



# **Defence Force Discipline Act 1982**

## **Act No. 152 of 1982 as amended**

This compilation was prepared on 20 September 2008  
taking into account amendments up to Act No. 6 of 2008

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,  
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# An Act relating to the discipline of the Defence Force and for related purposes

## Part I—Preliminary

### 1 Short title [see Note 1]

This Act may be cited as the *Defence Force Discipline Act 1982*.

### 2 Commencement [see Note 1]

- (1) Part I and Part XI shall come into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act shall come into operation on a date to be fixed by Proclamation.

### 3 Interpretation

- (1) In this Act, unless the contrary intention appears:

***accused person*** means a person who has been charged with a service offence.

***active service***, in relation to a member of the Defence Force, means:

- (a) service by the member in connection with operations against the enemy;
- (b) service by the member with a force specified in a declaration by the Governor-General that is in force under subsection 4(1); or
- (c) service by the member in an area specified in a declaration by the Governor-General that is in force under subsection 4(2).

***aircraft*** includes any machine that can derive support in the atmosphere from the reactions of the air.

***airman*** means a member of the Australian Air Force, not being an officer.

***allied force*** means a force of another country that is acting in co-operation with the Defence Force.

***ancillary offence***, in relation to an offence against this Act or the regulations, means an offence against:

- (a) section 11.1, 11.4 or 11.5 of the *Criminal Code*; or
- (b) section 6 of the *Crimes Act 1914*;

that relates to that other offence.

***ancillary Territory offence***, in relation to another Territory offence (the ***first Territory offence***), means an offence against:

- (a) section 11.1, 11.4 or 11.5 of the *Criminal Code*; or
- (b) section 6 of the *Crimes Act 1914*; or
- (c) section 44, 47 or 48 of the *Criminal Code 2002* of the Australian Capital Territory; or
- (d) section 181 of the *Crimes Act 1900* of the Australian Capital Territory; or
- (e) a provision of a law in force in the Jervis Bay Territory (other than a Commonwealth law) that is prescribed for the purposes of this paragraph (see subsection (3A));

that relates to the first Territory offence.

***another country*** means a country other than Australia.

***appoint*** includes re-appoint.

***appropriate authority***:

- (a) in relation to proceedings before the Australian Military Court, means:
  - (i) the Chief Military Judge or a Military Judge; or
  - (ii) the Registrar; or
- (c) in relation to proceedings before a summary authority, means the summary authority.

***audio link*** means facilities (for example, telephone facilities) that enable audio communication between persons in different places.

***Australia***, when used in a geographical sense, includes the external Territories.

***Australian Military Court*** means the court created under section 114.

**Australian Military Court Rules** means the rules made under section 149A.

**authorized officer** means an officer, or an officer included in a class of officers, authorized, in writing, by the Chief of the Defence Force or a service chief for the purposes of the provision in which the expression occurs.

**charge** means a charge of a service offence.

**Chief Military Judge** means the person appointed under section 188AC.

**civil court** means a federal court or a court of a State or Territory.

**civil court offence** means:

- (a) an offence against a law of the Commonwealth (other than a service offence); or
- (b) an offence against a law of a State or Territory.

**civil detention facility** means a police station or any other premises in which persons in custody awaiting trial in a civil court may lawfully be detained.

**class 1 offence** means a service offence that is specified to be a class 1 offence in the table in clause 1 of Schedule 7.

**class 2 offence** means a service offence that is:

- (a) specified to be a class 2 offence in the table in clause 1 of Schedule 7; or
- (b) neither a class 1 offence nor a class 3 offence.

**class 3 offence** means a service offence that:

- (a) is specified to be a class 3 offence in the table in clause 1 of Schedule 7; or
- (b) both:
  - (i) has a maximum penalty of not greater than 5 years imprisonment or is not punishable by imprisonment; and
  - (ii) is not specified to be a class 1 offence or a class 2 offence in the table in clause 1 of Schedule 7.

**competent reviewing authority** has the meaning given by subsection 150(2).

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**constable** means a member, or a special member, of the Australian Federal Police or a member of the police force of a State or Territory.

**convicted person** means a person convicted of a service offence by a service tribunal or the Defence Force Discipline Appeal Tribunal.

**custodial offence** means:

- (a) an offence against subsection 54A(1) or (2); or
- (b) an offence that:
  - (i) is an ancillary offence in relation to an offence against subsection 54A(1) or (2); and
  - (ii) was committed by a person at a time when the person was a detainee.

**custodial punishment** means a punishment of a kind referred to in subsection 68A(1).

**custody** means custody under this Act.

**defence civilian** means a person (other than a defence member) who:

- (a) with the authority of an authorized officer, accompanies a part of the Defence Force that is:
  - (i) outside Australia; or
  - (ii) on operations against the enemy; and
- (b) has consented, in writing, to subject himself or herself to Defence Force discipline while so accompanying that part of the Defence Force.

**Defence Force Discipline Appeal Tribunal** means the Defence Force Discipline Appeal Tribunal constituted under the *Defence Force Discipline Appeals Act 1955*.

**defence member** means:

- (a) a member of the Permanent Navy, the Regular Army or the Permanent Air Force; or
- (b) a member of the Reserves who:
  - (i) is rendering continuous full-time service; or
  - (ii) is on duty or in uniform.

***Deputy Judge Advocate General*** means a Deputy Judge Advocate General appointed under section 179.

***detainee*** means a person who is undergoing a punishment of detention in a detention centre.

***detention centre*** means a place, not being a prison, that is operated by the Defence Force as a place for the detention of persons on whom punishments of detention have been imposed.

***Director of Military Prosecutions*** means the Director of Military Prosecutions appointed under section 188GF.

***elective punishment*** means a punishment set out in column 2 of an item of Table B or C in Schedule 3.

***enemy person*** means a person who is:

- (a) a representative or agent of the enemy; or
- (b) a member of:
  - (i) an armed force of a body politic that constitutes the enemy; or
  - (ii) an armed force or other force that constitutes the enemy.

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to perform an act.

***general order*** means:

- (a) a Defence Instruction (General), a Defence Instruction (Navy), a Defence Instruction (Army) or a Defence Instruction (Air Force);
- (b) any other order, instruction or directive issued by, or under the authority of, the Chief of the Defence Force or a service chief; or
- (c) a general, standing, routine or daily order in force with respect to a part of the Defence Force.

***hearing***, in relation to a service tribunal, includes the announcement of the verdict of the tribunal and the taking of action by the tribunal under Part IV in relation to a convicted person.

***institution***, in relation to the Defence Force or an allied force, means a mess, club, band, canteen or other institution of the Defence Force or of the allied force, as the case may be.

***Judge Advocate General*** means the Judge Advocate General appointed under section 179.

***legal officer*** means an officer who is a legal practitioner.

***legal practitioner*** means a person who is enrolled as a barrister, a solicitor, a barrister and solicitor or a legal practitioner of a civil court.

***medical practitioner*** means a person who is registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners.

***member below non-commissioned rank*** means a member of the Defence Force who is not an officer, a warrant officer or a non-commissioned officer.

***Military Judge*** means:

- (a) a person appointed under section 188AP; and
- (aa) except in Divisions 2 and 2A of Part XI, a person appointed as an acting Military Judge under section 188BB; and
- (b) except in section 188AN and Division 2A of Part XI, the Chief Military Judge.

***military jury*** means a jury constituted in accordance with this Act (including the Australian Military Court Rules) for the trial of a charge of a service offence that is to be tried by a Military Judge and military jury.

***mutiny*** means a combination between persons who are, or of whom at least 2 are, members of the Defence Force:

- (a) to overthrow lawful authority in the Defence Force or in an allied force; or
- (b) to resist such lawful authority in such a manner as to prejudice substantially the operational efficiency of the Defence Force or of, or of a part of, an allied force.

***non-commissioned officer*** means:

- (a) a sailor holding a rank not higher than the rank of chief petty officer and not lower than the rank of leading seaman;

- (b) a soldier holding a rank not higher than the rank of staff sergeant and not lower than the rank of lance-corporal; or
- (c) an airman holding a rank not higher than the rank of flight sergeant and not lower than the rank of corporal.

***officer*** means:

- (a) in relation to the Australian Navy—a person appointed as an officer of the Australian Navy, including a person who holds the rank in the Australian Navy of Acting Sub-Lieutenant or of Midshipman; and
- (b) in relation to the Australian Army and the Australian Air Force—a person appointed as an officer of the Australian Army or the Australian Air Force.

***old system offence*** means an offence under previous service law that was committed by a member of the Defence Force at any time during the period of 3 years that ended on the day immediately before the proclaimed date.

***order*** includes:

- (a) a general order; and
- (b) a command given to a member of the Defence Force by a superior officer.

***overseas court*** means a court of a place outside Australia that has jurisdiction to try charges of offences against the law of that place.

***overseas offence*** means an offence against a law of a place outside Australia.

***place of confinement*** means:

- (a) a civil detention facility; or
- (b) a detention centre.

***police member*** means:

- (a) a service police officer; or
- (b) a sailor, soldier or airman who is a member of a police corps or service.

***previous service law*** means the following laws as in force at any time during the period of 3 years that ended on the day immediately before the proclaimed date:

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- (a) the *Naval Defence Act 1910* and regulations in force under that Act;
- (b) the *Defence Act 1903* in its application to and in relation to the Australian Navy and the members of the Australian Navy;
- (c) where any law of the United Kingdom applied during that period to or in relation to the Australian Navy or the members of the Australian Navy—that law in that application;
- (d) the *Defence Act 1903* and the regulations in force under that Act in their application to and in relation to the Australian Army and the members of the Australian Army;
- (e) where any law of the United Kingdom applied during that period to or in relation to the Australian Army or the members of the Australian Army—that law in that application;
- (f) the *Air Force Act 1923* and regulations in force under that Act;
- (g) the *Defence Act 1903* in its application to and in relation to the Australian Air Force and the members of the Australian Air Force;
- (h) where any law of the United Kingdom applied during that period to or in relation to the Australian Air Force or the members of the Australian Air Force—that law in that application.

***prisoner*** means a convicted person on whom a punishment of imprisonment has been imposed.

***proclaimed date*** means the date fixed for the purposes of subsection 2(2).

***property*** includes:

- (a) real property; and
- (b) personal property; and
- (c) money; and
- (d) a thing in action or other intangible property; and
- (e) electricity; and
- (f) a wild creature that is:
  - (i) tamed; or



- (ii) ordinarily kept in captivity; or
- (iii) reduced (or in the course of being reduced) into the possession of a person.

***Provost Marshal Australian Defence Force*** means the person holding the position of Provost Marshal Australian Defence Force, and includes any person acting in that position.

***public place***, in relation to a service offence, includes a place that at the time of the commission of the offence:

- (a) was used by the public; or
- (b) was open to the public, whether or not on the payment of money.

***punishment*** includes a combination of punishments.

***receive***, in relation to property, includes handle, retain, remove, dispose of or realize the property.

***Registrar*** means the Registrar of the Australian Military Court appointed under section 188FB.

***relevant Territory offence***, in relation to an offence against section 61, means the Territory offence on which the offence against section 61 is based.

***reparation order*** means an order under section 84.

***Reserves*** means the Naval Reserve, the Army Reserve and the Air Force Reserve.

***restitution order*** means an order under section 83.

***review*** means a review by a commanding officer or a reviewing authority, in accordance with Part VIIIA, of the proceedings of a summary authority.

***reviewing authority*** means a reviewing authority appointed under subsection 150(1).

***rules of procedure*** means the Australian Military Court Rules and the Summary Authority Rules.

***sailor*** means a member of the Australian Navy, not being an officer.

**Schedule 1A offence** means:

- (a) an offence specified in Schedule 1A; or
- (b) an offence that is an ancillary offence in relation to an offence referred to in paragraph (a).

**service chief** means the Chief of Navy, the Chief of Army or the Chief of Air Force.

**service land** means land (including a building or other structure) used or occupied by:

- (a) the Defence Force;
- (b) an allied force; or
- (c) an institution of the Defence Force or of an allied force.

**service offence** means:

- (a) an offence against this Act or the regulations;
- (b) an offence that:
  - (i) is an ancillary offence in relation to an offence against this Act or the regulations; and
  - (ii) was committed by a person at a time when the person was a defence member or a defence civilian; or
- (c) an old system offence.

**service police officer** means an officer who is a member of a police corps or service, and includes a provost marshal and a deputy provost marshal.

**service property** means property used by, or in the possession or under the control of:

- (a) the Defence Force;
- (b) an allied force; or
- (c) an institution of the Defence Force or of an allied force;

and **service aircraft**, **service armoured vehicle**, **service missile**, **service ship**, **service vehicle** and **service weapon** have corresponding meanings.

**service tribunal** means the Australian Military Court or a summary authority.

**ship** means a vessel or boat of any description, and includes:

- (a) any floating structure; and

(b) any air cushion vehicle.

**soldier** means a member of the Australian Army, not being an officer.

**subordinate summary authority** means a subordinate summary authority appointed under subsection 105(2).

**summary authority** means:

- (a) a superior summary authority;
- (b) a commanding officer; or
- (c) a subordinate summary authority.

**Summary Authority Rules** means the rules made under section 149.

**superior authority** means a superior authority appointed under section 5A.

**superior officer**, in relation to a member of the Defence Force, means another member of the Defence Force who holds a higher rank, or a higher relative rank, in the Defence Force than the member, and includes any other member of the Defence Force who, by virtue of his or her office or appointment, is entitled to exercise command over the member.

**superior summary authority** means a superior summary authority appointed under subsection 105(1).

**Territory offence** means:

- (a) an offence against a law of the Commonwealth in force in the Jervis Bay Territory other than this Act or the regulations; or
- (b) an offence punishable under any other law in force in the Jervis Bay Territory (including any unwritten law) creating offences or imposing criminal liability for offences.

Note 1: Paragraph (a) of this definition includes an offence (an **ancillary Territory offence**) against section 11.1 (attempt), section 11.4 (incitement) or section 11.5 (conspiracy) of the *Criminal Code* or section 6 (accessory after the fact) of the *Crimes Act 1914* in relation to another Territory offence within the meaning of that paragraph.

Note 2: Paragraph (b) of this definition includes an offence (an **ancillary Territory offence**) against section 44 (attempt), section 47 (incitement) or section 48 (conspiracy) of the *Criminal Code 2002* of the Australian Capital Territory or section 181 (accessory after the fact) of the *Crimes Act 1900* of the Australian Capital Territory in

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relation to another Territory offence within the meaning of that paragraph.

Note 3: The laws of the Australian Capital Territory in force in the Jervis Bay Territory apply, and Chapter 2 of the *Criminal Code* does not apply, for the purpose of determining criminal liability for offences referred to in paragraph (b) of this definition.

***the enemy*** means a body politic or an armed force engaged in operations of war against Australia or an allied force and includes any force (including mutineers and pirates) engaged in armed hostilities against the Defence Force or an allied force.

***video link*** means facilities (for example, closed-circuit television facilities) that enable audio and visual communication between persons in different places.

***warrant officer*** means a sailor, soldier or airman who holds the rank of warrant officer.

- (2) A reference in this Act to the Defence Force shall be read as including a reference to a part of that Force.
- (3) A reference in this Act to an arm of the Defence Force shall be read as a reference to the Australian Navy, the Australian Army or the Australian Air Force, as the case may be.
- (3A) Before the Governor-General makes a regulation prescribing a provision of a law for the purposes of paragraph (e) of the definition of ***ancillary Territory offence*** in subsection (1), the Minister must be satisfied that the provision is equivalent to, or has the same effect as, a provision referred to in paragraph (c) or (d) of that definition.
- (4) For the purposes of subparagraph (b)(ii) of the definition of ***defence member*** in subsection (1):
  - (a) a member of the Reserves is taken to be on duty from the time appointed for him or her to report to, or to attend at, a specified place for any naval, military or air force service that he or she is required to render by or under the *Defence Act 1903*, the *Naval Defence Act 1910* or the *Air Force Act 1923* until he or she is released or discharged from that service; and

- (b) a member of the Reserves is taken to be on duty while acting, or purporting to act, in his or her capacity as a member of the Reserves.
- (5) A member of the Defence Force who is serving in a rank or grade to which the member has not been duly appointed or promoted shall, while so serving in that rank or grade, be deemed, for the purposes of this Act, to hold that rank or grade.
- (6) A member of the Defence Force who holds a rank temporarily (however described) shall, while so holding that rank, be deemed, for the purposes of this Act, to hold that rank.
- (7) For the purposes of this Act, a person's membership of the Defence Force is not affected by reason only of the person's attachment to, or allotment for duty with:
- (a) the armed forces of another country;
  - (b) a force raised or organized by the United Nations or another international body; or
  - (c) a Peacekeeping Force within the meaning of Part IV of the *Veterans' Entitlements Act 1986*.
- (8) For the purposes of this Act, a comparison of the severity of a combination of punishments with that of a single punishment or of another combination of punishments shall be made as follows:
- (a) any punishment on one side of the comparison that is the same as a punishment on the other side of the comparison shall be disregarded;
  - (b) if, after the operation of paragraph (a), 2 or more punishments remain for consideration on either side of the comparison, regard shall be had only to the more severe, or the most severe, of the punishments so remaining on that side.
- (9) A reference in this Act to the amount of a convicted person's pay for a specific number of days (including a person who has no pay entitlement in respect of the day on which he or she was convicted) shall be read as a reference to an amount that is the product of:
- (a) the amount that is to be taken, for the purposes of this Act, to be the amount of daily rate of pay applicable in relation to a class of persons in which the person is included, being an amount ascertained in accordance with regulations that are in

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- force for the purposes of this paragraph and are applicable in respect of the day on which the person was so convicted; and
- (b) the number of days specified in the reference.
- (10) Regulations made for the purposes of paragraph (9)(a) may provide for an amount of daily rate of pay to be ascertained by reference to a provision of any other regulations under any Act as in force at a particular time or as in force from time to time, or any determination under section 58B or 58H of the *Defence Act 1903* as in force at a particular time or as in force from time to time.
- (11) A reference to a commanding officer in a provision of this Act that confers a power on a commanding officer includes:
- (a) a reference to an officer performing the duties and functions of a commanding officer by virtue of:
- (i) a direction given by means of a Defence Instruction (Navy), a Defence Instruction (Army) or a Defence Instruction (Air Force); or
- (ii) an order, instruction or directive issued by, or under the authority of, the Chief of the Defence Force or a service chief; and
- (b) a reference to an officer appointed under subsection 5(1) whose instrument of appointment under that section authorizes the officer to exercise that power;
- but does not include a reference to an officer in respect of whom a determination relating to the exercise of that power is in force under subsection 5(3).
- (12) A reference in this Act to a person who is on guard duty shall be read as including a reference to a person who:
- (a) is posted or ordered to patrol; or
- (b) is a member of a guard or other party mounted or ordered to patrol;
- for the purpose of:
- (c) protecting any person, any premises or place or any ship, vehicle, aircraft or other thing;
- (d) preventing or controlling access to, or egress from, any premises or place or any ship, vehicle, aircraft or other thing; or
- (e) regulating traffic by land or water.

- (15) For the purposes of any law of the Commonwealth other than this Act, an offence against this Act or the regulations shall not be taken not to be an offence against a law of the Commonwealth by reason that it forms part of the law regulating the relationship between the Commonwealth and members of the Defence Force and other persons.
- (16) Where:
- (a) a detainee is granted leave of absence from a detention centre; and
  - (b) the detainee refuses or fails to return to the detention centre before the end of the leave of absence;
- the detainee shall be taken, for the purposes of this Act, to have escaped from custody and from the detention centre.
- (17) A reference in a provision of this Act to the officer in charge of a detention centre is a reference to the officer who is responsible for the administration of the detention centre, and includes a reference to a member of the Defence Force, or to a member of the Defence Force included in a class of members of the Defence Force, authorized by a commanding officer, in writing, for the purposes of the provision in relation to the detention centre.
- (18) The provisions of this Act in so far as they protect the individual are in addition to, and not in derogation of, any rights and freedoms of the individual, whether under the law of the Commonwealth or of a State or Territory, and this Act is not intended to exclude or limit the operation of any law of the Commonwealth or of a State or Territory providing for those rights and freedoms in so far as it is capable of operating concurrently with this Act.

#### **4 Declaration of active service for disciplinary purposes**

- (1) The Governor-General may, by writing under his or her hand, declare a specified force to be on active service for the purposes of this Act.
- (2) The Governor-General may, by writing under his or her hand, declare the members of the Defence Force who are serving in a specified area to be on active service for the purposes of this Act.
- (3) A copy of a declaration made under subsection (1) or (2) shall be published in the *Gazette*.

## 5 Commanding officers for disciplinary purposes

- (1) For the purposes of this Act, the Chief of the Defence Force or a service chief or an authorized officer may, by instrument in writing, appoint an officer to exercise all the powers conferred on a commanding officer by or under this Act or such of those powers as are specified in the instrument of appointment.
- (2) An instrument of appointment under subsection (1) takes effect on the date of the instrument or on such later date as is specified in the instrument.
- (3) For the purposes of this Act, the Chief of the Defence Force or a service chief or an authorized officer may, by instrument in writing, determine that a commanding officer shall not exercise the powers conferred on a commanding officer by or under this Act or such of those powers as are specified in the instrument.
- (4) A determination under subsection (3) takes effect on the date of the instrument or on such later date as is specified in the determination.

### 5A Appointment of superior authority

The Chief of the Defence Force or a service chief may, by instrument in writing, appoint an officer, or each officer included in a class of officers, to be a superior authority for the purpose of:

- (a) representing the interests of the Defence Force in relation to charges that are being considered by the Director of Military Prosecutions for possible trial by the Australian Military Court; and
- (b) exercising the powers and performing the functions conferred on superior authorities by or under this Act or the regulations.

## 6 Further provision with respect to certain members of the Defence Force

- (1) In this section, *prescribed class*, in relation to members of the Defence Force, means any of the following classes of such members:
  - (a) chaplains;
  - (b) members who have not attained the age of 18 years;



- (c) members receiving instruction or training.
- (2) The regulations may make further provision relating to the discipline of members of the Defence Force included in a prescribed class and, in particular, may make provision for:
  - (a) the exemption of those members from any provision of this Act, other than this section; and
  - (b) the modification of any provision of this Act, other than this section or subsection 68(1) or 68A(1), so far as it relates to those members.
- (3) Regulations made by virtue of subsection (2) shall not modify a provision of this Act so as to increase the severity of the punishment provided by this Act for a service offence.

## **7 Prisoners of war**

- (1) This Act (including the regulations and the rules of procedure) applies to, and in relation to, prisoners of war as if prisoners of war were members of the Defence Force and also defence members.
- (2) The regulations may make further provision relating to the discipline of prisoners of war and, in particular, may make provision for:
  - (a) the exemption of prisoners of war from any provision of this Act, other than this section; and
  - (b) the modification of any provision of this Act, other than this section or subsection 68(1) or 68A(1), so far as it relates to prisoners of war.
- (2A) Regulations made by virtue of subsection (2) shall not modify a provision of this Act so as to increase the severity of the punishment provided by this Act for a service offence.
- (3) The operation of this section is subject to the Convention and to the *Geneva Conventions Act 1957*.
- (4) In this section:

**Convention** means the Third Convention, within the meaning of the *Geneva Conventions Act 1957*, being that Convention as having effect subject to and in accordance with any reservation or declaration referred to in subsection 5(3) of that Act.

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*prisoner of war* means a protected prisoner of war as defined in subsection 5(2) of the *Geneva Conventions Act 1957* for whom Australia is responsible.

**8 Extension to external Territories**

This Act extends to every external Territory.

**9 Extra-territorial operation of Act**

The provisions of this Act apply, according to their tenor, both in and outside Australia but do not apply in relation to any person outside Australia unless that person is a defence member or a defence civilian.

## Part II—Criminal liability

### 10 Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all service offences, other than old system offences.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

### 11 Recklessness and negligence in relation to a member of the Defence Force

- (1) Where a member of the Defence Force is charged with a service offence arising out of activities (in this subsection referred to as *the relevant activities*) upon which the member was engaged in the course of the member's duty or in accordance with the requirements of the Defence Force, a service tribunal, in deciding whether the member, by act or omission, behaved recklessly shall have regard to the fact that the member was engaged in the relevant activities in the course of the member's duty or in accordance with the requirements of the Defence Force, as the case may be.
- (2) Where a member of the Defence Force is charged with a service offence arising out of activities (in this subsection referred to as *the relevant activities*) upon which the member was engaged in the course of the member's duty or in accordance with the requirements of the Defence Force, a service tribunal, in deciding whether the member, by act or omission, behaved negligently, shall, to the extent that it is required, for that purpose, to have regard to the standard of care of a reasonable person, have regard to the standard of care that would have been exercised by a reasonable person who:
  - (a) was a member of the Defence Force with the same training and experience in the Defence Force or other armed force as the member charged; and
  - (b) was engaged in the relevant activities in the course of the member's duty or in accordance with the requirements of the Defence Force, as the case may be.

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- (3) This section does not, except to the extent expressly provided, affect, modify or alter the application of Chapter 2 of the *Criminal Code* to service offences.
- (3A) In particular, subsections (1) and (2) merely provide for matters to which a service tribunal must have regard in deciding whether a member was reckless, or negligent. They do not alter the definitions of *recklessness* and *negligence* in sections 5.4 and 5.5 of the *Criminal Code*.
- (3B) Subsections (1) and (2) do not limit the matters to which a service tribunal may have regard.
- (4) In this section, *service offence* does not include an old system offence.

**14 Act or omission in execution of law etc.**

A person is not liable to be convicted of a service offence by reason of an act or omission that:

- (a) was in execution of the law; or
- (b) was in obedience to:
  - (i) a lawful order; or
  - (ii) an unlawful order that the person did not know, and could not reasonably be expected to have known, was unlawful.

## **Part III—Offences**

### **Division 1—Offences relating to operations against the enemy**

#### **15 Abandoning or surrendering a post etc.**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person has a duty to defend or destroy a place, post, service ship, service aircraft or service armoured vehicle; and
  - (b) the person knows of that duty; and
  - (c) the person abandons or surrenders to the enemy the place or thing mentioned in paragraph (a).

Maximum punishment:     Imprisonment for 15 years.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note:           The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

#### **15A Causing the capture or destruction of a service ship, aircraft or vehicle**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person engages in conduct; and
  - (b) the conduct causes the capture or destruction by the enemy of a service ship, service aircraft or service armoured vehicle; and
  - (c) by engaging in the conduct, the person intends to bring about that result.

Maximum punishment:     Imprisonment for 15 years.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note:           The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

**Part III** Offences

**Division 1** Offences relating to operations against the enemy

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**15B Aiding the enemy while captured**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person is captured by the enemy; and
  - (b) the person serves with the enemy, aids the enemy in prosecuting hostilities or measures likely to influence morale or aids the enemy in any other manner that is not authorised by international law.

Maximum punishment: Imprisonment for life.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

**15C Providing the enemy with material assistance**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if the person provides the enemy with, or permits or enables the enemy to have access to, arms, ammunition, vehicles, supplies of any description or any other thing likely to assist the enemy.

Maximum punishment: Imprisonment for life.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

**15D Harboursing enemies**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person harbours or protects another person; and
  - (b) that other person is an enemy person; and
  - (c) that other person is not a prisoner of war; and
  - (d) the first-mentioned person knows that the other person is an enemy person.

Maximum punishment: Imprisonment for 15 years.

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- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

### **15E Offences relating to signals and messages**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person is engaged on service in connection with operations against the enemy; and
  - (b) the person:
    - (i) gives a signal, message or other communication that the person knows to be false; or
    - (ii) alters or interferes with a signal, message or other communication; or
    - (iii) alters or interferes with apparatus for giving or receiving a signal, message or other communication.

Maximum punishment: Imprisonment for 15 years.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

### **15F Failing to carry out orders**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person:
    - (i) is ordered by his or her superior officer to prepare for, or to carry out, operations against the enemy; or
    - (ii) is otherwise under orders to prepare for, or to carry out, operations against the enemy; and
  - (b) the person does not use his or her utmost exertions to carry those orders into effect.

Maximum punishment: Imprisonment for 15 years.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

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Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

**15G Imperilling the success of operations**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person engages in any conduct; and
  - (b) the conduct imperils the success of operations against the enemy.

Maximum punishment: Imprisonment for 15 years.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

**16 Communicating with the enemy**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if the person communicates with, or gives intelligence to, the enemy.

Maximum punishment: Imprisonment for 15 years.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

**16A Failing to report information received from the enemy**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person receives information from the enemy; and
  - (b) the person does not make the information known to proper authority; and
  - (c) the information is likely to be directly or indirectly useful in operations against the enemy; and
  - (d) the person knows or could reasonably be expected to know that the information is likely to be directly or indirectly useful in operations against the enemy.



Maximum punishment: Imprisonment for 15 years.

- (2) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

### **16B Offence committed with intent to assist the enemy**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person engages in conduct that constitutes an offence against any of sections 15 to 16A (other than section 15B or 15C); and
  - (b) the person engages in that conduct with intent to assist the enemy.

Maximum punishment: Imprisonment for life.

- (2) In paragraph (1)(a), strict liability applies to the physical element of circumstance, that the conduct constitutes an offence against the section concerned.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **17 Leaving a post, abandoning equipment or otherwise failing to perform duty**

- (1) A defence member is guilty of an offence if the member is engaged on service in connection with operations against the enemy and:
- (a) the member:
    - (i) has a duty to be at a post, position or other place; and
    - (ii) leaves the post, position or place; or
  - (b) the member abandons his or her weapons or other equipment; or
  - (c) the member does not properly perform his or her duty in any other manner in attacking or defending against the enemy.

Maximum punishment: Imprisonment for 5 years.

- (2) It is a defence if the member proves that he or she had a reasonable excuse for the relevant conduct.

**Part III** Offences

**Division 1** Offences relating to operations against the enemy

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Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

(3) In this section:

*equipment* includes vehicles, ammunition, instruments and tools.

**18 Endangering morale**

(1) A person who is a defence member or a defence civilian is guilty of an offence if:

- (a) the person spreads a report; and
- (b) the report relates to operations against the enemy; and
- (c) by spreading the report the person intends to create despondency or unnecessary alarm.

Maximum punishment: Imprisonment for 2 years.

(2) A person who is a defence member or a defence civilian is guilty of an offence if:

- (a) the person is engaged on service in connection with operations against the enemy; and
- (b) the person spreads a report; and
- (c) the report relates to operations against the enemy; and
- (d) by spreading the report the person intends to create despondency or unnecessary alarm.

Maximum punishment: Imprisonment for 5 years.

**19 Conduct after capture by the enemy**

(1) A defence member is guilty of an offence if:

- (a) the member is captured by the enemy; and
- (b) any reasonable steps are available to the member to rejoin his or her force; and
- (c) the member does not take those steps.

Maximum punishment: Imprisonment for 5 years.

(2) A defence member is guilty of an offence if:

- (a) the member and another person are captured by the enemy; and

- (b) any reasonable steps are available to the other person to rejoin his or her force; and
- (c) the member prevents or discourages the other person from taking those steps.

Maximum punishment: Imprisonment for 5 years.

- (3) A defence member is guilty of an offence if:
- (a) the member is captured by the enemy; and
  - (b) the member engages in conduct with the intention of securing favourable treatment for himself or herself; and
  - (c) the conduct is detrimental to other persons also captured by the enemy.

Maximum punishment: Imprisonment for 5 years.

- (4) A defence member is guilty of an offence if:
- (a) the member is captured by the enemy; and
  - (b) the member is in a position of authority over other persons also captured by the enemy; and
  - (c) the member ill-treats those other persons.

Maximum punishment: Imprisonment for 5 years.

## **Division 2—Mutiny, desertion and unauthorised absence**

### **20 Mutiny**

- (1) A defence member who takes part in a mutiny is guilty of an offence.

Maximum punishment: Imprisonment for 10 years.

- (2) A defence member is guilty of an offence if:
- (a) the member takes part in a mutiny; and
  - (b) the mutiny's object, or one of its objects, is the refusal or avoidance of duty or service in connection with operations against the enemy or the impeding of the performance of such a duty or service.

Maximum punishment: Imprisonment for life.

### **21 Failing to suppress mutiny**

- (1) A defence member is guilty of an offence if:
- (a) a mutiny is taking place or is intended; and
  - (b) the member knows that fact; and
  - (c) the member does not take reasonable steps:
    - (i) to suppress or prevent the mutiny; or
    - (ii) to report to proper authority without delay that the mutiny is taking place or is intended.

Maximum punishment: Imprisonment for 2 years.

- (2) A defence member is guilty of an offence if:
- (a) a mutiny is taking place or is intended; and
  - (b) the member knows that fact; and
  - (c) the member knows, or could reasonably be expected to know, that the mutiny's object, or one of its objects, is:
    - (i) the refusal or avoidance of duty or service in connection with operations against the enemy; or
    - (ii) the impeding of the performance of such duty or service; and
  - (d) the member does not take reasonable steps:

- (i) to suppress or prevent the mutiny; or
- (ii) to report to proper authority without delay that the mutiny is taking place or is intended.

Maximum punishment: Imprisonment for 5 years.

## **22 Desertion**

- (1) A defence member is guilty of an offence if the member:
  - (a) is on active service or has been warned for active service; and
  - (b) without leave, and with the intention of avoiding that service, departs from, or does not attend at, his or her place of duty.

Maximum punishment: Imprisonment for 5 years.

- (2) A defence member is guilty of an offence if:
  - (a) the member is absent without leave; and
  - (b) the member engages in conduct; and
  - (c) the conduct manifests an intention to avoid active service.

Maximum punishment: Imprisonment for 5 years.

## **23 Absence from duty**

- (1) A defence member is guilty of an offence if the member:
  - (a) is required to attend for duty; and
  - (b) does not attend for the duty.

Maximum punishment: Imprisonment for 12 months.

- (2) A defence member is guilty of an offence if the member:
  - (a) is required to perform a duty; and
  - (b) ceases to perform the duty before he or she is permitted to do so.

Maximum punishment: Imprisonment for 12 months.

- (3) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

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- (4) It is a defence to a charge under this section if the person proves that he or she had a reasonable excuse for engaging in the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (4). See section 13.4 of the *Criminal Code*.

**24 Absence without leave**

- (1) A defence member who is absent without leave is guilty of an offence.

Maximum punishment: Imprisonment for 12 months.

- (2) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the member proves that he or she was absent due to circumstances not reasonably within the member's control.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

## **Division 3—Insubordination and violence**

### **25 Assaulting a superior officer**

- (1) A defence member is guilty of an offence if:
- (a) the member assaults a person; and
  - (b) that person is a superior officer.

Maximum punishment: Imprisonment for 2 years.

- (2) Strict liability applies to paragraph (1)(b).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the member proves that he or she neither knew, nor could reasonably be expected to have known, that the person against whom the offence is alleged to have been committed was a superior officer.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

### **26 Insubordinate conduct**

- (1) A defence member is guilty of an offence if:
- (a) the member engages in conduct that is threatening, insubordinate or insulting to a person; and
  - (b) the person is a superior officer.

Maximum punishment: Imprisonment for 6 months.

- (2) A defence member is guilty of an offence if:
- (a) the member uses language that is threatening, insubordinate or insulting about a person; and
  - (b) the language is used in that person's presence; and
  - (c) the person is a superior officer.

Maximum punishment: Imprisonment for 6 months.

- (3) An offence against this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

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- (4) It is a defence to a charge under this section if the person proves that he or she neither knew, nor could reasonably be expected to have known, that the person against whom the offence is alleged to have been committed was a superior officer.

Note: The defendant bears a legal burden in relation to the matter in subsection (4). See section 13.4 of the *Criminal Code*.

**27 Disobeying a lawful command**

- (1) A defence member is guilty of an offence if:
- (a) a person gives the member a lawful command; and
  - (b) the person giving the command is a superior officer; and
  - (c) the member disobeys the command.

Maximum punishment: Imprisonment for 2 years.

- (2) Strict liability applies to paragraphs (1)(b) and (c).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the member proves that he or she neither knew, nor could reasonably be expected to have known, that the person who gave the command was a superior officer.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

**28 Failing to comply with a direction in relation to a ship, aircraft or vehicle**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person is in or near a service ship, service aircraft or service vehicle; and
  - (b) the person is given a lawful direction by, or with the authority of, the person in command of the ship, aircraft or vehicle; and
  - (c) the direction:
    - (i) relates to the sailing or handling of the ship, the flying or handling of the aircraft or the handling of the vehicle; or
    - (ii) affects the safety of the ship, aircraft or vehicle or of the persons on board the ship, aircraft or vehicle; and



- (d) the first-mentioned person does not comply with the direction.

Maximum punishment: Imprisonment for 2 years.

- (2) Strict liability applies to paragraph (1)(d).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

## **29 Failing to comply with a general order**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:

- (a) a lawful general order applies to the person; and  
(b) the person does not comply with the order.

Maximum punishment: Imprisonment for 12 months.

- (2) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the member proves that he or she neither knew, nor could reasonably be expected to have known, of the order.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

## **30 Assaulting a guard**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:

- (a) the person assaults another person; and  
(b) that other person is a member of the Defence Force or of an allied force; and  
(c) that other person is on guard duty.

Maximum punishment: Imprisonment for 2 years.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if:

- (a) the person is engaged on service in connection with operations against the enemy; and
- (b) the person assaults another person; and
- (c) that other person is a member of the Defence Force or of an allied force; and
- (d) that other person is on guard duty.

Maximum punishment: Imprisonment for 5 years.

### **31 Obstructing a police member**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person obstructs another person; and
  - (b) that other person:
    - (i) is a police member acting in the performance of his or her duty; or
    - (ii) is lawfully exercising authority under or on behalf of a service police officer.

Maximum punishment: Imprisonment for 12 months.

- (2) A defence member is guilty of an offence if:
- (a) the member is called on to assist another person; and
  - (b) that other person:
    - (i) is a police member acting in the performance of his or her duty; or
    - (ii) is lawfully exercising authority under or on behalf of a service police officer; and
  - (c) the member refuses to assist that other person.

Maximum punishment: Imprisonment for 12 months.

- (3) In paragraphs (1)(b) and (2)(b), strict liability applies to the physical element of circumstance, that the person was a police member, or a person lawfully exercising authority under or on behalf of a service police officer.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) It is a defence to a charge under this section if the person proves that he or she neither knew, nor could reasonably be expected to have known, that the other person was a police member, or a

person lawfully exercising authority under or on behalf of a service police officer, as the case requires.

Note: The defendant bears a legal burden in relation to the matter in subsection (4). See section 13.4 of the *Criminal Code*.

### **32 Person on guard or on watch**

- (1) A defence member is guilty of an offence if the member is on guard duty or on watch and the member:
- (a) sleeps at the member's post or on watch; or
  - (b) is not on duty at a post but sleeps when the member's duty requires him or her to be awake; or
  - (c) is intoxicated (see subsection (5)); or
  - (d) leaves his or her post before being regularly relieved or otherwise absents himself or herself from a place where it is the member's duty to be.

Maximum punishment: Imprisonment for 12 months.

- (2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) A defence member is guilty of an offence if the member:
- (a) is engaged on service in connection with operations against the enemy; and
  - (b) is on guard duty or on watch; and
  - (c) engages in conduct that constitutes an offence against subsection (1).

Maximum punishment: Imprisonment for 5 years.

- (4) Strict liability applies to paragraph (3)(c).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5) For the purposes of this section, a person is *intoxicated* if, and only if, the person's faculties are, because of the person being under the influence of intoxicating liquor or a drug (other than a drug administered by, or taken in accordance with the directions of, a person lawfully authorised to administer the drug), so impaired that the person is unfit to be entrusted with the person's duty or with any duty that the person may be called on to perform.

- (6) It is a defence if a person charged with an offence under this section proves that he or she had a reasonable excuse for engaging in the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (6). See section 13.4 of the *Criminal Code*.

### **33 Assault, insulting or provocative words etc.**

A person who is a defence member or a defence civilian is guilty of an offence if the person is on service land, in a service ship, service aircraft or service vehicle or in a public place and the person:

- (a) assaults another person; or
- (b) creates a disturbance or takes part in creating or continuing a disturbance; or
- (c) within the view or hearing of another person, engages in conduct that is obscene; or
- (d) uses insulting or provocative words to another person.

Maximum punishment: Imprisonment for 6 months.

### **34 Assaulting a subordinate**

- (1) A defence member is guilty of an offence if:
- (a) the member assaults or ill-treats a person; and
  - (b) the person is a member of the Defence Force who is of subordinate rank to the member.

Maximum punishment: Imprisonment for 2 years.

- (2) Strict liability applies to paragraph (1)(b).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the member proves that he or she neither knew, nor could reasonably be expected to have known, that the other person was a member of the Defence Force of subordinate rank to the member.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

## **Division 4—Offences relating to performance of duty**

### **35 Negligence in performance of a duty**

- (1) A person who is a defence member is guilty of an offence if:
- (a) the person is required, because of his or her office or appointment, to perform a duty; and
  - (b) the person engages in conduct; and
  - (c) that conduct results in a failure to perform the duty to the required standard.

Penalty: Imprisonment for 3 months.

- (2) Negligence applies to paragraph (1)(c).
- (3) In this section:

*required standard*, in relation to performing a duty, means the standard to which a reasonably capable and careful defence member of the same training and experience would perform the duty.

### **36 Dangerous conduct**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person engages in conduct; and
  - (b) the conduct is in or in connection with:
    - (i) the operation, handling, servicing or storage; or
    - (ii) the giving of directions with respect to the operation, handling, servicing or storage;of a ship, aircraft or vehicle or a weapon, missile, explosive or other dangerous thing or equipment; and
  - (c) the conduct causes, or is likely to cause, the death of or grievous bodily harm to another person; and
  - (d) the first-mentioned person knows of the matter mentioned in paragraph (c); and
  - (e) where the person mentioned in paragraph (c) is an enemy person—the conduct is not in the execution of the first-mentioned person's duty.

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Maximum punishment: Imprisonment for 10 years.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person engages in conduct; and
  - (b) the conduct is in or in connection with:
    - (i) the operation, handling, servicing or storage; or
    - (ii) the giving of directions with respect to the operation, handling, servicing or storage;of a ship, aircraft or vehicle or a weapon, missile, explosive or other dangerous thing or equipment; and
  - (c) the conduct causes, or is likely to cause, the death of or grievous bodily harm to another person; and
  - (d) the first-mentioned person is reckless as to the matter mentioned in paragraph (c); and
  - (e) where the person mentioned in paragraph (c) is an enemy person—the conduct is not in the execution of the first-mentioned person's duty.

Maximum punishment: Imprisonment for 5 years.

- (3) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person engages in conduct; and
  - (b) the conduct is in or in connection with:
    - (i) the operation, handling, servicing or storage; or
    - (ii) the giving of directions with respect to the operation, handling, servicing or storage;of a ship, aircraft or vehicle or a weapon, missile, explosive or other dangerous thing or equipment; and
  - (c) the conduct causes, or is likely to cause, the death of or grievous bodily harm to another person; and
  - (d) the first-mentioned person is negligent as to the matter mentioned in paragraph (c); and
  - (e) where the person mentioned in paragraph (c) is an enemy person—the conduct is not in the execution of the first-mentioned person's duty.

Maximum punishment: Imprisonment for 2 years.

### **36A Unauthorised discharge of weapon**

A person who is a defence member or a defence civilian is guilty of an offence if:

- (a) the person engages in conduct; and
- (b) the conduct causes, or contributes to, the discharge of a weapon; and
- (c) the discharge of the weapon is not authorised.

Penalty: Imprisonment for 6 months.

### **36B Negligent discharge of weapon**

A person who is a defence member or a defence civilian is guilty of an offence if:

- (a) the person engages in conduct; and
- (b) the conduct causes, or contributes to, the discharge of a weapon; and
- (c) the person is negligent as to that result.

Penalty: Imprisonment for 6 months.

### **37 Intoxicated while on duty etc.**

- (1) A defence member is guilty of an offence if:
  - (a) the member is on duty, or reports or should report for duty; and
  - (b) the member is intoxicated (see subsection (3)).

Maximum punishment: Imprisonment for 6 months.

- (2) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) For the purposes of this section, a person is *intoxicated* if, and only if, the person's faculties are, because of the person being under the influence of intoxicating liquor or a drug (other than a drug administered by, or taken in accordance with the directions of, a person lawfully authorised to administer the drug), so impaired that the person is unfit to be entrusted with the person's duty or with any duty that the person may be called on to perform.

**38 Malingering**

- (1) A defence member is guilty of an offence if, with intent to make or keep himself or herself unfit for duty or service, the member:
- (a) injures himself or herself or causes or permits himself or herself to be injured; or
  - (b) by act or omission, causes himself or herself to suffer from a sickness or disability or prolongs or aggravates a sickness or disability from which he or she is suffering.

Maximum punishment:     Imprisonment for 12 months.

- (2) A defence member is guilty of an offence if:
- (a) the member represents himself or herself to be suffering from a physical or mental condition; and
  - (b) the member makes the representation with intent to avoid duty or service; and
  - (c) the representation is false; and
  - (d) the member knows that the representation is false.

Maximum punishment:     Imprisonment for 12 months.



## **Division 5—Offences relating to ships, vehicles, aircraft and weapons**

### **39 Loss of, or hazard to, service ship**

- (1) A defence member is guilty of an offence if:
- (a) the member engages in conduct; and
  - (b) the conduct causes or allows a service ship to be lost, stranded or hazarded; and
  - (c) the member intends that the conduct will have that result.

Maximum punishment:     Imprisonment for 5 years.

- (2) A defence member is guilty of an offence if:
- (a) the member engages in conduct; and
  - (b) the conduct causes or allows a service ship to be lost, stranded or hazarded; and
  - (c) the member is reckless as to whether the conduct will have that result.

Maximum punishment:     Imprisonment for 2 years.

- (3) A defence member is guilty of an offence if:
- (a) the member engages in conduct; and
  - (b) the conduct causes or allows a service ship to be lost, stranded or hazarded; and
  - (c) the member is negligent as to whether the conduct will have that result.

Maximum punishment:     Imprisonment for 6 months.

### **40 Driving while intoxicated**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person drives a service vehicle in any place, whether a public place or not; and
  - (b) the person is under the influence of intoxicating liquor or a drug to such an extent as to be incapable of having proper control of the vehicle.

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Maximum punishment: Imprisonment for 12 months.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person drives a vehicle on service land; and
  - (b) the person is under the influence of intoxicating liquor or a drug to such an extent as to be incapable of having proper control of the vehicle.

Maximum punishment: Imprisonment for 12 months.

- (3) An offence under this section is an offence of absolute liability.

Note: For *absolute liability*, see section 6.2 of the *Criminal Code*.

**40A Dangerous driving**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person drives a service vehicle in any place, whether a public place or not; and
  - (b) the person does so at a speed, or in a manner, dangerous to another person in that place.

Maximum punishment: Imprisonment for 6 months.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person drives a vehicle on service land; and
  - (b) the person does so at a speed, or in a manner, dangerous to another person on that land.

Maximum punishment: Imprisonment for 6 months.

- (3) Absolute liability applies to paragraphs (1)(a) and (2)(a).

Note: For *absolute liability*, see section 6.2 of the *Criminal Code*.

- (4) Strict liability applies to paragraphs (1)(b) and (2)(b).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

#### **40C Driving a service vehicle for unauthorised purpose**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person:
    - (i) drives a service vehicle in any place, whether a public place or not; and
    - (ii) is not authorised to drive that vehicle; or
  - (b) the person uses a service vehicle for an unauthorised purpose.

Maximum punishment: Imprisonment for 3 months.

- (2) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence to a charge under subsection (1) if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

#### **40D Driving without due care or attention etc.**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person drives a service vehicle in any place, whether a public place or not; and
  - (b) the person does so without due care and attention or without reasonable consideration for another person in that place.

