



Summary Authority Rules¹

Select Legislative Instrument 2009 No. 248

I, RICHARD ROSS SINCLAIR TRACEY RFD, Acting Judge Advocate General, make the following Rules under section 149 of the *Defence Force Discipline Act 1982*.

Dated 22 September 2009

RICHARD ROSS SINCLAIR TRACEY
Acting Judge Advocate General

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Part 1 Preliminary

1 Name of Rules

These Rules are the Summary Authority Rules.

2 Commencement

These Rules commence on 22 September 2009.

3 Repeal

- (1) The Summary Authority Rules made on 17 September 2008 (the *old Rules*) are repealed.
- (2) The old Rules continue to apply to proceedings commenced after the commencement of the old Rules and before the repeal of the old Rules.

4 Definitions

In these Rules, unless the contrary intention appears:

Act means the *Defence Force Discipline Act 1982*.

authorized member of the Defence Force has the same meaning as in section 87 of the Act.

convicted person means a person convicted of a service offence by a summary authority.

defending officer means a member of the Defence Force secured, under rule 12, 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:

- (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.

recorder:

- (a) means a person who records the spoken word, by longhand, shorthand, mechanical or other means; and

Rule 5

- (b) includes a person who operates or transcribes mechanical or other recordings of the spoken word.

Note Other words and expressions used in these Rules are listed in section 3 of the Act, and have the meanings given by the Act. For example:

- (a) accused person;
- (b) authorized officer;
- (c) charge;
- (d) commanding officer;
- (e) hearing;
- (f) legal officer;
- (g) reparation order;
- (h) summary authority;
- (i) superior summary authority.

5 Matters not covered by the Act, these Rules or the regulations

If, in the course of or in relation to proceedings, a matter arises that is not adequately covered by the Act, these Rules or the regulations, the matter must be dealt with according to the interests of justice.

6 Instrument for section 194A of the Act

An instrument for section 194A of the Act may be issued by a summary authority and must:

- (a) be directed to the person in charge of the prison where the prisoner is undergoing the sentence of imprisonment; and
- (b) require the person to produce the prisoner at the time and place specified in the instrument; and
- (c) specify the purpose for which the prisoner is required to be produced.

Note Section 194A of the Act relates to the circumstance where a prisoner is required to appear as a witness before a summary authority.

Part 2 Charging and summoning accused person

7 Charge sheets

- (1) A charge against an accused person must be entered on a charge sheet.
- (2) A charge sheet may contain more than 1 charge.
- (3) Only 1 person may be charged in the 1 charge sheet.
- (4) Nothing in subrule (3) prevents a summary authority, at the hearing of a proceeding, from directing that 2 or more accused persons be dealt with or tried jointly in those proceedings in respect of:
 - (a) an offence alleged to have been committed by them jointly; or
 - (b) offences alleged to have been committed by them separately if the acts or omissions on which the charges are founded are so connected that it is in the interests of justice that they be dealt with or tried together.

8 Charges

- (1) A charge may state 1 offence only.
- (2) A charge must consist of 2 parts, namely:
 - (a) a statement of the offence which the accused person is alleged to have committed; and
 - (b) particulars of the act or omission constituting the offence.
- (3) A statement of an offence must contain:
 - (a) a sufficient statement of the offence; and
 - (b) in the case of an offence other than an offence against the common law — a reference to the provision of the law creating the offence.
- (4) Without limiting the form of a sufficient statement of the offence, a statement of the offence is sufficient if it is set out in the appropriate form in Schedule 1.
- (5) Particulars of an offence must contain a sufficient statement of the circumstances of the offence to enable the accused person to know what it is intended to prove against that person as constituting the offence.

9 How charges to be interpreted

The statement of an offence and particulars of that offence, in a charge, must be read and interpreted together.

Rule 10

10 Summons to accused person

- (1) A summons under subsection 87 (5) of the Act must specify:
 - (a) the name of the accused person; and
 - (b) the purpose for which the accused person is required to appear before the summary authority; and
 - (c) the time and place at which the accused person must appear.
- (2) If the accused person has an employee ID number and rank, the summons must also specify the employee ID number and rank.

11 Service of summons on accused person

- (1) For subsection 87 (5) of the Act, a summary authority must summon an accused person by causing a summons to be personally served on the accused person.
- (2) Personal service may be effected by serving on the accused person:
 - (a) the original summons; or
 - (b) a copy of the summons.
- (3) If the accused person refuses to accept personal service of the summons, service may be effected by leaving the summons in the presence of the accused person.

Part 3 Representation of accused person

12 Defence of accused person at summary hearing

- (1) An accused person may request the services of a specified member of the Defence Force to defend the accused person at the hearing of a proceeding before a summary authority.
- (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) leave 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 which have been 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.

13 Self-representation

- (1) An accused person may represent himself or herself.
- (2) A summary authority must ensure that an accused person does not choose to represent himself or herself until the accused person has been informed of the right to representation as described in rule 12.
- (3) The summary authority must also ensure that the accused person is not disadvantaged because of a decision to represent himself or herself.

Rule 14

Part 4 Disclosure of prosecution case**14 Accused person to be given copies of statements by witnesses**

If an authorized member of the Defence Force or a commanding officer causes a person to be given a copy of a charge under subsection 87 (1) or 95 (3) of the Act or to be served with a summons under subsection 87 (3) of the Act, that member or officer must cause the person to be given, before the person appears before a summary authority for a purpose relating to the charge, a copy of each statement in writing obtained by the prosecution from material witnesses to the alleged offence.

Part 5 Summary authority proceedings — general provisions

15 General responsibilities of summary authority

- (1) A summary authority must administer justice according to law without fear or favour, affection or ill-will.
- (2) In particular, the summary authority must:
 - (a) ensure that any proceedings before the authority are conducted in accordance with the Act and these Rules; and
 - (b) ensure that, in any proceedings before the authority, the accused person is not disadvantaged because of:
 - (i) the accused person's position; or
 - (ii) the accused person's ignorance; or
 - (iii) any inability of the accused person or the defending officer (if any) to challenge adequately the evidence presented by the prosecuting officer; or
 - (iv) any inability of the accused person or the defending officer (if any) to make the accused person's evidence clear and intelligible.

