EXPLANATORY STATEMENT

Issued by authority of the Judge Advocate General

Defence Force Discipline Act 1982

Court Martial and Defence Force Magistrate Rules 2026

The *Court Martial and Defence Force Magistrate Rules 2026* (the Rules) are made under section 149A of the *Defence Force Discipline Act 1982* (the Act).

Section 149A of the Act provides that the Judge Advocate General may, by legislative instrument, make rules, to be known as the Court Martial and Defence Force Magistrate Rules, providing for the practice and procedure to be followed by the court martial (CM) or Defence Force magistrate (DFM).

Subsection 33(3) of the *Acts Interpretation Act 1901* relevantly provides that a power to make a legislative instrument includes a power to repeal, rescind, revoke, amend, or vary that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.

The Rules commence on 7 October 2026. The Rules apply only to proceedings commenced on or after that date. Proceedings commenced before that date continue to be governed by the *Court Martial and Defence Force Magistrate Rules 2020* (old Rules). Accordingly, the Rules do not operate retrospectively and do not adversely affect existing rights, obligations or liabilities.

Purpose

The Act establishes the disciplinary framework for the Australian Defence Force (ADF) by creating a legal system for maintaining order, discipline and military justice in the ADF. Part VIII of the Act governs the procedure of service tribunal proceedings and allows for the creation of the Rules.

The Rules provide for the practice and procedure to be followed by the CM or DFM.

The Rules consist of 12 Parts that address preliminary matters, charging and summoning an accused person, disclosure obligations, provisions for dealing with witnesses, obligations of the Registrar of Military Justice, CM and DFM, pre-trial and general trial provisions for superior disciplinary tribunal proceedings, evidence before superior disciplinary tribunal proceedings, and procedure for recording of proceedings and dealing with exhibits. There are seven schedules detailing various Forms, which must be used in the proceedings.

Background

The *Defence Force Discipline Amendment (RCDVS Implementation and Related Measures No. 1) Act 2026* (the Amending Act) represented one of the most significant reforms to Australia's military discipline framework in decades, delivering on key recommendations from the Royal Commission into Defence and Veteran Suicide (RCDVS) and many of the recommendations of successive Judge Advocates General for reforms to the superior tribunal process to align with contemporary justice practice. These reforms intend to provide for fairer outcomes in the prosecution of service offences before superior tribunals.

The Amending Act made significant reforms to implement recommendations around sexual violence, unacceptable behaviour and military justice. It also addresses concerns in relation to

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fairness, transparency, mental health treatment, timelines and complexity within the Act; and adopts recommendations made in Judge Advocates General Annual Reports spanning from 2019 to 2024.

The old Rules needed to be repealed and replaced to ensure that they are consistent with the Amending Act, modernised and fit for purpose, and support the implementation of relevant recommendations and observations of the RCDVS Final Report within the scope of the Judge Advocate General's rule-making function under the Act. In particular, key updates from the existing Rules will limit the disclosure of sensitive personal information, modernise the mechanisms for witness involvement in proceedings, align with contemporary civilian criminal jurisdiction best practices, and facilitate opportunities for victims to provide victim impact statements in sentencing.

The Rules repeal and replace the old Rules in substantially the same format, with the additions described above. They also make a number of minor technical and typographical amendments to various rules and schedules.

Details of the instrument

Details of the instrument are set out in **Attachment A**.

Consultation

In developing the Rules, the Judge Advocate General consulted with key stakeholders involved in the military justice system, specifically the relevant workforce areas and military justice stakeholders, including the Office of the Judge Advocate General, the Director of Military Prosecutions, the Registrar of Military Justice, the Director of Defence Legal Assistance, the Military Justice Steering Group and relevant areas within Defence responsible for military justice policy and administration.

Consultation was appropriate and reasonably practicable for the purposes of section 17 of the *Legislation Act 2003* (Legislation Act) because the Rules concern procedural matters governing the conduct of military justice proceedings and directly affect the operation of service tribunals and persons participating in those proceedings. Feedback received during consultation informed the drafting of the Rules. Additional external consultation was not undertaken in relation to the making of these Rules.

Parliamentary scrutiny

The instrument is subject to disallowance under section 42 of the Legislation Act.

The instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full Statement of Compatibility with Human Rights is included at **Attachment B**.

The instrument is made by the Judge Advocate General in accordance with the requirements of section 149A of the Act, providing for the practice and procedure to be followed by a CM or a DFM.

The Act specifies no conditions that must be met before the power to make the instrument may be exercised.

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Attachment A

Details of the *Court Martial and Defence Force Magistrate Rules 2026*

Part 1 – Preliminary

Rule 1 – Name of the Rules
This rule provides that the name of the instrument is the *Court Martial and Defence Force Magistrate Rules 2026*.

Rule 2 – Commencement
This rule provides for the commencement of the Rules on 7 October 2026. The Rules do not operate retrospectively and do not apply to proceedings commenced before 7 October 2026. Accordingly, the Rules do not adversely affect rights, impose liabilities, or alter procedural expectations in relation to existing proceedings.

Rule 3 – Repeal
This rule repeals the *Court Martial and Defence Force Magistrate Rules 2020* made on 6 March 2020 (the old Rules). This rule also provides that the Rules apply to all proceedings commenced on or after 7 October 2026 and the old Rules will continue to apply to proceedings prior to 7 October 2026. This savings provision ensures continuity of existing proceedings by preserving the application of the old Rules. The intent of these transitional arrangements is to avoid uncertainty and ensure that parties are not required to alter their conduct or comply with different procedural requirements part way through a proceeding.

Rule 4 – Authority
This rule provides that this instrument is made under section 149A of the *Defence Force Discipline Act 1982* (Act). Section 149A provides that the Judge Advocate General (JAG) may, by legislative instrument, make rules, to be known as the Court Martial and Defence Force Magistrate Rules, providing for the practice and procedure to be followed by the CM or DFM.

The repeal of the old Rules is supported by subsection 33(3) of the *Acts Interpretation Act 1901*, which provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Rule 5 – Interpretation
This rule provides the interpretation of key terms used in the instrument in conjunction with the Act, unless the contrary intention appears.

Rule 6 – Cases not covered by the Act, these Rules or the regulations
This rule provides that where a case arises for which no provision is made in the Act or Rules the established course adopted in a trial by jury in a civil court in the Jervis Bay Territory in its criminal jurisdiction will apply. Where there is no established course, such course shall be adopted as the interests of justice require. The discretion is necessarily broad because the rule is intended to address unforeseen procedural issues that cannot practically be prescribed in advance.

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Rule 7 – **Summons to accused person**
This rule provides for the content of a summons under subsection 87(7) of the Act.

Rule 8 – Service of summons to appear
This rule provides the means by which a summons may be served under subsections 87(7) or 138(2) of the Act. It includes guidance on the process for issuing a summons for an accused person to appear, as well as for a witness who is required to appear, and if that witness is required to produce documents and things when they appear before a service tribunal. To support procedural fairness, the rule specifies permissible methods of service and provides certainty regarding when service is taken to have occurred.

Rule 9 – **Instrument for purposes of section 194A of the Act**
This rule details how the requirement of section 194A of the Act will be met for a person who is imprisoned to be produced before a hearing of a superior tribunal. The rule is procedural in nature and facilitates the operation of powers already authorised by the Act. It does not confer any new power to detain a person or extend a person's period of imprisonment. The production of a prisoner under section 194A remains subject to the statutory safeguards contained in the Act.

