43, 1995; No. 43, 1996
S. 95	am. No. 43, 1995; No. 1, 1997; No. 142, 2005
S. 95A	ad. No. 164, 1984 am. No. 43, 1995
S. 96	am. No. 28, 1991; No. 43, 1995; No. 116, 1999; No. 141, 2001; No. 121, 2005
S. 97	am. No. 43, 1995; No. 1, 1997; No. 142, 2005
Ss. 99, 100	am. No. 43, 1995
Part VI	
Part VI.....	rs. No. 164, 1984
Division 1	
S. 101	rs. No. 164, 1984 am. No. 43, 1995
S. 101AA	ad. No. 65, 1985 am. No. 76, 1986
Division 2	
S. 101A	ad. No. 164, 1984
S. 101B	ad. No. 164, 1984 am. No. 43, 1995
Heading to s. 101C	rs. No. 135, 2003
S. 101C	ad. No. 164, 1984 am. No. 43, 1995; No. 135, 2003

Table of Amendments

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

Provision affected	How affected
Heading to s. 101D	rs. No. 135, 2003
S. 101D	ad. No. 164, 1984 rs. No. 43, 1995 am. No. 135, 2003
S. 101E	ad. No. 164, 1984 rs. No. 43, 1995
S. 101F	ad. No. 164, 1984 am. No. 43, 1995; No. 159, 2006
S. 101G	ad. No. 164, 1984 rs. No. 43, 1995
S. 101H	ad. No. 164, 1984 am. No. 43, 1995
Division 3	
S. 101J	ad. No. 164, 1984
S. 101JA	ad. No. 43, 1995
S. 101K	ad. No. 164, 1984 am. No. 43, 1995
Division 4	
Ss. 101L–101N	ad. No. 164, 1984 am. No. 43, 1995
Ss. 101P, 101Q	ad. No. 164, 1984 am. No. 43, 1995
S. 101QA	ad. No. 43, 1995 am. No. 141, 2001
Note to s. 101QA(4)	ad. No. 141, 2001
S. 101R	ad. No. 164, 1984
Division 5	
Ss. 101S–101U	ad. No. 164, 1984 am. No. 43, 1995
Division 6	
Ss. 101V, 101W	ad. No. 164, 1984 am. No. 76, 1986
S. 101X	ad. No. 164, 1984 am. No. 43, 1995 (as am. by No. 43, 1996)
Ss. 101Y, 101Z	ad. No. 164, 1984 am. No. 43, 1995
S. 101ZA	ad. No. 164, 1984 am. No. 43, 1995; No. 43, 1996
Division 7	
S. 101ZB	ad. No. 164, 1984
Division 8	
S. 101ZC	ad. No. 164, 1984
Part VII	
Division 1	
Heading to Div. 1 of Part VII	rs. No. 142, 2005

Table of Amendments

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

Provision affected	How affected
S. 102.....	am. No. 1, 1997 rep. No. 142, 2005
Heading to s. 103.....	am. No. 142, 2005
S. 103	am. No. 164, 1984; No. 135, 2003; No. 142, 2005
Note to s. 103(1)	ad. No. 135, 2003 rs. No. 142, 2005
Note 2 to s. 103(1)	ad. No. 142, 2005
Note to s. 103(2)	ad. No. 135, 2003
Note to s. 103(4)	ad. No. 135, 2003
Note to s. 103(6)	ad. No. 135, 2003
Division 2	
S. 104	am. No. 164, 1984; No. 75, 1990; No. 43, 1995; No. 56, 1996; No. 121, 2005
S. 105.....	am. No. 1, 1997
S. 105A	ad. No. 142, 2005
Ss. 106, 107	am. No. 43, 1995
S. 108	am. No. 164, 1984 am. No. 43, 1995
S. 109	am. No. 164, 1984; No. 142, 2005
S. 110	am. No. 164, 1984; No. 43, 1995; No. 142, 2005
S. 111	am. No. 164, 1984; No. 65, 1985; No. 65, 1987; No. 43, 1995
S. 111A	ad. No. 164, 1984 am. No. 43, 1995 (as am. by No. 43, 1996)
S. 113.....	am. No. 1, 1997
Division 3	
S. 115	am. No. 164, 1984
S. 116	am. No. 164, 1984; No. 43, 1995
S. 117	am. No. 43, 1995
S. 118	am. No. 43, 1995 rep. No. 135, 2003
S. 119	am. No. 43, 1995; No. 142, 2005
Note to s. 119(1)	ad. No. 135, 2003 am. No. 142, 2005
S. 120	am. No. 43, 1995; No. 142, 2005
S. 121.....	am. No. 142, 2005
S. 122	am. No. 43, 1995; No. 142, 2005
S. 123.....	am. No. 142, 2005
Note to s. 123	ad. No. 135, 2003 am. No. 142, 2005
S. 124	am. No. 43, 1995; No. 142, 2005
Note to s. 124(3)	ad. No. 135, 2003 am. No. 142, 2005
S. 125	am. No. 43, 1995; No. 142, 2005

Table of Amendments

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

Provision affected	How affected
Division 4	
S. 127	am. No. 43, 1995
Note to s. 127	ad. No. 135, 2003
S. 128	am. No. 43, 1995
S. 129	am. No. 164, 1984; No. 43, 1995
S. 129A	ad. No. 164, 1984 am. No. 142, 2005
Note to s. 129A(4)	ad. No. 135, 2003
Division 5	
Div. 5 of Part VII	ad. No. 135, 2003
Heading to s. 129B	am. No. 142, 2005
Ss. 129B, 129C	ad. No. 135, 2003 am. No. 142, 2005
Part VIII	
Division 1	
S. 130	am. No. 164, 1984; No. 43, 1995; No. 142, 2005
S. 130A	ad. No. 164, 1984
S. 131	am. No. 65, 1987; No. 43, 1995; No. 142, 2005
Heading to s. 131A	am. No. 142, 2005
S. 131A	ad. No. 164, 1984 am. No. 43, 1995; No. 142, 2005
Division 2	
S. 132	am. No. 164, 1984; No. 43, 1995; No. 142, 2005
S. 133	am. No. 164, 1984
S. 134	am. No. 28, 1991; No. 43, 1995
S. 135	am. No. 164, 1984; No. 43, 1995; No. 142, 2005
S. 136	am. No. 43, 1995
S. 137	am. No. 43, 1995; No. 142, 2005; No. 159, 2006
Division 3	
Ss. 138, 139	am. No. 43, 1995
S. 140	am. No. 43, 1995; No. 1, 1997
S. 141	am. No. 43, 1995; No. 142, 2005
S. 141A	ad. No. 164, 1984 am. No. 43, 1995; No. 142, 2005
S. 142	am. No. 164, 1984; No. 28, 1991; No. 141, 2001; No. 121, 2005
S. 144	am. No. 43, 1995
S. 145	am. No. 43, 1995; No. 141, 2001; No. 142, 2005
S. 145A	ad. No. 164, 1984 am. No. 43, 1995 (as am. by No. 43, 1996); No. 142, 2005
S. 146	am. No. 28, 1991
S. 149	am. No. 164, 1984; No. 99, 1988; Nos. 121 and 142, 2005

Table of Amendments

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

Provision affected	How affected
Part IX	
Division 1	
S. 150.....	am. No. 1, 1997
S. 150A	ad. No. 135, 2003 am. No. 142, 2005
Division 2	
S. 151	am. No. 65, 1985; No. 43, 1995; No. 135, 2003
S. 152	am. No. 135, 2003
S. 153	am. No. 43, 1995; No. 135, 2003
S. 154	am. No. 65, 1985; No. 43, 1995; No. 1, 1997; No. 135, 2003
Heading to s. 155.....	am. No. 1, 1997
S. 155.....	am. No. 43, 1995; No. 1, 1997 (as am. by No. 116, 1999); No. 135, 2003
S. 156	am. No. 43, 1995
Division 3	
S. 158	am. No. 43, 1995
Ss. 160, 161	am. No. 43, 1995
S. 162	am. No. 164, 1984; No. 65, 1987; No. 4, 1990; No. 43, 1995
Division 4	
S. 164	am. No. 43, 1995
S. 166	am. No. 43, 1995
Division 5	
S. 169	am. No. 164, 1984; No. 43, 1995
Part IXA	
Part IXA	ad. No. 43, 1995
S. 169A	ad. No. 43, 1995 am. No. 135, 2003
S. 169B	ad. No. 43, 1995
Ss. 169C, 169D	ad. No. 43, 1995 am. No. 135, 2003
S. 169E	ad. No. 43, 1995
S. 169F	ad. No. 43, 1995 am. No. 135, 2003
S. 169FA	ad. No. 135, 2003
Ss. 169G, 169H	ad. No. 43, 1995
S. 169J	ad. No. 43, 1995
Part X	
S. 170	am. No. 164, 1984; No. 43, 1995
S. 171	am. No. 43, 1995
S. 172	am. No. 164, 1984; No. 43, 1995
S. 175	am. No. 65, 1985; No. 146, 1999
Ss. 176, 177	am. No. 43, 1995

Table of Amendments

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

Provision affected	How affected
Part XA	
Part XA	ad. No. 164, 1984
S. 178	rs. No. 164, 1984 ad. No. 164, 1984
S. 178A	ad. No. 164, 1984 am. No. 43, 1995
S. 178B	ad. No. 164, 1984
S. 178C	ad. No. 164, 1984 am. No. 43, 1995; No. 1, 1997
S. 178D	ad. No. 164, 1984
Part XI	
Heading to Part XI	rs. No. 135, 2003; No. 142, 2005
Division 1	
Heading to Div. 1 of Part XI	ad. No. 135, 2003
S. 179	am. No. 43, 1995; No. 43, 1996
S. 180	am. No. 164, 1984; No. 43, 1995; No. 142, 2005
S. 181	am. No. 43, 1995
S. 182	am. No. 104, 1988
S. 183	am. No. 43, 1995; No. 159, 2001
S. 184.....	am. No. 43, 1995
S. 185	am. No. 65, 1985; No. 43, 1995; No. 43, 1996; No. 142, 2005
Ss. 186–188	am. No. 43, 1995
Division 2	
Div. 2 of Part XI	ad. No. 135, 2003
S. 188A	ad. No. 135, 2003 am. No. 142, 2005
S. 188B	ad. No. 135, 2003
S. 188C	ad. No. 135, 2003 am. No. 142, 2005
S. 188D	ad. No. 135, 2003
S. 188E	ad. No. 142, 2005
Division 3	
Div. 3 of Part XI	ad. No. 142, 2005
S. 188F	ad. No. 142, 2005
Ss. 188FA–188FM	ad. No. 142, 2005
Part XIA	
Part XIA.....	ad. No. 142, 2005
Division 1	
Div. 1 of Part XIA	ad. No. 142, 2005
S. 188G.....	ad. No. 142, 2005
Ss. 188GA–188GE	ad. No. 142, 2005
Division 2	
Div. 2 of Part XIA	ad. No. 142, 2005