16 Order referring charge or case to superior summary authority or commanding officer

- (1) If the Director of Military Prosecutions refers a charge or a case to a superior summary authority or a commanding officer, the Director must, in the order referring the charge or the case, specify the superior summary authority or the commanding officer to whom the charge or case is referred.
- (2) If the charge is referred in accordance with paragraph 111C (7) (b) of the Act, the summary authority is not required to offer the accused person another election in accordance with section 111B of the Act.

Note The requirements of section 111B of the Act would be satisfied by the giving of an election, and a further election would not be required.

17 Administration of oaths and affirmations

A summary authority may allow a person to take an oath or affirmation in any manner that the person taking the oath or affirmation declares to be binding on the person.

Rule 18

18 Application by accused person or prosecuting officer for adjournment

The accused person or the prosecuting officer may, at any time, apply to the summary authority, on any reasonable grounds, for an adjournment of the proceedings.

19 Amendment of charge sheet by summary authority

If it appears to a summary authority at any time during proceedings that there is, in the charge sheet:

- (a) a mistake in the name or description of the accused person; or
- (b) a mistake attributable to a clerical error or omission;

the summary authority may amend the charge sheet to correct the mistake.

Note See also section 141A of the Act.

20 Recorders — general

A summary authority may arrange for a person to act as a recorder at the proceedings before him or her.

21 Recorders — objections

- (1) The accused person or a prosecuting officer may, at any stage in the proceedings, enter an objection to a recorder on either or both of the following grounds:
 - (a) the recorder is not able to properly record the proceedings;
 - (b) the recorder:
 - (i) is biased; or
 - (ii) is likely to be biased; or
 - (iii) is likely to be thought, on reasonable grounds, to be biased.
- (2) If the summary authority is satisfied that the accused person or the prosecuting officer has substantiated an objection entered under subrule (1), the summary authority must allow the objection.

22 Recorders — administration of oaths and affirmations

- (1) Before a person begins to act as a recorder, the summary authority must administer, or cause to be administered, an oath or affirmation to the person.
- (2) The oath or affirmation must be an oath or affirmation that the person will, to the best of the person's ability, truly record:
 - (a) the evidence to be given before the summary authority; and
 - (b) such other matters as may be required.

23 Interpreters — general

A summary authority may arrange for a person to act as an interpreter at the proceedings before him or her.

24 Interpreters — objections

- (1) The accused person or a prosecuting officer may, at any stage in the proceedings, enter an objection to an interpreter on either or both of the following grounds:
 - (a) the interpreter is not able to properly interpret the proceedings;
 - (b) the interpreter:
 - (i) is biased; or
 - (ii) is likely to be biased; or
 - (iii) is likely to be thought, on reasonable grounds, to be biased.
- (2) If the summary authority is satisfied that the accused person or the prosecuting officer has substantiated an objection entered under this rule, the summary authority must allow the objection.

25 Interpreters — administration of oaths and affirmations

- (1) Before a person begins to act as an interpreter, the summary authority must administer, or cause to be administered, an oath or affirmation to the person.
- (2) The oath or affirmation must be an oath or affirmation that the person will, to the best of the person's ability, truly interpret and translate as required.

Rule 26

Part 6 Summary authority proceedings — dealing with a charge

26 Dealing with a charge

- (1) A prosecuting officer must commence proceedings by reading the charge to the accused person.
- (2) After the prosecuting officer has read the charge, the summary authority must consider which of the following courses of action are open to him or her:
 - (a) trying the charge;
 - (b) referring the charge to the Director of Military Prosecutions;
 - (c) referring the charge to another summary authority;
 - (d) directing that the charge not be proceeded with.
- (3) The summary authority must then decide which of the courses of action to take for the charge.
- (4) To decide which of the courses of action to take:
 - (a) the summary authority may call on the prosecuting officer to provide an outline of the case; and
 - (b) if the prosecuting officer is called on, the prosecuting officer must state briefly:
 - (i) the elements of the offence that, on a trial of the charge, would have to be proved before the accused person could be found guilty and convicted; and
 - (ii) for each element — the alleged facts on which, on a trial of the charge, the prosecuting officer would rely to support the charge; and
 - (iii) the nature of the evidence that, on a trial of the charge, the prosecuting officer would propose to present to prove the alleged facts; and
 - (c) if the prosecuting officer is called on, the prosecuting officer may give an explanation of an alternative offence to the offence with which the accused person has been charged.
- (5) After hearing the outline of the case in accordance with subrule (4), the summary authority may hear evidence in relation to the charge in accordance with subsection 111A (1) of the Act.

Part 7 Summary authority proceedings — trying a charge

27 Application of Part 7

This Part applies to the trial of a charge by a summary authority.

28 Pleading to charges

If there is more than 1 charge against an accused person before a summary authority, the accused person must plead separately to each charge.

29 Plea of guilty — outline of charge and material facts for purpose of election during trial

- (1) For subparagraph 130 (1) (a) (ii) of the Act, and to allow the summary authority to make an assessment in accordance with subsection 131 (3) of the Act, if an accused person pleads guilty to a charge, the summary authority must call on the prosecuting officer to provide an outline of the material facts which show the nature and gravity of the offence.
- (2) If the prosecuting officer is called on, the prosecuting officer must provide the outline.

30 Opening address by prosecution

Before the first prosecution witness is called to give evidence at a trial, the prosecuting officer may make an opening address, stating briefly for each charge in the charge sheet:

- (a) the elements of the offence that must be proved before the accused person can be found guilty and convicted; and
- (b) for each element — the alleged facts on which the prosecuting officer will rely to support the charge; and
- (c) the nature of the evidence that the prosecuting officer proposes to present to prove the alleged facts.

31 Submission of no case to answer

After the prosecuting officer has adduced the prosecution evidence, the accused person, or a representative on behalf of the accused person, may submit to the summary authority that the evidence in relation to a charge is insufficient to support the charge.

Rule 32

32 Opening address by accused person or representative

The accused person, or a representative on behalf of the accused person, may make an opening address to the summary authority stating the nature and general effect of the evidence which the accused person proposes to introduce in his or her defence.

