



Summary Authority Rules 2019

I, MICHAEL JOHN SLATTERY, AM RAN, Judge Advocate General, make the following Rules under section 149 of the *Defence Force Discipline Act 1982*.

Dated 9 September 2019

Signed by

MICHAEL JOHN SLATTERY, AM RAN
Judge Advocate General

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Part 1 Preliminary

Rule 1 Name of Rules

These Rules are the *Summary Authority Rules 2019*.

Rule 2 Commencement

These Rules commence on 9 September 2019.

Rule 3 Repeal

- (1) The Summary Authority Rules made on 22 September 2009 (the *old Rules*) are repealed.
- (2) These Rules apply to all charges preferred on or after 9 March 2020.
- (3) The old Rules continue to apply to proceedings commenced or in respect of charges that were laid prior to 9 March 2020.

Rule 4 Authority

These Rules are made pursuant to section 149 of the *Defence Force Discipline Act 1982*.

Rule 5 Definitions

In these Rules, unless the contrary intention appears:

Act means the *Defence Force Discipline Act 1982*.

defending officer means a member of the Defence Force secured to represent an accused person for proceedings.

proceedings means the following actions taken by a summary authority in accordance with the Act, rules made under the Act and regulations made under the Act:

Rule 5

- (a) dealing with a charge;
- (b) trying a charge;
- (c) imposing a punishment under Part IV of the Act;
- (d) making an order under Part IV of the Act.

prosecuting officer means a member of the Defence Force prosecuting a charge before a summary authority.

reasonably available means an Australian Defence Force member is able to be released from their usual duties without significant impact upon the ordinary business of Defence, having regard to all of the circumstances, including the exigencies of service, preparation and travel time, and the efficient and effective use of Commonwealth resources.

regulations means the *Defence Force Discipline Regulations 2018*.

Part 2 Charging and summoning accused person

Rule 6 Charging an accused person

- (1) At the time the accused person is charged with an offence under subsection 87(1) or 95(3) of the Act, or is served with a summons under subsection 87(3) of the Act, they are to be provided in writing:
 - (a) a summary of the rights and obligations of the accused substantially in accordance with Schedule 1,
 - (b) the charges being preferred against them,
 - (c) related to those charges:
 - (i) the name of the offence and the section of the Act or regulations that refers to that offence,
 - (ii) the elements of the alleged offence,
 - (iii) any statutory defence available under the Act or regulations in respect of the offence charged, and
 - (d) the name and rank of the proposed prosecuting officer.
- (2) With the material provided under subrule (1), the accused person is to be provided in writing with a summary of the case against them, which is to include:
 - (a) particulars of the charge,
 - (b) an outline of the facts and circumstances relevant to the alleged conduct constituting the offence, and
 - (c) a summary of the case the prosecuting officer is intending to rely upon to prove each element of the offence charged.
- (3) A charge must consist of a sufficient statement of the offence and the particulars of the act or omission constituting the offence.

Rule 7

- (4) Once given to an accused person, a charge may only be dealt with as described in Rule 9.
- (5) When a person is charged with a service offence, it is to be recorded on a charge sheet.
- (6) A charge sheet may contain more than one charge.
- (7) Only one person may be charged in the one charge sheet.
- (8) Each summary proceedings must deal with only one accused person.

Rule 7 Representation of an accused person

- (1) An accused person may request the services of a member of the Defence Force to act as a defending officer.
- (2) If an accused person makes a request under subrule (1), the person whose services are requested must be permitted to defend the accused person unless:
 - (a) the services of the person are not reasonably available; or
 - (b) the hearing is before a subordinate summary authority and the person requested is a legal officer.
- (3) If an accused person makes a request under subrule (1) for representation by a legal officer at a hearing before a commanding officer or superior summary authority, the legal officer whose services are requested must be permitted to defend the accused if:
 - (a) approval is given by that commanding officer or superior summary authority; and
 - (b) the services of the legal officer are reasonably available.
- (4) If the services of a person requested by an accused person under subrule (1) are not reasonably available, the summary authority must, with the consent of the accused person, direct a defence member to defend the accused person.
- (5) An accused person may represent themselves.