Table of Amendments

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

Provision affected	How affected
Ss. 188GF–188GQ	ad. No. 142, 2005
Division 3	
Div. 3 of Part XIA	ad. No. 142, 2005
S. 188GR	ad. No. 142, 2005
Part XII	
S. 190	am. No. 164, 1984; No. 43, 1995; No. 135, 2003; No. 121, 2005
S. 191	am. No. 43, 1995
S. 193	am. No. 43, 1995; No. 142, 2005
S. 194	am. No. 164, 1984; No. 43, 1995; No. 142, 2005
S. 194A	ad. No. 164, 1984
S. 195.....	am. No. 43, 1995; No. 1, 1997
S. 196.....	am. No. 43, 1995; No. 1, 1997 (as am. by No. 116, 1999); No. 135, 2003
S. 196A	ad. No. 164, 1984 am. No. 43, 1995
S. 196B	ad. No. 164, 1984 am. No. 43, 1995; No. 43, 1996; No. 1, 1997 rep. No. 116, 1999 ad. No. 142, 2005
Schedule 3	
Schedule 3	am. No. 164, 1984; No. 43, 1995; No. 135, 2003
Schedule 3A	
Schedule 3A	ad. No. 164, 1984
Schedule 4	
Schedule 4.....	am. No. 142, 2005
Schedule 6	
Schedule 6	am. No. 164, 1984; No. 43, 1995; No. 141, 2001

Note 2

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

The following amendments commence on 1 October 2007 unless proclaimed earlier:

Schedule 1

1 Subsection 3(1)

Insert:

audio link means facilities (for example, telephone facilities) that enable audio communication between persons in different places.

2 Subsection 3(1)

Insert:

Australian Military Court means the court created under section 114.

3 Subsection 3(1)

Insert:

Australian Military Court Rules means the rules made under section 149A.

4 Subsection 3(1)

Insert:

Chief Military Judge means the person appointed under section 188AC.

5 Subsection 3(1)

Insert:

class 1 offence means a service offence that is specified to be a class 1 offence in the table in clause 1 of Schedule 7.

6 Subsection 3(1)

Insert:

Note 2

class 2 offence means a service offence that is:

- (a) specified to be a class 2 offence in the table in clause 1 of Schedule 7; or
- (b) neither a class 1 offence nor a class 3 offence.

7 Subsection 3(1)

Insert:

class 3 offence means a service offence that:

- (a) is specified to be a class 3 offence in the table in clause 1 of Schedule 7; or
- (b) both:
 - (i) has a maximum penalty of not greater than 5 years imprisonment or is not punishable by imprisonment; and
 - (ii) is not specified to be a class 1 offence or a class 2 offence in the table in clause 1 of Schedule 7.

8 Subsection 3(1)

Insert:

Military Judge means:

- (a) a person appointed under section 188AP; and
- (aa) except in Divisions 2 and 2A of Part XI, a person appointed as an acting Military Judge under section 188BB; and
- (b) except in section 188AN and Division 2A of Part XI, the Chief Military Judge.

9 Subsection 3(1)

Insert:

military jury means a jury constituted in accordance with this Act (including the Australian Military Court Rules) for the trial of a charge of a service offence that is to be tried by a Military Judge and military jury.

10 Subsection 3(1)

Insert:

video link means facilities (for example, closed-circuit television facilities) that enable audio and visual communication between persons in different places.

11 Divisions 3, 4 and 5 of Part VII

Repeal the Divisions, substitute:

Division 3—Australian Military Court

114 Creation of the Australian Military Court

- (1) A court, to be known as the Australian Military Court, is created by this Act.

Note 1: The Australian Military Court is not a court for the purposes of Chapter III of the Constitution.

Note 2: The Australian Military Court is a service tribunal for the purposes of this Act: see the definition of *service tribunal* in subsection 3(1).

- (1A) The Australian Military Court is a court of record.
- (2) The Australian Military Court consists of:
 - (a) the Chief Military Judge; and
 - (b) such other Military Judges as from time to time hold office in accordance with this Act.

115 Jurisdiction

- (1) Subject to section 63, the Australian Military Court has jurisdiction to try any charge against any person.
- (2) However, the Australian Military Court does not have jurisdiction to try a charge of a custodial offence.
- (3) The Australian Military Court has jurisdiction to take action under Part IV in relation to a convicted person if the conviction had been referred to the Court under subsection 103(5) for that purpose.
- (4) Before taking action under subsection (3), the Australian Military Court must hear evidence relevant to the determination of what action should be taken.

Note 2

116 Exercise of jurisdiction

- (1) For the purposes of the exercise of the jurisdiction of the Australian Military Court, the Court is to be constituted by a single Military Judge.
- (2) The Australian Military Court constituted by a Military Judge may sit and exercise the jurisdiction of the Court even if the Court constituted by another Military Judge is at the same time sitting and exercising the jurisdiction of the Court.

117 Venue

- (1) The Australian Military Court may sit at any place in or outside Australia.
- (2) The Australian Military Court may, at any stage of proceedings in the Court, order that:
 - (a) the proceedings; or
 - (b) a part of the proceedings;be conducted or continued at a place specified in the order, subject to such conditions (if any) as the Court imposes.

118 Referral of cases to the Australian Military Court and nomination of Military Judges

Referral of charges

- (1) The Registrar must refer a charge to the Australian Military Court if the Director of Military Prosecutions requests the Registrar to do so.
- (2) The Chief Military Judge must nominate the Military Judge who is to try the charge.

Referral of convictions

- (3) The Registrar must refer a conviction to the Australian Military Court to take action under Part IV in relation to a convicted person if the Director of Military Prosecutions requests the Registrar to do so.

- (4) The Chief Military Judge must nominate the Military Judge who is to take action in relation to the person.

119 Seal of the Australian Military Court

- (1) The Australian Military Court is to have a seal, and the design of the seal is to be determined in writing by the Minister.
- (2) The seal of the Australian Military Court must be kept in such custody as the Chief Military Judge directs.
- (3) The seal of the Australian Military Court must be affixed to documents as provided by this or any other Act or by the Australian Military Court Rules.
- (4) A determination made under subsection (1) is not a legislative instrument.

120 Stamp of the Australian Military Court

- (1) There are to be one or more Australian Military Court stamps. For this purpose, an *Australian Military Court stamp* is a stamp the design of which is, as nearly as practicable, the same as the design of the seal of the Australian Military Court.
- (2) A document or a copy of a document marked with an Australian Military Court stamp is as valid and effectual as if it had been sealed with the seal of the Australian Military Court.
- (3) An Australian Military Court stamp must be affixed to documents as provided by this or any other Act or by the Australian Military Court Rules.

121 Staff of the Australian Military Court

The staff necessary to assist the Australian Military Court are to be the following:

- (a) defence members made available for the purpose by the appropriate service chief;
- (b) persons engaged under the *Public Service Act 1999* and made available for the purpose by the Secretary of the Department.

Note 2

Division 4—Military jury

122 Constitution of a military jury

- (1) There are to be:
 - (a) 12 members on a military jury for a trial of a class 1 offence; and
 - (b) 6 members on a military jury for a trial of a class 2 offence or class 3 offence.
- (2) At least one member of the jury must hold a rank that is not lower than the naval rank of commander or the rank of lieutenant-colonel or wing commander.
- (3) The requirements of subsection (2) apply only if, and to the extent that, the exigencies of service permit.

123 Eligibility to be a member of a military jury

Eligibility where accused is an officer or a defence civilian

- (1) Where the accused person is an officer or a defence civilian, a person is eligible to be a member, or a reserve member, of a military jury for the trial of the accused person if:
 - (a) the person is an officer; and
 - (b) the person has been an officer for a continuous period of not less than 3 years or for periods that total no less than 3 years; and
 - (c) if the accused person is an officer—the person holds a rank that is not lower than the rank held by the accused person.

Eligibility where accused is not an officer or a defence civilian

- (2) Where the accused person is not an officer or a defence civilian, a person is eligible to be a member, or a reserve member, of a military jury for the trial of the accused person if:
 - (a) the person:
 - (i) is an officer; or
 - (ii) holds a rank not lower than the naval rank of warrant officer, the army rank of warrant officer class 1, or the air force rank of warrant officer; and

Note 2

- (b) the person has been an officer, or held a rank not lower than warrant officer or warrant officer class 1, for a continuous period of not less than 3 years or for periods that total no less than 3 years.
- (3) The requirements of this section apply only if, and to the extent that, the exigencies of service permit.

124 Determination of questions by a military jury

- (1) In a trial of a charge of a service offence that is to be tried by Military Judge and military jury, the military jury is responsible for deciding the questions whether the accused person:
 - (a) is guilty or not guilty of the offence; and
 - (b) at the time of the act or omission the subject of the charge, was suffering from such unsoundness of mind as not to be responsible, in accordance with law, for that act or omission.
- (2) A decision of a military jury on the questions in subsection (1) is to be made by:
 - (a) unanimous agreement of the jury members; or
 - (b) if the conditions in subsection (3) are met—five-sixths majority agreement of the jury members.
- (3) The conditions are:
 - (a) the jury has deliberated for at least 8 hours; and
 - (b) the jury does not have unanimous agreement after that time but does have five-sixths majority agreement; and
 - (c) the Australian Military Court is satisfied that:
 - (i) the period of time for deliberation is reasonable, having regard to the nature and complexity of the case; and
 - (ii) after examination on oath or affirmation of one or more of the jurors, it is unlikely that the jurors would reach unanimous agreement after further deliberation.
- (4) A military jury must sit without any other person present when deciding the questions in subsection (1).

12 Division 2 of Part VIII (heading)

Repeal the heading, substitute:

Note 2

Division 2—Trial by the Australian Military Court

13 Sections 132 to 135

Repeal the sections, substitute:

132A Trial of class 1, class 2 and class 3 offences

- (1) A class 1 offence is to be tried by a Military Judge and military jury.
- (2) A class 2 offence is to be tried by a Military Judge and military jury, unless the accused person elects to be tried by a Military Judge alone.
- (3) A class 3 offence is to be tried by a Military Judge alone, unless the accused person elects to be tried by a Military Judge and military jury.

132B Trial by Military Judge and military jury

- (1) Subject to section 132E, the trial of a charge of a service offence that is to be tried by a Military Judge and military jury is to be in accordance with the following subsections.
- (2) Before evidence on the charge is heard, the Military Judge must ask the accused person whether he or she pleads guilty or not guilty to the charge.
- (3) If the accused person pleads guilty and the Military Judge is satisfied that the person understands the effect of that plea, the Military Judge must convict the person.
- (4) If:
 - (a) the accused person pleads not guilty, refuses to plead or does not plead intelligibly; or
 - (b) the Military Judge is not satisfied that the accused person, in pleading guilty, understands the effect of that plea;the Military Judge must record a plea of not guilty and the Military Judge and the military jury must proceed to hear the evidence on the charge.