Part 2 – Charge sheets and charges

Rule 10 – Charge sheets
This rule provides that, in addition to the requirements of section 87A of the Act, a charge sheet must be issued in accordance with the form set out in Schedule 2 of the Rules. Unlike the old Rules, which proscribed the form and content requirements for charge sheets, the substantive content requirements are now contained in section 87A of the Act. Accordingly, this rule is limited to prescribing the approved form of a charge sheet and operates in conjunction with the requirements set out in the Act. The effect is that the scope of this rule is reduced.

Rule 11 – Charges
This rule details the forms charges shall take. A charge will consist of one offence only, and consist of two parts, being a statement of offence and particulars of the act or omission alleged. The requirements of a statement of an offence are set out in subrule 11(3) and (4), and direct that a statement of offence shall be sufficient if it complies with Schedule 1 of the Rules.

Subrule 11(5) specifically requires sufficient detail to be included in the particulars of the offence to enable the accused person to understand the case they must answer. This reflects longstanding criminal justice principles and supports the right to a fair hearing.

Subrule 11(6) specifies how two or more accused may be charged jointly in one charge and allows a joint trial if it is in the interests of justice to do so. This rule aligns with section 87 of the Act and enables a separate trial application to be brought by persons who are charged on the same charge sheet.

Rule 12 – **How charges to be construed**
This rule confirms the statement of offence and particulars must be read and construed together. The intent of this rule is to ensure that charges are interpreted as a whole.

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Rule 13 – Amendment of charge sheets by judge advocate or the Defence Force magistrate
This rule provides for amendment by a judge advocate (JA) or DFM of a charge where it appears there is a mistake in the name or description of the accused person, or a clerical error or omission. It includes a new reference to section 141A of the Act which provides for the process to amend a charge sheet by a JA or DFM.

The amendment power in section 13 is narrow and limited to circumstances involving mistakes in the name or description of an accused person, or clerical errors or omissions. It is not intended to permit substantive alteration of the case against an accused person or the addition of new allegations. The power may only be exercised by a JA or DFM.

Rule 14 – Withdrawal of charge
This rule permits a JA or DFM to allow the prosecution to withdraw a charge or charge sheet before arraignment of the person. If the prosecution seeks to withdraw a charge sheet, the charge sheet may not be withdrawn if the person has been arraigned on any charges contained in that charge sheet. The definition of arraign has the meaning set out in Rule 5. The rule is procedural in nature and does not limit any substantive rights available to an accused person under the Act.

Rule 15 – Limitation of publication of complainant's name in charge sheet
This new rule establishes procedures for limiting the publication of complainant's names in charge sheets.

The rule provides that any complainant's name must not be included in the statement of offence, however allows for a complainant's name to be included in the particulars of the offence, and sets out the procedures to follow where a unique identifier is used.

Subrule 15(3) requires the complainant's name to be read onto the record in place of the unique identifier listed in the statement of the offence. This ensures that no third party information is inadvertently disclosed in the handling and management of the charge sheet, or in the subsequent disclosure of conviction information, should the charges result in a conviction and a disclosure of the conviction to the Australian Criminal Intelligence Commission. This also ensures that the accused person and parties are able to properly understand and identify the particulars of the offence.

The rule is intended to protect the privacy of complainants and reduce the risk of unnecessary disclosure of personal information during the administration of military justice proceedings. Although the rule limits the publication of a complainant's name on the face of a charge sheet, it does not prevent the identity of the complainant from being known by the parties or the tribunal where necessary for the fair conduct of proceedings. The intent of this is to achieve an appropriate balance between the protection of personal information and the maintenance of open and fair proceedings.

Part 3 – Disclosure obligations

Rule 16 – Disclosure of sensitive personal information
This is a new rule that sets out the requirement for the Director of Military Prosecutions (DMP) to inform a person if their sensitive personal information is to be disclosed in connection to a charge of an accused person.

Subrule (2) sets out what constitutes sensitive personal information, and refers to:

- health information which extends to a person's counselling information;

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- intimate images of a person or purported intimate images of a person; and
- telephone or social media data of an individual which could be regarded as sensitive and personal.

The definition of what constitutes intimate images is defined in the Act at section 84A(1A).

The rule is intended to protect the privacy interests of individuals whose sensitive personal information may become relevant to proceedings while ensuring that relevant evidence remains available for the proper administration of justice.

By requiring notice to be given before disclosure occurs, the rule ensures affected persons are informed that their sensitive personal information may be used in connection with proceedings and provides an opportunity for those persons to make an application regarding the handling, disclosure or use of that information during proceedings.

The rule promotes procedural fairness by enabling affected persons to participate in decisions concerning the treatment of their personal information. At the same time, it does not prevent the disclosure of relevant evidence where disclosure is necessary for the fair determination of proceedings.

Rule 17 – I**nspection prior to release of sensitive information**
This is a new rule that establishes a process for the management of material procedure in response to a summons where that material may contain sensitive personal information.

Where the Registrar of Military Justice (Registrar) or any party to the proceedings identifies that summons material may contain sensitive personal information, the issue must be referred to a JA or DFM for a procedural hearing who can then make orders in respect of the handling of those materials.

This Rule provides a mechanism for a person whose sensitive information is to be disclosed in response to a summons to be given notice of this intention, which provides an opportunity for those persons to make an application regarding the handling, disclosure or use of that information during proceedings.

The purpose of the rule is to ensure that sensitive information is not automatically disclosed without appropriate judicial consideration of privacy, fairness and evidentiary issues.

The rule does not prevent access to relevant evidence. Rather, it provides an independent mechanism through which a JA or DFM may determine the appropriate manner in which sensitive personal information should be handled, disclosed or protected during proceedings.

Rule 18 – Expert evidence
This is a new rule that requires parties to proceedings to serve an expert report it intends to rely on in the proceedings as soon as reasonably practicable, or as directed by the JA or DFM. It specifies that the prosecution’s duties of disclosure remain unaffected by this Rule. This rule gives effect to section 101BF of the Act and does not affect the obligations of the Act at section 101ZBE. Accordingly, the rule expressly preserves the prosecution's statutory disclosure obligations under the Act and is intended to operate in conjunction with, rather than diminish or replace, those obligations.

The rule promotes the efficient and fair conduct of proceedings by ensuring that parties are aware of expert evidence that may be relied upon at trial and are provided with sufficient opportunity to

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consider, test and respond to that evidence. Early disclosure of expert reports reduces the risk of delay, facilitates the identification of contested issues and supports the effective administration of justice.

Rule 19 – Disclosure and notification by the Director of Military Prosecutions
This rule provides for the prosecution's disclosure obligations in the proceedings and for the provision by the Registrar of certain information to the JA.

For the purposes of this Rule, the service police, law enforcement or investigating officers have a duty to disclose to the DMP all relevant information, documents or other things obtained during investigation that might reasonably be expected to fall within section 101ZBC(2) of the Act.

A list of what information and documents to be disclosed is detailed in subrule 19(5). This disclosure obligation also includes a requirement under subrule 19(6) to notify the accused where the prosecution decides not to call a witness whose statement has been disclosed; and, under subrule 19(7), to inform the accused person of the intent to rely upon any lawful exception from disclosure of documents that fall under the exception in subrule 19(5)(g). The footnote to subrule 19(5)(g) includes examples of lawful exemptions from disclosure, including legal professional privilege and public interest immunity.

Subrule 19(7) provides that if information, documents or things are provided under subrule 19(5)(g) and that material is expected to be the subject of a lawful exception, that the prosecution must inform the accused person of their intention to claim this protection at the time of production. This notification must occur as soon as is reasonably practicable. This ensures that the accused person is provided sufficient notice of this intention and can adequately prepare an application to request consideration of access to this material if necessary.

Part 4 – Witnesses

Rule 20 – Securing appearance of witnesses on behalf of accused person
This rule requires the relevant authority to take the necessary steps to secure the appearance of persons reasonably required by the accused person to give evidence or to produce documents.

