

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2007 No. 344**

Issued by the authority of the Judge Advocate General

*Defence Force Discipline Act 1982*

*Summary Authority Rules 2007*

Section 149 of the *Defence Force Discipline Act 1982* (the Act) provides that the Judge Advocate General may make rules of procedure, not inconsistent with the Act (including the regulations), providing for or in relation to the practice and procedure to be followed by service tribunals exercising power under the Act.

The *Defence Force Discipline Rules 1985* will be replaced by the *Australian Military Court Rules* and the *Summary Authority Rules* (the Rules) for all matters initiated after 5 October 2007 to reflect the amendments to the Act by the *Defence Legislative Amendment Act 2006*. The *Defence Force Discipline Rules 1985* will continue to apply, in the transition period, to all matters commencing prior to 5 October 2007.

The Rules reflect the changes to the Act with regard to terminology and the consequential changes due to the introduction of the Australian Military Court. The *Defence Force Discipline Rules 1985* provide the basis from which the Rules were drafted and the differences are minimal.

Details of the rules are outlined in the Attachment.

The Rules are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Rules commence on 5 October 2007.

There has been no consultation in the making of this instrument as it relates to the management and service of members of the Australian Defence Force.

## ATTACHMENT

### Details of the *Summary Authority Rules 2007*

#### Part 1

**Rule 1** identifies these rules as the *Summary Authority Rules*.

**Rule 2** sets the commencement date of these rules at 5 October 2007.

**Rule 3** allows for the transitional arrangements for the operation of the *Defence Force Discipline Rules 1985*.

**Rule 4** provides for the interpretation of certain terms and words within the Rules.

**Rule 5** provides that if a matter is not adequately covered by the Act or associated Rules or Regulations, then the matter may be dealt with in a manner consistent with a civil court in the Jervis Bay Territory or where appropriate in a manner consistent with the interests of justice.

**Rules 6 and 7** outline the Summons specifications and service in accordance with subsections 87(5) and 138(2) of the Act.

#### Part 2

**Rules 8-11** address the issue of charge sheets and charges. The charges must consist of statement and particulars, refer to only one offence and should be articulated well enough to enable the accused to know what is to be proven against them. The Rules permit more than one accused to be tried jointly in any proceedings.

#### Part 3

**Rule 12** compels a commanding officer to secure the appearance of any witnesses necessary and the production of relevant documents for a summary hearing.

**Rule 13** deals with the provision of witness statements to the accused prior to the summary hearing.

**Rule 14** excludes witnesses from the hearing room during proceedings before a summary authority except when giving evidence or if the witness is the accused or person representing the accused.

**Rule 15** outlines the power of examining, cross-examining or re-examining witnesses in summary proceedings.

**Rule 16** allows for the recalling of a witness, by leave of the summary authority at any stage prior to a finding being made as long as it is considered in the interests of justice.

**Rule 17** compels witnesses to reply promptly to questions unless privilege is claimed or the question is objected to, at which time the summary authority will rule on admissibility.

**Rule 18** provides for fees and allowances to be paid to non-defence member witnesses to compensate for costs in accordance with the *Public Works Committee Act 1969*.

#### **Part 4**

**Rule 19** outlines the general responsibilities of summary authorities. It ensures compliance with the Act and these Rules in a manner befitting a court of justice. It also protects the accused from being disadvantaged as a consequence of their position, knowledge or capability in legal matters and mandates that the accused must be tried according to the evidence and that an adequate record of the proceedings be made.

**Rule 20** provides the outline for the conduct of a hearing by a summary authority including the entitlement for the accused to be represented and the procedure by which the hearing is to be conducted. The summary authority is given to power to decide if the charges are within their jurisdiction and if so, to hear them. If the charges are outside the summary authority's jurisdiction and if there is insufficient evidence the summary authority may decide not to proceed. The Rules also give the option for referring the case to another summary authority or to the Director of Military Prosecutions.