33 Closing addresses

- (1) After all of the evidence has been given:
 - (a) the prosecuting officer may make a closing address to the summary authority; and
 - (b) a closing address may be made to the summary authority by or on behalf of the accused person.
- (2) A closing address by the prosecuting officer must be made before the closing address (if any) made by or on behalf of the accused person.
- (3) If 2 or more accused persons are tried jointly, the summary authority is to determine the order of the closing addresses made by or on behalf of the accused persons.
- (4) If 2 or more accused persons are represented by the same person, that person may make 1 closing address only.

34 What summary authority can have regard to in making a finding as to whether or not a charge or alternative offence is proved

For the purpose of deciding, in accordance with paragraph 130 (1) (c), (e) or (f), or subsection 142 (2), of the Act whether or not a charge or an alternative offence has been proved, the summary authority may have regard only to:

- (a) matters within the general service knowledge of the summary authority; and
- (b) the evidence produced at the trial.

35 Reasons for finding of guilty and conviction

- (1) If a summary authority finds an accused person guilty and convicts the accused person, the summary authority must give reasons for the conviction.
- (2) If the summary authority makes any other order in relation to the accused person after finding the accused person guilty, the summary authority must give reasons for the order.

Part 8 Imposition of punishments and making of orders

36 Evidence of material facts after conviction on plea of guilty

If, on the trial of a charge, the accused person pleads guilty and is convicted, then:

- (a) the prosecutor must inform the summary authority of the material facts which show the nature and gravity of the offence; and
- (b) the convicted person may dispute any of these facts; and
- (c) the convicted person and the prosecutor may call evidence about any disputed fact.

37 Convicted person's record etc and plea in mitigation

- (1) After the conviction of a person by a summary authority, the prosecutor must give evidence of:
 - (a) if the convicted person is a defence member or was a defence member at the time of commission of the offence of which the convicted person has been convicted — relevant particulars of the convicted person's service in the Defence Force; and
 - (b) particulars of any previous convictions of the convicted person for service offences, civil court offences and overseas offences; and
 - (c) any other matters relevant to determining action under Part IV of the Act in relation to the convicted person as the summary authority requires.
- (2) The convicted person may:
 - (a) give evidence, and call witnesses to give evidence, about his or her character and in mitigation of punishment; and
 - (b) address the summary authority in mitigation of punishment.
- (3) Rule 48 applies to a witness (including the convicted person) who gives evidence under this rule as if a reference in that rule to the accused person were a reference to the convicted person.

38 Reasons for punishment or orders

If the summary authority imposes a punishment or makes an order in relation to the accused person after finding the accused person guilty, the summary authority must give reasons for the punishment imposed or order made.

Rule 39

Part 9 Rules of evidence**39 Evidence of general orders**

In proceedings before a summary authority, 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.

Note Section 121 of the *Defence Act 1903* provides for proof of orders and appointments.

40 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) For subrule (1), a document that purports to have been signed by an analyst is taken to have been so signed unless the contrary is proved.

41 Accused person — right to silence

- (1) Evidence that an accused person has failed to answer 1 or more questions put by 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.

42 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.

43 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) a person representing the accused person.

Rule 46

44 Compellability of witness — confidential communications

- (1) In this rule, a *confidential communication* is a communication in any form between:
 - (a) an accused person and a person representing the accused person; or
 - (b) an accused person and a person who has advised the accused person, before the commencement of the summary authority proceedings, about a charge that could have formed part of the summary authority proceedings; or
 - (c) the prosecuting officer and an accused person in respect of any discussion of a charge or a plea to a charge; or
 - (d) the prosecuting officer and a person representing the accused person in respect of any discussion of a charge or a plea to a charge.
- (2) However, a communication is not a *confidential communication* if the summary authority is satisfied that the parties to the communication:
 - (a) did not intend it to be confidential; or
 - (b) have consented to the disclosure of the communication.
- (3) A witness before a summary authority must not be required to disclose a confidential communication.
- (4) A witness before a summary authority must not be required to produce a document if that document would reveal a confidential communication.

Note Section 127 of the *Evidence Act 1995* applies to religious confessions.

45 Compellability of witness — self-incrimination

- (1) 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.
- (2) However, subrule (1) does not apply if:
 - (a) the witness is the accused person; and
 - (b) the evidence is relevant to an issue before the summary authority.

46 Witnesses — evidence by audio-visual link or audio link

- (1) A summary authority may, on the application of a party, direct that a witness before a summary authority may give evidence by audio-visual link or audio link from a place in or outside Australia.
- (2) The summary authority may revoke the direction:
 - (a) at any time; and
 - (b) on its own initiative or on the application of a party.

Rule 47

- (3) A document may be used during the testimony of the witness by sending a copy from the place or from the hearing.
- (4) An object may be used during the testimony of the witness by sending an image of the object from the place or from the hearing.

47 Witnesses — sworn evidence

- (1) A witness before a summary authority must give sworn evidence.
- (2) However, if the summary authority is satisfied that a person is incapable of understanding that, in giving evidence, he or she is under a legal obligation to give truthful evidence:
 - (a) the person must not give sworn evidence; and
 - (b) the person may give unsworn evidence only if the summary authority is satisfied that the person understands the difference between the truth and a lie.
- (3) If a witness before a summary authority is to give sworn testimony, the person must, subject to rule 17, be sworn by the administration of the following witness oath or affirmation:

Form of oath

I swear by Almighty God that the information I am about to give shall be the truth, the whole truth and nothing but the truth.

Form of affirmation

I do solemnly, sincerely and truly declare and affirm that the information I am about to give shall be the truth, the whole truth and nothing but the truth.

48 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 or by a co-accused.
- (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.

Rule 50

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

49 Recalling of witnesses and calling of further witnesses

- (1) A prosecuting officer or an accused person may, by leave of a summary authority, recall a witness at any time before the summary authority makes a finding on the charge.
- (2) After the witnesses for the defence have given their evidence, the prosecuting officer may, by leave of 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, by leave of the summary authority, put questions to the witness.