For the purposes of this rule, subrule 20(2) defines relevant authority to mean the Chief of the Defence Force or a delegate of the CDF of at least the rank Lieutenant Colonel (or an equivalent rank).

The delegation level of Lieutenant Colonel or equivalent rank ensures that an appropriately senior military officer is entrusted with this task, who in most cases will be the Deputy Registrar, or in other cases holds the equivalent rank of a Commanding Officer. Delegation to this level is necessary and appropriate to ensure the efficient and effective ability to secure attendance of witnesses before superior tribunal proceedings. The delegation is limited to appropriately senior officers and does not affect the accused person's entitlement to seek the attendance of reasonably required witnesses.

The intent of this rule is to promote procedural fairness by supporting an accused person's ability to obtain relevant evidence and call witnesses in support of their case.

Rule 21 – Exclusion of witness from tribunal hearing room
This rule provides that a witness shall not be present in the hearing room, or audio or audio-visual link, without leave of the JA or DFM, until that witness is called to give evidence, and for the

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witness to withdraw from the hearing room whilst an objection is heard. The rule is intended to preserve the integrity and reliability of witness evidence by minimising the risk that a witness's evidence may be influenced by other evidence given during the proceedings.

Subrule 21(2) allows for the JA or DFM to direct that the witness withdraw from the hearing room or audio or audio-visual link while a decision relating to an objection in respect of the allowing of question of the evidence of the witness is decided. This ensures objections can be determined fairly and efficiently without unnecessarily exposing the witness to potentially inadmissible or disputed matters.

Subrule 21(3) clarifies that this rule does not apply to the accused, their representative or the prosecuting officer.

Rule 22 – Examination of witnesses

This rule sets out the order of examination of a witness, and process by which a witness may be examined, cross-examined and re-examined.

Subrule 22(2) allows for the postponement of cross-examination or re-examination if the JA or DFM considers it is in the interests of justice to do so.

Subrule 22(3) allows for the JA or DFM to put questions to a witness, and subrule 22(4) sets out the procedure by which members of a CM may ask a question.

Subrule 22(5) provides that the accused and the prosecuting officer may ask questions arising out of the answers to questions put to the witness by the JA, DFM or the panel.

Rule 23 – Calling and recalling witnesses

This rule provides for the recall of a witness, and sets out how evidence in rebuttal may be given.

Where the rule permits a witness to be called or recalled in the interests of justice, the discretion may be only exercised by the JA or DFM having regard to the circumstances of the particular proceeding and the requirements of procedural fairness. This discretion is therefore limited and narrow in nature.

Rule 24 – Witnesses to reply forthwith

This rule requires a witness to reply to each question put to them when appearing before a CM or DFM unless a circumstance set out in subrule (2) applies. If the question is objected to or the witness claims privilege in respect of the question, the witness is not to answer the question unless the objection or claim is overruled by the JA or DFM.

The rule preserves existing rights and protections relating to legal privilege and ensures that disputes concerning objections or claims of privilege are determined by the JA or DFM before an answer is required.

Rule 25 – Expenses for witnesses

This rule details how witness expenses for people who are not defence members shall be paid, by reference to the fee and allowances scale set out in the High Court Rules as in force under the *High Court of Australia Act 1979.* The rule supports access to justice by ensuring that witnesses are appropriately compensated for expenses incurred by complying with a summons.

Subrule 25(2) sets out who is authorised to facilitate the payment of the witness's attendance. At the request of the appropriate authority, payment may be facilitated by the CDF, the CDF's delegate of

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the rank of at least Lieutenant Colonel or equivalent, or the DMP. This delegation is necessary and appropriate to allow for the efficient operation and processing of payment of fees and allowances for expenses for witnesses who are not defence members. The exercise of this function is administrative in nature and does not affect any substantive rights or obligations of witnesses.

Rule 25 adopts the scale concerning witness attendance fees and allowances in the High Court Rules, as in force from time to time, ensuring that any future adjustment to the appropriate scale of compensation is automatically reflected in the operation of Rule 25. This avoids the need for frequent amendments to the Rules to maintain consistency with contemporary federal court practice.

The incorporation of these provisions is authorised by section 14 of the Legislation Act, which permits legislative instruments to apply, adopt or incorporate provisions of rules of court as in force at a particular time or from time to time.

The *High Court Rules 2004* (Cth) is a publicly available law of the Commonwealth and may be accessed, viewed and downloaded, free of charge, on the Federal Legislation Register at https://www.legislation.gov.au.

Rule 26 – Right of a person to make applications in proceedings

This is a new rule that provides details about the rights of a person when they are notified that their sensitive information is being disclosed in connection with a charge, to make an application to the CM or DFM regarding the handling and management of that information.

Subrule (2) sets out how such application may be made, including by a person acting through a representative. This ensures that affected persons can effectively exercise their rights under the rule, including where they require assistance or representation.

Subrule (3) requires applications to be determined at a procedural hearing before the JA or DFM. This provides independent oversight of decisions concerning sensitive personal information and assists in ensuring that privacy interests, procedural fairness and the administration of justice are appropriately balanced.

Part 5 - Registrar

Rule 27 – Registrar may liaise with certain persons

This rule provides that the Registrar may liaise or consult about the conduct of proceedings with the list of people or classes of person specified in the rule. This power is limited to consultation within the roles and functions of the Registrar as set out in the Act, these Rules or the regulations.

The rule updates the list contained in the old Rules to update the reference from the Director of Defence Counsel Services to the new name of Director of Defence Legal Assistance to reflect the amendment made by the *Defence Force Discipline Amendment (RCDVS Implementation and Related Measures No. 1) Act 2026*; and to allow the Registrar flexibility at subrule 27(g) to allow consultation with a person they consider necessary. The ability to consult with any other person the Registrar considers necessary provides operational flexibility to support the efficient administration of proceedings and is limited by the Registrar's statutory functions and duties.

The rule is administrative in nature and does not confer any decision-making power affecting the substantive rights or liabilities of a person.

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Rule 28 – Registrar may consult with services or groups about conduct of proceedings
This rule provides that the Registrar may consult with the services or groups concerning the administration of proceedings before a CM or DFM, and, at subrule 28(2) sets out a non-exhaustive list of the matters that may be the subject of this consultation or liaison.

This has been updated from the old Rules to refer to groups as well as services, as a result of the restructuring of the ADF to include more personnel in groups as well as services. It also reflects the new language of alternative members of a CM panel at subrule 27(j) to reflect amendments made to the Act.

Rule 29 – Registrar may consult with services or groups about administrative support for trial proceedings
This rule provides that the Registrar may consult with the services or groups concerning the nomination and appointment of staff to perform the administrative duties and functions of a proceeding before a CM or DFM. As with Rule 28, this has been updated from the old Rules to refer to groups as well as services.

Rule 30 – Order referring charge or case to Defence Force magistrate
This rule provides that when the Registrar refers a charge or a case to a DFM, the Registrar must specify the DFM to whom the charge or case is referred and fix, or provide for fixing, the time and place for the hearing of the charge or case or any pre-trial hearing.

Rule 30 contains a note that makes clear that the Registrar must not refer a charge to a DFM unless the JAG has nominated the magistrate to try the charge under section 129C of the Act.

Rule 31 – Registrar to provide certain documents
This rule sets out the documents the Registrar must provide to each party to the proceedings on convening of a CM or on referral of a charge to a DFM for trial. As with Rules 28 and 29, it reflects the new language of alternative members of a CM panel.

Subrule 31(1) contains a note that makes clear that the Registrar must not refer a charge to a JA unless the JAG has nominated the JA to try the charge under section 129B of the Act.

