Statutory Rules 1985 No. 1

Defence Force Discipline Regulations

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Statutory Rules 1985 No. 1

Defence Force Discipline Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the Defence Force Discipline Act 1982.

Dated 13 June 1985.

James Ramsay
Governor-General
Administrator

By His Excellency’s Command,

K. C. Beazley
Minister of State for Defence

PART I—PRELIMINARY

Citation

1. These Regulations may be cited as the Defence Force Discipline Regulations.

Commencement

2. These Regulations shall come into operation on 3 July 1985.

Interpretation

3. In these Regulations, unless the contrary intention appears—
   “member of the staff” has the same meaning as in Part XA of the Act;
   “officer cadet” means an officer who holds—
   (a) in the Navy—the rank of midshipman; or
   (b) in the Army or the Air Force—the rank of officer cadet;
PART II—DETAINEES AND DETENTION CENTRES

Division I—Application

Application of Divisions 2 and 3

4. The requirements of Divisions 2 and 3 apply in respect of a detention centre under the control of a part of the Defence Force the members of which are on active service only if, and to the extent that, the exigencies of service permit.

Division 2—General administration and classification of detention centres

Detention centres

5. (1) A detention centre shall be conducted as—
   (a) a unit detention centre;
   (b) an area detention centre; or
   (c) a corrective detention centre,
as declared in writing by the chief of staff or an authorized officer.

   (2) A person who is sentenced to detention for a period shall not be detained
   (a) in a unit detention centre—if the period exceeds 7 days; or
   (b) in an area detention centre—if the period exceeds 14 days.

   (3) In calculating a period of detention for the purposes of sub-regulation (2)
   (a) where a detainee is sentenced to 2 or more concurrent periods of detention—the period of detention shall be taken to be the longer or longest of those periods; or
   (b) where a detainee is sentenced to 2 or more periods of detention to be served consecutively—the period shall be taken to be the aggregate of those periods.

Duties of officer in charge

6. (1) The officer in charge of a detention centre is responsible to the officer’s immediate superior officer for the management, control and security of the centre and the welfare of all detainees in the centre.

   (2) The officer in charge of a detention centre shall
   (a) cause each detainee to be interviewed as soon as practicable after the detainee is admitted to the centre; and
   (b) cause to be brought to the attention of each detainee such of these Regulations and the general orders as are applicable to the detainee in relation to the detainee’s detention in the centre.
(3) The officer in charge of a detention centre shall
(a) as far as practicable, visit each part of the detention centre and each
detainee every day;
(b) visit and inspect the detention centre at least once each week at night
at a time not known in advance by any other person in the centre; and
(c) ensure that the treatment of detainees is consistent with their
rehabilitation for further naval, military or air force service.

Accommodation of detainees
7. (1) Every detainee shall, as far as practicable, be accommodated in a
separate cell.

(2) Where it is not practicable to provide every detainee with a separate
cell, there shall be not less than 3 detainees accommodated in each cell
containing more than one detainee.

(3) Every detainee shall be provided with a separate bed.

(4) Every cell shall—
(a) be of such a size and be provided with such heating, lighting,
ventilation and equipment as is necessary for the preservation of the
physical and mental health of a detainee; and
(b) be provided with a means of enabling a detainee to express at any time
a wish to communicate with a member of the staff.

Cleanliness
8. A detainee shall be provided with facilities to enable the detainee to
maintain proper standards of cleanliness and clothing.

Meals
9. (1) A detainee shall be provided each day with food of such type and in
such quantities as is ordinarily provided to other members of the Defence
Force.

(2) A detainee may, subject to the general orders, purchase food in addition
to that provided in accordance with sub-regulation (1).

Purchases
10. A detainee may make such purchases, not being purchases referred to
in regulation 9 or 12, as the officer in charge of the detention centre thinks fit.

Exercise
11. A detainee under punishment of segregated confinement or
confinement to cell or who is directed to work indoors within a detention centre
shall, if practicable, be permitted to exercise daily in open air.
Newspapers, &c.

12. A detainee shall be permitted to purchase such newspapers and be permitted to view or listen to such daily television or radio broadcasts as the officer in charge of the detention centre thinks reasonable.