**Rule 21** gives the accused a right to choose a specific member of the Defence Force to defend them in a proceeding before a summary authority unless the member is not reasonably available or in the case of a subordinate summary authority proceeding the member requested is a legal officer. A legal officer may be requested, where available, in commanding officer or superior summary authority proceedings, with leave by that authority. If the member requested is not reasonably available, the summary authority must direct a defence member to defend the accused person with the consent of the accused.

#### **Part 5**

**Rule 22** applies to a hearing by examining officers of evidence of a dangerously ill person under section 130A of the Act. It allows for the examination of dangerously ill persons if the evidence is in relation to a serious service offence, if the person is physically able to give evidence and the person is not likely to recover. The Rules specify that the accused must be informed of the intention to examine the dangerously ill person. Recording the evidence, signing the evidence and providing reasons for taking the evidence are also required.

**Rule 23** provides for the hearing of evidence by an examining officer, other than as described in Rule 22, under section 130A of the Act. The accused person must be given notice of the evidence being taken. The conduct of the hearing commences with the examining officer calling the witness, the accused person cross-examining and any re-examination necessary. On conclusion of the hearing of evidence the accused may give evidence or call witnesses who may then be examined, cross-examined and re-examined.

**Rule 24** states that Rules 21, 26, 27 and 28 apply to proceedings before an examining officer as if they were proceedings before a commanding officer.

## **Part 6**

**Rule 25** provides that a referral from the Director of Military Prosecutions must be to a specific superior summary authority or commanding officer.

## **Part 7**

**Rule 26** outlines the employment of, objections to and swearing of recorders and interpreters.

**Rule 27** provides for any form of oath to be binding on the person taking the oath.

**Rule 28** allows for adjournments to proceedings by the accused person or prosecutor on reasonable grounds, at any time.

**Rule 29** gives the accused person and prosecutor the right to argue and give evidence on a matter to be decided by the summary authority.

**Rule 30** requires the accused person to plead separately to each charge.

**Rule 31** allows the prosecutor to make an opening address stating the elements of the offence, the alleged facts and the nature of evidence relied upon to prove the alleged facts.

**Rule 32** provides that if the accused pleads guilty and the summary authority believes at any time that the accused person does not understand the effect of their guilty plea, a not guilty plea may be substituted and the proceedings should be conducted accordingly.

**Rule 33** permits the accused person an opportunity to submit that there is no case to answer at the completion of the prosecution's case.

**Rule 34** allows the defence to make an opening address stating the nature and general effect of the evidence to be presented if one or more witnesses are to be called.

**Rule 35** provides that both the prosecutor and the accused person, in that order, may make a closing address.

**Rule 36** states that after conviction on a plea of guilty the prosecutor must inform the summary authority of the material facts showing the nature and gravity of the offence which may be disputed by the accused person, who may then give evidence about the disputed facts.

**Rule 37** outlines the role of the prosecutor in outlining the convicted person's conduct record, particulars of service, any civilian offences and any other matters relevant to the sentencing of the person. In response the convicted person may offer mitigation.

## **Part 8**

**Rules 38 and 39** enables a summary authority to impose punishment if an undertaking for good behaviour is breached.

**Part 9**

**Rule 40** states that the record of proceedings of a hearing before a summary authority must contain the evidence of the witnesses and anything else necessary to show the merits of the case. If the proceedings are recorded and the matter is referred to the

Director of Military Prosecutions or if a conviction is recorded then a transcript must be prepared and authenticated by the recorder. The records of the proceeding must be certified by the summary authority.

**Rule 41** makes provision for any loss of the original record of proceedings, in which case a valid and sufficient copy may be used with a signature of the summary authority or examining officer attached.

**Schedule 1** provides the appropriate form for statement of offences as required for Subrule 9(4) for the *Defence Force Discipline Act 1985*, *Defence Force Discipline Regulations 1985* and the *Commonwealth Criminal Code Act 1995*.