



Court Martial and Defence Force Magistrate Rules 2020

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

Dated 6 March 2020

Signed

MICHAEL JOHN SLATTERY, AM RAN
Judge Advocate General

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Part 1 Preliminary

1 Name of Rules

This instrument is the *Court Martial and Defence Force Magistrate Rules 2020*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. <i>The whole of this instrument</i>	<i>1 April 2020</i>	<i>1 April 2020</i>

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 149A of the *Defence Force Discipline Act 1982*.

4 Interpretation

In these Rules, unless the contrary intention appears:

arraign, in relation to an accused person at a trial by a court martial or Defence Force magistrate, means reading a charge to the person, calling upon the person to plead to the charge and recording the person's plea to the charge.

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

recorder means a person who records the spoken word, whether by longhand, shorthand, or mechanical or other means and includes a person who operates or transcribes mechanical or other recordings of the spoken word.

serious service offence has the same meaning as in Part VI of the Act.

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

Where, in the course of or in relation to proceedings before a court martial, a judge advocate of a court martial or Defence Force magistrate, a case arises for which no provision or insufficient provision is made by the Act, these Rules or any regulations made under subsection 146(2) of the Act:

- (a) the established course that would, in the particular case, have applied in a trial by jury in a civil court in the Jervis Bay Territory in its criminal jurisdiction shall be adopted; or
- (b) if there is no such established course, such course shall be adopted as the interests of justice require.

6 Summons to accused person

A summons under subsection 87(5) of the Act shall specify:

- (a) the name of the accused person; and
- (b) the purpose for which the person is required to appear before the court martial or Defence Force magistrate; and
- (c) the time and place at which the person is required by the summons to appear.

7 Service of summons to appear

- (1) A summons that is required by subsection 87(5) or 138(2) of the Act to be served on a person shall be served:
 - (a) by delivering the original summons or a copy of the original summons to the person personally; or
 - (b) by prepaying and posting the summons as a letter addressed to the person at the person's last-known place of residence or business or, if the person is carrying on business at 2 or more places, at 1 of those places; or
 - (c) by leaving the summons at the last-known place of residence of the person with some person apparently a resident of that place and apparently not less than 16 years of age; or
 - (d) by leaving the summons at the last-known place of business of the person or, if the person is carrying on business at 2 or more places, at 1 of those places with a person apparently in the service of the person and apparently not less than 16 years of age; or
 - (e) if the person consents by fax, email or by any other electronic means.
- (2) A summons served pursuant to paragraph (1)(e) is taken to have been effected at the time of transmission.

- (3) If a person other than a defence member is required to appear under a summons, the summoner must, at a reasonable time before the person is required to appear:
- (a) pay the person's travel expenses; or
 - (b) arrange with the person to pay the person's travel expenses; or
 - (c) arrange the person's travel, and advise the person of the arrangements.

Note: See also rule 20 (Expenses for witnesses).

- (4) In this rule:

summoner means the person at whose request the summons was issued.

travel expenses means a reasonable amount to enable the person to travel between:

- (a) the place where the person lives or works, whichever is appropriate in the circumstances; and
- (b) the place where the person is required to appear under the summons.

8 Instrument for purposes of section 194A of the Act

An instrument for the purposes of section 194A of the Act may be issued by an appropriate authority, and shall:

- (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.

Part 2 Charge sheets and charges

9 Charge sheets

- (1) A charge against an accused person must be entered in a charge sheet that is signed and dated by the Director of Military Prosecutions.
- (2) A charge sheet for the trial of an accused person by a court martial or Defence Force magistrate may contain more than 1 charge if the offences charged:
 - (a) form, or are part of, a series of offences of the same or a similar character; or
 - (b) are founded on the same or closely related acts or omissions; or
 - (c) are founded on a series of acts done or omitted to be done in the prosecution of a single purpose; or
 - (d) are alternative to other charges in the charge sheet.
- (3) At a trial before a court martial or Defence Force magistrate, 2 or more accused persons may be charged in the same charge sheet with 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 tried together.
- (4) A charge sheet must be in accordance with Schedule 2.
- (5) If charges against an accused are contained in more than 1 charge sheet, the Director of Military Prosecutions may request the Registrar to:
 - (a) convene 1 court martial for the trial of the charges on all charge sheets; or
 - (b) refer all of the charges for trial before a single Defence Force magistrate; or
 - (c) do some combination of paragraphs (a) and (b).

10 Charges

- (1) A charge shall state 1 offence only.
- (2) A charge shall consist of 2 parts, namely:
 - (a) a statement of the offence that 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 shall contain:
 - (a) 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; and
 - (b) in any case — a sufficient statement of the offence.

- (4) Without prejudice to any other sufficient manner of setting out the statement of an offence, the statement of an offence shall be sufficient if it is set out in the appropriate form in Schedule 1.
- (5) Particulars of an offence shall 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.
- (6) At a trial by a court martial or Defence Force magistrate, 2 or more accused persons may be charged jointly in 1 charge of an offence alleged to have been committed by them jointly.

11 How charges to be construed

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

12 Amendment of charge sheets by judge advocate or Defence Force magistrate

Where it appears to a judge advocate or Defence Force magistrate at any time during a hearing of proceedings that there is, in the charge sheet:

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

the judge advocate or Defence Force magistrate may amend the charge sheet so as to correct the mistake.

13 Withdrawal of charge

A court martial or Defence Force magistrate may allow the prosecuting officer to withdraw:

- (a) a charge, before the accused person is arraigned on it; or
- (b) a charge sheet, before the accused person is arraigned on any charge in it.