- (6) A summary authority must ensure that an accused person does not choose to represent themselves until the accused person has been informed of the right to representation as described in this Rule.

- (7) The summary authority must ensure that the accused person is not disadvantaged because of a decision to represent themselves.

Rule 8

Part 3 Summary authority proceedings – general provisions

Rule 8 General procedures for summary authority proceedings

- (1) A summary authority must administer justice according to law without fear or favour, affection or ill-will.
- (2) Summary proceedings must be conducted with as little legal formality or technicality as possible while ensuring fairness to the accused.
- (3) If a matter arises in the proceedings that is not adequately covered by the Act, these Rules or the regulations, it must be dealt with according to the interests of justice.
- (4) The summary authority must ensure that any person giving evidence before summary authority proceedings takes an oath or affirmation in such manner as the person taking the oath or affirmation declares to be binding on the person's conscience.
- (5) The summary authority must ensure that any person interpreting summary authority proceedings must take an oath or affirmation in such manner as the person taking the oath or affirmation declares to be binding on the person's conscience, that the person will, to the best of their ability, truly interpret and translate the proceedings as required.
- (6) The summary authority must not require the defending officer, prosecuting officer, the accused or a witness to disclose any confidential communications related to the proceedings between or among any of them.
- (7) During a summary proceedings the summary authority must give the accused person reasons for:
 - (a) Decisions relating to applications or objections,
 - (b) Decisions with respect to dealing with the charge(s),
 - (c) Decisions upon, and findings with respect to, conviction,
 - (d) Punishments and orders, if applicable.

Rule 9 Dealing with charge

- (1) The summary authority must consider the summary of the prosecution case provided under subrules 6(1) and 6(2) prior to making a decision about how to deal with the charge(s).
- (2) The summary authority may request from the accused person, or their defending officer, and the prosecuting officer whether any elements or facts relevant to the elements of the offence(s) with which the accused has been charged have been agreed.
- (3) The summary authority cannot compel an accused person to agree to any facts.
- (4) The summary authority is required to determine how to deal with the charge(s) and is to:
 - (a) Confirm that the accused person has been provided with the opportunity to make an up-front election for trial pursuant to section 111C of the Act if applicable;
 - (b) Inquire whether the accused person has any applications or objections in respect of the charge(s);
 - (c) Have regard to the application of sections 108A, 109, 110 or 111 of the Act;
 - (d) Subject to the Act, refer the charge(s) to another summary authority.
- (5) If the summary authority decides to try the charge(s) the summary authority is required to give sufficient notice of the date, time and place of the hearing to the accused person, their defending officer and the prosecuting officer as is reasonable to enable the preparation for a plea in respect of the offence(s) charged.

Rule 10 Withdrawal of election to be heard by court martial or Defence Force magistrate referred back to summary authority by Director of Military Prosecutions

Where an accused person has made an up-front or in-trial election for trial by court martial or Defence Force magistrate for a non-Schedule 1A offence pursuant to section 111B or 131 of the Act, respectively, if the person withdraws their election under sections 111C(6) or 131AA(6) of the Act and in consequence the Director of Military Prosecutions refers the charge(s) back to a summary authority pursuant to sections 111C(7)(b) or 131AA(7)(b) of the

Rule 11

Act, there is no requirement for that summary authority to offer the accused person another up-front or in-trial election.

Rule 11 Trial by summary authority

- (1) Prior to asking the accused person to enter a plea, the summary authority must read the charge(s) to the accused person.
- (2) The summary authority must ask the accused person to enter a plea in respect of each offence with which they have been charged.
- (3) In the event the accused person enters a plea of not guilty, or does not enter a plea when called upon to do so, or pleads guilty but the summary authority is not satisfied that the accused person understands the effect of that plea, the summary authority must hear evidence called by and submissions from the prosecuting officer, and defending officer or accused person, to determine whether or not the accused person should be found guilty or not guilty of the offence(s) charged.
- (4) At a hearing under subrule (3) the summary authority is required to give sufficient notice of the date, time and place of the hearing to the accused person, their defending officer and the prosecuting officer as is reasonable to enable the preparation for hearing the evidence in respect of the offence(s) charged.
- (5) Prior to hearing the prosecution case in a hearing under subrule (3), the summary authority must be satisfied that all documents, including statements, notes, exhibits or records of the Australian Defence Force or other materials relevant to the offence(s) charged, in the possession of the prosecuting officer have been provided to the accused person and their defending officer.