Maximum punishment:

- (c) if the person is a member of the Defence Force—a fine of the amount of the member's pay for 7 days; or
  - (d) in any other case—a fine of \$100.
- (2) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person drives a vehicle on service land; and
  - (b) the person does so without due care and attention or without reasonable consideration for another person on that land.

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Maximum punishment:

- (c) if the person is a member of the Defence Force—a fine of the amount of the member's pay for 7 days; or
  - (d) in any other case—a fine of \$100.
- (3) An offence under this section is an offence of absolute liability.

Note: For *absolute liability*, see section 6.2 of the *Criminal Code*.

**41 Low flying**

- (1) A defence member is guilty of an offence if:
- (a) the member flies a service aircraft; and
  - (b) by or in accordance with a lawful general order, there is a minimum height at which the member is authorised to fly; and
  - (c) the height at which the member flies is less than that minimum height; and
  - (d) the member is reckless or negligent as to the matter in paragraph (c).

Maximum punishment: Imprisonment for 12 months.

- (2) Strict liability applies to paragraph (1)(b).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the member proves that he or she neither knew, nor could reasonably be expected to have known, of the general order.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

**42 Inaccurate certification in relation to ships, aircraft, vehicles etc.**

A person who is a defence member or a defence civilian is guilty of an offence if:

- (a) the person gives a certificate, makes or signs a document or makes an entry in a document; and
- (b) the certificate, document or entry relates to any matter affecting the safety or efficiency of a service ship, service aircraft, service vehicle, service missile or service weapon; and

- (c) the person does not take reasonable care to ensure the accuracy of the certificate, document or entry.

Maximum punishment: Imprisonment for 12 months.

## **Division 5A—Property offences**

### **Subdivision A—Service property offences**

#### **43 Destroying or damaging service property**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person engages in conduct; and
  - (b) the conduct results in the destruction of, or damage to, service property; and
  - (c) the person intends that result.

Maximum punishment:     Imprisonment for 5 years.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person engages in conduct; and
  - (b) the conduct results in the destruction of, or damage to, service property; and
  - (c) the person is reckless as to that result.

Maximum punishment:     Imprisonment for 2 years.

- (3) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person engages in conduct; and
  - (b) the conduct results in the destruction of, or damage to, service property; and
  - (c) the person is negligent as to that result.

Maximum punishment:     Imprisonment for 6 months.

- (4) It is a defence to a charge under subsection (1) if the person proves that he or she had a reasonable excuse for engaging in the relevant conduct.

Note:           The defendant bears a legal burden in relation to the matter in subsection (4). See section 13.4 of the *Criminal Code*.

#### **44 Losing service property**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person loses any property; and
  - (b) the property is, or forms part of, service property issued for the person's use, or entrusted to the person's care, in connection with the person's duties.

Maximum punishment: Imprisonment for 6 months.

- (2) Absolute liability applies to paragraph (1)(a).

Note: For *absolute liability*, see section 6.2 of the *Criminal Code*.

- (3) It is a defence if the person proves that he or she took reasonable steps for the safe-keeping of the lost property.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

#### **45 Unlawful possession of service property**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person is in possession of service property; and
  - (b) the person has no lawful authority for being in possession of the property.

Maximum punishment: Imprisonment for 6 months.

- (2) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the person proves that he or she:
- (a) was not aware that he or she was in possession of the property; or
  - (b) was not aware that the property was service property; or
  - (c) had a reasonable excuse for his or her possession of the property without authority.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

### **Subdivision B—Possession of property suspected of having been unlawfully obtained**

#### **46 Possession of property suspected of having been unlawfully obtained**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person is in possession of property; and
  - (b) the property may reasonably be suspected of having been unlawfully obtained.

Maximum punishment: Imprisonment for 6 months.

- (2) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the person proves that he or she:

- (a) was not aware that he or she was in possession of the property; or
- (b) was not aware of the circumstances by reason of which that property may reasonably be suspected of having been unlawfully obtained; or
- (c) had a reasonable excuse for his or her possession of the property.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

- (4) It is a defence if the person proves that the property was not unlawfully obtained.

Note: The defendant bears a legal burden in relation to the matter in subsection (4). See section 13.4 of the *Criminal Code*.

### **Subdivision C—Fraudulent conduct**

#### **47 When property belongs to a person**

- (1) For the purposes of this Subdivision, property *belongs to* a person if, and only if:
- (a) the person has possession or control of the property; or



- (b) the person has a proprietary right or interest in the property, other than an equitable interest arising only from:
  - (i) an agreement to transfer an interest; or
  - (ii) an agreement to grant an interest; or
  - (iii) a constructive trust.
- (2) Subsection (1) has effect subject to subsections 134.1(9) and (10) of the *Criminal Code* (which deal with money transfers).

#### **47A Dishonesty**

For the purposes of this Subdivision, *dishonest* means:

- (a) dishonest according to the standards of ordinary people; and
- (b) known by the defendant to be dishonest according to the standards of ordinary people.

Note: In the case of the offence of theft, see also section 47D.

#### **47B Determination of dishonesty to be a matter for the trier of fact**

In a prosecution for an offence against this Subdivision, the determination of dishonesty is a matter for the trier of fact.

#### **47C Theft**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if the person dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property.

Maximum punishment: Imprisonment for 5 years.

- (2) For the purposes of this Act, an offence against subsection (1) is to be known as the offence of theft.

#### **47D Special rules about the meaning of dishonesty**

- (1) For the purposes of this Subdivision, a person's appropriation of property belonging to another is taken not to be dishonest if the person appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.

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- (2) However, the rule in subsection (1) does not apply if the person appropriating the property held it as trustee or personal representative.
- (3) For the purposes of this Subdivision, a person's appropriation of property belonging to another may be dishonest even if the person or another person is willing to pay for the property.

**47E Appropriation of property**

- (1) For the purposes of this Subdivision, any assumption of the rights of an owner to ownership, possession or control of property, without the consent of the person to whom it belongs, amounts to an appropriation of the property. This includes, in a case where a person has come by property (innocently or not) without committing theft, any later such assumption of rights without consent by keeping or dealing with it as owner.
- (2) For the purposes of this Subdivision, if property, or a right or interest in property, is, or purports to be, transferred or given to a person acting in good faith, a later assumption by the person of rights which the person had believed himself or herself to be acquiring does not, because of any defect in the transferor's title, amount to an appropriation of the property.

**47F Theft of land or things forming part of land**

- (1) For the purposes of this Subdivision, a person cannot commit theft of land, except in the following cases:
  - (a) the case where the person appropriates anything forming part of the land by severing it or causing it to be severed;
  - (b) the case where:
    - (i) the person is a trustee or personal representative, or is authorised (by power of attorney, as liquidator of a company or otherwise) to sell or dispose of land belonging to another; and
    - (ii) the person appropriates the land, or anything forming part of it, by dealing with it in breach of the confidence reposed in the person.
- (2) For the purposes of this section, *land* does not include incorporeal hereditaments.

#### **47G Trust property**

- (1) For the purposes of this Subdivision, if property is subject to a trust, the persons to whom the property belongs include any person who has a right to enforce the trust.
- (2) Accordingly, for the purposes of this Subdivision, an intention to defeat the trust is an intention to deprive any such person of the property.

#### **47H Obligation to deal with property in a particular way**

For the purposes of this Subdivision, if:

- (a) a person receives property from or on account of another; and
- (b) the person is under a legal obligation to the other to retain and deal with that property or its proceeds in a particular way;

the property or proceeds belong (as against the person) to the other.

#### **47J Property obtained because of fundamental mistake**

- (1) For the purposes of this Subdivision, if:
  - (a) a person gets property by another's fundamental mistake; and
  - (b) the person is under a legal obligation to make restoration (in whole or in part) of the property or its proceeds;then, to the extent of that obligation, the property or proceeds belong (as against the person) to the person entitled to restoration.
- (2) For the purposes of this Subdivision, an intention not to make restoration is:
  - (a) an intention to permanently deprive the person so entitled of the property or proceeds; and
  - (b) an appropriation of the property or proceeds without the consent of the person entitled to restoration.
- (3) For the purposes of this section, a *fundamental mistake* is:
  - (a) a mistake about the identity of the person getting the property; or
  - (b) a mistake as to the essential nature of the property; or

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(c) a mistake about the amount of any money if the person getting the money is aware of the mistake at the time of getting the money.

(4) In this section:

*money* includes anything that is equivalent to money. For this purpose, cheques, negotiable instruments and electronic funds transfers are taken to be equivalent to money.

**47K Property of a corporation sole**

For the purposes of this Subdivision, property of a corporation sole belongs to the corporation despite a vacancy in the corporation.

**47L Property belonging to 2 or more persons**

If property belongs to 2 or more persons, a reference in this Subdivision to the person to whom the property belongs is a reference to all of those persons.

**47M Intention of permanently depriving a person of property**

(1) For the purposes of this Subdivision, if:

- (a) a person appropriates property belonging to another without meaning the other permanently to lose the thing itself; and
- (b) the person's intention is to treat the thing as the person's own to dispose of regardless of the other's rights;

the person has the intention of permanently depriving the other of it.

(2) For the purposes of this section, a borrowing or lending of a thing amounts to treating the thing as the borrower's or lender's own to dispose of regardless of another's rights if, and only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.

(3) For the purposes of this section, if:

- (a) a person has possession or control (lawfully or not) of property belonging to another; and
- (b) the person parts with the property under a condition as to its return that the person may not be able to perform; and

(c) the parting is done for purposes of the person's own and without the other's authority;

the parting is taken to amount to treating the property as the person's own to dispose of regardless of the other's rights.

Note: See also paragraph 47J(2)(a).

#### **47N General deficiency**

- (1) For the purposes of this Subdivision, a person may be convicted of theft of all or any part of a general deficiency in money even though the deficiency is made up of any number of particular sums of money that were appropriated over a period of time.
- (2) For the purposes of this Subdivision, a person may be convicted of theft of all or any part of a general deficiency in property other than money even though the deficiency is made up of any number of particular items of property that were appropriated over a period of time.

#### **47P Receiving**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if the person dishonestly receives stolen property, knowing or believing the property to be stolen.

Maximum punishment: Imprisonment for 5 years.

- (2) For the purposes of this Act, an offence against subsection (1) is to be known as the offence of receiving.

##### *Stolen property*

- (3) For the purposes of this section, property is ***stolen property*** if, and only if:
  - (a) it is original stolen property (as defined by subsection (5)); or
  - (b) it is previously received property (as defined by subsection (6)); or
  - (c) it is tainted property (as defined by subsection (8)).

This subsection has effect subject to subsections (4) and (7).

- (4) For the purposes of this section, ***stolen property*** does not include land obtained in the course of an offence against a law of the

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Commonwealth, a State or a Territory that involves obtaining property by deception (however described).

*Original stolen property*

- (5) For the purposes of this section, ***original stolen property*** is:
- (a) property, or a part of property, that:
    - (i) was appropriated in the course of theft (whether or not the property, or the part of the property, is in the state it was in when it was so appropriated); and
    - (ii) is in the possession or custody of the person who so appropriated the property; or
  - (b) property, or a part of property, that:
    - (i) was otherwise unlawfully obtained (whether or not the property, or the part of the property, is in the state it was in when it was so obtained); and
    - (ii) is in the possession or custody of the person who so obtained the property or the person for whom the property was so obtained.

*Previously received property*

- (6) For the purposes of this section, ***previously received property*** is property that:
- (a) was received in the course of an offence against subsection (1); and
  - (b) is in the possession or custody of the person who received the property in the course of that offence.
- (7) For the purposes of this section, property ceases to be original stolen property or previously received property:
- (a) after the property is restored:
    - (i) to the person from whom it was appropriated or obtained; or
    - (ii) to other lawful possession or custody; or
  - (b) after:
    - (i) the person from whom the property was appropriated or obtained ceases to have any right to restitution in respect of the property; or

- (ii) a person claiming through the person from whom the property was appropriated or obtained ceases to have any right to restitution in respect of the property.

*Tainted property*

- (8) For the purposes of this section, ***tainted property*** is property that:
  - (a) is (in whole or in part) the proceeds of sale of, or property exchanged for:
    - (i) original stolen property; or
    - (ii) previously received property; and
  - (b) if subparagraph (a)(i) applies—is in the possession or custody of:
    - (i) if the original stolen property was appropriated in the course of theft (whether in contravention of this Act or of another law)—the person who so appropriated the original stolen property; or
    - (ii) if the original stolen property was otherwise unlawfully obtained—the person who so obtained the property or the person for whom the property was so obtained; and
  - (c) if subparagraph (a)(ii) applies—is in the possession or custody of the person who received the previously received property in the course of an offence against subsection (1).

*Money transfers*

- (9) For the purposes of this section, if, as a result of the application of subsection 134.1(9) or (10) of the *Criminal Code*, an amount credited to an account held by a person is property obtained in the course of an offence against section 134.1 of the *Criminal Code*:
  - (a) while the whole or any part of the amount remains credited to the account, the property is taken to be in the possession of the person; and
  - (b) if the person fails to take such steps as are reasonable in the circumstances to secure that the credit is cancelled—the person is taken to have received the property; and
  - (c) subsection (7) of this section does not apply to the property.

Note: Subsections 134.1(9) and (10) of the *Criminal Code* deal with money transfers.

*Receiving property stolen before commencement*

- (10) For the purposes of this section:
- (a) it is to be assumed that section 47C of this Act had been in force at all times before the commencement of this section; and
  - (b) property that was appropriated or obtained at a time before the commencement of this section does not become ***original stolen property*** unless the property was appropriated or obtained in circumstances that (apart from paragraph (a)) amounted to an offence against a law of the Commonwealth, a State or a Territory in force at that time.

*Definition*

- (11) In this section:

***account*** has the same meaning as in section 133.1 of the *Criminal Code*.

**Subdivision D—Looting**

**48 Looting**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if, in the course of operations against the enemy, or in the course of operations undertaken by the Defence Force for the preservation of law and order or otherwise in aid of the civil authorities, the person:
- (a) takes any property that has been left exposed or unprotected; or
  - (b) takes any property from the body of a person who has been killed or from a person who has been wounded, injured or captured; or
  - (c) takes any vehicle, equipment or stores captured from or abandoned by the enemy.

Maximum punishment:     Imprisonment for 5 years.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person receives property; and



- (b) the property has been taken in circumstances constituting an offence against subsection (1); and
- (c) the person knows of those circumstances.

Maximum punishment: Imprisonment for 5 years.

- (3) It is a defence to a charge under this section if the person proves that he or she took or received the property for the service of the Commonwealth or had other reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

## Division 6—Arrest, custody and proceedings before service tribunals

### 49 Refusing to submit to arrest

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
  - (a) the person is ordered into arrest; and
  - (b) the order is lawful; and
  - (c) the person disobeys the order.

Maximum punishment: Imprisonment for 12 months.

- (2) Strict liability applies to paragraphs (1)(b) and (c).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the person proves that he or she neither knew, nor could reasonably be expected to have known, that the other person was acting lawfully.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

### 49A Assault against arresting person

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
  - (a) the person assaults another person; and
  - (b) the other person:
    - (i) has a power of arrest over him or her under section 89 and is arresting, or attempting to arrest, him or her in the exercise of that power; or
    - (ii) is carrying out, or attempting to carry out, an order for his or her arrest under section 89; or
    - (iii) is arresting, or attempting to arrest, him or her under a warrant under section 88 or 90; or
    - (iv) has him or her in custody.

Maximum punishment: Imprisonment for 12 months.

- (2) In paragraph (1)(b), strict liability applies to the physical element of circumstance, that the conduct mentioned in that paragraph is lawful.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the person proves that he or she neither knew, nor could reasonably be expected to have known, that the other person was acting lawfully.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

### **50 Delaying or denying justice**

- (1) A defence member is guilty of an offence if:
- a person is in custody on a charge; and
  - the member is required by or under this Act to take action to have the charge dealt with in accordance with this Act; and
  - the member does not take the action.

Maximum punishment: Imprisonment for 12 months.

- (2) A defence member is guilty of an offence if:
- a person in custody is entitled to be released; and
  - the member is required by or under this Act to take action to release, or to order the release of, the person; and
  - the member does not take the action.

Maximum punishment: Imprisonment for 12 months.

- (3) It is a defence to a charge under this section if the member proves that he or she had a reasonable excuse for not taking the required action.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

### **51 Escaping from custody**

A person who is a defence member or a defence civilian is guilty of an offence if the person escapes from custody.

Maximum punishment: Imprisonment for 2 years.

## **52 Giving false evidence**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person has been sworn or affirmed as a witness in proceedings before a service tribunal; and
  - (b) the person makes a false statement in those proceedings; and
  - (c) the person knows the statement to be false or does not believe it to be true; and
  - (d) the statement is material in those proceedings.

Maximum punishment:     Imprisonment for 5 years.

- (2) A person is not liable to be convicted of an offence under this section only on the evidence of one witness as to the falsity of the statement alleged to be false.

## **53 Contempt of service tribunal**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) 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
  - (b) the person:
    - (i) fails to appear as required by the summons or order; or
    - (ii) fails to appear and report himself or herself from day to day and has not been excused or released by the tribunal from further attendance.

Maximum punishment:     Imprisonment for 6 months.

- (2) A person who is a defence member or a defence civilian is guilty of an offence if the person is appearing as a witness before a service tribunal and the person:
- (a) refuses or fails to take an oath or make an affirmation when lawfully required to do so; or
  - (b) refuses or fails to answer a question that the person is lawfully required to answer by the tribunal; or
  - (c) refuses or fails to produce a document that the person was required to produce by a summons served on the person, as provided for by the rules of procedure, or by an order.

Maximum punishment: Imprisonment for 6 months.

- (3) It is a defence to a charge under subsection (1) or (2) if the person proves that he or she had a reasonable excuse for the relevant conduct.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

- (4) A person who is a defence member or a defence civilian is guilty of an offence if the person:
- (a) insults a member of a military jury, a Military Judge or a summary authority in, or in relation to, the exercise of his or her powers or functions as such a member, Judge or authority; or
  - (b) interrupts the proceedings of a service tribunal; or
  - (c) creates a disturbance or takes part in creating or continuing a disturbance in or near a place where a service tribunal is sitting; or
  - (d) engages in any other conduct that:
    - (i) in the case of the Australian Military Court—constitutes a contempt of that court; and
    - (ii) in the case of a service tribunal other than the Australian Military Court—would, if the service tribunal were a court of record, constitute a contempt of that court.

Maximum punishment: Imprisonment for 6 months.

- (5) If an offence under subsection (4) is committed by a person in relation to the Australian Military Court during proceedings before the Court, the Court, if it considers it expedient to do so, may then and there order that the person be taken into custody and call on the person to show cause why the person should not be convicted of the offence.
- (6) If the Australian Military Court convicts a person under subsection (5), the maximum punishment for the offence is detention for 21 days.
- (7) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**54 Unlawful release etc. of person in custody**

- (1) A defence member is guilty of an offence if:
- (a) a person has been delivered into a member's custody or the member has a duty to guard a person; and
  - (b) by act or omission, the member intentionally allows the person to escape.

Maximum punishment:      Imprisonment for 2 years.

- (2) A defence member is guilty of an offence if:
- (a) a person has been delivered into a member's custody or the member has a duty to guard a person; and
  - (b) the member releases the person; and
  - (c) the member has no authority to release the person.

Maximum punishment:      Imprisonment for 2 years.

- (3) A person who is a defence member or a defence civilian is guilty of an offence if the person intentionally facilitates the escape of a person from custody or a place of confinement.

Maximum punishment:      Imprisonment for 12 months.

- (4) A person who is a defence member or a defence civilian is guilty of an offence if, with intent to facilitate an escape from a place of confinement of another person, the first-mentioned person conveys anything into that place.

Maximum punishment:      Imprisonment for 12 months.

## **Division 6A—Custodial offences**

### **54A Custodial offences**

- (1) A detainee who:
  - (a) makes any unnecessary noise;
  - (b) commits a nuisance;
  - (c) is idle, careless or negligent at work;
  - (d) without lawful authority, converses or otherwise communicates with another person (whether or not a detainee);
  - (e) without lawful authority, gives any thing to, or receives any thing from, another person (whether or not a detainee);
  - (f) without lawful authority, has in his or her possession any thing; or
  - (g) without lawful authority, enters or leaves his or her cell;is guilty of an offence.
- (2) A detainee who, while on leave of absence from a detention centre, refuses or fails to comply with a condition of the grant of the leave of absence is guilty of an offence.
- (2A) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (3) It is a defence if a person charged with a custodial offence proves that he or she had a reasonable excuse for engaging in the behaviour to which the charge relates.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.
- (4) The maximum punishment for a custodial offence is segregated confinement for 10 days.
- (5) Subsection (4) has effect notwithstanding anything contained in section 64.
- (6) If a person (other than a detainee) commits an offence against subsection (1) or (2) of this section by virtue of section 11.2 of the *Criminal Code*, that section has effect as if the maximum

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punishment for an offence against subsection (1) or (2) of this section were imprisonment for 10 days.



## **Division 7—Miscellaneous offences**

### **55 Falsifying service documents**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if, with intent to make a gain for the person or another person or with intent to deceive, or to cause loss, damage or injury to, another person:
- (a) the person makes or signs a service document that is false in a material particular; or
  - (b) the person makes in a service document an entry that is false in a material particular; or
  - (c) the person alters a service document so that the document is false in a material particular; or
  - (d) the person engages in conduct that results in the suppression of, the defacing of, the making away with or the destruction of a service document, or a part of a service document, that it is the person's duty to preserve or produce; or
  - (e) the person does not make an entry in a service document that it is the person's duty to make so that the document is rendered false in a material particular.

Maximum punishment:      Imprisonment for 2 years.

- (2) In subsection (1):

*service document* means a document belonging or pertaining to, or connected with, the Defence Force.

### **56 False statement in relation to application for a benefit**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person makes a statement, (whether orally, in a document or in any other way); and
  - (b) the statement:
    - (i) is false or misleading; or
    - (ii) omits any matter or thing without which the statement is misleading; and

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- (c) the person knows of the matter mentioned in paragraph (b); and
- (d) the statement is made in, in connection with, or in support of, an application for:
  - (i) a grant, payment or allotment of money or an allowance; or
  - (ii) leave of absence; or
  - (iii) any other benefit or advantage; for the person or another person; and
- (e) the application arises out of, or is based on, membership of, or service in or in connection with, the Defence Force.

Maximum punishment:     Imprisonment for 12 months.

- (2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the statement is not false or misleading in a material particular.

Note:     A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the statement did not omit any matter or thing without which the statement is misleading in a material particular.

Note:     A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

- (4) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person makes a statement (whether orally, in a document or in any other way); and
  - (b) the statement:
    - (i) is false or misleading; or
    - (ii) omits any matter or thing without which the statement is misleading; and
  - (c) the person is reckless as to the matter mentioned in paragraph (b); and
  - (d) the statement is made in, in connection with, or in support of, an application for:
    - (i) a grant, payment or allotment of money or an allowance; or
    - (ii) leave of absence; or
    - (iii) any other benefit or advantage;

for the person or another person; and

- (e) the application arises out of, or is based on, membership of, or service in or in connection with, the Defence Force.

Maximum punishment: Imprisonment for 6 months.

- (5) Subsection (4) does not apply as a result of subparagraph (4)(b)(i) if the statement is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3) of the *Criminal Code*.

- (6) Subsection (4) does not apply as a result of subparagraph (4)(b)(ii) if the statement did not omit any matter or thing without which the statement is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6). See subsection 13.3(3) of the *Criminal Code*.

- (7) In this section:

*benefit* includes any advantage and is not limited to property.

### **57 False statement in relation to appointment or enlistment**

- (1) A person is guilty of an offence if, in or in connection with an application for the person's appointment to or enlistment in the Defence Force:

(a) the person:

- (i) is required to answer a question set out in a document required to be completed in relation to the person's appointment or enlistment; and

(ii) with intent to deceive, makes a false answer to the question; or

(b) with intent to deceive, the person gives any false information or document in relation to the person's appointment or enlistment; or

(c) with intent to deceive, the person does not disclose, if and when lawfully required to do so, particulars of any prior service in the Defence Force;

and as a result of that application, the person is appointed to or enlisted in the Defence Force.

Maximum punishment: Imprisonment for 3 months.

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- (2) A defence member is guilty of an offence if:
- (a) the member:
    - (i) is required to answer a question set out in a document required to be completed in relation to the person's appointment or enlistment; and
    - (ii) with intent to deceive, makes a false answer to the question; or
  - (b) with intent to deceive, the member gives any false information or document in relation to the person's appointment or enlistment; or
  - (c) with intent to deceive, the member does not disclose, if and when lawfully required to do so, particulars of any prior service in the Defence Force.

Maximum punishment: Imprisonment for 3 months.

**58 Unauthorised disclosure of information**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
- (a) the person discloses information; and
  - (b) there is no lawful authority for the disclosure; and
  - (c) the disclosure is likely to be prejudicial to the security or defence of Australia.

Maximum punishment: Imprisonment for 2 years.

- (2) Strict liability applies to paragraph (1)(c).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence if the person proves that he or she neither knew, nor could reasonably be expected to have known, that the disclosure of the information was likely to be prejudicial to the security or defence of Australia.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

## **59 Dealing in or possession of prohibited drugs**

### *Selling, dealing or trafficking in a prohibited drug—defence member or defence civilian outside Australia*

- (1) A person who is a defence member or a defence civilian is guilty of an offence if the person:
- (a) is outside Australia; and
  - (b) sells, or deals or traffics in, a prohibited drug; and
  - (c) knows the nature of the drug.

Maximum punishment: Imprisonment for 10 years.

- (2) It is a defence to a charge under subsection (1) if the person proves that he or she had lawful authority for the conduct mentioned in paragraph (1)(b).

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

### *Possessing a prohibited drug—defence member or defence civilian outside Australia*

- (3) A person who is a defence member or a defence civilian is guilty of an offence if the person:
- (a) is outside Australia; and
  - (b) is in possession of a prohibited drug; and
  - (c) knows that he or she possesses that drug and knows its nature.

Maximum punishment:

- (d) if the offence is committed in relation to:
  - (i) a prohibited drug other than cannabis; or
  - (ii) a quantity of cannabis exceeding the prescribed quantity of that drug;imprisonment for 2 years; or
- (e) if the offence is committed in relation to a quantity of cannabis not exceeding the prescribed quantity of that drug and the convicted person is a defence member:
  - (i) for a first offence—a fine of the amount of the member's pay for 14 days; or

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- (ii) for a second or later offence—dismissal from the Defence Force; or
  - (f) if the offence is committed in relation to a quantity of cannabis not exceeding the prescribed quantity of that drug and the convicted person is a defence civilian—a fine of \$100.
- (4) It is a defence to a charge under subsection (3) if the person proves that he or she had lawful authority for possessing the prohibited drug.

Note: The defendant bears a legal burden in relation to the matter in subsection (4). See section 13.4 of the *Criminal Code*.

*Administering a prohibited drug—defence member or defence civilian outside Australia*

- (5) A person who is a defence member or a defence civilian is guilty of an offence if the person:
- (a) is outside Australia; and
  - (b) administers, or causes or permits to be administered, to himself or herself, a prohibited drug.

Maximum punishment:

- (c) if the offence is committed in relation to a prohibited drug other than cannabis—imprisonment for 2 years; or
  - (d) if the offence is committed in relation to cannabis and the convicted person is a defence member:
    - (i) for a first offence—a fine of the amount of the member's pay for 14 days; or
    - (ii) for a second or later offence—dismissal from the Defence Force; or
  - (e) if the offence is committed in relation to cannabis and the convicted person is a defence civilian—a fine of \$100.
- (5A) It is a defence to a charge under subsection (5) if the person proves that he or she had lawful authority for the conduct mentioned in paragraph (5)(b).

*Administering a prohibited drug—defence member or defence civilian in Australia*

- (6) A person who is a defence member or a defence civilian is guilty of an offence if the person:
- (a) is in Australia; and
  - (b) administers, or causes or permits to be administered, to himself or herself a prohibited drug.

Maximum punishment:

- (c) if the offence is committed in relation to a prohibited drug other than cannabis and the convicted person is a defence member—imprisonment for 2 years; or
  - (d) if the offence is committed in relation to cannabis and the convicted person is a defence member:
    - (i) for a first offence—a fine of the amount of the member’s pay for 14 days; or
    - (ii) for a second or later offence—dismissal from the Defence Force; or
  - (e) if the convicted person is a defence civilian—a fine of \$100.
- (6A) It is a defence to a charge under subsection (6) if the person proves that he or she had lawful authority for the conduct mentioned in paragraph (6)(b).

*Possessing non-trafficable quantity of a prohibited drug—defence member in Australia*

- (7) A defence member is guilty of an offence if the member:
- (a) is in Australia; and
  - (b) is in possession of a quantity of a prohibited drug not exceeding the prescribed quantity of that drug; and
  - (c) knows that he or she possesses that drug and knows its nature.

Maximum punishment:

- (d) if the offence is committed in relation to a prohibited drug other than cannabis—imprisonment for 2 years; or
- (e) if the offence is committed in relation to cannabis:
  - (i) for a first offence—a fine of the amount of the member’s pay for 14 days; or

- (ii) for a second or later offence—dismissal from the Defence Force.
- (8) It is a defence to a charge under subsection (7) if the member proves that he or she had lawful authority for possessing the prohibited drug.

Note: The defendant bears a legal burden in relation to the matter in subsection (8). See section 13.4 of the *Criminal Code*.

*Definitions*

- (9) In this section:

**cannabis** means:

- (a) a living cannabis plant; or
- (b) cannabis resin; or
- (c) any other form of cannabis (including flowering or fruiting tops, leaves, seeds or stalks, but not including cannabis fibre).

**controlled drug** has the same meaning as in Part 9.1 of the *Criminal Code*.

**controlled plant** has the same meaning as in Part 9.1 of the *Criminal Code*.

**prescribed quantity**, in relation to a prohibited drug, means:

- (a) for a narcotic substance that is a controlled drug or a controlled plant in relation to which there is a trafficable quantity specified under the *Criminal Code*—the trafficable quantity so specified for that substance; or
- (b) for any other prohibited drug—50 grams.

**prohibited drug** means:

- (a) a narcotic substance (as defined by subsection 4(1) of the *Customs Act 1901*); or
- (b) an anabolic steroid (within the meaning of Part 5 of the *Poisons and Drugs Act 1978* of the Australian Capital Territory).



## 60 Prejudicial conduct

- (1) A defence member is guilty of an offence if the member does an act that is likely to prejudice the discipline of, or bring discredit on, the Defence Force.

Maximum punishment: Imprisonment for 3 months.

- (1A) A defence member is guilty of an offence if:
- (a) the member omits to perform an act; and
  - (b) the omission is likely to prejudice the discipline of, or bring discredit on, the Defence Force.

Maximum punishment: Imprisonment for 3 months.

- (2) An offence against subsection (1) or (1A) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence to a charge under subsection (1) if the member proves that he or she had a reasonable excuse for the relevant act.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

- (4) It is a defence to a charge under subsection (1A) if the member proves that he or she had a reasonable excuse for omitting to perform the relevant act.

Note: The defendant bears a legal burden in relation to the matter in subsection (4). See section 13.4 of the *Criminal Code*.

## Division 8—Offences based on Territory offences

### 61 Offences based on Territory offences

- (1) A person who is a defence member or a defence civilian is guilty of an offence if:
  - (a) the person engages in conduct in the Jervis Bay Territory;  
and
  - (b) engaging in that conduct is a Territory offence.
- (2) A person who is a defence member or a defence civilian is guilty of an offence if:
  - (a) the person engages in conduct in a public place outside the Jervis Bay Territory; and
  - (b) engaging in that conduct would be a Territory offence, if it took place in a public place in the Jervis Bay Territory.
- (3) A person who is a defence member or a defence civilian is guilty of an offence if:
  - (a) the person engages in conduct outside the Jervis Bay Territory (whether or not in a public place); and
  - (b) engaging in that conduct would be a Territory offence, if it took place in the Jervis Bay Territory (whether or not in a public place).
- (4) The maximum punishment for an offence against this section is:
  - (a) if the relevant Territory offence is punishable by a fixed punishment—that fixed punishment; or
  - (b) otherwise—a punishment that is not more severe than the maximum punishment for the relevant Territory offence.
- (5) Strict liability applies to paragraphs (1)(b), (2)(b) and (3)(b).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (6) To avoid doubt, section 10 of this Act does not have the effect that Chapter 2 of the *Criminal Code* applies to the law in force in Jervis Bay, for the purpose of determining whether an offence against this section has been committed.

Note: Section 10 of this Act applies Chapter 2 of the *Criminal Code* to the content of this section, but not to the content of the law in force in

Jervis Bay. To determine, for the purposes of this section, whether Chapter 2 of the Code applies to Jervis Bay law, it is necessary to consult Jervis Bay law.

## Division 9—Miscellaneous

### 62 Commanding or ordering a service offence to be committed

- (1) A defence member is guilty of an offence if:
- (a) the member commands or orders a person to engage in conduct; and
  - (b) the conduct would constitute the commission of a service offence.

Maximum punishment:

- (c) if the last-mentioned offence is punishable by a fixed punishment—that fixed punishment; or
  - (d) otherwise—a punishment that is not more severe than the maximum punishment for the last-mentioned offence.
- (2) Strict liability applies to paragraph (1)(b).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### 63 Consent for proceedings for certain offences

- (1) Except with the consent of the Director of Public Prosecutions, proceedings under this Act shall not be instituted for:
- (a) an offence against section 61 that is alleged to have been committed in Australia and in relation to which the relevant Territory offence is:
    - (i) treason, murder, manslaughter or bigamy;
    - (ia) an offence against section 51, 52, 53, 54 or 55 of the *Crimes Act 1900* of the Australian Capital Territory, in its application to the Jervis Bay Territory, as amended or affected by Ordinances in force in that Territory;
    - (ii) an offence in respect of which proceedings could not be brought in the Jervis Bay Territory without the consent of a Minister, the Director of Public Prosecutions or a person authorised by the Director of Public Prosecutions to give consent; or
    - (iii) an offence prescribed for the purposes of this section; or

- (b) an offence against section 61 that is based on an ancillary Territory offence in relation to a Territory offence referred to in paragraph (a).
- (2) Notwithstanding that a consent has not been given as required by this section to the institution of proceedings against a person for an offence:
- (a) a warrant for the arrest of the person for the offence may be issued in accordance with Part V;
  - (b) the person may be arrested for the offence, and kept in custody, or otherwise dealt with, in accordance with Part V; and
  - (c) the person may be charged with the offence in accordance with Part V;
- but no further steps in the proceedings shall be taken until such consent is obtained.

#### **64 Punishment for ancillary offences**

Where a service offence:

- (a) is an ancillary offence in relation to another offence (other than an offence against section 61); and
  - (b) is punishable otherwise than by a fixed punishment;
- then, notwithstanding anything contained in the *Crimes Act 1914*, the punishment for that service offence is a punishment not more severe than the maximum punishment for that offence.

#### **65 Maximum punishment for old system offence**

The maximum punishment for an old system offence is the maximum punishment (in this section referred to as *the old system punishment*) provided for that offence by previous service law or, if the old system punishment is specified in column 1 of Schedule 1, the punishment that is specified in column 2 of that Schedule opposite to the reference to the old system punishment.

## Part IV—Punishments and orders

### 66 Punishment or order to be in respect of a particular conviction

- (1) Each punishment imposed, and each order made, by a service tribunal shall be imposed or made, as the case may be, in respect of a particular conviction and no other conviction.
- (2) In this section, *order* means a restitution order, a reparation order or an order under subsection 75(1).

### 67 Authorised punishments

- (1) Subject to sections 166, 167 and 167A, the Australian Military Court must not impose a punishment in respect of a conviction except in accordance with this Part and Schedule 2.
- (2) A summary authority shall not impose a punishment in respect of a conviction except in accordance with this Part, Schedule 3 and Schedule 3A.

### 68 Scale of punishments

- (1) Subject to sections 68A and 68C, the only punishments that may be imposed by a service tribunal on a convicted person are, in decreasing order of severity, as follows:
  - (a) imprisonment for life;
  - (b) imprisonment for a specific period;
  - (c) dismissal from the Defence Force;
  - (d) detention for a period not exceeding 2 years;
  - (e) reduction in rank;
  - (f) forfeiture of service for the purposes of promotion;
  - (g) forfeiture of seniority;
  - (h) fine, being a fine not exceeding:
    - (i) where the convicted person is a member of the Defence Force—the amount of his or her pay for 28 days; or
    - (ii) in any other case—\$500;
  - (j) severe reprimand;

- (k) restriction of privileges for a period not exceeding 14 days;
  - (m) stoppage of leave for a period not exceeding 21 days;
  - (n) extra duties for a period not exceeding 7 days;
  - (na) extra drill for not more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days;
  - (p) reprimand.
- (2) The Chief of the Defence Force or a service chief may, by legislative instrument, make rules with respect to the consequences, in relation to a member of the Defence Force, that are to flow from the imposition by a service tribunal on that member of any of the following punishments:
- (a) reduction in rank;
  - (b) forfeiture of service for the purposes of promotion;
  - (c) forfeiture of seniority;
  - (d) restriction of privileges for a period;
  - (e) stoppage of leave for a period;
  - (f) extra duties for a period;
  - (g) extra drill for a period.
- (3) The commanding officer of a convicted person subject to a punishment specified in paragraph (2)(d) or (f) may moderate the consequences of that punishment in relation to the convicted person in such manner as the commanding officer considers appropriate having regard to the particular circumstances of the case and to any directions, in writing, of the Chief of the Defence Force or a service chief.
- (4) Notwithstanding that a convicted person is subject to a punishment of stoppage of leave, the commanding officer of the person may, if he or she is satisfied that it is appropriate to do so, grant leave of absence to the person.

### **68A Scale of custodial punishments**

- (1) The only punishments that may be imposed by a service tribunal on a person convicted of a custodial offence are, in decreasing order of severity, as follows:
- (a) segregated confinement for a period not exceeding 10 days;
  - (b) confinement to cell for a period not exceeding 10 days;
  - (c) extra drill for a period not exceeding 6 days;

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- (d) restriction of custodial privileges for a period not exceeding 14 days.
- (2) The Chief of the Defence Force or a service chief may, by legislative instrument, make rules with respect to the consequences, in relation to a detainee, that are to flow from the imposition by a service tribunal on that detainee of any custodial punishment.
- (3) The officer in charge of a detention centre in which a detainee subject to a custodial punishment is undergoing a punishment of detention may moderate the consequences of the custodial punishment in relation to the detainee in such manner as the officer thinks appropriate having regard to the particular circumstances of the case and to any directions, in writing, of the Chief of the Defence Force or a service chief.

**68C Custodial punishments may be imposed for certain non-custodial service offences**

- (1) Subject to subsection 71(4), where a person is convicted of a service offence to which this subsection applies, a service tribunal may, in lieu of imposing a punishment of a kind referred to in subsection 68(1), impose a custodial punishment on the person in respect of the conviction.
- (2) Subsection (1) applies to a service offence that:
  - (a) is:
    - (i) an offence against section 23, 25, 26, 27, 29, 33, 43, 51 or 60; or
    - (ii) an offence that is an ancillary offence in relation to an offence referred to in subparagraph (i); and
  - (b) was committed by a person at a time when the person was a detainee.

**69 Punishment not to be more severe than maximum punishment**

The punishment that may be imposed by a service tribunal upon a convicted person in respect of a service offence is a punishment that is not more severe than the maximum punishment for that offence.



**70 Sentencing principles**

- (1) A service tribunal, in determining what action under this Part should be taken in relation to a convicted person, shall have regard to:
  - (a) the principles of sentencing applied by the civil courts, from time to time; and
  - (b) the need to maintain discipline in the Defence Force.
- (2) In so far as the principles referred to in paragraph (1)(a) require the taking into account of any mitigating or aggravating circumstances, the circumstances to be so taken into account in relation to a convicted person shall include:
  - (a) the person's rank, age and maturity;
  - (b) the person's physical and mental condition;
  - (c) the person's personal history;
  - (d) the absence or existence in the person's case of previous convictions for service offences, civil court offences and overseas offences;
  - (e) if the service offence involves a victim, the person's relationship with the victim;
  - (f) the person's behaviour before, during and after the commission of the service offence; and
  - (g) any consequential effects of the person's conviction or proposed punishment.
- (3) Where a service tribunal has, in accordance with subsection (1), determined to impose a fine on a convicted person, the tribunal, in fixing the amount of the fine, shall have regard to the following additional factors:
  - (a) the means of the person; and
  - (b) the effect of the fine on the person's ability to meet any reparation orders that the tribunal may wish to make.
- (4) For the purposes of subsection (1) the principles referred to in paragraph (a) of that subsection shall be deemed to include:
  - (a) the principle that the period (if any) that a convicted person has spent in custody before action is taken under this Part by a service tribunal in relation to the person should be taken into account by the service tribunal in determining the length

of the period of any punishment of imprisonment or detention that it imposes on the person; and

- (b) the principle that, where the offence of which the convicted person is convicted was an offence against section 11.1 of the *Criminal Code* and the attempt that constitutes the offence was voluntarily abandoned, the fact and the circumstances of that abandonment should be taken into account in mitigation of any punishment to be imposed in respect of the offence.
- (5) In the application of paragraph (2)(d) to a convicted person who is not a detainee, a conviction of the person by a summary authority that resulted in the imposition of a custodial punishment on the person shall be disregarded.

### **71 Restrictions on power to impose punishments**

- (1) A service tribunal shall not impose a punishment of imprisonment on a member of the Defence Force whom it has convicted of a service offence unless the tribunal also imposes on that member in respect of that conviction the punishment of dismissal from the Defence Force.
- (1A) A service tribunal must not impose on a non-commissioned officer who has been convicted of a service offence a punishment of detention unless the tribunal also imposes the punishment of reduction in rank to a rank below non-commissioned rank.
- (2) A service tribunal shall not impose a punishment of detention on a member of the Defence Force who has been convicted of a service offence if the member, at the time of conviction, had not attained the age of 18 years.
- (3) A service tribunal shall not impose a punishment of detention on a member of the Defence Force who has been convicted of a service offence if it also imposes the punishment of dismissal from the Defence Force in respect of that conviction or another conviction.
- (4) A service tribunal shall not impose a custodial punishment on a person who is not a detainee.
- (5) A custodial punishment imposed on a detainee shall not extend beyond the period during which the detainee is undergoing a punishment of detention in a detention centre.

**72 Application of certain provisions of *Crimes Act 1914***

- (1) Sections 16, 19A to 19AZD (other than section 19AH), 20, 20A and 20AA of the *Crimes Act 1914* apply to a service tribunal that imposes a punishment of imprisonment for a specific period on a convicted person as if:
  - (a) the service tribunal were a court exercising jurisdiction in or in relation to the Jervis Bay Territory; and
  - (b) the person were convicted in that Territory.
- (2) The fixing of a non-parole period by a service tribunal under the provisions of the *Crimes Act 1914* as applied by virtue of subsection (1) to the service tribunal shall be taken, for the purposes of this Act, to be an order fixing that non-parole period made by the service tribunal under this Part.

**73 Imposition of fines**

- (1) A service tribunal that imposes a punishment of a fine shall specify in the decision imposing the punishment the amount of money that is the amount of the fine.
- (2) Where a service tribunal convicts a person of 2 or more service offences and imposes 2 or more punishments, being or including fines, the sum of the amounts of those fines shall not exceed the amount of the most severe fine that the tribunal could impose on the person for any one of the service offences of which the person has been so convicted.

**74 Concurrent or cumulative punishments**

- (1) In this section, *prescribed punishment* means a punishment of any of the following kinds:
  - (a) imprisonment for a specific period;
  - (b) detention;
  - (c) restriction of privileges;
  - (d) stoppage of leave;
  - (e) extra duties;
  - (f) segregated confinement;
  - (g) confinement to cell;
  - (h) extra drill;

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- (j) restriction of custodial privileges.
- (2) Subject to this section, where:
- (a) a service tribunal convicts a person of 2 or more service offences and imposes 2 or more prescribed punishments;
  - (b) a service tribunal convicts of a service offence a person who is already subject to a prescribed punishment (not being a punishment that is wholly suspended) and, on that conviction, imposes another prescribed punishment;
  - (c) a service tribunal convicts of a service offence a person who is already subject to a prescribed punishment (being a punishment that is suspended in whole or in part) and, on that conviction, revokes that suspension and also imposes another prescribed punishment; or
  - (d) a service tribunal convicts a person of a service offence that was committed during the period to which an undertaking given by the person in accordance with subsection 75(2) relates and, on that conviction, imposes:
    - (i) a prescribed punishment for the service offence to which the conviction relates; and
    - (ii) a prescribed punishment for the service offence in relation to which the undertaking was given;
- the punishments so imposed (including, where applicable, the punishment referred to in paragraph (c) the suspension of which is revoked) shall be concurrent.
- (3) Where a service tribunal imposes a punishment of imprisonment for a specific period for a service offence and also a punishment of imprisonment for life for another service offence, the punishments shall be concurrent.
- (4) Subject to subsection (5), where:
- (a) a service tribunal convicts a person of 2 or more service offences and imposes 2 or more prescribed punishments that are of the same kind;
  - (b) a service tribunal convicts of a service offence a person who is already subject to a prescribed punishment (not being a punishment that is wholly suspended) and, on that conviction, imposes another prescribed punishment that is of the same kind as the prescribed punishment to which the person is already subject;

- (c) a service tribunal convicts of a service offence a person who is already subject to a prescribed punishment (being a punishment that is suspended in whole or in part) and, on that conviction, revokes that suspension and also imposes another prescribed punishment that is of the same kind as the suspended punishment; or
- (d) a service tribunal convicts a person of a service offence that was committed during the period to which an undertaking given by the person in accordance with subsection 75(2) relates and, on that conviction, imposes:
  - (i) a prescribed punishment for the service offence to which the conviction relates; and
  - (ii) a prescribed punishment that is of the same kind as the prescribed punishment referred to in subparagraph (i) for the service offence in relation to which the undertaking was given;

the tribunal may order that all or any of the punishments so imposed (including, where applicable, the punishment referred to in paragraph (c) the suspension of which is revoked) shall be cumulative.

(4A) Subject to this section, where:

- (a) a summary authority convicts of a service offence a person who is already subject to a prescribed punishment (being a punishment that is suspended in whole or in part) and, on that conviction:
  - (i) recommends to a competent reviewing authority, under subsection 80(3), that the suspension be revoked by the reviewing authority; and
  - (ii) imposes another prescribed punishment; and
- (b) the reviewing authority revokes the suspension under subsection 80(4);

the punishments so imposed (including the punishment the suspension of which is revoked) shall be concurrent.

(4B) Subject to subsection (5), where:

- (a) a summary authority convicts of a service offence a person who is already subject to a prescribed punishment (being a punishment that is suspended in whole or in part) and, on that conviction:

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- (i) recommends to a competent reviewing authority, under subsection 80(3), that the suspension be revoked by the reviewing authority;
    - (ii) imposes another prescribed punishment that is of the same kind as the suspended punishment; and
    - (iii) recommends to the reviewing authority that the punishments be made cumulative; and
  - (b) the reviewing authority revokes the suspension under subsection 80(4);
- the reviewing authority may order that the punishments so imposed (including the punishment the suspension of which is revoked) shall be cumulative.
- (5) A service tribunal shall not order that prescribed punishments shall be cumulative if the effect of the order would be that the person convicted would be subject to punishment for a total period that exceeds the period of operation of the most severe punishment (being a punishment of the same kind as the first-mentioned punishments) that the tribunal could impose on the person for the service offence, or any one of the service offences, of which the person has been convicted by the tribunal.
  - (5A) A reviewing authority that has revoked the suspension of the whole or a part of a punishment under subsection 80(4), on the recommendation of a summary authority, must not order that prescribed punishments are to be cumulative if the effect of the order would be that the person convicted would be subject to punishment for a total period that exceeds the period of operation of the most severe punishment (being a punishment of the same kind as the first-mentioned punishments) that the summary authority could impose on the person for the service offence, or any one of the service offences, of which the person has been convicted by the summary authority.
  - (6) Where:
    - (a) a person is convicted by a service tribunal of a service offence committed by the person while serving a punishment of detention; and
    - (b) the service tribunal imposes on the person for that service offence a punishment of detention;

that last-mentioned punishment shall commence at the expiration of the period of detention that the person was serving when the offence was committed.