50 Witness to reply immediately

- (1) A witness before a summary authority must reply immediately to each question put to the witness.
- (2) However, if:
 - (a) a question is objected to; or
 - (b) a witness claims that he or she is not compellable in accordance with section 127 of the *Evidence Act 1995* or these Rules;the witness must not answer the question unless the summary authority overrules the objection or claim.

Rule 51

51 Tender of witness statements

- (1) If notice is given in accordance with this rule, a party may tender as an exhibit to the summary authority the statement of any witness, instead of calling the witness to testify, unless:
 - (a) notice is received in accordance with subrule (5) that the witness is required; and
 - (b) the witness:
 - (i) is reasonably available to give evidence in person, having regard to the exigencies of service; or
 - (ii) is reasonably available to give evidence by audio-visual link or audio link, having regard to the exigencies of service.
- (2) If, in the opinion of the summary authority, a witness is not reasonably available to testify within the meaning of subrule (1), the party may apply to tender the witness statement.
- (3) The summary authority must not accept a witness statement tendered under subrule (2) unless:
 - (a) the opposing party consents; or
 - (b) the summary authority is satisfied that no injustice will be suffered by the opposing party, having regard to:
 - (i) the foreshadowed evidence of the witness; and
 - (ii) the reasons given for requiring the witness to testify; and
 - (iii) whether the witness gives primary or secondary evidence of relevant facts; and
 - (iv) whether the credibility of the witness can be adequately assessed; and
 - (v) the weight of the evidence of the witness, if accepted; and
 - (vi) any other matter that the summary authority considers relevant to the evidence of the witness.
- (4) Notice of an intention to tender a witness statement must be given in writing to the opposing party, and must:
 - (a) include a copy of the witness statement; and
 - (b) state that the party receiving the notice has the right to require the witness to testify provided that is done within the time stated in the notice; and
 - (c) be served no later than 48 hours before the scheduled commencement of the proceeding.
- (5) Notice that the witness is required to testify must be delivered in writing to the opposing party no later than 24 hours before the scheduled commencement of the proceeding.
- (6) A party may consent to a lesser period of notice than specified by this rule.

Rule 54

52 Witness statement — exhibit

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

- (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; or
- (c) the other party does not object to the tendering of the statement.

53 Relevance

- (1) Any element of a charge that is not admitted by the accused is an issue for determination.

Note The criminal responsibility of an accused, or a statutory defence, may be issue for determination.

- (2) 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.
- (3) 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.
- (4) Evidence that is relevant to an issue or credibility is admissible in summary authority proceedings unless it is excluded under these Rules.
- (5) Evidence that is not relevant to an issue or credibility is not admissible in summary authority proceedings.

54 Credibility

- (1) The summary authority must assess the credibility of a witness by determining whether the testimony of the witness is:
 - (a) truthful; and
 - (b) reliable.
- (2) In considering whether the testimony is truthful, the summary authority may have regard to whether the witness:
 - (a) has a motive for being untruthful; or
 - (b) demonstrates a lack of objectivity; or
 - (c) has made any complaint or report of the conduct which is the subject of a charge before the summary authority, and, if so, the interval between the conduct and the complaint or report; or
 - (d) has previously made an oral or written statement that is inconsistent with the testimony; or
 - (e) subject to rule 59 for the accused person — has any previous convictions for dishonesty, perjury or making false representations; or
 - (f) is evasive, vague, equivocal or argumentative in answering questions.

Rule 55

- (3) Subrule (2) does not limit the matters that the summary authority may take into account in considering whether the testimony is truthful.
- (4) In considering whether the testimony is reliable, the summary authority may have regard to the following matters:
 - (a) the time that has elapsed since the subject of the testimony occurred;
 - (b) the ease or difficulty the witness has in recollection;
 - (c) whether the witness made a record in writing of relevant observations at a time when the observations were still fresh in the mind of the witness;
 - (d) any disability or impairment of the witness, temporary or not, that could affect observations made by the witness or the testimony of the witness;
 - (e) the quality of any observation made by reference to:
 - (i) the time available for the observation; and
 - (ii) the circumstances of the observation; and
 - (iii) the familiarity of the witness with the subject of the observation;
 - (f) the consistency of the testimony of the witness when considered as a whole, and also when compared with all other evidence in the case;
 - (g) if the witness gives secondary evidence — the matters mentioned in paragraphs 56 (3) (b) to (e).
- (5) Subrule (4) does not limit the matters that the summary authority may take into account in considering whether the testimony is reliable.

Examples — truthful but not reliable

1 A mess is broken into at night. A person is seen running away carrying alcohol. The offender is unknown to the witness. The witness observes the offender in low light at a distance.

The witness is being truthful in stating that the offender is the accused before the summary authority, but the evidence would have very low reliability because of paragraph (4) (e). The evidence could still be considered in the case as a whole, for example in conjunction with evidence that upon a search of the accused person's accommodation alcohol matching the stolen items was discovered.

2 A witness may be truthful, but mistaken, because of a temporary impairment at the time of observation such as exhaustion or intoxication — see paragraph (4) (d).

55 Primary evidence

Primary evidence is evidence of the perceptions of a witness.

Examples

1 If evidence refers to a fact which could be seen, it is the primary evidence of a witness who says that he or she saw it.

2 If evidence refers to a fact which could be heard, it is the primary evidence of a witness who says that he or she heard it.

3 If evidence refers to a fact which could be perceived by any other sense, or in any other manner, it is the primary evidence of a witness who says that he or she perceived it by that sense or in that manner.

Rule 57

56 Secondary evidence

- (1) Secondary evidence is evidence of a statement made by a person who is not called as a witness for the purpose of proving the statement is true.
- (2) However, subrule (1) does not apply to:
 - (a) documentary evidence; or
 - (b) an admission made by an accused person.

Note Rules for documentary evidence are set out in rule 57.

- (3) The summary authority must assess secondary evidence that he or she receives, having regard to:
 - (a) the credibility of the witness repeating the statement; and
 - (b) the possibility that the witness misheard or misunderstood the statement; and
 - (c) the possibility that the person who made the statement was not being truthful; and
 - (d) the possibility that the person who made the statement was mistaken; and
 - (e) the fact that the credibility of the person who made the statement cannot be tested in cross-examination.

