Court Martial and Defence Force Magistrate Rules 2026

I, Paul Edward Smith AM, Judge Advocate General, make the following Rules under section 149A of the *Defence Force Discipline Act 1982.*

Dated 29 September 2026

P.E. Smith AM
Major General
Judge Advocate General

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Part 1 Preliminary

1 Name

This instrument is the *Court Martial and Defence Force Magistrate Rules 2026*.

2 Commencement

(1) These Rules commence on 7 October 2026.

3 Repeal

(1) The Court Martial and Defence Force Magistrate Rules 2020 made on 6 March 2020 (the old Rules) are repealed.

(2) These Rules apply to all proceedings commenced on or after 7 October 2026.

(3) The old Rules continue to apply to proceedings commenced prior to 7 October 2026.

4 Authority

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

5 Interpretation

In these Rules, unless the contrary intention appears:

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

authorised charging member has the same meaning as in section 3AA of the Act.

charge sheet means the charge sheet signed by hand or digitally by the Director of Military Prosecutions or a person appointed under section 188GP of the Act or a delegate under section 188GR of the Act.

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

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

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

Where, in the course of or in relation to proceedings before a court martial, a judge advocate of a court martial or Defence Force magistrate, a case arises for

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which no provision or insufficient provision is made by the Act, these Rules or any regulations made under subsection 146(2) of the Act:

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

7 Summons to accused person

A summons under subsection 87(7) of the Act shall specify:

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

8 Service of summons to appear

(1) A summons that is required by subsection 87(7) or 138(2) of the Act to be served on a person shall be served:

(a) in the form prescribed by these Rules with the Privacy Notice attached (see Schedule 3, Part 7);
(b) by delivering the original summons or a copy of the original summons to the person personally; or
(c) by prepaying and posting the summons as a letter addressed to the person at the person's last-known place of residence or business or, if the person is carrying on business at 2 or more places, at 1 of those places; or
(d) by leaving the summons at the last-known place of residence of the person with some person apparently a resident of that place and apparently not less than 16 years of age; or
(e) by leaving the summons at the last-known place of business of the person or, if the person is carrying on business at 2 or more places, at 1 of those places with a person apparently in the service of the person and apparently not less than 16 years of age; or
(f) if the person consents, by email or by any other electronic means.

(2) A summons served pursuant to paragraph (1)(f) is taken to have been effected at the time of transmission.

(3) If a person other than a defence member is required to appear under a summons, the summoner must, at a reasonable time before the person is required to appear:

(a) pay the person's travel expenses; or
(b) arrange with the person to pay the person's travel expenses; or
(c) arrange the person's travel, and advise the person of the

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arrangements.

Note: See also Rule 25 (Expenses for witnesses).

(4) A summons for a witness to give evidence must be served on the person at least 15 working days prior to the date of appearance at trial of that person.

(5) A summons for a witness to appear and produce documents or things must be served on the person at least 15 working days prior to the date requiring the production of documents.

(6) If a party is unable to comply with the requirements of paragraph (4) or (5) they may apply for an abridgement of time on application:

(a) to the Registrar of Military Justice; or

(b) to the judge advocate or Defence Force magistrate.

(7) The Registrar is to provide a copy of a signed summons for a witness to appear and produce documents or things to the parties to the proceedings at the time of issue.

(a) This subrule does not apply to a summons for a witness to appear only.

(b) If an objection is raised to provision of the documents or things contained in the summons, it must be done at the time of providing the draft summons to the Registrar for signature.

(c) Upon receipt of such objection the Registrar will proceed to issue the summons but will not provide a copy to all parties, and will list the matter before a judge advocate or Defence Force magistrate for determination of the objection.

(8) In this rule:

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

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

(a) the place where the person lives or works, whichever is appropriate in the circumstances; and

(b) the place where the person is required to appear under the summons.

9 Instrument for purposes of section 194A of the Act

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

(a) be directed to the person in charge of the prison where the prisoner is undergoing the sentence of imprisonment; and

(b) require the person to produce the prisoner at the time and place specified in the instrument; and

(c) specify the purpose for which the prisoner is required to be produced.

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Part 2 Charge sheets and charges

10 Charge sheets

In addition to the requirements of section 87A of the Act, a charge sheet must be in accordance with Schedule 2.

11 Charges

(1) A charge shall state one offence only.

(2) A charge shall consist of 2 parts, namely:

(a) a statement of the offence that the accused person is alleged to have committed; and

(b) particulars of the act or omission constituting the offence.

(3) A statement of an offence shall contain:

(a) in the case of an offence other than an offence against the common law — a reference to the provision of the law creating the offence; and

(b) in any case — a sufficient statement of the offence.

(4) Without prejudice to any other sufficient manner of setting out the statement of an offence, the statement of an offence shall be sufficient if it is set out in the appropriate form in Schedule 1.

(5) Particulars of an offence shall contain a sufficient statement of the circumstances of the offence to enable the accused person to know what it is intended to prove against that person as constituting the offence.

(6) At a trial by a court martial or Defence Force magistrate, 2 or more accused persons may be charged jointly in one charge of an offence alleged to have been committed by them jointly and it is in the interests of justice they be charged jointly.

12 How charges to be construed

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

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

Where it appears to a judge advocate or Defence Force magistrate, or following a successful prosecution application in accordance with section 141A of the Act, at any time during a hearing of proceedings that there is, in the charge sheet:

(a) a mistake in the name or description of the accused person; or

(b) a mistake that is attributable to clerical error or omission;

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

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Rule 14

14 Withdrawal of charge

A judge advocate or Defence Force magistrate may allow the prosecution to withdraw:

(a) a charge, before the accused person is arraigned on it; or

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

15 Limitation of publication of complainant's name in charge sheet

(1) Any complainant's name must not be included in the statement of offence in a charge sheet, but may be contained in the particulars of an offence.

(2) A complainant may be referred to in a statement of offence using a unique identifier, such as an alphanumeric label, which if used, must then refer to the complainant in the particulars of the charge sheet.

(3) On reading out the charge sheet during the arraignment of the accused, the full name of the complainant, as listed in the particulars of the charge sheet, must be read onto the record in place of the unique identifier listed in the statement of offence in the charge sheet.

(4) For the purposes of this rule, complainant means the person alleged to have been the subject of an offence against the person or an offence of a sexual nature.

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Part 3 Disclosure obligations

16 Disclosure of sensitive personal information

(1) If the Director of Military Prosecutions discloses sensitive personal information as defined in subsection 16(2) in connection to a charge of an accused person, and that information contains sensitive personal information about any other person, the Director of Military Prosecutions must inform that person of the disclosure.

(2) Sensitive personal information means:

(a) health information (including counselling information) about an individual; or

(b) intimate images of an individual or purported intimate images of an individual; or

(c) telephone or social media data of an individual which could be regarded as sensitive and personal.

17 Inspection prior to release of sensitive information

If it appears to the Registrar of Military Justice or any party to the proceedings that materials the subject of a summons may include sensitive personal information, the issue is to be referred to a judge advocate or Defence Force magistrate who at a procedural hearing may make orders concerning the handling of materials, including:

(a) orders as to notification to the affected person;

(b) orders as to the handling of the material;

(c) orders that the affected person be separately represented; and

(d) any other orders which are appropriate in the interests of justice.

18 Expert evidence

A party to the proceeding must serve any expert report that it intends to rely on in the proceedings as soon as reasonably practicable or at such other time as directed by the judge advocate or Defence Force magistrate. The prosecution's duties of disclosure are unaffected by this rule.

19 Disclosure and notification by the Director of Military Prosecutions

(1) If the Director of Military Prosecutions requests the Registrar to refer a matter for trial, the Director of Military Prosecutions must ensure that:

(a) the accused person; and

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(b) if a trial by a court martial is requested — the Registrar;

are provided with, or have already been provided with, the information or copies of the documents mentioned in subrule (5).

(2) The prosecution's obligation of disclosure provided for in this rule continues at all times during the proceedings.

(3) For the purposes of this rule, service police, law enforcement or investigating officers have a duty to disclose to the Director of Military Prosecutions all relevant information, documents or other things obtained during the investigation that might reasonably be expected to fall within subrule (5).

(4) The Registrar must provide to the judge advocate all information and documents provided to the Registrar under subrule (1).

(5) For subrule (1) and (3), the information and documents are as follows:

(a) the charge sheet, signed and dated by the Director of Military Prosecutions;

(b) the record of evidence in relation to the charge taken at any proceedings before a summary authority, together with all documents relating to those proceedings;

(c) a Case Statement, being a summary of the alleged facts and description of evidence that may be led by the prosecution in relation to each element of each charge;

(d) a list of the names of prosecution witnesses;

(e) a list of prosecution exhibits, specifying sensitive material which could be subject to a sensitive material notice;

(f) each witness statement from a witness mentioned in paragraph (d);

(g) any information, document or thing in the possession of, or which exists to the knowledge of the prosecution, that is relevant to a fact in issue or to the reliability or credibility of a prosecution witness, or that might reasonably be expected to assist the case for the accused person (unless there is to be an application not to disclose due to a lawful exception);[1] and

(h) any information, document or thing in the possession of or which exists to the knowledge of the prosecution that is adverse to the credit or credibility of the accused person.