Visiting officers

13. An authorized officer may appoint, in respect of each area detention centre or corrective detention centre, one or more officers to be visiting officers.

Duties of visiting officers

14. A visiting officer shall—

(a) visit and inspect the area detention centre or corrective detention centre in respect of which the visiting officer is appointed at such times or at such intervals as an authorized officer directs;

(b) as far as practicable, visit all detainees at that detention centre and hear any complaints or requests they wish to make;

(c) furnish a report to the proper authority after each visit and inspection made pursuant to paragraph (a); and

(d) make a record of any complaint made to the officer by a detainee and make such inquiries into the complaint as are reasonable and report the complaint and the result of those inquiries to the proper authority.

Visits

15. (1) A detainee shall be permitted at reasonable times to receive visits from—

(a) a visiting officer appointed under regulation 13;

(b) a medical officer;

(c) a chaplain;

(d) a legal practitioner; or

(e) a police officer.

(2) A detainee shall be permitted to receive visits from persons other than persons referred to in sub-regulation (1).

(3) Permission given under sub-regulation (2) to receive a visit at a detention centre may be given subject to such reasonable conditions as the officer in charge of the detention centre thinks fit.

(4) A visit permitted under this regulation shall take place out of the hearing, but within the sight, of a member of the staff.

(5) Where there are reasonable grounds for believing that a visitor to a detention centre is likely to endanger or interfere with the security or discipline of the centre the officer in charge of the centre may refuse the visitor entry to, or cause the visitor to be removed from, the centre and may use such reasonable force as is necessary for the purpose.
Religion

16. A detainee shall, as far as is reasonable, be permitted to—

(a) engage in the normal activities of his or her religion or, with the approval of the officer in charge of the detention centre, of another religion; and

(b) have in his or her possession or have access to books and objects used in the practice of his or her religion.

Employment

17. (1) The officer in charge of a detention centre may direct a detainee to be employed in kinds of work that it is reasonable to expect the detainee to perform.

(2) In directing a detainee to perform particular work, the officer in charge of a detention centre shall take into account the religion and the mental and physical capacity of the detainee.

(3) A detainee shall not be employed otherwise than for the benefit of the Commonwealth.

(4) A detainee shall not be required to perform work on a Sunday, Christmas day or Good Friday other than such work as is necessary for the continued daily operation of the detention centre.

Period of work

18. (1) Subject to sub-regulation (2), a detainee shall be required to perform work each day for not less than 6 hours, if that is practicable, but not more than 9 hours.

(2) A detainee shall not be required to perform work that, in the opinion of a medical practitioner, would be likely to be detrimental to the physical or mental health of the detainee.

Division 3—Correspondence

Interpretation—Division 3

19. In this Division—

“authorized member” means a member of the staff of a detention centre authorized under regulation 20;

“contraband” includes any substance or item, other than money, the possession of which by a detainee is not permitted by or under the Act;

“letter” means a card, telegram, document or other form of written communication and includes an envelope containing any of those things;

“parcel” means a package or other similar article, and includes any parcel or package containing a book, newspaper, magazine or other similar printed material.
Persons authorized to open correspondence, &c.

20. The officer in charge of a detention centre may authorize a member of the staff, to the extent permitted by regulations 21 and 22, to open and inspect letters and parcels sent to or proposed to be sent by a detainee and to read such letters.

Receiving and sending letters

21. (1) Subject to this Division, a detainee may send letters or parcels to, and receive letters or parcels from, persons who are not detained on agreeing, in the case of letters or parcels sent by post, to the opening or inspection of those letters or parcels in accordance with this Division.

(2) A detainee shall be permitted to send—
(a) immediately on being admitted—2 letters;
(b) in every week of detention—2 letters; and
(c) such additional letters as the officer in charge of the detention centre permits.

(3) Where a detainee delivers to the officer in charge of a detention centre, or a member of the staff, a letter addressed by the detainee to the Defence Force Ombudsman, a member of Parliament, a member of the legal profession or an authorized officer—
(a) the officer in charge shall cause the letter to be sent to the addressee; and
(b) the letter shall not be opened, inspected or read other than by the person to whom it is addressed or some other person authorized by that person.