### **75 Conviction without punishment**

- (1) Instead of imposing a punishment on a convicted person, a service tribunal may make an order that the conviction be recorded as a conviction without punishment.
- (2) As a condition of making an order under subsection (1), a service tribunal may require the convicted person to give an undertaking that he or she will be of good behaviour for a period of 12 months.

### **76 Breach of undertaking to be of good behaviour**

- (1) Where:
  - (a) a person has, in accordance with subsection 75(2), given an undertaking that he or she will be of good behaviour for a period of 12 months; and
  - (b) a service tribunal convicts the person of a service offence that was committed during that period;the tribunal may, subject to subsection (3), if it is satisfied that, by reason of the person's commission of that offence, the person has failed to be of good behaviour, take action under this Part in relation to the person for the service offence in relation to which that undertaking was given.
- (2) A service tribunal, before taking action under subsection (1), shall hear evidence relevant to the determination of what action should be taken.
- (3) The only action that a service tribunal may take under this Part, in relation to a person for a service offence in relation to which an undertaking was given under subsection 75(2), is action that could have been taken under this Part in relation to the person by the service tribunal that convicted the person of the service offence.

### **77 Taking other offences into consideration**

- (1) Where a convicted person requests the Australian Military Court to take into consideration, for the purposes of this Part, any other service offence:

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- (a) that is similar to the service offence of which the person has been convicted;
  - (b) that the Court has jurisdiction to try; and
  - (c) that the person admits having committed;
- the Court, with the consent of the prosecution, may take the other service offence into consideration.
- (2) The Australian Military Court must not impose a separate punishment or make a separate order under subsection 75(1) in respect of a service offence that it has taken into consideration under subsection (1).
  - (3) If the Australian Military Court does not take a service offence into consideration under subsection (1) because:
    - (a) the prosecution did not give its consent; or
    - (b) the Court rejected the convicted person's request;an admission for the purposes of paragraph (1)(c) in relation to that service offence is not admissible as evidence in:
    - (c) any other proceeding before a service tribunal in respect of that service offence; or
    - (d) any proceeding in a civil court in respect of a civil court offence that is substantially the same offence as that service offence.

### 78 Suspension of detention

- (1) Subject to this section, a service tribunal that imposes a punishment of detention may make an order suspending the whole or a part of that punishment.
- (2) Where a service tribunal imposes on a person 2 or more punishments of detention in respect of 2 or more service offences, the service tribunal shall not make an order suspending the whole or a part of any of those punishments unless it also makes an order suspending the whole or a part of the other punishment or the other punishments.
- (3) Where a service tribunal makes an order suspending the whole or a part of a punishment of detention, the punishment, or such part of the punishment as is suspended, does not begin, and shall not be put into execution, while the suspension remains in force.



**79 Suspension of fines**

- (1) A service tribunal that imposes on a member of the Defence Force a punishment of a fine may make an order suspending the whole or a part of that punishment.
- (2) A service tribunal that imposes on a person who is not a member of the Defence Force a punishment of a fine of an amount not less than \$100 may make an order suspending the whole or a part of that punishment.
- (3) Where a service tribunal makes an order suspending a fine in whole or in part, the fine, or such part of the fine as is suspended, does not take effect while the suspension remains in force.

**80 Revocation of suspension of punishment**

- (1) Subject to subsection (2), where a person convicted of a service offence by a service tribunal is already subject to a punishment that is suspended (whether in whole or in part), the tribunal may revoke the suspension and, in that event, the punishment, or such part of the punishment, that was suspended shall, subject to subsection 172(2), take effect as if it had been imposed at the time of the revocation.
- (2) A summary authority must not revoke the suspension of the whole or a part of a punishment if the authority would not have had power to impose the punishment if it had convicted the person of the service offence for which the punishment was imposed.
- (3) Where, by virtue of subsection (2), a summary authority is not empowered to revoke a suspension that it considers should be revoked, the summary authority may recommend to a competent reviewing authority that the suspension be revoked by that authority.
- (4) Where, under subsection (3), a summary authority recommends to a competent reviewing authority that a suspension of the whole or a part of a punishment be revoked, the authority may revoke the suspension and, in that event, the punishment, or such part of the punishment, that was suspended shall, subject to subsection 172(2), take effect as if it had been imposed at the time of the revocation.

### **81 Remission of suspended punishment**

- (1) Where:
  - (a) a punishment imposed on a member of the Defence Force has been suspended in whole or in part and that suspension has not been revoked; and
  - (b) the member ceases to be a member of the Defence Force; that punishment is remitted.
- (2) Where a punishment of detention has been suspended in whole or in part and that suspension has not been revoked, that punishment, or such part of that punishment as has been suspended, is remitted at the expiration of:
  - (a) a period of 12 months; or
  - (b) a period equal to the period for which the punishment of detention was imposed;whichever is the greater period, commencing on the date of the order under subsection 78(1) suspending that punishment or that part of that punishment.
- (3) Where a punishment of a fine has been suspended in whole or in part and that suspension has not been revoked, that punishment, or so much of that punishment as is suspended, is remitted at the expiration of a period of 12 months commencing on the date of the order under section 79 suspending that punishment.

### **82 Remission of punishment of detention on imprisonment**

Where a service tribunal imposes a punishment of imprisonment on a convicted person who is already subject to a punishment of detention (whether or not that punishment, or a part of that punishment, has been suspended), that punishment of detention, or such part of that punishment of detention as has not been served, is remitted.

### **83 Restitution orders**

- (1) Where a person is convicted by a service tribunal of a service offence that involved the unlawful obtaining of property by the convicted person, the tribunal, instead of, or in addition to, imposing a punishment or making an order under subsection 75(1), may:

- (a) if the whole or any part of the property so unlawfully obtained is in the custody or control of the prosecution—order the property to be repaid or restored to the person appearing to the tribunal to be its owner; or
  - (b) if any property (other than money) appearing to the tribunal to have been obtained by the conversion or exchange of any of the property so unlawfully obtained is in the custody or control of the prosecution—order the property to be delivered to the person appearing to the tribunal to be the owner of the property so unlawfully obtained.
- (2) Where:
- (a) a person is convicted by a service tribunal of a service offence that involved the unlawful obtaining of property by the convicted person;
  - (b) it appears to the tribunal that:
    - (i) some or all of the property so unlawfully obtained was given by the convicted person to another person in exchange for other property; and
    - (ii) the other person did not know, at the time of the exchange, that the property received by the other person in the exchange had been unlawfully obtained; and
  - (c) the whole or a part of the property given by the other person in the exchange is in the custody or control of the prosecution;
- the service tribunal may order that, on the restitution by the other person of the property received by the other person in the exchange to the person appearing to the tribunal to be its owner, the property in the custody or control of the prosecution be restored to the other person.
- (3) This section applies in relation to a service offence that has been taken into consideration by a service tribunal under section 77 in determining the appropriate punishment for a service offence of which a person has been convicted by the tribunal as if the tribunal had convicted the person of the service offence so taken into consideration.
- (4) Nothing in this section affects any right that a person may have to recover any property delivered or paid in pursuance of an order under this section from the person to whom the property has been so delivered or paid.
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#### **84 Reparation orders**

- (1) Where a person is convicted by a service tribunal of a service offence, the tribunal may, instead of, or in addition to, imposing a punishment or making an order under subsection 75(1), order the person to pay such amount as it thinks just by way of reparation to a person who has sustained loss or damage through or by reason of that service offence.
- (2) Where a person is convicted by a service tribunal that is a summary authority, the amount or the sum of the amounts that that person may be ordered to pay by that tribunal under this section shall not exceed:
  - (a) where the person is a member of the Defence Force—the amount of the person's pay for 14 days; or
  - (b) in any other case—5 times the maximum fine that that tribunal could impose on the person.
- (3) In making an order under this section, a service tribunal may order payment to be made either in one sum or by instalments.
- (4) This section applies in relation to a service offence that has been taken into consideration by a service tribunal under section 77 in determining the appropriate punishment for a service offence of which a person has been convicted by the tribunal as if the tribunal had convicted the person of the service offence so taken into consideration.
- (5) Nothing in this section affects any right or remedy that a person may have, apart from this section, in respect of any loss or damage occasioned by a service offence.

#### **85 Payment of fines**

- (1) A service tribunal may order that a fine shall be paid either in one sum or by instalments.
- (2) A fine is payable to the Commonwealth.

## **Part V—Summons, arrest, custody and suspension from duty**

### **86 Interpretation**

In this Part, *authorized officer* includes a commanding officer.

#### **86A Oaths, affirmations and affidavits**

- (1) An authorized officer may administer oaths and affirmations for the purposes of this Part.
- (2) The forms of oaths and affirmations administered by an authorized officer for the purposes of this Part shall be as prescribed.
- (3) An affidavit to be used for the purposes of this Part may be sworn before an authorized officer.
- (4) This section shall not be taken to limit, by implication, the classes of persons who may administer oaths and affirmations for the purposes of this Part or before whom affidavits to be used for the purposes of this Part may be sworn or affirmed.

#### **87 Summons and order in the nature of summons**

- (1) Where an authorized member of the Defence Force believes, on reasonable grounds, that a person has committed a service offence, the authorized member may:
  - (a) if the person is a defence member:
    - (i) charge the defence member with the service offence;
    - (ii) cause a copy of the charge to be given to the defence member; and
    - (iii) order the defence member to appear before a summary authority at a specified time and place to be dealt with in accordance with section 110 or 111; or
  - (b) whether or not the person is a defence member—cause to be prepared a summons directed to the person specifying the service offence that the person is alleged to have committed and requiring the person to appear before a commanding

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officer at a time and place specified in the summons to be dealt with in accordance with section 110; or

- (c) if the authorized member is the Director of Military Prosecutions, do one of the following:
- (i) if the charge is a charge that is within the jurisdiction of a superior summary authority or a commanding officer to try—refer the charge to a superior summary authority or a commanding officer for trial under section 106 or 107;
  - (ii) request the Registrar to refer the charge to the Australian Military Court for trial.

- (1A) To avoid doubt, the Director of Military Prosecutions:
- (a) may exercise any or all of the powers referred to in paragraphs (1)(a), (b) and (c); and
  - (b) may exercise the power referred to in paragraph (1)(c) in addition to, or instead of, the powers referred to in paragraphs (1)(a) and (b).
- (2) A summons under paragraph (1)(b) shall be served on the person to whom it is directed in a manner specified in the regulations.
- (3) Where a summons relating to a service offence is served on a person in accordance with subsection (2), the person shall be taken, for the purposes of this Act, to have been charged with the offence.
- (4) A superior officer may order an accused person, being a defence member, to appear before a service tribunal for any purpose relating to the charge against the person.
- (5) The appropriate authority may summon an accused person (whether or not a defence member), in a manner provided for in the rules of procedure, to appear before a service tribunal for any purpose relating to the charge against the person.
- (6) In this section:

***authorized member of the Defence Force*** means:

- (a) the Director of Military Prosecutions; or
- (b) a member of the Defence Force, or a member of the Defence Force included in a class of members of the Defence Force, authorized, in writing, by a commanding officer for the purposes of this section.

**88 Arrest, summons etc. where accused person not present at hearing before service tribunal**

- (1) Where an accused person is not present at a hearing before a service tribunal (otherwise than by reason of an order under subsection 139(2)), an authorized officer or the Registrar may:
  - (a) if the accused person is a defence member—order the accused person to appear before the service tribunal for any purpose relating to the charge against the person; or
  - (b) whether or not the accused person is a defence member:
    - (i) cause to be prepared a summons directed to the accused person requiring the person to appear before the service tribunal at a time and place specified in the summons for a purpose specified in the summons relating to the charge against the person; or
    - (ii) issue a warrant for the arrest of the accused person.
- (1A) The Registrar may carry out an action under subsection (1) only if the Australian Military Court directs the Registrar to carry out the action.
- (2) A summons under paragraph (1)(b) shall be served on the person to whom it is directed in a manner specified in the regulations.
- (3) A warrant issued under subsection (1) shall:
  - (a) specify the name of the accused person concerned and the service offence the subject of the charge; and
  - (b) state that the warrant is issued because the accused person was not present at a hearing before the service tribunal specified in the warrant.
- (4) A constable or a member of the Defence Force may, in execution of a warrant issued in accordance with subsection (1), arrest the accused person named in the warrant.
- (5) A warrant issued under subsection (1) shall specify a date after which the warrant ceases to have effect.

**89 Arrest without warrant**

- (1) A member of the Defence Force may, without warrant, arrest a person over whom the member has a power of arrest if, and only if, the member believes on reasonable grounds:
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- (a) that the person has committed, or is committing, a service offence;
  - (b) that the arrest of the person is necessary in order to achieve one or more of the following purposes:
    - (i) the purpose of ensuring the appearance of the person before a service tribunal in respect of the service offence;
    - (ii) the purpose of preventing a continuation of or repetition of the service offence or the commission of a further service offence;
    - (iii) the purpose of preventing the concealment, loss or destruction of evidence of, or relating to, the service offence;
    - (iv) the purpose of preserving the safety or welfare of the person; and
  - (c) that proceedings under section 87 against the person in respect of the offence would not effectively achieve that purpose or those purposes.
- (2) For the purposes of subsection (1):
- (a) an officer has a power of arrest over:
    - (i) a sailor, soldier or airman;
    - (ii) an officer in respect of whom he or she is a superior officer; or
    - (iii) a defence civilian;
  - (b) a warrant officer or a non-commissioned officer has a power of arrest over a sailor, soldier or airman in respect of whom he or she is a superior officer;
  - (c) a member of:
    - (i) the regulating staff;
    - (ii) the staff of the officer of the watch; or
    - (iii) the staff of the officer of the day;of a ship or establishment of the Australian Navy has a power of arrest over any sailor;
  - (d) a police member or a person lawfully exercising authority under or on behalf of a service police officer has, subject to the regulations, a power of arrest over any person; and
  - (e) where the service offence concerned is mutiny or a service offence involving disorderly or violent behaviour:



- (i) an officer has a power of arrest over any other officer;  
and
  - (ii) a warrant officer or a non-commissioned officer has a power of arrest over any other sailor, soldier or airman.
- (3) A power of arrest under subsection (1) may be exercised:
- (a) personally;
  - (b) by ordering the person concerned into arrest; or
  - (c) by giving an order for the arrest of the person concerned.
- (4) Nothing in subsection (1) authorizes the arrest, without warrant, of a person who is not a defence member or a defence civilian.
- (5) A constable may, without warrant, arrest a person who the constable believes, on reasonable grounds, is escaping from custody or has escaped from custody to which the person is still liable.

## **90 Arrest under warrant**

- (1) Subject to this section, where an authorized officer:
- (a) is satisfied by information on oath or affirmation that there are reasonable grounds for suspecting that a person has committed a service offence; and
  - (b) believes on reasonable grounds that proceedings under section 87 would not be effective;
- the authorized officer may issue a warrant for the arrest of the person.
- (2) An authorized officer shall not issue a warrant under subsection (1) for the arrest of a person for a service offence unless:
- (a) an affidavit of the informant has been furnished to the authorized officer setting out the reasons for which the issue of the warrant is sought (including the reasons why it is believed that the person has committed the service offence and the reasons why it is claimed that proceedings under section 87 would not be effective);
  - (b) the informant or some other person has furnished to the authorized officer, on oath or affirmation, such further information (if any) as the authorized officer requires concerning the reasons for which the issue of the warrant is sought; and

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- (c) the authorized officer is satisfied, after considering the affidavit and any such further information, that there are reasonable grounds for the issue of the warrant.
- (3) Where an authorized officer issues a warrant under subsection (1), the officer shall indicate, by writing under the officer's hand, on the affidavit referred to in subsection (2), which of the reasons specified in that affidavit, and any other reasons, the officer has relied on as justifying the issue of the warrant.
- (4) A warrant issued under subsection (1) shall specify the name of the person concerned and the service offence that the person is alleged to have committed.
- (5) A constable or a member of the Defence Force may, in execution of a warrant issued in accordance with subsection (1), arrest the person named in the warrant.
- (6) A warrant issued under subsection (1) shall specify a date after which the warrant ceases to have effect.

**91 Power to enter to make arrest**

- (1) Subject to subsection (3), where a constable has, under a warrant issued under this Act, power to arrest a person, the constable may enter any premises, by force if necessary, at any time of the day or night for the purpose of arresting the person, and may search the premises for the person, if the constable believes on reasonable grounds that the person is on the premises.
- (2) Subject to subsection (3), where, by virtue of subsection 89(5), a constable may, without warrant, arrest a person, the constable may enter any premises, by force if necessary, at any time of the day or night for the purpose of arresting the person, and may search the premises for the person, if the constable believes on reasonable grounds that the person is on the premises.
- (3) Subsections (1) and (2) do not authorize a constable to enter premises at any time during the period commencing at 9 o'clock in an evening and ending at 6 o'clock in the next following morning for the purpose of arresting a person if the constable believes, on reasonable grounds, that it will be practicable to arrest the person, either on the premises or elsewhere, at any other time.

**92 Use of force in making arrest**

- (1) A person shall not, in the course of arresting another person under this Act, use more force, or subject the other person to greater indignity, than is necessary to make the arrest or to prevent the escape of the other person after the other person has been arrested.
- (2) A person:
  - (a) shall not, in the course of arresting another person under this Act, do an act likely to cause the death of, or grievous bodily harm to, the other person unless the person making the arrest believes on reasonable grounds that the doing of that act is necessary to protect life or to prevent serious injury to any other person (including the person making the arrest); and
  - (b) without limiting the application of paragraph (a), shall not, in the course of so arresting another person who is attempting to escape arrest by fleeing, do such an act unless the other person has, if practicable, been called upon to surrender and the person making the arrest believes on reasonable grounds that the other person cannot be apprehended in any other manner.

**93 Persons to be informed of grounds of arrest**

- (1) A person who arrests another person for a service offence shall inform the other person, at the time of the arrest, of the service offence for which the other person is arrested.
- (2) A person who arrests another person for a service offence shall be taken to have complied with subsection (1) if the person informs the other person of the substance of the service offence for which the other person is arrested, and it is not necessary for the person to do so in language of a precise or technical nature.
- (3) Subsection (1) does not apply to or in relation to the arrest of a person:
  - (a) if that person ought, by reason of the circumstances in which the person is arrested, to know the substance of the service offence for which the person is arrested; or
  - (b) if that person makes it impracticable, by reason of his or her actions, for the person making the arrest to inform him or her of the service offence for which the person is arrested.

#### **94 Civil detention of arrested person**

- (1) A constable may detain a person arrested (whether by himself or herself or by another constable) under this Act at a civil detention facility for such time as is reasonably necessary to enable the arrested person to be delivered into the custody of a police member or an authorized officer.
- (2) Where:
  - (a) a person has been arrested under this Act and is in the custody of a member of the Defence Force; and
  - (b) a commanding officer or the senior member of the escort of the arrested person certifies, in writing, that it is necessary for the arrested person to be detained in a place of detention and that no suitable place of detention controlled by the Defence Force is reasonably available for the purpose;a constable may detain the arrested person in a civil detention facility for a period not exceeding 7 days.

#### **95 Avoidance of delay after arrest**

- (1) Where a member of the Defence Force:
  - (a) arrests a person under this Act; or
  - (b) receives into his or her custody a person who has been arrested under this Act;the member shall, as soon as practicable, take all reasonable steps in the member's power to ensure that the arrested person is delivered into the custody of a commanding officer.
- (2) Where a person has been delivered into the custody of a commanding officer, the commanding officer or an officer authorized, in writing, by the commanding officer shall, unless the person has been arrested in execution of a warrant issued under section 88, before the expiration of the period of 24 hours after the person has been delivered into the custody of the commanding officer, either charge the person with a service offence or release the person from custody.
- (3) Where a person is charged with a service offence in accordance with subsection (2), the commanding officer shall forthwith cause a copy of the charge to be given to the person.

- (4) Where a person is charged with a service offence in accordance with subsection (2), the commanding officer shall, as soon as practicable, cause proceedings to be commenced for dealing with the charge and, if no such proceedings are commenced before the expiration of a period of 48 hours after the person has been delivered into the custody of the commanding officer, the commanding officer shall, at the expiration of that period, report, in writing, to a superior authority and the Director of Military Prosecutions his or her reasons for not causing those proceedings to be commenced.
- (5) Where a person remains in the custody of the commanding officer for a period of 8 days or more without the charge against the person having been dealt with, the commanding officer shall, at the expiration of the first 8 day period of such custody and, thereafter, at the expiration of each subsequent 8 day period of such custody, report, in writing, to a superior authority and the Director of Military Prosecutions his or her reasons for the delay in dealing with the charge.
- (6) For the purposes of subsection (5), a charge that is dealt with by a summary authority by referring it to another summary authority shall be deemed not to have been dealt with.
- (7) If due to the exigencies of service it is not reasonably practicable for the commanding officer to make a report in accordance with subsection (5) on the date on which that report is due, he or she shall make that report as soon as it becomes reasonably practicable to do so and shall state in that report why it was not reasonably practicable to report on the due date.
- (8) Where a person remains in custody for 30 days and the charge against the person has not been dealt with within the meaning of subsection (5), the superior authority to whom a report under subsection (5) or subsection (7) has been made shall notify the Director of Military Prosecutions and the Chief of the Defence Force, a service chief or an authorized officer of the reasons why the charge has not been dealt with.
- (9) Upon receipt of a notification in accordance with subsection (8), the Chief of the Defence Force, the service chief or the authorized officer shall, unless he or she is satisfied that it is proper that the

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person should continue in custody, order the release of the person from custody.

**95A Search of persons in custody in custodial facilities**

- (1) Where:
- (a) a person (in this section referred to as the *accused person*) is in custody on a charge in a custodial facility; and
  - (b) an authorized person in relation to the custodial facility believes that it is necessary to do so for the purpose of ascertaining whether there is concealed on the accused person or in the accused person's clothing:
    - (i) a weapon or other thing capable of being used to:
      - (A) inflict death or bodily injury; or
      - (B) assist him or her to escape from custody; or
    - (ii) any thing that is likely to affect the security or discipline of the custodial facility;

the authorized person may direct an authorized member in relation to the custodial facility to search the accused person and the clothing that the accused person is wearing.

- (2) The search shall be conducted in accordance with the following provisions:
- (a) the search shall be conducted in the presence of at least 2 other persons who are authorized persons, or authorized members, in relation to the custodial facility;
  - (b) the search shall not be conducted in the presence of a person who is not an authorized person, or an authorized member, in relation to the custodial facility;
  - (c) the accused person shall not be searched by, or in presence of, a person who is not of the same sex as the accused person.
- (3) The authorized member directed to conduct the search may:
- (a) require the accused person to remove any clothing that the accused person is wearing;
  - (b) if the accused person refuses or fails to comply with such a requirement—remove the clothing;
  - (c) use such reasonable force as is necessary to conduct the search; and

(d) seize any weapon or thing of a kind referred to in paragraph (1)(b) found as in the course of the search.

(4) In this section:

**authorized member**, in relation to a custodial facility, means a member of the Defence Force, or a member of the Defence Force included in a class of members of the Defence Force, appointed by a commanding officer, in writing, to be an authorized member or authorized members, as the case may be, in relation to the custodial facility.

**authorized person**, in relation to a custodial facility, means a member of the Defence Force, or a member of the Defence Force included in a class of members of the Defence Force, appointed by a commanding officer, in writing, to be an authorized person or authorized persons, as the case may be, in relation to the custodial facility.

**custodial facility** means a place or facility:

- (a) under the control of the Defence Force; and
- (b) at or in which a person in custody on a charge is detained.

## **96 Time limitation on charges**

(1) A person shall not be charged with:

- (a) an offence against this Act (other than section 61) or the regulations; or
- (b) a service offence that is an ancillary offence in relation to an offence referred to in paragraph (a);

after the expiration of a period of 5 years after the time at which the offence is alleged to have been committed.

(2) Notwithstanding anything in subsection (1), a person may be charged with:

- (a) an offence against any of sections 15 to 16B, section 20 or section 22; or
- (b) a service offence that is an ancillary offence in relation to an offence referred to in paragraph (a);

at any time.

(3) A reference in subsection (1) to a period shall be read as not including a reference to a period during which the person:

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- (a) was a prisoner of war;
  - (b) was absent without leave; or
  - (c) was serving a sentence of imprisonment.
- (4) A person shall not be charged with an offence against section 61 if the time that has elapsed since the offence is alleged to have been committed equals or exceeds the period of time that would bar trial by, or institution of proceedings in, a court exercising jurisdiction in or in relation to the Jervis Bay Territory for the relevant Territory offence.
- (5) A person shall not be charged with, or tried for, an old system offence if the person could not have been charged with, or tried for, as the case may be, that offence if the provisions of previous service law imposing a time limitation on such a charge or trial were still in force.
- (6) A person who has ceased to be a member of the Defence Force or a defence civilian shall not be charged with a service offence unless:
- (a) the period that has elapsed since the person so ceased does not exceed 6 months; and
  - (b) the maximum punishment for the service offence is imprisonment for a period of 2 years or a punishment that is more severe than that punishment.

**97 Release from custody**

- (1) A commanding officer or an officer authorized, in writing, by a commanding officer may at any time release from custody a person charged with a service offence and may impose on that person, in relation to that release, such conditions and restrictions, being conditions or restrictions of a kind authorized by the Chief of the Defence Force or a service chief, by instrument in writing, for the purposes of this section, as he or she considers necessary.
- (2) An officer referred to in subsection (1) may at any time vary or revoke a condition or restriction in force in relation to a person under this section.
- (3) An officer who:
- (a) imposes a condition or restriction under subsection (1) on a person; or



- (b) varies or revokes a condition or restriction in force in relation to a person under this section;  
shall cause the imposition, variation or revocation to be notified to the person as soon as practicable.
- (4) A person released under subsection (1) may again be taken into custody if, and only if:
- (a) the person is in breach of a condition or restriction in force in relation to the person under this section; or
  - (b) the person is arrested for another service offence.
- (5) A condition or restriction in force in relation to a person under this section ceases to have effect if:
- (a) a summary authority or the Director of Military Prosecutions directs that the charge against the person be not proceeded with;
  - (b) the person is acquitted or convicted of the service offence charged; or
  - (c) the charge against the person is dismissed.

### **98 Suspension from duty on suspicion of offence etc.**

- (1) Where a member of the Defence Force is charged with a service offence, a civil court offence or an overseas offence, an authorized officer may, by notice in writing served on the member, suspend the member from duty.
- (2) Where an authorized officer suspects on reasonable grounds that a member of the Defence Force has committed a service offence and orders an investigation, an authorized officer may, by notice in writing served on the member, suspend the member from duty.
- (3) Where a member of the Defence Force is suspended from duty under subsection (1), the suspension ceases:
- (a) if the charge is not proceeded with or the prosecution of the charge is abandoned—at the time the member is notified to that effect; or
  - (b) in any other case—on the termination of the proceedings before the service tribunal, the civil court or the overseas court hearing the charge.

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- (4) Where a member of the Defence Force is suspended from duty under subsection (2), the suspension ceases on the completion of the investigation referred to in that paragraph unless the member concerned is charged with a service offence.
- (5) Where on the completion of an investigation referred to in subsection (2) the member concerned is charged with a service offence, the suspension of the member under that subsection continues as a suspension of the member under subsection (1).
- (6) A notice under subsection (1) or (2) shall be served in a manner specified in the regulations.

**99 Suspension from duty after conviction**

- (1) Where a summary authority imposes upon a member of the Defence Force a punishment that does not take effect unless it is approved by a reviewing authority, the summary authority or a reviewing authority may, by notice in writing served on the member, suspend the member from duty pending the decision of the reviewing authority.
- (2) Where a member of the Defence Force is convicted of a service offence, a civil court offence or an overseas offence, an authorized officer may, by notice in writing served on the member, suspend the member from duty pending a decision as to the termination of the member's service.
- (3) A notice under subsection (1) or (2) shall be served in a manner specified in the regulations.

**100 Effect of custody or suspension from duty**

- (1) A member of the Defence Force is not required to perform any duty of the member's office or appointment (other than such duties as may be necessary to relieve the member of that office or appointment) during any period of custody or any period of suspension from duty under section 98 or 99.
- (2) Subject to subsection (3), a member of the Defence Force who is suspended from duty under subsection 98(1) or section 99 is not entitled to remuneration in respect of the period of suspension.

- (3) If a member of the Defence Force is suspended from duty under subsection 98(1) or section 99, the relevant authority may, at any time, on application by the member or otherwise, direct that the member receive remuneration during the whole, or a specified part, of the period of suspension.
- (4) A direction may only be given under subsection (3) if the relevant authority is satisfied that the member is suffering, or has suffered, hardship as a result of the suspension.
- (5) For the purposes of subsection (3), the relevant authority is:
  - (a) in the case of a suspension under subsection 98(1) or 99(2)—an authorised officer; or
  - (b) in the case of a suspension under subsection 99(1)—the summary authority by which the suspension was imposed or a reviewing authority.
- (6) A member of the Defence Force who is suspended from duty under subsection 98(1) or section 99 is entitled to engage in employment outside the Defence Force during any period of suspension in respect of which the member is not receiving remuneration.
- (7) This section does not affect any requirement to perform a duty, or any remuneration entitlement, of a member of the Defence Force who is undergoing a punishment of detention.
- (8) In this section, **remuneration** has the same meaning as in Division 1 of Part IIIA of the *Defence Act 1903*.

## Part VI—Investigation of service offences

### Division 1—Preliminary

#### 101 Interpretation

- (1) In this Part, unless the contrary intention appears:

*confession* includes any admission or incriminating statement.

*interview*, in relation to a person, includes asking the person questions in the course of investigating a service offence.

*investigating officer* means:

- (a) a police member; or
- (b) an officer, warrant officer or non-commissioned officer (not being a police member) engaged in the investigation of a service offence.

*relevant act*, in relation to a service offence, means:

- (a) an act or omission that constituted, or was done or omitted to be done, as the case requires, in connection with, the commission of the service offence; or
- (b) an act or omission believed by an investigating officer investigating the service offence to have constituted, or to have been done or omitted to have been done, as the case requires, in connection with, the commission of the service offence.

*relevant person*, in relation to a relevant act, means a person who was seen by another person doing or omitting to do, as the case requires, the relevant act.

*serious service offence* means a service offence punishable by a maximum punishment, or a fixed punishment, of imprisonment for life or a period exceeding 6 months.

*suspect*, in relation to a relevant act, means a person whom an investigating officer investigating the service offence in relation to the relevant act believes may be a person who did or omitted to do, as the case requires, the relevant act.

*tape recording* includes sound recording and video recording.

*telephone* includes telex, radio or similar facilities.

*witness*, in relation to a relevant act, means a person who saw another person doing or omitting to do, as the case requires, the relevant act.

- (2) For the purposes of this Part, a person is in custody in respect of a service offence if the person is being detained as a person charged with the service offence or as a person arrested for, but not yet charged with, the service offence.
- (3) If a person is not in custody in respect of a particular service offence (in this subsection referred to as *the relevant service offence*), but:
  - (a) is in custody, or is undergoing detention or imprisonment, in respect of another service offence or is in custody for another reason; or
  - (b) in connection with the investigation of the relevant service offence, is in the company of an investigating officer; and an investigating officer concerned in the investigation of the relevant service offence:
    - (c) in the case of a person to whom paragraph (a) applies—has come to the belief, or has given the person reasonable grounds for believing that the person has come to the belief, that it is probable that the person committed the relevant service offence; or
    - (d) in the case of a person to whom paragraph (b) applies—would not allow the person to leave, or has given the person reasonable grounds for believing that the person would not be allowed to leave, if the person wished to do so;then, unless the contrary intention appears, the provisions of this Part have effect as if the person were in custody in respect of the relevant service offence.
- (4) Unless the contrary intention appears, a reference in this Part to custody includes a reference to custody that was unlawfully commenced or is being unlawfully continued.
- (5) Unless the contrary intention appears, a reference in this Part to a service offence includes a reference to a service offence that an

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investigating officer has reasonable grounds for believing is being, has been, or will be committed.

- (6) Without prejudice to the interpretation of a provision of this Act (other than a provision of this Part):
- (a) it is the duty of an investigating officer to comply with the provisions of this Part in exercising his or her powers, or performing his or her duties, as an investigating officer; and
  - (b) where an investigating officer contravenes a provision of this Part that is applicable to the officer—the contravention is not punishable as a service offence unless a penalty is provided by this Act or the regulations in respect of the contravention.
- (7) Nothing in subsection (6) shall be taken to affect:
- (a) the operation of any provision of this Act or the regulations relating to the exclusion of evidence; or
  - (b) any civil proceedings.

**101AA Oaths, affirmations and affidavits**

- (1) An authorized officer may administer oaths and affirmations for the purposes of this Part.
- (2) The forms of oaths and affirmations administered by an authorized officer for the purposes of this Part shall be as prescribed.
- (3) An affidavit to be used for the purposes of this Part may be sworn before an authorized officer.
- (4) This section shall not be taken to limit, by implication, the classes of persons who may administer oaths and affirmations for the purposes of this Part or before whom affidavits to be used for the purposes of this Part may be sworn or affirmed.

## **Division 2—Duties of investigating officers when interviewing suspects**

### **101A Interpretation**

Where the investigating officer in charge of investigating a service offence has grounds for believing that a person who is in custody in respect of the service offence has committed another service offence, the person shall, for the purposes of this Division, be deemed to be in custody in respect of both of the service offences.

### **101B Investigating officer may question persons**

- (1) Where an investigating officer who is investigating a service offence believes that a person (including a person believed by the investigating officer to have committed the service offence) may be able to furnish information that may assist the investigating officer in his or her investigation of the service offence, the investigating officer may, subject to this Part, ask the person questions relevant to his or her investigation of the service offence.
- (2) A person who is asked a question by an investigating officer under subsection (1) is not required to answer the question.

### **101C Questioning and cautioning of person in custody**

- (1) Where a person is in custody, an investigating officer shall not ask the person any questions or ask the person to do any thing, for a purpose connected with the investigation of a service offence, unless the investigating officer has told the person his or her name and rank.
- (2) Where, at or after the time when a person comes into custody in respect of a service offence, an interview of the person in connection with the service offence is being conducted by an investigating officer, the investigating officer shall not:
  - (a) ask the person any questions, or ask the person to do any thing, for a purpose connected with the investigation of the service offence; or

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- (b) cause or permit another person to ask the person any questions, or ask the person to do any thing, for a purpose connected with the investigation of the service offence; unless an investigating officer has, at or since the commencement of the interview cautioned the person that he or she does not have to say or do anything, but that anything the person does say or do may be used in evidence.
- (2A) A caution for the purpose of subsection (2) must be given in, or translated into, a language in which the person being cautioned is able to communicate with reasonable fluency, but need not be given in writing.
- (2B) An investigating officer who is required by subsection (2) to caution a person must, if practicable, tape record the giving of the caution and the person's response (if any).
- (2C) If:
- (a) an investigating officer cautions a person under this section; and
  - (b) the giving of the caution and the person's response (if any) to the caution are not tape recorded;
- then, in any proceedings before a service tribunal, the prosecution has the burden of proving that it was not practicable to tape record the giving of the caution or the person's response (if any) to the caution.
- (3) Subsection (2) does not apply in relation to asking a person to take part in an identification parade conducted in accordance with section 101N.

**101D Cautioning once decision to charge or summon has been made**

- (1) After an investigating officer has decided to charge a person with a service offence, to seek the issue of a summons against a person for a service offence or to recommend that a person be so charged or that a summons be so sought:
- (a) an investigating officer must not ask the person any question, or request the person to do anything, for a purpose connected with the investigation of the service offence unless the investigating officer or another investigating officer has cautioned the person that he or she does not have to say or do



- anything, but that anything the person does say or do may be used in evidence; and
- (b) the investigating officer who made the decision must take reasonable steps to ensure that paragraph (a) is not contravened.
- (2) A caution for the purpose of paragraph (1)(a) must be given in, or translated into, a language in which the person being cautioned is able to communicate with reasonable fluency, but need not be given in writing.
- (3) An investigating officer who is required by subsection (1) to caution a person must, if practicable, tape record the giving of the caution and the person's response (if any).
- (4) If:
- (a) an investigating officer cautions a person under this section; and
  - (b) the giving of the caution and the person's response (if any) to the caution are not tape recorded;
- then in any proceedings before a service tribunal, the prosecution has the burden of proving that it was not practicable to tape record the giving of the caution or the person's response (if any) to the caution.
- (5) Subsection (1) does not apply in relation to asking a person to take part in an identification parade.

### **101E Access to friend, relative and legal practitioner**

- (1) Subject to section 101G, if a person is in custody in respect of a service offence, an investigating officer concerned in the investigation of the offence must, before starting to question the person, inform the person that he or she may:
- (a) communicate, or attempt to communicate, with a friend or relative to inform that person of his or her whereabouts; and
  - (b) communicate, or attempt to communicate, with a legal practitioner of the person's choice and arrange, or attempt to arrange, for a legal practitioner of the person's choice to be present during the questioning;
- and the investigating officer must defer the questioning for a reasonable time to allow the person to make, or attempt to make,

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the communication and, if the person has arranged for a legal practitioner to be present, to allow the legal practitioner to attend the questioning.

- (2) Subject to section 101G, if a person in custody in respect of a service offence wishes to communicate with a friend, relative or legal practitioner, the investigating officer holding the person in custody must:
  - (a) as soon as practicable, give the person reasonable facilities to enable the person to do so; and
  - (b) in the case of a communication with a legal practitioner—allow the legal practitioner or a clerk of the legal practitioner to communicate with the person in circumstances in which, as far as practicable, the communication will not be overheard.
- (3) Subject to section 101G, if a person in custody in respect of a service offence arranges for a legal practitioner to be present during the questioning, the investigating officer holding the person in custody must:
  - (a) allow the person to consult with the legal practitioner in private and provide reasonable facilities for that consultation; and
  - (b) allow the legal practitioner to be present during the questioning and to give advice to the person, but only while the legal practitioner does not unreasonably interfere with the questioning.

**101F Lists of legal officers**

- (1) In this section, *prescribed place* means a place prescribed for the purposes of this section.
- (2) Subject to and in accordance with the regulations, the Chief of the Defence Force shall establish and, so far as it is reasonably practicable to do so, update at such intervals as the Chief of the Defence Force thinks appropriate, a list, in relation to each prescribed place, of the names of legal officers who are willing to assist persons who are in custody at, or in the vicinity of, the prescribed place.
- (2A) The Chief of the Defence Force may delegate his or her powers under subsection (2) to a member of the Defence Force who holds

a rank that is not lower than the naval rank of captain, or the rank of colonel or group captain.

- (3) Where a person is in custody in respect of a service offence at, or in the vicinity of, a prescribed place, an investigating officer shall furnish to the person a copy of the list of the names of legal officers kept in relation to the prescribed place if:
  - (a) the person, to the knowledge of the investigating officer, seeks to communicate, but is unable to communicate, with a legal practitioner of the person's choice; or
  - (b) the investigating officer has reasonable grounds for believing that the person wishes to communicate with a legal practitioner but does not know of a legal practitioner whom the person could consult.
- (4) The requirements of subsection (3) apply only if, and to the extent that, the exigencies of service permit.
- (5) A reference in this section to a person in custody in respect of a service offence shall be read:
  - (a) as not including a reference to a person who is undergoing a punishment of detention or imprisonment in respect of the service offence or is in custody under subsection 172(5) in respect of the service offence; and
  - (b) as including a reference to a person (other than a person referred to in paragraph (a)) who is being, or will be, interviewed by an investigating officer in connection with the investigation of the service offence and has been given a caution of a kind referred to in subsection 101C(2).

### **101G Exceptions to requirements of section 101E**

- (1) Subject to subsections (2), (3) and (4), if a requirement imposed on an investigating officer by section 101E is expressed to be subject to this section, the requirement does not apply if, and so long as, the investigating officer has reasonable grounds for believing that:
  - (a) compliance with the requirement is likely to result in:
    - (i) an accomplice of the person taking steps to avoid apprehension; or
    - (ii) the concealment, fabrication or destruction of evidence or the intimidation of a witness; or

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- (b) if the requirement relates to the deferral of questioning—the questioning is so urgent, having regard to the safety of other people, that it should not be delayed by compliance with that requirement.
- (2) If the application of subsection (1) results in:
- (a) preventing or delaying the person communicating with a legal practitioner of his or her choice; or
  - (b) preventing or delaying a legal practitioner of the person's choice attending at any questioning;
- the investigating officer must offer the services of another legal practitioner and, if the person accepts the offer, make the necessary arrangements.
- (3) If a requirement referred to in subsection (1) relates to things done by or in relation to a legal practitioner:
- (a) subsection (1) applies only in exceptional circumstances; and
  - (b) if subsection (1) applies, the investigating officer must comply with the requirement as soon as possible after subsection (1) ceases to apply.
- (4) If a requirement referred to in subsection (1) relates to things done by or in relation to a legal practitioner, subsection (1) only applies if an appropriate officer has authorised the application of subsection (1) and has made a record of the investigating officer's grounds for belief.
- (5) An appropriate officer, for the purposes of subsection (4) is:
- (a) if the person in custody is a member of the Australian Navy—a member of the Australian Navy holding the rank of Commander or a higher rank; or
  - (b) if the person in custody is a member of the Australian Army—a member of the Australian Army holding the rank of Lieutenant-Colonel or a higher rank; or
  - (c) if the person in custody is a member of the Australian Air Force—a member of the Australian Air Force holding the rank of Wing Commander or a higher rank.

**101H Treatment of persons in custody**

- (1) A person shall, while in custody in respect of a service offence, be treated with humanity and with respect for human dignity.

- (2) A person shall not, while in custody in respect of a service offence, be subjected to cruel, inhuman or degrading treatment.
- (3) Where a member of the Defence Force responsible for the custody of a person:
  - (a) is informed by the person that the person wishes to be provided with medical treatment in respect of illness or an injury; or
  - (b) has reasonable grounds for believing that the person wishes to be provided with, or requires, medical treatment in respect of illness or an injury;the member of the Defence Force shall, forthwith, take such reasonable action as is necessary to provide the person with medical treatment.
- (4) Where a person is in custody in respect of a service offence, the investigating officer in charge of investigating the service offence shall take all reasonable steps to ensure that the person is provided with reasonable refreshments and reasonable access to toilet facilities.
- (5) Where a person who is in custody in respect of a service offence is to be brought before a service tribunal while still in custody, the investigating officer in charge of investigating the service offence shall take all reasonable steps to ensure that the person is provided with facilities to wash or shower, and with the opportunity to obtain, and change into, other clothes, before the person is brought before the service tribunal.
- (6) Where an investigating officer has reasonable grounds for believing that a person in custody is unable, by reason of inadequate knowledge of the English language or any physical disability, to communicate orally with reasonable fluency in the English language, the investigating officer shall not ask the person any questions in connection with the investigation of a service offence unless:
  - (a) a person competent to act as interpreter is present and acts as interpreter during the questioning;
  - (b) the investigating officer questions the person in a language in which both the investigating officer and the person are able to communicate with reasonable fluency, or by any other

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means by which the investigating officer and the person are able to communicate with reasonable proficiency; or

- (c) the investigating officer has reasonable grounds for believing that it is necessary to question the person otherwise than in accordance with paragraph (a) or (b) without delay in order to avoid danger of the death of, or serious injury to, any person or serious damage to property.
- (7) The provisions of subsection (1) or (2) shall not be taken to be contravened by the taking of any action by an investigating officer in accordance with section 101L or by the taking of necessary custodial measures.

## **Division 3—Confessions**

### **101J Admissibility of confessional evidence**

- (1) Evidence of a confession made by a person in the presence of an investigating officer is not admissible in proceedings against the person for a service offence unless the service tribunal is satisfied that the confession was made voluntarily.
- (2) For the purposes of subsection (1), a confession that is obtained from a person in consequence of:
  - (a) the use of physical violence, or a threat of physical violence, to any person; or
  - (b) the making of a promise, threat or other inducement (not being physical violence or a threat of physical violence) likely to cause the person to make a confession that is untrue;shall be deemed not to be made voluntarily.

### **101JA Tape recording of confessions and admissions**

- (1) If a person who is being interviewed as a suspect (whether under arrest or not) makes a confession or admission to a police member, the confession or admission is inadmissible as evidence against the person in proceedings for a service offence unless:
  - (a) if the confession or admission was made in circumstances where it was reasonably practicable to tape record the confession or admission—the questioning of the person and anything said by the person during that questioning was tape recorded; or
  - (b) in any other case:
    - (i) at the time of the interview of the person or as soon as practicable afterwards, a record in writing was made, either in English or in another language used by the person in the interview, of the things said by or to the person in the course of the interview; and
    - (ii) as soon as practicable after the record was made, it was read to the person in the language used by him or her in the interview and a copy of the record was made available to the person; and

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- (iii) the person was given the opportunity to interrupt the reading at any time for the purpose of drawing attention to any error or omission that he or she claimed had been made in or from the record and, at the end of the reading, the person was given the opportunity to state whether he or she claimed that there were any errors in or omissions from the record in addition to any to which he or she had drawn attention in the course of the reading; and
  - (iv) a tape recording was made of the reading referred to in subparagraph (ii) and of everything said by or to the person as a result of compliance with subparagraph (iii), and the requirements of subsection (2) were observed in respect of that recording; and
  - (v) before the reading referred to in subparagraph (ii), an explanation, in accordance with the form set out in subsection (6), was given to the person of the procedure that would be followed for the purposes of compliance with that subparagraph and subparagraphs (iii) and (iv).
- (2) If the questioning, confession or admission, or the confirmation of a confession or admission, of a person is recorded as required under this section, the police member concerned must, without charge:
- (a) if the recording is a sound recording only or a video recording only—make the recording or a copy of it available to the person or his or her legal representative within 7 days after the making of the recording; and
  - (b) if both a sound recording and a video recording were made—make the sound recording or a copy of it available to the person or his or her legal representative within 7 days after the making of the recording, and notify the person or his or her legal representative that an opportunity will be provided, on request, for viewing the video recording; and
  - (c) if a transcript of the tape recording is prepared—make a copy of the transcript available to the person or his or her legal representative within 7 days after the preparation of the transcript.
- (3) In proceedings for a service offence, evidence to which this section applies may be admitted even if the requirements of this section have not been complied with, or there is insufficient evidence of
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compliance with those requirements, if, having regard to the nature of and the reasons for the non-compliance or insufficiency of evidence and any other relevant matters, the service tribunal is satisfied that, in the special circumstances of the case, admission of the evidence would not be contrary to the interests of justice.

- (4) In proceedings for a service offence, evidence to which this section applies may be admitted even if a provision of subsection (2) has not been complied with if, having regard to the reasons for the non-compliance and any other relevant matters, the service tribunal is satisfied that it was not practicable to comply with that provision.
- (5) If proceedings are before a military jury and the Military Judge permits evidence to be given under subsection (3) or (4), the Judge must:
- (a) inform the members of the military jury of:
    - (i) the non-compliance with the requirements of this section; or
    - (ii) the absence of sufficient evidence of compliance with the requirements of this section; and
  - (b) give the members such warning about the evidence as he or she thinks appropriate in the circumstances.
- (6) The explanation referred to in subparagraph (1)(b)(v) is to be in accordance with the following form:

When you were interviewed by [*name of police member*], a written record was made of what you said, and what was said to you, in the interview. The record was made \*at the time of the interview \*as soon as practicable after the interview. It is in \*English \*the language you used at the interview. You will be given a copy.