Rule 32 – Inspection of exhibits before trial
This rule allows an accused person to inspect exhibits before trial and provides that the accused must be permitted to inspect and copy any exhibit which has been provided to them in the list sent in accordance with Rule 19. The rule promotes procedural fairness by supporting an accused person's ability to understand and respond to the evidence relied upon in proceedings.

Subrule 32(2) requires that the custodian of the exhibit ensure that proper precautions are taken for the safety of the exhibit during an inspection.

Subrule 32(3) provides that any materials treated as sensitive materials for the purposes of section 101ZBB of the Act and section 7D of the *Defence Force Discipline Regulations* continue to be treated as sensitive materials unless a subsequent order is made. This ensures that sensitive material remains subject to appropriate protections unless otherwise directed by a JA or DFM.

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Part 6 – Courts martial

Rule 33 – Functions of President
This rule provides that a President of a CM, in addition to any other functions, is to speak on behalf of the CM panel in announcing any decision, and in requesting any advice from the JA.

Rule 34 – Functions of judge advocate
This rule sets out the functions of the JA. The functions reflect the JA's role in ensuring the fairness, legality and orderly conduct of CM proceedings.

The functions are:

- Subject to subsection 136(6) of the Act, the JA is to be present at all sittings of a CM;
- To ensure the proceedings are conducted in accordance with the Act and the Rules and in a manner befitting a court of justice;
- To preside over all hearings conducted in pursuance of subsections 136A(2) or 141(7) of the Act;
- To ensure a self-represented defendant does not suffer any undue disadvantage, which is intended to promote procedural fairness and assists in safeguarding the accused person's ability to effectively participate in proceedings; and
- To ensure a proper record of proceedings is kept and exhibits properly safeguarded.

These functions support the integrity, transparency and accountability of military justice proceedings.

Rule 35 – Manner of voting of court martial
This rule provides for the order of voting by members of a CM. The rule establishes a clear and consistent voting procedure for the determination of questions by a CM and supports the orderly conduct of deliberations.

Rule 36 – Objections to members of court martial
This rule provides for the process by which objection can be taken to a member of a CM, and extends objections to any alternative or new member who is appointed to the panel. The opportunity to object to a panel member by an accused person must be provided prior to the swearing in of the panel member. Extending this right to alternative and replacement members ensures that the same procedural safeguards apply throughout the proceedings.

Rule 37 – Swearing of court martial
This rule provides for members of a CM to be sworn or affirmed, and for the form of words to be used. The rule further details how the JA is responsible for administering the oath or affirmation for the President and each member of the CM, which is to take place before the arraignment of the accused person. The oath or affirmation reinforces the independence and impartiality of CM members and reflects the obligation to determine matters according to law and the evidence presented.

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Rule 38 – Alternative court martial members
This new rule provides that the Registrar must determine the number of CM members required for the CM and requires all members to be present during hearings as directed by the JA. The rule ensures that sufficient members are available to enable the CM to continue to function where a member becomes unavailable during proceedings.

The rule sets out the process by which the Registrar is to select the appropriate numbers of panel members to undertake a vote, which includes the random selection of members to be dismissed, if there are more members than required for the purposes of a vote. The requirement for random selection provides an objective and transparent mechanism for determining which members will be dismissed and reduces the risk of actual or perceived bias in the composition of the voting panel.

This rule ensures that alternative members will have sat in proceedings, as directed by the JA, to be capable of undertaking duties as a voting member, and allows flexibility to the Registrar in the manner in which they are to ensure that there are sufficient panel members to undertake voting functions in the numbers specified in the Act, in proceedings where alternative members have been appointed to account for potential unavailability of panel members to vote, such as through illness that might arise during protracted proceedings.

Part 7 – Defence Force magistrate

Rule 39 – Functions of the Defence Force magistrate
This rule sets out the functions of a DFM in proceedings before the magistrate. In addition to any functions conferred by the Act, the regulations or any other rule, the DFM must ensure:

- that proceedings are conducted in accordance with the Act and these Rules, and in a manner befitting a court of justice.
- that an accused person who is not legally represented does not suffer any undue disadvantage as a result of that fact.
- that a proper record of proceedings is maintained and that exhibits are appropriately safeguarded.

The functions prescribed by this rule substantially mirror those conferred on a JA under paragraphs 34(b), (d) and (e), reflecting the equivalent role performed by a DFM in proceedings conducted without a CM panel.

Part 8 – Pre-trial proceedings

Rule 40 – Application for procedural hearing
This rule allows the prosecution or the accused person to apply to the JA or DFM for a direction or ruling in relation to a procedural hearing. Subrule 40(2) also permits the JA or DFM, on their own initiative, to direct the parties to attend a procedural hearing for the purposes of giving directions or making rulings concerning the conduct of the proceedings. The rule provides flexibility by allowing procedural hearings to be conducted in person or by audio or audio-visual link, which may reduce delay and facilitate the effective management of proceedings.

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Where a procedural hearing is directed on the initiative of a JA or DFM, it is expected that the power would be exercised in accordance with the Act, these Rules and the requirements of procedural fairness.

This case management power supports the efficient, fair and orderly conduct of proceedings by allowing procedural, evidentiary and administrative issues to be identified and resolved before or during a trial.

Rule 41 – Nature of procedural hearings
This rule provides for a non-exhaustive list of the matters which could be raised in procedural proceedings and could be the subject of a direction or ruling.

The matters listed in the rule are intended to provide guidance as to the types of matters that may appropriately be addressed by a direction or ruling, but do not expand the powers otherwise conferred under the Act or limit the operation of sections 132 or 136B of the Act or Rule 40.

Part 9 – Evidence

Rule 42 – Time for service of previous representation/ tendency/coincidence evidence
This rule has been updated and provides for the timing of service of a previous representation notice under section 65 of the *Evidence Act 2011* (ACT), or a tendency or coincidence notice under Part 3.6 of the *Evidence Act 2011* (ACT), and requires that any such notice given by the prosecution must be given to the accused person at the time of referral to the Registrar, or any other such times as allowed by the JA or DFM. This rule also requires that the notice must be provided by the Registrar to the JA or DFM prior to the trial.

The note to Rule 42 clarifies that the *Evidence Act 2011* (ACT) applies to proceedings under the Act, as modified by the *Defence Force Discipline Regulations*. This note makes clear that the *Evidence Act 2011* (ACT), as modified by the *Defence Force Discipline Regulations*, is a rule of evidence in force in the Jervis Bay Territory, pursuant to section 146 of the Act.

The incorporation of these provisions is authorised by section 14 of the Legislation Act, which permits legislative instruments to apply, adopt or incorporate provisions of rules of court as in force at a particular time or from time to time.

The *Evidence Act 2011* (ACT) is a publicly available law of the ACT and may be accessed, viewed and downloaded, free of charge, on the ACT Legislation Register at https://www.legislation.act.gov.au.

Rule 43 – Notice of Previous representation/ tendency/coincidence evidence
This rule provides that a party seeking to rely 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), and submit a notice in accordance with the relevant Schedule of the Rules.

Rule 43 adopts the provisions related to representation, tendency and coincidence evidence in the *Evidence Regulations 2012* (ACT).

The incorporation of these provisions is authorised by section 14 of the Legislation Act, which permits legislative instruments to apply, adopt or incorporate provisions of rules of court as in force at a particular time or from time to time.

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The *Evidence Regulations 2012* (ACT) is a publicly available law of the ACT and may be accessed, viewed and downloaded, free of charge, on the ACT Legislation Register at https://www.legislation.act.gov.au.

Rule 44 – Affidavit—form
This is a new rule which provides that the Form of affidavit to be used in proceedings must substantially comply with Schedule 7. In cases of minor, typographic or unsubstantial error, this rule will still have been complied with.