(4) A letter that has been, and whose envelope purports to have been, addressed to a detainee by the Defence Force Ombudsman shall not be opened, inspected or read other than by that detainee or some other person authorized by that detainee.

(5) Where a member of Parliament or of the legal profession sends to a detainee a letter contained in a sealed envelope accompanied by a letter addressed to the officer in charge of the detention centre indicating that privilege is claimed in respect of the letter in the sealed envelope, that sealed envelope and letter shall not, except as provided in sub-regulation (6), be opened and inspected or read by any person other than the detainee or some other person authorized by that detainee.

(6) Where the officer in charge or an authorized member has reasonable grounds for believing that a sealed envelope referred to in sub-regulation (5) addressed to a detainee may contain money, contraband or any item or matter that is likely to adversely affect the security, discipline or good order of the centre, the detainee may be required to open the sealed envelope in the presence of the officer in charge or the authorized member.
(7) Where a sealed envelope is opened in accordance with sub-regulation (6) and found to contain money, contraband or any other item or matter that, in the opinion of the officer in charge of a detention centre, may adversely affect the security, discipline or good order of the centre, the sealed envelope or money, contraband, other item or matter contained in the envelope or any or all of them, may be impounded.

Correspondence to be opened in certain cases

22. (1) Subject to regulation 21, where an officer in charge of a detention centre or an authorized member has reasonable grounds for believing that the security, discipline or good order of the centre is likely to be adversely affected by the delivery to or despatch from a detainee of any letter or parcel the officer in charge or the authorized member may open and inspect that letter or parcel and read that letter.

(2) If, following the opening, inspection and reading of a letter or the opening and inspection of a parcel in accordance with sub-regulation (1), a letter or parcel is found to contain money, contraband or any item or matter that, in the opinion of the officer in charge of a detention centre, may adversely affect the security, discipline or good order of the centre, that letter or parcel and money, contraband or other item or matter contained in the letter or parcel or any or all of them, may be impounded.

(3) Where any letter, parcel, contraband or other item or matter is impounded under sub-regulation (2) at a detention centre the officer in charge of the centre shall inform the detainee.

Impounded articles

23. Anything impounded under sub-regulation 21 (7) or 22 (2) may be dealt with in accordance with such directions as may be given by a chief of staff.

Division 4—Remission and Release

Remission

24. (1) A detainee is entitled to remission of detention in accordance with this regulation.

(2) A detainee who is serving a period of detention of not less than 28 days is, subject to this regulation, entitled to a remission of one-quarter of the period of detention.

(3) Where the remission of a period of detention would, but for this sub-regulation, reduce the period of detention to less than 24 days, the period of detention remitted shall be limited to so much of the period of detention as exceeds 24 days.
(4) Where a custodial punishment is imposed on a detainee, the period of
remission to which a detainee would, but for this sub-regulation, be entitled,
shall be reduced—

(a) for each day of the punishment of segregated confinement served by
the detainee—by 3 days;

(b) for each day of the punishment of confinement to a cell served by the
detainee—by 2 days;

(c) for each day of the punishment of extra drill served by the
detainee—by 1 day; or

(d) for continuous or discontinuous periods of the punishment of
restriction of custodial privileges which in the aggregate amount to
more than 7 days—by 1 day for each such period of not less than 7
days.

(5) Where a punishment of a period of detention is imposed on a detainee
in respect of an offence committed during a period of detention, remission does
not accrue in respect of the latter period of detention.

Release

25. (1) Where, but for this regulation, a period of punishment by remission
or otherwise would expire on a Sunday or public holiday, the officer in charge
may remit so much of the unexpired period of detention as would enable the
detainee to be released on the last day preceding that Sunday or public holiday,
as the case requires, that is not a Sunday or public holiday.

(2) A detainee may be released at any time during the period of 24 hours
immediately preceding the expiration of the detainee's period of detention.