Part 3 Witnesses

14 Securing appearance of witness on behalf of accused person

- (1) The relevant authority must take the necessary steps to secure the appearance at the hearing of a proceeding before a court martial or Defence Force magistrate of persons reasonably required by the accused person to appear to give evidence, and (if so required) to produce documents, on that person's behalf.
- (2) In this rule, *relevant authority* means:
 - (a) the Chief of the Defence Force; or
 - (b) a delegate of the Chief of the Defence Force of at least the rank of Colonel (or an equivalent rank).

15 Disclosure and notification by the Director of Military Prosecutions or prosecuting officer

- (1) If the Director of Military Prosecutions requests the Registrar to refer a matter for trial, the Director of Military Prosecutions must ensure that:
 - (a) the accused person; and
 - (b) if a trial by a court martial is requested — the Registrar;

are provided with, or have already been provided with, the information or copies of the documents mentioned in subrule (4).

- (2) The prosecution's obligation of disclosure provided for in this rule continues at all times during the proceedings.
- (3) The Registrar must disclose to the judge advocate all information and documents provided to the Registrar under subrule (1).
- (4) For subrule (1), the information and documents are as follows:
 - (a) the charge sheet, signed and dated by the Director of Military Prosecutions;
 - (b) the record of evidence in relation to the charge taken at any proceedings before a summary authority, together with all documents relating to those proceedings;
 - (c) a list of the names of prosecution witnesses;
 - (d) a list of prosecution exhibits;
 - (e) each witness statement from a witness mentioned in paragraph (c);
 - (f) any information, document or thing in the possession of or which exists to the knowledge of the prosecuting officer that is relevant to a fact in issue or to the reliability or credibility of a prosecution witness;
 - (g) any information, document or thing in the possession of or which exists to the knowledge of the prosecuting officer that is adverse to the credit or credibility of the accused person.

- (5) If the prosecuting officer decides not to call a witness to give evidence that:
- (a) is contained in a written statement furnished to the accused person under paragraph (4)(e); or
 - (b) has been notified to the accused person under subrule (1);
- the prosecuting officer must:
- (c) if it is practicable to do so before the trial, inform the accused person:
 - (i) that the prosecuting officer does not intend to call the witness to give evidence; and
 - (ii) that the accused person may call the witness as a witness for the defence; or
 - (d) inform the accused person at the trial that the prosecuting officer does not intend to call the witness to give evidence but will tender the witness for cross-examination by the accused person if the accused person so requests.

16 Exclusion of witness from tribunal hearing room

- (1) During proceedings before a court martial or Defence Force magistrate, a witness shall not, except by leave of the judge advocate or Defence Force magistrate, be in the hearing room until called to give evidence.
- (2) The judge advocate or Defence Force magistrate may direct a witness to withdraw from the hearing room until the judge advocate or Defence Force magistrate makes a decision on an objection that relates to:
 - (a) the allowing of a question; or
 - (b) the evidence given, or about to be given, by the witness.
- (3) Nothing in this rule requires the accused person, a person representing the accused person in the proceedings, or the prosecuting officer, to be absent, or withdraw, from the proceedings.

17 Examination of witness

- (1) A witness appearing before a court martial or Defence Force magistrate:
 - (a) may be:
 - (i) examined by the person who called the witness; and
 - (ii) cross-examined by the opposite party to the proceedings or by a co-accused; and
 - (b) on conclusion of any cross-examination, may be re-examined, on matters arising out of the cross-examination, by the person who called the witness.

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- (2) The court martial or Defence Force magistrate may allow the cross-examination or re-examination of a witness to be postponed if, in the opinion of the judge advocate or Defence Force magistrate, it is in the interests of justice to do so.
- (3) A judge advocate or Defence Force magistrate may put questions to a witness.
- (4) During a trial by court martial, members of the court martial are entitled to question a witness, if:
 - (a) the question is put in writing; and
 - (b) in the opinion of the judge advocate, the question is relevant and permissible in law; and
 - (c) the question is put to the witness by the judge advocate.
- (5) Upon a question put under subrule (3) or (4) being answered, the accused person and the prosecuting officer may put to the witness such questions, arising from the answer that the witness has given, as seem proper to the judge advocate or Defence Force magistrate.

18 Calling and recalling witnesses

- (1) The prosecuting officer and the accused person may, at any time before:
 - (a) at a trial by court martial — the judge advocate begins to sum up; or
 - (b) at a trial by Defence Force magistrate — the Defence Force magistrate makes a finding on the charge;recall a witness by leave of the judge advocate or Defence Force magistrate.
- (2) After the witnesses for the defence have given their evidence, the prosecuting officer may, by leave of the judge advocate or Defence Force magistrate, call a witness to give evidence on any matter raised by the accused person in the accused person's defence in respect of which evidence could not properly have been adduced, or which could not reasonably have been foreseen, by the prosecution before the accused person presented his or her defence.
- (3) The service tribunal may, at any time before:
 - (a) at a trial by court martial — the judge advocate begins to sum up; or
 - (b) at a trial by Defence Force magistrate — the Defence Force magistrate makes a finding on the charge;

call or recall a witness if, in the opinion of the judge advocate or Defence Force magistrate, it is in the interests of justice to do so.

- (4) When a witness is called or recalled under this rule, the accused person and the prosecuting officer may put such questions to the witness as seem proper to the judge advocate or Defence Force magistrate.