(6) If the prosecution decides not to call a witness to give evidence that:

(a) is contained in a written statement furnished to the accused person under paragraph (5)(f); or

(b) has been notified to the accused person under subrule (1)

[1] For example public interest immunity or privilege

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the prosecution must:

(c) if it is practicable to do so before the trial, inform the accused person:

(i) that the prosecution does not intend to call the witness to give evidence; and

(ii) that the accused person may call the witness as a witness for the defence; or

(d) inform the accused person at the trial that the prosecution does not intend to call the witness to give evidence but will tender the witness for cross-examination by the accused person if the accused person so requests.

(7) If information, documents or things are provided under paragraph (5)(g), and those information, documents or things are expected to be the subject of a lawful exception, then the prosecution must inform the accused person of their intention to claim that exemption in respect of that information, or those documents or things as soon as is reasonably practicable.

Part 4 Witnesses

20 Securing appearance of witness on behalf of accused person

(1) The relevant authority must take the necessary steps to secure the appearance at the hearing of a proceeding before a court martial or Defence Force magistrate of persons reasonably required by the accused person to appear to give evidence, and (if so required) to produce documents, on that person's behalf.

(2) In this rule, ***relevant authority*** means:

(a) the Chief of the Defence Force; or

(b) a delegate of the Chief of the Defence Force of at least the rank of Lieutenant Colonel (or an equivalent rank)

21 Exclusion of witness from tribunal hearing room

(1) During proceedings before a court martial or Defence Force magistrate, a witness shall not, except by leave of the judge advocate or Defence Force magistrate, be in the hearing room or on audio or audio-visual link until called to give evidence.

(2) The judge advocate or Defence Force magistrate may direct a witness to withdraw from the hearing room or audio or audio-visual link until the judge advocate or Defence Force magistrate makes a decision on an objection that relates to:

(a) the allowing of a question; or

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(b) the evidence given, or about to be given, by the witness.

(3) Nothing in this rule requires the accused person, a person representing the accused person in the proceedings, or the prosecuting officer, to be absent, or withdraw, from the proceedings.

22 Examination of witness

(1) A witness appearing before a court martial or Defence Force magistrate may be:

(a) examined by the person who called the witness;

(b) cross-examined by the opposite party to the proceedings or by a co-accused; and

(c) on conclusion of any cross-examination, may be re-examined, on matters arising out of the cross-examination, by the person who called the witness.

(2) The court martial or Defence Force magistrate may allow the cross-examination or re-examination of a witness to be postponed if, in the opinion of the judge advocate or Defence Force magistrate, it is in the interests of justice to do so.

(3) A judge advocate or Defence Force magistrate may put questions to a witness.

(4) During a trial by court martial, members of the court martial are entitled to question a witness, if:

(d) the question is put in writing;

(e) in the opinion of the judge advocate, the question is relevant and permissible in law; and

(f) the question is put to the witness by the judge advocate.

(5) Upon a question put under subrule (3) or (4) being answered, the accused person and the prosecuting officer may put to the witness such questions, arising from the answer that the witness has given, as seem proper to the judge advocate or Defence Force magistrate.

23 Calling and recalling witnesses

(1) The prosecuting officer and the accused person may, at any time before:

(a) at a trial by court martial — the judge advocate begins to sum up; or

(b) at a trial by Defence Force magistrate — the Defence Force magistrate makes a finding on the charge

recall a witness by leave of the judge advocate or Defence Force magistrate.

(2) After the witnesses for the defence have given their evidence, the prosecuting officer may, by leave of the judge advocate or Defence Force magistrate, call a

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witness to give evidence on any matter raised by the accused person in the accused person's defence, in respect of which:

(a) evidence could not properly have been adduced; or

(b) evidence which could not reasonably have been foreseen by the prosecution before the accused person presented his or her defence.

(3) The service tribunal may, at any time before:

(a) at a trial by court martial — the judge advocate begins to sum up; or

(b) at a trial by Defence Force magistrate — the Defence Force magistrate makes a finding on the charge;

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

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

24 Witnesses to reply forthwith

(1) Subject to subrule (2), a witness appearing before a court martial or Defence Force magistrate shall reply forthwith to each question put to the witness.

(2) Where a question is objected to or a witness claims privilege, the witness shall not answer the question unless the objection or claim is overruled by the judge advocate or Defence Force magistrate

25 Expenses for witnesses

(1) A person (other than a defence member) summoned to appear as a witness before a court martial or Defence Force magistrate shall be paid such fees, and allowances for expenses, in respect of the witness's attendance as the appropriate authority thinks fit to allow in accordance with the scale in the High Court Rules as in force from time to time under the *High Court of Australia Act 1979*.

(2) At the request of the appropriate authority, the functions in subrule (1) are to be carried out by

(a) the Chief of the Defence Force; or

(b) a delegate of the Chief of the Defence Force of at least the rank of Lieutenant Colonel (or an equivalent rank); or

(c) the Director of Military Prosecutions.

26 Right of a person to make applications in proceedings

(1) If a person whose sensitive personal information is notified that their information is being disclosed in connection with a charge, that person may make applications to the court martial or Defence Force magistrate about the handling and management of that information.

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(2) This application can be made on behalf of the person by the person, whether through representation or by themselves.

(3) Applications under this rule shall be dealt with at a procedural hearing before the judge advocate or Defence Force magistrate.

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Part 5 Registrar

27 Registrar may liaise with certain persons

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

(a) a judge advocate;
(b) a Defence Force magistrate;
(c) a prosecuting officer;
(d) a defending officer;
(e) the Director of Defence Legal Assistance;
(f) the Director of Military Prosecutions;
(g) service authorities;
(h) personnel who may be appointed as the President, member or alternative member of a court martial;
(i) civilian agencies and authorities;
(j) a recipient of a summons or their lawful representative; and
(k) any other person the Registrar considers necessary.

28 Registrar may consult with services or groups about conduct of proceedings

(1) The Registrar may consult with the services or groups in relation to any matter concerning the administration of proceedings before a court martial or Defence Force magistrate.

(2) The matters in relation to which the Registrar may consult and liaise under subrule (1) include, but are not limited to, the following

(a) the service details of the accused person;
(b) notification to the accused person;
(c) current posting location and chain of command for the accused person;
(d) the date, time and location of the proceedings;
(e) the appointment of an administrative officer, clerk, orderly or escort officer, as appropriate;
(f) service dress requirements for military and other personnel in attendance at the proceedings;
(g) customs of the services;
(h) information technology support requirements for the proceedings;
(i) financial arrangements in relation to the proceedings;
(j) the process for the appointment and administration of a court martial President, the members and the alternative members.

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29 Registrar may consult with services or groups about administrative support for trial proceedings

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

(2) Without limiting subrule (1), the Registrar may consult in relation to staff to be appointed from the services to one or more of the following positions:

(a) administrative officer;
(b) clerk;
(c) orderly;
(d) escort officer;
(e) other administrative support personnel as necessary.

30 Order referring charge or case to Defence Force magistrate

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

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

Note: The Registrar must not refer a charge to a Defence Force magistrate unless the Judge Advocate General has nominated the magistrate to try the charge under section 129C of the Act.

31 Registrar to provide certain documents

(1) When the Registrar convenes a court martial for the trial of a charge, the Registrar must cause to be sent:

(a) to the President and each member or alternative member of the court martial — a copy of the convening order; and
(b) to the judge advocate:
(i) the convening order;
(ii) the charge sheet;
(iii) the prosecution Case Statement listed in Rule 20(5)(c);
(iv) the record of evidence taken at proceedings (if held) in relation to the charge before a commanding officer or a superior summary authority;
(v) any other statement taken from a witness to be called for the

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prosecution; and

(c) to the accused person — copies of the documents referred to in subparagraphs (b)(i) and (ii); and

(d) to the prosecuting officer — a copy of the document referred

(e) to in subparagraph (b)(i).

Note: The Registrar must not refer a charge to a judge advocate unless the Judge Advocate General has nominated the judge advocate to try the charge under section 129B of the Act.

(2) When the Registrar refers a charge to a Defence Force magistrate for trial, the Registrar must cause to be sent:

(a) to the Defence Force magistrate:

(i) the order referring the charge; and

(ii) the charge sheet; and

(b) to the accused person — copies of the documents referred to in paragraph (a); and

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

32 Inspection of exhibits before trial

(1) An accused person who is sent a list of exhibits in accordance with Rule 19 must, on application by the person to the Director of Military Prosecutions, be permitted by the custodian of the exhibit to inspect and to copy any exhibit.

(2) The custodian of the exhibit must ensure that proper precautions are taken for the safety of the exhibit during an inspection of those materials.

