



Appointment of Deputy Chief Judge Advocate Instrument No 2 2020

I, MICHAEL JOHN SLATTERY, Judge Advocate General:

- a. make the following notifiable instrument for the purpose of section 188EC(5)(a) and (b) of the *Defence Force Discipline Act 1982*.
- b. revoke all previous notifiable instruments made under that section.

Dated: 24 August 2020

Signed by

MICHAEL JOHN SLATTERY AM, RAN
Judge Advocate General

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1 Name

This instrument is the *Appointment of Deputy Chief Judge Advocate Instrument No 2 2020*.

2 Commencement

This instrument commences on 24 August 2020. Upon commencement this instrument repeals the *Appointment of Deputy Chief Judge Advocate Instrument 2020* dated 19 January 2020.

3 Selection Criteria

By this instrument I determine that the following criteria will apply to the selection of a person for appointment under s 188EC of the *Defence Force Discipline Act 1982* to the position of Deputy Chief Judge Advocate (the position). To be successful in this position a candidate will need to meet the following selection criteria.

1. **Legal Knowledge and Experience.** The successful candidate for the position will have:
 - a. Substantial trial and preferably appellate advocacy experience, appearing before higher courts in serious and complex criminal casework (or judicial or other experience giving equivalent competence in the conduct of challenging criminal trials).
 - b. Attained a high level of professional achievement and effectiveness in military law, criminal law, the law of evidence and the application of the *Defence Force Discipline Act 1982*, particularly the law and rules of procedure governing the conduct of courts martial and Defence Force magistrate (DFM) trials.
 - c. Sound experience, knowledge and understanding of the law and its application in these fields, including sentencing principles, to a standard that befits a judicial officer discharging functions and duties equivalent to those of a County or District Court judge and a demonstrated ability to understand and apply standard trial directions.
 - d. Demonstrated Service knowledge and an understanding of the requirement for maintaining discipline in the ADF.
 - e. Some experience in and aptitude for legislative reform and legal policy development.
2. **Leadership and Management.** The successful candidate for the position will have:
 - a. A demonstrated ability for organisational leadership, for the intellectual leadership of other lawyers, and for governance, management and administration in either the public or private sectors, with at least some experience in the public sector.
 - b. A demonstrated ability to appear before high level forums, such as Parliamentary committees and senior leadership groups, and to present oral and written briefings at this level.

- c. A demonstrated ability to work collaboratively to deliver effective results, and the capacity to act as the Chief Judge Advocate if so appointed by the Judge Advocate General under s 188EB of the *Defence Force Discipline Act 1982*.
 - d. Some experience in and aptitude for implementing reform and a demonstrated commitment to continuous improvement.
3. **Skills and Abilities of a Judicial Officer.** The successful candidate for the position will have demonstrated standards that befit a judicial officer discharging functions and duties equivalent to those of a County or District Court judge including:
- a. Intellectual and Analytical Ability.
 - The ability to concentrate for long periods, and to understand and assimilate facts and arguments, and the ability to recall evidence and information speedily and accurately.
 - The ability to identify the issues in question and analyse the facts relevant to those issues.
 - The ability to apply legal principles to particular facts and to determine from a large body of information those issues and facts which are relevant and legally important and those which are not.
 - The ability by intellectual analysis of the matters in issue to reduce unnecessary contests and to deploy case management techniques to reduce delay in the conduct of trials.
 - b. Sound judgement.
 - The ability to exercise judicial discretion effectively.
 - The ability to apply his or her knowledge and common sense to make decisions which are consistent with the evidence and in compliance with the law.
 - The ability to consider competing arguments and to reason logically to a correct and balanced conclusion.
 - c. Decisiveness.
 - The ability to reach firm conclusions (often quickly), to think, decide and act independently of others, and to rely on his/her own judgement.
 - d. Communication Skills.
 - The ability to communicate effectively, giving instructions and explaining complex issues and setting out legally sound reasons for reaching decisions clearly and concisely, both orally and, where necessary, in writing.
 - The ability to direct a court martial correctly on the legal issues arising for determination and to relate these issues to an accurate summary of the facts.

- When sitting as a DFM to give clear reasons for findings, and, where relevant for sentence.
 - The ability to clearly explain sentencing principles to a court martial and to relate these to the facts and the sentences available for the court's consideration.
 - The ability to represent the administration of justice in the ADF with well-judged communication and in doing so to prepare timely written briefs or advices to the Minister, the CDF, the Associate Secretary, the JAG and other senior members of the Department on disciplinary and related matters.
- e. Authority.
- The ability to command the respect of court users and to maintain fair minded discipline in court and chambers, with appropriate bearing and composure.
 - The ability to promote and effect the expeditious dispatch of business.
- f. Information Technology.
- The ability to use, or familiarity with, modern information technology or the capacity to attain the same.
- g. Judicial Education.
- The willingness to participate in and lead ongoing judicial education.
 - The ability to provide high level technical training in military law.
4. **Personal Qualities.** The successful candidate for the position will possess the following personal qualities:
- a. Integrity.
- A demonstrated history of honesty and discretion in their personal and professional life, so to protect both their reputation as a judicial officer and that of the judiciary within the ADF.
 - They will possess independence of mind and moral courage and a willingness to take, maintain and enforce unpopular or unpleasant decisions when necessary, so as to enhance respect for the judiciary within the ADF.
 - They will have generated the trust, confidence and respect of others.
- b. Fairness and Impartiality.
- They will be open minded and objective, having the ability to recognise and deal appropriately with any matter that has the capacity to interfere with the proper observance of the judicial oath to act without fear or favour, affection or ill will.
 - They will deal impartially with all matters which come before him/her and will seek to ensure that all who appear before him/her have an

opportunity for their case to be clearly presented and that it is then considered as fully and dispassionately as possible, so as to maintain public confidence in the administration of justice within the ADF.