19 Witnesses to reply forthwith

- (1) Subject to subrule (2), a witness appearing before a court martial or Defence Force magistrate shall reply forthwith to each question put to the witness.
- (2) Where a question is objected to or a witness claims privilege, the witness shall not answer the question unless the objection or claim is overruled by the judge advocate or Defence Force magistrate.

20 Expenses for witnesses

- (1) A person (other than a defence member) summoned to appear as a witness before a court martial or Defence Force magistrate shall be paid such fees, and allowances for expenses, in respect of the witness's attendance as the appropriate authority thinks fit to allow in accordance with the scale in the Public Works Committee Regulation as in force from time to time under the *Public Works Committee Act 1969*.
- (2) At the request of the appropriate authority, the functions in subrule (1) are to be carried out by:
 - (a) the Chief of the Defence Force; or
 - (b) a delegate of the Chief of the Defence Force of at least the rank of Colonel (or an equivalent rank); or
 - (c) the Director of Military Prosecutions.

Part 4 Registrar

21 Registrar may liaise with certain persons

In order to fulfil a function or a duty under the Act, these Rules or the regulations, the Registrar may liaise or consult with any of the following:

- (a) a judge advocate;
- (b) a prosecuting officer;
- (c) a defending officer;
- (d) the Director of Defence Counsel Services;
- (e) service authorities;
- (f) personnel who may be appointed as the President, member or reserve member of a court martial;
- (g) civilian agencies and authorities.

22 Registrar may consult with services about conduct of proceedings

- (1) The Registrar may consult with the services in relation to any matter concerning the administration of proceedings before a court martial or Defence Force magistrate.
- (2) The matters in relation to which the Registrar may consult and liaise under subrule (1) include, but are not limited to, the following:
 - (a) the service details of the accused person;
 - (b) notification to the accused person;
 - (c) current posting location and chain of command for the accused person;
 - (d) the date, time and location of the proceedings;
 - (e) the appointment of an administrative officer, clerk, orderly or escort officer, as appropriate;
 - (f) service dress requirements for military and other personnel in attendance at the proceedings;
 - (g) customs of the services;
 - (h) information technology support requirements for the proceedings;
 - (i) financial arrangements in relation to the proceedings;
 - (j) the process for the appointment and administration of a court martial President, the members and the reserve members.

23 Registrar may consult with services about administrative support for trial proceedings

- (1) The Registrar may consult with the services concerning the nomination and appointment of staff from the services to perform the administrative duties and functions of a proceeding before a court martial or Defence Force magistrate.

- (2) Without limiting subrule (1), the Registrar may consult in relation to staff to be appointed from the services to 1 or more of the following positions:
- (a) administrative officer;
 - (b) clerk;
 - (c) orderly;
 - (d) escort officer;
 - (e) other administrative support personnel as necessary.

24 Order referring charge or case to Defence Force magistrate

When the Registrar refers a charge or a case to a Defence Force magistrate, the Registrar must, in the order referring the charge or the case:

- (a) specify the Defence Force magistrate to whom the charge or case is referred; and
- (b) fix, or provide for the fixing of, the time and place for the hearing of the charge or case or the date of any pre-trial hearing.

25 Registrar to provide certain documents

- (1) When the Registrar convenes a court martial for the trial of a charge, the Registrar must cause to be sent:
- (a) to the President and each member or reserve member of the court martial — a copy of the convening order; and
 - (b) to the judge advocate:
 - (i) the convening order; and
 - (ii) the charge sheet; and
 - (iii) the record of evidence taken at proceedings (if held) in relation to the charge before a commanding officer or a superior summary authority; and
 - (iv) any other statement taken from a witness to be called for the prosecution; and
 - (c) to the accused person — copies of the documents referred to in subparagraphs (b)(i) and (ii); and
 - (d) to the prosecuting officer — a copy of the document referred to in subparagraph (b)(i).
- (2) When the Registrar refers a charge to a Defence Force magistrate for trial, the Registrar must cause to be sent:
- (a) to the Defence Force magistrate:
 - (i) the order referring the charge; and
 - (ii) the charge sheet; and
 - (b) to the accused person — copies of the documents referred to in paragraph (a); and

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(c) to the prosecuting officer — a copy of the order referring the charge.

26 Inspection of exhibits before trial

- (1) An accused person who has been sent a list of exhibits in accordance with rule 15 must, on application by the person to the Director of Military Prosecutions, be permitted by the custodian of the exhibit to inspect and to copy any exhibit.
- (2) The custodian of the exhibit must ensure that proper precautions are taken for the safety of the exhibit during an inspection under subrule (1).

Part 5 Courts martial

27 Functions of President

In addition to the functions that the President of a court martial has in his or her capacity as a member of the court martial and any functions conferred on the President by the Act or any other rule, the functions of the President are:

- (a) to speak on behalf of the court martial in announcing a finding or sentence or any other decision taken by the court martial; and
- (b) to speak on behalf of the members of the court martial in conferring with, or requesting advice from, the judge advocate on any question of law or procedure.

28 Functions of judge advocate

In addition to any functions conferred on the judge advocate by the Act, the regulations or any other rule, the functions of the judge advocate are:

- (a) subject to subsection 133(6) of the Act, to be present at all sittings of a court martial; and
- (b) to ensure that the proceedings are conducted in accordance with the Act and these Rules and in a manner befitting a court of justice; and
- (c) to preside over all hearings conducted in pursuance of subsection 134(2) or 141(7) of the Act and to ensure, at all such hearings, that the proceedings are conducted in accordance with the Act and these Rules and in a manner befitting a court of justice; and
- (d) to ensure that an accused person who is not represented does not in consequence of that fact suffer any undue disadvantage; and
- (e) to ensure that a proper record of the proceedings is made and that the record of proceedings and the exhibits (if any) are properly safeguarded.