(3) Any materials treated as sensitive materials for the purposes of section 101ZBB of the Act and section 7D of the *Defence Force Discipline Regulations* are to continue to be treated as sensitive materials for the purposes of these Rules, unless subsequent orders about those materials are made.

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Part 6 Courts Martial

33 Functions of President

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

(a) to speak on behalf of the court martial panel in announcing a finding or any other decision taken by the court martial; and

(b) to speak on behalf of the members of the court martial panel in conferring with, or requesting advice from, the judge advocate on any question of law or procedure.

34 Functions of judge advocate

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

(a) subject to subsection 136(6) of the Act, to be present at all sittings of a court martial; and

(b) to ensure that the proceedings are conducted in accordance with the Act and these Rules and in a manner befitting a court of justice; and

(c) to preside over all hearings conducted in pursuance of subsection 136A(2) or 141(7) of the Act and to ensure, at all such hearings, that the proceedings are conducted in accordance with the Act and these Rules and in a manner befitting a court of justice; and

(d) to ensure that an accused person who is not represented does not in consequence of that fact suffer any undue disadvantage; and

(e) to ensure that a proper record of the proceedings is made and that the record of proceedings and the exhibits (if any) are properly safeguarded.

35 Manner of voting of court martial

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

36 Objections to members of court martial

(1) Before the members of a court martial are sworn, their names shall be read to the accused person and that person shall be asked whether they object to be tried by any of them.

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(2) This rule applies in relation to an alternative member or new member who is appointed to a court martial in place of another member in the same way that it applies to an original member of the court martial.

37 Swearing of court martial

(1) After initial objections by the accused person to members of the court martial have been dealt with and before the arraignment of the accused person begins, the judge advocate shall, in the presence of the accused person, administer, or cause to be administered, an oath or affirmation to the President and each other member of the court martial.

(2) The oath or affirmation to be taken or made by a person for the purposes of this rule is an oath or affirmation that:

(a) the person will duly administer justice according to law, without fear or favour, affection or ill will;

(b) the person will well and truly try the accused person or persons before the court martial, according to the evidence; and

(c) the person will not disclose the vote or opinion of any member of the court martial unless required to do so in due course of law.

38 Alternative court martial members

(1) The Registrar is to determine the number of court martial members required for the court martial.

(2) All members of the court martial must be present during the proceedings as directed by the judge advocate.

(3) The judge advocate is to notify the Registrar immediately before the court martial members are required to retire to undertake a vote.

(4) If, immediately before the panel is to retire to undertake a vote, the panel consists of more members than required by the Act, the Registrar must randomly select the members, other than the President, by electronic or other means, to be dismissed from court martial.

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Part 7 Defence Force magistrate

39 Functions of Defence Force magistrate

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

(a) that the proceedings are conducted in accordance with the Act and these Rules and in a manner befitting a court of justice; and

(b) that an accused person who is not represented does not in consequence of that fact suffer any undue disadvantage; and

(c) that a proper record of the proceedings is made and that the record of proceedings and the exhibits (if any) are properly safeguarded.

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Part 8 Pre-trial proceedings

40 Application for procedural hearing

(1) The prosecution or the accused person may apply to the judge advocate or the Defence Force magistrate to whom a matter has been referred for a direction or ruling; or

(2) The judge advocate or Defence Force magistrate may on his or her initiative direct the parties to attend (in person or otherwise) before the judge advocate or Defence Force magistrate for directions or rulings as to the conduct of the trial or any procedural hearing.

41 Nature of procedural hearings

Without limiting sections 132, 136B of the Act or Rule 40 a direction or ruling may be given in relation to:

(a) the quashing or staying of a charge; or
(b) the joinder of accused persons or joinder of charges; or
(c) prosecution disclosure under Part 3; or
(d) the provision of a report, proof of evidence or other information; or
(e) the noting of admissions and issues relevant to the trial; or
(f) deciding questions of law, including admissibility of evidence; or
(g) ascertaining whether a defence of unsoundness of mind or any other question of a psychiatric nature is to be raised; or
(h) the psychiatric or other medical examination of the accused; or
(i) the exchange of medical, psychiatric and other expert reports; or
(j) the time by which an expert report must be disclosed under section 101ZBE of the Act; or
(k) the return of summons to produce documents; or
(l) encouraging the parties to narrow the issues and any other administrative arrangements to assist the speedy disposition of the trial; or
(m) the giving of evidence by video or audio link under section 148A of the Act, the *Evidence (Miscellaneous Provisions) Act 1991* (ACT) or otherwise;
(n) any issues of privacy which may warrant separate legal representation of any person or may warrant notification to or consultation with any person;
(o) the dealing with sensitive material; or

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(p) any other issue connected with the proceedings.

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Part 9 Evidence

42 Time for service of previous representation/tendency/coincidence notice

Where the Director of Military Prosecutions requests the Registrar to refer a matter for trial, and the prosecution intends to rely at trial on a previous representation under section 65 of the *Evidence Act 2011* (ACT) or tendency or coincidence evidence under Part 3.6 of the *Evidence Act 2011* (ACT), the prosecution is to give notice of this to, or already have given notice of this to:

(a) the accused person at the time of the referral to the Registrar; or

(b) at such other times as the judge advocate or Defence Force magistrate may allow.

This notice is also to be provided by the Registrar to the judge advocate or Defence Force magistrate prior to the trial.

Note: The *Evidence Act 2011* (ACT) applies to proceedings under the Act, and as modified by the Defence Force Discipline Regulations.

43 Notice of previous representation/tendency/coincidence evidence

A party relying on evidence of a previous representation or on tendency or coincidence evidence must comply with sections 5, 6, 7, 8, 9 and 10 of the Evidence Regulation 2012 (ACT) and submit a notice in accordance with Schedule 4 (Notice of intention to adduce tendency evidence), Schedule 5 (Notice of intention to adduce coincidence evidence) or Schedule 6 (Notice of intention to adduce evidence of a previous representation).

44 Affidavit—form

The Form of affidavit to be used in proceedings must substantially comply with Schedule 7.

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Part 10 Trial Provisions

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

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

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

(2) The Registrar of Military Justice may arrange for a person or entity to act as a recorder or as an interpreter at proceedings before a court martial or Defence Force magistrate. If a party requires an interpreter, they must inform the Registrar as soon as reasonably practicable.

(3) The accused person may enter an objection to an interpreter on the ground of partiality or incompetence, or both.

(4) If the proceedings are not electronically recorded the accused person may enter an objection to a recorder on the ground of partiality or incompetence or both.

(5) Where the judge advocate or Defence Force magistrate is satisfied that the accused person has substantiated an objection entered by that person under this rule, the judge advocate or Defence Force magistrate shall allow the objection.

(6) Before a person begins to act as an interpreter or as a recorder where the proceedings are not being electronically recorded, the judge advocate or Defence Force magistrate shall administer, or cause to be administered, an oath or affirmation to the person before the person begins so to act.

(7) The oath or affirmation to be taken or made by a person for the purposes of this rule is an oath or affirmation:

(a) other than where proceedings are recorded electronically, in the case of a person who is to act as a recorder — that the person will, to the best of the person's ability, truly record the evidence to be given before the court martial or Defence Force magistrate and such other matters as may be required.

(b) in the case of a person who is to act as an interpreter — that the person will, to the best of the person's ability, truly interpret and translate as the person will be required to do.

46 Administration of oaths and affirmations

The judge advocate or Defence Force magistrate may permit a person to take an oath or affirmation in such manner as the person taking the oath or affirmation declares to be binding on the person's conscience.

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

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

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

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

49 Pleading to charges and arraignment

(1) An accused shall be arraigned on the charges on the charge sheet sent by the Director of Military Prosecutions or an authorised charging member to the Registrar with the referral request.

(2) Where there is more than one charge against an accused person before a court martial or Defence Force magistrate, the person shall be required to plead separately to each charge.

(3) Where the accused person refuses to plead to a charge the judge advocate or Defence Force magistrate shall record a plea of not guilty and the trial shall proceed as if the accused person had pleaded not guilty.

(4) Where:

(a) there is more than one charge against an accused person before a court martial or Defence Force magistrate; and

(b) the charges are contained in more than one charge sheet;

the court martial or Defence Force magistrate shall arraign and try the person on the charge or charges in a charge sheet (other than taking action under paragraph 135 or 136E of the Act) before the tribunal arraigns and tries the person on a charge in another charge sheet.

(5) Where:

(a) an accused person is convicted by a court martial or Defence Force magistrate of a charge that is one of 2 or more charges stated in the charge sheet in the alternative, the person shall not be convicted by the court martial or Defence Force magistrate of any charge that is alternative to the charge of which the person has been convicted and that is placed after it on the charge sheet.

(b) an accused person pleads not guilty to a service offence, but guilty to another service offence that is averred on the charge sheet in the alternative to the first mentioned service offence,

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and the prosecution consents to the acceptance of the plea to the alternative, the trial shall proceed as if the accused had not been charged with the first –mentioned offence.