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 secondary evidence to the extent that it relates to the purpose of proving that Private Smith was not on duty.

57 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.

Rule 58

- (2) However, subrule (1) does not apply to a record created in the course of:
 - (a) an investigation conducted under Part VI of the Act; or
 - (b) an investigation conducted by a civilian police force; or
 - (c) any other investigation or inquiry conducted into an incident that gave rise to a charge of a service offence.
- (3) For subrule (1), a document includes a copy of a document.
- (4) Evidence given in relation to an admissible document may be given by statutory declaration, unless the summary authority is satisfied that giving the evidence in that way would be unfair.
- (5) To avoid doubt, evidence given in relation to an admissible document may be contradicted or qualified by other evidence.

Note Section 121 of the *Defence Act 1903* provides for proof of orders and appointments.

58 Opinion evidence

- (1) Evidence of an opinion is not admissible to prove the truth of any matter about which the opinion was expressed unless:
 - (a) the opinion is based on what the person saw, heard or otherwise perceived about a matter or event, and evidence of the opinion is necessary to obtain an account or understanding of the person's perception of the matter or event; or
 - (b) the opinion is expressed by a person who has specialised knowledge based on the person's training, study or experience, and the opinion is wholly or substantially based on that knowledge in the context of the facts of the case relevant to the formation of the opinion.
- (2) The summary authority is not required to accept the opinion of a person who is presented as having specialised knowledge based on the person's training, study or experience if:
 - (a) the summary authority is not satisfied that the person has the appropriate training, study or experience; or
 - (b) the person's opinion is based on assumptions that the summary authority does not find proven; or
 - (c) the opinion is contradicted by another person who has specialised knowledge based on the person's training, study or experience; or
 - (d) the opinion is not in accord with other evidence in the case.

59 Character evidence

- (1) Evidence of the good character of the accused person is admissible in summary authority proceedings.
- (2) Evidence of the bad character of the accused person is admissible in summary authority proceedings if the evidence:
 - (a) satisfies rule 60; or

Rule 60

- (b) is relevant to the consideration of the punishment of the accused person.
- (3) Evidence of a prior conviction of the accused person is admissible in summary authority proceedings if the evidence:
 - (a) satisfies rule 60; or
 - (b) is relevant to the consideration of the punishment of the accused person.
- (4) Evidence of the bad character of the accused person, or of a prior conviction of the accused person, is not admissible in summary authority proceedings in any other circumstances.

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.

60 Related misconduct evidence

- (1) In summary authority proceedings, evidence tending to show that the accused has committed an offence other than the offence or offences in the charge sheet is not admissible unless the evidence has a specific connection to an issue before the summary authority.
- (2) A specific connection between evidence and an issue is not established by evidence tending to show only that the accused has a history of committing the offence in the charge sheet.
- (3) In summary authority proceedings, evidence tending to show that the accused has engaged in misconduct other than the commission of an offence is not admissible unless the evidence has a specific connection to an issue before the summary authority.
- (4) A specific connection between evidence and an issue is not established by evidence tending to show only that the accused has a history of engaging in particular misconduct.

Example

If the accused person is charged with theft from an accommodation block, evidence of the person's previous convictions, or previous convictions for theft, would not be admissible.

However if:

- (a) the offender left a highly distinctive graffiti symbol where the theft took place; and
- (b) the accused person has a prior conviction for theft where the same distinctive graffiti symbol had been left;

the prior conviction would have a specific connection to the current charge.

Rule 61

61 Tangible evidence

- (1) In this rule, *tangible evidence* is evidence that can be directly examined by a summary authority.

Examples

Equipment, printouts, photographs, charts and diagrams.

- (2) In considering the weight that is to be given to tangible evidence, the summary authority must have regard to:
- (a) the authenticity of the tangible evidence; and
 - (b) the accuracy of the tangible evidence.
- (3) If the tangible evidence is a device, the summary authority must also have regard to its sensitivity, reliability and consistency.
- (4) Subrules (2) and (3) do not limit the matters that the summary authority may take into account in considering the weight that is to be given to the tangible evidence.
- (5) The summary authority may order that a demonstration, experiment or inspection be held if:
- (a) the summary authority is satisfied that the demonstration will assist in resolving an issue or understanding evidence; and
 - (b) the parties will be given a reasonable opportunity to be present.

62 Discretion to exclude

A summary authority may exclude evidence that would otherwise be admissible in summary authority proceedings if the accused person satisfies the summary authority that:

- (a) the evidence was obtained unlawfully; or
- (b) it would otherwise be unfair to the accused person to admit the evidence.

63 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.

64 Assessment of evidence

- (1) A summary authority must assess all evidence in summary authority proceedings according to the probative value, credibility and weight of the evidence.
- (2) The probative value of evidence is the degree to which the evidence alters the probability of whether a disputed fact is true or not true.

Rule 64

- (3) The credibility of the evidence is where the evidence falls on a scale from being undoubtedly false to being undoubtedly true.
- (4) The weight of an item of evidence consists of:
 - (a) the importance of the fact to which the evidence is relevant; and
 - (b) the probative value of the evidence; and
 - (c) the credibility of the evidence.
- (5) In assessing particular evidence, the summary authority must have regard to the evidence as a whole.

Rule 65

Part 10 Witnesses

Note Part 9 deals with the competence of witnesses to give evidence, the compellability of witnesses, the calling of witnesses to testify (in person, via audio-visual link or via audio link), the requirement that witnesses give sworn evidence, and when (and how) witnesses statements can be tendered as evidence.

65 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.

66 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 ID number and rank — the employee ID 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.