29 Manner of voting of court martial

On any question to be determined by a court martial, the members of the court martial shall vote orally, in order of seniority, commencing with the junior in rank.

30 Objections to members of court martial

- (1) Before the members of a court martial are sworn, their names shall be read to the accused person and that person shall be asked whether he or she objects to be tried by any of them.
- (2) This rule applies in relation to a reserve member or new member who is appointed to a court martial in place of another member in the same way that it applies to an original member of the court martial.

Rule 31

31 Swearing of court martial

- (1) After all objections by the accused person to members of the court martial have been dealt with and before the arraignment of the accused person begins, the judge advocate shall, in the presence of the accused person, administer, or cause to be administered, an oath or affirmation to the President and each other member of the court martial.
- (2) The oath or affirmation to be taken or made by a person for the purposes of this rule is an oath or affirmation that:
 - (a) the person will duly administer justice according to law, without fear or favour, affection or ill will; and
 - (b) the person will well and truly try the accused person or persons before the court martial, according to the evidence; and
 - (c) the person will not disclose the vote or opinion of any member of the court martial unless required to do so in due course of law.

Part 6 Defence Force magistrate

32 Functions of Defence Force Magistrate

In addition to any functions conferred on the Defence Force magistrate by the Act, the regulations or any other rule, the functions of the magistrate at any proceedings before the magistrate are to ensure:

- (a) that the proceedings are conducted in accordance with the Act and these Rules and in a manner befitting a court of justice; and
- (b) that an accused person who is not represented does not in consequence of that fact suffer any undue disadvantage; and
- (c) that a proper record of the proceedings is made and that the record of proceedings and the exhibits (if any) are properly safeguarded.

Part 7 Pre-trial proceedings

33 Application for pre-trial hearing

The prosecution or the accused person may apply to the judge advocate or the Defence Force magistrate to whom a matter has been referred for a direction or ruling or the judge advocate or Defence Force magistrate may on his or her initiative direct the parties to attend (in person or otherwise) before the judge advocate or Defence Force magistrate for directions or rulings as to the conduct of the trial or any pre-trial hearing.

34 Nature of pre-trial hearings

Without limiting rule 33 a direction or ruling may be given in relation to:

- (a) the quashing or staying of a charge; or
- (b) the joinder of accused persons or joinder of charges; or
- (c) prosecution disclosure under rule 15; or
- (d) the provision of a report, proof of evidence or other information; or
- (e) the noting of admissions and issues relevant to the trial; or
- (f) deciding questions of law, including admissibility of evidence; or
- (g) ascertaining whether a defence of unsoundness of mind or any other question of a psychiatric nature is to be raised; or
- (h) the psychiatric or other medical examination of the accused; or
- (i) the exchange of medical, psychiatric and other expert reports; or
- (j) the return of summons to produce documents; or
- (k) encouraging the parties to narrow the issues and any other administrative arrangements to assist the speedy disposition of the trial; or
- (l) the giving of evidence by video or audio link under section 148A of the Act, the *Evidence (Miscellaneous Provisions) Act 1991* (ACT) or otherwise; or
- (m) any other issue connected with the proceedings.

Part 8 Evidence

35 Time for service of Notice of previous representation or Tendency/Coincidence notice

If the prosecution intends to rely on a previous representation under section 65 of the *Evidence Act 2011* (ACT) or tendency or coincidence evidence under Part 3.6 of the *Evidence Act 2011* (ACT) the prosecution is to give notice of this to the accused person at the time the accused person is served with the signed charge sheet or at such other times as the judge advocate or Defence Force magistrate may allow. This notice is also to be provided to the judge advocate prior to the trial.

Note: The Evidence Act 2011 (ACT) applies to proceedings under the Act

36 Notice of previous representation and notices of tendency/coincidence evidence

A party relying on evidence of a previous representation or on tendency or coincidence evidence must comply with sections 5, 6, 7, 8, 9 and 10 of the Evidence Regulation 2012 (ACT).

Part 9 Trial Provisions

37 Employment of, objections to, and swearing of recorders and interpreters

- (1) All proceedings (including pre-trial hearings) before a court martial or Defence Force magistrate are to be, where practicable, electronically recorded and a transcript prepared of the recording unless otherwise ordered by the judge advocate or Defence Force magistrate.

Note: It may be that the exigencies of service such as a trial in an operational area means that only a handwritten record may be made.

- (2) The Registrar of Military Justice may arrange for a person or entity to act as a recorder or as an interpreter at proceedings before a court martial or Defence Force magistrate.
- (3) The accused person may enter an objection to an interpreter on the ground of partiality or incompetence, or both.
- (4) If the proceedings are not electronically recorded the accused person may enter an objection to a recorder on the ground of partiality or incompetence or both.
- (5) Where the judge advocate or Defence Force magistrate is satisfied that the accused person has substantiated an objection entered by that person under this rule, the judge advocate or Defence Force magistrate, as the case may be, shall allow the objection.
- (6) Before a person begins to act as an interpreter or as a recorder where the proceedings are not being electronically recorded, the judge advocate or Defence Force magistrate shall administer, or cause to be administered, an oath or affirmation to the person before the person begins so to act.
- (7) The oath or affirmation to be taken or made by a person for the purposes of this rule is an oath or affirmation:
 - (a) other than where proceedings are recorded electronically, in the case of a person who is to act as a recorder — that the person will, to the best of the person's ability, truly record the evidence to be given before the court martial or Defence Force magistrate and such other matters as may be required.
 - (b) in the case of a person who is to act as an interpreter — that the person will, to the best of the person's ability, truly interpret and translate as the person will be required to do.