Part 10 – Trial Provisions

Rule 45 – Employment of, objections to, and swearing of recorders and interpreters
This rule requires that all proceedings must be recorded and, if practicable, electronically recorded with a transcript of that recording prepared unless otherwise ordered by the JA or DFM. The rule supports the integrity, transparency and accountability of military justice proceedings by ensuring an accurate record is maintained. A note to subrule 45(1) notes that the exigencies of operational service may make electronic recording impracticable and justify a handwritten record of proceedings.

Subrule 45(2) specifies the process for arranging a recorder or interpreter for proceedings, and the requirement for a party to notify the Registrar as soon as reasonably practicable if they require an interpreter.

Subrules 45(3), 45(4) and 45(5) sets out the process for registering and substantiating objections of a recorder or interpreter on the basis of incompetence or bias. The rule clarifies that there is no requirement to swear in a recorder where the proceedings are recorded electronically, and provides for electronic recording as the usual means of recording. The rule retains the requirements to swear in a recorder in other circumstances, together with the requirement to swear in an interpreter.

Rule 46 – Administration of oaths and affirmations
This rule allows a JA or DFM to permit a person to take an oath or affirmation in any form that is declared by that person to be binding on their conscience.

Rule 47 – Application by accused person or prosecuting officer for adjournment of proceedings
This rule provides that an accused person or the prosecuting officer may, at any time, make an application to the JA or DFM for an adjournment of proceedings on any reasonable grounds.

Rule 48 – Right of accused person and prosecuting officer to argue and adduce evidence on matter to be decided
This rule provides that an accused person or the prosecuting officer may properly argue and adduce evidence on any question to be determined in the proceeding. The word properly is to be interpreted as having regard to the Act, the Regulations, any other rules and any other practice that would constitute accepted practice in a civil court in the Jervis Bay Territory from time to time.

Rule 49 – Pleading to charges and arraignment
This rule establishes the procedure for an accused person to be arraigned on the charges sent by DMP or an authorised charging member to the Registrar with the referral request. It requires that the accused plead separately to each charge on the charge sheet; and the procedure of the JA and DFM in respect of what type of plea to record in response to the accused person's response when asked to

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plea. The requirement to record a plea of not guilty where an accused person refuses to plead protects the accused person's right to a fair trial and ensures proceedings can continue without prejudice.

Subrule 49(4) specifies that if there are multiple charges against an accused person on multiple charge sheets that the arraignment of that person cannot occur in respect of the other charge sheets until that person has been charged in respect of the first charge sheet.

Subrule 49(5) sets out the procedure in respect of conviction or guilty pleas for alternative charges listed on a single charge sheet.

Rule 50 – Opening address by prosecution
This rule provides that before the first prosecution witness is called to give evidence at a trial, the prosecuting officer shall make an opening address to the tribunal and specifies what the opening address is to include. The intent of this rule is to promote procedural fairness by ensuring the accused person is informed of the prosecution case before evidence is called.

Rule 51 – Opening address by the defence after opening address by the prosecution
This rule provides that, with leave of the JA or DFM, the accused person may make a brief opening address after the prosecution's opening address. The brief opening address made by the defence is limited to identifying the issues that are in dispute or not in dispute in the proceedings.

Rule 52 – Judge advocate or Defence Force magistrate may direct substitution of plea of not guilty
This rule permits a JA or DFM to substitute a plea of guilty with one of not guilty at any time during a trial if it appears that an accused person does not understand the effect of that plea. This is an important safeguard that seeks to protect against pleas being entered on the basis where the accused person does not understand the effect of that plea.

Rule 53 – Submission of no case to answer
This rule provides that at the close of the prosecution case, an accused person may submit to the JA or DFM that the evidence adduced in respect of a charge is insufficient to support the charge.

The effect of this rule is that the JA or the DFM is not required to give a ruling in relation to the efficacy of the evidence to support the charge under subsections 134(2) and 136D(2) of the Act, unless, the accused person has submitted that the JA or the DFM should give the ruling in accordance with subsections 134(6) and 136D(6) of the Act. This rule makes clear that the JA or DFM must give a ruling after such a submission is made.

Rule 54 – Opening address by defence
This rule allows the accused person to make an opening address, if they wish, before they adduce any evidence in their case, limited to the nature and general effect of the evidence that they intend to adduce in the accused person's defence.

Rule 55 – Closing addresses
This rule sets out the order for closing addresses, if any, after all of the evidence has been given in a trial. Subrules 55(3) and 55(4) make provision for the closing address in cases where there are 2 or more persons charged in the same charge sheet. This rule promotes procedural fairness by ensuring each party has an opportunity to make submissions on the evidence before the matter is determined.

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Rule 56 – Summing up
This rule provides that after the closing addresses, if any, at a trial by CM, the JA shall sum up the evidence and direct the panel on matters of law relating to the case.

Rule 57 – Evidence as to material facts after conviction on plea of guilty
This rule provides the procedure to be followed where an accused person pleads guilty and is convicted. In these circumstances, the prosecuting officer is required to inform the JA or DFM of the material facts that show the nature and gravity of the offence.

The rule ensures that the JA or DFM has access to sufficient information about the offending conduct to determine any subsequent action under Part IV of the Act. It also preserves procedural fairness by allowing the convicted person to dispute any material fact relied upon by the prosecution.

Where a material fact is disputed, both the convicted person and the prosecuting officer may adduce evidence in relation to that fact. This ensures that any factual issue relevant to the determination of punishment may be properly considered and determined on the basis of evidence, rather than assertion, and supports the fair and transparent administration of military justice proceedings.

Rule 58 – Victim impact statement
This is a new rule providing that a CM or the DFM shall give the victim of the offending, if any, an opportunity to present a victim impact statement in accordance with the *Defence Force Discipline Regulations,* after the person's conviction and before the convicted person's record or plea in mitigation is taken.

Subrule 58(3) provides that a victim impact statement may not be given unless a copy of the statement has been given to the defence in advance of giving it during proceedings.

Subrules 58(4) to 58(9) set out the rules related to the content of a victim impact statement. The content of this rule reflects the content of both sections 16AB of the *Crimes Act 1914* (Cth) and Chapter 6A of the *Evidence and Miscellaneous Provisions Act 1991* (ACT).

Rule 59 – Service impact statement
This is a new rule that provides for the process to be followed in relation to a service impact statement tendered to a service tribunal under subsection 70(1A) of the Act. The rule provides that, after the conviction of a person and before that convicted person's plea in mitigation is taken, a JA or DFM is to consider any service impact statement made by a relevant superior authority.

The rule provides that a service impact statement must describe the impact that the charged conduct has had, or could have had, on maintaining discipline in the Defence Force, including any impact on the discipline, efficiency or morale of the Defence Force, or a relevant part of it. The rule also provides that a superior authority may consult other personnel within the Australian Defence Force, including personnel at the most relevant level of command, in preparing a service impact statement, provided those sources are identified in the statement.

The rule requires that a copy of a service impact statement be provided to the defence before it is given during proceedings. The rule also provides that only one service impact statement may be

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made unless leave is granted, and that no implication is to be drawn from the absence of a service impact statement.

The rule further provides that a service impact statement is not to be read to, or otherwise taken into account by, the tribunal to the extent that it expresses an opinion about an appropriate sentence, is offensive, threatening, intimidating or harassing, or where its admission would otherwise not be in the interests of justice. The rule also limits the circumstances in which a convicted person may test the facts contained in a service impact statement and preserves the ability of the defence to make relevant submissions concerning the statement.

Rule 60 – Convicted person's record etc. and plea in mitigation

This rule sets out the procedure to be followed after a person has been convicted by a CM or DFM and before punishment is imposed.