Rule 12 Order of witnesses and submissions

- (1) The prosecution case is to go first, before the defence case, and the accused person is under no obligation to give or call evidence.
- (2) At the conclusion of the evidence, the prosecuting officer, and then the accused person or their defending officer may put a case summary and submissions to the summary authority.

Rule 13 Consultation during trial proceedings

- (1) Subject to Rule 21, the summary authority must make a determination only on the evidence admitted during the proceeding.
- (2) During the proceeding, the summary authority may seek legal advice upon matters of practice or procedure required by the Act or these Rules for the conduct of the proceedings, if the summary authority considers it is in the interests of justice to do so.
- (3) The summary authority must obtain legal advice under subrule (2) in the presence or within the hearing of the accused, their defending officer and the prosecuting officer.

Part 4 Evidence in summary authority proceedings

Rule 14 Admission of evidence in summary proceedings

- (1) The summary authority must only admit evidence in a proceeding that is of assistance and relevant.
- (2) Any element of a charge that is not admitted by the accused is an issue for determination by the summary authority.
- (3) A fact is relevant to an issue if the fact, alone or in combination with other facts, makes proof of an issue more or less probable.
- (4) A fact is relevant to the credibility of a witness if the fact, alone or in combination with other facts, makes the evidence of the witness more or less credible.
- (5) Evidence that is not relevant to an issue or credibility, or is otherwise excluded by the Act or these Rules, is not admissible in summary authority proceedings.

Rule 15 Weighing of evidence in summary proceedings

Once a summary authority admits evidence, it must be entered onto the record, and the summary authority must then give appropriate weight to the evidence having regard to:

- (a) The probative value of the evidence,
- (b) The reliability of the evidence,
- (a) The credibility of the evidence, and
- (b) Where evidence is contradicted by other evidence, the relative weight having regard to all of the evidence on that issue.

Rule 16 Exclusion of evidence that is unfair, misleading or time wasting

- (1) A summary authority must exclude evidence presented during a summary proceeding if its probative value is substantially outweighed by the danger that the evidence might be unfairly prejudicial to the accused.

- (2) Any statement made by an accused person which was not voluntarily given, including when the accused person was ordered to answer a question by a superior or investigating officer, is unfairly prejudicial to an accused person and is to be excluded from admission into evidence.
- (3) A summary authority may exclude evidence presented during a summary proceeding if its probative value is substantially outweighed by the danger that the evidence might:
 - (a) be misleading or confusing; or
 - (b) cause or result in undue waste of time.

Rule 17 Admissions

A party to summary authority proceedings may admit a matter of fact or a conclusion of fact even if the matter is not within the party's personal knowledge.

Rule 18 Character evidence

- (1) Evidence of the good character of the accused person is admissible in summary authority proceedings as it may relate to credibility.
- (2) Evidence of the bad character of the accused person is not admissible in summary authority proceedings, unless it forms part of the evidence necessary to prove an element of the offence charged, or to rebut evidence of good character, or a matter relevant to punishment.
- (3) Evidence of the bad character of a witness (other than the accused person), is admissible in summary authority proceedings as it may relate to credibility.

Example

If:

- (a) an accused person is charged with the offence of making a false answer to a question on enlistment (section 57 of the Act); and
- (b) the answer given was that the accused had no prior convictions; it would be a necessary part of the prosecution case to prove the prior convictions in order to show the answer was false.

Rule 19

Rule 19 Hearsay evidence

- (1) Hearsay evidence is evidence of a statement to a witness made by a person who is not called as a witness, to prove that any fact in the statement is true.
- (2) However, subrule (1) does not apply to:
 - (a) documentary evidence; or
 - (b) an admission made by an accused person.
- (3) Although hearsay evidence is not admissible to prove the truth of a fact in a statement made to a witness, it may nevertheless be admissible to prove that the statement was made.