I am now going to read it to you in [*language*], the language you used in the interview.

You have the right to interrupt the reading at any time if you think there is something wrong with the record. At the end of the reading, you have the right to tell me about anything else you think is wrong with the record, as well as the things you mentioned during the reading.

A tape recording will be made of the reading of the record and of everything you say, and everything said to you, during the reading and at the end. You will be given a copy of that

tape recording and, if a transcript is made, a copy of that transcript.

\*Delete whichever is not applicable.

### **101K Admissibility of oral confessions**

- (1) Subject to subsection (10), in proceedings against a person (in this section referred to as the *accused*) before a service tribunal in respect of a serious service offence, evidence by an investigating officer who is not a police member of a confession made by the accused in his or her presence, after the proclaimed date, is not admissible on behalf of the prosecution unless the requirements of subsection (2), (3) or (4) are complied with in respect of the interview during which the confession is alleged to have been made.
- (2) This subsection is complied with in respect of an interview:
  - (a) if 2 sound recordings of everything said by and to the accused during the interview are made by the one multiple sound recording apparatus; or
  - (b) where a multiple sound recording apparatus is not available at the place of interview for use by the investigating officer conducting the interview—if one sound recording of everything said by and to the accused during the interview is made by a sound recording apparatus and a copy of the sound recording is made as soon as practicable thereafter;and the requirements of subsections (5) and (6) are observed in respect of the sound recordings.
- (3) This subsection is complied with in respect of an interview if, at the time of the interview or as soon as practicable thereafter, a record in writing is made, either in English or in another language used by the accused during the interview, of everything said by and to the accused during the interview and:
  - (a) the record, with or without alteration, is acknowledged, in writing in the prescribed manner, by the accused to be a full and correct record and a copy of the record as so acknowledged is given to him or her; and
  - (b) if the language used by the accused during the interview is a language other than English but the record is made in English—the record is read to the accused, in the language

used by the accused during the interview, before he or she so acknowledges it.

- (4) This subsection is complied with in respect of an interview if:
- (a) at the time of the interview or as soon as practicable thereafter, a record in writing is made, either in English or in another language used by the accused during the interview, of everything said by and to the accused during the interview;
  - (b) as soon as practicable after the record is made, the record is read to the accused in the language used by the accused during the interview and a copy of the record is given to the accused;
  - (c) the accused is given the opportunity to interrupt the reading at any time for the purpose of drawing attention to any error or omission that the accused claims has been made in or from the record and, at the end of the reading, the accused is given the opportunity of stating whether the accused claims that there are any errors in or omissions from the record, in addition to any to which the accused has drawn attention during the reading;
  - (d) either:
    - (i) 2 sound recordings are made by the one multiple sound recording apparatus of the reading referred to in paragraph (b) and of everything said by and to the accused as a result of compliance with paragraph (c) and the requirements of subsections (5) and (6) are observed in respect of the sound recordings; or
    - (ii) an appropriate witness is present when the requirements of paragraphs (b) and (c) are complied with and:
      - (A) a record in writing is made of everything said by and to the accused as a result of compliance with paragraph (c) while it is being said or as soon as practicable thereafter; and
      - (B) the appropriate witness signs a certificate in the prescribed form certifying that paragraphs (b) and (c) were complied with in his or her presence and that the record is a full and correct record; and
  - (e) before conducting the reading referred to in paragraph (b), an explanation, in accordance with the prescribed form, is given to the accused of the procedure that will be followed for the
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purpose of compliance with that paragraph and paragraphs (c) and (d).

- (5) Where 2 sound recordings are made as referred to in paragraph (2)(a) or subparagraph (4)(d)(i), the investigating officer in charge of the making of the sound recordings shall:
- (a) hand one of the sound recordings to the accused;
  - (b) inform the accused that the other sound recording will be retained by the Defence Force and may be used in evidence; and
  - (c) advise the accused to make arrangements for the safe-keeping of the sound recording handed to him or her so that it will be available for comparison with the sound recording retained by the Defence Force and, if requested to do so by the accused, afford the accused an opportunity of making arrangements for the safe-keeping of the sound recording on his or her behalf.
- (6) Where a sound recording has been handed to a person in accordance with subsection (5), the investigating officer in charge of the investigation shall, upon request, provide, as soon as practicable, reasonable facilities to the accused or the accused's legal practitioner to enable the sound recording to be reproduced in sound.
- (7) For the purposes of subsection (1), the requirements of subsection (4) shall be taken to be complied with in respect of an interview if, where the explanation referred to in paragraph (4)(e) is given to the accused after paragraph (4)(a) has been complied with in respect of the interview, the actions of the accused prevent the following of the procedure that would, but for this subsection, be required to be followed for the purposes of compliance with paragraphs (4)(b), (c) and (d).
- (8) In proceedings against a person before a service tribunal, the burden of satisfying the service tribunal that, in relation to evidence to which this section applies, the requirements of this section have been complied with lies on the prosecution.
- (9) Subject to the power of a service tribunal to exclude evidence:
- (a) on the ground of unfairness to the accused;
  - (b) on the ground that it is evidence of a confession not shown to have been made voluntarily; or

- (c) otherwise in the interests of justice;  
the prosecution is not prevented from leading evidence of a confession by reason only of anything said by the accused, during, or at the end of, the reading to the accused of a record in writing containing the confession, concerning the accuracy of the record, but, in proceedings before a military jury, this subsection does not prevent the Military Judge from giving directions to the members of the jury about the weight to be accorded to the statement as evidence.
- (10) A service tribunal may admit evidence of a confession notwithstanding that the requirements of this section have not been complied with, or that there is insufficient evidence of compliance with those requirements, if, having regard to the nature of, and the reasons for, the non-compliance or insufficiency of evidence and any other relevant matters, the service tribunal is satisfied that, in the special circumstances of the case, admission of the evidence would not be contrary to the interests of justice.
- (11) If proceedings are before a military jury and the Military Judge permits evidence to be given under subsection (10), the Judge must:
- (a) inform the members of the jury of:
    - (i) the non-compliance with the requirements of this section; or
    - (ii) the absence of sufficient evidence of compliance with the requirements of this section; and
  - (b) give the members such warning about the evidence as he or she thinks appropriate in the circumstances.
- (12) A reference in this section to a multiple sound recording apparatus is a reference to a sound recording apparatus:
- (a) capable of making 2 or more recordings of the same sound at the one time; or
  - (b) that, at the same time as, or immediately after, it makes one recording, automatically makes a copy of the recording.
- (13) A reference in this section to an interview includes a reference to any occasion on which anything is said by the accused in the presence of an investigating officer.

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- (14) A reference in subsection (4) to an appropriate witness is a reference to:
- (a) a person included in a prescribed class of persons;
  - (b) a legal practitioner advising the accused; or
  - (c) a relative or friend of the accused who is present at the reading referred to in paragraph (4)(b) at the request or with the approval of the accused.

## **Division 4—Other investigative action**

### **101L Fingerprints, photographs etc.**

- (1) An investigating officer who is an officer or warrant officer may take, or cause to be taken, prints of the hands, fingers, feet or toes, sound recordings of the voice, samples of the handwriting, or photographs, of a person who is in lawful custody in respect of a service offence if:
  - (a) the investigating officer believes on reasonable grounds that it is necessary to do so for the purpose of establishing who the person is or of identifying the person as the person who committed the service offence or of providing evidence of, or relating to, the service offence;
  - (b) the investigating officer believes on reasonable grounds that the person has committed another service offence and the prints, recordings, samples or photographs are to be taken for the purpose of identifying the person as the person who committed the other service offence or of providing evidence of, or relating to, the other service offence; or
  - (c) the investigating officer has the consent in writing of the person to do so.
- (2) Except as provided in subsection (1) or in accordance with an approval under subsection (4), or for the purposes of section 101K or subsection 101N(5), an investigating officer shall not:
  - (a) take, or cause to be taken, a print, recording, sample or photograph of a kind referred to in subsection (1) in respect of a person who is in custody in respect of a service offence; or
  - (b) require any other person to submit to the taking of any such print, recording, sample or photograph.
- (3) An investigating officer who is an officer or warrant officer may:
  - (a) make application to an authorized officer in person; or
  - (b) if it is impracticable for the investigating officer to make application to an authorized officer in person—make application to an authorized officer by telephone;

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for approval to take, or cause to be taken, prints of the hands, fingers, feet or toes, sound recordings of the voice, samples of the handwriting, or photographs, of:

- (c) a person who is in lawful custody in respect of a service offence; or
  - (d) a person against whom proceedings have been instituted under section 87 in respect of a service offence.
- (4) The authorized officer may, if he or she thinks it proper in all the circumstances, give his or her approval, in writing, to the taking of the prints, recordings, samples or photographs, as the case may be.
- (5) Where the application was made to the authorized officer by telephone, the authorized officer shall cause the instrument of approval to be forwarded to the applicant.
- (6) An investigating officer may use such reasonable force as may be necessary in acting in accordance with subsection (1) or in pursuance of an approval of an authorized officer under subsection (4).

**101M Identification by means of photographs**

- (1) Where a suspect in relation to a relevant act in relation to a service offence is in custody, an investigating officer investigating the service offence shall not show a photograph of a person, or a series of photographs of persons, to a witness to the relevant act for the purpose of ascertaining, or obtaining evidence of, the identity of a relevant person in relation to the relevant act unless:
- (a) the suspect has refused to take part in an identification parade; or
  - (b) the holding of an identification parade would be:
    - (i) unfair to the suspect; or
    - (ii) impracticable in all the circumstances.
- (2) Where an investigating officer investigating a service offence shows a photograph of a person, or a series of photographs of persons, to a witness to a relevant act in relation to the service offence for the purpose of ascertaining, or obtaining evidence of, the identity of a relevant person in relation to the relevant act, the investigating officer:



- (a) shall not, in doing so, act unfairly towards a suspect in relation to the relevant act or suggest to the witness that a particular photograph is the photograph of such a suspect or of a person who is being sought by the police or by the Defence Force in respect of a civil court offence, an overseas offence or a service offence;
  - (b) shall keep, or cause to be kept, a record identifying each photograph or series of photographs that is shown to the witness; and
  - (c) shall, upon application by a suspect in relation to the relevant act:
    - (i) provide the suspect with a copy of the record so kept; and
    - (ii) afford the suspect a reasonable opportunity to inspect each photograph or series of photographs shown to the witness.
- (3) Where a suspect in relation to a relevant act in relation to a service offence is in custody, an investigating officer investigating the service offence shall not show a picture of the kind known as an *Identikit* picture or a picture of a similar kind, or a series of pictures of the kind known as an *Identikit* picture or a series of pictures of a similar kind, to a witness to the relevant act for the purpose of assisting the witness to describe the features of a relevant person in relation to the relevant act.
- (4) Nothing in subsection (3) precludes an investigating officer from obtaining the assistance of a witness to a relevant act in relation to a service offence in the preparation of a picture of the kind known as an *Identikit* picture or a picture of a similar kind.
- (5) Where, after an investigating officer investigating a service offence has shown a witness to a relevant act in relation to the service offence a picture or series of pictures for the purpose of assisting the witness to describe the features of a relevant person in relation to the relevant act, a suspect in relation to the relevant act comes into custody, the investigating officer in charge of investigating the service offence shall, unless it is impracticable to do so, cause the witness to attend an identification parade in relation to the suspect.
- (6) Where, after a witness to a relevant act in relation to a service offence has been shown a picture or series of pictures for the

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purpose of assisting the witness to describe the features of a relevant person in relation to the relevant act, a person is charged with the service offence, the investigating officer in charge of investigating the service offence shall, upon application by the person, provide the person with particulars of the picture or series of pictures that was shown to the witness and the comments (if any) of the witness concerning the picture or series of pictures.

- (7) Where a suspect in relation to a relevant act in relation to a service offence is in custody and an investigating officer investigating the service offence believes on reasonable grounds that a person who is not in custody is a relevant person in relation to the relevant act:
- (a) subsection (1) shall not be taken to prevent an investigating officer from showing a photograph of a person, or a series of photographs of persons, to a witness to the relevant act for the purpose of ascertaining, or obtaining evidence of, the identity of the other person; and
  - (b) subsection (3) shall not be taken to prevent an investigating officer from showing a picture of the kind known as an *Identikit* picture or a picture of a similar kind, or a series of pictures of the kind known as an *Identikit* picture or a series of pictures of a similar kind, to a witness to the relevant act for the purpose of assisting the witness to describe the features of a relevant person in relation to the relevant act (other than the suspect).

**101N Identification parades**

- (1) An investigating officer investigating a service offence shall not cause or permit an identification parade to be held for the purpose of ascertaining whether a witness to a relevant act in relation to the service offence can identify a suspect in relation to the relevant act as a relevant person in relation to the relevant act unless the suspect has agreed to the holding of the parade and has been informed by an investigating officer in writing in a language in which the suspect is reasonably fluent and, if practicable, orally in such a language:
- (a) that the suspect is entitled to refuse to agree to the holding of the parade;
  - (b) that, if the suspect does not agree to the holding of the parade and take part in the parade, evidence may be given, in any

- proceedings with respect to the service offence, of any identification of the suspect by the witness as a result of:
- (i) having seen a photograph or series of photographs; or
  - (ii) having seen the suspect otherwise than during an identification parade;
- (c) that, if the suspect does take part in the identification parade, evidence may be given, in any proceedings with respect to the service offence:
- (i) of any identification made by the witness;
  - (ii) of any doubts expressed by the witness, during or immediately following the holding of the parade; and
  - (iii) of any unfairness in the conducting of the parade; and
- (d) that the suspect may have present, during the holding of the parade, a legal practitioner or other person of his or her choice if arrangements can be made for the legal practitioner or other person to be present within a reasonable time.
- (2) Where the investigating officer informs the suspect as provided in subsection (1), the investigating officer shall ask the suspect to sign an acknowledgment, in accordance with the prescribed form, of the fact that the suspect has been so informed and of the date on which, and the time at which, the suspect was so informed.
- (3) Where it is necessary, in proceedings with respect to a service offence, for a service tribunal to determine whether an investigating officer has informed a person as provided in subsection (1) and an acknowledgment of the kind referred to in subsection (2), signed by the person, is not produced in evidence, the service tribunal shall presume, unless the contrary is proved, that the person was not so informed.
- (4) Where an identification parade is held in relation to a suspect in relation to a relevant act in relation to a service offence, for the purpose of ascertaining whether a witness to the relevant act can identify the suspect as a relevant person in relation to the relevant act, the investigating officer responsible for conducting the parade:
- (a) shall arrange and conduct the parade in such a manner as will not unfairly prejudice the suspect; and
  - (b) shall, as far as the investigating officer is able to do so, ensure that nothing in the arranging and conducting of the parade, or in what happens during the conducting of the

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parade, suggests, or is likely to suggest, to the witness which of the persons included in the parade is the suspect.

- (5) The investigating officer responsible for conducting the identification parade shall:
- (a) cause:
    - (i) at least one photograph, if practicable in colour, to be taken of the identification parade while it is being conducted; or
    - (ii) a videotape recording of the parade to be taken; and
  - (b) cause to be recorded particulars of:
    - (i) what happens during the parade (including particulars of any words spoken by the witness and of any doubts expressed, and any gestures made, by the witness); and
    - (ii) the name, address and occupation of each person (other than the suspect) who is included in the parade and consents to the recording of those particulars.
- (6) The suspect is entitled, upon request to the investigating officer responsible for conducting the identification parade, to be provided with:
- (a) if a photograph of the identification parade has been taken in pursuance of paragraph (5)(a)—a copy of the photograph;
  - (b) if a videotape recording of the identification parade has been taken in pursuance of paragraph (5)(a)—reasonable facilities to enable the videotape recording to be reproduced in images and, if practicable, sound; and
  - (c) a copy of the record made in pursuance of subparagraph (5)(b)(i).

**101P Searches of arrested persons**

- (1) An investigating officer may, upon lawfully taking a person into custody in respect of a service offence, search the person, the clothing the person is wearing and any property under his or her immediate control if the investigating officer believes on reasonable grounds that it is necessary to do so:
- (a) for the purpose of ascertaining whether there is concealed on the person, in his or her clothing or in that property a weapon or other thing capable of being used to:
    - (i) inflict death or bodily injury; or

- (ii) assist the person to escape from custody; or
  - (b) for the purpose of preventing the concealment, loss or destruction of evidence of, or relating to, the service offence.
- (2) Subsection (1) does not authorize the investigating officer to remove, or to require the person to remove, any clothing that the person is wearing.
- (3) The investigating officer may seize:
  - (a) any weapon or other thing of a kind referred to in paragraph (1)(a); or
  - (b) any thing that the investigating officer has reasonable grounds to believe is a thing:
    - (i) with respect to which a service offence has been committed;
    - (ii) that will afford evidence of the commission of a service offence; or
    - (iii) that was used, or is intended to be used, for the purpose of committing a service offence;being a weapon or thing found in the course of the search.
- (4) Nothing in this section shall be taken to affect the operation of section 95A or 178A.

#### **101Q Medical examinations**

- (1) An investigating officer may arrange for a medical practitioner to examine a person in lawful custody in respect of a service offence for the purpose of securing evidence of, or relating to, the service offence if, and only if, the investigating officer believes on reasonable grounds that the examination is likely to provide such evidence and:
  - (a) the person has given his or her consent in writing; or
  - (b) an authorized officer has, under subsection (4), approved the examination.
- (2) An investigating officer may arrange for a medical practitioner to take a specimen from a person in lawful custody in respect of a service offence for the purpose of having the specimen analysed or otherwise examined if, and only if, the investigating officer believes on reasonable grounds that analysis or other examination

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of the specimen is likely to provide evidence of, or relating to, the service offence and:

- (a) the person has given his or her consent in writing; or
  - (b) an authorized officer has, under subsection (4), approved the taking of the specimen.
- (3) An investigating officer may:
- (a) make application to an authorized officer in person; or
  - (b) if it is impracticable for the investigating officer to make application to an authorized officer in person—make application to an authorized officer by telephone;
- for an approval for the purpose of subsection (1) or (2).
- (4) The authorized officer may, if he or she is satisfied that the investigating officer has reasonable grounds for the belief referred to in subsection (1) or (2), whichever is applicable, give his or her approval by instrument in writing.
- (4A) The authority conferred by subsection (4) on an authorised officer only extends to the giving of approval in respect of a medical examination of a kind, or the taking of a specimen, that is reasonably necessary for the purpose of obtaining evidence relating to the presence or absence of a narcotic substance in the blood or urine of a person.
- (4B) In subsection (4A), *narcotic substance* has the same meaning as in the *Customs Act 1901*.
- (4C) In considering whether to give approval under subsection (4), an authorised officer may take into account the physical health of the person to whom the application for approval relates.
- (5) Where the application was made to the authorized officer by telephone, the authorized officer shall cause the instrument of approval to be forwarded to the investigating officer.
- (6) Before arranging for a medical practitioner to examine a person in lawful custody or to take a specimen from such a person, an investigating officer shall inquire whether the person wishes to have a medical practitioner of the person's choice present during the examination or the taking of the specimen, as the case may be, and, if the person states that the person does so wish, shall:

- (a) provide reasonable facilities to enable the person to arrange for a medical practitioner of the person's choice to be so present; and
  - (b) unless it would be impracticable to do so—arrange for the examination to be made or the specimen to be taken, as the case may be, at a time when the medical practitioner chosen by the person can be present.
- (7) Subsection (6) does not apply in relation to a person in custody in respect of a service offence where an investigating officer believes on reasonable grounds that, if the examination of the person or the taking of a specimen from the person, as the case requires, is delayed until a time when a medical practitioner chosen by the person can be present, evidence of, or relating to, the service offence may be lost or destroyed or may otherwise disappear.
- (8) An investigating officer may use such reasonable force as is necessary to take a person to a medical practitioner for the purpose of an examination of the person in accordance with subsection (1) or the taking of a specimen from the person in accordance with subsection (2), as the case requires.
- (9) Where, in accordance with this section, a medical practitioner examines a person in lawful custody in respect of a service offence or takes a specimen from such a person and:
  - (a) no proceedings in respect of the service offence, or a related service offence, are instituted against the person:
    - (i) within a period of 12 months after the examination is made or the specimen is taken, as the case may be; or
    - (ii) if that period is extended under subsection (10)—within that period as from time to time so extended; or
  - (b) proceedings in respect of the service offence, or a related service offence, are instituted within that period, but a service tribunal acquits the person of a charge of the service offence, or a related service offence, or dismisses such a charge;the person having the custody of the report of the examination or the report of the analysis or other examination of the specimen, as the case may be, and any investigating officer having the custody of a copy of such a report, shall cause it to be destroyed.
- (10) An authorized officer may, upon application by a person having the custody of the report of an examination by a medical

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practitioner of a person in lawful custody in respect of a service offence, or of the report of an analysis or other examination of a specimen taken from such a person, or by an investigating officer having the custody of a copy of such a report, and upon being satisfied, by information on oath or affirmation, that there are special reasons for doing so, extend, in respect of the examination or the analysis or other examination of the specimen, as the case may be, the period referred to in subparagraph (9)(a)(i), or that period as previously extended under this subsection.

- (11) Where a person in lawful custody in respect of a service offence is examined by a medical practitioner in accordance with subsection (1), or a specimen is taken from such a person in accordance with subsection (2), an investigating officer concerned in the investigation of the service offence, shall, upon application by the person, cause the person to be provided with a copy of the report of the medical practitioner in respect of the examination or the report of the analysis or other examination of the specimen, as the case may be.
- (12) Where a medical practitioner makes an examination of a person, or takes a specimen from a person, in pursuance of arrangements duly made, or purporting to be duly made, by an investigating officer under this section, proceedings do not lie against the medical practitioner, or against any other person acting under his or her direction or otherwise assisting him or her, in respect of anything reasonably done in good faith by the medical practitioner or by the other person for the purpose of making the examination or taking the specimen, as the case may be.
- (13) Nothing in this section:
  - (a) prevents a medical practitioner from examining, or taking a specimen from, a person at the request of the person or for the purpose of treating the person for illness or an injury; or
  - (b) affects the power of a service tribunal to exclude evidence obtained through unreasonable force or inhuman treatment.
- (14) In this section, *specimen*, in relation to a person, includes a sample of, or taken from, the body of the person.
- (15) In the application of this section to a person who is in custody at a place outside Australia, a reference to a medical practitioner



includes a reference to a person who is registered or licensed as a medical practitioner under:

- (a) a law of that place; or
- (b) a law of a prescribed place;

being a law that provides for the registration or licensing of medical practitioners.

**101QA Offence of refusing to submit to medical examination etc.**

(1) If:

- (a) a person is in lawful custody in respect of a service offence; and
- (b) an investigating officer has arranged for a medical practitioner to examine the person for the purpose of securing evidence of, or relating to, the service offence; and
- (c) either:
  - (i) the person has given his or her consent in writing to the examination; or
  - (ii) an authorised officer has, under subsection 101Q(4), approved the examination; and
- (d) the investigating officer has informed the person that refusal or failure by him or her to submit to the examination will constitute an offence; and
- (e) after having been so informed, the person refuses or fails to submit to the examination;

the person is guilty of an offence for which the maximum punishment is imprisonment for 6 months.

(1A) It is a defence to a charge under subsection (1) if the person proves that he or she had a reasonable excuse for refusing or failing to submit to the examination.

Note: The defendant bears a legal burden in relation to the matter in subsection (1A). See section 13.4 of the *Criminal Code*.

(2) If:

- (a) a person is in lawful custody in respect of a service offence; and
- (b) an investigating officer has arranged for a medical practitioner to take a specimen from the person; and

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- (c) the officer believes on reasonable grounds that analysis or other examination of the specimen is likely to provide evidence of, or relating to, the service offence; and
  - (d) either:
    - (i) the person has given his or her consent in writing to the taking of the specimen; or
    - (ii) an authorised officer has, under subsection 101Q(4), approved the taking of the specimen; and
  - (e) the investigating officer has informed the person that refusal or failure by him or her:
    - (i) to submit to the taking of the specimen; or
    - (ii) to do any act reasonably necessary to enable the specimen to be taken;will constitute an offence; and
  - (f) after being so informed, the person:
    - (i) refuses or fails to submit to the taking of the specimen; or
    - (ii) refuses or fails to do an act reasonably necessary to enable the specimen to be taken;the person is guilty of an offence for which the maximum punishment is imprisonment for 6 months.
- (2A) It is a defence to a charge under subsection (2) if the person proves that he or she had a reasonable excuse for refusing or failing to do the act mentioned in subparagraph (2)(f)(i) or (ii).
- Note: The defendant bears a legal burden in relation to the matter in subsection (2A). See section 13.4 of the *Criminal Code*.
- (3) It is a reasonable excuse for the purposes of subsection (1A) or (2A) that a person has a medical condition that may be aggravated by the conduct of the medical examination or the taking of the specimen, as the case requires.
  - (4) Nothing in this section renders a person guilty of an offence for refusing to submit to a medical examination or the taking of a specimen to the extent that the person proves that the examination or the taking of the specimen, as the case may be, was not reasonably necessary for the purpose of obtaining evidence relating to the presence or absence of a narcotic substance in the blood or urine of a person.

Note: The defendant bears a legal burden in relation to the matter in subsection (4). See section 13.4 of the *Criminal Code*.

- (5) In subsection (4), *narcotic substance* has the same meaning as in the *Customs Act 1901*.

### **101R Application of Division**

This Division shall not be taken to prohibit an investigating officer from taking investigative action of a kind not referred to in this Division where the taking of that action is not inconsistent with a provision of this Division.

## **Division 5—Rights of persons charged with service offences**

### **101S Persons to be cautioned**

Immediately after a person in custody is charged with a service offence, the investigating officer in charge of investigating the service offence shall caution the person, or cause the person to be cautioned, in a language in which the person is reasonably fluent, in writing, and also, if practicable, orally, that the person is not obliged to, but may if the person wishes to do so, answer any questions, or do any thing, asked of the person by an investigating officer and that anything said or done by the person may be used in evidence.

### **101T Questioning of persons charged with service offences**

- (1) An investigating officer shall not, after a person is charged with, or summoned in respect of, a service offence, ask the person any question in relation to the service offence other than:
  - (a) a question with respect to an ambiguity in an answer previously made by the person to a question asked of the person by an investigating officer, being a question asked before the person was charged with, or summoned in respect of, the service offence or duly asked in accordance with this section after the person was so charged;
  - (b) a question with respect to an ambiguity in a statement made by the person, whether before or after the person was charged with, or summoned in respect of, the service offence; or
  - (c) a question necessary to assist the investigating officer in dealing with an emergency.
- (2) Subsection (1) shall not be taken to prevent an investigating officer from asking a person who has been charged with, or summoned in respect of, a service offence, whether the person wishes to make a statement with respect to any information or other evidence of, or relating to, the service offence, that, at the time when the person was so charged or summoned, was not in the possession of any investigating officer concerned in the investigation of the offence, but nothing in this subsection shall be taken to permit an

investigating officer to ask such a person any further question other than a question with respect to an ambiguity in a statement referred to in this subsection.

- (3) Immediately before an investigating officer asks a person who has been charged with, or summoned in respect of, a service offence any questions relating to the service offence, the investigating officer shall give the person a caution of the kind referred to in section 101S or draw the attention of the person to the caution previously given to the person in accordance with that section, as the case requires.
- (4) Where a person who has been charged with, or summoned in respect of, a service offence voluntarily proposes to make, or commences to make, a statement to an investigating officer in relation to the service offence (including a statement of the kind referred to in subsection (2)), the investigating officer shall caution the person in a language in which the person is reasonably fluent, in writing, and also, if practicable, orally, before the person commences to make the statement or, if it is not practicable to do so, as soon as practicable after the person commences to make the statement, that the person is not obliged to, but may if the person wishes, make a statement and that the statement may be used in evidence.

#### **101U Persons charged with same service offence**

- (1) Where, after 2 or more persons have been charged with the same service offence, one of those persons furnishes to an investigating officer a written statement in relation to the service offence, not being a statement made jointly with the other person or all the other persons, as the case may be, charged with the service offence, the investigating officer to whom the statement is furnished may cause a copy of the statement to be furnished to the other person or each of the other persons, as the case may be, charged with the service offence who did not join in making the statement, but shall not, subject to subsection (2), read the statement to the other person or any of those other persons, as the case may be, or invite, either orally or otherwise, the other person or any of those other persons, as the case may be, to comment on the statement.

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- (2) Where a person to whom a copy of a statement is furnished in accordance with subsection (1) is unable for any reason to read the copy of the statement, the investigating officer shall:
- (a) in a case where the person is not reasonably fluent in the language in which the statement is written—cause the statement to be translated into a language in which the person is reasonably fluent and cause a copy of the translation to be furnished to the person and, if the person is unable to read the copy of the translation and the person consents, read the copy of the translation, or cause the copy of the translation to be read, to the person; or
  - (b) in any other case—if the person consents, read the copy of the statement, or cause the copy of the statement to be read, to the person.
- (3) Where a person to whom a copy of a statement is furnished in accordance with subsection (1) voluntarily proposes to make, or commences to make, a statement to an investigating officer in relation to the relevant service offence by way of comment on the first-mentioned statement, the investigating officer shall caution the person in a language in which the person is reasonably fluent, in writing, and also, if practicable, orally, before the person commences to make the statement or, if it is not practicable to do so, as soon as practicable after the person commences to make the statement, that the person is not obliged to, but may if the person wishes, make a statement and that the statement may be used in evidence.
- (4) A reference in this section to a written statement includes a reference to a record in writing of an interview, being an interview in respect of which subsection 101K(3) has been complied with.

## **Division 6—Search and seizure**

### **101V Interpretation**

- (1) For the purposes of this Division, a thing is connected with a particular service offence if it is:
  - (a) a thing with respect to which the service offence has been committed;
  - (b) a thing that will afford evidence of the commission of the service offence; or
  - (c) a thing that was used, or is intended to be used, for the purpose of committing the service offence.
- (2) A reference in a provision of this Division other than subsection 101W(3) to land or premises is a reference to service land or premises on service land (other than land or premises in Australia occupied by, or comprising, married quarters), as the case requires.
- (3) A reference in a provision of this Division other than subsection 101W(3) to a ship, aircraft or vehicle is a reference to:
  - (a) a service ship, service aircraft or service vehicle, as the case requires; or
  - (b) a ship, aircraft or vehicle, as the case requires, on service land.

### **101W Search and seizure**

- (1) An investigating officer may search a defence member or defence civilian, or clothing being worn by, or property under the immediate control of, a defence member or defence civilian, and may seize any thing found in the course of the search that the investigating officer believes on reasonable grounds to be connected with a service offence if, and only if, the search and seizure is made by the investigating officer:
  - (a) in pursuance of a search warrant issued under section 101X or 101Y;
  - (b) in accordance with section 101P or 101Z; or
  - (c) after obtaining, in accordance with section 101ZA, the consent of the defence member or defence civilian, as the case may be, to the search.

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- (2) An investigating officer may enter upon land, or upon or into premises or a ship, aircraft or vehicle, and may search the land, premises, ship, aircraft or vehicle and may seize any thing found in the course of the search that the investigating officer believes on reasonable grounds to be connected with a service offence if, and only if, the entry, search and seizure is made by the investigating officer:
- (a) in pursuance of a search warrant issued under section 101X or 101Y;
  - (b) in accordance with section 101Z; or
  - (c) after obtaining, in accordance with section 101ZA, the consent of the occupier of the land or premises or of the person in charge of the ship, aircraft or vehicle, as the case may be, to the entry.
- (3) An investigating officer may:
- (a) enter upon land, not being land referred to in subsection (2), or upon or into premises or a ship, aircraft or vehicle, not being premises or a ship, aircraft or vehicle referred to in subsection (2);
  - (b) search the land, premises, ship, aircraft or vehicle; and
  - (c) seize any thing found in the course of the search that the investigating officer believes on reasonable grounds to be connected with a service offence;
- if, and only if, the entry, search and seizure are made by the investigating officer after obtaining, in accordance with section 101ZA, the consent of the occupier of the land or premises or of the person in charge of the ship, aircraft or vehicle, as the case may be, to the entry.

**101X Search warrants**

- (1) Where an information on oath or affirmation is laid before an authorized officer alleging that there are reasonable grounds for suspecting that a thing of a particular kind connected with a particular service offence may be found on a defence member or defence civilian, or in clothing being worn by, or property under the immediate control of, a defence member or defence civilian, and the information sets out those grounds, the authorized officer may issue a search warrant authorizing an investigating officer



named in the warrant, with such assistance as he or she thinks necessary and if necessary by force:

- (a) to search the defence member or defence civilian, as the case may be, and clothing being worn by, and property under the immediate control of, the defence member or defence civilian, as the case may be, for things of that kind; and
  - (b) to seize any thing of that kind found in the course of the search that he or she believes on reasonable grounds to be connected with the service offence.
- (2) Where an information on oath or affirmation is laid before an authorized officer alleging that there are reasonable grounds for suspecting that there may be, at that time or within the next following 24 hours, upon any land or upon or in any premises, ship, aircraft or vehicle, a thing of a particular kind connected with a particular service offence, and the information sets out those grounds, the authorized officer may issue a search warrant authorizing an investigating officer named in the warrant, with such assistance as he or she thinks necessary and if necessary by force:
- (a) to enter upon the land or upon or into the premises, ship, aircraft or vehicle, as the case may be;
  - (b) to search the land, premises, ship, aircraft or vehicle, as the case may be, for things of that kind; and
  - (c) to seize any thing of that kind found in the course of the search that he or she believes on reasonable grounds to be connected with the service offence.
- (3) An authorized officer shall not issue a warrant under subsection (1) or (2) unless:
- (a) the informant or some other person has given to the authorized officer, either orally or by affidavit, such further information (if any) as the authorized officer requires concerning the grounds on which the issue of the warrant is being sought; and
  - (b) the authorized officer is satisfied that there are reasonable grounds for issuing the warrant.
- (4) There shall be stated in a warrant issued under this section:
- (a) in the case of a warrant issued under subsection (1):

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- (i) a statement of the purpose for which the warrant is issued, which shall include a reference to the nature of the service offence in relation to which the search is authorized;
    - (ii) a description of the kind of things authorized to be seized; and
    - (iii) a date, not being later than one month after the day on which the warrant is issued, upon which the warrant ceases to have effect; and
  - (b) in the case of a warrant issued under subsection (2):
    - (i) a statement of the purpose for which the warrant is issued, which shall include a reference to the nature of the service offence in relation to which the entry and search are authorized;
    - (ii) whether entry is authorized to be made at any time of the day or night or only during specified hours of the day or night;
    - (iii) a description of the kind of things authorized to be seized; and
    - (iv) a date, not being later than one month after the day on which the warrant is issued, upon which the warrant ceases to have effect.
- (5) Where:
- (a) in the course of searching, in accordance with a warrant issued under this section or section 101Y, for things connected with a particular service offence, being things of a kind specified in the warrant, an investigating officer finds:
    - (i) any thing that he or she believes on reasonable grounds to be connected with the service offence, although not of the kind specified in the warrant; or
    - (ii) any thing that he or she believes on reasonable grounds to be connected with another service offence; and
  - (b) the investigating officer believes on reasonable grounds that it is necessary to seize that thing in order to:
    - (i) prevent its concealment, loss or destruction; or
    - (ii) its use in committing, continuing or repeating a service offence;
- the warrant shall be deemed to authorize the investigating officer to seize that thing.

- (6) An investigating officer acting in accordance with a warrant issued under subsection (1) may:
  - (a) require a person to remove any clothing that the person is wearing; and
  - (b) if the person refuses or fails to comply with the requirement—remove the clothing.
- (7) A person shall not be searched by, or in the presence of, a person who is not of the same sex as the first-mentioned person.

### **101Y Search warrants may be granted by telephone**

- (1) Where, by reason of circumstances of urgency, an investigating officer considers it necessary to do so, the investigating officer may make application to an authorized officer, by telephone, for a search warrant.
- (2) Before making the application, the investigating officer shall prepare an information of the kind referred to in subsection 101X(1) or (2), as the case requires, being an information that sets out the grounds on which the issue of the warrant is being sought, but may, if it is necessary to do so, make the application before the information has been sworn or affirmed.
- (3) Where, upon application under subsection (1), an authorized officer is satisfied, after having:
  - (a) considered the terms of the information prepared in accordance with subsection (2); and
  - (b) had given to him or her such further information (if any) as he or she requires concerning the grounds on which the issue of the warrant is being sought;that there are reasonable grounds for issuing the warrant, the authorized officer shall complete and sign a search warrant of such a kind as he or she would have issued under section 101X if the application had been made in accordance with that section.
- (4) Where an authorized officer signs a warrant under subsection (3):
  - (a) the authorized officer shall:
    - (i) inform the investigating officer of:
      - (A) the terms of the warrant; and
      - (B) the date on which, and the time at which, it was signed; and

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- (ii) record on the warrant his or her reasons for granting the warrant; and
- (b) the investigating officer shall:
  - (i) complete a form of warrant in the terms furnished to him or her by the authorized officer; and
  - (ii) write on the form of warrant:
    - (A) the name of the authorized officer; and
    - (B) the date on which, and the time at which, the warrant was signed.
- (5) Where an investigating officer completes a form of warrant in accordance with paragraph (4)(b), the investigating officer shall, not later than the day next following the date of expiry of the warrant, send to the authorized officer who signed the warrant the form of warrant and the information duly sworn or affirmed by him or her in connection with the issue of the warrant.
- (6) Upon receipt of the form of warrant and information, the authorized officer shall attach to them the warrant.
- (7) A form of warrant duly completed by an investigating officer in accordance with paragraph (4)(b) is, if it is in the terms of the warrant signed by the authorized officer, authority for any search, seizure or entry that the warrant so signed authorizes.
- (8) Where it is material, in any action or proceeding, for a civil court or service tribunal to be satisfied that a search, seizure or entry was authorized by this section, and a warrant signed by an authorized officer in accordance with this section authorizing the search, seizure or entry is not produced in evidence, the civil court or service tribunal, as the case may be, shall presume, unless the contrary is proved, that the search, seizure or entry was not authorized by such a warrant.

**101Z Searches in emergencies**

- (1) An investigating officer may:
  - (a) search a defence member or defence civilian, or clothing being worn by, or property under the immediate control of, a defence member or defence civilian, whom the investigating officer believes on reasonable grounds to be carrying anything connected with a service offence; or

- (b) enter upon land, or upon or into premises or a ship, aircraft or vehicle, on or in which the investigating officer believes on reasonable grounds that any thing connected with a service offence is situated and search the land, premises, ship, aircraft or vehicle, as the case may be;
- and may seize any such thing found in the course of the search if:
- (c) the investigating officer believes on reasonable grounds that it is necessary to do so in order to:
    - (i) prevent its concealment, loss or destruction; or
    - (ii) prevent its use in committing, continuing or repeating a service offence; and
  - (d) the search or entry and search, as the case may be, is made in circumstances of such seriousness and urgency as to require and justify immediate search or entry and search, as the case may be, without the authority of a warrant issued under section 101X or 101Y.
- (2) Where an investigating officer believes on reasonable grounds that a defence member or defence civilian is, without lawful authority or reasonable excuse, carrying an offensive weapon, or any thing connected with a serious service offence, the investigating officer may:
- (a) stop the defence member or defence civilian;
  - (b) search the defence member or defence civilian, and the clothing being worn by, and property under the immediate control of, the defence member or defence civilian, as the case may be; and
  - (c) seize any such weapon or thing found in the course of the search.
- (3) Where an investigating officer believes on reasonable grounds that an offensive weapon, or any thing connected with a serious service offence, is in a ship, aircraft or vehicle, the investigating officer may:
- (a) stop the ship, aircraft or vehicle;
  - (b) enter upon or into the ship, aircraft or vehicle;
  - (c) search the ship, aircraft or vehicle; and
  - (d) seize any such weapon or thing found in the course of the search.

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- (4) An investigating officer conducting a search in accordance with paragraph (1)(a) may:
  - (a) require a person to remove any clothing that the person is wearing; and
  - (b) if the person refuses or fails to comply with the requirement—remove the clothing.
- (5) A person shall not be searched by, or in the presence of, a person who is not of the same sex as the first-mentioned person.
- (6) In subsections (2) and (3), *offensive weapon* means any thing:
  - (a) made or adapted for use for causing death or bodily injury; or
  - (b) intended by the person having it for such use.

**101ZA Consent to search**

- (1) Before obtaining the consent of a person for the purposes of section 101W, an investigating officer shall inform the person that the person may refuse to give his or her consent.
- (2) An investigating officer who obtains the consent of a person for the purposes of section 101W shall ask the person to sign an acknowledgement, in accordance with the prescribed form:
  - (a) of the fact that the person has been informed that the person may refuse to give his or her consent;
  - (b) of the fact that the person has voluntarily given his or her consent; and
  - (c) of the date on which, and the time at which, the person gave his or her consent.
- (3) A search or entry and search, as the case requires, by an investigating officer by virtue of the consent of a person is not lawful unless the person concerned voluntarily consented to the search or entry and search, as the case may be.
- (4) Where it is material, in any action or proceeding, for a civil court or service tribunal to be satisfied of the voluntary consent of a person for the purposes of section 101W and an acknowledgment of the kind referred to in subsection (2) signed by the person is not produced in evidence, the civil court or service tribunal, as the case may be, shall presume, unless the contrary is proved, that the person did not give such a voluntary consent.

## **Division 6A—Referral of serious service offences**

### **101ZAA Provost Marshal may refer serious service offence to Director of Military Prosecutions**

If a person is charged with a serious service offence, the Provost Marshal Australian Defence Force may, at the completion of the investigation of the offence and if he or she considers it appropriate to do so, refer the charge of the offence to the Director of Military Prosecutions.

## **Division 7—Exclusion of evidence**

### **101ZB Exclusion of evidence illegally obtained**

- (1) Where, in proceedings before a service tribunal in respect of a service offence, upon objection being taken to the admission of evidence on the ground that the evidence was obtained in contravention of, or in consequence of a contravention of, a provision of this Part, the service tribunal is satisfied, on the balance of probabilities but having regard to any provision of this Act or the regulations relating to proof of particular matters, that the evidence was so obtained, the service tribunal must not admit the evidence unless the service tribunal is of the opinion that:
  - (a) admission of the evidence would substantially benefit the public interest in the administration of justice; and
  - (b) this benefit would outweigh any prejudice to the rights and freedoms of any person, including the accused person, that has occurred, or is likely to occur, as a result of the contravention or the admission of the evidence.
- (2) The matters that the service tribunal may have regard to in deciding whether to admit the evidence include:
  - (a) the seriousness of the service offence, the urgency and difficulty of detecting the offender and the need to preserve evidence of the facts;
  - (b) the nature and seriousness of the contravention;
  - (c) the effect that admission of the evidence in the particular circumstances of the case is likely to have on the operation of the provisions of this Part;
  - (d) the effect (if any) of the contravention on the cogency of the evidence so obtained; and
  - (e) the extent to which the evidence might have been obtainable lawfully.
- (3) This section is in addition to, and not in substitution for, any other law or rule under which a service tribunal may refuse to admit evidence.
- (4) Subsection (3) shall not be taken to authorize a service tribunal, in proceedings in respect of a service offence, to refuse to admit a



statement in evidence on the ground that an investigating officer contravened the rules known as the Judge's Rules.

- (5) Nothing in this section derogates from the application of section 101J or 101K.

## **Division 8—Application of Part**

### **101ZC Application of Part**

Nothing in this Part shall be taken to limit or restrict, by implication:

- (a) any action that may be taken, in accordance with any other law of the Commonwealth or the law of a State or Territory, for a purpose not connected with the investigation of a service offence; or
- (b) any action that a constable, or any other person who is not an investigating officer, may take, in accordance with any other law of the Commonwealth or the law of a State or Territory, for the purpose of investigating a service offence.

## **Part VII—Service tribunals**

### **Division 1—Director of Military Prosecutions**

#### **103 Courses open to Director of Military Prosecutions**

- (1) Where a charge is referred to the Director of Military Prosecutions under section 101ZAA, subsection 105A(2), paragraph 109(b) or 110(1)(d), subsection 129(2) or 130(5), section 131A or subsection 141(8), 145(1) or (3) or 194(7), the Director of Military Prosecutions may:
- (a) direct that the charge be not proceeded with;
  - (b) if the charge is a charge that is within the jurisdiction of a superior summary authority or a commanding officer to try (other than a charge referred under subsection 145(1) or (3))—refer the charge to the superior summary authority or the commanding officer for trial;
  - (c) request the Registrar to refer the charge to the Australian Military Court for trial.

Note: See also paragraph 87(1)(c) for additional powers that may be exercised by the Director of Military Prosecutions in relation to a charge.

- (2) If, under the *Defence Force Discipline Appeals Act 1955*, the Defence Force Discipline Appeal Tribunal or the Federal Court of Australia orders a new trial of a person, the Director of Military Prosecutions may request the Registrar to refer the charge to the Australian Military Court for trial.
- (2A) If, under section 165, the Australian Military Court orders a new trial of a person, the Director of Military Prosecutions may request the Registrar to refer the charge that was the subject of the proceedings to which the appeal relates to the Australian Military Court for a new trial.
- (3) Nothing in subsection (2) or (2A) requires the Director of Military Prosecutions to proceed with a new trial of a person unless the Director of Military Prosecutions is satisfied that there is sufficient cogent evidence to justify a new trial of the person.
- (4) If under subsection 111C(1) or 131AA(1):

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- (a) an accused person elects to be tried by the Australian Military Court; and
  - (b) the summary authority refers the charge to the Director of Military Prosecutions;
- the Director of Military Prosecutions may:
- (c) direct that the charge be not proceeded with; or
  - (d) request the Registrar to refer the charge to the Australian Military Court for trial.

**103A Director of Military Prosecutions may decide that class 3 offence is to be tried by Military Judge alone**

- (1) This section applies in relation to a charge of a class 3 offence if:
  - (a) the charge is to be tried by the Australian Military Court; and
  - (b) the charge is not to be tried together with a charge of a class 1 offence or a class 2 offence.
- (2) The Director of Military Prosecutions may, if he or she considers it appropriate in the circumstances, decide that the charge is to be tried by a Military Judge alone.
  - Note 1: If 2 or more charges of class 3 offences against an accused person are being dealt with together, the Director of Military Prosecutions may make a decision under subsection (2) in relation to any or all of the charges.
  - Note 2: If 2 or more accused persons are being dealt with together in respect of one or more charges of a class 3 offence, the Director of Military Prosecutions may make a decision under subsection (2) in relation to any or all of the charges against any or all of the accused persons.
  - Note 3: The maximum punishment that may be imposed on a person who is convicted of a class 3 offence that is tried by a Military Judge alone, because of a decision by the Director of Military Prosecutions under subsection (2), is imprisonment for a period of 6 months: see clause 2 of Schedule 2.
- (3) If the Director of Military Prosecutions makes a decision under subsection (2), he or she must inform the Registrar of this decision.

## **Division 2—Summary authorities**

### **104 Interpretation**

In this Division, *prescribed offence* means:

- (a) an offence against section 61 in relation to which the relevant Territory offence is:
  - (i) treason, murder, manslaughter or bigamy; or
  - (ii) an offence against section 51, 52, 53, 54 or 55 of the *Crimes Act 1900* of the Australian Capital Territory, in its application to the Jervis Bay Territory, as amended or affected by Ordinances in force in that Territory; or
  - (iii) an offence prescribed for the purposes of this subparagraph; or
  - (iv) an ancillary Territory offence in relation to a Territory offence referred to in subparagraph (i), (ii) or (iii); or
- (b) a service offence prescribed for the purposes of this paragraph; or
- (c) a service offence that is an ancillary offence in relation to an offence referred to in paragraph (b).