Subrule 60(1) requires the prosecuting officer to adduce evidence relevant to the determination of an appropriate punishment, including the convicted person's service record (where applicable), any previous convictions for service offences, civil court offences or overseas offences, and any other matters that the JA or DFM considers relevant to the exercise of powers under Part IV of the Act.

Subrule 60(2) provides the convicted person with an opportunity to give evidence, call witnesses and make submissions in mitigation of punishment. This ensures that matters relevant to the convicted person's character, personal circumstances, service history and any other mitigating factors may be placed before the tribunal for consideration.

The rule promotes procedural fairness by ensuring that both the prosecution and the convicted person have an opportunity to present relevant material before punishment is determined. It assists the tribunal in making an informed and proportionate decision based on all relevant circumstances of the offending and the offender.

Subrule 60(3) applies the procedures relating to the examination, cross-examination and re-examination of witnesses in Rule 22 to witnesses giving evidence under this rule, ensuring that any evidence provided during the mitigation process is subject to the same procedural safeguards that apply elsewhere in proceedings.

Rule 61 – Imposition of punishment or order in case of breach of undertaking of good behaviour

This rule applies where a person who has previously given an undertaking to be of good behaviour under subsection 75(2) of the Act is subsequently convicted of a further service offence committed during the period of that undertaking.

The rule establishes the procedure to be followed where a JA or DFM is considering whether to impose punishment or make an order in relation to the earlier offence as a consequence of the breach of the undertaking.

Subrule 61(2) applies the procedures in Rules 57, 58 and 59 to these proceedings as if the person had been convicted before the tribunal and had pleaded guilty. This ensures that the tribunal receives relevant information concerning the nature and gravity of the conduct, any victim impact statement and any service impact statement before determining the appropriate action to take.

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The rule promotes procedural fairness and consistency by applying the same safeguards and processes that ordinarily apply following conviction, ensuring that relevant information may be considered by the tribunal before exercising its powers in relation to a breach of an undertaking of good behaviour.

Part 11 – Record of proceedings and exhibits

Rule 62 – Record of proceedings before court martial or Defence Force magistrate

This rule sets out the requirements for the recording of proceedings before a CM or DFM. The rule provides for proceedings to be recorded either electronically or, where electronic recording is not practicable, in written form.

Subrule 62(1) prescribes the level of detail required in a written record to ensure that the course of the proceedings can be followed and the merits of the case assessed from the record. The rule also provides for particular evidence, objections, submissions, applications and other relevant parts of proceedings to be recorded where required.

Subrules 62(2) and (3) establish requirements for the preparation and authentication of transcripts and the certification of records following conviction.

The rule promotes transparency, accountability and procedural fairness by ensuring that an adequate record of proceedings is maintained for the purposes of review, appeal and the proper administration of military justice.

Rule 63 – Inspection of record of proceedings etc during trial

This rule permits an accused person or the prosecuting officer, with the permission of the JA or DFM, to have a particular part of the record of proceedings read or played back during a trial and to inspect an exhibit, subject to appropriate safeguards.

The rule assists in ensuring that the parties are able to effectively participate in proceedings and supports the fair determination of issues arising during a trial. The requirement that the permission of the JA or DFM be obtained provides oversight of the process and assists in ensuring the orderly conduct of proceedings.

The requirement that proper precautions be taken when inspecting exhibits protects the integrity and evidentiary value of material tendered during the proceedings.

Rule 64 – Loss of original record of proceedings

This rule provides a mechanism for the reconstruction of a record of proceedings where the whole or part of an original record of proceedings has been lost.

The rule allows a copy of the record to be authenticated by the signature of the prescribed person, being the relevant JA or DFM. This ensures that a valid record of proceedings may continue to be available notwithstanding the loss of the original record.

The rule supports the continuity and integrity of proceedings and assists in preserving the availability of records for review, appeal and other lawful purposes.

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Rule 65 – Exhibits
This rule provides for documents and things admitted into evidence during proceedings before a CM or DFM to be made exhibits.

Subrule 65(2) permits a CM or DFM to make a copy of, or extract from, a document or book an exhibit in place of the original document or book where satisfied that the copy or extract is correct. This provides a practical mechanism for the management of documentary evidence while preserving the evidentiary value of the material tendered.

Part 12 – Miscellaneous provisions

Rule 66 – Relief from rules
This rule permits a JA or DFM may dispense with compliance with any of the requirements of the Rules, either before or after the occasion for compliance arises.

The intent of the rule is to provide flexibility to address circumstances where strict compliance with a procedural requirement may be impracticable, unnecessary or otherwise inconsistent with the efficient administration of justice in a particular case. The discretion is intended to address procedural matters only and does not permit the JA or DFM to disregard requirements imposed by the Act.

The discretion may only be exercised by an independent judicial officer. In exercising this discretion, it is expected that the JA or DFM would act consistently with the Act, the requirements of procedural fairness and the interests of justice.

Rule 67 – Transitional Rules
This new rule sets out how the Rules will continue to operate upon commencement of the summary contravention scheme in Schedule 4, Parts 1, 2 and 3 of the *Defence Force Discipline Amendment (RCDVS Implementation and Related Measures No. 1) Act 2026*.

Subrule 67(1)(a) provides that, upon commencement of those amendments, any reference to a charge sheet in the Rules are taken to mean the charge sheet signed, by hand or digitally, by the DMP or a person appointed under section 188GP of the Act, or a delegate under sections 87(9) and 188GR of the Act.

The rule is intended to ensure that the Rules continue to operate consistently with amendments made to the Act and to avoid uncertainty regarding the validity and operation of charge sheets following commencement of those amendments. The rule is procedural in nature and does not alter any substantive rights, liabilities or offences established by the Act.

Subrule 67(2) makes clear that the modification operates only if the relevant amendments commence. This ensures that the transitional provision has no effect unless it becomes necessary for the operation of the amended legislative framework.

Schedule 1 – Statement of offences
This Schedule prescribes the approved statements of offence for offences under the Act, the Regulations and the *Criminal Code Act 1995* (Criminal Code).

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Schedule 1 contains three parts. Part 1 contains the offences against the Act. Part 2 contains the offences against the Regulations. Part 3 contains the offences against the Criminal Code.

Schedule 2 – Form of charge sheet
This Schedule prescribes the approved form of charge sheet for proceedings before a CM or DFM for the purposes of rule 10.

Schedule 3 – Forms of summons
This Schedule prescribes the approved forms of summons that may be issued to accused persons and witnesses, including summonses for the production of documents or things.

Schedule 3 contains seven parts:

Part 1 – Form of summons – accused person

Part 2 – Form of summons – ADF member

Part 3 – Form of summons – civilian

Part 4 – Form of summons to produce documents – ADF member

Part 5 – Form of summons to produce documents – civilian

Part 6 – Form of summons to produce documents – Defence Secretary

Part 7 – Privacy Notice for summons

The Schedule is intended to ensure that recipients of summonses are provided with clear information about their obligations, the consequences of non-compliance, applicable privacy arrangements and available legal protections and objections. The forms support procedural fairness and the effective administration of service tribunal proceedings.

Part 7 of Schedule 3 does not authorise for the collection, use and disclosure of personal information, however to the extent that the Schedule engages privacy interests, those impacts are accompanied by safeguards including notification requirements, judicial oversight of proceedings, and the continued application of the *Privacy Act 1988* and relevant Defence privacy policies.

Relevantly, the Privacy Notice contained in Part 7 of the Schedule provides information about the collection, use and disclosure of personal information in connection with CM and DFM proceedings. The Privacy Notice explains the authority for the collection of personal information, the purposes for which that information may be collected, used and disclosed, and the avenues available to individuals to access, correct or complain about the handling of their personal information.