67 Service of summons to witness

- (1) A summons that is required by subsection 138 (2) of the Act to be served on a person other than the accused person must be served:
 - (a) by personally delivering the summons to that person; or
 - (b) by prepaying and posting the summons as a letter addressed to that person at:
 - (i) the place where the person was last known to live; or
 - (ii) the place where the person carries on business; or
 - (iii) if the person carries on business at 2 or more places — 1 of those places; or
 - (c) by leaving the summons:
 - (i) at the place where the person was last known to live; and
 - (ii) with another person who appears to live at that place and appears to be at least 16 years old; or
 - (d) by leaving the summons:
 - (i) at the place where the person was last known to carry on business, or, if the person was last known to carry on business at 2 or more places, at 1 of those places; and

Rule 70

- (ii) with another person who appears to be in the service of the person and appears to be at least 16 years old; or
- (e) with the person's consent — by fax or email.

Note A person may be served with a summons under this rule whether the person is a member of the Defence Force or not — see subsection 138 (2) of the Act.

- (2) If the summons is served by fax:
 - (a) the summons is taken to be served on completion of the transmission; and
 - (b) the person serving the summons must retain a paper copy of the receipt or delivery notice of the fax.
- (3) If the summons is served by email:
 - (a) the summons is taken to be served at the time of receipt of the email; and
 - (b) the person effecting the service must retain a paper copy of the receipt or delivery notice of the email.
- (4) If the summons is served on a corporation, the corporation may comply with the summons by authorising and ensuring attendance by its appropriate or proper officer.

68 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.

69 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:

- (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 his or her attendance.

70 Exclusion of witness from proceedings

- (1) During summary authority proceedings, a witness must not, except by leave of the summary authority, be in the room where proceedings are being conducted (the *hearing room*) while the witness is not under examination.
- (2) The summary authority may direct a witness to leave the hearing room until the summary authority decides whether to allow an objection in relation to:
 - (a) a question; or

Rule 71

- (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 hearing room or to leave the hearing room.
- (4) If the summary authority proceedings are not being held in a hearing room, a reference to the hearing room is a reference to the immediate vicinity of the place where the proceedings are being conducted.

71 Payment of witnesses 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 Schedule 2 to the *Public Works Committee Regulations 1969*, as in force from time to time.

Note The *Public Works Committee Regulations 1969* are made under the *Public Works Committee Act 1969*.

- (2) At the request of the summary authority, the functions in subrule (1) must be performed by the accused person's commanding officer.

Part 11 Exhibits

72 Exhibits

- (1) A document or thing that is admitted in evidence during summary authority proceedings must be made an exhibit.
- (2) 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 an exhibit in place of the original document or book.
- (3) An exhibit:
 - (a) must be recorded by the summary authority; and
 - (b) forms part of the record of the summary authority proceedings.

73 Inspection and copying of exhibits before proceedings

- (1) The accused person may, before the summary authority proceedings commence, ask the prosecuting officer for permission to inspect the proposed exhibit or to make a copy of a proposed exhibit.
- (2) The prosecuting officer must ensure that the custodian of the proposed exhibit allows the accused person to inspect the proposed exhibit, to make a copy of the proposed exhibit, or both, before the summary authority proceedings commence.
- (3) The custodian of the proposed exhibit must ensure that proper precautions are taken for the safety of the proposed exhibit during inspection or copying.

74 Inspection of exhibits during proceedings

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

Rule 75

Part 12 Procedure for imposing punishment or making an order in case of breach of undertaking to be of good behaviour

75 Application of Part 12

- (1) This Part applies to summary authority proceedings for the purpose of imposing punishment on a convicted person in respect of a service offence in relation to 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.
- (2) This Part also applies to summary authority proceedings for the purpose of making an order relating to the convicted person in respect of the service offence.

76 Evidence of material facts, convicted person's record etc and plea in mitigation

After the service offence has been read to the summary authority, action must be taken in accordance with rules 36 and 37:

- (a) as if the person had been convicted by that summary authority; and
- (b) in the case of rule 36, as if the person had pleaded guilty to a charge of that offence.

Part 13

Record of summary authority proceedings

77 Keeping record of summary authority proceedings

- (1) A summary authority must ensure that an adequate record of summary authority proceedings is kept in accordance with this rule.
- (2) The record of proceedings must contain:
 - (a) the substance of the evidence of any witness called to testify; and
 - (b) an explanation of any additional matter as is necessary to enable the merits of the case to be determined; and
 - (c) the findings of the summary authority; and
 - (d) any punishment imposed by the summary authority; and
 - (e) any order made by the summary authority; and
 - (f) the reasons given for any conviction, punishment or order.

Note A document or thing admitted in evidence must be made an exhibit (including any witness statement tendered as evidence), and all exhibits must be recorded by the summary authority and form part of the record of the summary authority proceedings.

- (3) If the summary authority proceedings are recorded by means of shorthand or sound recording apparatus, and the proceedings result in:
 - (a) a referral to the Director of Military Prosecutions; or
 - (b) a conviction on 1 or more charges on the charge sheet (including alternative charges);the recorder, or another person selected for the purpose of transcribing the proceedings, must prepare a transcript in writing which must be authenticated by the person who made the transcript.
- (4) As soon as practicable after the conclusion of a hearing before a summary authority, the record of proceedings of the hearing must be certified as true and correct by:
 - (a) the summary authority; and
 - (b) if the matter was recorded by a person other than the summary authority — the other person.

78 Securing record of summary authority proceedings

A summary authority must ensure that the record of proceedings is properly secured during the summary authority proceedings.

Rule 79

79 Inspection of record of proceedings etc during summary authority proceedings

- (1) During summary authority proceedings, a party may, by leave of the summary authority, have a particular part of the record of proceedings read, played or related back to the party.
- (2) Subrule (1) applies only to the extent that the record of proceedings which has been kept allows.

80 Loss of original record of summary authority proceedings

If, at any time, the whole or any part of the original record of summary authority proceedings is lost, or unable to be retrieved, a valid and sufficient record of the proceedings for all purposes may be made by attaching the signature of the summary authority to a copy of the record of proceedings.