Note 2

- (5) If the Military Judge, after hearing the evidence on the charge adduced by the prosecution, rules that that evidence is insufficient to support the charge, the Military Judge must dismiss the charge.
- (6) If the Military Judge, after hearing the evidence on the charge adduced by the prosecution, rules that that evidence is sufficient to support the charge, the Military Judge and military jury must proceed with the trial.
- (7) If the military jury finds the accused person not guilty, the Military Judge must acquit the person.
- (8) If the military jury finds the accused person guilty, the Military Judge must convict the person.

132C Powers of the Military Judge in trial by Military Judge and military jury

- (1) In the trial of a charge of a service offence that is to be tried by a Military Judge and military jury, the Military Judge must give any ruling, and exercise any discretion, that, in accordance with the law in force in the Jervis Bay Territory, would be given or exercised by a judge in a trial by jury.
- (2) If, in a trial by jury in the Jervis Bay Territory, the judge would, in accordance with the law in force in that Territory, sit in the absence of the jury for any purpose in connection with:
 - (a) the giving of a ruling; or
 - (b) the exercise of a discretion;the Military Judge must, for any purpose in connection with the giving of such a ruling, or the exercise of such a discretion, sit without the members of the military jury.
- (3) A ruling given by the Military Judge in accordance with subsection (1) and a decision made by the Military Judge under subsection 141(5) or (6) is binding on the military jury.
- (4) The powers conferred on the Military Judge by this section are in addition to any other powers conferred on the Military Judge by any other provision of this Act, the regulations or the Australian Military Court Rules.

Note 2

132D Trial by Military Judge alone

- (1) Subject to section 132E, the trial of a charge of a service offence that is to be tried by a Military Judge alone is to be in accordance with the following subsections.
- (2) Before evidence on the charge is heard, the Military Judge must ask the accused person whether he or she pleads guilty or not guilty to the charge.
- (3) If the accused person pleads guilty and the Military Judge is satisfied that the person understands the effect of that plea, the Military Judge must convict the person.
- (4) If:
 - (a) the accused person pleads not guilty, refuses to plead or does not plead intelligibly; or
 - (b) the Military Judge is not satisfied that the accused person, in pleading guilty, understands the effect of that plea;the Military Judge must record a plea of not guilty and proceed to hear the evidence on the charge.
- (5) If the Military Judge, after hearing the evidence on the charge adduced by the prosecution, rules that that evidence is insufficient to support the charge, the Military Judge must dismiss the charge.
- (6) If the Military Judge, after hearing the evidence on the charge adduced by the prosecution, rules that that evidence is sufficient to support the charge, the Military Judge must proceed with the trial.
- (7) If the Military Judge finds the accused person not guilty, the Military Judge must acquit the person.
- (8) If the Military Judge finds the accused person guilty, the Military Judge must convict the person.

132E Additional matters about trials by Military Judge alone or with a military jury

- (1) If, under subsection 132B(2) or 132D(2), an accused person pleads guilty to a service offence that is one (other than the first) of 2 or more charges stated in the charge sheet in the alternative, the Military Judge must:

Note 2

- (a) if the Director of Military Prosecutions notifies the Judge that he or she does not object to the acceptance of the plea—accept the plea and proceed in accordance with section 132B or 132D; or
 - (b) in any other case—record a plea of not guilty and proceed in accordance with section 132B or 132D.
- (2) If an accused person who has pleaded not guilty withdraws his or her plea and pleads guilty, the Military Judge must, if the Judge is satisfied that the person understands the effect of that plea, substitute a plea of guilty for the plea of not guilty and proceed in accordance with section 132B or 132D.
- (3) A Military Judge is not required to give a ruling of the kind referred to in subsection 132B(5) or 132D(5) unless:
- (a) the accused person has submitted that the Judge should give the ruling; or
 - (b) the interests of justice require that the Judge should give the ruling.
- (4) A Military Judge is not required to give a ruling of the kind referred to in subsection 132B(6) or 132D(6).

132F Australian Military Court to take action against convicted persons

- (1) If an accused person is convicted under section 132B or 132D, the Australian Military Court must take action under Part IV in relation to the convicted person.
- (2) Before taking action, the Court must hear evidence relevant to determining what action should be taken.

13A Section 148

Before “A service”, insert “(1)”.

13B At the end of section 148

Add:

- (2) The Australian Military Court may order that the whole or a specified part of a record under subsection (1) that relates to proceedings before the Court is not to be published if the Court

Note 2

considers that such a publication would be inappropriate, taking account of the interests of the security or defence of Australia, the proper administration of justice, public morals or any other matter it considers relevant.

14 After section 148

Insert:

Subdivision B—Use of video and audio links in the Australian Military Court

148A Testimony by video link or audio link

- (1) The Australian Military Court may, for the purposes of proceedings before it, direct or allow testimony to be given by video link or audio link.
- (2) The testimony must be given on oath or affirmation unless:
 - (a) the person giving the testimony is in a foreign country; and
 - (b) either:
 - (i) the law in force in that country does not permit the person to give testimony on oath or affirmation for the purposes of the proceedings; or
 - (ii) the law in force in that country would make it inconvenient for the person to give testimony on oath or affirmation for the purposes of the proceedings; and
 - (c) the Court is satisfied that it is appropriate for the testimony to be given otherwise than on oath or affirmation.
- (3) If the testimony is given otherwise than on oath or affirmation, the Court is to give the testimony such weight as the Court thinks fit in the circumstances.
- (4) The power conferred on the Court by subsection (1) may be exercised:
 - (a) on the application of the accused person or the Director of Military Prosecutions; or
 - (b) on the Court's own initiative.
- (5) This section applies whether the person giving testimony is in or outside Australia, but does not apply if the person giving testimony is in New Zealand.

Note: See the *Evidence and Procedure (New Zealand) Act 1994*.

148B Appearance of persons or submissions made by video link or audio link

- (1) The Australian Military Court may, for the purposes of proceedings before it, direct or allow a person:
 - (a) to appear before the Court; or
 - (b) to make a submission to the Court;by way of video link or audio link.
- (2) The power conferred on the Court by subsection (1) may be exercised:
 - (a) on the application of the accused person or the Director of Military Prosecutions; or
 - (b) on the Court's own initiative.
- (3) This section applies whether the person appearing is in or outside Australia, but does not apply if the person appearing is in New Zealand.

Note: See the *Evidence and Procedure (New Zealand) Act 1994*.

148C Conditions for use of video links and audio links

Video link

- (1) The Australian Military Court must not exercise the power conferred by subsection 148A(1) or 148B(1) in relation to a video link unless the Court is satisfied that the following conditions are met in relation to the video link:
 - (a) the courtroom or other place where the Court is sitting is equipped with facilities (for example, television monitors) that enable all eligible persons present in that courtroom or place to see and hear the person (the **remote person**) who is:
 - (i) giving the testimony; or
 - (ii) appearing; or
 - (iii) making the submission;by way of the video link;
 - (b) the place at which the remote person is located is equipped with facilities (for example, television monitors) that enable all eligible persons present in that place to see and hear each

Note 2

- eligible person who is present in the courtroom or other place where the Court is sitting;
- (c) such other conditions (if any) as are prescribed by the Australian Military Court Rules in relation to the video link;
 - (d) such other conditions (if any) as are imposed by the Court.
- (2) The conditions that may be prescribed by the Australian Military Court Rules in accordance with paragraph (1)(c) include conditions relating to:
- (a) the form of the video link; and
 - (b) the equipment, or class of equipment, used to establish the link; and
 - (c) the layout of cameras; and
 - (d) the standard of transmission; and
 - (e) the speed of transmission; and
 - (f) the quality of communication.

Audio link

- (3) The Court must not exercise the power conferred by subsection 148A(1) or 148B(1) in relation to an audio link unless the Court is satisfied that the following conditions are met in relation to the audio link:
- (a) the courtroom or other place where the Court is sitting is equipped with facilities (for example, loudspeakers) that enable all eligible persons present in that courtroom or place to hear the person (the *remote person*) who is:
 - (i) giving the testimony; or
 - (ii) appearing; or
 - (iii) making the submission;by way of the audio link;
 - (b) the place at which the remote person is located is equipped with facilities (for example, loudspeakers) that enable all eligible persons present in that place to hear each eligible person who is present in the courtroom or other place where the Court is sitting;
 - (c) such other conditions (if any) as are prescribed by the Australian Military Court Rules in relation to the audio link;
 - (d) such other conditions (if any) as are imposed by the Court.

Note 2

- (4) The conditions that may be prescribed by the Australian Military Court Rules in accordance with paragraph (3)(c) include conditions relating to:
- (a) the form of the audio link; and
 - (b) the equipment, or class of equipment, used to establish the audio link; and
 - (c) the standard of transmission; and
 - (d) the speed of transmission; and
 - (e) the quality of communication.

Eligible persons

- (5) For the purposes of the application of this section to particular proceedings, *eligible persons* are such persons as the Australian Military Court considers should be treated as eligible persons for the purposes of the proceedings.

148D Putting documents to a person by video link or audio link

If, in the course of an examination or appearance of a person by video link or audio link in accordance with this Subdivision, it is necessary to put a document to the person, the Australian Military Court may direct or allow the document to be put to the person:

- (a) if the document is physically present in the courtroom or other place where the Court is sitting:
 - (i) by causing a copy of the document to be transmitted to the place where the person is located; and
 - (ii) by causing the transmitted copy to be put to the person; or
- (b) if the document is physically present in the place where the person is located:
 - (i) by causing the document to be put to the person; and
 - (ii) by causing a copy of the document to be transmitted to the courtroom or other place where the Court is sitting.

148E Administration of oaths and affirmations

An oath to be sworn, or an affirmation to be made, by a person (the *remote person*) who is to give testimony by video link or audio link in accordance with this Subdivision may be administered:

Note 2

- (a) by means of the video link or audio link, as the case may be, in a way that, as nearly as practicable, corresponds to the way in which the oath or affirmation would be administered if the remote person were to give testimony in the courtroom or other place where the Australian Military Court is sitting; or
- (b) if the Australian Military Court allows another person who is present at the place where the remote person is located to administer the oath or affirmation—by that other person.

148F New Zealand proceedings

This Subdivision does not affect the operation of the *Evidence and Procedure (New Zealand) Act 1994*.