Example

On a charge of absence from duty, Sergeant Brown states that:

- (a) he ordered Corporal White to check if Private Smith was on duty; and
- (b) Corporal White subsequently reported to him that Private Smith was not present at his place of duty.

If Corporal White is not called as a witness, the statement to Sergeant Brown that Private Smith was not on duty is hearsay evidence and inadmissible to prove that fact.

Rule 20 Documentary evidence

- (1) A document is admissible in summary authority proceedings to prove the truth of a matter stated in the document if:
 - (a) the document is produced from a record kept by:
 - (i) the Defence Force; or
 - (ii) a Department or agency of a government; or
 - (iii) an authority otherwise created by a law of a government; or
 - (iv) a business; and

- (b) the record was kept by a person who, in the course of the person's duties or business:
 - (i) is required to create, amend, maintain or store records of that kind; or
 - (ii) was, at the relevant time, required to create, amend, maintain or store records of that kind.
- (2) Subrule (1) does not apply to a record created in the course of:
 - (a) an investigation conducted under Part VI of the Act;
 - (b) an investigation conducted by a civilian police force;
 - (c) any other investigation or inquiry conducted into an incident that gave rise to a charge of a service offence.
- (3) In subrule (1), a "document" includes a copy of a document.
- (4) Evidence to establish that a document is admissible under subrule (1) may be given by statutory declaration, unless the summary authority is satisfied that giving the evidence without the declarant being present would be unfair to the accused person.
- (5) Evidence given in relation to a document admissible under subrule (1) may be contradicted or qualified by other evidence.

Rule 21 General and service knowledge

- (1) Proof is not required about knowledge that is not reasonably open to question and is common knowledge in the locality in which the proceeding is being held or generally, and the summary authority is to take knowledge of that kind into account.
 - (2) The summary authority does not require submissions to be made or evidence to be presented about such knowledge in order for the summary authority to accept it as fact.
 - (3) The summary authority is to give the parties the opportunity to make submissions, and to refer to relevant information, relating to the acquiring or taking into account of knowledge of the kind referred to in subrule (1), or knowledge within the general service knowledge of the summary authority described in section 147 of the Act, if it is necessary to prevent unfair prejudice to a party.
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Rule 22

Rule 22 Evidence of general orders

In proceedings before a summary authority, a document certified by an officer of the rank of Lieutenant Commander, Major, Squadron Leader, or above, to be a copy of a general order is evidence of that order unless the contrary is proved.

Rule 23 Certificate of analyst in respect of prohibited drugs

- (1) In summary authority proceedings 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) A document that purports to have been signed by an analyst for the purposes of subrule (1) is taken to have been so signed unless the contrary is proved.

Rule 24 Accused person — right to silence

- (1) Evidence that an accused person has failed to answer one or more questions put by a superior or an investigating officer is not relevant and must be disregarded by the summary authority.
- (2) If an accused person does not give evidence in the trial, that fact is not relevant and must be disregarded by the summary authority.

Rule 25 Competence of witness to give evidence

A person must not give evidence if the person:

- (a) is unable to comprehend the summary authority proceedings or an aspect of the proceedings; or
- (b) is unable to communicate to the satisfaction of the summary authority.

Rule 26 Compellability of witnesses — general

None of the following persons may be compelled to give evidence before a summary authority:

- (a) an accused person;
- (b) the spouse, de facto partner, parent or child of an accused person;
- (c) the prosecuting officer;
- (d) the defending officer.

Rule 27 Compellability of witness — self-incrimination

- (1) The accused may not be compelled to give evidence.
- (2) Other than by express limitations described elsewhere in these Rules, the accused, or their defending officer, the prosecuting officer and the summary authority may ask questions of any witness to the proceedings.
- (3) If a witness before a summary authority objects to giving evidence on the ground that the evidence may tend to incriminate the witness, or expose the witness to a penalty under an Australian law, the summary authority must not require the evidence to be given if satisfied there are reasonable grounds for the objection.
- (4) However, subrule (3) does not apply if:
 - (a) the witness is the accused person; and
 - (b) the evidence is relevant to an issue before the summary authority.