Schedule 1 Statement of offences

(subrule 8 (4))

Part 1 Offences against *Defence Force Discipline Act 1982*

Item	Provision	Offence
1	Section 15	Abandoning or surrendering a (place) (post) (service ship) (service aircraft) (service armoured vehicle)
2	Section 15A	Causing the capture or destruction of a (service ship) (service aircraft) (service armoured vehicle)
3	Section 15B	Aiding the enemy while captured
4	Section 15C	Providing the enemy with material assistance
5	Section 15D	Harbouring enemies
6	Subparagraph 15E (1) (b) (i)	Giving false communication
7	Subparagraph 15E (1) (b) (ii)	Altering or interfering with communication
8	Subparagraph 15E (1) (b) (iii)	Altering or interfering with apparatus for giving or receiving communication
9	Section 15F	Failing to carry out orders
10	Section 15G	Imperilling the success of operations
11	Section 16	Communicating with the enemy
12	Section 16A	Failing to report information received from the enemy
13	Section 16B	Committing the offence of [name of offence against section 15 to 16A (other than section 15B or 15C)] with intent to assist the enemy
14	Paragraph 17 (1) (a)	Leaving (post) (position) (place) in connection with operations
15	Paragraph 17 (1) (b)	Abandoning (weapons) (other equipment) in connection with operations
16	Paragraph 17 (1) (c)	Failing to properly perform duty in attacking or defending against the enemy
17	Subsection 18 (1)	Endangering morale
18	Subsection 18 (2)	Endangering morale in connection with operations
19	Subsection 19 (1)	Failing to rejoin force
20	Subsection 19 (2)	Preventing another rejoining (his) (her) force
21	Subsection 19 (3)	Securing favourable treatment to detriment of others

Item	Provision	Offence
22	Subsection 19 (4)	Ill-treating other persons over whom member has authority
23	Subsection 20 (1)	Mutiny
24	Subsection 20 (2)	Mutiny in connection with service against enemy
25	Subsection 21 (1)	Failing to suppress mutiny
26	Subsection 21 (2)	Failing to suppress mutiny in connection with service against enemy
27	Subsection 22 (1)	Absence from place of duty with intention to avoid active service
28	Subsection 22 (2)	Absence without leave with intention to avoid active service
29	Subsection 23 (1)	Absence from duty — failure to attend
30	Subsection 23 (2)	Absence from duty — ceasing to perform
31	Section 24	Absence without leave
32	Section 25	Assaulting a superior officer
33	Subsection 26 (1)	Engaging in (threatening) (insubordinate) (insulting) conduct
34	Subsection 26 (2)	Using (threatening) (insubordinate) (insulting) language
35	Section 27	Disobeying lawful command
36	Section 28	Failing to comply with direction of person in command of (service ship) (service aircraft) (service vehicle)
37	Section 29	Failing to comply with general order
38	Subsection 30 (1)	Assaulting a guard
39	Subsection 30 (2)	Assaulting a guard in connection with operations against the enemy
40	Subsection 31 (1)	Obstructing a police member
41	Subsection 31 (2)	Refusing to assist a police member
42	Paragraph 32 (1) (a)	Sleeping (at post) (on watch) while on (guard duty) (watch)
43	Paragraph 32 (1) (b)	Sleeping on duty while on (guard duty) (watch)
44	Paragraph 32 (1) (c)	Being intoxicated while on (guard duty) (watch)
45	Paragraph 32 (1) (d)	(Leaving post) (absence from place of duty) while on (guard duty) (watch)
46	Subsection 32 (3)	Committing the offence of [name of offence against paragraph 32 (1) (a), (b), (c) or (d)] in connection with service against enemy

Item	Provision	Offence
47	Paragraph 33 (a)	Assaulting another person (on service land) (in service ship) (in service aircraft) (in service vehicle) (in a public place)
48	Paragraph 33 (b)	Creating a disturbance (on service land) (in service ship) (in service aircraft) (in service vehicle) (in a public place)
49	Paragraph 33 (c)	Engaging in obscene conduct (on service land) (in service ship) (in service aircraft) (in service vehicle) (in a public place)
50	Paragraph 33 (d)	Using (insulting) (provocative) words (on service land) (in service ship) (in service aircraft) (in service vehicle) (in a public place)
51	Section 34	Assaulting a subordinate
52	Section 35	Negligent performance of duty
53	Subsection 36 (1)	Dangerous conduct with knowledge of consequences
54	Subsection 36 (2)	Dangerous conduct with recklessness as to consequences
55	Subsection 36 (3)	Dangerous conduct with negligence as to consequences
56	Section 36A	Unauthorised discharge of weapon
57	Section 36B	Negligent discharge of weapon
58	Section 37	Being intoxicated (while on duty) (when reporting for duty) (when required to report for duty)
59	Paragraph 38 (1) (a)	Malingering — self injury
60	Paragraph 38 (1) (b)	Malingering — prolonging sickness or disability
61	Subsection 38 (2)	Malingering — falsely representing oneself as suffering from physical or mental condition
62	Subsection 39 (1)	Intentionally causing (loss of) (stranding of) (hazarding of) service ship
63	Subsection 39 (2)	Recklessly causing (loss of) (stranding of) (hazarding of) service ship
64	Subsection 39 (3)	Negligently causing (loss of) (stranding of) (hazarding of) service ship
65	Subsection 40 (1)	Driving a service vehicle while intoxicated
66	Subsection 40 (2)	Driving a vehicle on service land while intoxicated
67	Subsection 40A (1)	Dangerous driving of a service vehicle
68	Subsection 40A (2)	Dangerous driving of a vehicle on service land
69	Paragraph 40C (1) (a)	Driving a service vehicle while not authorised
70	Paragraph 40C (1) (b)	Using a service vehicle for an unauthorised purpose