PART III—EVIDENCE

Admissibility of evidence adduced before summary authority or examining
officer

26. (1) In proceedings before a summary authority in relation to a charge,
a record of the evidence—

(a) adduced in proceedings, in relation to that charge, before a summary
authority for the purposes referred to in sub-section 111A (1) of the
Act; or

(b) made under rule 26 of the Defence Force Discipline Rules in relation
to that charge,

is admissible in evidence if—

(c) the summary authority is satisfied that it would not be unfair to the
person charged to admit that record; and

(d) that person consents to that record being admitted.
(2) If, on the trial of a person charged with an offence in respect of which a record or part of a record of evidence made under rule 25 of the Defence Force Discipline Rules is relevant, a service tribunal is satisfied—

(a) that the person by whom that evidence was given is dead or should not, because of illness or other circumstances beyond the control of the person charged, be required to attend the trial; and

(b) that

(i) the person charged, or a person representing that person, was present when that evidence was taken; or

(ii) if the person charged or a person representing that person was not then present, reasonable notice of the time and place fixed for the taking of that evidence was given to that person or to the person representing that person,

the record of that evidence is admissible in evidence to the extent that that evidence would have been admissible at the trial if given orally.

Evidence of general orders

27. In proceedings before a service tribunal, a document certified by a commanding officer to be a copy of a general order is evidence of that order unless the contrary is proved.

Certificate of analyst in respect of narcotic goods

28. (1) In proceedings before a summary authority for an offence against section 59 of the Act, a certificate signed by an analyst setting out the result of an analysis carried out at the request of an investigating officer within the meaning of Part VI of the Act is admissible as evidence of the matters set out in the certificate.

(2) For the purposes of sub-section (1), a document that purports to have been signed by an analyst shall be taken to have been so signed unless the contrary is proved.

Modifications of the provisions of the Evidence Ordinance 1971 of the Australian Capital Territory in their application to proceedings before a service tribunal

29. For the purposes of section 146 of the Act, the provisions of the Evidence Ordinance 1971 of the Australian Capital Territory in their application to proceedings before a service tribunal are modified as set out in Schedule 1.

Modification of the definition of “business” in sub-section 7A of the Evidence Act 1905 in its application to proceedings before a service tribunal

30. For the purposes of section 146 of the Act, the definition of “business” in sub-section 7A (1) of the Evidence Act 1905 in its application to proceedings before a service tribunal is modified—

(a) by omitting from paragraph (a) “and” (last occurring); and
(b) by inserting at the end the following word and paragraph:
   
   "; and (c) the control, operation and administration of the
   Defence Force or a part of the Defence Force;”.

PART IV—MISCELLANEOUS

Calculation of daily rate of pay of convicted person

31. For the purposes of paragraph 3 (9) (a) of the Act, the amount that is
to be taken, for the purposes of the Act, to be the amount of daily rate of pay
applicable in relation to a class of persons in which a convicted person
is included, is—

(a) where the convicted person is a person included in the class of persons
comprising defence members rendering continuous full-time service—the
amount of the daily rate of salary payable to that person
under the determination applicable to the person under section 58B of
the Defence Act 1903 as in force on the day on which that person was
convicted; or

(b) where the convicted person is a person included in the class of persons
comprising defence members who are not rendering continuous
full-time service—the amount that is the daily rate of pay that would
be payable to that person under the determination that would, if the
convicted person were rendering service other than continuous
full-time service, be applicable to the person under section 58B of the
Defence Act 1903 as in force on the day on which that person was
convicted.

Chaplains—notional rank

32. For the purposes of sub-section 6 (2) of the Act, in matters relating to
the discipline of a member of the Defence Force who is a chaplain—

(a) a Chaplain 4th Class in the Army shall be deemed to hold the rank of
Captain in the Army and a Chaplain in the Navy or Air Force with less
than 4 years service in the Defence Force as a Chaplain shall be
deemed to hold a rank equivalent to that rank;

(b) a Chaplain 3rd Class in the Army shall be deemed to hold the rank of
Major and a Chaplain in the Navy or Air Force with not less than 4
years service but less than 14 years service as a Chaplain shall be
deemed to hold a rank equivalent to that rank;