Rule 28 Witnesses — evidence by telephone or telecommunications device

A summary authority may allow evidence to be given in proceedings by means of a telephone or telecommunications device. In deciding whether or not evidence of this kind will be allowed, the summary authority may consider:

- (a) if the witness can be sworn;
- (b) if the summary authority and the accused person can hear and examine the witness who has been sworn;
- (c) the location and personal circumstances of the witness;

Rule 29

- (d) the costs that would be incurred if the witness were required to be physically present;
- (e) the nature of the witness's anticipated evidence;
- (f) any potential injustice to the accused or adverse impact upon the summary authority's ability to evaluate the evidence caused by the physical absence of that witness from the hearing;
- (g) the likely issues of credibility and reliability in assessing the evidence;
- (h) whether allowing the witness to give evidence in the proceedings by means of a telephone or telecommunications device is opposed; and
- (c) whether it is in the interests of the witness having regard to the type of evidence the witness is anticipated to provide or the characteristics of the witness.

Rule 29 Examination of witnesses

- (1) A witness before a summary authority may be:
 - (a) examined by the person who called the witness; and
 - (b) cross-examined by the other party to the proceedings.
- (2) Evidence that a witness has made a prior inconsistent statement is not to be adduced unless in cross-examination of that witness:
 - (a) the making of the prior inconsistent statement is brought to the witness' attention; and
 - (b) the witness has been invited to comment on it.
- (3) On the conclusion of any cross-examination, the witness may be re-examined, on matters arising out of the cross-examination, by the person who called the witness.
- (4) The summary authority may allow the cross-examination or re-examination of a witness to be postponed if the summary authority believes it is in the interests of justice to do so.
- (5) The summary authority may put questions to any witness.

- (6) If the witness answers a question put by the summary authority, the accused person and the prosecuting officer may, if authorised by the summary authority, put questions to the witness arising from the answer.

Rule 30 Recalling of witnesses and calling of further witnesses

- (1) An accused person, their defending officer or a prosecuting officer, if authorised by a summary authority, may recall a witness at any time before the summary authority makes a finding on the charge.
- (2) After the witnesses for the accused person have given their evidence, the prosecuting officer may, if authorised by the summary authority, call a witness to give evidence on any matter raised by the accused person in his or her defence if the evidence to be given by the witness:
- (a) could not properly have been given before the accused person presented his or her defence; or
 - (b) could not reasonably have been foreseen by the prosecuting officer before the accused person presented his or her defence.
- (3) The summary authority may, at any time before making a finding on the charge, call or recall a witness if the summary authority is satisfied that it is in the interests of justice to do so.
- (4) If a witness is called or recalled in accordance with this rule, the accused person and the prosecuting officer may, if authorised by the summary authority, put questions to the witness.

Rule 31 Witness statement — exhibit when witness not available

A summary authority may accept the evidence of a witness as a written statement if that witness is not present to give oral testimony and if the other party does not object to the tendering of the statement.

Rule 32 Witness statement — exhibit when witness available

A witness statement made by a person who is present to give oral testimony must not be tendered as an exhibit unless:

Rule 33

- (a) the maker of the statement testifies that the contents are true; or
- (b) the maker of the statement verifies by statutory declaration that the contents are true; and
- (c) the other party does not object to the tendering of the statement.

Rule 33 Securing appearance of witness on behalf of accused person

The summary authority must take the steps necessary to secure the appearance at summary authority proceedings of persons reasonably required by the accused person:

- (a) to appear to give evidence on the accused person's behalf; and
- (b) to produce documents (if required) on the accused person's behalf.

Rule 34 Exclusion of witness from proceedings

- (1) During summary authority proceedings, a witness must not, except by approval of the summary authority, be in the room where proceedings are being conducted before the witness is under examination.
- (2) The summary authority may direct a witness giving evidence to leave the room where the hearing is taking place until the summary authority decides whether or not to allow an objection in relation to:
 - (a) a question; or
 - (b) the evidence given, or about to be given, by the witness.
- (3) This rule does not require the accused person, the prosecuting officer, or a person representing the accused person, to be absent from the room where proceedings are being conducted, or to leave that room.