50 Opening address by prosecution

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

(a) the elements of the offence charged that have to be proved before the accused person can be convicted;

(b) the alleged facts upon which the prosecuting officer will rely to support the charge; and

(c) the nature of the evidence that the prosecuting officer proposes to adduce to prove the alleged facts.

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

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

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

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

53 Submission of no case to answer

At the close of the case for the prosecution, the accused person may submit to the judge advocate or Defence Force magistrate in respect of a charge that the evidence adduced is insufficient to support the charge and the judge advocate or Defence Force magistrate will make a decision as to whether the evidence is sufficient or insufficient after hearing submissions from the parties.

54 Opening address by defence

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

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55 Closing addresses

(1) After all of the evidence has been given, the accused person and the prosecuting officer may each make a closing address to the court martial or Defence Force magistrate.

(2) Any closing address by the prosecuting officer shall be made before the closing address (if any) by the accused person.

(3) Subject to subrule (4), where 2 or more accused persons are charged in the same charge sheet, their closing addresses shall be made in the order in which their names are listed on the charge sheet.

(4) When 2 or more accused persons are represented by the same person, that person may only make one closing address.

56 Summing up

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

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

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

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

58 Victim impact statement

(1) This rule applies in relation to victim impact statements sought to be tendered to a service tribunal under section 70(2)(ea) of the Act.

(2) Where, after the conviction of a person and before that convicted person's plea in mitigation is taken, if there is a victim of the offending, the court martial or Defence Force magistrate shall give that victim an opportunity to present a victim impact statement as required by the *Defence Force Discipline Regulations*.

(3) 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.

(4) Only one victim impact statement may be made for each victim of an offence, unless the tribunal gives leave.

(5) No implication is to be drawn from the absence of a victim impact statement for a victim.

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(6) All or part of a victim impact statement for a victim may be read to the tribunal by or on behalf of the victim.

(7) A victim impact statement is not to be read to the tribunal, or otherwise taken into account, to the extent that:
(a) it expresses an opinion about an appropriate sentence; or

(b) it is offensive, threatening, intimidating or harassing; or

(c) admitting it into evidence would otherwise not be in the interests of justice.

(8) The person convicted of the offence may only test the facts in a victim impact statement:
(a) by way of cross-examining the maker of the statement; and
(b) if the tribunal gives leave to do so.

This does not prevent the defence from making relevant submissions about the statement.

(9) The tribunal must not allow the defence to cross examine the maker of a victim impact statement unless the tribunal is informed of the nature of the cross-examination and the tribunal is satisfied that the cross examination would materially affect the likely punishment to be imposed.

59 Service impact statement

(1) This section applies in relation to a service impact statement sought to be tendered to a service tribunal under section 70(1A) of the Act.

(2) In the section "superior authority" is as defined in section 5A of the Act.

(3) Where, after the conviction of a person and before that convicted person's plea in mitigation is taken, the judge advocate or Defence Force magistrate shall consider any service impact statement made by a relevant superior authority under section 70(1A) of the Act.

(4) The service impact statement must describe the impact the charged conduct has had or could have had on maintaining discipline in the Defence Force. This can include impact on the discipline, efficiency or morale of the Defence Force (or a relevant part of it.)

(5) The superior authority is entitled to consult other personnel within the Australian Defence Force including those at the most relevant level of command (not below the level of commanding officer) in preparing the statement, provided such sources are identified in the statement.

(6) A service impact statement may not be tendered in evidence unless a copy of the statement has been given to the defence in advance of tendering it during proceedings.

(7) Only one service impact statement may be made, unless the court gives leave.

(8) No implication is to be drawn from the absence of a service impact statement.

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(9) A service impact statement is not to be read to the court, or otherwise taken into account, to the extent that:

(a) it expresses an opinion about an appropriate sentence; or

(b) it is offensive, threatening, intimidating or harassing; or

(c) admitting it into evidence would otherwise not be in the interests of justice.

(10) The person convicted of the offence may only test the facts in a service impact statement

(a) by way of cross-examining the maker of the statement or the sources of information in the statement; and

(b) if the court gives leave to do so.

(11) This does not prevent the defence from making relevant submissions about the statement.

60 Convicted person's record etc and plea in mitigation

(1) After the conviction of a person by a court martial or Defence Force magistrate, the prosecuting officer shall adduce evidence of:

(a) if the convicted person is a defence member or was a defence member at the time of the commission of the offence of which the person has been convicted — relevant particulars of the person's service in the Defence Force;
(b) particulars of any previous convictions of the convicted person for service offences, civil court offences and overseas offences; and
(c) such other matters relevant to determining action under Part IV of the Act in relation to the convicted person as the judge advocate or Defence Force magistrate requires.

(2) The convicted person may:

(a) give evidence, and call witnesses to give evidence, as to the convicted person's character and in mitigation of punishment; and
(b) address the judge advocate or Defence Force magistrate in mitigation of punishment.

(3) Rule 22 applies to a witness (including the convicted person) who gives evidence under this rule as if a reference in that rule to the accused person were a reference to the convicted person.

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

(1) This rule applies to proceedings before a judge advocate or Defence Force magistrate for the purpose of imposing punishment on a convicted person in

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respect of a service offence for which the convicted person has given, in accordance with subsection 75(2) of the Act, an undertaking to another judge advocate or Defence Force magistrate to be of good behaviour for 12 months, and that convicted person is appearing before a judge advocate or Defence Force magistrate in respect of a conviction for another service offence that occurred during the 12 month period of good behaviour.

(2) After the service offence has been read to the judge advocate or Defence Force magistrate, action must be taken in accordance with Rules 57, 58 and 59:

(a) as if the person had been convicted by that court martial or Defence Force magistrate; and

(b) as if the person had pleaded guilty.

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Part 11 Record of proceedings and exhibits

62 Record of proceedings before court martial or Defence Force magistrate

(1) Where the proceedings before a court martial or Defence Force magistrate are not recorded electronically, they shall be recorded in sufficient detail to enable the course of the proceedings to be followed, and the merits of the case to be judged, from the record, and in particular:

(a) subject to paragraph (b), the evidence shall be taken down in narrative form as nearly as possible in the words used; and

(b) if:

(i) the prosecution or the defence so requests and the judge advocate or Defence Force magistrate so directs; or

(ii) in any other case, the judge advocate or Defence Force magistrate so directs;

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

(c) a record shall be made of the proceedings relating to each objection, submission or application; and

(d) subject to paragraph (e), any address by the prosecution or the defence, or the summing up by the judge advocate, if not in writing, shall be recorded to such extent as the judge advocate or the Defence Force magistrate thinks fit; and

(e) if the prosecution or the defence so requires, a record shall be made of any particular point in the address by the prosecution or the defence, or in the summing up by the judge advocate.

(2) Where the proceedings are recorded electronically, the recorder shall prepare or cause to be prepared a transcript, in writing, which shall be authenticated by the person who made the transcript.

(3) If a conviction is recorded, the written record of the proceedings must be certified as true and correct, in writing, by the recorder and the judge advocate or Defence Force magistrate as soon as practicable after the conclusion of the trial.

63 Inspection of record of proceedings etc during trial

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

(a) have a particular part of the record of proceedings read or played over to the accused person or the prosecuting officer, as the case may be; and

(b) if proper precautions are taken for its safety, inspect an

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exhibit.

64 Loss of original record of proceedings

(1) If, at any time, the whole or any part of the original record of proceedings before a court martial or Defence Force magistrate is lost, a valid and sufficient record of the proceedings for all purposes may be made by the signature of a prescribed person being affixed to a copy of the record of proceedings.

(2) In this rule, ***prescribed person*** means:

(a) in relation to proceedings before a court martial or a judge advocate — the judge advocate; or

(b) in relation to proceedings before a Defence Force magistrate — the Defence Force magistrate.

65 Exhibits

(1) Subject to subrule (2), any document or thing admitted in evidence at a trial by a court martial or Defence Force magistrate shall be made an exhibit.

(2) Where the court martial or Defence Force magistrate is satisfied that a copy of, or an extract or relevant parts from, a document or book admitted in evidence is correct, the court martial or Defence Force magistrate may make the copy or extract an exhibit in place of the document or book.

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Part 12 Miscellaneous provisions

66 Relief from Rules

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

67 Transitional Rules

(1) The Rules shall remain in effect as made on commencement of Schedule 4, Parts 1, 2 and 3 of the Defence Force Discipline Amendment (RCDVS Implementation and Related Measures No. 1) Act 2026, with the following amendments:

(a) Any reference to a ***charge sheet*** shall mean the charge sheet signed by hand or digitally by the Director of Military Prosecutions or a person appointed under section 188GP of the Act or a delegate under sections 87(9) and 188GR of the Act.

(2) However, the provisions shall not be amended if the event mentioned in paragraph (1) does not occur.