15 Before section 149

Insert:

Subdivision C—Rules of procedure for service tribunals

16 Section 149

Repeal the section, substitute:

149 The Summary Authority Rules

The Judge Advocate General may, by legislative instrument, make rules, to be known as the Summary Authority Rules, providing for the practice and procedure to be followed by summary authorities and, in particular, providing for:

- (a) the attendance of witnesses; and
- (b) the production of documents; and
- (c) the administration of oaths and affirmations; and
- (d) the forms to be used in relation to proceedings before a summary authority; and
- (e) the service of any process of a summary authority; and
- (f) charge sheets in proceedings before a summary authority; and
- (g) the manner and form of charges brought before a summary authority; and
- (h) the recording of proceedings of a summary authority.

149A The Australian Military Court Rules

The Chief Military Judge may, by legislative instrument, make rules, to be known as the Australian Military Court Rules, providing for:

- (a) the practice and procedure to be followed by the Court and, in particular, providing for:
 - (i) pre-trial hearings and directions; and
 - (ii) the attendance of witnesses; and
 - (iii) the manner and timing of elections in relation to trial by military jury; and
 - (iv) the giving of testimony and other evidence; and
 - (v) the production of documents; and
 - (vi) the administration of oaths and affirmations; and
 - (vii) the forms to be used in relation to proceedings before the Court; and
 - (viii) the service of any process of the Court; and
 - (ix) charge sheets in proceedings before the Court; and
 - (x) the manner and form of charges brought before the Court; and
 - (xi) the recording of proceedings of the Court; and
 - (xii) the duties of the Registrar in respect of the practice and procedure of the Court; and
 - (xiii) the maintenance of the customs and traditions of the Defence Force in proceedings before the Court; and
- (b) matters concerning a military jury, including the summoning, attendance, empanelling of, the right of challenge, polling and the discharge of the jury; and
- (c) any matter required or permitted by this Act to be prescribed by the Rules.

17 Division 2 of Part XI

Repeal the Division, substitute:

Note 2

Division 2—Chief Military Judge

188AA Chief Military Judge

There is to be a Chief Military Judge of the Australian Military Court.

188AB Role of the Chief Military Judge

The Chief Military Judge is responsible for:

- (a) ensuring the orderly and expeditious discharge of the business of the Australian Military Court; and
- (b) managing the administrative affairs of the Australian Military Court; and
- (c) matters conferred on the Chief Military Judge by or under this Act.

188AC Appointment of Chief Military Judge

- (1) The Chief Military Judge is to be appointed by the Governor-General by written instrument.
- (2) The Chief Military Judge holds office for 10 years.

Note: If, before the expiration of the term of appointment, the Chief Military Judge retires from the Australian Defence Force, he or she ceases to be the Chief Military Judge on retirement: see paragraph 188AL(2)(b).

- (3) A person must not be appointed as the Chief Military Judge if the person has been a Chief Military Judge.

Note: However, the person may be appointed as an acting Military Judge under section 188BB.

- (4) The Chief Military Judge holds office on a full-time basis.

188AD Qualifications for Chief Military Judge

A person must not be appointed as the Chief Military Judge unless:

- (a) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years; and
- (b) the person is a member of the Permanent Navy, the Regular Army or the Permanent Air Force, or is a member of the Reserves who is rendering continuous full-time service; and

Note 2

- (c) the person holds a rank not lower than the naval rank of commodore or the rank of brigadier or air commodore; and
- (d) the person meets the person's individual service deployment requirements.

188AE Selection of Chief Military Judge

- (1) The Minister may, by notice in writing given to the Chief of the Defence Force, request the Chief of the Defence Force to establish an independent selection committee to give to the Minister, within the period specified in the notice:
 - (a) the name of a person, or the names of persons, the committee considers suitable for appointment as the Chief Military Judge; and
 - (b) all the applications made for the office; and
 - (c) any other thing specified by the Minister in the notice.
- (2) If the Chief of the Defence Force receives such a notice, the Chief of the Defence Force must establish the committee.
- (3) The committee must invite all persons who satisfy, or who are capable of satisfying, the qualification requirements in section 188AD to apply for appointment as the Chief Military Judge within the period specified in the notice under subsection (1).
- (4) The appointment of a person as the Chief Military Judge is not invalid because:
 - (a) of a defect or irregularity in the process for selecting the person for appointment; or
 - (b) the committee did not comply with subsection (3).

188AF Oath or affirmation

- (1) The Chief Military Judge must, before proceeding to discharge the duties of his or her office, make and subscribe an oath or affirmation in accordance with the form in Schedule 4.
- (2) An oath or affirmation under this section is to be made before:
 - (a) in the case of the first Chief Military Judge—the Judge Advocate General; or
 - (b) in any other case—a Military Judge.

Note 2

188AG Remuneration

- (1) Subject to this section, the Chief Military Judge is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, he or she is to be paid the remuneration that is prescribed.
- (2) The Chief Military Judge is to be paid the allowances that are prescribed.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

188AH Leave of absence

- (1) The Chief Military Judge has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Governor-General may grant the Chief Military Judge leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Governor-General determines.

188AI No outside employment

The Chief Military Judge must not engage in employment outside the duties of his or her office.

188AJ No promotion other than automatic mid-term promotion

- (1) Subject to subsection (2), the Chief Military Judge is not eligible for a promotion in rank during the period he or she is the Chief Military Judge.
- (2) The Chief Military Judge is, by force of this subsection, promoted to the next rank on the 5 year anniversary of his or her appointment as Chief Military Judge.
- (3) However, subsection (2) does not apply if the Chief Military Judge already holds the naval rank of Rear Admiral or the rank of Major-General or Air Vice-Marshal.

188AK Resignation

- (1) The Chief Military Judge may resign his or her appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect 3 months, or such shorter period agreed to by the Governor-General, after it is given.

188AL Termination of appointment

- (1) The Governor-General may terminate the appointment of the Chief Military Judge:
 - (a) for misbehaviour; or
 - (b) for physical or mental incapacity; or
 - (c) if the Chief Military Judge no longer meets his or her individual service deployment requirements.
- (2) The Chief Military Judge ceases to hold office if he or she:
 - (a) ceases to be enrolled as a legal practitioner; or
 - (b) is neither:
 - (i) a member of the Permanent Navy, the Regular Army or the Permanent Air Force; nor
 - (ii) a member of the Reserves who is rendering continuous full-time service; or
 - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (d) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months.

188AN Acting Chief Military Judge

- (1) The Governor-General may appoint a full-time Military Judge to act as the Chief Military Judge:
 - (a) during a vacancy in the office, whether or not an appointment has previously been made to that office; or
 - (b) during any period, or during all periods, when the Chief Military Judge is absent from duty, or is, for any other reason, unable to perform the functions of his or her office.

Note 2

- (2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Division 2A—Military Judges

188AO Military Judges

There are to be Military Judges of the Australian Military Court.

188AP Appointment of Military Judges

- (1) A Military Judge is to be appointed by the Governor-General by written instrument.
- (2) A Military Judge must be appointed either as a full-time Military Judge or as a part-time Military Judge.
- (3) There are to be 2 full-time Military Judges and no more than 8 part-time Military Judges. (To avoid doubt, this subsection does not require there to be 8 part-time Military Judges at any one time.)

Note: This subsection does not prevent the appointment of additional acting Military Judges: see section 188BB.

- (4) A Military Judge holds office for 10 years.

Note: If, before the expiration of the term of appointment, a Military Judge retires from the Australian Defence Force, he or she ceases to be a Military Judge on retirement: see paragraphs 188AZ(2)(b) and (c).

- (4A) A person must not be appointed as a Military Judge if the person has been a Chief Military Judge or a Military Judge.

Note: However, the person may be appointed as the Chief Military Judge under section 188AC or as an acting Military Judge under section 188BB.

- (5) A full-time Military Judge holds office on a full-time basis and a part-time Military Judge holds office on a part-time basis.

188AQ Appointment of part-time Military Judge not to affect tenure etc.

If a person:

- (a) holds the judicial office of justice, judge or magistrate of a federal court; and
 - (b) is appointed, or serves, as a part-time Military Judge;
- the appointment or service does not affect his or her:
- (c) tenure of that judicial office; or
 - (d) rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of that judicial office;
- and, for all purposes, his or her service as a part-time Military Judge is taken to be service as the holder of that judicial office.

188AR Qualifications for Military Judges

Full-time Military Judges

- (1) A person must not be appointed as a full-time Military Judge unless:
 - (a) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years; and
 - (b) the person is a member of:
 - (i) the Permanent Navy, the Regular Army or the Permanent Air Force; or
 - (ii) is a member of the Reserves and is rendering continuous full-time service; and
 - (c) the person holds a rank not lower than the naval rank of commander or the rank of lieutenant colonel or wing commander; and
 - (d) the person meets the person's individual service deployment requirements.

Part-time Military Judges

- (2) A person must not be appointed as a part-time Military Judge unless:
 - (a) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years; and

Note 2

- (b) the person is a member of the Reserves and is not rendering continuous full-time service; and
- (c) the person holds a rank not lower than the naval rank of commander or the rank of lieutenant colonel or wing commander; and
- (d) the person meets the person's individual service deployment requirements.

188AS Selection of Military Judges

- (1) The Minister may, by notice in writing given to the Chief of the Defence Force, request the Chief of the Defence Force to establish an independent selection committee to give to the Minister, within the period specified in the notice:
 - (a) the name of a person, or the names of persons, the committee considers suitable for appointment as a Military Judge; and
 - (b) all the applications made for the office; and
 - (c) any other thing specified by the Minister in the notice.
- (2) If the Chief of the Defence Force receives such a notice, the Chief of the Defence Force must establish the committee.
- (3) The committee must invite all persons who satisfy, or who are capable of satisfying, the qualification requirements in section 188AR to apply for nomination for appointment as a Military Judge within the period specified in the notice under subsection (1).
- (4) The appointment of a person as a Military Judge is not invalid because:
 - (a) of a defect or irregularity in the process for selecting the person for appointment; or
 - (b) the committee did not comply with subsection (3).

188AT Oath or affirmation

- (1) A Military Judge must, before proceeding to discharge the duties of his or her office, make and subscribe an oath or affirmation in accordance with the form in Schedule 4.
- (2) An oath or affirmation under this section is to be made before the Chief Military Judge or a Military Judge.

188AU Remuneration

- (1) Subject to this section, a Military Judge is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, he or she is to be paid the remuneration that is prescribed.
- (2) A Military Judge is to be paid the allowances that are prescribed.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

Special rules for part-time Military Judges

- (4) If a person:
 - (a) is a justice, judge or magistrate of a federal court, or of a State or Territory court; and
 - (b) is appointed as a part-time Military Judge; and
 - (c) receives salary or annual allowance as such a justice, judge or magistrate for the period of the appointment as a part-time Military Judge;then he or she is not entitled to remuneration under this Act for that period.
- (5) If a person is a justice, judge or magistrate of a State or Territory court, the Minister may, for the purpose of appointing the person as a part-time Military Judge, enter into such arrangement with the appropriate State or Territory Minister as is necessary to secure the person's services.
- (6) An arrangement under subsection (5) with a State or Territory Minister may provide for the Commonwealth to reimburse the State or Territory with respect to the services of the person to whom the arrangement relates.