Rule 35 Payment of witness expenses

- (1) If a person other than a member of the Defence Force is summoned to appear as a witness before a summary authority, the person must be paid the fees, and allowances for expenses, in relation to the person's attendance that:

- (a) the summary authority considers appropriate; and
 - (b) are in accordance with the scale in section 11 of the *Public Works Committee Regulations 2016*, as in force from time to time.
- (2) At the request of the summary authority, the payment under subrule (1) must be performed as directed by the accused person's commanding officer.

Part 5 Exhibits

Rule 36 Exhibits

- (1) Any document or thing may be admitted by consent of the prosecuting officer and the defending officer or the accused person without requiring formal proof.
- (2) A document or thing that is admitted in evidence during summary authority proceedings must be made an exhibit.
- (3) However, if the summary authority is satisfied that:
 - (a) a copy of a document that is a correct copy has been admitted in evidence; or
 - (b) an extract of a document or book that is a correct extract has been admitted in evidence; or
 - (c) parts of a document or book that are a correct copy of parts of the document or book have been admitted in evidence;

the summary authority may make that copy, extract or parts as an exhibit in place of the original document or book.

- (4) An exhibit:
 - (a) must be recorded by the summary authority; and
 - (b) forms part of the record of the summary authority proceedings.

Rule 37 Inspection and copying of exhibits before proceedings

The accused person may, before the summary authority proceedings commence, ask the prosecuting officer for permission to inspect a proposed exhibit or to make a copy of a proposed exhibit, and the prosecuting officer shall make a proposed exhibit available for inspection or make a copy of a proposed exhibit in accordance with the request.

Rule 38 Inspection of exhibits during proceedings

- (1) An accused person, their defending officer or a prosecuting officer may, with permission of the summary authority, inspect or copy an exhibit during summary authority proceedings.
- (2) The summary authority must ensure that proper precautions are taken for the safety of the exhibit during inspection or copying.

Rule 39

Part 6 Procedure for imposing punishment or making an order

Rule 39 Imposition of punishment or order in case of breach of undertaking to be of good behaviour

- (1) This Rule applies to summary authority proceedings for the purpose of imposing punishment on, or making an order relating to, a convicted person in respect of a service offence for which the convicted person has given, in accordance with subsection 75(2) of the Act, an undertaking to another service tribunal to be of good behaviour for 12 months, and that convicted person is appearing before the summary authority in respect of a conviction for another service offence that occurred during the 12 month period of good behaviour.
- (2) After the service offence has been read to the summary authority, action must be taken in accordance with Rule 40:
 - (a) as if the person had been convicted by that summary authority; and
 - (b) in the case of subrules 40(1)(c) and (2)(b), as if the person had pleaded guilty to a charge of that offence.

Rule 40 Submissions and evidence under Part IV of the Act

- (1) After the conviction of a person by a summary authority, the prosecuting officer must submit:
 - (a) if the convicted person is a defence member or was a defence member at the time of commission of the offence, relevant particulars of the convicted person's service in the Defence Force;
 - (b) particulars of any previous convictions of the convicted person for service offences, civil court offences and the convicted person's service record;
 - (c) upon a plea of guilty, the material facts that show the nature and gravity of the offence; and
 - (d) any other matters relevant to determining action under Part IV of the Act.
 - (2) The convicted person may:
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- (a) give evidence, and call witnesses to give evidence, or tender statements or documents about their character and in mitigation of punishment;
- (b) upon a plea of guilty, dispute any of the facts relied upon by the prosecution to show the nature and gravity of the offence; and
- (c) address the summary authority in mitigation of punishment.

Part 7 Record of summary authority proceedings

Rule 41 Recording of summary authority proceedings

- (1) Subject to the exigencies of service, in the event of a not guilty plea being entered, a summary authority is to ensure that an audio recording of proceedings is made, recording from the commencement of the hearing of evidence until the conclusion of the hearing, including sentencing, if applicable.
- (2) The audio recording must be retained securely with other trial records.
- (3) During summary authority proceedings, a party may, with permission of the summary authority, have a particular part of the record of proceedings played.