- c. Understanding the Requirements of Discipline in a Disciplined Force.
 - They will have knowledge and understanding of, and respect for men and women from all ranks of the ADF.
 - They will understand the Service environment and the requirements of discipline in a disciplined force.
- d. Maturity and Sound Temperament.
 - They will display a maturity of attitude and approach to the conduct of in-court duties and out-of-court administration.
 - They will when required be firm and decisive while remaining patient, tolerant, good humoured and even tempered.
- e. Courtesy and Humanity.
 - They will be courteous and considerate to all court users and court staff.
- f. Commitment.
 - They will be committed to the proper and efficient administration of justice, which they will pursue conscientiously with energy and diligence.

4 The Selection Process

By this instrument I determine the following process will apply to the selection of a person for appointment under s 188EC of the *Defence Force Discipline Act 1982*.

1. Calls for Applications for the Position

- a. The process for selecting a person for appointment to the position will commence with the distribution of an information pack calling for candidates to make application for the position to the Directorate of Senior Officer Management, Defence People Group (DSOM).
- b. The information pack will be distributed by such means as are reasonably expected to bring the proposal to appoint a person to the position to the attention of all permanent and reserve ADF legal officers, who are likely to be eligible to serve in the position.
- c. In the discretion of and at the direction of the Judge Advocate General, the position may also be advertised in a national newspaper, on the Internet, or by such other means as are reasonably calculated to bring the call for applications and the information pack to the attention of members of the civilian legal profession, who may be potentially suitable applicants for the position after they join the ADF.

- d. A call for applications for the position must provide a period of notice that allows a reasonable opportunity for potential applicants to consider the call, to consult if desired and to respond to the requirements of the call for applications.
- e. The information pack calling for applications for the position will:
 - provide a description of the position;
 - identify defence leadership behaviours expected of a person serving in the position;
 - set out a duty statement for the position;
 - identify the selection criteria for the position;
 - request a response to the specified selection criteria for the position;
 - identify considerations of diversity and inclusion;
 - identify the remuneration package and the terms of the engagement for the position; and
 - otherwise include such matters, as may be required by law and as the Judge Advocate General may direct.

2. **The Selection Panel**

- a. To assist the Judge Advocate General in making an appointment under s 188EC(1) the Judge Advocate General will convene a panel of at least five persons (the selection panel) to assist the Judge Advocate General in (a) recognising from the applications received the candidates who are suitable for appointment to the position, and (b) judging the relative ranking against the selection criteria of those candidates who are suitable for appointment to the position.
- b. The Judge Advocate General will appoint the members of the selection panel. The selection panel will consist of at least five persons: the Judge Advocate General, the Chief Judge Advocate, another officer with judicial experience in the ADF, a senior ADF officer at least of the rank of Colonel equivalent but who is not a lawyer, and a senior practising lawyer from the public sector or in private practice, who is not a member of the ADF. The selection panel may in the Judge Advocate General's discretion also include a distinguished member of the community, who need not be a practising lawyer.
- c. In appointing persons to the selection panel the Judge Advocate General will have regard to the desirability of reflecting a diversity of expertise, experience and gender among the members of the selection panel.

3. **The Selection**

- a. Upon receipt of applications for the position, to assist the Judge Advocate General in making the appointment, the selection panel will consider the applications submitted, make any necessary further enquiries (inside or outside the ADF) about candidates for the position, and may if required settle a short list of candidates for interview and then interview those candidates.
- b. If with the assistance of the selection panel the Judge Advocate General determines that there is a candidate suitable for appointment to the position and that the person should be appointed, then the Judge Advocate General will make an offer to the person of an appointment to the position upon the terms and conditions set out in the information pack.
- c. If the first suitable candidate declines the offer, then the Judge Advocate General may make an offer to the next suitable candidate of an appointment to the position upon the terms and conditions set out in the information pack.
- d. If a successful candidate accepts the position but becomes unable to perform the duties of the office, or resigns from the office, the Judge Advocate General may appoint the next suitable candidate from the process and without the need to conduct a further process, provided no more than two years has elapsed since the appointment of the first successful candidate.
- e. If in response to the Judge Advocate General's offer made pursuant to paragraph (b) the person consents to being appointed to the position, then the Judge Advocate General will proceed in coordination with DSOM with the necessary procedural steps to make the appointment.
- f. The appointment will be subject to verification that the successful candidate complies with single service policies and prerequisites that are applicable to the successful candidate upon appointment of the position. A failure of a successful candidate to achieve compliance with all applicable single service policies and prerequisites may result in a cancellation of the Judge Advocate General's offer of appointment to the position, which may then be offered to the next suitable candidate.