(c) a Chaplain 2nd Class in the Army shall be deemed to hold the rank of
Lieutenant-Colonel and a Chaplain in the Navy or Air Force with not
less than 14 years service but less than 20 years service as a Chaplain
shall be deemed to hold a rank equivalent to that rank;

(d) a Chaplain 1st Class in the Army shall be deemed to hold the rank of
Colonel and a Chaplain in the Navy or Air Force with not less than 20
years service as a Chaplain shall be deemed to hold a rank equivalent
to that rank; and
Members receiving instruction or training

33. For the purposes of sub-section 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—

<table>
<thead>
<tr>
<th>Officer or below the rank of officer in the Navy, captain in the Army or flight lieutenant or warrant officer</th>
<th>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</th>
<th>Fine not exceeding the amount of the convicted person's pay for 7 days</th>
</tr>
</thead>
<tbody>
<tr>
<td>and substituting—</td>
<td>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</td>
<td>Fine not exceeding the amount of the convicted person's pay for 7 days</td>
</tr>
<tr>
<td>Officer cadet</td>
<td>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</td>
<td>Fine not exceeding the amount of the convicted person's pay for 7 days</td>
</tr>
<tr>
<td>Restriction of privileges for a period not exceeding 14 days</td>
<td>Severe reprimand</td>
<td>Severe reprimand</td>
</tr>
<tr>
<td>Stoppage of leave for a period not exceeding 21 days</td>
<td>Extra duties for a period not exceeding 3 days</td>
<td>Reprimand</td>
</tr>
</tbody>
</table>

(c) by omitting from Table C of Schedule 3—

<table>
<thead>
<tr>
<th>&quot;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&quot;</th>
<th>Fine exceeding the amount of the convicted person's pay for 7 days</th>
<th>Fine not exceeding the amount of the convicted person's pay for 7 days</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sailor of the rank of leading seaman</td>
<td>Fine not exceeding the amount of the convicted person's pay for 7 days</td>
<td>Fine not exceeding the amount of the convicted person's pay for 7 days</td>
</tr>
<tr>
<td>Severe reprimand</td>
<td>Severe reprimand</td>
<td>Severe reprimand</td>
</tr>
<tr>
<td>Stoppage of leave for a period not exceeding 21 days</td>
<td>Extra duties for a period not exceeding 3 days</td>
<td>Extra duties for a period not exceeding 3 days</td>
</tr>
<tr>
<td>Reprimand</td>
<td>Reprimand</td>
<td>Reprimand</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sailor below the rank of leading seaman</th>
<th>Fine exceeding the amount of the convicted person's pay for 7 days</th>
<th>Fine not exceeding the amount of the convicted person's pay for 7 days</th>
</tr>
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<td>Severe reprimand</td>
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<tr>
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<tr>
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<td>Extra duties for a period not exceeding 3 days</td>
</tr>
<tr>
<td>Reprimand</td>
<td>Reprimand</td>
<td>Reprimand</td>
</tr>
</tbody>
</table>
and substituting—

| Ranks                                      | Punishments                                                                 |
|--------------------------------------------|                                                                            |
| 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.               |
|                                            | Extra duties for a period not exceeding 3 days.                            |
|                                            | Reprimand                                                                 |
| 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”.

Service of summons, &c.

34. A summons that is required by sub-section 87 (2) or 88 (2) of the Act or a notice that is required by sub-section 98 (6) or 99 (3) of the Act to be served on a natural person shall be served—

(a) by delivering the summons or notice to that person personally;

(b) in the case of a notice—by prepaying and posting the notice as a letter addressed to that person at the person’s last-known place of residence or business or, if the person is carrying on business at 2 or more places, at one of those places;

(c) by leaving the summons or notice at the last-known place of residence of that person with some person apparently resident at that place and apparently not less than 16 years of age; or

(d) by leaving the summons or notice at the last-known place of business of that person or, if the person is carrying on business at 2 or more places, at one of those places with some person apparently in the service of that person and apparently not less than 16 years of age.
Power of arrest: service policemen and others

35. (1) For the purposes of paragraph 89 (2) (d) of the Act
(a) a service policeman who is not an officer; or
(b) a person, who is not an officer, lawfully exercising authority under or
on behalf of a service police officer,
does not have power of arrest over an officer unless the service offence
concerned is mutiny or a service offence involving disorderly or violent
behaviour.