38 Administration of oaths and affirmations

The president or Defence Force magistrate may permit a person to 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.

39 Application by accused person or prosecuting officer for adjournment of proceedings

The accused person or the prosecuting officer may, at any time, apply to the court martial or Defence Force magistrate on any reasonable grounds for an adjournment of the proceedings before the tribunal.

40 Right of accused person and prosecuting officer to argue and adduce evidence on matter to be decided

The accused person and the prosecuting officer may properly argue, and adduce evidence relevant to, any question presented to the court martial or Defence Force magistrate for decision.

41 Pleading to charges and arraignment

- (1) Where there is more than 1 charge against an accused person before a court martial or Defence Force magistrate, the person shall be required to plead separately to each charge.
- (2) Where the accused person refuses to plead to a charge the judge advocate or Defence Force magistrate shall record a plea of not guilty and the trial shall proceed as if the accused person had pleaded not guilty.
- (3) Where:
 - (a) there is more than 1 charge against an accused person before a court martial or Defence Force magistrate; and
 - (b) the charges are contained in more than 1 charge sheet;

the court martial or Defence Force magistrate shall arraign and try the person on the charge or charges in a charge sheet (other than taking action under paragraph 132(1)(g) or 135(1)(g) of the Act) before the tribunal arraigns and tries the person on a charge in another charge sheet.

- (4) Where:
 - (a) an accused person is convicted by a court martial or Defence Force magistrate of a charge that is 1 of 2 or more charges stated in the charge sheet in the alternative, the person shall not be convicted by the court martial or Defence Force magistrate of any charge that is alternative to the charge of which the person has been convicted and that is placed after it on the charge sheet.
 - (b) an accused person pleads not guilty to a service offence, but guilty to another service offence that is averred on the charge sheet in the alternative to the first mentioned service offence, and the prosecution consents to the acceptance of the plea to the alternative, the trial shall proceed as if the accused had not been charged with the first – mentioned offence.

Rule 42

42 Opening address by prosecution

Before the first prosecution witness is called to give evidence at a trial by a court martial or Defence Force magistrate, the prosecuting officer shall make an opening address to the tribunal, stating briefly:

- (a) the elements of the offence charged that have to be proved before the accused person can be convicted; and
- (b) the alleged facts upon which the prosecuting officer will rely to support the charge; and
- (c) the nature of the evidence that the prosecuting officer proposes to adduce to prove the alleged facts.

43 Opening address by the defence after opening address by the prosecution

With leave of the judge advocate or Defence Force magistrate the accused person may make a brief opening limited to identifying the issues in dispute and not in dispute.

44 Judge advocate or Defence Force magistrate may direct substitution of plea of not guilty

Where, at any time during a trial, it appears to the judge advocate or Defence Force magistrate that an accused person who has pleaded guilty does not understand the effect of that plea, the judge advocate or Defence Force magistrate shall substitute the plea to one of not guilty and proceed accordingly.

45 Submission of no case to answer

At the close of the case for the prosecution, the accused person may submit to the judge advocate or Defence Force magistrate in respect of a charge that the evidence adduced is insufficient to support the charge.

46 Opening address by defence

Where the accused person intends to adduce evidence the person may, before he or she adduces such evidence, make an opening address to the court martial or Defence Force magistrate stating the nature and general effect of the evidence that the person proposes to adduce in the person's defence.

47 Closing addresses

- (1) After all of the evidence has been given, the accused person and the prosecuting officer may each make a closing address to the court martial or Defence Force magistrate.
- (2) Any closing address by the prosecuting officer shall be made before the closing address (if any) by the accused person.

- (3) Subject to subrule (4), where 2 or more accused persons are charged in the same charge sheet, their closing addresses shall be made in the order in which their names are listed on the charge sheet.
- (4) When 2 or more accused persons are represented by the same person, that person may only make 1 closing address.

48 Summing up

After the closing addresses (if any) at a trial by court martial, the judge advocate shall sum up the evidence and direct the court martial on the law relating to the case (including Part IV of the Act).

49 Evidence as to material facts after conviction on plea of guilty

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

- (a) the prosecuting officer shall inform the court martial or Defence Force magistrate of the material facts that show the nature and gravity of the offence; and
- (b) the convicted person may dispute any such facts; and
- (c) the convicted person and the prosecuting officer may adduce evidence in relation to any fact so disputed.

50 Convicted person's record etc and plea in mitigation

- (1) After the conviction of a person by a court martial or Defence Force magistrate, the prosecuting officer shall cause evidence to be adduced of:
 - (a) if the convicted person is a defence member or was a defence member at the time of the commission of the offence of which the person has been convicted — relevant particulars of the 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) such other matters relevant to determining action under Part IV of the Act in relation to the convicted person as the court martial or Defence Force magistrate requires.
- (2) The convicted person may:
 - (a) give evidence, and call witnesses to give evidence, as to the convicted person's character and in mitigation of punishment; and
 - (b) address the court martial or Defence Force magistrate in mitigation of punishment.
- (3) Rule 17 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.