### **105 Appointment of certain summary authorities**

- (1) The Chief of the Defence Force or a service chief may, by instrument in writing, appoint an officer, or each officer included in a class of officers, to be a superior summary authority.
- (2) A commanding officer may, by instrument in writing, appoint an officer, or each officer included in a class of officers, to be a subordinate summary authority.

### **105A Referral of charge to Director of Military Prosecutions before dealing with charge under section 109, 110 or 111**

- (1) This section applies if:
  - (a) a person has been charged with a service offence; and
  - (b) the charge has not yet been dealt with under section 109, 110 or 111.

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- (2) The person's commanding officer, or a superior officer in relation to the person's commanding officer, may refer the charge to the Director of Military Prosecutions.
- (3) Subject to paragraph 103(1)(b), if a charge is referred to the Director of Military Prosecutions under this section, the charge must not be dealt with under section 109, 110 or 111.

Note: Under paragraph 103(1)(b), the Director of Military Prosecutions may refer a charge that is referred to him or her under this section to a superior summary authority or a commanding officer for trial.

**106 Jurisdiction of superior summary authority**

A superior summary authority has jurisdiction to try a charge against:

- (a) an officer who is 2 or more ranks junior to him or her, being an officer of or below the rank of rear admiral, major-general or air vice-marshal; or
  - (b) a warrant officer; or
  - (c) a person who is not a member of the Defence Force;
- in respect of a service offence that is not a prescribed offence.

Note: A superior summary authority may be disqualified from trying a charge against a person because of subsection 108A(1).

**107 Jurisdiction of commanding officer**

- (1) A commanding officer has jurisdiction to deal with any charge against any person.
- (2) A commanding officer has jurisdiction to try a charge against:
  - (a) a member of the Defence Force who is 2 or more ranks junior to him or her, being a member of or below the naval rank of lieutenant, the military rank of captain or the rank of flight lieutenant; or
  - (b) a person who is not a member of the Defence Force;in respect of a service offence that is not a prescribed offence.

Note: A commanding officer may be disqualified from trying a charge against a person because of subsection 108A(1).

### **108 Jurisdiction of subordinate summary authority**

(1) A subordinate summary authority has jurisdiction to deal with a charge against a member of the Defence Force who is not an officer in respect of a service offence of a kind notified, in writing, to the authority by the commanding officer who appointed him or her.

(1A) A subordinate summary authority has jurisdiction to deal with a charge against a prescribed officer in respect of a service offence of a kind notified, in writing, to the authority by the commanding officer who appointed him or her.

(2) A subordinate summary authority has jurisdiction to try a charge against a member of the Defence Force of, or below, the rank of leading seaman or corporal in respect of a service offence (other than a prescribed offence) of a kind notified, in writing, to the authority by the commanding officer who appointed him or her.

Note: A subordinate summary authority may be disqualified from trying a charge against a person because of subsection 108A(1).

(3) A subordinate summary authority has jurisdiction to try a charge against a prescribed officer in respect of a service offence (other than a prescribed offence) of a kind notified, in writing, to the authority by the commanding officer who appointed him or her.

Note: A subordinate summary authority may be disqualified from trying a charge against a person because of subsection 108A(1).

(4) In this section, ***prescribed officer*** means an officer who is:  
(a) included in a prescribed class of officers; and  
(b) receiving instruction or training.

### **108A Disqualification of summary authority from trying a charge**

(1) A summary authority must not try a charge of a service offence against a person if the summary authority was involved in:

- (a) the investigation of the offence; or
- (b) the issuing of a warrant for the arrest of the person; or
- (c) charging the person with the offence.

(2) If a summary authority is not permitted to try a charge of a service offence against a person because of subsection (1), the summary

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authority must refer the charge to another summary authority, being a summary authority who:

- (a) has jurisdiction to try the charge; and
- (b) is not prevented from trying the charge because of subsection (1).

**109 Dealing with a charge by superior summary authority**

A superior summary authority to whom a charge is referred by a commanding officer under paragraph 110(1)(c) may:

- (a) make a decision to try the charge under section 106; or
- (b) refer the charge to the Director of Military Prosecutions.

**110 Dealing with a charge by commanding officer**

- (1) In dealing with a charge, a commanding officer may:
  - (a) where the charge is within his or her jurisdiction to try under subsection 107(2)—make a decision to try the charge under that subsection;
  - (b) where the charge is not within his or her jurisdiction to try under subsection 107(2) and he or she is of the opinion that there is insufficient evidence to support the charge—direct that the charge be not proceeded with;
  - (c) where the charge is within the jurisdiction of a superior summary authority to try under section 106—refer the charge to a superior summary authority;
  - (d) refer the charge to the Director of Military Prosecutions; or
  - (e) where it is desirable in the interests of justice or for any other reason—refer the charge to be dealt with by another commanding officer.
- (2) A commanding officer may refer a charge under paragraph (1)(c) or (d) whether or not the charge is within his or her jurisdiction to try under subsection 107(2).

**111 Dealing with charge by subordinate summary authority**

- (1) Unless a commanding officer otherwise directs in a particular case or in relation to a class of cases in which the particular case is included, a charge of a service offence that a subordinate summary authority has jurisdiction to deal with under subsection 108(1) or



(1A) shall be dealt with by that authority in accordance with subsection (2).

- (2) In dealing with a charge, a subordinate summary authority may:
- (a) where the charge is within his or her jurisdiction to try under subsection 108(2) or (3)—make a decision to try the charge under subsection 108(2) or (3), as the case requires;
  - (b) where the charge is not within his or her jurisdiction to try under subsection 108(2) or (3) and he or she is of the opinion that there is insufficient evidence to support the charge—direct that the charge be not proceeded with; or
  - (c) whether or not the charge is within his or her jurisdiction to try under subsection 108(2) or (3)—refer the charge to the commanding officer of the authority or to another subordinate summary authority.

### **111A Proceedings by way of dealing with a charge**

- (1) A summary authority may, if he or she thinks it desirable to do so, hear evidence in relation to a charge for the purpose of determining, under section 109, 110 or 111, the manner in which the charge is to be dealt with, but, if he or she does so, nothing in this subsection precludes him or her from trying the charge.

Note: A summary authority is not bound by the rules of evidence and may hear any evidence that it considers to be of assistance and relevance in proceedings for the purpose referred to in this subsection: see section 146A.

- (2) The regulations may make provision for and in relation to the admissibility, in proceedings before a service tribunal (including proceedings by way of trying a charge), of evidence adduced in proceedings before a summary authority for the purpose referred to in subsection (1).

### **111B Accused person may elect to be tried by the Australian Military Court—election before commencement of trial**

- (1) At the commencement of dealing with a charge against an accused person, the summary authority must give the person an opportunity to elect, in accordance with section 111C, to have the charge tried by the Australian Military Court.

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- Note 1: If the summary authority is dealing with an accused person in respect of 2 or more charges (the *linked charges*) that arise from the same facts or circumstances, and the accused person makes an election to have one or more of the linked charges tried by the Australian Military Court, the summary authority must refer that charge or those charges and, unless the Director of Military Prosecutions agrees otherwise, any other linked charge to the Director of Military Prosecutions: see subsection 111C(3).
- Note 2: If the summary authority is dealing with 2 or more accused persons together, the summary authority must give each accused person an opportunity to make an election in accordance with section 111C.
- Note 3: If a charge is tried by the Australian Military Court because of an election under subsection 111C(1), the charge will be tried by a Military Judge alone: see subsection 132AB(2A).

- (2) Subsection (1) does not apply in relation to:
- (a) a charge of a prescribed offence; or
  - (b) a charge of any other service offence that:
    - (i) arises from the same facts and circumstances as a prescribed offence; and
    - (ii) is being dealt with together with that offence; or
  - (c) a charge of a Schedule 1A offence (other than a Schedule 1A offence covered by paragraph (b)), unless the accused person is:
    - (i) an officer of or below the rank of rear admiral but above the rank of lieutenant commander; or
    - (ii) an officer of or below the rank of major-general but above the rank of major; or
    - (iii) an officer of or below the rank of air vice-marshal but above the rank of squadron leader.
- (3) The accused person must be given an opportunity to obtain legal advice in relation to the election if a legal officer is reasonably available to give such advice.

**111C Decision by accused person whether to elect to be tried by the Australian Military Court—decision before commencement of trial**

*When election decision must be made*

- (1) If, under section 111B, a summary authority gives an accused person an opportunity to elect to have a charge tried by the

Australian Military Court, the accused person must decide whether or not to make the election:

- (a) within 24 hours after the opportunity to make the election is given; or
  - (b) if the exigencies of service do not permit the person to make the decision within that time—within such longer period (not exceeding 14 days) as the summary authority allows.
- (2) The summary authority must ensure that a decision under subsection (1) is recorded in writing.

*Decision to elect to have charge tried by the Australian Military Court*

- (3) If the accused person elects to have the charge tried by the Australian Military Court, the summary authority must:
- (a) refer the charge (the **first charge**) to the Director of Military Prosecutions; and
  - (b) unless the Director of Military Prosecutions agrees otherwise, refer any other charge (including a charge in respect of a Schedule 1A offence) against the accused person that is linked to the first charge, and that is being dealt with together with the first charge, to the Director of Military Prosecutions; and
  - (c) inform the Registrar that the charge or charges have been referred to the Director of Military Prosecutions.
- (4) For the purposes of paragraph (3)(b), a charge (the **first charge**) against a person is linked to another charge against the person if the first charge and the other charge arise from the same facts or circumstances.

*Decision not to elect to have charge tried by the Australian Military Court*

- (5) If:
- (a) the accused person:
    - (i) does not elect to have the charge tried by the Australian Military Court; or
    - (ii) does not make a decision within the time allowed under subsection (1); and

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(b) the charge is not referred to the Director of Military Prosecutions under paragraph (3)(b);  
the summary authority must deal with the charge.

*Withdrawal of election*

- (6) An accused person who has elected to have a charge tried by the Australian Military Court may withdraw the election at any time before a date is fixed for hearing by the Court.
- (7) If an accused person withdraws an election to have a charge tried by the Australian Military Court:
- (a) the Director of Military Prosecutions must inform the Registrar; and
  - (b) the Director of Military Prosecutions must refer the charge, and any other charge referred to the Director of Military Prosecutions under paragraph (3)(b), to a summary authority; and
  - (c) the summary authority must deal with the charge or charges.

### **112 Discontinuance**

Where a summary authority, after commencing to deal with a charge:

- (a) refers the charge under paragraph 110(1)(c) or (e) or 111(2)(c) or subsection 141(9) to another summary authority;
- (b) is unable to conclude the hearing of the charge because of death, illness, transfer or other circumstances; or
- (c) considers that it would not be in the interests of justice to continue;

a summary authority who subsequently deals with the charge shall deal with the charge afresh.

### **113 Powers of officer in command of detachment**

- (1) Subject to such limitations and restrictions as are determined, in writing, by the Chief of the Defence Force or a service chief or by an authorized officer, in relation to a specified detachment or a detachment included in a specified class of detachments, an officer in command of a detachment has, and may exercise, in relation to a member of the detachment, the powers under this Part of a commanding officer.

- (2) In this section, ***detachment*** means an organized body of members of the Defence Force that is declared by an authorized officer, by instrument in writing, to be a detachment for the purposes of this section, and includes an organized body of members of the Defence Force that is so separated from the unit of the Defence Force to which it belongs that the commanding officer of the unit could not effectively exercise disciplinary powers with respect to that body of members.

## **Division 3—Australian Military Court**

### **114 Creation of the Australian Military Court**

- (1) A court, to be known as the Australian Military Court, is created by this Act.

Note 1: The Australian Military Court is not a court for the purposes of Chapter III of the Constitution.

Note 2: The Australian Military Court is a service tribunal for the purposes of this Act: see the definition of *service tribunal* in subsection 3(1).

- (1A) The Australian Military Court is a court of record.
- (2) The Australian Military Court consists of:
- (a) the Chief Military Judge; and
  - (b) such other Military Judges as from time to time hold office in accordance with this Act.

### **115 Jurisdiction**

- (1) Subject to section 63, the Australian Military Court has jurisdiction to try any charge against any person.
- (2) However, the Australian Military Court does not have jurisdiction to try a charge of a custodial offence.
- (3) The Australian Military Court has jurisdiction to hear and determine appeals from decisions of summary authorities (including a decision relating to a charge of a custodial offence).

Note: Part IX deals with appeals to the Australian Military Court.

### **116 Exercise of jurisdiction**

- (1) For the purposes of the exercise of the jurisdiction of the Australian Military Court (including the Court's jurisdiction to hear and determine appeals from decisions of summary authorities), the Court is to be constituted by a single Military Judge.
- (2) The Australian Military Court constituted by a Military Judge may sit and exercise the jurisdiction of the Court even if the Court

constituted by another Military Judge is at the same time sitting and exercising the jurisdiction of the Court.

### **117 Venue**

- (1) The Australian Military Court may sit at any place in or outside Australia.
- (2) The Australian Military Court may, at any stage of proceedings in the Court, order that:
  - (a) the proceedings; or
  - (b) a part of the proceedings;be conducted or continued at a place specified in the order, subject to such conditions (if any) as the Court imposes.

### **118 Referral of cases to the Australian Military Court and nomination of Military Judges**

#### *Referral of charges*

- (1) The Registrar must refer a charge to the Australian Military Court if the Director of Military Prosecutions requests the Registrar to do so.

#### *Nomination of Military Judge to try charge or hear appeal*

- (2) The Chief Military Judge must nominate the Military Judge who is:
  - (a) to try a charge referred to the Australian Military Court; or
  - (b) to hear and determine an appeal to the Australian Military Court.

### **119 Seal of the Australian Military Court**

- (1) The Australian Military Court is to have a seal, and the design of the seal is to be determined in writing by the Minister.
- (2) The seal of the Australian Military Court must be kept in such custody as the Chief Military Judge directs.
- (3) The seal of the Australian Military Court must be affixed to documents as provided by this or any other Act or by the Australian Military Court Rules.

- (4) A determination made under subsection (1) is not a legislative instrument.

### **120 Stamp of the Australian Military Court**

- (1) There are to be one or more Australian Military Court stamps. For this purpose, an *Australian Military Court stamp* is a stamp the design of which is, as nearly as practicable, the same as the design of the seal of the Australian Military Court.
- (2) A document or a copy of a document marked with an Australian Military Court stamp is as valid and effectual as if it had been sealed with the seal of the Australian Military Court.
- (3) An Australian Military Court stamp must be affixed to documents as provided by this or any other Act or by the Australian Military Court Rules.

### **121 Staff of the Australian Military Court**

The staff necessary to assist the Australian Military Court are to be the following:

- (a) defence members made available for the purpose by the appropriate service chief;
- (b) persons engaged under the *Public Service Act 1999* and made available for the purpose by the Secretary of the Department.



## **Division 4—Military jury**

### **122 Constitution of a military jury**

- (1) A military jury must comprise:
  - (a) for a trial of one or more charges if at least one of the charges is of a class 1 offence—12 members; or
  - (b) for any other trial—6 members.
- (2) At least one member of the jury must hold a rank that is not lower than the naval rank of commander or the rank of lieutenant-colonel or wing commander.
- (3) The requirements of subsection (2) apply only if, and to the extent that, the exigencies of service permit.

### **123 Eligibility to be a member of a military jury**

#### *Eligibility where accused is an officer or a defence civilian*

- (1) Where the accused person is an officer or a defence civilian, a person is eligible to be a member, or a reserve member, of a military jury for the trial of the accused person if:
  - (a) the person is an officer; and
  - (b) the person has been an officer for a continuous period of not less than 3 years or for periods that total no less than 3 years; and
  - (c) if the accused person is an officer—the person holds a rank that is not lower than the rank held by the accused person.

#### *Eligibility where accused is not an officer or a defence civilian*

- (2) Where the accused person is not an officer or a defence civilian, a person is eligible to be a member, or a reserve member, of a military jury for the trial of the accused person if:
  - (a) the person:
    - (i) is an officer; or
    - (ii) holds a rank not lower than the naval rank of warrant officer, the army rank of warrant officer class 1, or the air force rank of warrant officer; and

- (b) the person has been an officer, or held a rank not lower than warrant officer or warrant officer class 1, for a continuous period of not less than 3 years or for periods that total no less than 3 years.
- (3) The requirements of this section apply only if, and to the extent that, the exigencies of service permit.

**124 Determination of questions by a military jury**

- (1) In a trial of a charge of a service offence that is to be tried by Military Judge and military jury, the military jury is responsible for deciding the questions whether the accused person:
  - (a) is guilty or not guilty of the offence; and
  - (b) at the time of the act or omission the subject of the charge, was suffering from such unsoundness of mind as not to be responsible, in accordance with law, for that act or omission.
- (2) A decision of a military jury on the questions in subsection (1) is to be made by:
  - (a) unanimous agreement of the jury members; or
  - (b) if the conditions in subsection (3) are met—five-sixths majority agreement of the jury members.
- (3) The conditions are:
  - (a) the jury has deliberated for at least 8 hours; and
  - (b) the jury does not have unanimous agreement after that time but does have five-sixths majority agreement; and
  - (c) the Australian Military Court is satisfied that:
    - (i) the period of time for deliberation is reasonable, having regard to the nature and complexity of the case; and
    - (ii) after examination on oath or affirmation of one or more of the jurors, it is unlikely that the jurors would reach unanimous agreement after further deliberation.
- (4) A military jury must sit without any other person present when deciding the questions in subsection (1).

## **Part VIII—Procedure of service tribunals**

### **Division 1—Trial by summary authority**

#### **129 Time within which trial must be commenced**

- (1) The trial of a charge of a service offence that is to be tried by a summary authority:
  - (a) must be commenced:
    - (i) as soon as practicable within the period of 3 months after the accused person is charged with the service offence; or
    - (ii) if the exigencies of service or other circumstances do not permit the trial to be commenced within this period—within a longer period as allowed by a superior authority; and
  - (b) must be completed as soon as practicable.
- (2) If a summary authority that is to try a charge does not commence the trial within the period allowed under paragraph (1)(a), the summary authority must refer the charge to the Director of Military Prosecutions.

#### **130 Trial by summary authority**

- (1) A summary authority shall try a charge in accordance with the following provisions:
  - (a) if the accused person is present at the hearing:
    - (i) the authority, before hearing any evidence on the charge, must ask the accused person whether he or she pleads guilty or not guilty to the charge; and
    - (ii) if the accused person pleads guilty and the authority is satisfied that the accused person understands the effect of that plea—the authority must, subject to subsection 131(3), convict the accused person;
  - (aa) if:
    - (i) the accused person has pleaded guilty to the charge in writing; and

- (ii) the authority has made an order under subsection 139(4) (permitting the accused person not to be present at the hearing);  
the authority must convict the accused person;
  - (b) if the accused person pleads not guilty or the authority is not satisfied that the accused person, in pleading guilty, understands the effect of that plea, the authority shall record a plea of not guilty and proceed to hear the evidence on the charge;
  - (c) if the authority, after hearing the evidence on the charge adduced by the prosecution, is of the opinion that that evidence is insufficient to support the charge, the authority shall dismiss the charge;
  - (d) if the authority, after hearing the evidence on the charge adduced by the prosecution, is of the opinion that that evidence is sufficient to support the charge, the authority shall proceed with the trial;
  - (e) if the authority finds that the charge is not proved, the authority shall dismiss the charge;
  - (f) if the authority finds the charge proved, the authority shall convict the accused person;
  - (g) if the authority convicts the accused person, the authority shall take action under Part IV in relation to the convicted person.
- (2) Where the accused person:
- (a) refuses to plead; or
  - (b) does not plead intelligibly;
- the summary authority shall record a plea of not guilty and proceed accordingly in accordance with subsection (1).
- (3) Where an accused person who has pleaded not guilty withdraws his or her plea and pleads guilty, the summary authority shall, if it is satisfied that the accused person understands the effect of that plea, substitute a plea of guilty for the plea of not guilty and proceed accordingly in accordance with subsection (1).
- (3A) Nothing in subsection (1) shall be taken to require the summary authority, in trying a charge in accordance with that subsection, to form either an opinion of the kind referred to in paragraph (1)(c) or an opinion of the kind referred to in paragraph (1)(d) unless:
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- (a) the accused person has submitted that the summary authority should form an opinion of the first-mentioned kind; or
  - (b) the interests of justice require that the summary authority should form an opinion of the first-mentioned kind.
- (4) A summary authority, before taking action under paragraph (1)(g), shall hear evidence relevant to the determination of what action should be taken.
- (5) A summary authority trying a charge may, at any stage of the trial, refer the charge to the Director of Military Prosecutions if the summary authority considers that it is desirable, in the interests of justice, that the charge be so referred.
- (6) Subsection (5) does not affect the operation of any other provision of this Act.

### **131 Accused person may elect to be tried by the Australian Military Court—election during trial**

- (1) This section applies to a trial by a superior summary authority, or a commanding officer, of a charge of a Schedule 1A offence (other than a custodial offence).
- (2) However, this section does not apply in relation to an accused person who is an officer referred to in paragraph 111B(2)(c).
- (3) If, during the trial, the summary authority considers:
- (a) that the evidence adduced by the prosecution is sufficient to support the charge; and
  - (b) that, if the accused person were convicted, it would be appropriate to impose an elective punishment on the person;
- the summary authority must, before making a finding in relation to the charge, give the accused person an opportunity to elect, in accordance with section 131AA, to have the charge tried by the Australian Military Court.

Note 1: If the summary authority considers that it would be appropriate to impose elective punishments in relation to 2 or more charges that are being tried together, the summary authority must give the accused person an opportunity to make an election in relation to each charge. If the accused person makes an election to have one or more of those charges tried by the Australian Military Court, the summary authority must refer that charge or those charges and, unless the Director of

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Military Prosecutions agrees otherwise, any other linked charge to the Director of Military Prosecutions: see subsection 131AA(3).

- Note 2: If the summary authority considers that it would be appropriate to impose, on 2 or more accused persons who are being tried together, elective punishments in relation to one or more charges, the summary authority must give each accused person an opportunity to make an election in relation to each of those charges.
- Note 3: If a charge is tried by the Australian Military Court because of an election under subsection 131AA(1), the charge will be tried by a Military Judge alone: see subsection 132AB(2A).
- Note 4: See section 67 and Schedule 3 (in particular, subclauses 1(3) and (4) and 2(2) and (3) of that Schedule) in relation to the punishments that a superior summary authority or a commanding officer may impose on a person convicted of a Schedule 1A offence.

- (4) The accused person must be given an opportunity to obtain legal advice in relation to the election if a legal officer is reasonably available to give such advice.

**131AA Decision by accused person whether to elect to be tried by the Australian Military Court—decision during trial**

*When election decision must be made*

- (1) If, under section 131, a summary authority gives an accused person an opportunity to elect to have a charge of a Schedule 1A offence tried by the Australian Military Court, the accused person must decide whether or not to make the election:
- (a) within 24 hours after the opportunity to make the election is given; or
  - (b) if the exigencies of service do not permit the person to make the decision within that time—within such longer period (not exceeding 14 days) as the summary authority allows.
- (2) The summary authority must ensure that a decision under subsection (1) is recorded in writing.

*Decision to elect to have charge tried by the Australian Military Court*

- (3) If the accused person elects to have the charge tried by the Australian Military Court, the summary authority must:
- (a) refer the charge (the *first charge*) to the Director of Military Prosecutions; and

- (b) unless the Director of Military Prosecutions agrees otherwise, refer any other charge against the accused person that is linked to the first charge, and that is being tried together with the first charge, to the Director of Military Prosecutions; and
  - (c) inform the Registrar that the charge or charges have been referred to the Director of Military Prosecutions.
- (4) For the purposes of paragraph (3)(b), a charge (the *first charge*) against a person is linked to another charge against the person if the first charge and the other charge arise from the same facts or circumstances.

*Decision not to elect to have charge tried by the Australian Military Court*

- (5) If:
- (a) the accused person:
    - (i) does not elect to have the charge tried by the Australian Military Court; or
    - (ii) does not make a decision within the time allowed under subsection (1); and
  - (b) the charge is not referred to the Director of Military Prosecutions under paragraph (3)(b);
- the summary authority must proceed with the trial of the charge.

*Withdrawal of election*

- (6) An accused person who has elected to have a charge tried by the Australian Military Court may withdraw the election at any time before a date is fixed for hearing by the Court.
- (7) If an accused person withdraws an election to have a charge tried by the Australian Military Court:
- (a) the Director of Military Prosecutions must inform the Registrar; and
  - (b) the Director of Military Prosecutions must refer the charge, and any other charge referred to the Director of Military Prosecutions under paragraph (3)(b), to the summary authority referred to in subsection 131(1); and
  - (c) the summary authority must proceed with the trial of the charge or charges.

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*Punishments that may be imposed by summary authority*

- (8) If:
- (a) under subsection (5) or (7), a summary authority proceeds with the trial of a charge of a Schedule 1A offence; and
  - (b) the summary authority convicts the accused person of the offence;
- the summary authority may impose an elective punishment on the convicted person in respect of the offence.

**131A Reference of charge to Director of Military Prosecutions**

Where on a trial of a charge a superior summary authority or commanding officer is of the opinion:

- (a) that the evidence adduced by the prosecution is sufficient to support the charge; and
- (b) that, in the event of his or her convicting the accused person, he or she would be precluded by a provision of this Act from taking such action under Part IV in relation to the accused person as he or she considers to be warranted by that evidence;

the superior summary authority or commanding officer, as the case may be, shall terminate the trial and refer the charge to the Director of Military Prosecutions.

**131B Conviction by summary authority to have effect for service purposes only**

- (1) If a person has been convicted by a summary authority of a service offence:
  - (a) the conviction has effect for service purposes only; and
  - (b) the person is not required to disclose to any person, for any purpose (other than a service purpose), the fact that the person was convicted of the offence.
- (2) This section applies to a conviction by a summary authority whether the conviction occurs before or after the commencement of this section.



## **Division 2—Trial by the Australian Military Court**

### **132 Application of Division**

This Division does not apply to an appeal to the Australian Military Court from a decision of a summary authority.

Note: Part IX deals with appeals to the Australian Military Court.

### **132A Trial of class 1 offences etc.**

- (1) This section applies to the trial of one or more charges if at least one of the charges is of a class 1 offence.
- (2) The trial is to be by a Military Judge and military jury.

### **132AA Trials of class 2 offences etc.**

- (1) This section applies to the trial of one or more charges if:
  - (a) at least one of the charges is of a class 2 offence; and
  - (b) none of the charges is of a class 1 offence.
- (2) The trial is to be by a Military Judge and military jury, unless:
  - (a) if one accused person only is to be tried—the accused person elects to have the charge, or (if 2 or more charges are to be tried together) all the charges, tried by a Military Judge alone; or
  - (b) if 2 or more accused persons are to be tried together—all the accused persons elect to have the charge, or (if 2 or more charges are to be tried together) all the charges, tried by a Military Judge alone.
- (3) If the accused person, or all the accused persons, make an election under subsection (2), the trial is to be by a Military Judge alone.

### **132AB Trials of class 3 offences**

- (1) This section applies to a charge of a class 3 offence, unless section 132A or 132AA applies to the charge.

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- (2) If the Director of Military Prosecutions has decided, under subsection 103A(2), that the charge is to be tried by a Military Judge alone, the charge is to be tried by a Military Judge alone.

Note: The maximum punishment that may be imposed on a person who is convicted of a class 3 offence that is tried by a Military Judge alone, because of a decision by the Director of Military Prosecutions under subsection 103A(2), is imprisonment for a period of 6 months: see clause 2 of Schedule 2.

- (2A) If the charge was referred to the Australian Military Court for trial because of an election by the accused person under subsection 111C(1) or 131AA(1), the charge is to be tried by a Military Judge alone.
- (3) If neither subsection (2) nor (2A) applies to the charge, the trial is to be by a Military Judge alone, unless:
- (a) if one accused person only is to be tried—the accused person elects to have the charge, or (if 2 or more charges are to be tried together) all the charges, tried by a Military Judge and military jury; or
  - (b) if 2 or more accused persons are to be tried together—any of the accused persons elects to have the charge, or (if 2 or more charges are to be tried together) all the charges, tried by a Military Judge and military jury.
- (4) If the accused person, or any of the accused persons, makes an election under subsection (3), the charge is to be tried by a Military Judge and military jury.

**132B Trial by Military Judge and military jury**

- (1) Subject to section 132E, the trial of a charge of a service offence that is to be tried by a Military Judge and military jury is to be in accordance with the following subsections.
- (2) Before evidence on the charge is heard, the Military Judge must ask the accused person whether he or she pleads guilty or not guilty to the charge.
- (3) If the accused person pleads guilty and the Military Judge is satisfied that the person understands the effect of that plea, the Military Judge must convict the person.
- (4) If:

- (a) the accused person pleads not guilty, refuses to plead or does not plead intelligibly; or
  - (b) the Military Judge is not satisfied that the accused person, in pleading guilty, understands the effect of that plea;
- the Military Judge must record a plea of not guilty and the Military Judge and the military jury must proceed to hear the evidence on the charge.
- (5) If the Military Judge, after hearing the evidence on the charge adduced by the prosecution, rules that that evidence is insufficient to support the charge, the Military Judge must dismiss the charge.
  - (6) If the Military Judge, after hearing the evidence on the charge adduced by the prosecution, rules that that evidence is sufficient to support the charge, the Military Judge and military jury must proceed with the trial.
  - (7) If the military jury finds the accused person not guilty, the Military Judge must acquit the person.
  - (8) If the military jury finds the accused person guilty, the Military Judge must convict the person.

### **132C Powers of the Military Judge in trial by Military Judge and military jury**

- (1) In the trial of a charge of a service offence that is to be tried by a Military Judge and military jury, the Military Judge must give any ruling, and exercise any discretion, that, in accordance with the law in force in the Jervis Bay Territory, would be given or exercised by a judge in a trial by jury.
- (2) If, in a trial by jury in the Jervis Bay Territory, the judge would, in accordance with the law in force in that Territory, sit in the absence of the jury for any purpose in connection with:
  - (a) the giving of a ruling; or
  - (b) the exercise of a discretion;the Military Judge must, for any purpose in connection with the giving of such a ruling, or the exercise of such a discretion, sit without the members of the military jury.

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- (3) A ruling given by the Military Judge in accordance with subsection (1) and a decision made by the Military Judge under subsection 141(5) or (6) is binding on the military jury.
- (4) The powers conferred on the Military Judge by this section are in addition to any other powers conferred on the Military Judge by any other provision of this Act, the regulations or the Australian Military Court Rules.

**132D Trial by Military Judge alone**

- (1) Subject to section 132E, the trial of a charge of a service offence that is to be tried by a Military Judge alone is to be in accordance with the following subsections.
- (2) Before evidence on the charge is heard, the Military Judge must ask the accused person whether he or she pleads guilty or not guilty to the charge.
- (3) If the accused person pleads guilty and the Military Judge is satisfied that the person understands the effect of that plea, the Military Judge must convict the person.
- (4) If:
  - (a) the accused person pleads not guilty, refuses to plead or does not plead intelligibly; or
  - (b) the Military Judge is not satisfied that the accused person, in pleading guilty, understands the effect of that plea;the Military Judge must record a plea of not guilty and proceed to hear the evidence on the charge.
- (5) If the Military Judge, after hearing the evidence on the charge adduced by the prosecution, rules that that evidence is insufficient to support the charge, the Military Judge must dismiss the charge.
- (6) If the Military Judge, after hearing the evidence on the charge adduced by the prosecution, rules that that evidence is sufficient to support the charge, the Military Judge must proceed with the trial.
- (7) If the Military Judge finds the accused person not guilty, the Military Judge must acquit the person.
- (8) If the Military Judge finds the accused person guilty, the Military Judge must convict the person.

**132E Additional matters about trials by Military Judge alone or with a military jury**

- (1) If, under subsection 132B(2) or 132D(2), an accused person pleads guilty to a service offence that is one (other than the first) of 2 or more charges stated in the charge sheet in the alternative, the Military Judge must:
  - (a) if the Director of Military Prosecutions notifies the Judge that he or she does not object to the acceptance of the plea—accept the plea and proceed in accordance with section 132B or 132D; or
  - (b) in any other case—record a plea of not guilty and proceed in accordance with section 132B or 132D.
- (2) If an accused person who has pleaded not guilty withdraws his or her plea and pleads guilty, the Military Judge must, if the Judge is satisfied that the person understands the effect of that plea, substitute a plea of guilty for the plea of not guilty and proceed in accordance with section 132B or 132D.
- (3) A Military Judge is not required to give a ruling of the kind referred to in subsection 132B(5) or 132D(5) unless:
  - (a) the accused person has submitted that the Judge should give the ruling; or
  - (b) the interests of justice require that the Judge should give the ruling.
- (4) A Military Judge is not required to give a ruling of the kind referred to in subsection 132B(6) or 132D(6).

**132F Australian Military Court to take action against convicted persons**

- (1) If an accused person is convicted under section 132B or 132D, the Australian Military Court must take action under Part IV in relation to the convicted person.
- (2) Before taking action, the Court must hear evidence relevant to determining what action should be taken.

### **136 Representatives of parties before Australian Military Court**

A person shall not represent a party before the Australian Military Court unless the person is:

- (a) where the trial is held in Australia—a member of the Defence Force or a legal practitioner; or
- (b) where the trial is held in a place outside Australia—a person referred to in paragraph (a) or a person qualified to practise before the courts of that place.

### **137 Representation of accused person before Australian Military Court**

- (1) The Chief of the Defence Force must if, and to the extent that, the exigencies of service permit, cause an accused person awaiting trial by the Australian Military Court to be afforded the opportunity to be represented at the trial, and to be advised before the trial, by a legal officer.
- (2) An accused person who is advised or represented in accordance with subsection (1) shall be so advised or represented without expense to the accused person.
- (3) Nothing in this section prevents the operation of any scheme of legal aid, advice or assistance under a law of the Commonwealth or of a State or Territory.
- (4) The Chief of the Defence Force may delegate his or her powers under subsection (1) to a member of the Defence Force who holds a rank that is not lower than the naval rank of captain, or the rank of colonel or group captain.

## **Division 3—General**

### **Subdivision A—General provisions relating to trials**

#### **137A Application of Subdivision**

This Subdivision does not apply to an appeal to the Australian Military Court from a decision of a summary authority.

Note: Part IX deals with appeals to the Australian Military Court.

#### **138 Procedural powers**

- (1) For the purposes of a proceeding before a service tribunal, the service tribunal may:
  - (a) take evidence on oath or affirmation; and
  - (b) adjourn a hearing from time to time and from place to place as appears to the tribunal to be necessary or expedient having regard to the administration of justice or the exigencies of service.
- (2) For the purposes of the hearing of a proceeding before a service tribunal, the appropriate authority may summon a person, in a manner provided for in the rules of procedure, to appear before the tribunal to give evidence and to produce such documents (if any) as are referred to in the summons.
- (3) For the purposes of the hearing of a proceeding before a service tribunal, a superior officer may order a defence member to appear before the tribunal to give evidence and to produce such documents (if any) as are referred to in the order.
- (4) A service tribunal:
  - (a) may require a person appearing before the tribunal to give evidence either to take an oath or to make an affirmation; and
  - (b) may administer, or cause to be administered, an oath or affirmation to a person so appearing before the tribunal.
- (5) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence given by the person will be true.

### **139 Accused person to be present at hearing**

*General rule*

- (1) Subject to subsections (2) and (5), a hearing before a service tribunal shall be held in the presence of the accused person.
- (2) If a service tribunal considers that, by reason of the disorderly behaviour of the accused person, it is impossible to continue the hearing in his or her presence, the tribunal may order that the accused person be removed from the place of hearing and be held in custody elsewhere.

*Exception—trial by summary authority*

- (3) If:
  - (a) a charge is to be tried by a summary authority; and
  - (b) because of exceptional circumstances, the accused person is unable to attend the hearing of the charge; and
  - (c) the accused person pleads guilty to the charge in writing before the hearing;the accused person may apply in writing to the summary authority for an order permitting the accused person not to be present at the hearing.
- (4) The summary authority may make an order permitting the accused person not to be present at the hearing if the authority:
  - (a) is satisfied that the accused person understands the effect of the plea; and
  - (b) considers that exceptional circumstances exist.
- (5) If the summary authority makes an order under subsection (4), the summary authority must proceed with the trial of the charge by considering, without holding a hearing, the documents or other material provided to the summary authority in relation to the charge.

### **140 Public hearings by the Australian Military Court**

- (1) The hearing of proceedings before the Australian Military Court must be in public.



- (2) However, the Court may, if it considers it necessary in the interests of the security or defence of Australia, the proper administration of justice or public morals:
- (a) order that some or all of the members of the public are to be excluded during the whole or a specified part of the proceedings; or
  - (b) order that no report of, or relating to, the whole or a specified part of the proceedings is to be published.
- (3) If proceedings before the Court are held in a secure place, then, subject to an order (if any) in force under subsection (2), the appropriate service chief must cause such steps to be taken as will permit the public to have reasonable access to the proceedings.
- (4) In subsection (3):
- secure place* means a place the entry to which is controlled by guards who are constables or members of the Defence Force.

#### **141 Applications and objections**

- (1) At any time before an accused person is asked to plead at a trial by a service tribunal, the accused person:
- (a) may do any one or more of the following:
    - (i) apply for an adjournment on the ground that he or she has not had an adequate opportunity to prepare his or her defence or to choose a person to represent or advise the accused person;
    - (ii) apply to secure the attendance of witnesses or additional witnesses on his or her behalf;
    - (iii) if he or she is charged with more than one service offence, apply for each charge to be heard separately;
    - (iv) if he or she is charged with one or more other persons, apply to be dealt with separately on the ground that he or she would otherwise be prejudiced in his or her defence;
    - (v) make such other applications as he or she considers relevant in connection with the trial; and
  - (b) may enter an objection to the charge on any ground, including any of the following grounds:

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- (i) that, by virtue of section 144, he or she is not liable to be tried by the service tribunal for the service offence with which he or she has been charged;
  - (ii) that the charge was made in contravention of section 96;
  - (iii) that he or she has, in the exercise of the royal prerogative of mercy, been pardoned for the service offence with which he or she has been charged or for a civil court offence that is substantially the same offence;
  - (iv) that the charge does not disclose a service offence or is otherwise wrong in law;
  - (v) that the service tribunal does not have jurisdiction;
  - (vi) in the case of a trial by a summary authority—that the summary authority is not permitted to try the charge because of subsection 108A(1).
- (2) At any time before a military jury is sworn or affirmed, the accused person may enter an objection to any member or reserve member of the military jury on the ground that the member:
- (a) is ineligible;
  - (b) is, or is likely to be, biased; or
  - (c) is likely to be thought, on reasonable grounds, to be biased.
- (4) At any time before an accused person is asked to plead at a trial by a service tribunal, the accused person may:
- (a) enter an objection to the service tribunal on the ground that the service tribunal is ineligible; or
  - (b) except in the case of a trial by a summary authority, enter an objection to the service tribunal on the ground that the service tribunal:
    - (i) is, or is likely to be, biased; or
    - (ii) is likely to be thought, on reasonable grounds, to be biased;
- but nothing in this subsection shall be taken, by implication, to authorize trial by a summary authority who:
- (c) is, or is likely to be, biased; or
  - (d) is likely to be thought, on reasonable grounds, to be biased.
- (4A) For the purposes of this section, a summary authority is not to be regarded:
- (a) as biased; or

- (b) as likely to be biased;  
in relation to the trial of an accused person merely because the summary authority is the commanding officer of the accused person.
- (4B) For the purposes of this section, the circumstance that a summary authority is the commanding officer of an accused person is not, without more, a reasonable ground for thinking that, in relation to the trial of the accused person, the summary authority is biased.
- (5) Where:
- (a) an accused person makes an application under paragraph (1)(a); and
  - (b) the service tribunal is satisfied that the interests of justice require that the application be granted;
- the service tribunal must grant the application.
- (6) Where:
- (a) an accused person enters an objection under paragraph (1)(b) or subsection (2) or (4); and
  - (b) the service tribunal is satisfied that the accused person has substantiated his or her objection;
- the service tribunal must allow the objection.
- (7) If an application or objection under subsection (1) or (2) is made and the trial is by a Military Judge and military jury, the Military Judge must sit without the members of the military jury for a hearing of that application or objection.
- (8) If the Australian Military Court grants an application or allows an objection under this section, the Court may refer the charge against the accused person to the Director of Military Prosecutions or the Registrar.
- (9) Where a summary authority grants an application, or allows an objection, under this section, the summary authority may refer the charge against the accused person to another summary authority.

### **141A Amendment of charges**

- (1) Where it appears to:
- (a) a summary authority, before dealing with or trying a charge or at any stage of dealing with or trying a charge;

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- (b) the Director of Military Prosecutions, at any stage when a charge is before him or her under section 103;
  - (c) the Australian Military Court, before trying a charge or at any stage of trying a charge;
- that, for any reason, the charge should be amended, the summary authority, Director of Military Prosecutions or Court must make such amendment of the charge as he, she or it thinks necessary unless the amendment cannot be made without injustice to the accused person.
- (2) In subsection (1), **amendment** includes the addition of a charge or the substitution of a charge for another charge.

### 142 Alternative offences

- (1) For the purposes of this section:
  - (a) an offence against this Act (other than section 61) is an alternative offence in relation to another such offence if the first-mentioned offence is specified in column 2 of Schedule 6 opposite to the reference to the other offence in column 1 of that Schedule;
  - (b) an offence against section 11.1 of the *Criminal Code*, being a service offence that is an ancillary offence in relation to an offence against this Act (other than section 61) or the regulations is an alternative offence in relation to that offence against this Act or the regulations;
  - (ba) an offence against section 61 that is based on an ancillary Territory offence against section 11.1 of the *Criminal Code*, or section 44 of the *Criminal Code 2002* of the Australian Capital Territory, in relation to another Territory offence (the **first Territory offence**), is an alternative offence in relation to another offence against section 61 that is based on the first Territory offence;
  - (c) an offence against section 61 is an alternative offence in relation to another such offence if the relevant Territory offence in relation to the first-mentioned offence is an alternative offence in relation to the relevant Territory offence in relation to the other offence against section 61;
  - (d) a Territory offence is an alternative offence in relation to another Territory offence if a court exercising jurisdiction in or in relation to the Jervis Bay Territory could, in a trial of a

person on a charge of the other Territory offence, convict the person of the first-mentioned Territory offence; and

- (e) an old system offence is an alternative offence in relation to another old system offence if, in accordance with previous service law, a court martial could, in a trial of a person on a charge of the other old system offence, have convicted the person of the first-mentioned old system offence.

- (2) Where a service tribunal acquits a person of a service offence but is satisfied beyond reasonable doubt of facts that prove that the person is guilty of another service offence that is an alternative offence in relation to the offence of which the person has been acquitted, the service tribunal may convict the person of that other offence.

- (3) Where:

- (a) a person is charged with a service offence;
- (b) the person pleads not guilty to the charge but guilty to another service offence that is an alternative offence in relation to the first-mentioned service offence; and
- (c) the prosecution consents to the acceptance of the last-mentioned plea;

the trial shall proceed as if the person:

- (d) had been charged with the other service offence;
- (e) had pleaded guilty to a charge of the other service offence; and
- (f) had not been charged with the first-mentioned offence.

### **143 Condonation no bar to proceedings**

Proceedings under this Act for a service offence shall not be barred on the ground of condonation of the offence.

### **144 Previous acquittal or conviction**

- (1) Where a person has been acquitted or convicted of a service offence, the person is not liable to be tried by a service tribunal for the same offence or for an offence that is substantially the same offence.

Note: If a person has been convicted of a service offence by a summary authority, the Australian Military Court may, in an appeal against the

conviction, quash the conviction and order a new trial of the person for the offence: see section 165.

- (2) Where, under section 77, the Australian Military Court has taken a service offence into consideration in relation to a convicted person, the person is not liable to be tried by a service tribunal for the same offence or for an offence that is substantially the same offence.
- (3) Where:
- (a) a person has been acquitted or convicted by a civil court of a civil court offence; or
  - (b) a person has been acquitted or convicted by an overseas court of an overseas offence;
- the person is not liable to be tried by a service tribunal for a service offence that is substantially the same offence.
- (3A) If a defence member has been dealt with by a discipline officer under Part IXA in respect of an act or omission constituting a disciplinary infringement for the purposes of that Part, the member is not liable to be tried by a service tribunal for a service offence arising out of the same act or omission.
- (3B) For the purpose of subsection (3A), the exercise by a discipline officer of the power conferred by subsection 169F(3) does not constitute dealing with a defence member under Part IXA.
- (4) For the purposes of this section:
- (a) the dismissal of a charge under section 130, 132B or 132D shall be deemed to be an acquittal of the service offence the subject of the charge;
  - (b) the dismissal of a charge under previous service law shall be deemed to be an acquittal of the service offence the subject of the charge;
  - (c) a direction under section 103, 110 or 111 that a charge be not proceeded with shall be deemed not to be an acquittal of the service offence the subject of the charge; and
  - (d) the dismissal of a charge of a civil court offence against a person, or the discharge of a person in proceedings on a charge of a civil court offence, by a civil court, under section 19B of the *Crimes Act 1914* or any corresponding provision of a law of a State or Territory, shall be deemed to be an acquittal of the offence.

### **145 Unsoundness of mind**

- (1) Where a summary authority considers that an accused person, by reason of mental impairment, may not be able to understand the proceedings against him or her and accordingly may be unfit to stand trial, the authority shall refer the charge to the Director of Military Prosecutions.
- (2) Where the Australian Military Court is satisfied that an accused person, by reason of mental impairment, is not able to understand the proceedings against him or her and accordingly is unfit to stand trial, the Court shall so find and shall direct that the person be kept in strict custody until the pleasure of the Governor-General is known.
- (3) Where, in a trial of a charge by a summary authority of an accused person, evidence is adduced that shows, or tends to show, that the accused person, at the time of the act or omission the subject of the charge, was suffering from such mental impairment as not to be responsible, in accordance with law, for that act or omission, the authority shall refer the charge to the Director of Military Prosecutions.
- (4) Where, in a trial of a charge of a service offence that is to be tried by Military Judge and military jury, the jury finds that the accused person, at the time of the act or omission the subject of the charge, was suffering from such mental impairment as not to be responsible, in accordance with law, for that act or omission, the jury shall find the accused person not guilty on the ground of mental impairment and the Judge shall acquit the person of the charge on the ground of mental impairment.
- (5) Where an accused person is acquitted by the Australian Military Court of a charge on the ground of mental impairment, the Court shall record the ground of the acquittal and shall direct that the accused person be kept in strict custody until the pleasure of the Governor-General is known.