(2) For the purposes of paragraph 89 (2) (d) of the Act
(a) a service policeman who is not a prescribed officer; or
(b) a person, who is not a prescribed officer, lawfully exercising authority
under or on behalf of a service police officer,
does not have power of arrest over a defence civilian.

(3) In sub-regulation (2), “prescribed officer” means an officer, a service
police warrant officer or a service police non-commissioned officer.

Form of caution for purposes of sub-section 101D (2) of the Act

36. For the purposes of sub-section 101D (2) of the Act, the prescribed
form of caution is Form 1 in Schedule 2.

Prescribed places for purposes of section 101F of the Act

37. Each of the places specified in Schedule 3 is prescribed for the purposes
of section 101F of the Act.

Form of acknowledgment of record of interview

38. For the purposes of paragraph 101K (3) (a) of the Act, a record of
interview of an accused is acknowledged in the prescribed manner if, where the
record of interview is—
(a) not more than one page—the accused signs an acknowledgment
endorsed at the end of that page that the record is a full and correct
record; or
(b) more than one page—the accused signs an acknowledgment endorsed
at the end of the last of those pages that the record is a full and correct
record and signs the end of each other page.

Form of certificate for purposes of sub-sub-paragraph 101K (4) (d) (ii) (B) of
the Act

39. For the purposes of sub-sub-paragraph 101K (4) (d) (ii) (B) of the
Act, the prescribed form of certificate is Form 2 in Schedule 2.

Form of explanation for purposes of paragraph 101K (4) (e) of the Act

40. For the purposes of paragraph 101K (4) (e) of the Act, the prescribed
form of explanation is Form 3 in Schedule 2.
Prescribed class of persons for purposes of paragraph 101K (14) (a) of the Act

41. (1) For the purposes of paragraph 101K (14) (a) of the Act, each of the following classes of persons is prescribed, namely, officers, warrant officers and non-commissioned officers (not below the rank of sergeant or equivalent), other than service policemen or members who hold a rank below the rank held by the investigating officer conducting the interview in respect of which that paragraph is applied.

(2) In sub-regulation (1), "investigating officer" has the same meaning as in Part VI of the Act.

Form of acknowledgment for purposes of sub-section 101N (2) of the Act

42. For the purposes of sub-section 101N (2) of the Act, the prescribed form of acknowledgment is Form 4 in Schedule 2.

Form of acknowledgment for purposes of sub-section 101ZA (2) of the Act

43. For the purposes of sub-section 101ZA (2) of the Act, the prescribed form of acknowledgment is Form 5 in Schedule 2.

Prescribed service offences for purposes of paragraph 104 (b) of the Act

44. For the purposes of paragraph 104 (b) of the Act, each of the following service offences is prescribed:

(a) a service offence in respect of which a person is liable to more than 2 years imprisonment, other than an offence to which sub-section 43 (1) or section 47, 48 or 52 applies;

(b) an offence to which section 18, 36, 39 or 58 applies.

Prescribed class of officers for the purposes of paragraph 108 (4) (a) of the Act

45. For the purposes of paragraph 108 (4) (a) of the Act, the following class of officers is prescribed, namely, officer cadets.

Fees

46. For the purposes of sub-sections 195 (1) and (2) of the Act, the prescribed fee for the supply of a copy of the record of the proceedings of a trial is—

(a) where the number of pages copied does not exceed 50 $12; or

(b) where the number of pages copied exceeds 50 $12 plus 10 cents for each page copied in excess of 50.

Record of previous convictions

47. (1) The chief of staff of each arm of the Defence Force shall, in respect of each member of the Defence Force in that arm, for the purposes of facilitating compliance with sub-section 70 (2) of the Act, cause to be kept a record of the convictions of the member for service offences, civil court offences and overseas offences.
(2) The chief of staff of an arm of the Defence Force shall, at the request of a member of the Defence Force serving in that arm, cause to be made available to the member a copy of any record kept under this regulation in respect of that member.
MODIFICATIONS OF THE PROVISIONS OF THE EVIDENCE ORDINANCE 1971 OF THE AUSTRALIAN CAPITAL TERRITORY IN ITS APPLICATION TO PROCEEDINGS BEFORE SERVICE TRIBUNALS

Sections 2, 3, 4 and 5—
Omit the sections.