188AV Leave of absence

- (1) A Military Judge has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Governor-General may grant a Military Judge leave of absence, other than recreation leave, on the terms and conditions as

Note 2

to remuneration or otherwise that the Governor-General determines.

188AW Outside employment

Full-time Military Judges

- (1) A full-time Military Judge must not engage in employment outside the duties of his or her office.

Part-time Military Judges

- (2) A part-time Military Judge must not engage in employment outside the duties of his or her office as Military Judge if to do so would conflict with his or her duties as Military Judge.

188AX No promotion other than automatic mid-term promotion

- (1) Subject to subsection (2), a Military Judge is not eligible for a promotion in rank during the period he or she is a Military Judge.
- (2) A Military Judge is, by force of this subsection, promoted to the next rank on the 5 year anniversary of his or her appointment as a Military Judge.
- (3) However, subsection (2) does not apply if the Military Judge already holds the naval rank of Commodore or the rank of Brigadier or Air Commodore.

188AY Resignation

- (1) A Military Judge may resign his or her appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect 3 months, or such shorter period agreed to by the Governor-General, after it is given.

188AZ Termination of appointment

- (1) The Governor-General may terminate the appointment of a Military Judge:
 - (a) for misbehaviour; or
 - (b) for physical or mental incapacity; or

Note 2

- (c) if the Military Judge no longer meets his or her individual service deployment requirements.
- (2) A Military Judge ceases to hold office if:
 - (a) he or she ceases to be enrolled as a legal practitioner; or
 - (b) if he or she is a full-time Military Judge—he or she is neither:
 - (i) a member of the Permanent Navy, the Regular Army or the Permanent Air Force; nor
 - (ii) a member of the Reserves who is rendering continuous full-time service; or
 - (c) if he or she is a part-time Military Judge—he or she is not a member of the Reserves who is not rendering continuous full-time service; or
 - (d) he or she becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (e) he or she is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months.

188BB Acting Military Judges*Recommendation to appoint an acting Military Judge*

- (1) If, after receiving advice from the Chief Military Judge, the Minister considers that a charge that has been, or will be, referred to the Australian Military Court requires the experience or expertise of a person who:
 - (a) has been a Chief Military Judge or Military Judge; or
 - (b) is, or has been, a justice, judge or magistrate of a federal court, or of a State or Territory court;the Minister may make a recommendation to the Governor-General that the person be appointed to act as a Military Judge to try the charge and, in the case of a conviction, take action under Part IV.

Appointment

- (2) If the Minister makes such a recommendation, the Governor-General may, by written instrument, appoint the person as an acting Military Judge.

Note 2

Qualifications

- (3) However, the Governor-General must not appoint the person unless:
- (a) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years; and
 - (b) the person is a member of:
 - (i) the Permanent Navy, the Regular Army or the Permanent Air Force; or
 - (ii) the Reserves; and
 - (c) the person holds a rank not lower than the naval rank of commander or the rank of lieutenant colonel or wing commander; and
 - (d) the person meets the person's individual service deployment requirements.

Term of appointment

- (4) An acting Military Judge holds office for the period specified in the instrument of appointment. The instrument must provide that the period ends on:
- (a) if the proceedings for the charge are terminated without the accused person being acquitted or convicted—the day of the termination; or
 - (b) if the accused person is acquitted—the day of the acquittal; or
 - (c) if the accused person is convicted—the day that action is taken under Part IV.

Appointment to be part-time

- (5) An acting Military Judge holds office on a part-time basis.

Resignation

- (6) An acting Military Judge may resign his or her appointment by giving the Governor-General a written resignation. The resignation takes effect 2 weeks after it is given.

Terms and conditions etc.

- (7) The following provisions apply to an acting Military Judge as if a reference to “Military Judge” in those provisions included a reference to “acting Military Judge”:
- (a) section 188AQ (appointment not to affect tenure etc.);
 - (b) section 188AT (oath or affirmation);
 - (c) section 188AU (remuneration);
 - (d) section 188AV (leave of absence);
 - (e) subsection 188AW(2) (outside employment);
 - (f) subsection 188AX(1) (no promotion);
 - (g) section 188AZ, other than paragraph 188AZ(2)(b) (termination of appointment).

18 After section 196B

Insert:

196C Annual report relating to the operations of the Australian Military Court

- (1) The Chief Military Judge must, as soon as practicable after each 31 December, prepare and give to the Minister, for presentation to the Parliament, a report relating to:
 - (a) the operations of the Australian Military Court; and
 - (b) the operations of the Australian Military Court Rules; during the year ending on that 31 December.
- (2) The report must set out such statistical information as the Chief Military Judge considers appropriate.
- (3) The first report is to relate to the period beginning on the day on which this section commences and ending on the next 31 December.

19 At the end of the Act

Add:

Note 2**Schedule 7—Class 1, class 2 and class 3 offences**

Note: See subsection 3(1) for definitions of *class 1 offence*, *class 2 offence* and *class 3 offence*.

1 Classes of offences

The following table sets out whether a service offence is a class 1 offence, class 2 offence or class 3 offence.

Class 1, class 2 and class 3 offences		
Item	An offence against this provision:	is the following class of offence:
1	subsection 15(1)	class 1
2	subsection 15A(1)	class 1
3	subsection 15B(1)	class 1
4	subsection 15C(1)	class 1
5	subsection 15D(1)	class 1
6	subsection 15E(1)	class 1
7	subsection 15F(1)	class 1
8	subsection 15G(1)	class 1
9	subsection 16(1)	class 1
10	subsection 16A(1)	class 1
11	subsection 16B(1)	class 1
12	subsection 17(1)	class 3
13	subsection 18(1)	class 3
14	subsection 18(2)	class 3
15	subsection 19(1)	class 3
16	subsection 19(2)	class 3
17	subsection 19(3)	class 3
18	subsection 19(4)	class 3
19	subsection 20(1)	class 1
20	subsection 20(2)	class 1
21	subsection 21(1)	class 3
22	subsection 21(2)	class 1
23	subsection 22(1)	class 1

Note 2

Class 1, class 2 and class 3 offences		
Item	An offence against this provision:	is the following class of offence:
24	subsection 22(2)	class 1
25	subsection 23(1)	class 3
26	subsection 23(2)	class 3
27	subsection 24(1)	class 3
28	subsection 25(1)	class 3
29	subsection 26(1)	class 3
30	subsection 26(2)	class 3
31	subsection 27(1)	class 3
32	subsection 28(1)	class 3
33	subsection 29(1)	class 3
34	subsection 30(1)	class 3
35	subsection 30(2)	class 3
36	subsection 31(1)	class 3
37	subsection 31(2)	class 3
38	subsection 32(1)	class 3
39	subsection 32(3)	class 3
40	section 33	class 3
41	subsection 34(1)	class 3
42	subsection 35(1)	class 3
43	subsection 36(1)	class 2
44	subsection 36(2)	class 3
45	subsection 36(3)	class 3
46	section 36A	class 3
47	section 36B	class 3
48	subsection 37(1)	class 3
49	subsection 38(1)	class 3
50	subsection 38(2)	class 3
51	subsection 39(1)	class 3
52	subsection 39(2)	class 3
53	subsection 39(3)	class 3
54	subsection 40(1)	class 3
55	subsection 40(2)	class 3
56	subsection 40A(1)	class 3

Note 2

Class 1, class 2 and class 3 offences		
Item	An offence against this provision:	is the following class of offence:
57	subsection 40A(2)	class 3
58	subsection 40C(1)	class 3
59	subsection 40D(1)	class 3
60	subsection 40D(2)	class 3
61	subsection 41(1)	class 3
62	section 42	class 3
63	subsection 43(1)	class 3
64	subsection 43(2)	class 3
65	subsection 43(3)	class 3
66	subsection 44(1)	class 3
67	subsection 45(1)	class 3
68	subsection 46(1)	class 3
69	subsection 47C(1)	class 3
70	subsection 47P(1)	class 3
71	subsection 48(1)	class 3
72	subsection 48(2)	class 3
73	subsection 49(1)	class 3
74	subsection 49A(1)	class 3
75	subsection 50(1)	class 3
76	subsection 50(2)	class 3
77	section 51	class 3
78	subsection 52(1)	class 3
79	subsection 53(1)	class 3
80	subsection 53(2)	class 3
81	subsection 53(4)	class 3
82	subsection 54(1)	class 3
83	subsection 54(2)	class 3
84	subsection 54(3)	class 3
85	subsection 54(4)	class 3
86	subsection 55(1)	class 3
87	subsection 56(1)	class 3
88	subsection 56(4)	class 3
89	subsection 57(1)	class 3

Note 2

Class 1, class 2 and class 3 offences		
Item	An offence against this provision:	is the following class of offence:
90	subsection 57(2)	class 3
91	subsection 59(1)	class 1
92	subsection 59(3)	class 2
93	subsection 59(5)	class 2
94	subsection 59(6)	class 2
95	subsection 59(7)	class 2
96	subsection 61(1), if clause 2 of this Schedule is satisfied	class 1
97	subsection 61(1), if clause 3 of this Schedule is satisfied	class 2
98	subsection 61(1), if clause 4 of this Schedule is satisfied	class 3
99	subsection 61(2), if clause 2 of this Schedule is satisfied	class 1
100	subsection 61(2), if clause 3 of this Schedule is satisfied	class 2
101	subsection 61(2), if clause 4 of this Schedule is satisfied	class 3
101A	subsection 61(3), if clause 2 of this Schedule is satisfied	class 1
101B	subsection 61(3), if clause 3 of this Schedule is satisfied	class 2
101C	subsection 61(3), if clause 4 of this Schedule is satisfied	class 3
102	subsection 62(1)	class 1
103	subsection 101QA(1)	class 3
104	subsection 101QA(2)	class 3

2 Section 61 offences that are class 1 offences

This clause is satisfied if:

- (a) for an offence against subsection 61(1)—section 63 applies to the offence; or
- (b) for an offence against subsection 61(2) or (3)—section 63 applies to the offence, or would apply if the offence were committed in Australia.

Note 2

3 Section 61 offences that are class 2 offences

This clause is satisfied if clauses 2 and 4 are not satisfied.

4 Section 61 offences that are class 3 offences

This clause is satisfied if:

- (a) section 63 does not apply to the offence; and
- (b) any of the following apply:
 - (i) the offence has a maximum penalty of not greater than 5 years imprisonment;
 - (ii) the offence is not punishable by imprisonment;
 - (iii) the offence may be heard and determined by a civil court of summary jurisdiction.