### **145A Notice of alibi**

- (1) If the Registrar refers a charge to the Australian Military Court for trial, the Registrar must:

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- (a) inform the accused person of the requirements of subsections (2), (3) and (5); and
  - (b) give a copy of this section to the accused person.
- (2) In a trial of a charge by the Australian Military Court, the accused person must not, without the leave of the Court:
  - (a) adduce evidence in support of an alibi; or
  - (b) assert in any statement made by him or her otherwise than on oath or affirmation that he or she has an alibi;unless, before the end of the period of 14 days commencing on the day the charge is referred to the Court, he or she gives notice of particulars of the alibi.
- (3) In a trial of a charge by the Australian Military Court, the accused person must not, without the leave of the Court, call a person to give evidence in support of an alibi unless:
  - (a) the notice given under subsection (2) includes the name and address of the person or, if the name or address of the person is not known to the accused person at the time he or she gives the notice, all information then in his or her possession that may be of material assistance in ascertaining the identity of, or in locating, the person;
  - (b) if the name or address of the person is not included in the notice—the Court is satisfied that, before giving notice, the accused person took, and, after giving the notice, the accused person continued to take, all reasonable steps to ascertain the name and address of the person;
  - (c) if the name or address of the person is not included in the notice, but the accused person subsequently ascertains the name or address of the person or receives information that may be of material assistance in ascertaining the identity of, or in locating, the person—the accused person forthwith gives notice of the name, address or other information, as the case may be; and
  - (d) if the accused person is notified by or on behalf of the prosecution that the person has not been found by the name, or at the address, given by the accused person—the accused person forthwith gives notice of all information that is then in his or her possession that may be of material assistance in ascertaining the identity of, or in locating, the person and, if the accused person subsequently receives any such



information, the accused person forthwith gives notice of the information.

- (4) Evidence to disprove an alibi may, subject to any direction by the Court, be adduced before or after evidence is adduced in respect of the alibi.
- (5) A notice under this section shall be given in writing to the Director of Military Prosecutions and the Registrar.
- (6) In this section, *evidence in support of an alibi* means evidence tending to show that by reason only of the presence of the accused person at a particular place, or in a particular area, at a particular time the accused person was not, or was unlikely to have been, at the place where the service offence is alleged to have been committed at the time of the alleged commission of the service offence.

#### **146 Evidence in trials by the Australian Military Court**

- (1) Subject to regulations in force under subsection (2), the rules of evidence in force in the Jervis Bay Territory apply to a trial by the Australian Military Court as if:
  - (a) the Australian Military Court were a court exercising jurisdiction in or in relation to that Territory; and
  - (b) the trial were a criminal proceeding in such a court.
- (2) The regulations may make rules of evidence to be applied in relation to trials by the Australian Military Court that are in addition to or in substitution for, or that modify, the rules of evidence that, apart from the regulations, would apply in relation to such trials by virtue of subsection (1).

#### **146A Evidence etc. in proceedings before a summary authority**

- (1) This section applies to proceedings before a summary authority (including proceedings for the purpose referred to in subsection 111A(1)).
- (2) The summary authority:
  - (a) must comply with:
    - (i) the rules of natural justice; and
    - (ii) the Summary Authority Rules; and

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- (b) consistently with those rules:
- (i) must act with as little legal formality or legal technicality as possible, while ensuring fairness; and
  - (ii) is, subject to this Act, not bound by the rules of evidence (whether statutory or common law), but must comply with the basic principles of those rules relating to relevance, reliability, weight and probative value; and
  - (iii) may admit any documents or call any witnesses that the summary authority considers to be of assistance and relevance; and
  - (iv) may give such weight as the summary authority considers appropriate to any evidence admitted under subparagraph (iii), having regard to the importance of the evidence in the proceedings and its probative value.

Note: The Summary Authority Rules may make provision in relation to the giving of testimony and other evidence: see paragraph 149(aa).

- (3) Nothing in this section allows a person to be compelled to testify against himself or herself, or to give particular evidence, in proceedings before a summary authority, if doing so might tend to incriminate the person or expose the person to a penalty.
- (4) This section does not affect the law relating to legal professional privilege.

**147 Judicial notice of service matters**

- (1) In addition to the matters of which judicial notice may be taken by a court under the rules of evidence referred to in section 146, the Australian Military Court must take judicial notice of all matters within the general service knowledge of:
  - (a) the Court; and
  - (b) if the proceedings are before a military jury—the jury.
- (2) In proceedings before a summary authority, the summary authority must take judicial notice of all matters within the general service knowledge of the summary authority.

### **148 Record of proceedings to be kept**

- (1) A service tribunal shall keep a record of its proceedings and shall include in that record such particulars as are provided for by the rules of procedure.
- (2) The Australian Military Court may order that the whole or a specified part of a record under subsection (1) that relates to proceedings before the Court is not to be published if the Court considers that such a publication would be inappropriate, taking account of the interests of the security or defence of Australia, the proper administration of justice, public morals or any other matter it considers relevant.

### **Subdivision B—Use of video and audio links in the Australian Military Court**

#### **148A Testimony by video link or audio link**

- (1) The Australian Military Court may, for the purposes of proceedings before it, direct or allow testimony to be given by video link or audio link.
- (2) The testimony must be given on oath or affirmation unless:
  - (a) the person giving the testimony is in a foreign country; and
  - (b) either:
    - (i) the law in force in that country does not permit the person to give testimony on oath or affirmation for the purposes of the proceedings; or
    - (ii) the law in force in that country would make it inconvenient for the person to give testimony on oath or affirmation for the purposes of the proceedings; and
  - (c) the Court is satisfied that it is appropriate for the testimony to be given otherwise than on oath or affirmation.
- (3) If the testimony is given otherwise than on oath or affirmation, the Court is to give the testimony such weight as the Court thinks fit in the circumstances.
- (4) The power conferred on the Court by subsection (1) may be exercised:

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- (a) on the application of the accused person or the Director of Military Prosecutions; or
  - (b) on the Court's own initiative.
- (5) This section applies whether the person giving testimony is in or outside Australia, but does not apply if the person giving testimony is in New Zealand.

Note: See the *Evidence and Procedure (New Zealand) Act 1994*.

**148B Appearance of persons or submissions made by video link or audio link**

- (1) The Australian Military Court may, for the purposes of proceedings before it, direct or allow a person:
- (a) to appear before the Court; or
  - (b) to make a submission to the Court;
- by way of video link or audio link.
- (2) The power conferred on the Court by subsection (1) may be exercised:
- (a) on the application of the accused person or the Director of Military Prosecutions; or
  - (b) on the Court's own initiative.
- (3) This section applies whether the person appearing is in or outside Australia, but does not apply if the person appearing is in New Zealand.

Note: See the *Evidence and Procedure (New Zealand) Act 1994*.

**148C Conditions for use of video links and audio links**

*Video link*

- (1) The Australian Military Court must not exercise the power conferred by subsection 148A(1) or 148B(1) in relation to a video link unless the Court is satisfied that the following conditions are met in relation to the video link:
- (a) the courtroom or other place where the Court is sitting is equipped with facilities (for example, television monitors) that enable all eligible persons present in that courtroom or place to see and hear the person (the *remote person*) who is:

- (i) giving the testimony; or
  - (ii) appearing; or
  - (iii) making the submission;  
by way of the video link;
  - (b) the place at which the remote person is located is equipped with facilities (for example, television monitors) that enable all eligible persons present in that place to see and hear each eligible person who is present in the courtroom or other place where the Court is sitting;
  - (c) such other conditions (if any) as are prescribed by the Australian Military Court Rules in relation to the video link;
  - (d) such other conditions (if any) as are imposed by the Court.
- (2) The conditions that may be prescribed by the Australian Military Court Rules in accordance with paragraph (1)(c) include conditions relating to:
- (a) the form of the video link; and
  - (b) the equipment, or class of equipment, used to establish the link; and
  - (c) the layout of cameras; and
  - (d) the standard of transmission; and
  - (e) the speed of transmission; and
  - (f) the quality of communication.

*Audio link*

- (3) The Court must not exercise the power conferred by subsection 148A(1) or 148B(1) in relation to an audio link unless the Court is satisfied that the following conditions are met in relation to the audio link:
- (a) the courtroom or other place where the Court is sitting is equipped with facilities (for example, loudspeakers) that enable all eligible persons present in that courtroom or place to hear the person (the *remote person*) who is:
    - (i) giving the testimony; or
    - (ii) appearing; or
    - (iii) making the submission;  
by way of the audio link;
  - (b) the place at which the remote person is located is equipped with facilities (for example, loudspeakers) that enable all

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- eligible persons present in that place to hear each eligible person who is present in the courtroom or other place where the Court is sitting;
- (c) such other conditions (if any) as are prescribed by the Australian Military Court Rules in relation to the audio link;
  - (d) such other conditions (if any) as are imposed by the Court.
- (4) The conditions that may be prescribed by the Australian Military Court Rules in accordance with paragraph (3)(c) include conditions relating to:
- (a) the form of the audio link; and
  - (b) the equipment, or class of equipment, used to establish the audio link; and
  - (c) the standard of transmission; and
  - (d) the speed of transmission; and
  - (e) the quality of communication.

*Eligible persons*

- (5) For the purposes of the application of this section to particular proceedings, *eligible persons* are such persons as the Australian Military Court considers should be treated as eligible persons for the purposes of the proceedings.

**148D Putting documents to a person by video link or audio link**

If, in the course of an examination or appearance of a person by video link or audio link in accordance with this Subdivision, it is necessary to put a document to the person, the Australian Military Court may direct or allow the document to be put to the person:

- (a) if the document is physically present in the courtroom or other place where the Court is sitting:
  - (i) by causing a copy of the document to be transmitted to the place where the person is located; and
  - (ii) by causing the transmitted copy to be put to the person;or
- (b) if the document is physically present in the place where the person is located:
  - (i) by causing the document to be put to the person; and
  - (ii) by causing a copy of the document to be transmitted to the courtroom or other place where the Court is sitting.

### **148E Administration of oaths and affirmations**

An oath to be sworn, or an affirmation to be made, by a person (the *remote person*) who is to give testimony by video link or audio link in accordance with this Subdivision may be administered:

- (a) by means of the video link or audio link, as the case may be, in a way that, as nearly as practicable, corresponds to the way in which the oath or affirmation would be administered if the remote person were to give testimony in the courtroom or other place where the Australian Military Court is sitting; or
- (b) if the Australian Military Court allows another person who is present at the place where the remote person is located to administer the oath or affirmation—by that other person.

### **148F New Zealand proceedings**

This Subdivision does not affect the operation of the *Evidence and Procedure (New Zealand) Act 1994*.

## **Subdivision C—Rules of procedure for service tribunals**

### **149 The Summary Authority Rules**

The Chief Military Judge may, by legislative instrument, make rules, to be known as the Summary Authority Rules, providing for the practice and procedure to be followed by summary authorities and, in particular, providing for:

- (a) the attendance and compellability of witnesses; and
- (aa) the giving of testimony and other evidence; and
- (b) the production of documents; and
- (c) the administration of oaths and affirmations; and
- (d) the forms to be used in relation to proceedings before a summary authority; and
- (e) the service of any process of a summary authority; and
- (f) charge sheets in proceedings before a summary authority; and
- (g) the manner and form of charges brought before a summary authority; and
- (h) the recording of proceedings of a summary authority; and

- (i) the reopening of proceedings of a summary authority on request by a reviewing authority.

### **149A The Australian Military Court Rules**

The Chief Military Judge may, by legislative instrument, make rules, to be known as the Australian Military Court Rules, providing for:

- (a) the practice and procedure to be followed by the Court and, in particular, providing for:
  - (i) pre-trial hearings and directions; and
  - (ii) the attendance of witnesses; and
  - (iii) the manner and timing of elections by an accused person under subsection 132AA(2) or 132AB(3); and
  - (iv) the giving of testimony and other evidence; and
  - (v) the production of documents; and
  - (vi) the administration of oaths and affirmations; and
  - (vii) the forms to be used in relation to proceedings before the Court; and
  - (viii) the service of any process of the Court; and
  - (ix) charge sheets in proceedings before the Court; and
  - (x) the manner and form of charges brought before the Court; and
  - (xa) matters relating to appeals to the Court; and
  - (xi) the recording of proceedings of the Court; and
  - (xii) the duties of the Registrar in respect of the practice and procedure of the Court; and
  - (xiii) the maintenance of the customs and traditions of the Defence Force in proceedings before the Court; and
- (b) matters concerning a military jury, including the summoning, attendance, empanelling of, the right of challenge, polling and the discharge of the jury; and
- (c) any matter required or permitted by this Act to be prescribed by the Rules.



## **Part VIIIA—Review of proceedings of summary authorities**

### **Division 1—Interpretation and application**

#### **150 Meaning of *reviewing authority* and *competent reviewing authority***

##### *Appointment of reviewing authorities*

- (1) The Chief of the Defence Force or a service chief may, by instrument in writing, appoint an officer, or each officer included in a class of officers, to be a ***reviewing authority*** for the purposes of:
  - (a) reviewing proceedings of summary authorities; and
  - (b) exercising any other powers and functions that are conferred on reviewing authorities by this Act or the regulations.

##### *Competent reviewing authorities*

- (2) A reviewing authority is a ***competent reviewing authority*** for the purposes of reviewing the proceedings of a summary authority only if the reviewing authority did not exercise any of the powers or perform any of the functions of a superior authority in relation to the charge that is the subject of the proceedings.

#### **150A Application of Part**

This Part applies in relation to proceedings of a summary authority that have resulted in a conviction of a person of a service offence.

## **Division 2—Automatic review by reviewing authority**

### **151 Review of proceedings of subordinate summary authority**

*Powers and duties of commanding officer*

- (1) As soon as practicable after a subordinate summary authority convicts a person of a service offence, the subordinate summary authority must give the record of the proceedings to the commanding officer of the subordinate summary authority.
- (2) The commanding officer must review the proceedings in accordance with this Part and, for that purpose, the commanding officer is taken to be a reviewing authority.
- (3) The commanding officer may, but is not required to, obtain legal advice on the proceedings from a legal officer.
- (4) After completing the review of the proceedings, the commanding officer must give to a legal officer:
  - (a) the record of the proceedings; and
  - (b) a report setting out:
    - (i) the results of the review; and
    - (ii) if the proceedings were reopened by the subordinate summary authority under section 153—the action taken by the subordinate summary authority in dealing with the reopened proceedings; and
    - (iii) the reasons for any delay in conducting the review.
- (5) The commanding officer must complete the review of the proceedings and give the documents referred to in paragraphs (4)(a) and (b) to a legal officer:
  - (a) within 30 days after the commanding officer receives the record referred to in subsection (1); or
  - (b) if this is not possible due to the exigencies of service—as soon as practicable after the end of that period.

*Powers and duties of legal officer*

- (6) As soon as practicable after receiving the record of the proceedings and the report referred to in subsection (4), the legal officer:
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- (a) must consider the record and report; and
- (b) may, if the legal officer considers it appropriate, give the record and report to a competent reviewing authority.

*Further review by competent reviewing authority*

- (7) If the legal officer gives the record of the proceedings and the report to a competent reviewing authority under subsection (6), the reviewing authority:
  - (a) must, as soon as practicable after receiving the record and report, review the proceedings in accordance with this Part; and
  - (b) after reviewing the proceedings, must give written notice of the results of the review to:
    - (i) the commanding officer; and
    - (ii) the person who was convicted of the service offence.

Note: A reviewing authority may not, under paragraph (7)(a), request the subordinate summary authority to reopen the proceedings: see paragraph 153(1)(a).

*Notice of results of review*

- (8) A commanding officer who receives a notice under paragraph (7)(b) must, as soon as practicable after receiving the notice, give written notice of the results of the review to the subordinate summary authority.
- (9) If the legal officer does not give the record of the proceedings and the report of the results of the review to a competent reviewing authority under subsection (6):
  - (a) the legal officer must notify the commanding officer of this fact; and
  - (b) the commanding officer must give written notice of the results of the review to:
    - (i) the subordinate summary authority; and
    - (ii) the person who was convicted of the service offence.

**152 Review of proceedings of superior summary authority or commanding officer**

*Powers and duties of reviewing authority*

- (1) As soon as practicable after a summary authority (other than a subordinate summary authority) convicts a person of a service offence, the summary authority must give the record of the proceedings to a competent reviewing authority.
- (2) The reviewing authority must review the proceedings in accordance with this Part.
- (3) Before reviewing the proceedings, the reviewing authority must obtain legal advice on the proceedings from a legal officer.
- (4) The reviewing authority must complete the review:
  - (a) within 30 days after receiving the record referred to in subsection (1); or
  - (b) if this is not possible due to the exigencies of service—as soon as practicable after the end of that period.

*Notice of results of review*

- (5) After reviewing the proceedings, the reviewing authority must give written notice of the results of the review to:
  - (a) the summary authority; and
  - (b) the person who was convicted of the service offence.

*Exception*

- (6) This section does not apply to proceedings before a superior summary authority if the superior summary authority has no reviewing authority of a higher rank.

Note: In the case referred to in subsection (6), the convicted person could lodge an appeal to the Australian Military Court under Part IX.

**153 Reviewing authority must request summary authority to reopen proceedings to correct punishment error**

- (1) This section applies to:
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- (a) a review, under section 151, by a commanding officer (the **reviewing authority**) of the proceedings of a subordinate summary authority; or
  - (b) a review, under section 152, by a competent reviewing authority of the proceedings of a superior summary authority or a commanding officer.
- (2) If the reviewing authority considers that the action taken by the summary authority under Part IV (whether the imposition of a punishment or the making of an order or both) in relation to the convicted person is beyond the power of the summary authority, the reviewing authority must request the summary authority, in writing, to reopen the proceedings.
  - (3) If the reviewing authority requests the summary authority to reopen the proceedings, the summary authority must reopen the proceedings.

### **153A Procedures for dealing with reopened proceedings**

- (1) This section applies if a summary authority reopens proceedings in response to a request by a reviewing authority under section 153.
- (2) The summary authority must notify the convicted person that the proceedings are to be reopened.
- (3) The summary authority must, as the case requires:
  - (a) impose a less severe punishment on the convicted person; or
  - (b) if the summary authority had made a reparation order (the **original reparation order**)—make a reparation order for an amount that is less than the amount of the original reparation order.
- (4) As soon as practicable after the summary authority completes dealing with the proceedings under subsection (3), the summary authority must give the record of the proceedings to the reviewing authority that requested the summary authority to reopen the proceedings.
- (5) Subject to subsection 161(4), this section does not affect the right of the convicted person to appeal to the Australian Military Court in relation to the proceedings.

Note: Part IX deals with appeals to the Australian Military Court.

### **154 Effect on review of appeal to the Australian Military Court**

If:

- (a) a person who is convicted of a service offence by a summary authority lodges an appeal to the Australian Military Court in relation to the proceedings; and
  - (b) the appeal is lodged before a reviewing authority has completed reviewing the proceedings under this Part;
- the reviewing authority must not request the summary authority to reopen the proceedings.

Note: Part IX deals with appeals to the Australian Military Court.

### **155 Reviewing authority may recommend that convicted person appeal to the Australian Military Court**

- (1) This section applies to a review of the proceedings of a summary authority if the reviewing authority (including a commanding officer referred to in subsection 151(1)) considers:
  - (a) that, having regard to the evidence, the conviction is unreasonable or cannot be supported; or
  - (b) that, as a result of a wrong decision on a question of law, or of mixed law and fact, the conviction was wrong in law and that a substantial miscarriage of justice has occurred; or
  - (c) that any action taken by the summary authority under Part IV (whether imposing a punishment or making an order or both) in relation to the convicted person is wrong in law or is excessive or otherwise unreasonable; or
  - (d) that there was a material irregularity in the course of the proceedings and that a substantial miscarriage of justice has occurred; or
  - (e) that, in all the circumstances of the case, the conviction is unsafe or unsatisfactory.
- (2) The reviewing authority must give a notice in writing to the convicted person:
  - (a) recommending that the person consider appealing to the Australian Military Court against the conviction, or any punishment imposed or order made under Part IV, as the case requires; and
  - (b) setting out the reasons for the recommendation.

Note: Part IX deals with appeals to the Australian Military Court. If the convicted person is given a notice under this subsection, the convicted person has 14 days, beginning on the day on which the notice is given, to lodge an appeal to the Australian Military Court against the conviction or any punishment imposed or order made under Part IV: see subsection 161(5).

- (3) If the reviewing authority gives a notice to the convicted person under subsection (2), the reviewing authority must give a copy of the notice to the person's commanding officer.
- (4) The convicted person must be given an opportunity to obtain legal advice in relation to an appeal if a legal officer is reasonably available to give such advice.

### **Division 3—Review of certain punishments and orders that are subject to approval by reviewing authority**

#### **156 Application of Division**

This Division applies to a review of the proceedings of a summary authority if the summary authority:

- (a) has imposed a punishment referred to in subsection 172(2);  
or
- (b) has made a restitution order or a reparation order.

#### **157 Reviewing authority must approve or not approve punishment or order**

The reviewing authority must approve or not approve the punishment or order.

#### **158 Approved punishment or order to take effect as determined**

If the reviewing authority approves the punishment or order, the reviewing authority must determine when the punishment or order is to take effect.

#### **159 Punishments or orders not approved to be quashed or revoked**

- (1) If the reviewing authority does not approve the punishment or order, the reviewing authority must quash the punishment or revoke the order, as the case may be.
- (2) If the reviewing authority quashes a punishment or revokes an order under subsection (1) in relation to a convicted person, the reviewing authority may take such action in relation to the convicted person as could have been taken under Part IV by the summary authority that convicted the person.
- (3) However, the reviewing authority must not do any of the following under subsection (2):
  - (a) impose a punishment that is more severe than the punishment that was imposed by the summary authority;



- (b) if the punishment imposed by the summary authority was a custodial punishment—impose a punishment other than a custodial punishment;
- (c) if the punishment imposed by the summary authority was not a custodial punishment—impose a custodial punishment;
- (d) if the summary authority made a reparation order—make a reparation order for an amount that exceeds the amount of the reparation order that was made by the summary authority.

## **Part IX—Appeals to the Australian Military Court**

### **Division 1—Definitions**

#### **160 Definitions**

In this Part:

*appeal* means an appeal to the Australian Military Court under this Part.

*appellant* means a person who has lodged an appeal.

*Part IV order* means a restitution order, a reparation order or an order made under subsection 75(1).

## Division 2—Bringing of appeals

### 161 Appeals to the Australian Military Court

- (1) A person who has been convicted of a service offence by a summary authority may appeal to the Australian Military Court against:
  - (a) his or her conviction; or
  - (b) a punishment imposed, or a Part IV order made, by the summary authority in respect of his or her conviction.
- (2) An appeal to the Australian Military Court:
  - (a) must specify the grounds on which the appeal is brought; and
  - (b) must be lodged with the Registrar or with such other person as is prescribed:
    - (i) within the appropriate period; or
    - (ii) within such longer period as the Court, either before or after the expiration of the appropriate period, allows.
- (3) For the purposes of subparagraph (2)(b)(i) and subject to subsections (4) and (5), the **appropriate period** is:
  - (a) if the appeal is against a conviction—the period of 14 days beginning on the day of the conviction; or
  - (b) if the appeal is against a punishment or a Part IV order—the period of 14 days beginning on the day on which the punishment or the Part IV order takes effect.

Note: Some punishments and orders under Part IV do not take effect unless they are approved by a reviewing authority: see subsections 172(2) and (3).
- (4) If a summary authority has reopened proceedings in response to a request by a reviewing authority under section 153:
  - (a) the convicted person may not appeal to the Australian Military Court in relation to the proceedings until after the summary authority has completed dealing with the reopened proceedings; and
  - (b) for the purposes of subparagraph (2)(b)(i), the **appropriate period** is:
    - (i) if the appeal is against the person's conviction—the period of 14 days beginning on the day on which, under

Part VIIIA, the person is given notice of the results of the review of the proceedings (including the reopening of the proceedings); or

- (ii) if the appeal is against a punishment imposed on the person or a Part IV order made in relation to the person—the period of 14 days beginning on the day on which the punishment or the Part IV order takes effect.
- (5) If a reviewing authority gives a convicted person a notice under subsection 155(2) recommending that the person consider appealing to the Australian Military Court against the conviction, or any punishment imposed or order made under Part IV in respect of the conviction, then, for the purposes of subparagraph (2)(b)(i), the *appropriate period* is the period of 14 days beginning on the date on which the notice is given.

## **Division 3—Determination of appeals**

### **162 Quashing of conviction—conviction unreasonable etc.**

If, in an appeal against a conviction by a summary authority, it appears to the Australian Military Court:

- (a) that, having regard to the evidence, the conviction is unreasonable or cannot be supported; or
- (b) that, as a result of a wrong decision on a question of law, or of mixed law and fact, the conviction was wrong in law and that a substantial miscarriage of justice has occurred; or
- (c) that there was a material irregularity in the course of the proceedings before the summary authority and that a substantial miscarriage of justice has occurred; or
- (d) that, in all the circumstances of the case, the conviction is unsafe or unsatisfactory;

the Court must allow the appeal and quash the conviction.

### **163 Quashing of conviction—new evidence available**

- (1) If, in an appeal against a conviction by a summary authority, it appears to the Australian Military Court that there is evidence that:
  - (a) was not reasonably available during the proceedings before the summary authority; and
  - (b) is likely to be credible; and
  - (c) would have been admissible in the proceedings before the summary authority;

the Court must receive and consider that evidence.

- (2) If:
  - (a) the Australian Military Court receives and considers evidence under subsection (1); and
  - (b) it appears to the Court that the conviction cannot be supported having regard to that evidence;

the Court must allow the appeal and quash the conviction.

**164 Quashing of conviction—person suffering from mental impairment**

- (1) Subject to subsection (3), if, in an appeal against a conviction by a summary authority, it appears to the Australian Military Court that the summary authority should have found that the appellant, by reason of mental impairment, was not able to understand the proceedings against him or her and, accordingly, was unfit to stand trial, the Court must:
  - (a) allow the appeal; and
  - (b) quash the conviction; and
  - (c) direct that the appellant be kept in strict custody until the pleasure of the Governor-General is known.
- (2) Subject to subsection (3), if, in an appeal against a conviction by a summary authority, it appears to the Australian Military Court that, at the time of the act or omission to which the conviction relates, the appellant was suffering from such mental impairment as not to be responsible, in accordance with law, for that act or omission, the Court must:
  - (a) allow the appeal and quash the conviction; and
  - (b) substitute for the conviction an acquittal on the ground of mental impairment; and
  - (c) direct that the appellant be kept in strict custody until the pleasure of the Governor-General is known.
- (3) The Australian Military Court must not quash a conviction under this section if there are grounds for quashing the conviction under section 162 or 163.

**165 Australian Military Court may order new trial**

- (1) If, in an appeal, the Australian Military Court quashes a conviction of a person of a service offence, the Court may, if it considers that in the interests of justice the person should be tried again, order a new trial of the person for the service offence.
- (2) If the Australian Military Court orders a new trial of a person under subsection (1), the trial must be by the Australian Military Court.

Note: Division 2 of Part VIII deals with trials by the Australian Military Court.

- (3) If the Australian Military Court orders a new trial of a person under subsection (1), the Court must make such further orders for the custody of the person pending the new trial as the Court considers appropriate.

### **165A Person taken to have been acquitted**

For the purposes of this Act, if the Australian Military Court quashes a conviction of a person of a service offence and does not order a new trial of the person for the offence, the person is taken to have been acquitted of the offence.

### **166 Substitution of conviction for alternative offence**

- (1) If, in an appeal, the Australian Military Court quashes a conviction of a person of a service offence (the *original offence*) but considers:
- (a) that the summary authority that convicted the person could have found the person guilty of another offence, being:
    - (i) a service offence that is an alternative offence, within the meaning of section 142, in relation to the original offence; or
    - (ii) a service offence with which the person was charged in the alternative and in respect of which the summary authority did not record a finding; and
  - (b) that the summary authority, because of its finding that the person was guilty of the original offence, must have been satisfied beyond reasonable doubt of facts that prove that the person was guilty of the other offence;
- the Australian Military Court may substitute for the conviction of the original offence a conviction of the other offence.
- (2) If, under subsection (1), the Australian Military Court substitutes for the conviction of the original offence a conviction of another service offence, the Court may take such action under Part IV, in relation to the convicted person, as the summary authority that convicted the person could have taken under that Part if the summary authority had convicted the person of the other service offence.
- (3) However, the Australian Military Court must not do any of the following under subsection (2):

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- (a) impose a punishment for the other service offence unless the summary authority had imposed a punishment for the original offence;
- (b) make a reparation order with respect to the other service offence unless the summary authority had made a reparation order with respect to the original offence;
- (c) if the summary authority had imposed a punishment (the *original punishment*) for the original offence—impose a punishment for the other service offence that is more severe than the original punishment;
- (d) if the summary authority had made a reparation order (the *original reparation order*) with respect to the original offence—make a reparation order with respect to the other service offence that is for an amount that exceeds the amount of the original reparation order.

**167 Powers of Court in an appeal against a punishment**

- (1) In an appeal by a convicted person against a punishment imposed on the person by a summary authority, the Australian Military Court, in its discretion, may confirm, quash or vary the punishment.
- (2) If the Australian Military Court quashes the punishment:
  - (a) the punishment does not take effect; and
  - (b) the Court may take such action under Part IV (including imposing a punishment or making an order or both) in relation to the convicted person as the summary authority could have taken under that Part in relation to the person.
- (3) If the Australian Military Court varies the punishment, the punishment takes effect as varied.
- (4) The Australian Military Court must not vary a punishment imposed on a convicted person by a summary authority in such a way that the varied punishment would not be a punishment that the summary authority could have imposed on the person under Part IV.



### **167A Powers of Court in an appeal against a Part IV order**

- (1) In an appeal by a convicted person against a Part IV order made in relation to the person by a summary authority, the Australian Military Court, in its discretion, may confirm, revoke or vary the order.
- (2) If the Australian Military Court revokes the Part IV order:
  - (a) the order does not take effect; and
  - (b) the Court may take such action under Part IV (including imposing a punishment or making an order or both) in relation to the convicted person as the summary authority could have taken under that Part in relation to the person.
- (3) If the Australian Military Court varies the Part IV order, the order takes effect as varied.
- (4) The Australian Military Court must not vary a Part IV order made in relation to a convicted person by a summary authority in such a way that the varied order would not be an order that the summary authority could have made in relation to the person under Part IV.

### **167B Frivolous or vexatious appeals**

If the Australian Military Court dismisses an appeal on the grounds that the appeal was frivolous or vexatious, the Court may order that any punishment of detention imposed on the appellant in the proceedings in relation to which the appeal was brought must be taken to commence on the day the appeal is dismissed.

## **Division 4—General provisions relating to appeals**

### **168 Representation of parties in an appeal**

- (1) Subject to subsection (2), sections 136 and 137 apply in relation to an appeal as if:
  - (a) references to a trial were references to an appeal; and
  - (b) references to an accused person were references to an appellant.

Note: Section 188GB deals with appearances by or on behalf of the Director of Military Prosecutions in proceedings before the Australian Military Court.

- (2) Subsection 137(1) applies in relation to an appeal as if the reference to an accused person awaiting trial by the Australian Military Court were a reference to an appellant in an appeal before the Australian Military Court.

### **168A Hearings**

- (1) The Australian Military Court may determine an appeal:
  - (a) by holding a hearing; or
  - (b) by considering, without holding a hearing, the documents or other material provided to the Court in relation to the appeal.However, the Court must hold a hearing if it appears to the Court that the issues for determination cannot be adequately determined in the absence of the parties.
- (2) For the purpose of determining an appeal, the Australian Military Court may order a party to the appeal or the Director of Military Prosecutions to produce such documents or other information as the Court specifies in the order.
- (3) If the Australian Military Court decides to hold a hearing for the purpose of determining an appeal, the hearing must, subject to subsection (4), be held in the presence of the appellant.
- (4) If:
  - (a) the Australian Military Court decides to hold a hearing for the purpose of determining an appeal; and

(b) the Court considers that, by reason of the disorderly behaviour of the appellant, it is impossible to continue the hearing in his or her presence;  
the Court may order that the appellant be removed from the place of hearing and be held in custody elsewhere.

### **168B Evidence**

- (1) Section 146A applies to an appeal in the same way as it applies to proceedings before a summary authority.
- (2) For the purposes of subsection (1):
  - (a) references to proceedings before a summary authority are to be read as references to an appeal before the Australian Military Court; and
  - (b) references to a summary authority are to be read as references to the Australian Military Court; and
  - (c) in subsection 146A(1), the words “(including proceedings for the purpose referred to in subsection 111A(1))” are to be omitted.

### **168C Judicial notice of service matters**

In determining an appeal, the Australian Military Court must take judicial notice of all matters within the general service knowledge of the Court.

### **168D Record of proceedings to be kept**

- (1) The Australian Military Court:
  - (a) must keep a record of an appeal determined by the Court; and
  - (b) must include in that record such particulars as are required by the rules of procedure.
- (2) A record referred to in subsection (1) must not be made publicly available but may be published for service purposes in accordance with the rules of procedure.

### **168E Use of video and audio links**

Subdivision B of Division 3 of Part VIII applies to appeal proceedings before the Australian Military Court.

## **Part IXA—Special procedures relating to certain minor disciplinary infringements**

### **169A Definitions**

In this Part:

*disciplinary infringement* means an act or omission that constitutes:

- (a) an offence against section 23, 27 or 29, subsection 32(1), section 35 or section 60; or
- (b) an offence against section 24 in relation to an absence without leave for a period not exceeding 3 hours.

*discipline officer* means a discipline officer appointed under section 169B.

*junior officer* means:

- (a) in the Navy—an officer who holds a rank of or below the rank of lieutenant (other than a person who holds the rank of midshipman); or
- (b) in the Army—an officer who holds a rank of or below the rank of captain; or
- (c) in the Air Force—an officer who holds a rank of or below the rank of flight lieutenant.

*officer cadet* means a defence member who holds:

- (a) in the Navy—the rank of midshipman; or
- (b) in the Army or the Air Force—the rank of officer cadet.

*prescribed defence member* means:

- (a) in the Navy—a member of the Defence Force who holds a rank of or below the rank of lieutenant; or
- (b) in the Army—a member of the Defence Force who holds a rank of or below the rank of captain; or
- (c) in the Air Force—a member of the Defence Force who holds a rank of or below the rank of flight lieutenant;

but does not include a warrant officer covered by a determination in force under section 169BA.

*relevant discipline officer*, in relation to a prescribed defence member, has the meaning given by section 169BB.

*relevant officer* means a member of the Defence Force who holds a rank of non-commissioned officer or a higher rank.

### **169B Appointment of discipline officers**

A commanding officer may, in writing, appoint officers or warrant officers to be discipline officers.

### **169BA Service chief may exempt certain warrant officers**

- (1) A service chief may determine, in writing, that a specified warrant officer, or a warrant officer included in a specified class of warrant officers, is not a *prescribed defence member* for the purposes of this Part.
- (2) A determination under subsection (1) is not a legislative instrument.

### **169BB Relevant discipline officers**

The following table sets out who is a *relevant discipline officer* in relation to a prescribed defence member.

<b>Item</b>	<b>Prescribed defence member</b>	<b>Relevant discipline officer</b>
1	Junior officer	Discipline officer who is at least one rank senior to the prescribed defence member
2	Officer cadet	Any discipline officer
3	Warrant officer Non-commissioned officer	Discipline officer who holds a rank not lower than lieutenant commander, major or squadron leader
4	Member below non-commissioned rank	Any discipline officer

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**169C Jurisdiction of discipline officer**

A relevant discipline officer, in relation to a prescribed defence member, has jurisdiction to deal with that member in respect of a disciplinary infringement if:

- (a) the member has not been charged under this Act with a service offence arising out of the act or omission that constitutes the infringement; and
- (b) the member has elected to be dealt with by a discipline officer; and
- (c) the member has not withdrawn the election; and
- (d) the discipline officer holds his or her appointment from the commanding officer of the member.

**169D Issue of infringement notice**

- (1) If a relevant officer has reasonable grounds for believing that a prescribed defence member has committed a disciplinary infringement, the relevant officer may give the defence member an infringement notice in relation to the infringement.
- (2) An infringement notice is a notice that:
  - (a) gives particulars of the infringement to which the notice relates; and
  - (b) informs the member to whom it is given of:
    - (i) the member's right to elect to be dealt with, in relation to the infringement, by a discipline officer if the member admits the infringement; and
    - (ii) the period within which an election must be made; and
    - (iii) the penalties that may be imposed by a discipline officer; and
    - (iv) the power of a relevant officer to refer a matter for action under section 87.
- (3) An infringement notice must be in accordance with a form approved by the Chief of the Defence Force.
- (4) A relevant officer does not have authority to give an infringement notice to a prescribed defence member unless the relevant officer is authorised in writing by the commanding officer of the member to give such notices.

- (5) A relevant officer does not have authority to give an infringement notice to a prescribed defence member in relation to a disciplinary infringement unless the notice is given as soon as is reasonably practicable after the relevant officer first has reasonable grounds for believing that the member has committed the infringement.

### **169E Election to be dealt with by discipline officer**

- (1) If a prescribed defence member has been given an infringement notice, the member may elect to be dealt with, in relation to the disciplinary infringement to which the notice relates, by a discipline officer.
- (2) If a prescribed defence member elects to be dealt with, in relation to a disciplinary infringement, by a discipline officer, the member is to be taken, for the purpose of being so dealt with but for no other purpose, to have admitted the infringement.
- (3) An election may only be made within the period specified in the infringement notice.
- (4) If:
  - (a) a prescribed defence member has been given an infringement notice in relation to a disciplinary infringement; and
  - (b) the defence member has not made an election within the period specified in the notice;a relevant officer may refer the matter to an authorised member of the Defence Force to be dealt with according to section 87.
- (5) A prescribed defence member may, at any time before a punishment is imposed, withdraw an election.

### **169F Powers of discipline officer**

*Punishments that may be imposed in respect of disciplinary infringements*

- (1) A relevant discipline officer, in relation to a prescribed defence member referred to in column 1 of an item of the following table, may impose on the prescribed defence member, in respect of a disciplinary infringement, a punishment set out in column 2 of that item.

**Part IXA** Special procedures relating to certain minor disciplinary infringements

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**Punishments that may be imposed in respect of disciplinary infringements**

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<b>Item</b>	<b>Column 1 Prescribed defence member</b>	<b>Column 2 Punishment</b>
1	Junior officer Warrant officer Non-commissioned officer	Fine not exceeding the amount of the defence member's pay for one day Reprimand
2	Officer cadet Member below non-commissioned rank	Fine not exceeding the amount of the defence member's pay for one day Restriction of privileges for a period not exceeding 2 days Stoppage of leave for a period not exceeding 3 days Extra duties for a period not exceeding 3 days Extra drill for no more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days Reprimand

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*Other powers*

- (2) A discipline officer may decide not to impose a punishment in respect of a disciplinary infringement that the discipline officer considers trivial.
- (3) If a discipline officer thinks a disciplinary infringement is too serious to be dealt with under this Part, the discipline officer may decline to deal with the defence member under this Part.
- (4) A discipline officer exercising jurisdiction under this section is not to be taken to be a service tribunal for the purposes of this Act.
- (5) A discipline officer must not impose a punishment except in accordance with this Part.



### **169FA Commencement of punishments**

- (1) Subject to this Part, a punishment imposed by a discipline officer takes effect immediately and a punishment for a specific period commences on the day on which it is imposed.
- (2) A discipline officer who imposes a punishment for a specific period may impose the punishment for a period beginning on a specified day no later than 14 days after the day on which the punishment is imposed.

### **169FB Consequences of punishments**

- (1) The Chief of the Defence Force or a service chief may, by legislative instrument, make rules with respect to the consequences, in relation to a prescribed defence member, that are to flow from the imposition by a discipline officer on that member of any of the following punishments:
  - (a) restriction of privileges;
  - (b) stoppage of leave;
  - (c) extra duties;
  - (d) extra drill.
- (2) The commanding officer of a prescribed defence member who is subject to a punishment referred to in paragraph (1)(a) or (c) may moderate the consequences of that punishment in relation to the member in such manner as the commanding officer considers appropriate, having regard to the particular circumstances of the case and to any directions, in writing, of the Chief of the Defence Force or a service chief.
- (3) A direction made under subsection (2) is not a legislative instrument.
- (4) Even if a prescribed defence member is subject to a punishment of stoppage of leave, the commanding officer of the member may, if he or she is satisfied that it is appropriate to do so, grant leave of absence to the member.

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**169G Procedure before discipline officer**

- (1) Subject to this section, the procedure followed by a discipline officer is to be in accordance with any requirements prescribed by the regulations.
- (2) A prescribed defence member who elects to be dealt with by a discipline officer is not to be represented before the discipline officer.
- (3) A prescribed defence member who elects to be dealt with by a discipline officer may, when he or she appears before the discipline officer, call witnesses and present evidence in relation to anything relevant to the exercise by the discipline officer of his or her powers under subsection 169F(1), (2) or (3).

**169GA Report by discipline officer**

- (1) As soon as practicable after the end of each month, a discipline officer must give a report in accordance with subsection (2) to the discipline officer's commanding officer.
- (2) The report must be in writing and must contain the following information:
  - (a) the name of each prescribed defence member dealt with, in relation to a disciplinary infringement, by the discipline officer in the month to which the report relates;
  - (b) the nature of the disciplinary infringement in relation to which each prescribed defence member referred to in paragraph (a) was dealt with;
  - (c) the punishment (if any) that was imposed in respect of each of those disciplinary infringements.

Note: A report under this section is a *relevant record* for the purposes of section 169H.

**169H Destruction of records**

- (1) In this section, *relevant record* means any part of a record that is kept by any means under a law of the Commonwealth and relates to a person's service as a member of the Defence Force.
- (2) Any part of a relevant record that relates, in any way, to:

- (a) the making by a prescribed defence member of an election;  
or
- (b) anything done by a discipline officer under subsection 169F(1) or (2) as a result of the making of an election;

must be destroyed at the end of a period of 12 months beginning on the day on which the election was made or, if anything was done by a discipline officer under subsection 169F(1) or (2) as a result of the making of the election, the day on which the thing was so done.

**169J This Part not a bar to action under other provisions**

A prescribed defence member is not prevented from being dealt with under any other Part in respect of a service offence merely because the offence arises out of an act or omission that constitutes a disciplinary infringement for the purposes of this Part.

## **Part X—Execution and enforcement of punishments and orders**

### **170 Warrants of commitment**

- (1) Subject to this section, an authorized officer may:
  - (a) issue a warrant for the commitment of a prisoner to a prison in a State or Territory; or
  - (b) issue a warrant for the commitment of a detainee to a detention centre.
- (2) A warrant issued under subsection (1) shall specify:
  - (a) the name of the prisoner or detainee;
  - (b) the place to which the prisoner or detainee is to be committed; and
  - (c) the punishment that has been imposed on the prisoner or detainee.
- (3) A warrant under subsection (1) may require all police members and members and special members of the Australian Federal Police, or a specified member of the Defence Force who is not a police member, to convey the prisoner or detainee specified in the warrant to such prison or detention centre as is specified in the warrant and there to deliver him or her into the custody of the officer in charge of the prison or detention centre or some other officer doing duty at the prison or detention centre, and the warrant may be executed by any police member or member or special member of the Australian Federal Police or the member of the Defence Force specified in the warrant, as the case requires.
- (4) Where a person is delivered into custody at a prison or detention centre in pursuance of a warrant under subsection (1), the person may, subject to this Act, be detained in that prison or any other prison in the same State or Territory as the first-mentioned prison, or that or any other detention centre, as the case requires, for as long as his or her detention is necessary for the execution of the punishment by reason of which the warrant was issued.

- (5) In this section, *detainee* means a convicted person on whom a punishment of detention has been imposed.

### **171 Commencement of punishments and orders**

- (1) Subject to this Act, a punishment imposed, or an order made, by a service tribunal, a reviewing authority or the Defence Force Discipline Appeal Tribunal takes effect forthwith and a punishment for a specific period commences on the day on which it is imposed.
- (1A) A summary authority who imposes a punishment for a specific period may impose the punishment for a period beginning on a specified day no later than 14 days after the day on which the punishment is imposed.
- (1B) If the Australian Military Court imposes the punishment of dismissal from the Defence Force on a member of the Defence Force who has been convicted of a service offence, the Court may order that the dismissal is to take effect on a day specified in the order, being a day no later than 30 days after the day on which the punishment is imposed.
- (1C) A person on whom a punishment of dismissal from the Defence Force is imposed may be kept in custody until the dismissal takes effect.
- (2) Subject to section 72, where 2 or more punishments are to be cumulative, they shall take effect one after the other in accordance with the order in which they are recorded.

### **172 Punishments and orders subject to approval**

- (2) The following punishments when imposed by a summary authority do not take effect unless approved by a reviewing authority:
- (a) detention;
  - (b) reduction in rank;
  - (c) forfeiture of seniority;
  - (d) a fine imposed on a member of the Defence Force that exceeds the amount of his or her pay for 14 days;
  - (e) segregated confinement for a period exceeding 3 days;
  - (f) confinement to cell for a period exceeding 3 days;
  - (g) extra drill for a period exceeding 3 days;

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- (h) restriction of custodial privileges for a period exceeding 7 days.
- (3) A restitution order or a reparation order imposed by a summary authority does not take effect unless approved by a reviewing authority.
- (5) A person on whom a punishment of detention is imposed by a summary authority may be kept in custody pending approval under subsection (2) of the punishment and, if the punishment is approved, any day on which the person was so kept in custody counts as a day of that detention.

**172A Suspension of operation of restitution orders and reparation orders made by a summary authority**

- (1) The operation of a restitution order or a reparation order made by a summary authority is suspended:
  - (a) until the expiration of the period in which, under Part IX, an appeal to the Australian Military Court against the order, or the conviction in relation to which the order was made, may be lodged, but not in any case beyond the time specified in paragraph (b); and
  - (b) if such an appeal is lodged—until the appeal is finally determined or abandoned.
- (2) If, in relation to a restitution order, the summary authority is satisfied that the title to the property in relation to which the order is made is not in dispute, the summary authority may direct that subsection (1) is not to apply to the order.
- (3) If the operation of a restitution order or a reparation order is suspended under subsection (1), the order does not take effect if the conviction in relation to which the order is made is quashed on appeal.

**173 Suspension of operation of restitution orders and reparation orders made by the Australian Military Court**

- (1) The operation of a restitution order or a reparation order made by the Australian Military Court is suspended:
    - (a) until the expiration of the period during which, under the *Defence Force Discipline Appeals Act 1955*, an application
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for leave to appeal, or an appeal, against the conviction in relation to which the order was made may be lodged, but not in any case beyond the time specified in paragraph (b); and

- (b) if an application for leave to appeal, or an appeal, against the conviction is duly lodged—until the application is finally dismissed or is withdrawn or the appeal is finally determined or abandoned.
- (2) Where the Court is satisfied that the title to the property in relation to which a restitution order is made is not in dispute, the Court may direct that subsection (1) shall not apply in relation to the order.
  - (3) Where the operation of a restitution order or a reparation order is suspended by virtue of subsection (1), the order does not take effect if the conviction in relation to which the order is made is quashed on appeal.

#### **174 Recovery of fines etc.**

- (1) The amount that is due and payable of any fine imposed on a person under this Act or the *Defence Force Discipline Appeals Act 1955* may be:
  - (a) recovered by deduction from any pay, wages or salary payable to the person by the Commonwealth; or
  - (b) without prejudice to recovery in accordance with paragraph (a), recovered by action in a civil court of competent jurisdiction as a debt due to the Commonwealth.
- (2) An amount that is due and payable under any reparation order made against a person may be recovered as follows:
  - (a) the amount may be recovered by deduction from any pay, wages or salary payable to the person by the Commonwealth and an amount equal to the amount so recovered may be paid by the Commonwealth to the person in whose favour the reparation order was made; or
  - (b) without prejudice to recovery in accordance with paragraph (a), the amount may be recovered by action in a civil court of competent jurisdiction as a debt due to the person in whose favour the reparation order was made.
- (3) Where any fine or reparation is directed to be paid by instalments and default is made in the payment of any instalment, all

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instalments then remaining unpaid thereupon become due and payable.

- (4) Nothing in this section affects any right or remedy that a person may have, apart from this section, in respect of any loss or damage occasioned by an offence.