Section 6—
Omit the definition of “document”, substitute the following definition:
“document” includes
(a) any paper or other material on which there is writing;
(b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
(c) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

Section 7—
Omit the section.

Section 26—
Omit the section.

Section 27—
Omit the section.

Sections 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51—
Omit the sections.

Section 54—
Omit the section.

Section 55—
Omit the section.

Section 67—
Omit the section, substitute the following section:

Admission by accused person
“67. In proceedings before a service tribunal, if the person charged with an offence makes an admission of a fact or other matter the service tribunal may accept the admission as sufficient evidence of that fact or other matter without further proof unless the tribunal is satisfied that it would be unfair to the person to accept the admission.”.

Section 68—
Omit the section.

Sections 72 and 73—
Omit the sections.

Section 74—
Omit the section, substitute the following section:
Failure to give evidence

"74. (1) In proceedings before a court martial, the failure of the person charged or his or her spouse to give evidence shall not be made the subject of comment by the prosecution.

(2) Where in proceedings before a court martial
(a) 2 or more persons are being tried together; and
(b) comment is made by or on behalf of any of those persons on the failure of any of those persons or of the spouse of any of those persons to give evidence,
the judge advocate may make such observations to the court martial in regard to the comment or failure to give evidence as the judge advocate thinks fit.”.

Section 75—
Omit the section, substitute the following section:

Certificates of scientific examinations

"75. In proceedings before a service tribunal, other than proceedings by way of trying a charge, a certificate in writing signed by a qualified person who has examined an article or body setting out
(a) the person’s qualifications;
(b) the place and time of the examination;
(c) if a particular method was used to effect the examination, a brief description of that method; and
(d) the facts that the person ascertained in the course of the examination and the conclusions that the person reached,
is admissible in evidence of the matters set out in the certificate.”.

Sections 77, 78, 79, 80, 81, 82, 83, 84 and 85—
Omit the sections.

Section 90—
Omit the section.

Section 91—
Omit the section.

Section 92—
Add at the end of the section the following sub-section:
"(2) In any proceedings a map, chart or plan purporting to be published by or on behalf of the Commonwealth or of a State or Territory or of the government of another country is evidence of the matters set out on the map, chart or plan unless the contrary is proved.”.

Sub-section 94 (1)—
Omit "a Commonwealth country", substitute “another country”. 
SCHEDULE 2

FORMS

FORM 1

COMMONWEALTH OF AUSTRALIA

Defence Force Discipline Act 1982

CAUTION TO PERSON CHARGED OR SUMMONED

Pursuant to section 101D of the Defence Force Discipline Act 1982, you are cautioned that

(a) you are not obliged to, but you may if you wish, answer any questions, or do anything, asked of you by an investigating officer, and anything said or done by you may be used in evidence;

(b) you may communicate with a legal practitioner and have, as provided by Part VI of that Act, the assistance of a legal practitioner while you are being questioned; and

(c) you may, as provided in Part VI of that Act, communicate with a relative or friend.

FORM 2

COMMONWEALTH OF AUSTRALIA

Defence Force Discipline Act 1982

CERTIFICATE OF APPROPRIATE WITNESS

(Name of appropriate witness) in the (Residential address of appropriate witness)

(State or Territory) being (qualification of appropriate witness)

under sub-section 101K (14) of the Defence Force Discipline Act 1982 certify that paragraphs 101K (4) (b) and (c) of the Defence Force Discipline Act 1982 were complied with in my presence and that the record of what was said by and to (Name of accused) as a result of compliance with paragraph 101 K (4) (c) is a full and correct record.