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Schedule 1 Statement of offences

(subrule: 10(4))

Part 1 Offences against Defence Force Discipline Act 1982

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

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Part 1

Item	Provision	Offence
19	Subsection 19 (1)	Failing to rejoin force
20	Subsection 19 (2)	Preventing another rejoining [*his*] [*her*] force
21	Subsection 19 (3)	Securing favourable treatment to detriment of others
22	Subsection 19 (4)	Ill-treating other persons over whom member has authority
23	Subsection 20 (1)	Mutiny
24	Subsection 20 (2)	Mutiny in connection with service against enemy
25	Subsection 21 (1)	Failing to suppress mutiny
26	Subsection 21 (2)	Failing to suppress mutiny in connection with service against enemy
27	Subsection 22 (1)	Absence from place of duty with intention to avoid active service
28	Subsection 22 (2)	Absence without leave with intention to avoid active service
29	Subsection 23 (1)	Absence from duty — failure to attend
30	Subsection 23 (2)	Absence from duty — ceasing to perform
31	Section 24	Absence without leave
32	Section 25	Assaulting a superior officer
33	Subsection 26 (1)	Engaging in [*threatening*] [*insubordinate*] [*insulting*] conduct
34	Subsection 26 (2)	Using [*threatening*] [*insubordinate*] [*insulting*] language
35	Section 27	Disobeying lawful command
36	Section 28	Failing to comply with direction of person in command of [*service ship*] [*service aircraft*] [*service vehicle*]
37	Section 29	Failing to comply with general order
38	Subsection 30 (1)	Assaulting a guard

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Part 1

Item	Provision	Offence
39	Subsection 30 (2)	Assaulting a guard in connection with operations against the enemy
40	Subsection 31 (1)	Obstructing a police member
41	Subsection 31 (2)	Refusing to assist a police member
42	Paragraph 32 (1)(a)	Sleeping [*at post*] [*on watch*] while on [*guard duty*] [*watch*]
43	Paragraph 32 (1)(b)	Sleeping on duty while on [*guard duty*] [*watch*]
44	Paragraph 32 (1)(c)	Being intoxicated while on [*guard duty*] [*watch*]
45	Paragraph 32 (1)(d)	[*Leaving post*] [*absence from place of duty*] while on [*guard duty*] [*watch*]
46	Subsection 32 (3)	Committing the offence of [*name of offence against paragraph 32 (1) (a), (b), (c) or (d)*] in connection with service against enemy
47	Paragraph 33 (a)	Assaulting another person
48	Paragraph 33 (b)	Creating a disturbance
49	Paragraph 33 (c)	Engaging in obscene conduct
50	Paragraph 33 (d)	Using [*insulting*] [*provocative*] words or otherwise harasses another person
51	Section 33A	Assault occasioning actual bodily harm
52	Section 34 (1) (a) (i)	Assaulting a subordinate – assaults a person
53	Section 34 (1) (a) (ii)	Assaulting a subordinate – ill-treats with violence
54	Section 34 (1) (a) (iii)	Assaulting a subordinate – otherwise ill-treats a person
55	Section 35	Negligent performance of duty
56	Section 35A	Failure to perform duty or carry out activity

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Part 1

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

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Part 1

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

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

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Part 1

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

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Part 1

Item	Provision	Offence
139	Subsection 59 (7)	Possession of non-trafficable quantity of prohibited drug in Australia
140	Subsection 60 (1)	Prejudicial conduct – does an act
141	Subsection 60 (1A)	Prejudicial conduct – omits to perform an act
142	Subsection 61 (1)	Engaging in conduct in the Jervis Bay Territory that is a Territory offence [*name of offence and provision of law contravened*]
143	Subsection 61 (2)	Engaging in conduct in a public place outside the Jervis Bay Territory that is a Territory offence [*name of offence and provision of law contravened*]
144	Subsection 61 (3)	Engaging in conduct outside the Jervis Bay Territory that is a Territory offence [*name of offence and provision of law contravened*]
145	Section 62	Commanding or ordering commission of service offence
146	Subsection 101QA (1)	Failing to submit to medical examination
147	Subsection 101QA (2)	Failing to submit to the taking of a specimen

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Part 2 Offences against Defence Force Discipline Regulations 2018

Item	Provision	Offence
1	Regulation 33	[*Tampering with*] [*causing damage to*] [*interferes with*] radar device

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Part 3 Offences against Criminal Code Act 1995

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

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Schedule 2 Form of charge sheet

(rule 10)

Charge sheet

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

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

……

Signed

Director of Military Prosecutions

Dated ……

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Schedule 3 Form of summons

(subrule 8(1)(a))

Part 1 Form of summons – accused person

Summons to appear before a service tribunal

Defence Force Discipline Act 1982

To: PMKeyS (if ARMY) RANK and full name PMKeyS (if NAVY / RAAF), post nominals
Unit name
Barracks name
Street address
Suburb STATE postcode

Pursuant to subsection 87(7) of the *Defence Force Discipline Act 1982*, you are hereby summoned to appear before a [*General/Restricted Court Martial/Defence Force Magistrate*] at [*place*] on [*day date year*] at [*time hours*] for the following reason:

1. [*insert purpose for which the person is required to appear before the court martial or Defence Force magistrate*]

2. [*details of the allegation*]

INITIALS SURNAME
Rank
Registrar of Military Justice

Summons issued at the request of the Office of the Director of Military Prosecutions [*if requested by the ODMP*]
e-mail: defence.dmp@defence.gov.au; Telephone: (02) 5131 1292

Summons issued at the request of Defence Legal Assistance [*if requested by Defence Legal Assistance*]
e-mail: your.trial@defence.gov.au; Telephone: 1800 563 563

Notes

1. **Service.** This summons must be served on the person personally or in accordance with Part 1 of

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Part 1

the Rules.

2. **Privacy Notice for Court Martial and Defence Force Magistrate Proceedings.** In accordance with APP 5 of the *Privacy Act 1988* (Cth), you are advised that the Department of Defence, through the Office of the Judge Advocate General, has collected or may collect personal information about you. The attached *Privacy Notice for Court Martial and Defence Force Magistrate Proceedings* provides information about the collection or potential collection, the purposes for which the information is being or may be used, and the circumstances in which the information may be disclosed

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Part 2 Form of summons – ADF member

Summons to witness to appear before a service tribunal [*via video link*]

Defence Force Discipline Act 1982

To: PMKeyS (if ARMY) RANK and full name PMKeyS (if NAVY / RAAF), post nominals
Unit name
Barracks name
Street address
Suburb STATE postcode

Pursuant to subsection 138(2) of the *Defence Force Discipline Act 1982*, you are hereby summoned to appear on [*day date year at time hours at location*] [*by way of video link*] [*copy the details from the DFM Reference or Convening Order unless summoned to appear at a later date*], before a [*General/Restricted Court Martial/Defence Force Magistrate*] at [*a Pre-Trial Direction Hearing*] [*to give evidence at the trial*] of [*PMKeyS (if ARMY) RANK and full name of accused PMKeyS (if NAVY / RAAF)*].

INITIALS SURNAME
Rank
Registrar of Military Justice

Summons issued at the request of the Office of the Director of Military Prosecutions [*if requested by the ODMP*]
e-mail: defence.dmp@defence.gov.au; Telephone: (02) 5131 1292

Summons issued at the request of Defence Legal Assistance [*if requested by Defence Legal Assistance*]
e-mail: your.trial@defence.gov.au; Telephone: 1800 563 563

Notes

1. **Service.** This summons must be served on the person at least 15 working days prior to the date of appearance at trial of that person (rule 8(4)). See Part 1 of the Rules for rules about service.

2. **Contempt of Service Tribunal (Failure to Appear).** Pursuant to section 53 of the *Defence Force Discipline Act 1982*, a person who is a defence member or a defence civilian is guilty of an

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Part 2

offence if the person has been served, as provided for by the rules of procedure, with a summons to appear, or has been ordered to appear, as a witness before a service tribunal, and the person:

a. fails to appear as required by the summons or order; or
b. fails to appear and report himself/herself from day to day and has not been excused or released from further attendance, by the service tribunal from further attendance.

Maximum punishment: **Imprisonment for 6 months**

3. **Privacy Notice for Court Martial and Defence Force Magistrate Proceedings.** In accordance with APP 5 of the *Privacy Act 1988* (Cth), you are advised that the Department of Defence, through the Office of the Judge Advocate General, has collected or may collect personal information about you. The attached *Privacy Notice for Court Martial and Defence Force Magistrate Proceedings* provides information about the collection or potential collection, the purposes for which the information is being or may be used, and the circumstances in which the information may be disclosed

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Part 3 Form of summons – civilian

Summons to witness to appear before a service tribunal [*via video link*]

Defence Force Discipline Act 1982

To: Full name (*civilian*)
Position Title (*if applicable*)
Full name of Agency (*if applicable*)
Street address
Suburb STATE postcode

Pursuant to subsection 138(2) of the *Defence Force Discipline Act 1982*, you are hereby summoned to appear on [*day date year at time hours at location*] [*by way of video link*] [*copy the details from the DFM Reference or Convening Order unless summoned to appear at a later date*], before a [*General/Restricted Court Martial/Defence Force Magistrate*] at [*a Pre-Trial Direction Hearing*] [*to give evidence at the trial*] of [*Full name*].