**175 Evidence of fine etc.**

- (1) The Registrar, an authorized officer, or a person appointed or engaged under the *Public Service Act 1999* performing duties in the Department, may issue a certificate stating that:
- (a) a specified amount of a fine is due and payable by a specified person under this Act or the *Defence Force Discipline Appeals Act 1955*; or
  - (b) a specified amount is due and payable by a specified person under a reparation order.
- (2) A certificate purporting to be issued under subsection (1) and purporting to be signed by the Registrar, an authorized officer, or a person appointed or engaged under the *Public Service Act 1999* performing duties in the Department, shall be received in any civil court without further proof and is *prima facie* evidence of the facts stated in it.

**176 Stay of execution of punishment**

- (1) If:
- (a) a summary authority has imposed a punishment on a convicted person; and
  - (b) the convicted person notifies the summary authority that he or she has appealed to the Australian Military Court under Part IX against the conviction or the punishment;
- the summary authority must order that the execution of the punishment be stayed, in whole or in part, pending the determination of the appeal.
- (2) If:
- (a) the Australian Military Court has imposed a punishment on a convicted person; and
  - (b) the convicted person or the Director or Military Prosecutions notifies the Court that he or she has appealed, or applied for



leave to appeal, under the *Defence Force Discipline Appeals Act 1955* against the conviction or punishment;  
the Court may order that the execution of the punishment is to be stayed in whole or in part pending the determination of the appeal.

**177 Unlawful absence**

Where a convicted person becomes unlawfully at large during the period of his or her detention or imprisonment, the time during which the convicted person is unlawfully at large shall be deemed not to be time spent in serving that detention or imprisonment.

## Part XA—Detainees and detention centres

### 178 Interpretation

In this Part, *member of the staff*, in relation to a detention centre, means a member of the Defence Force on the staff of a detention centre.

### 178A Search of detainees

- (1) Where the officer in charge of a detention centre believes that it is necessary to do so for the purpose of ascertaining whether there is concealed on a detainee of the detention centre, or in his or her clothing, any thing that the detainee is not authorized to have in his or her possession, the officer in charge of the detention centre may direct a member of the staff of the detention centre to search the detainee and the clothing that the detainee is wearing.
- (2) The search shall be conducted in accordance with the following provisions:
  - (a) the search shall be conducted in the presence of at least 2 other members of the staff of the detention centre;
  - (b) the search shall not be conducted in the presence of a person who is not the officer in charge, or a member of the staff, of the detention centre;
  - (c) the detainee shall not be searched by, or in the presence of, a person who is not of the same sex as the detainee.
- (3) The member of the staff of the detention centre directed to conduct the search may:
  - (a) require the detainee to remove any clothing that the detainee is wearing;
  - (b) if the detainee refuses or fails to comply with such a requirement—remove the clothing;
  - (c) use such reasonable force as is necessary to conduct the search; and
  - (d) seize any thing of the kind referred to in subsection (1) found in the course of the search.

**178B Fingerprints, photographs etc. of detainees**

- (1) Where the officer in charge of a detention centre believes that it is necessary to do so, a member of the staff of the detention centre may take prints of the hands, fingers, feet or toes, or photographs, of a detainee of the detention centre.
- (2) The member of the staff of the detention centre may use such reasonable force as may be necessary in acting in accordance with subsection (1).
- (3) A copy of a print or photograph taken under subsection (1) shall not be given to a person (other than the officer in charge, or a member of the staff of, the detention centre) except in accordance with the approval, in writing, of an authorized officer.

**178C Leave of absence of detainees**

- (1) Subject to any directions, in writing, of the Chief of the Defence Force or a service chief, the officer in charge of a detention centre may, in writing grant leave of absence to a detainee of the detention centre on such conditions (if any) as he or she thinks fit.
- (2) Any day on which a detainee of a detention centre is on leave of absence from the detention centre counts as a day of the detainee's punishment of detention.

**178D Regulations relating to detention centres**

The regulations may make provision for or in relation to:

- (a) the remission of punishments of detention of detainees; and
- (b) the conduct and administration of detention centres.

## **Part XI—Judge Advocate General, Deputy Judge Advocates General, Chief Military Judge, Military Judges and Registrar**

### **Division 1—Judge Advocate General and Deputy Judge Advocates General**

#### **179 Judge Advocate General and Deputy Judge Advocates General**

- (1) There shall be a Judge Advocate General, who shall be appointed by the Governor-General to hold his or her appointment either on a full-time basis or on a part-time basis.
- (2) The Governor-General may appoint one or more Deputy Judge Advocates General, who shall be so appointed to hold their appointments either on a full-time basis or on a part-time basis.
- (3) The Judge Advocate General shall have such functions, powers and duties as are conferred on the Judge Advocate General by this Act or any other law.
- (4) A Deputy Judge Advocate General shall exercise or perform such of the functions, powers or duties of the Judge Advocate General as the Judge Advocate General directs.

#### **180 Qualifications for appointment**

- (1) A person shall not be appointed as the Judge Advocate General unless the person is or has been a Justice or Judge of a federal court or of a Supreme Court of a State or Territory.
- (2) A person shall not be appointed as a Deputy Judge Advocate General unless:
  - (a) the person is or has been a Justice or Judge of a federal court or of a Supreme Court of a State or Territory; or
  - (b) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years.
- (3) A defence member may be appointed as the Judge Advocate General or as a Deputy Judge Advocate General.

**181 Appointment of Judge Advocate General or Deputy Judge Advocate General not to affect tenure etc.**

- (1) The appointment of the holder of a judicial office as the Judge Advocate General or a Deputy Judge Advocate General, or service by the holder of a judicial office as the Judge Advocate General or a Deputy Judge Advocate General, does not affect his or her tenure of that judicial office or his or her rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of that judicial office and, for all purposes, his or her service as the Judge Advocate General or a Deputy Judge Advocate General shall be taken to be service as the holder of that judicial office.
- (2) In subsection (1), *judicial office* means an office of Justice of the High Court or of Judge of a court created by the Parliament.

**182 Arrangement for appointment of the holder of a judicial office of a State or of the Northern Territory**

- (1) The Minister may, for the purpose of appointing to the office of Judge Advocate General or Deputy Judge Advocate General a person who is the holder of a judicial office of a State or of the Northern Territory, enter into such arrangement with the appropriate Minister of that State or that Territory, as the case may be, as is necessary to secure that person's services.
- (2) An arrangement under subsection (1) may provide for the Commonwealth to reimburse a State or the Northern Territory with respect to the services of the person to whom the arrangement relates.
- (3) In this section:

*Minister*, in relation to the Northern Territory, means a person holding an office referred to in section 34 of the *Northern Territory (Self-Government) Act 1978*.

**183 Terms and conditions of appointment etc.**

- (1) The Judge Advocate General or a Deputy Judge Advocate General holds office for such period, not exceeding 7 years, as is specified in the instrument of the Judge Advocate General's appointment.

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- (3) The Judge Advocate General or a Deputy Judge Advocate General holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

**184 Oath or affirmation of Judge Advocate General and Deputy Judge Advocate General**

- (1) The Judge Advocate General or a Deputy Judge Advocate General shall, before proceeding to discharge the duties of his or her office, make and subscribe an oath or affirmation in accordance with the form in Schedule 4.
- (2) An oath or affirmation under this section shall be made:
  - (a) in the case of the Judge Advocate General—before a Judge of the Federal Court of Australia; or
  - (b) in the case of a Deputy Judge Advocate General—before a Judge of the Federal Court of Australia or the Supreme Court of a State or Territory.

**185 Remuneration etc.**

- (1) Subject to this section, the Judge Advocate General or a Deputy Judge Advocate General shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, he or she shall be paid such remuneration as is prescribed.
- (2) The Judge Advocate General and a Deputy Judge Advocate General shall be paid such allowances as are prescribed.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.
- (4) If a person who is a Justice or Judge of a federal court or of a Supreme Court of a State or Territory is appointed as the Judge Advocate General or as a Deputy Judge Advocate General, he or she is not, while he or she receives salary or annual allowance as such a Justice or Judge, entitled to remuneration under this Act.
- (5) In the case of a defence member who is the Judge Advocate General or a Deputy Judge Advocate General, if the remuneration to which he or she would be entitled as the Judge Advocate

General or as a Deputy Judge Advocate General exceeds the pay to which he or she is entitled as a defence member, he or she is to receive, in respect of his or her office as the Judge Advocate General or as a Deputy Judge Advocate General, only an amount equal to the excess.

### **186 Termination of appointment**

- (1) The Governor-General may terminate the appointment of the Judge Advocate General or a Deputy Judge Advocate General (not being a Justice or Judge of a federal court or of a Supreme Court of a State or Territory) by reason of the misbehaviour or physical or mental incapacity of the Judge Advocate General or the Deputy Judge Advocate General, as the case may be.
- (2) If the Judge Advocate General or a Deputy Judge Advocate General (not being a Justice or Judge of a federal court or of a Supreme Court of a State or Territory) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, the Governor-General shall terminate the appointment of the Judge Advocate General or the Deputy Judge Advocate General, as the case may be.
- (3) A Judge Advocate General or a Deputy Judge Advocate General who is a Justice or Judge of a federal court or of a Supreme Court of a State or Territory ceases to hold office if he or she no longer holds office as such a Justice or Judge.
- (4) A Deputy Judge Advocate General who is not a Justice or Judge of a federal court or of a Supreme Court of a State or Territory ceases to hold office if he or she ceases to be a legal practitioner.

### **187 Resignation**

The Judge Advocate General or a Deputy Judge Advocate General may resign his or her office by writing signed by him or her and delivered to the Governor-General.

**188 Acting Judge Advocate General or Deputy Judge Advocate General**

- (1) The Minister may appoint a person who is eligible for appointment as Judge Advocate General or a Deputy Judge Advocate General:
  - (a) to act as Judge Advocate General or a Deputy Judge Advocate General, as the case may be, during a vacancy in the office concerned, whether or not an appointment has previously been made to that office; or
  - (b) to act as the Judge Advocate General or a Deputy Judge Advocate General, as the case may be, during any period, or during all periods, when the Judge Advocate General or a Deputy Judge Advocate General is absent from duty or from Australia, or is, for any other reason, unable to perform the functions of his or her office;but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.
- (2) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
- (3) The Minister may:
  - (a) subject to this Act, determine the terms and conditions of appointment including remuneration and allowances, of a person acting as Judge Advocate General or a Deputy Judge Advocate General; and
  - (b) terminate such an appointment at any time.
- (4) Where a person is acting as Judge Advocate General or a Deputy Judge Advocate General in accordance with paragraph (1)(b) and the office of Judge Advocate General or a Deputy Judge Advocate General becomes vacant while that person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.
- (5) The appointment of a person to act as Judge Advocate General or a Deputy Judge Advocate General ceases to have effect if the person resigns his or her appointment by writing signed by the person and delivered to the Minister.



- (6) While a person is acting as Judge Advocate General or a Deputy Judge Advocate General, the person has and may exercise all the powers, and shall perform all the functions, of the Judge Advocate General or a Deputy Judge Advocate General, as the case may be, under this Act.
- (7) The appointment of a person under subsection (1) is not invalidated, and shall not be called in question, by reason of a defect or irregularity in or in connection with the person's appointment.
- (8) The validity of anything done by a person purporting to act under subsection (1) shall not be called in question on the ground that the occasion for the person's appointment had not arisen, that there is a defect or irregularity in or in connection with the person's appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

## **Division 2—Chief Military Judge**

### **188AA Chief Military Judge**

There is to be a Chief Military Judge of the Australian Military Court.

### **188AB Role of the Chief Military Judge**

The Chief Military Judge is responsible for:

- (a) ensuring the orderly and expeditious discharge of the business of the Australian Military Court; and
- (b) managing the administrative affairs of the Australian Military Court; and
- (c) matters conferred on the Chief Military Judge by or under this Act.

### **188AC Appointment of Chief Military Judge**

- (1) The Chief Military Judge is to be appointed by the Governor-General by written instrument.
- (2) The Chief Military Judge holds office for 10 years.

Note: If, before the expiration of the term of appointment, the Chief Military Judge retires from the Australian Defence Force, he or she ceases to be the Chief Military Judge on retirement: see paragraph 188AL(2)(b).

- (3) A person must not be appointed as the Chief Military Judge if the person has been a Chief Military Judge.

Note: However, the person may be appointed as an acting Military Judge under section 188BB.

- (4) The Chief Military Judge holds office on a full-time basis.

### **188AD Qualifications for Chief Military Judge**

A person must not be appointed as the Chief Military Judge unless:

- (a) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years; and

- (b) the person is a member of the Permanent Navy, the Regular Army or the Permanent Air Force, or is a member of the Reserves who is rendering continuous full-time service; and
- (c) the person holds a rank not lower than the naval rank of commodore or the rank of brigadier or air commodore; and
- (d) the person meets the person's individual service deployment requirements.

### **188AE Selection of Chief Military Judge**

- (1) The Minister may, by notice in writing given to the Chief of the Defence Force, request the Chief of the Defence Force to establish an independent selection committee to give to the Minister, within the period specified in the notice:
  - (a) the name of a person, or the names of persons, the committee considers suitable for appointment as the Chief Military Judge; and
  - (b) all the applications made for the office; and
  - (c) any other thing specified by the Minister in the notice.
- (2) If the Chief of the Defence Force receives such a notice, the Chief of the Defence Force must establish the committee.
- (3) The committee must invite all persons who satisfy, or who are capable of satisfying, the qualification requirements in section 188AD to apply for appointment as the Chief Military Judge within the period specified in the notice under subsection (1).
- (4) The appointment of a person as the Chief Military Judge is not invalid because:
  - (a) of a defect or irregularity in the process for selecting the person for appointment; or
  - (b) the committee did not comply with subsection (3).

### **188AF Oath or affirmation**

- (1) The Chief Military Judge must, before proceeding to discharge the duties of his or her office, make and subscribe an oath or affirmation in accordance with the form in Schedule 4.
  - (2) An oath or affirmation under this section is to be made before:
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- (a) in the case of the first Chief Military Judge—the Judge Advocate General; or
- (b) in any other case—a Military Judge.

**188AG Remuneration**

- (1) Subject to this section, the Chief Military Judge is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, he or she is to be paid the remuneration that is prescribed.
- (2) The Chief Military Judge is to be paid the allowances that are prescribed.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

**188AH Leave of absence**

- (1) The Chief Military Judge has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Governor-General may grant the Chief Military Judge leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Governor-General determines.

**188AI No outside employment**

The Chief Military Judge must not engage in employment outside the duties of his or her office.

**188AJ No promotion other than automatic mid-term promotion**

- (1) Subject to subsection (2), the Chief Military Judge is not eligible for a promotion in rank during the period he or she is the Chief Military Judge.
- (2) The Chief Military Judge is, by force of this subsection, promoted to the next rank on the 5 year anniversary of his or her appointment as Chief Military Judge.

- (3) However, subsection (2) does not apply if the Chief Military Judge already holds the naval rank of Rear Admiral or the rank of Major-General or Air Vice-Marshal.

### **188AK Resignation**

- (1) The Chief Military Judge may resign his or her appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect 3 months, or such shorter period agreed to by the Governor-General, after it is given.

### **188AL Termination of appointment**

- (1) The Governor-General may terminate the appointment of the Chief Military Judge:
- (a) for misbehaviour; or
  - (b) for physical or mental incapacity; or
  - (c) if the Chief Military Judge no longer meets his or her individual service deployment requirements.
- (2) The Chief Military Judge ceases to hold office if he or she:
- (a) ceases to be enrolled as a legal practitioner; or
  - (b) is neither:
    - (i) a member of the Permanent Navy, the Regular Army or the Permanent Air Force; nor
    - (ii) a member of the Reserves who is rendering continuous full-time service; or
  - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (d) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months.

### **188AN Acting Chief Military Judge**

- (1) The Governor-General may appoint a full-time Military Judge to act as the Chief Military Judge:
- (a) during a vacancy in the office, whether or not an appointment has previously been made to that office; or

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- (b) during any period, or during all periods, when the Chief Military Judge is absent from duty, or is, for any other reason, unable to perform the functions of his or her office.
- (2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

## **Division 2A—Military Judges**

### **188AO Military Judges**

There are to be Military Judges of the Australian Military Court.

### **188AP Appointment of Military Judges**

- (1) A Military Judge is to be appointed by the Governor-General by written instrument.
- (2) A Military Judge must be appointed either as a full-time Military Judge or as a part-time Military Judge.
- (3) There are to be 2 full-time Military Judges and no more than 8 part-time Military Judges. (To avoid doubt, this subsection does not require there to be 8 part-time Military Judges at any one time.)

Note: This subsection does not prevent the appointment of additional acting Military Judges: see section 188BB.

- (4) A Military Judge holds office for 10 years.

Note: If, before the expiration of the term of appointment, a Military Judge retires from the Australian Defence Force, he or she ceases to be a Military Judge on retirement: see paragraphs 188AZ(2)(b) and (c).

- (4A) A person must not be appointed as a Military Judge if the person has been a Chief Military Judge or a Military Judge.

Note: However, the person may be appointed as the Chief Military Judge under section 188AC or as an acting Military Judge under section 188BB.

- (5) A full-time Military Judge holds office on a full-time basis and a part-time Military Judge holds office on a part-time basis.

### **188AQ Appointment of part-time Military Judge not to affect tenure etc.**

If a person:

- (a) holds the judicial office of justice, judge or magistrate of a federal court; and
  - (b) is appointed, or serves, as a part-time Military Judge;
- the appointment or service does not affect his or her:

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- (c) tenure of that judicial office; or
- (d) rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of that judicial office;

and, for all purposes, his or her service as a part-time Military Judge is taken to be service as the holder of that judicial office.

**188AR Qualifications for Military Judges**

*Full-time Military Judges*

- (1) A person must not be appointed as a full-time Military Judge unless:
  - (a) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years; and
  - (b) the person is a member of:
    - (i) the Permanent Navy, the Regular Army or the Permanent Air Force; or
    - (ii) is a member of the Reserves and is rendering continuous full-time service; and
  - (c) the person holds a rank not lower than the naval rank of commander or the rank of lieutenant colonel or wing commander; and
  - (d) the person meets the person's individual service deployment requirements.

*Part-time Military Judges*

- (2) A person must not be appointed as a part-time Military Judge unless:
  - (a) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years; and
  - (b) the person is a member of the Reserves and is not rendering continuous full-time service; and
  - (c) the person holds a rank not lower than the naval rank of commander or the rank of lieutenant colonel or wing commander; and
  - (d) the person meets the person's individual service deployment requirements.



### **188AS Selection of Military Judges**

- (1) The Minister may, by notice in writing given to the Chief of the Defence Force, request the Chief of the Defence Force to establish an independent selection committee to give to the Minister, within the period specified in the notice:
  - (a) the name of a person, or the names of persons, the committee considers suitable for appointment as a Military Judge; and
  - (b) all the applications made for the office; and
  - (c) any other thing specified by the Minister in the notice.
- (2) If the Chief of the Defence Force receives such a notice, the Chief of the Defence Force must establish the committee.
- (3) The committee must invite all persons who satisfy, or who are capable of satisfying, the qualification requirements in section 188AR to apply for nomination for appointment as a Military Judge within the period specified in the notice under subsection (1).
- (4) The appointment of a person as a Military Judge is not invalid because:
  - (a) of a defect or irregularity in the process for selecting the person for appointment; or
  - (b) the committee did not comply with subsection (3).

### **188AT Oath or affirmation**

- (1) A Military Judge must, before proceeding to discharge the duties of his or her office, make and subscribe an oath or affirmation in accordance with the form in Schedule 4.
- (2) An oath or affirmation under this section is to be made before the Chief Military Judge or a Military Judge.

### **188AU Remuneration**

- (1) Subject to this section, a Military Judge is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, he or she is to be paid the remuneration that is prescribed.

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(2) A Military Judge is to be paid the allowances that are prescribed.

(3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

*Special rules for part-time Military Judges*

(4) If a person:

(a) is a justice, judge or magistrate of a federal court, or of a State or Territory court; and

(b) is appointed as a part-time Military Judge; and

(c) receives salary or annual allowance as such a justice, judge or magistrate for the period of the appointment as a part-time Military Judge;

then he or she is not entitled to remuneration under this Act for that period.

(5) If a person is a justice, judge or magistrate of a State or Territory court, the Minister may, for the purpose of appointing the person as a part-time Military Judge, enter into such arrangement with the appropriate State or Territory Minister as is necessary to secure the person's services.

(6) An arrangement under subsection (5) with a State or Territory Minister may provide for the Commonwealth to reimburse the State or Territory with respect to the services of the person to whom the arrangement relates.

**188AV Leave of absence**

(1) A Military Judge has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Governor-General may grant a Military Judge leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Governor-General determines.

### **188AW Outside employment**

#### *Full-time Military Judges*

- (1) A full-time Military Judge must not engage in employment outside the duties of his or her office.

#### *Part-time Military Judges*

- (2) A part-time Military Judge must not engage in employment outside the duties of his or her office as Military Judge if to do so would conflict with his or her duties as Military Judge.

### **188AX No promotion other than automatic mid-term promotion**

- (1) Subject to subsection (2), a Military Judge is not eligible for a promotion in rank during the period he or she is a Military Judge.
- (2) A Military Judge is, by force of this subsection, promoted to the next rank on the 5 year anniversary of his or her appointment as a Military Judge.
- (3) However, subsection (2) does not apply if the Military Judge already holds the naval rank of Commodore or the rank of Brigadier or Air Commodore.

### **188AY Resignation**

- (1) A Military Judge may resign his or her appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect 3 months, or such shorter period agreed to by the Governor-General, after it is given.

### **188AZ Termination of appointment**

- (1) The Governor-General may terminate the appointment of a Military Judge:
  - (a) for misbehaviour; or
  - (b) for physical or mental incapacity; or
  - (c) if the Military Judge no longer meets his or her individual service deployment requirements.

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- (2) A Military Judge ceases to hold office if:
- (a) he or she ceases to be enrolled as a legal practitioner; or
  - (b) if he or she is a full-time Military Judge—he or she is neither:
    - (i) a member of the Permanent Navy, the Regular Army or the Permanent Air Force; nor
    - (ii) a member of the Reserves who is rendering continuous full-time service; or
  - (c) if he or she is a part-time Military Judge—he or she is not a member of the Reserves who is not rendering continuous full-time service; or
  - (d) he or she becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (e) he or she is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months.

**188BB Acting Military Judges**

*Recommendation to appoint an acting Military Judge*

- (1) If, after receiving advice from the Chief Military Judge, the Minister considers that a charge that has been, or will be, referred to the Australian Military Court requires the experience or expertise of a person who:
- (a) has been a Chief Military Judge or Military Judge; or
  - (b) is, or has been, a justice, judge or magistrate of a federal court, or of a State or Territory court;

the Minister may make a recommendation to the Governor-General that the person be appointed to act as a Military Judge to try the charge and, in the case of a conviction, take action under Part IV.

*Appointment*

- (2) If the Minister makes such a recommendation, the Governor-General may, by written instrument, appoint the person as an acting Military Judge.

*Qualifications*

- (3) However, the Governor-General must not appoint the person unless:
- (a) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years; and
  - (b) the person is a member of:
    - (i) the Permanent Navy, the Regular Army or the Permanent Air Force; or
    - (ii) the Reserves; and
  - (c) the person holds a rank not lower than the naval rank of commander or the rank of lieutenant colonel or wing commander; and
  - (d) the person meets the person's individual service deployment requirements.

*Term of appointment*

- (4) An acting Military Judge holds office for the period specified in the instrument of appointment. The instrument must provide that the period ends on:
- (a) if the proceedings for the charge are terminated without the accused person being acquitted or convicted—the day of the termination; or
  - (b) if the accused person is acquitted—the day of the acquittal; or
  - (c) if the accused person is convicted—the day that action is taken under Part IV.

*Appointment to be part-time*

- (5) An acting Military Judge holds office on a part-time basis.

*Resignation*

- (6) An acting Military Judge may resign his or her appointment by giving the Governor-General a written resignation. The resignation takes effect 2 weeks after it is given.

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*Terms and conditions etc.*

- (7) The following provisions apply to an acting Military Judge as if a reference to “Military Judge” in those provisions included a reference to “acting Military Judge”:
- (a) section 188AQ (appointment not to affect tenure etc.);
  - (b) section 188AT (oath or affirmation);
  - (c) section 188AU (remuneration);
  - (d) section 188AV (leave of absence);
  - (e) subsection 188AW(2) (outside employment);
  - (f) subsection 188AX(1) (no promotion);
  - (g) section 188AZ, other than paragraph 188AZ(2)(b) (termination of appointment).

## **Division 3—The Registrar of the Australian Military Court**

### **188F Registrar of the Australian Military Court**

There is to be a Registrar of the Australian Military Court.

#### **188FA Functions of the Registrar**

- (1) The function of the Registrar is to assist the Chief Military Judge by providing administrative and management services in connection with proceedings before the Australian Military Court under this Act.
- (2) In addition to his or her functions under subsection (1), the Registrar also has:
  - (a) the functions conferred on the Registrar by or under this Act or any other law of the Commonwealth; and
  - (b) such other functions as are prescribed by the regulations.

#### **188FB Appointment of the Registrar**

- (1) The Registrar is to be appointed by the Minister by written instrument.
- (2) The Registrar holds office on a full-time basis.
- (3) The Registrar holds office on the terms and conditions (if any) in respect of matters not provided for by this Act that are determined by the Minister.

#### **188FC Qualifications for appointment**

A person must not be appointed as the Registrar unless:

- (a) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years; and
- (b) the person is a member of the Permanent Navy, the Regular Army or the Permanent Air Force or is a member of the Reserves who is rendering continuous full-time service; and
- (c) the person holds a rank not lower than the naval rank of captain or the rank of colonel or group captain.

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**188FD Tenure**

- (1) The Registrar holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (2) The Registrar is eligible for reappointment.

**188FE Resignation**

The Registrar may resign his or her appointment by giving the Minister a written resignation.

**188FF Oath or affirmation**

- (1) The Registrar must, before proceeding to discharge the duties of his or her office, make and subscribe an oath or affirmation in accordance with the form in Schedule 4.
- (2) An oath or affirmation under this section is to be made before a Military Judge.

**188FG Remuneration**

- (1) Subject to this section, the Registrar is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, he or she is to be paid the remuneration that is prescribed.
- (2) The Registrar is to be paid the allowances that are prescribed.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

**188FH Leave of absence**

- (1) The Registrar has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Registrar leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.



### **188FI Outside employment**

The Registrar must not:

- (a) engage in practice as a legal practitioner outside the duties of his or her office; or
- (b) without the approval of the Minister, engage in paid employment outside the duties of his or her office.

### **188FJ Termination of appointment**

- (1) The Minister may terminate the appointment of the Registrar for:
  - (a) misbehaviour; or
  - (b) physical or mental incapacity.
- (2) The Minister must terminate the appointment of the Registrar if the Registrar:
  - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (c) engages in practice as a legal practitioner outside the duties of his or her office; or
  - (d) without the approval of the Minister, engages in paid employment outside the duties of his or her office; or
  - (e) fails, without reasonable excuse, to comply with his or her obligations under section 188FK.
- (3) The Registrar ceases to hold office if:
  - (a) he or she ceases to be enrolled as a legal practitioner; or
  - (b) he or she is no longer:
    - (i) a member of the Permanent Navy, the Regular Army or the Permanent Air Force; or
    - (ii) a member of the Reserves who is rendering continuous full-time service.

### **188FK Standing obligation to disclose interests**

- (1) The Registrar must disclose any interest that the Registrar has if that interest could conflict with the proper performance of the
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functions of his or her office. Disclosure is required whether or not there is any particular matter under consideration that gives rise to an actual conflict of interest.

- (2) Subsection (1) applies to interests:
  - (a) whether direct or indirect, and whether or not pecuniary; and
  - (b) whether acquired before or after the person's appointment.
- (3) The disclosure must be by notice in writing given to the Minister as soon as practicable after the Registrar becomes aware of the potential for conflict of interest.

**188FL Acting appointments**

- (1) The Minister may appoint a person to act as the Registrar:
  - (a) during a vacancy in the office, whether or not an appointment has previously been made to that office; or
  - (b) during any period, or during all periods, when the Registrar is absent from duty or from Australia, or is, for any other reason, unable to perform the functions of his or her office.
- (2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:
  - (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.
- (3) The Minister must not appoint a person to act as the Registrar unless:
  - (a) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years; and
  - (b) the person is a member of the Permanent Navy, the Regular Army or the Permanent Air Force or is a member of the Reserves who is rendering continuous full-time service; and
  - (c) the person holds a rank not lower than lieutenant commander, major or squadron leader.

### **188FM Delegation**

The Registrar may delegate all or any of his or her powers and functions to:

- (a) a defence member holding the rank of lieutenant commander, major or squadron leader; or
- (b) a person whose classification level appears in Group 5 or a higher Group of Schedule 1 to the Classification Rules under the *Public Service Act 1999*; or
- (c) a person who is acting in a position usually occupied by a person with a classification level of the kind mentioned in paragraph (b).

## **Part XIA—Director of Military Prosecutions**

### **Division 1—Establishment and functions of the Director of Military Prosecutions**

#### **188G Director of Military Prosecutions**

There is to be a Director of Military Prosecutions.

#### **188GA Functions of the Director of Military Prosecutions**

- (1) The Director of Military Prosecutions has the following functions:
  - (a) to carry on prosecutions for service offences in proceedings before the Australian Military Court, whether or not instituted by the Director of Military Prosecutions;
  - (b) to seek the consent of the Director of Public Prosecutions as required by section 63;
  - (c) to make statements or give information to particular persons or to the public relating to the exercise of powers or the performance of duties or functions under this Act;
  - (d) to represent the service chiefs in proceedings before the Defence Force Discipline Appeal Tribunal;
  - (e) to do anything incidental or conducive to the performance of any of the preceding functions.
- (2) In addition to his or her functions under subsection (1), the Director of Military Prosecutions also has:
  - (a) the functions conferred on the Director of Military Prosecutions by or under this Act or any other law of the Commonwealth; and
  - (b) such other functions as are prescribed by the regulations.

#### **188GB Appearances by and on behalf of Director of Military Prosecutions**

In proceedings before the Australian Military Court, the Director of Military Prosecutions:

- (a) may appear in person; or

- (b) if the Director of Military Prosecutions so authorises, may be represented by:
  - (i) if the proceedings are held in Australia—a member of the Defence Force or a legal practitioner; or
  - (ii) if the proceedings are held in a place outside Australia—a person referred to in subparagraph (i) or a person qualified to practise before the courts of that place.

### **188GC Right of Director of Military Prosecutions and staff to practise in their official capacity**

The Director of Military Prosecutions, or a person assisting the Director of Military Prosecutions who is a legal officer, is, in his or her official capacity:

- (a) entitled to practise as a barrister, solicitor, or barrister and solicitor, in a federal court or in a court of a State or Territory; and
- (b) entitled to all the rights and privileges of a barrister, solicitor, or barrister and solicitor, as the case may be, in that court; whether or not he or she would, but for this section, be entitled to practise in that court.

### **188GD Undertakings by the Director of Military Prosecutions**

- (1) The Director of Military Prosecutions may, if he or she considers it appropriate to do so, give to a person an undertaking that:
  - (a) an answer that is given, or a statement or disclosure that is made, by the person in the course of giving evidence in proceedings for a service offence; or
  - (b) the fact that the person discloses or produces a document or other thing in proceedings for a service offence; or
  - (c) any information, document or other thing that is obtained as a direct or indirect consequence of an answer that is given, a statement or disclosure that is made, or a document or other thing that is disclosed or produced in proceedings for a service offence;

will not be used in evidence against the person in any other proceedings for a service offence.

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- (2) If the Director of Military Prosecutions gives an undertaking under subsection (1):
- (a) an answer that is given, or a statement or disclosure that is made, by the person in the course of giving evidence in the proceedings; or
  - (b) the fact that the person discloses or produces a document or other thing in the proceedings; or
  - (c) any information, document or other thing that is obtained as mentioned in paragraph (1)(c);
- as the case may be, is not admissible in evidence against the person in any other proceedings for a service offence, other than proceedings in respect of the falsity of evidence given by the person.
- (3) The Director of Military Prosecutions may, if he or she considers it appropriate to do so, give to a person an undertaking that the person will not be prosecuted:
- (a) for a specified service offence; or
  - (b) in respect of specified acts or omissions that constitute, or may constitute, a service offence.
- (4) If the Director of Military Prosecutions gives an undertaking to a person under subsection (3), no prosecution may be instituted against the person in respect of the specified service offence or a service offence in respect of the specified acts or omissions.
- (5) An undertaking under subsection (3) may be subject to any conditions that the Director of Military Prosecutions considers appropriate.

**188GE Directions and guidelines by the Director of Military Prosecutions**

- (1) The Director of Military Prosecutions may, by legislative instrument, give directions, or provide guidelines, in relation to the prosecution of service offences to:
- (a) a person who is an investigating officer within the meaning of Part VI; or
  - (b) any other person who institutes or carries on prosecutions for service offences.

- (2) Without limiting the generality of subsection (1), directions or guidelines under that subsection may relate to particular cases and may specify:
- (a) a service offence, being an offence a matter relating to which is to be referred to the Director of Military Prosecutions for the institution or carrying on of a prosecution for that offence; or
  - (b) a class of service offences, being offences matters relating to which are to be referred to the Director of Military Prosecutions for the institution or carrying on of prosecutions for those offences.
- (3) The Director of Military Prosecutions must give to the Minister a copy of each direction given or guideline provided under subsection (1).

Note: The annual report prepared by the Director of Military Prosecutions for a year under section 196B must include a copy of each direction given or guideline provided under this section in the year, and a copy of each direction given or guideline provided under this section as in force at the end of that year.

## **Division 2—Administrative provisions about the Director of Military Prosecutions**

### **188GF Appointment of the Director of Military Prosecutions**

- (1) The Director of Military Prosecutions is to be appointed by the Minister by written instrument.
- (2) The Director of Military Prosecutions holds office on a full-time basis.
- (3) The Director of Military Prosecutions holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

### **188GG Qualifications for appointment**

A person must not be appointed as the Director of Military Prosecutions unless:

- (a) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years; and
- (b) the person is a member of the Permanent Navy, the Regular Army or the Permanent Air Force or is a member of the Reserves who is rendering continuous full-time service; and
- (c) the person holds a rank not lower than the naval rank of commodore or the rank of brigadier or air commodore.

### **188GH Tenure**

- (1) The Director of Military Prosecutions holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (2) The Director of Military Prosecutions is eligible for reappointment, but must not hold office for a total of more than 10 years.

### **188GI Resignation**

The Director of Military Prosecutions may resign his or her appointment by giving the Minister a written resignation.



### **188GJ Oath or affirmation**

- (1) The Director of Military Prosecutions must, before proceeding to discharge the duties of his or her office, make and subscribe an oath or affirmation in accordance with the form in Schedule 4.
- (2) An oath or affirmation under this section is to be made before a Military Judge.

### **188GK Remuneration**

- (1) The Director of Military Prosecutions is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, he or she is to be paid the remuneration that is prescribed.
- (2) The Director of Military Prosecutions is to be paid the allowances that are prescribed.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

### **188GL Leave of absence**

- (1) The Director of Military Prosecutions has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Director of Military Prosecutions leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

### **188GM Outside employment**

The Director of Military Prosecutions must not:

- (a) engage in practice as a legal practitioner outside the duties of his or her office; or
- (b) without the approval of the Minister, engage in paid employment outside the duties of his or her office.

**188GN Termination of appointment**

- (1) The Minister may terminate the appointment of the Director of Military Prosecutions for:
  - (a) misbehaviour; or
  - (b) physical or mental incapacity.
- (2) The Minister must terminate the appointment of the Director of Military Prosecutions if the Director of Military Prosecutions:
  - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (c) engages in practice as a legal practitioner outside the duties of his or her office; or
  - (d) without the approval of the Minister, engages in paid employment outside the duties of his or her office; or
  - (e) fails, without reasonable excuse, to comply with his or her obligations under section 188GO.
- (3) The Director of Military Prosecutions ceases to hold office if:
  - (a) he or she ceases to be enrolled as a legal practitioner; or
  - (b) he or she is no longer:
    - (i) a member of the Permanent Navy, the Regular Army or the Permanent Air Force; or
    - (ii) a member of the Reserves who is rendering continuous full-time service.

**188GO Standing obligation to disclose interests**

- (1) The Director of Military Prosecutions must disclose any interest that the Director of Military Prosecutions has if that interest could conflict with the proper performance of the functions of his or her office. Disclosure is required whether or not there is any particular matter under consideration that gives rise to an actual conflict of interest.
- (2) Subsection (1) applies to interests:
  - (a) whether direct or indirect, and whether or not pecuniary; and

- (b) whether acquired before or after the person's appointment.
- (3) The disclosure must be by notice in writing given to the Minister as soon as practicable after the Director of Military Prosecutions becomes aware of the potential for conflict of interest.

### **188GP Acting appointments**

- (1) The Minister may appoint a person to act as the Director of Military Prosecutions:
  - (a) during a vacancy in the office, whether or not an appointment has previously been made to that office; or
  - (b) during any period, or during all periods, when the Director of Military Prosecutions is absent from duty or from Australia, or is, for any other reason, unable to perform the functions of his or her office.
- (2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:
  - (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.
- (3) The Minister must not appoint a person to act as the Director of Military Prosecutions unless:
  - (a) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years; and
  - (b) the person is a member of the Permanent Navy, the Regular Army or the Permanent Air Force or is a member of the Reserves who is rendering continuous full-time service; and
  - (c) the person holds a rank not lower than the naval rank of commander or the rank of lieutenant-colonel or wing commander.

### **188GQ Staff**

The staff necessary to assist the Director of Military Prosecutions are to be the following:

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- (a) defence members made available for the purpose by the appropriate service chief;
- (b) persons engaged under the *Public Service Act 1999* and made available for the purpose by the Secretary of the Department.

## **Division 3—Other matters**

### **188GR Delegation**

The Director of Military Prosecutions may delegate all or any of his or her powers to a defence member mentioned in paragraph 188GQ(a) who is a legal officer.

## Part XII—Miscellaneous

### 189 Royal prerogative of mercy

Nothing in this Act limits or affects the royal prerogative of mercy.

### 190 Jurisdiction of civil courts in relation to offences

- (1) Subject to the Constitution, a civil court does not have jurisdiction to try a charge of a service offence.
- (2) Subject to subsection (4), the jurisdiction of a civil court to try a charge of a civil court offence is not affected by this Act.
- (4) A civil court does not have jurisdiction to try a charge of a civil court offence that:
  - (a) is an ancillary offence in relation to an offence against this Act (other than section 61) or the regulations; and
  - (b) was committed by a person at a time when the person was a defence member or a defence civilian.

### 191 Evidentiary certificate

- (1) An authorized officer may issue a certificate setting out such facts as the authorised officer considers relevant with respect to:
  - (a) the acquittal or conviction of a person of a service offence;
  - (b) the dismissal of a charge of a service offence against a person under section 130, 132B or 132D;
  - (c) the dismissal of a charge of an offence against a person under previous service law; or
  - (d) the taking of a service offence into consideration in relation to a person under section 77; or
  - (e) the determination or dismissal of an appeal under Part IX.
- (2) A certificate purporting to be issued under subsection (1) and purporting to be signed by an authorized officer shall be received in evidence in any civil court or service tribunal without further proof and is *prima facie* evidence of the facts stated in it.

**192 Evidence of warrant of commitment**

An instrument purporting to be a warrant of commitment under section 170 and purporting to be signed by an authorized officer shall be received in evidence in any civil court without further proof and is *prima facie* evidence of the facts stated in it.

**193 Protection of members of military juries etc.**

- (1) A member of a military jury, a Military Judge, a summary authority or a reviewing authority has, in the performance of his or her duties as such a member, Judge or authority, the same protection and immunity as a Justice of the High Court.
- (1A) The Judge Advocate General has, in the performance of his or her duties as the Judge Advocate General, the same protection and immunity as a Justice of the High Court.
- (2) A legal practitioner or other person appearing before a service tribunal on behalf of a party has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.
- (3) Subject to this Act, a person summoned to attend or appearing before a service tribunal as a witness has the same protection as a witness in proceedings in the High Court.
- (4) An action, suit or proceeding does not lie against:
  - (a) the Director of Military Prosecutions or a person assisting the Director of Military Prosecution; or
  - (b) the Registrar or a person assisting the Registrar;in relation to an act done or omitted to be done in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, conferred by or under this Act or any other law of the Commonwealth.

**194 Persons found to be of unsound mind**

- (1) Where a direction has been given under section 145 or 164 that a person be kept in strict custody until the pleasure of the Governor-General is known, the Governor-General may, by writing signed by him or her, order that the person be detained in

safe custody in such place and in accordance with such directions, if any, as the Governor-General specifies in the order.

- (2) The Governor-General may, from time to time, by writing signed by him or her, vary an order made under subsection (1), either as to the place specified in the order or the directions so specified, or as to both, in such manner as the person thinks fit.
- (3) The Governor-General may, by writing signed by him or her, order that a person detained in safe custody in pursuance of an order made under subsection (1) (being a person who, by reason of unsoundness of mind, has been acquitted of the service offence with which he or she was charged) be released from custody either unconditionally or subject to such conditions as are specified in the order.
- (4) Where the Governor-General orders that a person be released from custody subject to conditions, the Governor-General may, at any time, by writing signed by him or her:
  - (a) vary or revoke any or all of the conditions or impose additional conditions; or
  - (b) revoke the order.
- (5) Where an order in respect of a person under subsection (3) is revoked or the person fails to comply with a condition of such an order, the person may, without warrant, be arrested by any constable and may be detained in safe custody in accordance with the order made in respect of the person under subsection (1) as if the order under subsection (3) had not been made.
- (6) Upon the Governor-General making an order under subsection (3) that a person be released from custody unconditionally or upon the Governor-General revoking all the conditions subject to which a person has been released from custody in pursuance of an order made under that subsection, the order made under subsection (1) in respect of the person ceases to have effect.
- (7) Where an order is made under subsection (1) in respect of a person who, by reason of unsoundness of mind, is unfit to be tried, he or she shall be detained until the Governor-General is satisfied by the certificate in writing of not less than 2 medical practitioners that the person has become of sound mind and is fit to be tried, and, upon the Governor-General being so satisfied, the



Governor-General may, by writing signed by him or her, refer the charge to the Director of Military Prosecutions and, pending the decision of the Director of Military Prosecutions under section 103, order the removal of the person to such custody as is specified in the order.

- (8) For the purposes of the preceding provisions of this section, ***Governor-General*** means the Governor-General acting with the advice of the Attorney-General.
- (9) The Governor-General may make arrangements with the Governor of a State or the Administrator of the Northern Territory for or in relation to the detention in institutions maintained by the State or the Northern Territory, as the case may be, of persons in respect of whom orders are made under subsection (1).

#### **194A Persons required as witnesses before service tribunals**

Where:

- (a) a person (in this section referred to as the ***prisoner***) who is required as a witness before a service tribunal is undergoing a sentence of imprisonment in a State or Territory other than the State or Territory in which the service tribunal is to sit during the period when the prisoner will be so required as a witness; and
- (b) the prisoner is produced in the last-mentioned State or Territory in pursuance of an instrument, issued under the rules of procedure, directed to the person in charge of the prison where the prisoner is undergoing the sentence of imprisonment;

then:

- (c) the prisoner, while in the last-mentioned State or Territory in pursuance of the instrument, shall be deemed to be undergoing the sentence of imprisonment; and
- (d) the person in whose custody the prisoner is placed has the same powers, in relation to the detention or disposition of the prisoner, as the person to whom the instrument was directed has in the first-mentioned State or Territory.

**195 Supply of record of proceedings**

- (1) Subject to this section, a person who has been tried by the Australian Military Court is, upon application made to the Attorney-General before the expiration of a period of 10 years commencing on the date of the delivery of the verdict in the trial and upon the payment of the prescribed fee (if any), entitled to be supplied with a copy of the record of the proceedings of the trial.
- (2) Subject to this section, where a person tried by the Australian Military Court has died before the expiration of a period of 10 years commencing on the date of the delivery of the verdict in the trial, his or her legal personal representative or, subject to subsection (3), a person approved by the Attorney-General as that person's representative is, upon application made to the Attorney-General before the expiration of a period of 1 year commencing on the date of the death of the deceased person and upon the payment of the prescribed fee (if any), entitled to be supplied with a copy of the record of the proceedings of the trial.
- (3) If there is a legal personal representative of a deceased person, the Attorney-General shall not approve a person as a representative of a deceased person unless the Attorney-General is satisfied that the legal personal representative has declined to take action in relation to the making of the application under subsection (2).
- (4) Nothing in this section authorizes, or requires, the supply of a copy of the record of evidence the publication of which was prohibited by an order under subsection 140(2).
- (5) Nothing in this section affects the power of a civil court to make an order for the discovery of documents or the giving of evidence in, or the production of documents to, a civil court.
- (6) Where the record of the proceedings of a trial to which an application under subsection (1) or (2) relates is held by the Chief of the Defence Force or a service chief, the Attorney-General may make arrangements with the Chief of the Defence Force or the service chief for the supply of a copy of the record to the applicant.

**196A Annual report relating to Defence Force discipline law**

- (1) The Judge Advocate General shall, as soon as practicable after each 31 December, prepare and furnish to the Minister a report relating to:
  - (a) the operation of this Act, the regulations, the Procedural Rules and the Summary Authority Rules; and
  - (b) the operation of any other law of the Commonwealth or of the Australian Capital Territory in so far as that law relates to the discipline of the Defence Force;during the year ending on that 31 December.
- (2) The Minister shall cause a copy of a report furnished to the Minister under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.
- (3) A report under subsection (1) shall set out such statistical information as the Judge Advocate General considers appropriate.
- (4) The first report under subsection (1) shall relate to the period commencing on the proclaimed date and expiring on the next succeeding 31 December.
- (5) In this section:

*Procedural Rules* means the rules made under section 149 of this Act as that section was in force immediately before the commencement of Schedule 1 to the *Defence Legislation Amendment Act 2006*.

**196B Annual report relating to the operations of the Director of Military Prosecutions**

- (1) The Director of Military Prosecutions must, as soon as practicable after each 31 December, prepare and give to the Minister, for presentation to the Parliament, a report relating to the operations of the Director of Military Prosecutions during the year ending on that 31 December.
- (2) A report under subsection (1) must:
  - (a) set out such statistical information as the Director of Military Prosecutions considers appropriate; and

Section 196C

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- (b) include:
  - (i) a copy of each direction given or guideline provided under subsection 188GE(1) during the year to which the report relates; and
  - (ii) a copy of each such direction or guideline as in force at the end of that year.
- (3) The first report under subsection (1) is to relate to the period beginning on the day on which this section commences and ending on the next 31 December.

**196C Annual report relating to the operations of the Australian Military Court**

- (1) The Chief Military Judge must, as soon as practicable after each 31 December, prepare and give to the Minister, for presentation to the Parliament, a report relating to:
  - (a) the operations of the Australian Military Court; and
  - (b) the operations of the Australian Military Court Rules; during the year ending on that 31 December.
- (2) The report must set out such statistical information as the Chief Military Judge considers appropriate.
- (3) The first report is to relate to the period beginning on the day on which this section commences and ending on the next 31 December.

**197 Regulations**

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations shall not prescribe a punishment for a person convicted of an offence under the regulations other than:
  - (a) where the convicted person is a member of the Defence Force—a punishment referred to in paragraph 68(1)(h), (j), (k), (m), (n) or (p); or

- (b) in any other case—a punishment referred to in paragraph 68(1)(h).

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## Schedule 1A—Certain disciplinary offences

Note: See subsection 3(1).