36 Subsection 3(1) (paragraphs (a) and (b) of the definition of *appropriate authority*)

Repeal the paragraphs, substitute:

- (a) in relation to proceedings before the Australian Military Court, means the Australian Military Court.

37 Subsection 3(1) (definition of *Chief Judge Advocate*)

Repeal the definition.

38 Subsection 3(1) (definition of *Defence Force magistrate*)

Repeal the definition.

39 Subsection 3(1) (definition of *judge advocate*)

Repeal the definition.

40 Subsection 3(1) (definition of *judge advocates' panel*)

Repeal the definition.

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

Omit “a court martial or a Defence Force magistrate”, substitute “the Australian Military Court”.

42 Subsection 3(1) (definition of *President*)

Repeal the definition.

43 Subsection 3(1)

Insert:

Registrar means the Registrar of the Australian Military Court appointed under section 188FB.

44 Subsection 3(1) (definition of *Registrar of Military Justice*)

Repeal the definition.

45 Subsection 3(1) (definition of *rules of procedure*)

Omit “rules of procedure in force under section 149”, substitute “the Australian Military Court Rules and the Summary Authority Rules”.

46 Subsection 3(1) (definition of *service tribunal*)

Omit “a court martial, a Defence Force magistrate”, substitute “the Australian Military Court”.

47 Subsection 3(1)

Insert:

Summary Authority Rules means the rules made under section 149.

48 Paragraph 5A(a)

Omit “a Defence Force magistrate or a court martial”, substitute “the Australian Military Court”.

49 Paragraph 53(4)(a)

Repeal the paragraph, substitute:

- (a) insults a member of a military jury, a Military Judge or a summary authority in, or in relation to, the exercise of his or her powers or functions as such a member, Judge or authority; or

49A Paragraph 53(4)(d)

Repeal the paragraph, substitute:

- (d) engages in any other conduct that:
 - (i) in the case of the Australian Military Court—constitutes a contempt of that court; and

Note 2

- (ii) in the case of a service tribunal other than the Australian Military Court—would, if the service tribunal were a court of record, constitute a contempt of that court.

50 Subsection 53(5)

Omit “a service tribunal that is a court martial or a Defence Force magistrate, during proceedings before the tribunal, the tribunal”, substitute “the Australian Military Court during proceedings before the Court, the Court”.

51 Subsection 53(6)

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

52 Subsection 67(1)

Omit “A court martial or a Defence Force magistrate shall”, substitute “The Australian Military Court must”.

53 Subsection 77(1)

Omit “a court martial or a Defence Force magistrate”, substitute “the Australian Military Court”.

54 Paragraph 77(1)(b)

Omit “tribunal”, substitute “Court”.

55 Subsection 77(1)

Omit “the court martial or the Defence Force magistrate”, substitute “the Court”.

56 Subsection 77(2)

Omit “A court martial or a Defence Force magistrate shall”, substitute “The Australian Military Court must”.

57 Subsection 77(3)

Repeal the subsection, substitute:

- (3) If the Australian Military Court does not take a service offence into consideration under subsection (1) because:
- (a) the prosecution did not give its consent; or
 - (b) the Court rejected the convicted person’s request;

Note 2

an admission for the purposes of paragraph (1)(c) in relation to that service offence is not admissible as evidence in:

- (c) any other proceeding before a service tribunal in respect of that service offence; or
- (d) any proceeding in a civil court in respect of a civil court offence that is substantially the same offence as that service offence.

58 Subsections 80(1) and (4)

Omit “subsections 172(1) and (2)”, substitute “subsection 172(2)”.

59 Subparagraphs 87(1)(c)(ii) and (iii)

Repeal the subparagraphs, substitute:

- (ii) request the Registrar to refer the charge to the Australian Military Court for trial;

60 Subsection 87(1) (note)

Repeal the note.

61 Subsection 88(1)

Omit “of Military Justice”.

62 Subsection 88(1A)

Repeal the subsection, substitute:

- (1A) The Registrar may carry out an action under subsection (1) only if the Australian Military Court directs the Registrar to carry out the action.

63 Subsection 101F(5)

Omit “172(3A), (4) or (5)”, substitute “172(5)”.

64 Subsection 101J(1)

Omit “, or, in the case of a court martial, the judge advocate of the court martial,”.

65 Subsections 101JA(3) and (4)

Omit “, or, in the case of a court martial, the judge advocate of the court martial,”.

Note 2

66 Subsection 101JA(5)

Repeal the subsection, substitute:

- (5) If proceedings are before a military jury and the Military Judge permits evidence to be given under subsection (3) or (4), the Judge must:
- (a) inform the members of the military jury of:
 - (i) the non-compliance with the requirements of this section; or
 - (ii) the absence of sufficient evidence of compliance with the requirements of this section; and
 - (b) give the members such warning about the evidence as he or she thinks appropriate in the circumstances.

67 Subsections 101K(8) and (9)

Omit “, or, in the case of a court martial, the judge advocate of the court martial,”.

68 Subsection 101K(9)

Omit “but this subsection does not prevent a judge advocate from directing the members of a court martial with respect to”, substitute “but, in proceedings before a military jury, this subsection does not prevent the Military Judge from giving directions to the members of the jury about”.

69 Subsection 101K(10)

Omit “, or, in the case of a court martial, the judge advocate of the court martial,”.

70 Subsection 101K(10)

Omit “or the judge advocate, as the case may be,”.

71 Subsection 101K(11)

Repeal the subsection, substitute:

- (11) If proceedings are before a military jury and the Military Judge permits evidence to be given under subsection (10), the Judge must:
- (a) inform the members of the jury of:

Note 2

- (i) the non-compliance with the requirements of this section; or
 - (ii) the absence of sufficient evidence of compliance with the requirements of this section; and
- (b) give the members such warning about the evidence as he or she thinks appropriate in the circumstances.

72 Paragraph 101Q(13)(b)

Omit “, or, in the case of a court martial, the judge advocate of the court martial,”.

73 Subsection 101ZB(1)

Omit “, or, in the case of a court martial, the judge advocate of the court martial,”.

74 Subsection 101ZB(1)

Omit “or judge advocate, as the case may be, shall not admit the evidence unless the service tribunal or judge advocate, as the case may be,”; substitute “must not admit the evidence unless the service tribunal”.

75 Subsection 101ZB(2)

Omit “or judge advocate, as the case may be,”.

76 Subsection 101ZB(3)

Omit “, or, in the case of a court martial, the judge advocate of the court martial,”.

77 Subsection 101ZB(4)

Omit “or judge advocate”.

78 Subsection 103(1)

Omit “129A(3),”.

79 Paragraphs 103(1)(c) and (d)

Repeal the paragraphs, substitute:

- (c) request the Registrar to refer the charge to the Australian Military Court for trial.

Note 2

80 Subsection 103(1) (note 1)

Omit “Note 1”, substitute “Note”.

81 Subsection 103(1) (note 2)

Repeal the note.

82 Paragraph 103(2)(a)

Omit “or 166”.

83 Paragraph 103(2)(c)

Omit “(other than a charge to which an order under section 166 relates)”.

84 Paragraphs 103(2)(d) and (e)

Repeal the paragraphs, substitute:

- (d) request the Registrar to refer the charge to the Australian Military Court for trial.

85 Subsection 103(2) (note)

Repeal the note.

86 Paragraph 103(4)(a)

Omit “a Defence Force magistrate”, substitute “the Australian Military Court”.

87 Paragraphs 103(4)(d) and (e)

Repeal the paragraphs, substitute:

- (d) request the Registrar to refer the charge to the Australian Military Court for trial.

88 Subsection 103(4) (note)

Repeal the note.

89 Subsections 103(5), (6) and (7)

Repeal the subsections, substitute:

- (5) If, under section 131:
 - (a) a convicted person elects to be punished by the Australian Military Court; and

Note 2

(b) the summary authority refers the conviction to the Director of Military Prosecutions;

the Director of Military Prosecutions must request the Registrar to refer the conviction to the Court to take action under Part IV in relation to the convicted person.

90 Subsection 130A(1)

Omit “rules of procedure”, substitute “Summary Authority Rules”.

91 Subsection 131(1)

Omit “a court martial or by a Defence Force magistrate”, substitute “the Australian Military Court”.

92 Paragraphs 131(2)(a) and (b)

Omit “a court martial or by a Defence Force magistrate”, substitute “the Australian Military Court”.

93 Subsection 131(2A)

Omit “a court martial or by a Defence Force magistrate”, substitute “the Australian Military Court”.

94 Paragraph 131(2B)(a)

Omit “a court martial or by a Defence Force magistrate”, substitute “the Australian Military Court”.

95 Paragraph 131(2B)(b)

Repeal the paragraph, substitute:

(b) a person convicted of an offence by a summary authority elects under subsection (2A) to be punished by the Australian Military Court for the offence but the summary authority considers that the exigencies of service do not permit the reference of the conviction to the Court;

96 Subsection 131(3)

Omit “a court martial or by a Defence Force magistrate”, substitute “the Australian Military Court”.

97 Subsection 131(5)

Repeal the subsection, substitute:

Note 2

- (5) A person who has elected to be tried or punished by the Australian Military Court may, by notice to the Registrar, withdraw his or her election at any time before a date is fixed for hearing by the Court.

98 Subsection 131(6)

Omit “a court martial or by a Defence Force magistrate”, substitute “the Australian Military Court”.

99 Paragraph 131(7)(b)

Omit “a court martial or by a Defence Force magistrate”, substitute “the Australian Military Court”.

100 Paragraph 131(7)(ba)

Repeal the paragraph, substitute:

- (ba) a person convicted of an offence by a summary authority elects under subsection (2A) to be punished by the Australian Military Court for the offence but the summary authority considers that the exigencies of service do not permit the reference of the conviction to the Court; or

101 Paragraph 131(7)(c)

Omit “a court martial or by a Defence Force magistrate”, substitute “the Australian Military Court”.

102 Section 136

Omit “a court martial or a Defence Force magistrate”, substitute “the Australian Military Court”.

Note: The heading to section 136 is altered by omitting “**court martial or Defence Force magistrate**” and substituting “**Australian Military Court**”.

103 Subsection 137(1)

Omit “a court martial or by a Defence Force magistrate”, substitute “the Australian Military Court”.

Note: The heading to section 137 is altered by adding at the end “**before Australian Military Court**”.

104 Before section 138

Insert:

Subdivision A—General

105 Subsection 138(4)

Omit “or, if the service tribunal is a court martial, the President of the court martial”.