The Privacy Notice is intended to support compliance with the Australian Privacy Principles in Schedule 1 to the *Privacy Act 1988*, particularly the requirement to notify individuals about the collection of personal information. It promotes transparency by informing individuals about how their information may be handled in connection with military justice proceedings.

The Privacy Notice also explains the circumstances in which personal information may be disclosed for purposes connected with the administration of military justice, including appeals, reviews, disciplinary processes and other lawful purposes authorised by legislation. The inclusion of this information ensures that affected persons are aware of potential uses and disclosures of their personal information.

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Schedule 4 – Form of tendency notice
This Schedule prescribes the form of notice to be used where a party intends to adduce tendency evidence.

Schedule 5 – Form of coincidence notice
This Schedule prescribes the form of notice to be used where a party intends to adduce coincidence evidence.

Schedule 6 – Form of previous representation notice
This Schedule prescribes the form of notice to be used where a party intends to adduce evidence of a previous representation under the *Evidence Act 2011* (ACT).

Schedule 7 – Affidavit—form
This Schedule prescribes the approved form of affidavit for use in proceedings before a CM or DFM.

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Attachment B

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Court Martial and Defence Force Magistrate Rules 2026

The Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.*

Overview of the Disallowable Legislative Instrument

The *Court Martial and Defence Force Magistrate Rules 2026* (the Rules) are made under section 149A of the *Defence Force Discipline Act 1982* (the Act), which provides that the Judge Advocate General (JAG) may make rules providing for the practice and procedure to be followed by the court martial (CM) or Defence Force magistrate (DFM).

The Rules prescribe the rules and processes that are to be followed during CM and DFM proceedings under the Act.

The purpose of the Rules is to repeal and replace the *Court Martial and Defence Force Magistrate Rules 2020* (old Rules) to ensure that they are consistent with the Amending Act, modernised and fit for purpose, and support the implementation of relevant recommendations and observations of the RCDVS Final Report within the scope of the Judge Advocate General's rule-making function under the Act.

In particular, the Rules will update the old Rules to limit the disclosure of sensitive personal information, modernise the mechanisms for witness involvement in proceedings, align with contemporary civilian criminal jurisdiction best practices and facilitate opportunities for victims to provide victim impact statements in sentencing.

The Rules also make a range of technical, drafting and consequential amendments, including updates to prescribed forms and notices, to support the efficient administration of CM and DFM proceedings.

Human rights implications

This Disallowable Legislative Instrument engages the following rights:

- the right to liberty and security of the person under Article 9 of the International Covenant on Civil and Political Rights (ICCPR);
- the right to a fair trial and fair hearing under Article 14 of the ICCPR;
- the right to privacy and reputation in Article 17 of the ICCPR; and
- the right to physical and mental health in Article 12 of *the International Covenant on Economic, Social and Cultural Rights* (ICESCR).

Legitimate objective

Under international human rights law, any limitation on rights and freedoms must be reasonable, necessary and proportionate to the pursuit of a legitimate objective. A legitimate objective must

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address a pressing or substantial concern, and cannot simply seek an outcome that is desirable or convenient.

The legitimate objective of the Rules is to support the implementation of relevant recommendations and observations of the Royal Commission into Defence and Veteran Suicide Final Report and give effect to the Defence Force Discipline Amendment (RCDVS Implementation and Related Measures No. 1) Act 2026 (Amending Act) to implement fairness and streamlining measures that support a more efficient and just functioning of the military discipline system. This includes implementing specific recommendations made by the RCDVS that aim to reduce harm to Defence Force members, witnesses and victims engaged in the military justice system.

Right to liberty and security of the person

Article 9 of the ICCPR provides that everyone has the right to liberty and security of person. It prohibits arbitrary arrest or detention and provides that no person may be deprived of liberty except on grounds, and in accordance with procedures, established by law. Disciplinary proceedings are unique in character and are distinct from criminal proceedings. However, the rights conferred by Article 9 of the ICCPR as they relate to criminal proceedings are also given application to disciplinary proceedings by the framework created by the Act itself, the *Defence Force Discipline Regulations 2018* (the Regulations), and the Rules. The function of the Rules is to do no more than amplify the practice and procedure available to the CM or DFM in order to give effect to the rights and protections already afforded under the discipline framework, within the limits of powers already authorised by that framework.

Article 9 is engaged because the Act makes provisions for members of the Australian Defence Force (ADF) to be issued punishments of imprisonment and detention. However, ADF members will not be subject to these punishments arbitrarily. There are applicable measures in the discipline system that address the manner in which this punishment can be issued and then enforced.

The Rules do not provide any positive authority, or provide the CM or DFM any ability, to deviate from the requirements of the Act as they relate to the issuance of the punishment of imprisonment or detention. Specifically all measures ensure that ADF members will not be subject to arbitrary arrest or detention, that they will be informed of the reason for arrest and any charges, that they will be brought promptly before a court and tried within a reasonable period, and can challenge the lawfulness of detention are contained in the Act or the Regulations or the *Defence Force Discipline* (*Consequences of Punishment) Rules 2018*.

To the extent that the right to liberty and security of the person is engaged, any limitation on that right pursues the legitimate objective of maintaining an effective military discipline system. The Rules are rationally connected to that objective because it provides procedures to support the fair and efficient conduct of disciplinary proceedings. Any limitation is proportionate because the Rules do not alter the substantive safeguards contained in the disciplinary framework and operates subject to the protections already established by the Act and related legislative instruments.

Accordingly, any limitation on the right to liberty and security is reasonable, necessary and proportionate to the objectives pursued.

Right to fair trial and fair hearing

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Article 14 of the ICCPR provides that all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against them, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

Disciplinary proceedings are unique in character and are distinct from criminal proceedings. However, the rights conferred by Article 9 of the ICCPR as they relate to criminal proceedings are also given application to disciplinary proceedings by the framework created by the Act itself, the Regulations, and the Rules. The function of the Rules is to do no more than amplify the practice and procedure available to the CM or DFM in order to give effect to the rights and protections already afforded under the discipline framework, within the limits of powers already authorised by that framework.

The Rules promote the right to a fair trial and fair hearing by requiring proceedings to be conducted in a manner that affords an accused person the procedural safeguards ordinarily associated with criminal proceedings in Australian jurisdictions. In particular, the Rules support the minimum guarantees contained in Article 14(3) of the ICCPR.

To be informed promptly and in detail of the nature and cause of the charge

The Rules prescribe the form and content of charges and charge sheets. Rule 11 requires a charge to contain both a statement of the offence and particulars of the act or omission constituting the offence, including sufficient particulars to enable the accused person to understand the case against them. The Rules further require the accused person to be provided with the charge sheet and prosecution material, including witness statements, exhibits and a case statement setting out the alleged facts and evidence relied upon.

To have adequate time and facilities for the preparation of a defence and to communicate with counsel

The Rules support an accused person's ability to prepare a defence through the prosecution disclosure framework contained in Part 3 and Rule 20, which require ongoing disclosure of witness statements, exhibits and information relevant to the proceedings. The Rules also provide for pre-trial hearings under Rules 40 and 41, enabling parties to seek directions and rulings concerning disclosure, expert evidence, admissibility of evidence, witness issues and other procedural matters before trial. Rule 47 further preserves the ability of an accused person to apply for an adjournment on reasonable grounds. These measures assist in ensuring an accused person has adequate time and facilities to prepare and present their case.

To be tried without undue delay

The Rules facilitate the timely and efficient disposition of proceedings through the use of pre-trial hearings, early disclosure obligations, expert evidence procedures and case management powers. Rules 40 and 41 permit the resolution of procedural and evidentiary issues before trial, reducing the likelihood of unnecessary delays during proceedings. The Rules therefore support the prompt determination of charges while maintaining procedural fairness for all parties.