INITIALS SURNAME
Rank
Registrar of Military Justice

Summons issued at the request of the Office of the Director of Military Prosecutions [*if requested by the ODMP*]
e-mail: defence.dmp@defence.gov.au; Telephone: (02) 5131 1292

Summons issued at the request of Defence Legal Assistance [*if requested by Defence Legal Assistance*]
e-mail: your.trial@defence.gov.au; Telephone: 1800 563 563

Notes

1. **Service**. This summons must be served on the person at least 15 working days prior to the date of appearance at trial of that person (rule 8(4)). See Part 1 of the Rules for rules about service.

2. **Failure to Appear.** Pursuant to section 86 of the *Defence Act 1903* a person is guilty of an offence if the person has been served, as provided for by the *Defence Force Discipline Act 1982*, or the rules of procedure, with a summons to appear, or has been ordered to appear, as a witness before a service tribunal, and the person:

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Part 3

a. fails to appear as required by the summons or order; or

b. fails to appear and report himself/herself from day to day and has not been excused or released from further attendance, by the service tribunal from further attendance.

Penalty: Imprisonment for 6 months, or 10 penalty units, or both

3. **Privacy Notice for Court Martial and Defence Force Magistrate Proceedings.** Australian Privacy Principle 5 of the *Privacy Act 1988* (Cth), requires that notification be given to individuals about whom information has been or may be collected. The Directorate of Litigation, Defence Legal, is to determine whether any of the information provided in response to this summons requires the issue of privacy notifications and, if so, is to issue those privacy notifications. The attached Privacy Notice for Court Martial and Defence Force Magistrate Proceedings provides information about the collection or potential collection, the purposes for which the information is being or may be used, and the circumstances in which the information may be disclosed

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

Summons to witness to appear before a service tribunal and produce documents or things

Defence Force Discipline Act 1982

To: PMKeyS (if ARMY) RANK and full name PMKeyS (if NAVY / RAAF), post nominals
Unit name
Barracks name
Street address
Suburb STATE postcode

Pursuant to sub-section 138(2) of the *Defence Force Discipline Act 1982*, you are hereby summoned to appear on [*day date year at time hours at location*] [*copy the details from the DFM Reference or Convening Order unless summoned to appear at a later date*], before a [*General/Restricted Court Martial/Defence Force Magistrate*] at [*a Pre-Trial Direction Hearing*] [*to give evidence at the trial*] of [*PMKeyS (if ARMY) RANK and full name of accused PMKeyS (if NAVY / RAAF)*] and to produce documents or things listed in the attached Schedule A.

INITIALS SURNAME
Rank
Registrar of Military Justice

Summons issued at the request of the Office of the Director of Military Prosecutions [*if requested by the ODMP*]
e-mail: defence.dmp@defence.gov.au; Telephone: (02) 5131 1292

Summons issued at the request of Defence Legal Assistance [*if requested by Defence Legal Assistance*]
e-mail: your.trial@defence.gov.au; Telephone: 1800 563 563

For documents returned electronically to the Service tribunal, send to registrarof.militaryjustice@defence.gov.au [*if required*].

Notes

1. **Service**. This summons must be served on the person at least 15 working days prior to the date requiring the production of documents (rule 8(5)). See Part 1 of the Rules for rules about service.

2. **Contempt of Service Tribunal (Failure to Appear).** Pursuant to section 53 of the *Defence Force Discipline Act 1982*, a person who is a defence member or a defence civilian is guilty of an

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Part 4

offence if the person has been served, as provided for by the rules of procedure, with a summons to appear, or has been ordered to appear, as a witness before a service tribunal, and the person:

a. fails to appear as required by the summons or order; or
b. fails to appear and report himself/herself from day to day and has not been excused or released from further attendance, by the service tribunal from further attendance.

Maximum punishment: **Imprisonment for 6 months**

You must comply with this summons by:

a. appearing and producing the documents specified in the Schedule below at the date, time and place specified for attendance and production; or
b. by delivering or sending this summons or a copy of it and the documents specified in the Schedule below so that they are received at the Registry before the date and time specified in the summons (or if you receive notice of a later date or time from the issuing party, before the later date or time):

Physical address: Court Martial Facility, Level 1, 5 Tennant Street, Fyshwick, ACT
Postal address: F-TS-OJAG, PO Box 7906, CANBERRA BC ACT 2610
Email: registrarof.militaryjustice@defence.gov.au

If you object to a document produced in response to this summons being inspected by a party to the proceeding or any other person, you must attend in person at the time of production to make the objection.

3. **Privacy Notice for Court Martial and Defence Force Magistrate Proceedings.** In accordance with APP 5 of the *Privacy Act 1988* (Cth), you are advised that the Department of Defence, through the Office of the Judge Advocate General, has collected or may collect personal information about you. The attached *Privacy Notice for Court Martial and Defence Force Magistrate Proceedings* provides information about the collection or potential collection, the purposes for which the information is being or may be used, and the circumstances in which the information may be disclosed.

4. **Protected Confidences. [**This summons does not require production of documents recording a 'protected confidence' (see *Evidence (Miscellaneous Provisions) Act 1991* (ACT), section 79D(3)(a)).] OR [Leave has been granted to require production of documents recording a 'protected confidence' (see *Evidence (Miscellaneous Provisions) Act 1991* (ACT), section 79D(3)(a)).]

5. **Objections to produce documents:** If you wish to raise an objection to produce documents under the *Evidence Act 2011* (ACT) under the following sections you must inform the Registrar of the objection and attend in person at the date and time ordered on the summons to raise the objection.

a. section 126A – Professional confidential relationship privilege;
b. section 126B – Exclusion of evidence of protected confidences;
c. section 131A – Application of Division 3.10.4 to preliminary proceedings of court; and
d. section 132 – Court to inform of rights to make applications and objections.

6. **In returning documents**

a. Please clearly specify if any originals have been provided and clearly label the relevant documents.
b. Where documents are admitted into evidence, only copies will be so admitted and retained.
c. Within 14 days of the final day of the proceedings, any documents not admitted into evidence will be dealt with as follows, unless other instructions are provided:
    i. Any original documents will be returned to the address on the summons; and
    ii. Any copies, be they hard copy or electronic, will be destroyed or deleted, as applicable.

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Schedule A

The documents and things you must produce are as follows:

[List the documents or things. Attach list if insufficient space.]

[Specify if original documents are required to be produced]

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Part 5 Form of summons to produce documents or things – civilian

Summons to witness to appear before a service tribunal and produce documents or things

Defence Force Discipline Act 1982

To: Full name (*civilian*)
Position Title (*if applicable*)
Full name of Agency (*if applicable*)
Street address
Suburb STATE postcode

Pursuant to sub-section 138(2) of the *Defence Force Discipline Act 1982*, you are hereby summoned to appear on [*day date year at time hours at location*] [*copy the details from the DFM Reference or Convening Order unless summoned to appear at a later date*], before a [*General/Restricted Court Martial/Defence Force Magistrate*] at [*a Pre-Trial Direction Hearing*] [*to give evidence at the trial*] of [*Full name*] and to produce documents or things listed in the attached Schedule A.

INITIALS SURNAME
Rank
Registrar of Military Justice

Summons issued at the request of the Office of the Director of Military Prosecutions [*if requested by the ODMP*]
e-mail: defence.dmp@defence.gov.au; Telephone: (02) 5131 1292

Summons issued at the request of Defence Legal Assistance [*if requested by Defence Legal Assistance*]
e-mail: your.trial@defence.gov.au; Telephone: 1800 563 563

For documents returned electronically to the Service tribunal, send to registrarof.militaryjustice@defence.gov.au [*if required*].

Notes

1. **Service**. This summons must be served on the person at least 15 working days prior to the date requiring the production of documents (rule 8(5)). See Part 1 of the Rules for rules about service.

2. **Failure to Appear.** Pursuant to section 86 of the Defence Act 1903 a person is guilty of an offence if the

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person has been served, as provided for by the Defence Force Discipline Act 1982,or the rules of procedure, with a summons to appear, or has been ordered to appear, as a witness before a service tribunal, and the person:

a. fails to appear as required by the summons or order; or
b. fails to appear and report himself/herself from day to day and has not been excused or released from further attendance, by the service tribunal from further attendance.

Penalty: Imprisonment for 6 months, or 10 penalty units, or both

You must comply with this summons by:

a. appearing and producing the documents specified in the Schedule below at the date, time and place specified for attendance and production; or
b. by delivering or sending this summons or a copy of it and the documents specified in the Schedule below so that they are received at the Registry before the date and time specified in the summons (or if you receive notice of a later date or time from the issuing party, before the later date or time):

Physical address: Court Martial Facility, Level 1, 5 Tennant Street, Fyshwick, ACT
Postal address: F-TS-OJAG, PO Box 7906, CANBERRA BC ACT 2610
Email: registrarof.militaryjustice@defence.gov.au

If you object to a document produced in response to this summons being inspected by a party to the proceeding or any other person, you must attend in person at the time of production to make the objection.