Rule 51

51 Imposition of punishment or order in case of breach of undertaking of good behaviour

- (1) This Rule applies to proceedings before a court martial or Defence Force magistrate for the purpose of imposing punishment on 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 court martial or Defence Force magistrate to be of good behaviour for 12 months, and that convicted person is appearing before a court martial or Defence Force magistrate 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 court martial or Defence Force magistrate, action must be taken in accordance with rules 49 and 50:
 - (a) as if the person had been convicted by that court martial or Defence Force magistrate; and
 - (b) as if the person had pleaded guilty.

Part 10 Record of proceedings and exhibits

52 Record of proceedings before court martial or Defence Force magistrate

- (1) Where the proceedings before a court martial or Defence Force magistrate are not recorded electronically, they shall be recorded in sufficient detail to enable the course of the proceedings to be followed, and the merits of the case to be judged, from the record, and in particular:
 - (a) subject to paragraph (b), the evidence shall be taken down in narrative form as nearly as possible in the words used; and
 - (b) if:
 - (i) the prosecution or the defence so requests and the judge advocate or Defence Force magistrate so directs; or
 - (ii) in any other case, the judge advocate or Defence Force magistrate so directs;

a particular question and the answer to it shall be taken down verbatim;
and

 - (c) a record shall be made of the proceedings relating to each objection, submission or application; and
 - (d) subject to paragraph (e), any address by the prosecution or the defence, or the summing up by the judge advocate, if not in writing, shall be recorded to such extent as the judge advocate or the Defence Force magistrate thinks fit; and
 - (e) if the prosecution or the defence so requires, a record shall be made of any particular point in the address by the prosecution or the defence, or in the summing up by the judge advocate.
- (2) Where the proceedings are recorded electronically, the recorder shall prepare or cause to be prepared a transcript, in writing, which shall be authenticated by the person who made the transcript.
- (3) If a conviction is recorded, the written record of the proceedings must be certified as true and correct, in writing, by the recorder and the judge advocate or Defence Force magistrate as soon as practicable after the conclusion of the trial.

Rule 53

53 Inspection of record of proceedings etc during trial

During a trial by a court martial or Defence Force magistrate, the accused person or the prosecuting officer may, with the permission of the judge advocate or Defence Force magistrate:

- (a) have a particular part of the record of proceedings read or played over to the accused person or the prosecuting officer, as the case may be; and
- (b) if proper precautions are taken for its safety, inspect an exhibit.

54 Loss of original record of proceedings

- (1) If, at any time, the whole or any part of the original record of proceedings before a court martial or Defence Force magistrate is lost, a valid and sufficient record of the proceedings for all purposes may be made by the signature of a prescribed person being affixed to a copy of the record of proceedings.
- (2) In this rule, *prescribed person* means:
 - (a) in relation to proceedings before a court martial or a judge advocate — the judge advocate; or
 - (b) in relation to proceedings before a Defence Force magistrate — the Defence Force magistrate.

55 Exhibits

- (1) Subject to subrule (2), any document or thing admitted in evidence at a trial by a court martial or Defence Force magistrate shall be made an exhibit.
- (2) Where the court martial or Defence Force magistrate is satisfied that a copy of, or an extract or relevant parts from, a document or book admitted in evidence is correct, the court martial or Defence Force magistrate may make the copy or extract an exhibit in place of the document or book.

56 Relief from Rules

A judge advocate or Defence Force magistrate may dispense with compliance with any of the requirements of these Rules, either before or after the occasion for compliance arises.

Schedule 1 Statement of offences

(subrule 10(4))

Part 1 Offences against Defence Force Discipline Act 1982

Item	Provision	Offence
1	Section 15	Abandoning or surrendering a [<i>place</i>] [<i>post</i>] [<i>service ship</i>] [<i>service aircraft</i>] [<i>service armoured vehicle</i>]
2	Section 15A	Causing the capture or destruction of a [<i>service ship</i>] [<i>service aircraft</i>] [<i>service armoured vehicle</i>]
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 [<i>name of offence against sections 15 to 16A (other than section 15B or 15C)</i>] with intent to assist the enemy
14	Paragraph 17 (1)(a)	Leaving [<i>post</i>] [<i>position</i>] [<i>place</i>] in connection with operations

Part 1

Item	Provision	Offence
15	Paragraph 17 (1)(b)	Abandoning [<i>weapons</i>] [<i>other equipment</i>] 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 [<i>his</i>] [<i>her</i>] force
21	Subsection 19 (3)	Securing favourable treatment to detriment of others
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 [<i>threatening</i>] [<i>insubordinate</i>] [<i>insulting</i>] conduct
34	Subsection 26 (2)	Using [<i>threatening</i>] [<i>insubordinate</i>] [<i>insulting</i>] language
35	Section 27	Disobeying lawful command