Dated

(Signature of appropriate witness)
SCHEDULE 2—continued

FORM 3

COMMONWEALTH OF AUSTRALIA

Defence Force Discipline Act 1982

EXPLANATION TO ACCUSED

The following is the form of explanation to be given to an accused person of the procedure that will be followed for the purpose of compliance with paragraphs 101K (4) (b), (c) and (d) of the Defence Force Discipline Act 1982 in respect of a record made of an interview with the accused:

1. You have been given a copy of the record of the interview with you. The record will be read to you in the language used by you during the interview.

2. You may interrupt the reading of the record of interview at any time for the purpose of drawing attention to any error or omission that you claim has been made in or from the record and, at the end of the reading, you will be given an opportunity of stating whether you claim that there are any errors in or omissions from the record, in addition to any to which you have drawn attention during the reading.

Where a sound recording is made

3. 2 sound recordings of the reading referred to in paragraph 1 will be made by the one multiple sound recording apparatus and of everything said by and to you as a result of compliance with the matters raised in paragraph 2.

4. You will be handed one of the sound recordings.

5. The other recording will be retained by the Defence Force and may be used in evidence.

6. You should make arrangements for the safe-keeping of the recording handed to you so that it will be available for comparison with the sound recording retained by the Defence Force and, if you so request, you will be afforded an opportunity to make arrangements for the safe-keeping of your recording on your behalf.

7. If you or your legal practitioner so request, you or your legal practitioner will, as soon as practicable, be provided with reasonable facilities to enable the sound recording to be reproduced in sound.

OR, where a sound recording is not made but an appropriate witness is present

3. An appropriate witness will be present during the reading of the record of interview referred to in paragraph 1 or when anything is said by or to you as a result of compliance with paragraph 2 and a record in writing will be made of everything said by and to you as a result of compliance with paragraph 2 while it is being said or as soon as practicable thereafter (persons who can be appropriate witnesses include a legal practitioner advising you, or a relative or friend present at your request).

4. The appropriate witness will sign a prescribed form of certificate certifying that the requirements of paragraphs 101K (4) (b) and (c) of the Act have been complied with in the presence of the witness and that the record is a full and correct record.
SCHEDULE 2 - continued

COMMONWEALTH OF AUSTRALIA
Defence Force Discipline Act 1982

ACKNOWLEDGMENT OF SUSPECT IN RELATION TO THE HOLDING OF AN IDENTIFICATION PARADE

I, ................................................................. of .................................................................
(Name of suspect) ................................................................. (Residential address of suspect)
in the ................................................................., acknowledge that I was informed, on
(State or Territory) ................................................................. at ................................................................. that
(Date) ................................................................. (Time)

(a) I am entitled to refuse to agree to the holding of an identification parade for the purpose of
ascertaining whether a witness to a relevant act in relation to a service offence can identify me as a
relevant person in relation to that act;

(b) if I do not agree to the holding of the parade and to take part in the parade, evidence may be
given, in any proceedings with respect to the service offence, of any identification of me by a witness as
a result of

(i) having seen a photograph or series of photographs; or
(ii) having seen me otherwise than during an identification parade;

(c) if I do 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) I may have present, during the holding of the parade, a legal practitioner or other person of my
choice if arrangements can be made for the legal practitioner or other person to be present within a
reasonable time.

Dated 19 .

.................................................................
(Signature of suspect giving this acknowledgment)
SCHEDULE 2  continued

FORM 5

COMMONWEALTH OF AUSTRALIA
Defence Force Discipline Act 1982

ACKNOWLEDGMENT OF CONSENT TO SEARCH

I, ____________________________________________, acknowledge that

(Name)

(a) I have been informed that I may refuse to give my consent

(i) to be searched;

(ii) to the search of the clothing worn by me; or

(iii) to the search of property under my immediate control,

in relation to the investigation of a service offence; and

(b) I have on .................................................. at ..............................................................

(Insert date) (Insert place and time)

voluntarily given my consent –

*(i) to be searched;

*(ii) to the search of the clothing worn by me;

*(iii) to the search of property under my immediate control,

in relation to the investigation of a service offence.

Dated ____________________________

(Signature of suspect giving this acknowledgment)

* Strike out if inapplicable.
### SCHEDULE 3

**PRESCRIBED PLACES FOR PURPOSES OF SECTION 101F OF THE ACT**

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