3. **Privacy Notice for Court Martial and Defence Force Magistrate Proceedings.** In accordance with APP 5 of the *Privacy Act 1988* (Cth), you are advised that the Department of Defence, through the Office of the Judge Advocate General, has collected or may collect personal information about you. The attached *Privacy Notice for Court Martial and Defence Force Magistrate Proceedings* provides information about the collection or potential collection, the purposes for which the information is being or may be used, and the circumstances in which the information may be disclosed.

4. **Protected Confidences.** [This summons does not require production of documents recording a 'protected confidence' (see *Evidence (Miscellaneous Provisions) Act 1991* (ACT), section 79D(3)(a)).] OR [Leave has been granted to require production of documents recording a 'protected confidence' (see *Evidence (Miscellaneous Provisions) Act 1991* (ACT), section 79D(3)(a)).]

5. **Objections to produce documents:** If you wish to raise an objection to produce documents under the *Evidence Act 2011* (ACT) under the following sections you must inform the Registrar of the objection and attend in person at the date and time ordered on the summons to raise the objection.

a. section 126A – Professional confidential relationship privilege;
b. section 126B – Exclusion of evidence of protected confidences;
c. section 131A – Application of Division 3.10.4 to preliminary proceedings of court; and
d. section 132 – Court to inform of rights to make applications and objections.

6. **In returning documents**

a. Please clearly specify if any originals have been provided and clearly label the relevant documents.
b. Where documents are admitted into evidence, only copies will be so admitted and retained.
c. Within 14 days of the final day of the proceedings, any documents not admitted into evidence will be dealt with as follows, unless other instructions are provided:
    i. Any original documents will be returned to the address on the summons; and
    ii. Any copies, be they hard copy or electronic, will be destroyed or deleted, as applicable.

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Part 5

Schedule A

The documents and things you must produce are as follows:

[List the documents or things. Attach list if insufficient space.]

[Specify if original documents are required to be produced]

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

Summons to witness to appear before a service tribunal and produce documents or things

Defence Force Discipline Act 1982

To: The Secretary
Department of Defence
R1-5 Secretary Suite
Russell Drive
Russell ACT 2600

Pursuant to sub-section 138(2) of the *Defence Force Discipline Act 1982*, you are hereby summoned to appear on [*day date year at time hours at location*] [*copy the details from the DFM Reference or Convening Order unless summoned to appear at a later date*], before a [*General/Restricted Court Martial/Defence Force Magistrate*] at [*a Pre-Trial Direction Hearing*] [*to give evidence at the trial*] of [*Full name*] and to produce documents listed in the attached Schedule A.

INITIALS SURNAME
Rank
Registrar of Military Justice

Summons issued at the request of the Office of the Director of Military Prosecutions [*if requested by the ODMP*]
e-mail: defence.dmp@defence.gov.au; Telephone: (02) 5131 1292

Summons issued at the request of Defence Legal Assistance [*if requested by Defence Legal Assistance*]
e-mail: your.trial@defence.gov.au; Telephone: 1800 563 563

For documents returned electronically to the Service tribunal, send to registrarof.militaryjustice@defence.gov.au [*if required*].

Notes

1. **Service**. This summons must be served on the person at least 15 working days prior to the date requiring the production of documents (rule 8(5)). See Part 1 of the Rules for rules about service.

2. **Failure to Appear.** Pursuant to section 86 of the Defence Act 1903 a person is guilty of an offence if the person has been served, as provided for by the Defence Force Discipline Act 1982,or the rules of procedure,

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with a summons to appear, or has been ordered to appear, as a witness before a service tribunal, and the person:

a. fails to appear as required by the summons or order; or
b. fails to appear and report himself/herself from day to day and has not been excused or released from further attendance, by the service tribunal from further attendance.

Penalty: Imprisonment for 6 months, or 10 penalty units, or both

You must comply with this summons by:

a. appearing and producing the documents specified in the Schedule below at the date, time and place specified for attendance and production; or
b. by delivering or sending this summons or a copy of it and the documents specified in the Schedule below so that they are received at the Registry before the date and time specified in the summons (or if you receive notice of a later date or time from the issuing party, before the later date or time):

Physical address: Court Martial Facility, Level 1, 5 Tennant Street, Fyshwick, ACT
Postal address: F-TS-OJAG, PO Box 7906, CANBERRA BC ACT 2610
Email: registrarof.militaryjustice@defence.gov.au

If you object to a document produced in response to this summons being inspected by a party to the proceeding or any other person, you must attend in person at the time of production to make the objection.

3. **Privacy Notice for Court Martial and Defence Force Magistrate Proceedings.** In accordance with APP 5 of the *Privacy Act 1988* (Cth), you are advised that the Department of Defence, through the Office of the Judge Advocate General, has collected or may collect personal information about you. The attached Privacy Notice for Court Martial and Defence Force Magistrate Proceedings provides information about the collection or potential collection, the purposes for which the information is being or may be used, and the circumstances in which the information may be disclosed.

4. **Protected Confidences.** [This summons does not require production of documents recording a 'protected confidence' (see *Evidence (Miscellaneous Provisions) Act 1991* (ACT), section 79D(3)(a)).] OR [Leave has been granted to require production of documents recording a 'protected confidence' (see *Evidence (Miscellaneous Provisions) Act 1991* (ACT), section 79D(3)(a)).]

5. **Objections to produce documents:** If you wish to raise an objection to produce documents under the *Evidence Act 2011* (ACT) under the following sections you must inform the Registrar of the objection and attend in person at the date and time ordered on the summons to raise the objection.

a. section 126A – Professional confidential relationship privilege;
b. section 126B – Exclusion of evidence of protected confidences;
c. section 131A – Application of Division 3.10.4 to preliminary proceedings of court; and
d. section 132 – Court to inform of rights to make applications and objections.

6. **In returning documents**

a. Please clearly specify if any originals have been provided and clearly label the relevant documents.
b. Where documents are admitted into evidence, only copies will be so admitted and retained.
c. Within 14 days of the final day of the proceedings, any documents not admitted into evidence will be dealt with as follows, unless other instructions are provided:
    iii. Any original documents will be returned to the address on the summons; and
    iv. Any copies, be they hard copy or electronic, will be destroyed or deleted, as applicable.

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Schedule A

The documents and things you must produce are as follows:

[List the documents or things. Attach list if insufficient space.]

[Specify if original documents are required to be produced]

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Part 7 Privacy Notice for summons

Privacy notice for court martial and Defence Force magistrate proceedings

Privacy Act 1988

1. **Requirements of Australian Privacy Principle 5.** The *Privacy Act 1988* (Cth) was amended with effect 12 March 2014 to introduce Australian Privacy Principle (APP) 5. APP 5 requires that APP entities give notice to individuals about whom personal information has been or may be collected. In accordance with APP 5, you are advised that the Department of Defence, through the Office of the Judge Advocate General (OJAG), has collected or may collect personal information about you.

2. **Details of Australian Privacy Principle Entity.** The APP entity which has collected or may collect personal information about you is the Department of Defence (through the OJAG). The OJAG point of contact is provided in the footer of this notice.

3. **Authority for collection.** The *Defence Force Discipline Act 1982* (Cth) (DFDA) is the primary legislation authorising and/or requiring the OJAG to collect personal information about you.

4. **Purpose of collection.** The purpose for which the OJAG has collected or may collect personal information about you is the Australian Defence Force's (ADF's) maintenance and enforcement of Service discipline and, in particular the administration and conduct of court martial and/or Defence Force magistrate proceedings (proceedings generally conducted in public and therefore open to the media, members of the general public and ADF members). This can also include the following related purposes: appeals (including appeals to the High Court of Australia, the Federal Court of Australia and/or the Defence Force Discipline Appeal Tribunal); reviews; the enforcement of punishments and/or orders; post-trial administrative action; reporting requirements; and/or other disciplinary action.

5. **Consequences of non-collection.** The main consequences of the OJAG not collecting the personal information which has been or may be collected about you is that the requirements of the DFDA would/might not be met and/or the conduct of court martial and Defence Force magistrate proceedings would/could be compromised.

6. **Circumstances of collection.** The OJAG has or may itself collect personal information about you for the purposes outlined in paragraph 4 of this notice. In addition, and also for the purposes outlined in paragraph 4 of this notice, the OJAG has obtained or may obtain personal information about you which has been or may be collected by another part of the Department of Defence. This will generally occur as a result of the referral of charges for trial, the prosecution of charges, the defence of an accused person and/or the investigation of/inquiry into allegations.

7. **Nature of collection.** Any personal information collected about you may be collected from you and/or from someone other than you. It will generally relate to your identity, your

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participation in disciplinary proceedings or investigations, your connection with an alleged offence, and/or your connection with a person allegedly connected to an offence.