106 Subsections 139(2) and (3)

Repeal the subsections, substitute:

- (2) If a service tribunal considers that, by reason of the disorderly behaviour of the accused person, it is impossible to continue the hearing in his or her presence, the tribunal may order that the accused person be removed from the place of hearing and be held in custody elsewhere.

107 Section 140

Repeal the section, substitute:

140 Public hearings by the Australian Military Court

- (1) The hearing of proceedings before the Australian Military Court must be in public.
- (2) However, the Court may, if it considers it necessary in the interests of the security or defence of Australia, the proper administration of justice or public morals:
 - (a) order that some or all of the members of the public are to be excluded during the whole or a specified part of the proceedings; or
 - (b) order that no report of, or relating to, the whole or a specified part of the proceedings is to be published.
- (3) If proceedings before the Court are held in a secure place, then, subject to an order (if any) in force under subsection (2), the appropriate service chief must cause such steps to be taken as will permit the public to have reasonable access to the proceedings.
- (4) In subsection (3):

secure place means a place the entry to which is controlled by guards who are constables or members of the Defence Force.

Note 2

108 Subsection 141(2)

Omit “court martial” (wherever occurring), substitute “military jury”.

109 Subsection 141(3)

Repeal the subsection.

110 Subsection 141(4)

Omit “other than a court martial”.

111 Paragraph 141(5)(b)

Omit “in the case of a court martial, the judge advocate, or in any other case,”.

112 Subsection 141(5)

Omit “or the judge advocate, as the case may be, shall”, substitute “must”.

113 Paragraph 141(6)(a)

Omit “(2), (3)”, substitute “(2)”.

114 Paragraph 141(6)(b)

Omit “in the case of a court martial, the judge advocate, or in any other case,”.

115 Subsection 141(6)

Omit “or the judge advocate, as the case may be, shall”, substitute “must”.

116 Subsections 141(7) and (8)

Repeal the subsections, substitute:

- (7) If an application or objection under subsection (1) or (2) is made and the trial is by a Military Judge and military jury, the Military Judge must sit without the members of the military jury for a hearing of that application or objection.
- (8) If the Australian Military Court grants an application or allows an objection under this section, the Court may refer the charge against the accused person to the Director of Military Prosecutions.

117 Paragraphs 141A(1)(c) and (d)

Repeal the paragraphs, substitute:

- (c) the Australian Military Court, before trying a charge or at any stage of trying a charge;

118 Subsection 141A(1)

Omit “, judge advocate or Defence Force magistrate, as the case may be, shall make such amendment of the charge as he or she”, substitute “or Court must make such amendment of the charge as he, she or it”.

119 Subsection 144(2)

Omit “a court martial or a Defence Force magistrate”, substitute “the Australian Military Court”.

120 Paragraph 144(4)(a)

Omit “132 or 135”, substitute “132B or 132D”.

121 Subsection 145(2)

Omit “a court martial or a Defence Force magistrate”, substitute “the Australian Military Court”.

122 Subsection 145(2)

Omit “the court martial or the Defence Force magistrate”, substitute “the Court”.

123 Subsection 145(4)

Omit “by a court martial or a Defence Force magistrate, the court martial or the Defence Force magistrate”, substitute “of a service offence that is to be tried by Military Judge and military jury, the jury”.

124 Subsection 145(4)

Omit “court martial or the Defence Force magistrate”, substitute “jury”.

125 Subsection 145(4)

After “mental impairment and”, insert “the Judge”.

126 Subsection 145(5)

Omit “a court martial or a Defence Force magistrate”, substitute “the Australian Military Court”.

Note 2

127 Subsection 145(5)

Omit “the court martial or the Defence Force magistrate”, substitute “the Court”.

128 Subsections 145A(1) and (2)

Repeal the subsections, substitute:

- (1) If the Registrar refers a charge to the Australian Military Court for trial, the Registrar must:
 - (a) inform the accused person of the requirements of subsections (2), (3) and (5); and
 - (b) give a copy of this section to the accused person.
- (2) In a trial of a charge by the Australian Military Court, the accused person must not, without the leave of the Court:
 - (a) adduce evidence in support of an alibi; or
 - (b) assert in any statement made by him or her otherwise than on oath or affirmation that he or she has an alibi;unless, before the end of the period of 14 days commencing on the day the charge is referred to the Court, he or she gives notice of particulars of the alibi.

129 Subsection 145A(3)

Omit “a court martial or Defence Force magistrate, the accused person shall not, without the leave of the judge advocate of the court martial or the Defence Force magistrate, as the case requires,”, substitute “the Australian Military Court, the accused person must not, without the leave of the Court,”.

130 Paragraph 145A(3)(b)

Omit “judge advocate of the court martial or the Defence Force magistrate, as the case may be,”, substitute “Court”.

131 Subsection 145A(4)

Omit “judge advocate of a court martial or a Defence Force magistrate”, substitute “Court”.

132 Subsection 145A(5)

Omit “of Military Justice”.

133 Section 147

Repeal the section, substitute:

147 Judicial notice of service matters

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, a service tribunal must take judicial notice of all matters within the general service knowledge of:

- (a) the tribunal; or
- (b) if the proceedings are before a military jury—the jury.

134 Part IX (heading)

Repeal the heading, substitute:

Part IX—Review of proceedings of summary authorities

135 Section 150

Omit “service tribunals (whether all service tribunals or service tribunals of a specified kind)”, substitute “summary authorities”.

136 Section 150A

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

137 Subsection 152(1)

Repeal the subsection, substitute:

- (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 transmit the record of the proceedings to a competent reviewing authority.

138 Subsection 152(3)

Omit “, or who was the person in relation to whom a direction under subsection 145(2) or (5) was given,”.

139 Subsection 153(1)

Repeal the subsection, substitute:

Note 2

- (1) If a summary authority convicts a person of a service offence, the person may lodge with a competent reviewing authority a petition for review of the proceedings concerned.

140 Paragraph 153(1A)(a)

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

141 Subsection 153(2)

Repeal the subsection.

142 Subsections 153(3) and (4)

Omit “or (2)”.

143 Subsection 153(5)

Repeal the subsection.

144 Subsections 154(1), (1A) and (1B)

Repeal the subsections, substitute:

- (1) A reviewing authority must not commence a review without first obtaining a report on the proceedings from a legal officer.

145 Section 156

Repeal the section.

146 Section 157

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

147 Subsection 158(4)

Repeal the subsection.

148 Subsection 158(5)

Omit “or (4)”.

149 Paragraph 161(1)(a)

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

150 Subparagraph 161(1)(a)(ii)

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

151 Paragraph 161(1)(b)

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

152 Subsection 161(2)

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

153 Subsection 162(1)

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

154 Subsection 162(2)

Repeal the subsection.

155 Paragraph 162(4)(a)

Omit “a court martial or by a Defence Force magistrate”, substitute “the Australian Military Court”.

156 Subsection 162(4A)

Omit “convening of a court martial or the reference of the conviction to a Defence Force magistrate”, substitute “reference of the conviction to the Australian Military Court”.

157 Subsection 162(5)

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

158 Subsections 162(6) and (7)

Repeal the subsections.

159 Subsection 162(8)

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

160 Division 4 of Part IX

Repeal the Division.

161 Subsection 169(2)

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

Note 2

162 Subsection 172(1)

Repeal the subsection.

163 At the end of subsection 172(2)

Add:

- ; (e) segregated confinement for a period exceeding 3 days;
- (f) confinement to cell for a period exceeding 3 days;
- (g) extra drill for a period exceeding 3 days;
- (h) restriction of custodial privileges for a period exceeding 7 days.

164 Subsection 172(3)

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

165 Subsections 172(3A) and (4)

Repeal the subsections.

166 Subsection 173(1)

Omit “Subject to subsection (2), the operation of a restitution order or a reparation order, being a restitution order or a reparation order made by a court martial or a Defence Force magistrate,”, substitute “The operation of a restitution order or a reparation order made by the Australian Military Court”.

167 Subsection 173(2)

Omit “a reviewing authority”, substitute “the Court”.

168 Subsection 173(2)

Omit “the reviewing authority”, substitute “the Court”.

169 Section 176

Repeal the section, substitute:

- (1) If:
 - (a) a summary authority has imposed a punishment on a convicted person; and
 - (b) the convicted person lodges a petition under section 153 with respect to the conviction or punishment;

Note 2

the reviewing authority may order that the execution of the punishment is to be stayed in whole or in part pending the determination of the petition.

(2) If:

(a) the Australian Military Court has imposed a punishment on a convicted person; and

(b) the convicted person or the Director or Military Prosecutions notifies the Court that he or she has appealed, or applied for leave to appeal, under the *Defence Force Discipline Appeals Act 1955* against the conviction or punishment;

the Court may order that the execution of the punishment is to be stayed in whole or in part pending the determination of the appeal.

170 Part XI (heading)

Repeal the heading, substitute:

**Part XI—Judge Advocate General, Deputy Judge
Advocates General, Chief Military Judge,
Military Judges and Registrar**

171 Division 3 of Part XI (heading)

Repeal the heading, substitute:

Division 3—The Registrar of the Australian Military Court

172 Section 188F

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

Note: The heading to section 188F is altered by omitting “**Military Justice**” and substituting “**the Australian Military Court**”.

173 Subsection 188FA(1)

Repeal the subsection, substitute:

(1) The function of the Registrar is to assist the Chief Military Judge by providing administrative and management services in connection with proceedings before the Australian Military Court under this Act.

Note: The heading to section 188FA is altered by omitting “**of Military Justice**”.

Note 2

174 Subsection 188FA(2)

Omit “of Military Justice” (wherever occurring).

175 Section 188FB

Omit “of Military Justice” (wherever occurring).

Note: The heading to section 188FB is altered by omitting “**of Military Justice**”.

176 Section 188FC

Omit “of Military Justice”.

177 Section 188FD

Omit “of Military Justice” (wherever occurring).

178 Section 188FE

Omit “of Military Justice”.

179 Subsection 188FF(1)

Omit “of Military Justice”.

180 Subsection 188FF(2)

Repeal the subsection, substitute:

- (2) An oath or affirmation under this section is to be made before a Military Judge.

181 Sections 188FG and 188FH

Omit “of Military Justice” (wherever occurring).

182 Section 188FI

Omit “of Military Justice”.

183 Sections 188FJ and 188FK

Omit “of Military Justice” (wherever occurring).

184 Subsection 188FL(1)

Omit “of Military Justice” (wherever occurring).

185 Subsection 188FL(3)

Omit “of Military Justice”.

186 Section 188FM

Omit “of Military Justice”.

187 Paragraph 188GA(1)(a)

Omit “a Defence Force magistrate or a court martial”, substitute “the Australian Military Court”.

188 Section 188GB

Omit “a court martial or a Defence Force magistrate”, substitute “the Australian Military Court”.