To be tried in their presence and to defend themselves personally or through legal assistance

The Rules proceed on the basis that the accused person is present during proceedings and prescribe procedures for arraignment, pleas, witness examination, opening addresses, submissions and sentencing. The functions conferred on a JA and DFM under Rules 34 and 39 include ensuring that

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proceedings are conducted in accordance with the Act and that an accused person who is not represented does not suffer any undue disadvantage. The Rules do not derogate from the rights to representation and legal assistance conferred elsewhere under the military justice framework.

To examine witnesses and obtain the attendance and examination of witnesses on the same conditions as the prosecution

The Rules contain comprehensive provisions relating to witnesses and provide both the prosecution and the accused person with access to compulsory processes to secure evidence. Rule 8 establishes a summons framework for witnesses to attend and give evidence, produce documents, or both, and requires such summonses to be served within prescribed timeframes. Rules 19 and 20 provide mechanisms for securing the attendance of witnesses and obtaining documentary evidence, while Rules 22 and 23 establish procedures for examination, cross-examination, re-examination, and the calling and recalling of witnesses.

The modernised summons and witness framework reflects contemporary criminal justice best practice by providing clear procedures for witness attendance, document production and the management of evidentiary issues before and during trial.

To have the free assistance of an interpreter

Rule 45 expressly provides for the appointment of interpreters in proceedings and requires parties requiring an interpreter to notify the Registrar as soon as reasonably practicable. The Rules also provide a process for objections to interpreters on the grounds of incompetence or partiality and require interpreters to take an oath or affirmation before acting in that capacity. These measures support the participation of persons who may not understand or be able to effectively communicate in the language used during proceedings.

Not to be compelled to testify against oneself or to confess guilt

The Rules are directed toward procedural fairness and do not compel an accused person to provide evidence or confess guilt. Rule 52 further protects an accused person by requiring a judge advocate or DFM to substitute a plea of not guilty where it appears that a person who has pleaded guilty does not understand the effect of that plea. The Rules also preserve the ability of parties to make objections and submissions regarding the admissibility of evidence and other matters arising during proceedings.

The Rules further promote fair trial rights through new provisions relating to expert evidence, disclosure obligations, sensitive personal information, sensitive material and pre-trial procedures. Rules 16, 17, 26 and 32 establish safeguards governing the handling of sensitive personal information and sensitive material, while preserving the ability of the accused person to access relevant evidence and seek determinations from a JA or DFM where disputes arise. Rules 18, 19, 42 and 43 provide clarity regarding expert evidence, disclosure obligations and evidentiary notices, ensuring parties have adequate notice of evidence to be relied upon during proceedings.

Accordingly, the Rules promote and are compatible with the right to a fair trial and fair hearing by promoting procedural fairness and ensuring that parties have a reasonable opportunity to prepare and present their case.

Right to privacy and reputation

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Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, or to unlawful attacks on their honour and reputation. The United Nations Human Rights Committee has interpreted this right as protecting individuals from unwarranted or unreasonable intrusions into matters falling within their sphere of personal autonomy. The right to privacy may be limited where the limitation is lawful and not arbitrary, and where it is reasonable, necessary and proportionate to achieve a legitimate objective.

The Rules engage the right to privacy because it regulates the disclosure of sensitive personal information and sensitive material during CM or DFM proceedings.

The Rules promote the right to privacy through measures that limit publication of complainants' names, require notification before sensitive personal information is disclosed, and permit affected persons to seek orders regarding the handling of that information.

Protection of sensitive personal information and complainant identity

Rules 15, 16, 17 and 26 promote the right to privacy by introducing safeguards governing the treatment of sensitive personal information in superior tribunal proceedings.

Rule 15 limits the publication of complainants' names on the face of charge sheets while preserving the ability of the parties and tribunal to identify the complainant where necessary for the fair conduct of proceedings.

Rules 16 and 17 require notification and judicial oversight where sensitive personal information may be disclosed in connection with proceedings. Rule 26 allows affected persons to make applications regarding the handling, disclosure and use of that information.

These measures are directed towards preventing unnecessary dissemination of highly personal information while maintaining access to relevant evidence where required for the fair determination of proceedings. To the extent that privacy may be affected by disclosure of information in proceedings, that disclosure occurs pursuant to lawful procedures and subject to independent oversight by a judge advocate or DFM.

Disclosure of sensitive material

Rule 32 of the Rules engage the right to privacy because it prescribes the manner for disclosure of sensitive material in proceedings before a service tribunal. Any interference with privacy is narrowly confined and accompanied by safeguards that ensure the measures are lawful, necessary and proportionate to the legitimate objective of maintaining a fair and effective military justice system.

The Amending Act authorises rules to prescribe how sensitive material is identified and handled under section 101ZBB(2). This framework protects privacy by ensuring that sensitive material, such as medical material, intimate images or personal records, is subject to specific handling processes and is disclosed only to those who require access for the conduct of proceedings.

The limitation pursues the legitimate objective of ensuring fair and effective military justice proceedings while protecting individuals from unnecessary disclosure of highly personal material. The measure is rationally connected to that objective because it prescribes the manner of disclosure, ensuring relevant information is available where required for investigations and proceedings.

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Limiting disclosure to what is necessary for procedural fairness ensures that any interference with privacy is proportionate to this objective.

The amendments ensure that any impact on privacy is carefully limited to what is required to support lawful investigations and fair proceedings, and is balanced by statutory protections that control access, prevent unnecessary or unauthorised disclosure, and safeguard sensitive material throughout the investigative and prosecutorial process.

Accordingly, any limitation on privacy is reasonable, necessary and proportionate because it supports the proper administration of military justice proceedings while providing procedural safeguards regarding the handling of sensitive information.

Right to physical and mental health

Article 12 of the ICESCR requires State Parties to recognise the right of everyone to the highest attainable standard of physical and mental health. The United Nations Committee on Economic, Social and Cultural Rights has noted that this right extends beyond access to health care and includes the underlying determinants of health, such as safe and healthy working conditions.

The Rules significantly advance the protection and promotion of physical and mental health within the Defence Force, particularly for victims of sexual offences, through the changes to evidentiary and sentencing provisions that enhance participation by victims, for example, through victim impact statements and protections against unnecessary disclosure of sensitive material.

Rule 58 requires a CM or DFM to provide a victim with an opportunity to present a victim impact statement following conviction and prior to sentencing. This promotes recognition of the harm suffered by victims and allows victims to participate meaningfully in proceedings in a manner consistent with contemporary criminal justice practices

The Rules also establish safeguards relating to the handling of sensitive personal information and sensitive material. Rules 15, 16, 17, 26 and 32 seek to minimise the unnecessary dissemination of highly personal information by limiting publication of victim names, requiring notification where sensitive personal information is to be disclosed, providing affected persons with opportunities to make applications regarding the handling of their information, and regulating access to sensitive material during proceedings.

These measures promote the right to physical and mental health by reducing barriers to participation in proceedings and minimise the risk of re-traumatisation associated with recounting traumatic experiences. The protections afforded to victims support their psychological wellbeing and contribute to a disciplinary justice system that is more responsive to the needs of individuals affected, particularly those victims who have experienced sexual offending.

Accordingly, the Rules positively engage and promote the right to physical and mental health.

Conclusion

The Rules are compatible with human rights because they promote the rights to privacy and a fair hearing and supports the protection and promotion of physical and mental health. To the extent that it may limit the right to privacy through the disclosure of sensitive information in certain

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circumstances, those limitations are reasonable, necessary and proportionate to achieving the legitimate objective of ensuring the fair and effective conduct of superior tribunal proceedings.

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