8. **Other potential uses.** While the OJAG does not specifically collect personal information for purposes other than those outlined in paragraph 4 of this notice, other laws and/or policies authorise and/or require certain information to be provided in certain circumstances for use by other areas of the Department of Defence in the broader management of the Department of Defence and/or specific individuals, for example, further investigations/inquiries, security reviews and/or administrative action.

9. **Potential disclosures.** In addition to paragraph 4 of this notice (purpose of collection) and paragraph 8 of this notice (other potential uses), both of which potentially involve disclosures of personal information, the Department of Defence may also be authorised and/or required to disclose personal information in other circumstances, for example: for the purposes of criminal proceedings, civil proceedings, investigations and/or inquiries; to the Department of Veterans' Affairs in response to a claim for compensation or benefits; and/or under the *Freedom of Information Act 1982* (Cth); or for inclusion in the National Police Reference System managed by the Australian Criminal Intelligence Commission.

10. **Other disclosures.** Other than in the circumstances outlined in paragraph 9, the Department of Defence does not usually disclose personal information of the kind collected by the OJAG to any other APP entity, body or person. Similarly, the Department of Defence does not usually disclose personal information of the kind collected by the OJAG to overseas recipients. In rare circumstances, however, there may be authority and/or a requirement to do so, for example: career management action (including posting, deployment and/or security clearances) or for disciplinary proceedings involving witnesses from foreign military forces or ADF witnesses on overseas postings or deployments.

11. **Access, corrections and complaints.** The Department of Defence's APP Privacy Policy is available at: http://www.defence.gov.au/Privacy.asp or by request. It contains information about how you may access the personal information that the Department of Defence holds about you, and how you may seek correction of such information. The policy also contains information about how you may complain about a breach of the APPs and how the Department of Defence will deal with a complaint. Complaints about the handling of your personal information can be submitted by e-mail to defence.privacy@defence.gov.au. Once received, your complaint will be forwarded to the appropriate area within the Department of Defence for action.

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Schedule 4 Form of tendency notice

(rule 43)

Form of tendency notice

In the matter of

Notice of intention to adduce tendency evidence

Evidence Act 2011 (ACT), section 97
Evidence Regulations 2012 (ACT), regulations 5-10
Court Martial and Defence Force Magistrate Rules 2026, rule 43

TO: [*name*] of [*address*]

OF: CX

Under the *Evidence Act 2011* (ACT), section 97(1), the XXXX gives notice of the Prosecution/Defence intention to adduce evidence of the character, reputation and conduct of XXXX to prove that he/she had a tendency to act in particular ways and have particular states of mind.

The substance of the evidence of the kind referred to in that subsection that XX intend to adduce is as follows:

[s*ubstance of the evidence*]

Particulars of the *[character/reputation/conduct/tendency] of which evidence is to be adduced are as follows:

[*particulars*]

*[That the accused had a tendency to act in particular ways, namely:]

[*particulars about*:

(a) the date, time, place and circumstances at or in which the conduct occurred; and

(b) the names of each person who saw, heard or otherwise perceived the conduct.

Particulars of the tendency sought to be proved by the evidence are as follows:

(a) The substance of the evidence; and

(b) To the extent that that evidence consists of, or includes, evidence of the conduct of a person, particulars of:

(i) The date, time, place and circumstances at or in which the

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conduct occurred: and

(ii) The names of each person who saw, heard or otherwise perceived the conduct,

so far as they are known to the Prosecution/Defence are as follows:

Tendency 1

Incident 1: FX

(a) Substance of the evidence:

(b)(i) Particulars of the date, time, place and circumstances at or in which the conduct occurred:

(b)(ii) The names and addresses of each person who saw, heard or otherwise perceived the conduct:

Incident 2: FF

(a) Substance of the evidence:

(b)(i) Particulars of the date, time, place and circumstances at or in which the conduct occurred:

(b)(ii) The names and addresses of each person who saw, heard or otherwise perceived the conduct:

……

Signed

Prosecuting / Defending Officer

Dated ……

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Schedule 5 Form of coincidence notice

(rule 43)

Form of coincidence notice

In the matter of

Notice of intention to adduce coincidence evidence

Evidence Act 2011 (ACT), section 98
Evidence Regulations 2012 (ACT), regulations 5-10
Court Martial and Defence Force Magistrate Rules 2026, rule 43

TO: [*name*] of [*address*]

OF: CX

Under the *Evidence Act 2011* (ACT), section 98(1), the XXXX gives notice of the Prosecution/Defence intention to adduce evidence of the character, reputation and conduct of XXXX to prove that because of the improbability of the events occurring coincidentally, XXXX acted in particular ways and had particular states of mind.

The substance of the evidence that XX intends to adduce is as follows:

[*substance of the evidence*]

*[The particulars, so far as they are known to the Prosecution/Defence, are as follows:]

[*particulars about*:

(a) the date, time, place and circumstances at or in which the conduct occurred; and

(b) the names of each person who saw, heard or otherwise perceived the conduct.

Particulars of any additional evidence to be relied on to establish the improbability of events having occurred coincidentally are as follows:

[*particulars*]

Particulars of the *[act/state of mind] sought to be proved by the evidence are as follows

[*particulars*]

Coincidence 1

Incident 1: FX

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(a) Substance of the evidence:

(b)(i) Particulars of the date, time, place and circumstances at or in which the conduct occurred:

(b)(ii) The names and addresses of each person who saw, heard or otherwise perceived the conduct

(c) Particulars of any additional evidence to be relied on to establish the improbability of the events having occurred coincidentally are as follows:

(*Particulars)*

Incident 2: FF

(a) Substance of the evidence:

(b)(i) Particulars of the date, time, place and circumstances at or in which the conduct occurred:

(b)(ii) The names and addresses of each person who saw, heard or otherwise perceived the conduct:

(c) Particulars of any additional evidence to be relied on to establish the improbability of the events having occurred coincidentally are as follows:

(*Particulars)*

……

Signed

Prosecuting / Defending Officer

Dated ……

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Schedule 6 Form of previous representation notice

(rule 43)

Form of previous representation notice

In the matter of

Notice of intention to adduce evidence of a previous representation

Evidence Act 2011 (ACT), section 67(1)
Court Martial and Defence Force Magistrate Rules 2026, rule 43

TO: [*name*] of [*address*]

OF: CX

Under the *Evidence Act 2011* (ACT), section 67(1), the XXXX give notice that we intend to adduce evidence of a previous representation—maker not available.

I intend to rely on the *Evidence Act 2011* (ACT), section 65(2) / (3) / (8) (*omit subsections not being relied on*) in arguing that the hearsay rule does not apply to the evidence.

The substance of the evidence of a previous representation that I intend to adduce is as follows:

(*substance of that evidence— note that it is sufficient compliance to refer to an accompanying affidavit or statement*)

(if a copy of a document, or of a portion of a document, is attached to this notice, it is sufficient compliance to specify in the notice, or in the copy of the document or portion of the document attached to the notice, the representation evidence intended to be adduced—see the Evidence Regulations 2012 (ACT), reg 6)

The substance of all other relevant representations made by the person who made that previous representation, so far as they are known to me, is as follows:

(*substance of those other representations*)

(The particulars, so far as they are known to me, are as follows:

(*particulars about:*

(a) the date, time, place and circumstances at or in which each of the representations was made; and

(b) the names of the persons by whom, and the persons to whom, each of those representations were made.

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(*particulars*)

(if it is intended to rely on the Evidence Act 2011 (ACT), section 65 (2) (a) (b) or (d), section 65 (3)(a) or (b) or section 65 (8) (a) or (b)) *[Particulars of the facts on the basis of which it is alleged that the person who made a representation referred to in this notice is not available to testify concerning the fact to be proved by adducing evidence of that representation are as follows:

(*particulars*)]

(If a previous representation referred to is in writing:

(a) a copy of the document, or of the relevant portion of the document, containing the representation must be attached to the notice; and

(b) the notice must identify the document unless:

(i) a copy of the document is attached to the notice; and

(ii) the identity of the document is apparent on the face of the copy— see the Evidence Regulations (ACT), reg 6

……

Signed

Prosecuting / Defending Officer

Dated ……

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Schedule 7 Affidavit—Form

(rule 44)

Affidavit—general

Court Martial and Defence Force Magistrate Rules 2026

(see rule 44 (Affidavit—form))

In the matter of

(*rank/name*)
Defendant

Type of tribunal

General / Restricted Court Martial / Defence Force Magistrate

On (*date*), I (*Full name of person making affidavit*) of (*home or business address*), *[say on oath/solemnly affirm]—

1. I am *etc*.
2. *Etc.*

At the end of the body of the affidavit:

*[Sworn/Affirmed] by (*full name*):

(*signature of person making affidavit*)

at (*place*) in the presence of:

(*signature of person before whom affidavit is made)*

(*Full name of person before whom affidavit is made*) of (*address*)

*[Justice of the Peace/Barrister/Solicitor/(*other*)]

Note If the affidavit extends over more than 1 page, the person making the affidavit and the person taking the affidavit must sign or initial each page of the affidavit

**omit if, or whichever is, inapplicable*

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