Item	Provision	Offence
71	Subsection 40D (1)	Driving a service vehicle without due care and attention or without reasonable consideration
72	Subsection 40D (2)	Driving a vehicle on service land without due care and attention or without reasonable consideration
73	Section 41	Flying a service aircraft below the minimum height
74	Section 42	Giving inaccurate certification to a matter affecting a (service ship) (service aircraft) (service vehicle) (service missile) (service weapon)
75	Subsection 43 (1)	Intentionally (destroying) (damaging) service property
76	Subsection 43 (2)	Recklessly (destroying) (damaging) service property
77	Subsection 43 (3)	Negligently (destroying) (damaging) service property
78	Section 44	Losing service property
79	Section 45	Unlawful possession of service property
80	Section 46	Possession of property suspected of having been unlawfully obtained
81	Section 47C	Theft
82	Section 47P	Receiving stolen property
83	Subsection 48 (1)	Looting
84	Subsection 48 (2)	Receiving looted property
85	Section 49	Refusing to submit to arrest
86	Section 49A	Assault against arresting person
87	Subsection 50 (1)	Delaying or denying justice by failing to take action to have charge dealt with
88	Subsection 50 (2)	Delaying or denying justice by failing to take action to (release) (order release) of a person
89	Section 51	Escaping from custody
90	Section 52	Giving false evidence before a service tribunal
91	Subparagraph 53 (1) (b) (i)	Failing to appear before a service tribunal as required by (summons) (order)
92	Subparagraph 53 (1) (b) (ii)	Failing to appear and report when not excused by service tribunal
93	Paragraph 53 (2) (a)	Refusing to take an oath or make an affirmation before a service tribunal
94	Paragraph 53 (2) (b)	Refusing to answer a question before a service tribunal
95	Paragraph 53 (2) (c)	Refusal to produce a document required by (summons) (order) before a service tribunal

Item	Provision	Offence
96	Paragraph 53 (4) (a)	Insulting a (summary authority)
97	Paragraph 53 (4) (b)	Interrupting proceedings of a service tribunal
98	Paragraph 53 (4) (c)	Creating a disturbance (in) (near) a service tribunal
99	Paragraph 53 (4) (d)	Engaging in conduct that would constitute contempt of a service tribunal
100	Subsection 54 (1)	Intentionally allowing a person in custody to escape
101	Subsection 54 (2)	Unlawfully releasing a person in custody
102	Subsection 54 (3)	Facilitating escape of a person in custody
103	Subsection 54 (4)	Conveying a thing into place of confinement with intent to facilitate escape of a person
104	Paragraph 54A (1) (a)	Detainee making unnecessary noise
105	Paragraph 54A (1) (b)	Detainee committing a nuisance
106	Paragraph 54A (1) (c)	Detainee being (idle) (careless) (negligent) at work
107	Paragraph 54A (1) (d)	Detainee unlawfully communicating with another person
108	Paragraph 54A (1) (e)	Detainee unlawfully (giving) (receiving) any thing
109	Paragraph 54A (1) (f)	Detainee unlawfully being in possession of any thing
110	Paragraph 54A (1) (g)	Detainee unlawfully (entering) (leaving) cell
111	Subsection 54A (2)	Detainee failing to comply with a condition of grant of leave of absence
112	Subsection 54A (6)	Aiding, abetting etc the commission of [name of offence against subsection 54A (1) or (2)]
113	Paragraph 55 (1) (a)	(Making) (signing) false service document
114	Paragraph 55 (1) (b)	Making false entry in service document
115	Paragraph 55 (1) (c)	Altering a service document
116	Paragraph 55 (1) (d)	(Suppressing) (defacing) (making away with) (destroying) a service document
117	Paragraph 55 (1) (e)	Failing to make an entry in a service document
118	Subsection 56 (1)	Knowingly making false or misleading statement in relation to application for benefit
119	Subsection 56 (4)	Recklessly making false or misleading statement in relation to application for benefit
120	Paragraph 57 (1) (a)	Person giving false answer to a question in a document relating to appointment or enlistment
121	Paragraph 57 (1) (b)	Person giving false information or document in relation to appointment or enlistment
122	Paragraph 57 (1) (c)	Person failing to disclose prior service

Item	Provision	Offence
123	Paragraph 57 (2) (a)	Member giving false answer to question in a document relating to appointment or enlistment
124	Paragraph 57 (2) (b)	Member giving false information or document in relation to appointment or enlistment
125	Paragraph 57 (2) (c)	Member failing to disclose prior service
126	Section 58	Unauthorised disclosure of information
127	Subsection 59 (1)	(Selling) (dealing) (trafficking in) prohibited drug outside Australia
128	Subsection 59 (3)	Possession of prohibited drug outside Australia
129	Subsection 59 (5)	Administering prohibited drug outside Australia
130	Subsection 59 (6)	Administering prohibited drug in Australia
131	Subsection 59 (7)	Possession of non-trafficable quantity of prohibited drug in Australia
132	Section 60	Prejudicial conduct
133	Subsection 61 (1)	Engaging in conduct in the Jervis Bay Territory that is a Territory offence [name of offence and provision of law contravened]
134	Subsection 61 (2)	Engaging in conduct in a public place outside the Jervis Bay Territory that is a Territory offence [name of offence and provision of law contravened]
135	Subsection 61 (3)	Engaging in conduct outside the Jervis Bay Territory that is a Territory offence [name of offence and provision of law contravened]
136	Section 62	Commanding or ordering commission of service offence
137	Subsection 101QA (1)	Failing to submit to medical examination
138	Subsection 101QA (2)	Failing to submit to the taking of a specimen

Part 2 Offences against *Defence Force Discipline Regulations 1985*

Item	Provision	Offence
1	subregulation 25B (2)	(Tampering with) (causing damage to) radar device

Part 3 Offences against *Criminal Code*

Item	Provision	Offence
1	Section 11.1	Attempt to commit [name of offence against the <i>Defence Force Discipline Act 1982</i> or <i>Defence Force Discipline Regulations 1985</i>]
2	Section 11.2	Aiding, abetting etc the commission of [name of offence against the <i>Defence Force Discipline Act 1982</i> (other than subsection 54A (1) or (2)) or <i>Defence Force Discipline Regulations 1985</i>]
3	Section 11.3	Procuring conduct of another person that would have constituted the offence of [name of offence against the <i>Defence Force Discipline Act 1982</i> and <i>Defence Force Discipline Regulations 1985</i>] on the part of procurer
4	Section 11.4	Incitement to [name of offence against the <i>Defence Force Discipline Act 1982</i> and <i>Defence Force Discipline Regulations 1985</i>]
5	Section 11.5	Conspiracy to commit [name of offence against the <i>Defence Force Discipline Act 1982</i> and <i>Defence Force Discipline Regulations 1985</i>]

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.