Part 8 General summons provisions**Rule 42 Summons to witness**

A summons under subsection 138(2) of the Act must specify:

- (a) the name of the witness; and
- (b) if the witness has an employee identification number and rank — the employee identification number and rank of the witness; and
- (c) the purpose for which the witness is required to appear before the summary authority; and
- (d) the time and place at which the witness is required to appear.

Rule 43 Instrument to summons a witness to attend a summary proceeding

A summons that is required by subsection 138(2) of the Act to be served on a person other than the accused person must substantially follow the manner of service outlined in the *Defence Force Discipline Regulations 2018* at Regulation 41, as in force from time to time, and must be issued according to the instructions outlined in that Regulation.

Rule 44 Personal service of summons on witness

- (1) Personal service of a summons under this Part may be effected by serving on the witness:
 - (a) the original summons; or
 - (b) a copy of the summons.
- (2) If the witness refuses to accept personal service of the summons, service may be effected by leaving the summons in the presence of the witness.

Rule 45 Time for service of summons on witness

A summons to be served on a witness under subsection 138 (2) of the Act must be served:

Rule 45

- (a) in sufficient time for the attendance of the witness to be arranged; and
- (b) subject to the exigencies of service, to allow the witness reasonable time to make arrangements for their attendance.

7. The summary of the prosecution case against you with the attached Charge Sheet, will be provided to the summary authority to decide how to handle your case. But prior to the hearing time nominated above, you may agree with the summary of the prosecution case against you, or you may agree with prosecuting officer upon a different version of the facts to be provided to the summary authority.

8. If the summary authority proceeds to hear the charge(s), they will ask you to enter a plea of not guilty or guilty on each charge.

10. In some cases, during the hearing the summary authority may decide that if you were to be convicted they may require additional punishment powers to properly deal with your offending. If so, an in-trial election may be offered to you, asking you to choose whether you wish to have the charge(s) heard by the summary authority, or referred to the DMP to consider what further action to take. If you are offered an in-trial election, you have the right, and are encouraged, to seek legal advice about making the election offered to you.

11. If you are satisfied you should plead guilty to the charge(s) and your plea is accepted by the summary authority, the hearing of the charge(s) will be restricted only to issues of appropriate punishment. At such a hearing the summary authority will receive material from the prosecution relevant to punishment. The summary authority will consider your service record, any previous convictions you may have, including civilian court offences and overseas offences, honours and awards, and information about any injury, or the value of damages, or other victim impact, that was caused by the conduct alleged against you. You have the right to produce to the summary authority written and other material, such as character references, in mitigation of punishment.

12. If you enter a plea of guilty, the law requires the summary authority to take into account and make an appropriate allowance to reduce your punishment:

(1) for the fact you pleaded guilty, and especially whether your plea was given at the earliest available opportunity; and

(2) for your cooperation during the investigation and subsequent hearing.

13. If you plead not guilty, witness statements will be obtained from the prosecution witnesses and you will be entitled to receive a copy of all available witness statements and other relevant material at a reasonable time before the hearing to allow you to prepare your defence case. The summary authority will then hear the charge(s) against you and decide whether or not the prosecution has proved its case against you beyond reasonable doubt.

14. Whether you plead guilty or not guilty, you have the right to request the services of a specified member of the Defence Force to defend you at a hearing. That person must be permitted to defend you, unless their services are not reasonably available. If you cannot obtain a defending officer, you should raise this matter at the time specified in the Charge Sheet and the summary authority will assist you in finding an available person to assist you at your summary hearing. If your charges are being heard by a subordinate summary authority, you are not entitled to request a legal officer as your defending officer. Only at a hearing before a CO or SUPSA is the summary authority permitted to consider granting leave for representation by a legal officer.

Note: The name of this instrument was amended on registration as the instrument as lodged did not have a unique name (see subsection 10(2), *Legislation Rule 2016*).