189 Subsection 188GJ(2)

Repeal the subsection, substitute:

- (2) An oath or affirmation under this section is to be made before a Military Judge.

190 Paragraph 191(1)(b)

Omit “132 or 135”, substitute “132B or 132D”.

191 Subsection 193(1)

Repeal the subsection, substitute:

- (1) A member of a military jury, a Military Judge, a summary authority or a reviewing authority has, in the performance of his or her duties as such a member, Judge or authority, the same protection and immunity as a Justice of the High Court.

Note: The heading to section 193 is altered by omitting “**courts martial**” and substituting “**military juries**”.

192 Paragraph 193(4)(b)

Omit “of Military Justice” (wherever occurring).

193 Subsection 194(1)

Omit “, 158 or 164”, substitute “or 158”.

194 Subsections 195(1) and (2)

Omit “a court martial or a Defence Force magistrate”, substitute “the Australian Military Court”.

Note 2

195 Section 196

Repeal the section.

196 Paragraph 196A(1)(a)

Repeal the paragraph, substitute:

- (a) the operation of this Act, the regulations, the Procedural Rules and the Summary Authority Rules; and

197 At the end of section 196A

Add:

- (5) In this section:

Procedural Rules means the rules made under section 149 of this Act as that section was in force immediately before the commencement of Schedule 1 to the *Defence Legislation Amendment Act 2006*.

198 Schedule 2 (heading)

Repeal the heading (not including the note), substitute:

Schedule 2—Punishments that may be imposed by the Australian Military Court

199 Clause 1 of Schedule 2

Omit “a court martial or a Defence Force magistrate”, substitute “the Australian Military Court”.

200 Clause 2 of Schedule 2

Repeal the clause.

201 Schedule 4 (note to heading)

Omit “Sections 128, 184, 188FF and 188GJ”, substitute “Sections 184, 188AF, 188AT, 188FF and 188GJ”.

202 Schedule 5

Repeal the Schedule.

Note 2

As at 19 December 2006 the amendments are not incorporated in this compilation.

Table A

Table A

Application, saving or transitional provisions

Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001 (No. 10, 2001)

Schedule 2

94 Saving—old regulations

- (1) Regulations that were in effect under any Act immediately before the commencement of this item continue to have effect after that time as if members of an arm of the Defence Force who were members of a particular part or component of that arm immediately before the commencement of this item were still members of that part or component after that time, even if that part or component no longer exists.

Example: Assume that, immediately before the commencement of this item, regulations imposed training obligations on members of the Air Force Specialist Reserve. Those obligations would continue to apply to former members of that Reserve after commencement, even though the Air Force Specialist Reserve itself is no longer mentioned in the *Air Force Act 1923* and the members have now become members of the Air Force Reserve.

- (2) However, regulations that continue in effect under this item do so only to the extent that they are not amended or revoked by later regulations.

95 Regulations about transitional matters

- (1) The regulations may make provision in relation to other saving and transitional matters in connection with the amendments made by this Schedule.
- (2) In particular, such regulations may deal with the status, after the commencement of the amendments, of persons who were members of the Defence Force immediately before that time.
- (3) Subitem (2) does not limit the scope of subitem (1).
-

Table A

Defence Legislation Amendment (Application of Criminal Code) Act 2001
(No. 141, 2001)

4 Application of amendments

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

Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001
(No. 159, 2001)

Schedule 1

97 Application of amendments

The amendments made by this Schedule do not apply to an appointment if the term of the appointment began before the commencement of this item.

Defence Legislation Amendment Act 2003 (No. 135, 2003)

Schedule 1

48 Application

The amendments made by items 21, 31 and 46 of this Schedule apply to appointments made after the commencement of this Act.

Table A

Defence Legislation Amendment Act (No. 2) 2005 (No. 142, 2005)

Schedule 1

114 Transitional provision—functions and powers of convening authorities

- (1) This item applies to a function or power conferred on a convening authority by the old law if:
- (a) the function or power relates to a charge (including a proceeding in respect of a charge); and
 - (b) as at the commencement time, the charge or proceeding had not been finally dealt with under the old law.
- (2) If:
- (a) the convening authority performed the function or exercised the power before the commencement time; and
 - (b) a provision of the new law confers a corresponding function or power upon a designated person;
- the new law has effect as if the designated person had performed the function, or exercised the power, under the new law.
- (3) If:
- (a) apart from the amendments made by this Schedule, the convening authority would have been required or permitted to perform the function or exercise the power; and
 - (b) the new law confers a corresponding function or power upon a designated person;
- the designated person may perform the function, or exercise the power, under the new law.
- (4) In this item:
- commencement time*** means the time at which item 1 of this Schedule commences.
- designated person*** means:
- (a) the Director of Military Prosecutions; or
 - (b) the Registrar of Military Justice; or
 - (c) a judge advocate; or
 - (d) a Defence Force magistrate; or
 - (e) a superior authority.

Table A

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

old law means the *Defence Force Discipline Act 1982* as in force before the commencement time.

115 Regulations

The Governor-General may make regulations in relation to transitional matters arising out of the amendments of the *Defence Force Discipline Act 1982* made by this Schedule.

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

Schedule 2

2 Transitional provision

Despite the amendment of subsection 101F(2) of the *Defence Force Discipline Act 1982* made by item 1 of this Schedule, a list that:

- (a) was made under that subsection before the commencement of this item; and
- (b) that is in force immediately before the commencement;

continues in force, and may be dealt with, after the commencement as if it had been made under that subsection as amended.

The following provisions commence on 1 October 2007 unless proclaimed earlier:

Schedule 1

255 Definitions

In this Part:

commencement day means the day on which this Schedule commences.

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

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

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

Table A

256 Application of amendments

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

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

Trial by court martial

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

Table A*Trial by Defence Force magistrate*

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

Elections for trial by court martial or Defence Force magistrate

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

Table A

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

Trial by court martial

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

Trial by Defence Force magistrate

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

Table A

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

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

Punishment imposed by court martial

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

Punishment imposed by Defence Force magistrate

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

Table A

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

Elections to be punished by court martial or Defence Force magistrate

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

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

Table A

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

Trial by court martial

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

Trial by Defence Force magistrate

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

Table A*Elections made for trial by court martial or Defence Force magistrate*

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

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

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

Table A

Trial by Defence Force magistrate

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

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

Punishment imposed by court martial

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

Table A

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

Punishment imposed by Defence Force magistrate

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

Elections made for punishment by court martial or Defence Force magistrate

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

Table A

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

263 Registrar of Military Justice and Director of Military Prosecutions

(1) If:

- (a) a person has been appointed as the Registrar of Military Justice before the commencement day; and
- (b) the appointment is in force immediately before the commencement day;

then, on the commencement day:

- (c) the appointment is taken to have included the appointment of the person as the Registrar of the Australian Military Court under section 188FB of the new DFDA; and
- (d) the person is taken to have made and subscribed an oath or affirmation as the Registrar of the Australian Military Court before a Military Judge under section 188FF of the new DFDA.

(2) If:

- (a) a person is appointed as the Registrar of the Australian Military Court under section 188FB of the new DFDA after the commencement day; and
- (b) immediately before the appointment, there was a service offence that:
 - (i) was committed before the commencement day; and
 - (ii) had not been finally dealt with;

then:

- (c) the appointment is taken to include the appointment of the person as the Registrar of Military Justice under section 188FB of the old DFDA; and
- (d) when the person makes and subscribes an oath or affirmation as the Registrar of the Australian Military Court before a Military Judge under section 188FF of the new DFDA, the person is taken also to have made and subscribed an oath or affirmation as the Registrar of Military Justice before the Judge Advocate General under section 188FF of the old DFDA.

Table A

- (3) The person who is the Director of Military Prosecutions immediately before the commencement day is taken, on the commencement day, to have made and subscribed an oath or affirmation before a Military Judge under section 188GJ of the new DFDA.
- (4) If:
- (a) a person is appointed as the Director of Military Prosecutions after the commencement day; and
 - (b) immediately before the appointment, there was a service offence that:
 - (i) was committed before the commencement day; and
 - (ii) had not been finally dealt with;
- then, when the person makes and subscribes an oath or affirmation before a Military Judge under section 188GJ of the new DFDA, the person is taken also to have made and subscribed an oath or affirmation before the Judge Advocate General under section 188GJ of the old DFDA.

264 Regulations prescribing transitional matters

The Governor-General may make regulations in relation to transitional matters arising out of the amendments made by this Schedule.

Table B

Table B

Modifications

Defence Force Discipline Regulations 1985 (1985 No. 125)

33 Members receiving instruction or training

For the purposes of subsection 6(2) of the Act, Schedule 3 of the Act, so far as it relates to members receiving instruction or training, is modified:

- (a) by inserting in Table B of Schedule 3 “(other than an officer cadet),” after “Officer”;
- (b) by omitting from Table B of Schedule 3:

“Officer of or below the rank of lieutenant in the Navy, captain in the Army or flight lieutenant or warrant officer	Fine exceeding the amount of the convicted person’s pay or 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”
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and substituting:

“Officer of or below the rank of lieutenant in the Navy, captain in the Army or flight lieutenant or 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
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Table B

Officer cadet	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 Restriction of privileges for a period not exceeding 14 days Stoppage of leave for a period not exceeding 21 days Extra duties for a period not exceeding 3 days Reprimand";
(c) by omitting from Table C of Schedule 3:		
<p>"A subordinate summary authority who is:</p> <p>(a) an officer of the Navy of or above the rank of commander; or</p> <p>(b) an officer of the Navy of or above the rank of lieutenant holding an appointment of Executive Officer of a ship or naval establishment</p>	Sailor of the rank of leading seaman	Fine not exceeding the amount of the convicted person's pay for 7 days Severe reprimand Stoppage of leave for a period not exceeding 21 days Reprimand

Table B

	Sailor below the rank of leading seaman	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 Stoppage of leave for a period not exceeding 21 days Extra duties for a period not exceeding 3 days Reprimand"
and substituting:		
"A subordinate authority who is:	Officer cadet of the rank of midshipman	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 Stoppage of leave for a period not exceeding 7 days Extra duties for a period not exceeding 3 days Reprimand
(a) an officer of the Navy of or above the rank of commander; or		
(b) an officer of the Navy of or above the rank of lieutenant holding an appointment of Executive Officer of a ship or naval establishment		

Table B

Sailor of the rank of leading seaman	Fine not exceeding the amount of the convicted person's pay for 7 days Severe reprimand Stoppage of leave for a period not exceeding 21 days Reprimand
Sailor below the rank of leading seaman	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 Stoppage of leave for a period not exceeding 21 days Extra duties for a period not exceeding 3 days Reprimand";

and

(d) by omitting from Table C of Schedule 3:

“Member below non-commissioned rank”

and substituting:

“Officer cadet or member below non-commissioned rank”.