Item	Provision	Offence
36	Section 28	Failing to comply with direction of person in command of [<i>service ship</i>] [<i>service aircraft</i>] [<i>service vehicle</i>]
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 [<i>at post</i>] [<i>on watch</i>] while on [<i>guard duty</i>] [<i>watch</i>]
43	Paragraph 32 (1)(b)	Sleeping on duty while on [<i>guard duty</i>] [<i>watch</i>]
44	Paragraph 32 (1)(c)	Being intoxicated while on [<i>guard duty</i>] [<i>watch</i>]
45	Paragraph 32 (1)(d)	[<i>Leaving post</i>] [<i>absence from place of duty</i>] while on [<i>guard duty</i>] [<i>watch</i>]
46	Subsection 32 (3)	Committing the offence of [<i>name of offence against paragraph 32 (1) (a), (b), (c) or (d)</i>] in connection with service against enemy
47	Paragraph 33 (a)	Assaulting another person [<i>on service land</i>] [<i>in service ship</i>] [<i>in service aircraft</i>] [<i>in service vehicle</i>] [<i>in a public place</i>]
48	Paragraph 33 (b)	Creating a disturbance [<i>on service land</i>] [<i>in service ship</i>] [<i>in service aircraft</i>] [<i>in service vehicle</i>] [<i>in a public place</i>]
49	paragraph 33 (c)	Engaging in obscene conduct [<i>on service land</i>] [<i>in service ship</i>] [<i>in service aircraft</i>] [<i>in service vehicle</i>] [<i>in a public place</i>]
50	Paragraph 33 (d)	Using [<i>insulting</i>] [<i>provocative</i>] words [<i>on service land</i>] [<i>in service ship</i>] [<i>in service aircraft</i>] [<i>in service vehicle</i>] [<i>in a public place</i>]
51	Section 33A	Assault occasioning actual bodily harm
52	Section 34	Assaulting a subordinate

Part 1

Item	Provision	Offence
3	Section 35	Negligent performance of duty
4	Subsection 36 (1)	Dangerous conduct with knowledge of consequences
5	Subsection 36 (2)	Dangerous conduct with recklessness as to consequences
56	Subsection 36 (3)	Dangerous conduct with negligence as to consequences
57	Section 36A	Unauthorised discharge of weapon
58	Section 36B	Negligent discharge of weapon
59	Section 37	Being intoxicated [<i>while on duty</i>] [<i>when reporting for duty</i>] [<i>when required to report for duty</i>]
60	Paragraph 38 (1) (a)	Malingering — self injury
61	Paragraph 38 (1) (b)	Malingering — prolonging sickness or disability
62	Subsection 38 (2)	Malingering — falsely representing oneself as suffering from physical or mental condition
63	Subsection 39 (1)	Intentionally causing [<i>loss of</i>] [<i>stranding of</i>] [<i>hazarding of</i>] service ship
64	Subsection 39 (2)	Recklessly causing [<i>loss of</i>] [<i>stranding of</i>] [<i>hazarding of</i>] service ship
65	Subsection 39 (3)	Negligently causing [<i>loss of</i>] [<i>stranding of</i>] [<i>hazarding of</i>] service ship
66	Subsection 40 (1)	Driving a service vehicle while intoxicated
67	Subsection 40 (2)	Driving a vehicle on service land while intoxicated
68	Subsection 40A (1)	Dangerous driving of a service vehicle
69	Subsection 40A (2)	Dangerous driving of a vehicle on service land
70	Paragraph 40C (1)(a)	Driving a service vehicle while not authorised
71	Paragraph 40C (1)(b)	Using a service vehicle for an unauthorised purpose
72	Subsection 40D (1)	Driving a service vehicle without due care and attention or without reasonable consideration

Item	Provision	Offence
73	Subsection 40D (2)	Driving a vehicle on service land without due care and attention or without reasonable consideration
74	Section 41	Flying a service aircraft below the minimum height
75	Section 42	Giving inaccurate certification to a matter affecting a [<i>service ship</i>] [<i>service aircraft</i>] [<i>service vehicle</i>] [<i>service missile</i>] [<i>service weapon</i>]
76	Subsection 43 (1)	Intentionally [<i>destroying</i>] [<i>damaging</i>] service property
77	Subsection 43 (2)	Recklessly [<i>destroying</i>] [<i>damaging</i>] service property
78	Subsection 43 (3)	Negligently [<i>destroying</i>] [<i>damaging</i>] service property
79	Section 44	Losing service property
80	Section 45	Unlawful possession of service property
81	Section 46	Possession of property suspected of having been unlawfully obtained
82	Section 47C	Theft
83	Section 47P	Receiving stolen property
84	Section 47Q	Unauthorised use of Commonwealth credit card
85	Subsection 48 (1)	Looting
86	Subsection 48 (2)	Receiving looted property
87	Section 49	Refusing to submit to arrest
88	Section 49A	Assault against arresting person
89	Subsection 50 (1)	Delaying or denying justice by failing to take action to have charge dealt with
90	Subsection 50 (2)	Delaying or denying justice by failing to take action to [<i>release</i>] [<i>order release</i>] of a person
91	Section 51	Escaping from custody
92	Section 52	Giving false evidence before a service tribunal

Schedule 1 Statement of offences

Part 1

Item	Provision	Offence
93	Subparagraph 53 (1)(b)(i)	Failing to appear before a service tribunal as required by [summons] [order]
94	Subparagraph 53 (1)(b)(ii)	Failing to appear and report when not excused by service tribunal
95	Paragraph 53 (2) (a)	Refusing to take an oath or make an affirmation before a service tribunal
96	Paragraph 53 (2) (b)	Refusing to answer a question before a service tribunal
97	Paragraph 53 (2) (c)	Refusal to produce a document required by [summons] [order] before a service tribunal
98	Paragraph 53 (4) (a)	Insulting a [member of a court martial] [judge advocate] [Defence Force magistrate] [summary authority]
99	Paragraph 53 (4) (b)	Interrupting proceedings of a service tribunal
100	Paragraph 53 (4) (c)	Creating a disturbance [in] [near] a service tribunal
101	Paragraph 53 (4) (d)	Engaging in conduct that would constitute contempt of a service tribunal
102	Subsection 54 (1)	Intentionally allowing a person in custody to escape
103	Subsection 54 (2)	Unlawfully releasing a person in custody
104	Subsection 54 (3)	Facilitating escape of a person in custody
105	Subsection 54 (4)	Conveying a thing into place of confinement with intent to facilitate escape of a person
106	Paragraph 54A (1)(a)	Detainee making unnecessary noise
107	Paragraph 54A (1)(b)	Detainee committing a nuisance
108	Paragraph 54A (1)(c)	Detainee being [idle] [careless] [negligent] at work
109	Paragraph 54A (1)(d)	Detainee unlawfully communicating with another person
110	Paragraph 54A (1)(e)	Detainee unlawfully [giving] [receiving] any thing
111	paragraph 54A (1)(f)	Detainee unlawfully being in possession of any thing
112	Paragraph 54A (1)(g)	Detainee unlawfully [entering] [leaving] cell

Item	Provision	Offence
113	Subsection 54A (2)	Detainee failing to comply with a condition of grant of leave of absence
114	Subsection 54A (6)	Aiding, abetting etc the commission of [<i>name of offence against subsection 54A (1) or (2)</i>]
115	Paragraph 55 (1)(a)	[<i>Making</i>] [<i>signing</i>] false service document
116	Paragraph 55 (1)(b)	Making false entry in service document
117	Paragraph 55 (1)(c)	Altering a service document
118	Paragraph 55 (1)(d)	[<i>Suppressing</i>] [<i>defacing</i>] [<i>making away with</i>] [<i>destroying</i>] a service document
119	Paragraph 55 (1)(e)	Failing to make an entry in a service document
120	Subsection 56 (1)	Knowingly making false or misleading statement in relation to application for benefit
121	Subsection 56 (4)	Recklessly making false or misleading statement in relation to application for benefit
122	Paragraph 57 (1)(a)	Person giving false answer to a question in a document relating to appointment or enlistment
123	Paragraph 57 (1)(b)	Person giving false information or document in relation to appointment or enlistment
124	Paragraph 57 (1)(c)	Person failing to disclose prior service
125	Paragraph 57 (2)(a)	Member giving false answer to question in a document relating to appointment or enlistment
126	Paragraph 57 (2)(b)	Member giving false information or document in relation to appointment or enlistment
127	Paragraph 57 (2)(c)	Member failing to disclose prior service
128	Section 58	Unauthorised disclosure of information
129	Subsection 59 (1)	[<i>Selling</i>] [<i>dealing</i>] [<i>trafficking</i>] in narcotic goods outside Australia
130	Subsection 59 (3)	Possession of narcotic goods outside Australia
131	Subsection 59 (5)	Administering prohibited drug outside Australia
132	Subsection 59 (6)	Administering prohibited drug in Australia

Schedule 1 Statement of offences

Part 1

Item	Provision	Offence
133	Subsection 59 (7)	Possession of non-trafficable quantity of prohibited drug in Australia
134	Section 60	Prejudicial conduct
135	Subsection 61 (1)	Engaging in conduct in the Jervis Bay Territory that is a Territory offence [<i>name of offence and provision of law contravened</i>]
136	Subsection 61 (2)	Engaging in conduct in a public place outside the Jervis Bay Territory that is a Territory offence [<i>name of offence and provision of law contravened</i>]
137	Subsection 61 (3)	Engaging in conduct outside the Jervis Bay Territory that is a Territory offence [<i>name of offence and provision of law contravened</i>]
138	Section 62	Commanding or ordering commission of service offence
139	Subsection 101QA (1)	Failing to submit to medical examination
140	Subsection 101QA (2)	Failing to submit to the taking of a specimen

Part 2 Offences against Defence Force Discipline Regulations 2018

Item	Provision	Offence
1	Subregulation 33	[<i>Tampering with</i>] [<i>causing damage to</i>] [<i>interferes with</i>] radar device

Part 3 Offences against Criminal Code Act 1995

Item	Provision	Offence
1	Section 11.1	Attempt to commit [<i>name of offence against the Defence Force Discipline Act 1982 or the Defence Force Discipline Regulations 2018</i>]
2	Section 11.2	Aiding, abetting etc the commission of [<i>name of offence against the Defence Force Discipline Act 1982 (other than subsection 54A (1) or (2)) or the Defence Force Discipline Regulations 2018</i>]
3	Section 11.3	Procuring conduct of another person that would have constituted the offence of [<i>name of offence against the Defence Force Discipline Act 1982 or the Defence Force Discipline Regulations 2018</i>] on the part of procurer
4	Section 11.4	Incitement to [<i>name of offence against the Defence Force Discipline Act 1982 or the Defence Force Discipline Regulations 2018</i>]
5	Section 11.5	Conspiracy to commit [<i>name of offence against the Defence Force Discipline Act 1982 or the Defence Force Discipline Regulations 2018</i>]

Part 1

Schedule 2 Form of charge sheet

(subrule 9(4))

Charge sheet

[Insert Accused's Service Details], a member of the [Royal Australian Navy] [Australian Army] [Royal Australian Air Force] and at the time of the offence/s specified in the following charge/s a defence member under the *Defence Force Discipline Act 1982*, is charged as follows:

First charge [<i>Defence Force Discipline Act 1982</i> , subsection 61(3) and <i>Crimes Act 1900</i> (ACT), section 23]	[<i>Engaging in conduct outside the Jervis Bay Territory that is a Territory offence, being the offence of inflicting actual bodily harm.</i>] Insert particulars of the offence.
Second charge [<i>Defence Force Discipline Act 1982</i> , paragraph 33(a)]	[<i>Assaulting another person on service land etc.</i>] Insert particulars of the offence.

.....

Signed
Director of Military Prosecutions

Dated