<b>Item</b>	<b>Offence against:</b>	<b>Subject matter</b>
1	Subsection 23(1)	Absence from duty
2	Subsection 23(2)	Absence from duty
3	Subsection 24(1)	Absence without leave
4	Subsection 26(1)	Insubordinate conduct
5	Subsection 26(2)	Insubordinate conduct
6	Subsection 27(1)	Disobeying a lawful command
7	Subsection 29(1)	Failing to comply with a general order
8	Subsection 32(1)	Person on guard or on watch
9	Subsection 35(1)	Negligence in performance of a duty
10	Subsection 37(1)	Intoxicated while on duty etc.
11	Subsection 54A(1)	Custodial offences
12	Subsection 54A(2)	Custodial offences
13	Subsection 60(1)	Prejudicial conduct
14	Subsection 60(1A)	Prejudicial conduct

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## **Schedule 1—Corresponding punishments**

Section 65B

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<b>Item</b>	<b>Column 1 Punishment in accordance with previous service law</b>	<b>Column 2 Corresponding punishment under this Act</b>
1	Penal servitude	Imprisonment for a specific period
2	Dismissal with disgrace from Her Majesty's Service	Imprisonment for 2 years
3	Cashiering Dismissal from Her Majesty's Service	Dismissal from the Defence Force

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## Schedule 2—Punishments that may be imposed by the Australian Military Court

Section 67

1. Subject to clause 2, the Australian Military Court may impose punishments on convicted persons in accordance with the table in this Schedule.
2. The Australian Military Court must not impose any of the following punishments on a person convicted of a class 3 offence if the offence was tried by a Military Judge alone in accordance with subsection 132AB(2):
  - (a) imprisonment for life;
  - (b) imprisonment for a period exceeding 6 months;
  - (c) detention for a period exceeding 6 months.

### TABLE OF PUNISHMENTS

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<b>Column 1</b>	<b>Column 2</b>
<b>Convicted Person</b>	<b>Punishment</b>
Officer	Imprisonment Dismissal from the Defence Force Reduction in rank Forfeiture of service for the purposes of promotion Forfeiture of seniority Fine of an amount not exceeding the amount of the convicted person's pay for 28 days Severe reprimand Reprimand

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<b>Column 1</b>	<b>Column 2</b>
<b>Convicted Person</b>	<b>Punishment</b>
Member of the Defence Force who is not an officer	Imprisonment Dismissal from the Defence Force Detention for a period not exceeding 2 years Reduction in rank Forfeiture of seniority Fine not exceeding the amount of the convicted person's pay for 28 days Severe reprimand Reprimand
Person who is not a member of the Defence Force	Imprisonment Fine of an amount not exceeding \$500.

## Schedule 3—Punishments that may be imposed by a summary authority

Note: See section 67.

### 1 Punishments that may be imposed by a superior summary authority

#### *Punishments that may be imposed on certain officers*

- (1) A superior summary authority may impose a punishment set out in column 2 of an item of Table A of this Schedule on an officer referred to in column 1 of that item who has been convicted of an offence.

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**Table A—Punishments that may be imposed by a superior summary authority on certain officers**

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<b>Item</b>	<b>Column 1 Convicted person</b>	<b>Column 2 Punishment</b>
1	Officer: (a) of or below the rank of rear admiral but above the rank of lieutenant commander; or (b) of or below the rank of major-general but above the rank of major; or (c) of or below the rank of air vice-marshal but above the rank of squadron leader	Fine not exceeding the amount of the convicted person's pay for 7 days Severe reprimand Reprimand

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#### *Punishments that may be imposed on other persons*

- (2) A superior summary authority may impose an elective punishment, or a punishment set out in column 3 of an item of Table B of this Schedule, on a person referred to in column 1 of that item who has been convicted of an offence (other than a Schedule 1A offence).
- (3) A superior summary authority may impose a punishment set out in column 3 of an item of Table B of this Schedule on a person
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referred to in column 1 of that item who has been convicted of a Schedule 1A offence.

- (4) A superior summary authority may impose an elective punishment on a person referred to in column 1 of an item of Table B of this Schedule who has been convicted of a Schedule 1A offence (other than a custodial offence) only in accordance with subsection 131AA(8).

**Table B—Punishments that may be imposed by a superior summary authority on other persons**

<b>Item</b>	<b>Column 1 Convicted person</b>	<b>Column 2 Elective punishment</b>	<b>Column 3 Other punishment</b>
1	Officer of or below the rank of lieutenant commander, major or squadron leader Warrant officer	Fine exceeding the amount of the convicted person's pay for 7 days but not exceeding the amount of the convicted person's pay for 14 days	Fine not exceeding the amount of the convicted person's pay for 7 days Severe reprimand Reprimand
2	Person who is not a member of the Defence Force	Fine exceeding \$100 but not exceeding \$250	Fine not exceeding \$100

## **2 Punishments that may be imposed by a commanding officer**

- (1) A commanding officer may impose an elective punishment, or a punishment set out in column 3 of an item of Table C of this Schedule, on a person referred to in column 1 of that item who has been convicted of an offence (other than a Schedule 1A offence).
- (2) A commanding officer may impose a punishment set out in column 3 of an item of Table C of this Schedule on a person referred to in column 1 of that item who has been convicted of a Schedule 1A offence.
- (3) A commanding officer may impose an elective punishment on a person referred to in column 1 of an item of Table C of this Schedule who has been convicted of a Schedule 1A offence (other than a custodial offence) only in accordance with subsection 131AA(8).

**Schedule 3** Punishments that may be imposed by a summary authority

Clause 2

**Table C—Punishments that may be imposed by a commanding officer on convicted persons**

<b>Item</b>	<b>Column 1 Convicted person</b>	<b>Column 2 Elective punishment</b>	<b>Column 3 Other punishment</b>
1	Officer of or below the naval rank of lieutenant, the rank of captain in the Army or the rank of flight lieutenant Warrant officer	Fine exceeding the amount of the convicted person's pay for 7 days but not exceeding the amount of the convicted person's pay for 14 days	Fine not exceeding the amount of the convicted person's pay for 7 days Severe reprimand Reprimand
2	Non-commissioned officer	Reduction in rank by one rank or, in the case of a corporal of the Army, reduction in rank by one or 2 ranks Forfeiture of seniority Fine exceeding the amount of the convicted person's pay for 7 days but not exceeding the amount of the convicted person's pay for 14 days	Fine not exceeding the amount of the convicted person's pay for 7 days Severe reprimand Reprimand
3	Member below non-commissioned rank who, at the time he or she committed the service offence of which he or she has been convicted, was on active service	Detention for a period exceeding 14 days but not exceeding 42 days Fine exceeding the amount of the convicted person's pay for 14 days but not exceeding the amount of the convicted person's pay for 28 days	Detention for a period not exceeding 14 days Fine not exceeding the amount of the convicted person's pay for 14 days Severe reprimand Restriction of privileges for a period not exceeding 14 days Extra duties for a

**Table C—Punishments that may be imposed by a commanding officer on convicted persons**

<b>Item</b>	<b>Column 1 Convicted person</b>	<b>Column 2 Elective punishment</b>	<b>Column 3 Other punishment</b>
			period not exceeding 7 days Extra drill for not more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days Reprimand
4	Member below non-commissioned rank who, at the time he or she committed the service offence of which he or she has been convicted, was not on active service	Detention for a period exceeding 7 days but not exceeding 28 days Fine exceeding the amount of the convicted person's pay for 7 days but not exceeding the amount of the convicted person's pay for 28 days	Detention for a period not exceeding 7 days Fine not exceeding the amount of the convicted person's pay for 7 days Severe reprimand Restriction of privileges for a period not exceeding 14 days Extra duties for a period not exceeding 7 days Extra drill for not more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days Reprimand
5	Person who is not a member of the Defence Force	Fine exceeding \$100 but not exceeding \$250	Fine not exceeding \$100

Clause 3

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**3 Punishments that may be imposed by a subordinate summary authority**

A subordinate summary authority may impose a punishment set out in column 2 of an item of Table D of this Schedule on a person referred to in column 1 of that item who has been convicted of an offence.

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**Table D—Punishments that may be imposed by a subordinate summary authority on convicted persons**

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<b>Item</b>	<b>Column 1 Convicted person</b>	<b>Column 2 Punishment</b>
1	Non-commissioned officer of, or below, the rank of leading seaman or corporal	Fine not exceeding the amount of the convicted person's pay for 3 days Severe reprimand Reprimand
2	Member below non-commissioned rank	Fine not exceeding the amount of the convicted person's pay for 3 days Severe reprimand Restriction of privileges for a period not exceeding 7 days Stoppage of leave for a period not exceeding 7 days Extra duties for a period not exceeding 7 days Extra drill for not more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days Reprimand

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## **Schedule 3A—Punishments that may be imposed by a summary authority on detainees convicted of certain offences**

Section 67

1. A commanding officer may impose punishments on persons convicted of custodial offences, or service offences to which subsection 68C(1) applies, in accordance with Table A in this Schedule.
2. A subordinate summary authority may impose punishments on persons convicted of custodial offences, or service offences to which subsection 68C(1) applies, in accordance with Table B in this Schedule.

### TABLE A—COMMANDING OFFICER

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Segregated confinement for a period not exceeding 10 days  
Confinement to cell for a period not exceeding 10 days  
Extra drill for a period not exceeding 6 days  
Restriction of custodial privileges for a period not exceeding 14 days

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### TABLE B—SUBORDINATE SUMMARY AUTHORITY

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Segregated confinement for a period not exceeding 3 days  
Confinement to cell for a period not exceeding 3 days  
Extra drill for a period not exceeding 3 days  
Restriction of custodial privileges for a period not exceeding 7 days

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## Schedule 4

Sections 184, 188AF, 188AT, 188FF and 188GJ

### OATH

I, *A.B.*, do swear that I will well and truly serve Her Majesty in the office of \_\_\_\_\_ and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will: So help me God!

### AFFIRMATION

I, *A.B.*, do solemnly and sincerely promise and declare that I will well and truly serve Her Majesty in the office of \_\_\_\_\_ and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will.



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## Schedule 6—Alternative offences

Section 142

<b>Item</b>	<b>Column 1 Offence</b>	<b>Column 2 Alternative offence</b>
1	Offence against section 16B relating to an act or omission	Offence against section 15, 15A, 15D, 15E, 15F, 15G, 16 or 16A relating to that act or omission
3	Offence against subsection 18(2)	Offence against subsection 18(1)
4	Offence against subsection 20(1)	Offence against subsection 21(1)
5	Offence against subsection 20(2)	Offence against subsection 21(2)
6	Offence against section 22	Offence against section 24
6A	Offence against section 23	Offence against section 24
7	Offence against section 24	Offence against section 23
8	Offence against section 25	Offence against section 33 relating to an act or omission of the kind referred to in paragraph 33(a) or (b)
9	Offence against section 26	Offence against section 33 relating to an act or omission of the kind referred to in paragraph 33(b) or (d)
10	Offence against subsection 30(1)	Offence against section 33 relating to an act or omission of the kind referred to in paragraph 33(a) or (b)
11	Offence against subsection 30(2)	(a) Offence against subsection 30(1) (b) Offence against section 33 relating to an act or omission of the kind referred to in paragraph 33(a) or (b)
12	Offence against subsection 31(1)	Offence against section 33 relating to an act or omission of the kind referred to in paragraph 33(a) or (b)

**Schedule 6** Alternative offences

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<b>Item</b>	<b>Column 1 Offence</b>	<b>Column 2 Alternative offence</b>
13	Offence against subsection 32(1) relating to an act or omission of the kind referred to in paragraph 32(1)(c)	Offence against section 37 relating to being intoxicated on duty
14	Offence against subsection 32 (1) relating to an act or omission of the kind referred to in paragraph 32(1)(d)	Offence against section 23
15	Offence against subsection 32(3) relating to an act or omission	Offence against subsection 32(1) relating to that act or omission
16	Offence against subsection 32(3) relating to an act or omission of the kind referred to in paragraph 32(1)(c)	Offence against subsection 37(1) relating to being intoxicated on duty
17	Offence against subsection 32(3) relating to an act or omission of the kind referred to in paragraph 32(1) d)	Offence against section 23
18	Offence against section 34	Offence against section 33 relating to an act or omission of the kind referred to in paragraph 33(a) or (b)
19	Offence against subsection 36(1)	(a) Offence against subsection 36(2) (b) Offence against subsection 36(3)
20	Offence against subsection 36(2)	Offence against subsection 36(3)
20A	Offence against section 36A	Offence against section 36B
20B	Offence against section 36B	Offence against section 36A
21	Offence against subsection 39(1)	(a) Offence against subsection 39(2) (b) Offence against subsection 39(3)
22	Offence against subsection 39(2)	Offence against subsection 39(3)
23	Offence against subsection 40A(1)	Offence against subsection 40D(1)
24	Offence against subsection 40A(2)	Offence against subsection 40D(2)
27	Offence against subsection 43(1)	(a) Offence against subsection 43(2) (b) Offence against subsection 43(3)

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<b>Item</b>	<b>Column 1 Offence</b>	<b>Column 2 Alternative offence</b>
28	Offence against subsection 43(2)	Offence against subsection 43(3)
29	Offence against section 46	Offence against section 45
30	Offence against section 47C	(a) Offence against section 47P (b) Offence against section 45 (c) Offence against section 46
31	Offence against subsection 48(1)	Offence against subsection 48(2)
31A	Offence against subsection 56(1)	Offence against subsection 56(4)
32	Offence against subsection 59(1)	Offence against subsection 59(3)

## Schedule 7—Class 1, class 2 and class 3 offences

Note: See subsection 3(1) for definitions of *class 1 offence*, *class 2 offence* and *class 3 offence*.

### 1 Classes of offences

The following table sets out whether a service offence is a class 1 offence, class 2 offence or class 3 offence.

Class 1, class 2 and class 3 offences		
Item	An offence against this provision:	is the following class of offence:
1	subsection 15(1)	class 1
2	subsection 15A(1)	class 1
3	subsection 15B(1)	class 1
4	subsection 15C(1)	class 1
5	subsection 15D(1)	class 1
6	subsection 15E(1)	class 1
7	subsection 15F(1)	class 1
8	subsection 15G(1)	class 1
9	subsection 16(1)	class 1
10	subsection 16A(1)	class 1
11	subsection 16B(1)	class 1
12	subsection 17(1)	class 3
13	subsection 18(1)	class 3
14	subsection 18(2)	class 3
15	subsection 19(1)	class 3
16	subsection 19(2)	class 3
17	subsection 19(3)	class 3
18	subsection 19(4)	class 3
19	subsection 20(1)	class 1
20	subsection 20(2)	class 1
21	subsection 21(1)	class 3
22	subsection 21(2)	class 1
23	subsection 22(1)	class 1

<b>Class 1, class 2 and class 3 offences</b>		
<b>Item</b>	<b>An offence against this provision:</b>	<b>is the following class of offence:</b>
24	subsection 22(2)	class 1
25	subsection 23(1)	class 3
26	subsection 23(2)	class 3
27	subsection 24(1)	class 3
28	subsection 25(1)	class 3
29	subsection 26(1)	class 3
30	subsection 26(2)	class 3
31	subsection 27(1)	class 3
32	subsection 28(1)	class 3
33	subsection 29(1)	class 3
34	subsection 30(1)	class 3
35	subsection 30(2)	class 3
36	subsection 31(1)	class 3
37	subsection 31(2)	class 3
38	subsection 32(1)	class 3
39	subsection 32(3)	class 3
40	section 33	class 3
41	subsection 34(1)	class 3
42	subsection 35(1)	class 3
43	subsection 36(1)	class 2
44	subsection 36(2)	class 3
45	subsection 36(3)	class 3
46	section 36A	class 3
47	section 36B	class 3
48	subsection 37(1)	class 3
49	subsection 38(1)	class 3
50	subsection 38(2)	class 3
51	subsection 39(1)	class 3
52	subsection 39(2)	class 3
53	subsection 39(3)	class 3
54	subsection 40(1)	class 3
55	subsection 40(2)	class 3
56	subsection 40A(1)	class 3

**Schedule 7** Class 1, class 2 and class 3 offences

Clause 1

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<b>Class 1, class 2 and class 3 offences</b>		
<b>Item</b>	<b>An offence against this provision:</b>	<b>is the following class of offence:</b>
57	subsection 40A(2)	class 3
58	subsection 40C(1)	class 3
59	subsection 40D(1)	class 3
60	subsection 40D(2)	class 3
61	subsection 41(1)	class 3
62	section 42	class 3
63	subsection 43(1)	class 3
64	subsection 43(2)	class 3
65	subsection 43(3)	class 3
66	subsection 44(1)	class 3
67	subsection 45(1)	class 3
68	subsection 46(1)	class 3
69	subsection 47C(1)	class 3
70	subsection 47P(1)	class 3
71	subsection 48(1)	class 3
72	subsection 48(2)	class 3
73	subsection 49(1)	class 3
74	subsection 49A(1)	class 3
75	subsection 50(1)	class 3
76	subsection 50(2)	class 3
77	section 51	class 3
78	subsection 52(1)	class 3
79	subsection 53(1)	class 3
80	subsection 53(2)	class 3
81	subsection 53(4)	class 3
82	subsection 54(1)	class 3
83	subsection 54(2)	class 3
84	subsection 54(3)	class 3
85	subsection 54(4)	class 3
86	subsection 55(1)	class 3
87	subsection 56(1)	class 3
88	subsection 56(4)	class 3
89	subsection 57(1)	class 3

<b>Class 1, class 2 and class 3 offences</b>		
<b>Item</b>	<b>An offence against this provision:</b>	<b>is the following class of offence:</b>
90	subsection 57(2)	class 3
91	subsection 59(1)	class 1
92	subsection 59(3)	class 2
93	subsection 59(5)	class 2
94	subsection 59(6)	class 2
95	subsection 59(7)	class 2
96	subsection 61(1), if clause 2 of this Schedule is satisfied	class 1
97	subsection 61(1), if clause 3 of this Schedule is satisfied	class 2
98	subsection 61(1), if clause 4 of this Schedule is satisfied	class 3
99	subsection 61(2), if clause 2 of this Schedule is satisfied	class 1
100	subsection 61(2), if clause 3 of this Schedule is satisfied	class 2
101	subsection 61(2), if clause 4 of this Schedule is satisfied	class 3
101A	subsection 61(3), if clause 2 of this Schedule is satisfied	class 1
101B	subsection 61(3), if clause 3 of this Schedule is satisfied	class 2
101C	subsection 61(3), if clause 4 of this Schedule is satisfied	class 3
102	subsection 62(1)	class 1
103	subsection 101QA(1)	class 3
104	subsection 101QA(2)	class 3

## **2 Section 61 offences that are class 1 offences**

This clause is satisfied if:

- (a) for an offence against subsection 61(1)—section 63 applies to the offence; or
- (b) for an offence against subsection 61(2) or (3)—section 63 applies to the offence, or would apply if the offence were committed in Australia.

Clause 3

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**3 Section 61 offences that are class 2 offences**

This clause is satisfied if clauses 2 and 4 are not satisfied.

**4 Section 61 offences that are class 3 offences**

This clause is satisfied if:

- (a) section 63 does not apply to the offence; and
- (b) any of the following apply:
  - (i) the offence has a maximum penalty of not greater than 5 years imprisonment;
  - (ii) the offence is not punishable by imprisonment;
  - (iii) the offence may be heard and determined by a civil court of summary jurisdiction.



**Table of Acts****Notes to the *Defence Force Discipline Act 1982*****Note 1**

The *Defence Force Discipline Act 1982* as shown in this compilation comprises Act No. 152, 1982 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 22 March 2001 is not included in this compilation. For subsequent information *see* Table A.

Schedule 3 of the *Defence Force Discipline Act 1982* was modified by the *Defence Force Discipline Regulations 1985* (1985 No. 125). Schedule 3 was repealed and substituted by the *Defence Legislation Amendment Act 2008* (No. 6 of 2008). These modifications no longer apply.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Defence Force Discipline Act 1982</i>	152, 1982	31 Dec 1982	Parts I (ss. 1–9) and XI (ss. 179–188): Royal Assent Remainder: 3 July 1985 ( <i>see Gazette</i> 1985, No. S255)	

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Defence Legislation Amendment Act 1984</i>	164, 1984	25 Oct 1984	Ss. 1, 2, 16–19, Part XIV (ss. 115, 116) and s.120: Royal Assent Ss. 23–70 and 72–78: 3 July 1985 (see s. 2(4) and <i>Gazette</i> 1985, No. S255) S. 71: 31 Dec 1982 (see s. 2(3)) Ss. 82, 83, 85 and 87–89: 1 July 1983 Ss. 84 and 86: 1 Oct 1972 Part XI (ss. 108, 109): 1 Jan 1985 Part XV (ss.117–119): 1 Aug 1984 (see s. 2(8) and <i>Gazette</i> 1984, No. S292) S. 121: 1 Jan 1982 Remainder: 22 Nov 1984	—
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i>	65, 1985	5 June 1985	S. 3: 3 July 1985 (a)	S. 7
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1985</i>	193, 1985	16 Dec 1985	S. 3: Royal Assent (b)	S. 16
<i>Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986</i>	28, 1986	19 May 1985	S. 61: Royal Assent Remainder: 22 May 1986 (see <i>Gazette</i> 1986, No. S225)	—
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1986</i>	76, 1986	24 June 1986	S. 3: (c)	S. 9

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Defence Legislation Amendment Act 1987</i>	65, 1987	5 June 1987	Ss. 1–3, 9, 10, 13(1), 23–25, 26(1), 27, 29, 31, 33–36, 42–45, 48, 49, 52–58, 61(1), 62, 69(1), Parts IX and X (ss. 71–78): Royal Assent S. 37(1) and Part IV (ss. 50, 51): 10 Nov 1977 (see s. 2(3)) Ss. 37(2) and 38–41: 3 July 1985 Ss. 46 and 47: 19 June 1973 (see s. 2(2)) Remainder: 1 July 1988 (see <i>Gazette</i> 1988, No. S173)	S. 34(2)
<i>Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988</i>	99, 1988	2 Dec 1988	2 Dec 1988	—
<i>Defence Legislation Amendment Act (No. 2) 1988</i>	104, 1988	6 Dec 1988	Part IV (ss. 20–23): Royal Assent (d)	S. 23(2)
<i>Crimes Legislation Amendment Act (No. 2) 1989</i>	4, 1990	17 Jan 1990	S. 34: 17 July 1990 (e)	—
<i>Defence Legislation Amendment Act 1990</i>	75, 1990	22 Oct 1990	S. 3: Royal Assent (f)	—
<i>Crimes Legislation Amendment Act 1991</i>	28, 1991	4 Mar 1991	S. 74(1): Royal Assent (g)	—
<i>Defence Legislation Amendment Act 1995</i>	43, 1995	15 June 1995	Schedule 2 (items 1–28, 31–34) and Schedule 7: Royal Assent (h) Schedule 2 (items 29, 30): 1 Nov 1995 (see <i>Gazette</i> 1995, No. S361) (h)	—
<b>as amended by</b> <i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 3 (items 21–23): 15 June 1995 (ha)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 2 (items 50, 51): (l) Schedule 4 (items 63, 64) and Schedule 5 (items 49, 50): Royal Assent (i)	—
<i>Defence Legislation Amendment Act (No. 1) 1996</i>	56, 1996	8 Nov 1996	Schedule 1 (items 1–3): 28 May 1992 Remainder: Royal Assent	Sch. 1 (item 4)
<i>Defence Legislation Amendment Act (No. 1) 1997</i>	1, 1997	19 Feb 1997	Schedule 2 (items 120–126, 138, 139): Royal Assent (j)	—
<b>as amended by</b>				
<i>Defence Legislation Amendment Act (No. 1) 1999</i>	116, 1999	22 Sept 1999	Schedule 6 (item 2): (ja)	—
<i>Defence Legislation Amendment Act (No. 1) 1999</i>	116, 1999	22 Sept 1999	Schedule 4: Royal Assent (k)	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (item 368): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (l)	—
<i>Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001</i>	10, 2001	22 Mar 2001	Schedule 2 (items 35–39, 94, 95): 19 Apr 2001 (m)	Sch. 2 (items 94, 95) [see Table A]
<i>Defence Legislation Amendment (Application of Criminal Code) Act 2001</i>	141, 2001	1 Oct 2001	Schedule 1 (items 1–111): 15 Dec 2001 Schedule 1 (item 112): (n) Remainder: Royal Assent	S. 4 [see Table A] S. 2(2) (am. by 135, 2003, Sch. 2 (item 28))
<b>as amended by</b>				
<i>Statute Law Revision Act 2002</i>	63, 2002	3 July 2002	Schedule 2 (item 10): (na)	—
<i>Defence Legislation Amendment Act 2003</i>	135, 2003	17 Dec 2003	Schedule 2 (item 28): (nb)	—
<i>Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001</i>	159, 2001	1 Oct 2001	29 Oct 2001	Sch. 1 (item 97) [see Table A]

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Defence Legislation Amendment Act 2003</i>	135, 2003	17 Dec 2003	Schedule 1: 14 Jan 2004	Sch. 1 (item 48) [see Table A]
<i>Defence Legislation Amendment Act (No. 1) 2005</i>	121, 2005	6 Oct 2005	Schedule 5: (o) Remainder: Royal Assent	—
<i>Defence Legislation Amendment Act (No. 2) 2005</i>	142, 2005	12 Dec 2005	Schedule 1 (items 1, 3–99, 106, 107, 109–114): 12 June 2006 Schedule 1 (items 2, 100–105, 108, 115): Royal Assent	Sch. 1 (items 114, 115) [see Table A]
<i>Defence Legislation Amendment Act 2006</i>	159, 2006	11 Dec 2006	Schedule 1: 1 Oct 2007 Remainder: Royal Assent	Sch. 1 (items 255–264) and Sch. 2 (item 2) [see Table A]
<i>Defence Legislation Amendment Act 2008</i>	6, 2008	20 Mar 2008	Schedule 1, Schedule 2 (items 1–20), Schedules 3–6 and Schedule 7 (items 18–26, 29, 30): 20 Sept 2008 Schedule 7 (items 1–4, 15–17, 27, 28, 30A, 30B, 31–36, 40–44) and Schedule 8: Royal Assent Schedule 7 (item 39): (p)	Sch. 8 [see Table A]

## Act Notes

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- (a) The *Defence Force Discipline Act 1982* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(16) of which provides as follows:
- (16) Section 7 and the amendments of the *Defence Force Discipline Act 1982* made by this Act shall come into operation on the day on which this Act receives the Royal Assent or, if Part II of that first-mentioned Act is not in force on the day immediately before the day on which this Act receives the Royal Assent, immediately after that Part comes into operation.
- (b) The *Defence Force Discipline Act 1982* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1985*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (c) The *Defence Force Discipline Act 1982* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1986*, subsections 2(1) and (8) of which provide as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (8) The amendments of sections 86A and 101AA of the *Defence Force Discipline Act 1982* made by this Act shall be deemed to have come into operation on 3 July 1985.
- (d) The *Defence Force Discipline Act 1982* was amended by Part IV (sections 20–23) only of the *Defence Legislation Amendment Act (No. 2) 1988*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (e) The *Defence Force Discipline Act 1982* was amended by section 34 only of the *Crimes Legislation Amendment Act (No. 2) 1989*, subsections 2(13) and (14) of which provide as follows:
- (13) Subject to subsection (14), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
- (14) If a provision referred to in subsection (13) does not commence under that subsection within the period of 6 months beginning on the day it receives the Royal Assent, it commences on the first day after the end of that period.
- (f) The *Defence Force Discipline Act 1982* was amended by section 3 only of the *Defence Legislation Amendment Act 1990*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (g) The *Defence Force Discipline Act 1982* was amended by subsection 74(1) only of the *Crimes Legislation Amendment Act 1991*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (h) The *Defence Force Discipline Act 1982* was amended by the *Defence Legislation Amendment Act 1995*, subsections 2(1) and (2) of which provide as follows:
- (1) Except as indicated in subsections (2), (3) and (4), this Act commences on the day on which it receives the Royal Assent.
- (2) Schedule 1 (except items 3 and 11.3), items 29 and 30 of Schedule 2, and Schedule 5 commence on a day to be fixed by Proclamation.
- (ha) The *Defence Legislation Amendment Act 1995* was amended by Schedule 3 (items 21–23) only of the *Statute Law Revision Act 1996*, subsection 2(3) of which provides as follows:
- (3) Each item in Schedule 3 is taken to have commenced when the Act containing the provision amended by the item received the Royal Assent.

**Act Notes**

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- (i) The *Defence Force Discipline Act 1982* was amended by Schedule 2 (items 50, 51), Schedule 4 (items 63, 64) and Schedule 5 (items 49, 50) only of the *Statute Law Revision Act 1996*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
  - (2) Each item in Schedule 2 commences or is taken to have commenced (as the case requires) at the time specified in the note at the end of the item.
- Items 50 and 51 are taken to have commenced immediately after the commencement of section 179 of the *Defence Force Discipline Act 1982*.  
Section 179 commenced on 31 December 1982.
- (j) The *Defence Force Discipline Act 1982* was amended by Schedule 2 (items 120–126, 138 and 139) only of the *Defence Legislation Amendment Act (No. 1) 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (ja) The *Defence Legislation Amendment Act (No. 1) 1997* was amended by Schedule 6 (item 2) only of the *Defence Legislation Amendment Act (No. 1) 1999*, subsection 2(5) of which provides as follows:
- (5) Item 2 in Schedule 6 is taken to have commenced immediately after the commencement of Schedule 2 to the *Defence Legislation Amendment Act (No. 1) 1997*.
- (k) The *Defence Force Discipline Act 1982* was amended by Schedule 4 only of the *Defence Legislation Amendment Act (No. 1) 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (l) The *Defence Force Discipline Act 1982* was amended by Schedule 1 (item 368) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999* subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
  - (2) Subject to this section, this Act commences at the commencing time.
- (m) The *Defence Force Discipline Act 1982* was amended by Schedule 2 (items 35–39) only of the *Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the 28th day after the day on which it receives the Royal Assent.
- (n) Subsection 2(3) of the *Defence Legislation Amendment (Application of Criminal Code) Act 2001* provides as follows:
- (3) Part 2 of Schedule 1 is taken to have commenced immediately after the commencement of item 35 of Schedule 2 to the *Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001*.  
Schedule 2 (item 35) commenced on 19 April 2001.
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**Act Notes**

(na) Subsection 2(1) (item 39) of the *Statute Law Revision Act 2002* provides as follows:

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
39. Schedule 2, item 10	Immediately after the time specified in the <i>Defence Legislation Amendment (Application of Criminal Code) Act 2001</i> for the commencement of item 41 of Schedule 1 to that Act	15 December 2001

(nb) Subsection 2(1) (item 9) of the *Defence Legislation Amendment Act 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
9. Schedule 2, item 28	Immediately after the commencement of section 2 of the <i>Defence Legislation Amendment (Application of Criminal Code) Act 2001</i>	1 October 2001

(o) Subsection 2(1) (item 3) of the *Defence Legislation Amendment Act (No. 1) 2005* provides as follows:

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

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
3. Schedule 5	Immediately after the commencement of section 3 of the <i>Legislative Instruments Act 2003</i> .	1 January 2005

(p) Subsection 2(1) (item 10) of the *Defence Legislation Amendment Act 2008* provides as follows:

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

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
10. Schedule 7, item 39	Immediately after the commencement of item 59 of Schedule 1 to the <i>Defence Legislation Amendment Act 2006</i> .	1 October 2007



**Table of Amendments****Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
<b>Part I</b>	
S. 3.....	am. No. 164, 1984; No. 28, 1986; No. 65, 1987; No. 104, 1988; No. 28, 1991; No. 43, 1995; No. 56, 1996; No. 1, 1997; Nos. 10 and 141, 2001; No. 135, 2003; Nos. 121 and 142, 2005; No. 159, 2006; No. 6, 2008
S. 4.....	am. No. 43, 1995
S. 5.....	am. No. 1, 1997
S. 5A.....	ad. No. 142, 2005 am. No. 159, 2006
Ss. 6, 7.....	am. No. 164, 1984
<b>Part II</b>	
S. 10.....	rs. No. 141, 2001
S. 11.....	am. No. 43, 1995; No. 141, 2001 (as am. by No. 63, 2002)
S. 12.....	am. No. 28, 1991 rep. No. 141, 2001
S. 13.....	am. No. 43, 1995 rep. No. 141, 2001
<b>Part III</b>	
<b>Division 1</b>	
Div. 1 of Part III.....	rs. No. 141, 2001
S. 15.....	am. No. 164, 1984; No. 43, 1995 rs. No. 141, 2001
Ss. 15A–15G.....	ad. No. 141, 2001
S. 16.....	am. No. 164, 1984; No. 43, 1995 rs. No. 141, 2001
Ss. 16A, 16B.....	ad. No. 141, 2001
S. 17.....	am. No. 43, 1995 rs. No. 141, 2001
S. 18.....	rs. No. 141, 2001
S. 19.....	am. No. 43, 1995 rs. No. 141, 2001
<b>Division 2</b>	
Div. 2 of Part III.....	rs. No. 141, 2001
Ss. 20, 21.....	rs. No. 141, 2001
S. 22.....	am. No. 164, 1984; No. 43, 1995 rs. No. 141, 2001
Ss. 23, 24.....	am. No. 43, 1995 rs. No. 141, 2001
<b>Division 3</b>	
Div. 3 of Part III.....	rs. No. 141, 2001
S. 25.....	rs. No. 141, 2001

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
Ss. 26–29.....	am. No. 43, 1995 rs. No. 141, 2001
S. 30.....	rs. No. 141, 2001
Heading to s. 31.....	am. No. 43, 1995 rs. No. 141, 2001
S. 31.....	am. No. 43, 1995 rs. No. 141, 2001
S. 32.....	am. No. 164, 1984; No. 43, 1995 rs. No. 141, 2001
S. 33.....	rs. No. 141, 2001
Heading to s. 34.....	am. No. 135, 2003
S. 34.....	am. No. 43, 1995 rs. No. 141, 2001 am. No. 135, 2003
<b>Division 4</b>	
Div. 4 of Part III.....	rs. No. 141, 2001
S. 35.....	am. No. 43, 1995 rs. No. 141, 2001; No. 135, 2003
S. 36.....	am. No. 43, 1995 rs. No. 141, 2001
S. 36A.....	ad. No. 43, 1995 rs. No. 141, 2001; No. 135, 2003
S. 36B.....	ad. No. 135, 2003
Ss. 37, 38.....	am. No. 43, 1995 rs. No. 141, 2001
<b>Division 5</b>	
Div. 5 of Part III.....	rs. No. 141, 2001
S. 39.....	rs. No. 141, 2001
S. 40.....	am. No. 43, 1995 rs. No. 141, 2001
S. 40A.....	ad. No. 141, 2001
S. 40B.....	ad. No. 141, 2001 rep. No. 135, 2003
Ss. 40C, 40D.....	ad. No. 141, 2001
S. 41.....	am. No. 43, 1995 rs. No. 141, 2001
S. 42.....	rs. No. 141, 2001
<b>Division 5A</b>	
Div. 5A of Part III.....	ad. No. 141, 2001
<b>Subdivision A</b>	
S. 43.....	rs. No. 141, 2001
S. 44.....	am. No. 164, 1984; No. 43, 1995 rs. No. 141, 2001
S. 45.....	am. No. 43, 1995 rs. No. 141, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision B</b>	
S. 46.....	am. No. 43, 1995 rs. No. 141, 2001
<b>Subdivision C</b>	
S. 47.....	am. No. 43, 1995 rs. No. 141, 2001
Ss. 47A–47H.....	ad. No. 141, 2001
Ss. 47J–47N, 47P.....	ad. No. 141, 2001
<b>Subdivision D</b>	
S. 48.....	am. No. 164, 1984 rs. No. 141, 2001
<b>Division 6</b>	
Div. 6 of Part III.....	rs. No. 141, 2001
S. 49.....	am. No. 43, 1995 rs. No. 141, 2001
S. 49A.....	ad. No. 141, 2001
S. 50.....	am. No. 43, 1995 rs. No. 141, 2001
S. 51.....	rs. No. 141, 2001
S. 52.....	am. No. 43, 1995 rs. No. 141, 2001
S. 53.....	am. No. 43, 1995 rs. No. 141, 2001 am. No. 159, 2006
S. 54.....	am. No. 43, 1995 rs. No. 141, 2001
<b>Division 6A</b>	
Div. 6A of Part III.....	ad. No. 164, 1984
S. 54A.....	ad. No. 164, 1984 am. No. 43, 1995; No. 141, 2001
Note to s. 54A(3).....	ad. No. 141, 2001
<b>Division 7</b>	
Div. 7 of Part III.....	rs. No. 141, 2001
Ss. 55–57.....	am. No. 43, 1995 rs. No. 141, 2001
S. 58.....	rs. No. 141, 2001
Heading to s. 59.....	am. No. 6, 2008
Subhead. to s. 59(1).....	ad. No. 6, 2008
Subhead. to s. 59(3).....	ad. No. 6, 2008
Subhead. to s. 59(5).....	ad. No. 6, 2008
S. 59.....	am. No. 43, 1995 rs. No. 141, 2001 am. No. 6, 2008
S. 60.....	rs. No. 141, 2001 am. No. 6, 2008

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Division 8</b>	
Div. 8 of Part III .....	rs. No. 141, 2001
S. 61 .....	am. No. 28, 1991; No. 43, 1995 rs. No. 141, 2001
<b>Division 9</b>	
S. 62 .....	rs. No. 141, 2001
S. 63 .....	am. No. 75, 1990; No. 28, 1991; No. 43, 1995; No. 56, 1996; No. 121, 2005
S. 64 .....	am. No. 121, 2005
<b>Part IV</b>	
S. 67 .....	am. No. 164, 1984; No. 159, 2006; No. 6, 2008
S. 68 .....	am. No. 164, 1984; No. 43, 1995; No. 1, 1997; No. 121, 2005
S. 68A .....	ad. No. 164, 1984 am. No. 1, 1997; No. 121, 2005
S. 68B .....	ad. No. 164, 1984 am. No. 193, 1985; Nos. 99 and 104, 1988 rep. No. 121, 2005
S. 68C .....	ad. No. 164, 1984 am. No. 43, 1995
S. 70 .....	am. No. 164, 1984; No. 43, 1995; No. 141, 2001
S. 71 .....	am. No. 164, 1984; No. 43, 1995; No. 6, 2008
S. 72 .....	rs. No. 4, 1990 am. No. 28, 1991; No. 135, 2003
S. 74 .....	am. No. 164, 1984; No. 43, 1995; No. 6, 2008
S. 75 .....	am. No. 43, 1995
S. 76 .....	am. No. 43, 1995; No. 6, 2008
S. 77 .....	am. No. 43, 1995; No. 159, 2006
S. 78 .....	am. No. 6, 2008
S. 79 .....	am. No. 43, 1995
S. 80 .....	am. No. 164, 1984; No. 159, 2006; No. 6, 2008
Ss. 81, 82 .....	am. No. 6, 2008
S. 83 .....	am. No. 43, 1995
S. 84 .....	am. No. 164, 1984; No. 99, 1988
<b>Part V</b>	
S. 86A .....	ad. No. 65, 1985 am. No. 76, 1986
S. 87 .....	am. No. 164, 1984; No. 43, 1995; No. 142, 2005; No. 159, 2006; No. 6, 2008
Note to s. 87(1) .....	rep. No. 159, 2006
S. 88 .....	am. No. 43, 1995; No. 142, 2005; No. 159, 2006
S. 89 .....	am. No. 43, 1995; No. 43, 1996
S. 90 .....	am. No. 43, 1995
Ss. 92, 93 .....	am. No. 43, 1995
S. 94 .....	am. No. 43, 1995; No. 43, 1996

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 95.....	am. No. 43, 1995; No. 1, 1997; No. 142, 2005
S. 95A.....	ad. No. 164, 1984 am. No. 43, 1995
S. 96.....	am. No. 28, 1991; No. 43, 1995; No. 116, 1999; No. 141, 2001; No. 121, 2005
S. 97.....	am. No. 43, 1995; No. 1, 1997; No. 142, 2005
Ss. 99, 100.....	am. No. 43, 1995; No. 6, 2008
<b>Part VI</b>	
Part VI.....	rs. No. 164, 1984
<b>Division 1</b>	
S. 101.....	rs. No. 164, 1984 am. No. 43, 1995
S. 101AA.....	ad. No. 65, 1985 am. No. 76, 1986
<b>Division 2</b>	
S. 101A.....	ad. No. 164, 1984
S. 101B.....	ad. No. 164, 1984 am. No. 43, 1995
Heading to s. 101C.....	rs. No. 135, 2003
S. 101C.....	ad. No. 164, 1984 am. No. 43, 1995; No. 135, 2003
Heading to s. 101D.....	rs. No. 135, 2003
S. 101D.....	ad. No. 164, 1984 rs. No. 43, 1995 am. No. 135, 2003
S. 101E.....	ad. No. 164, 1984 rs. No. 43, 1995
S. 101F.....	ad. No. 164, 1984 am. No. 43, 1995; No. 159, 2006
S. 101G.....	ad. No. 164, 1984 rs. No. 43, 1995
S. 101H.....	ad. No. 164, 1984 am. No. 43, 1995
<b>Division 3</b>	
S. 101J.....	ad. No. 164, 1984 am. No. 159, 2006
S. 101JA.....	ad. No. 43, 1995 am. No. 159, 2006
S. 101K.....	ad. No. 164, 1984 am. No. 43, 1995; No. 159, 2006
<b>Division 4</b>	
Ss. 101L–101N.....	ad. No. 164, 1984 am. No. 43, 1995
S. 101P.....	ad. No. 164, 1984 am. No. 43, 1995

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 101Q.....	ad. No. 164, 1984 am. No. 43, 1995; No. 159, 2006
S. 101QA.....	ad. No. 43, 1995 am. No. 141, 2001
Note to s. 101QA(4).....	ad. No. 141, 2001
S. 101R.....	ad. No. 164, 1984
<b>Division 5</b>	
Ss. 101S–101U.....	ad. No. 164, 1984 am. No. 43, 1995
<b>Division 6</b>	
Ss. 101V, 101W.....	ad. No. 164, 1984 am. No. 76, 1986
S. 101X.....	ad. No. 164, 1984 am. No. 43, 1995 (as am. by No. 43, 1996)
Ss. 101Y, 101Z.....	ad. No. 164, 1984 am. No. 43, 1995
S. 101ZA.....	ad. No. 164, 1984 am. No. 43, 1995; No. 43, 1996
<b>Division 6A</b>	
Div. 6A of Part VI.....	ad. No. 6, 2008
S. 101ZAA.....	ad. No. 6, 2008
<b>Division 7</b>	
S. 101ZB.....	ad. No. 164, 1984 am. No. 159, 2006
<b>Division 8</b>	
S. 101ZC.....	ad. No. 164, 1984
<b>Part VII</b>	
<b>Division 1</b>	
Heading to Div. 1 of Part VII.....	rs. No. 142, 2005
S. 102.....	am. No. 1, 1997 rep. No. 142, 2005
Heading to s. 103.....	am. No. 142, 2005
S. 103.....	am. No. 164, 1984; No. 135, 2003; No. 142, 2005; No. 159, 2006; No. 6, 2008
Note to s. 103(1).....	ad. No. 135, 2003 rep. No. 142, 2005
Note 1 to s. 103(1).....	ad. No. 142, 2005
Renumbered Note.....	No. 159, 2006
Note 2 to s. 103(1).....	ad. No. 142, 2005 rep. No. 159, 2006
Note to s. 103(2).....	ad. No. 135, 2003 rep. No. 159, 2006
Note to s. 103(4).....	ad. No. 135, 2003 rep. No. 159, 2006
Note to s. 103(6).....	ad. No. 135, 2003 rep. No. 159, 2006

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 103A .....	ad. No. 6, 2008
<b>Division 2</b>	
S. 104.....	am. No. 164, 1984; No. 75, 1990; No. 43, 1995; No. 56, 1996; No. 121, 2005
S. 105.....	am. No. 1, 1997
S. 105A .....	ad. No. 142, 2005
S. 106.....	am. No. 43, 1995; No. 6, 2008
Note to s. 106.....	ad. No. 6, 2008
S. 107.....	am. No. 43, 1995
Note to s. 107.....	ad. No. 6, 2008
S. 108.....	am. No. 164, 1984 am. No. 43, 1995
Notes to s. 108(2), (3).....	ad. No. 6, 2008
S. 108A .....	ad. No. 6, 2008
S. 109.....	am. No. 164, 1984; No. 142, 2005
S. 110.....	am. No. 164, 1984; No. 43, 1995; No. 142, 2005
S. 111.....	am. No. 164, 1984; No. 65, 1985; No. 65, 1987; No. 43, 1995
S. 111A .....	ad. No. 164, 1984 am. No. 43, 1995 (as am. by No. 43, 1996); No. 6, 2008
Note to s. 111A(1).....	ad. No. 6, 2008
Ss. 111B, 111C.....	ad. No. 6, 2008
S. 113.....	am. No. 1, 1997
<b>Division 3</b>	
Div. 3 of Part VII.....	rs. No. 159, 2006
S. 114.....	rs. No. 159, 2006
S. 115.....	am. No. 164, 1984 rs. No. 159, 2006 am. No. 6, 2008
S. 116.....	am. No. 164, 1984; No. 43, 1995 rs. No. 159, 2006 am. No. 6, 2008
S. 117.....	am. No. 43, 1995 rs. No. 159, 2006
S. 118.....	am. No. 43, 1995 rep. No. 135, 2003 ad. No. 159, 2006 am. No. 6, 2008
S. 119.....	am. No. 43, 1995; No. 142, 2005 rs. No. 159, 2006
Note to s. 119(1) .....	ad. No. 135, 2003 am. No. 142, 2005 rep. No. 159, 2006
S. 120.....	am. No. 43, 1995; No. 142, 2005 rs. No. 159, 2006
S. 121.....	am. No. 142, 2005 rs. No. 159, 2006

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
<b>Division 4</b>	
Div. 4 of Part VII.....	rs. No. 159, 2006
S. 122.....	am. No. 43, 1995; No. 142, 2005 rs. No. 159, 2006 am. No. 6, 2008
S. 123.....	am. No. 142, 2005 rs. No. 159, 2006
Note to s. 123.....	ad. No. 135, 2003 am. No. 142, 2005 rep. No. 159, 2006
S. 124.....	am. No. 43, 1995; No. 142, 2005 rs. No. 159, 2006
Note to s. 124(3).....	ad. No. 135, 2003 am. No. 142, 2005 rep. No. 159, 2006
S. 125.....	am. No. 43, 1995; No. 142, 2005 rep. No. 159, 2006
S. 126.....	rep. No. 159, 2006
S. 127.....	am. No. 43, 1995 rep. No. 159, 2006
Note to s. 127.....	ad. No. 135, 2003 rep. No. 159, 2006
S. 128.....	am. No. 43, 1995 rep. No. 159, 2006
<b>Part VIII</b>	
<b>Division 1</b>	
S. 129.....	am. No. 164, 1984; No. 43, 1995 rep. No. 159, 2006 ad. No. 6, 2008
S. 129A.....	ad. No. 164, 1984 am. No. 142, 2005 rep. No. 159, 2006
Note to s. 129A(4).....	ad. No. 135, 2003 rep. No. 159, 2006
Div. 5 of Part VII.....	ad. No. 135, 2003 rep. No. 159, 2006
Heading to s. 129B.....	am. No. 142, 2005 rep. No. 159, 2006
Ss. 129B, 129C.....	ad. No. 135, 2003 am. No. 142, 2005 rep. No. 159, 2006
S. 130.....	am. No. 164, 1984; No. 43, 1995; No. 142, 2005; No. 6, 2008
S. 130A.....	ad. No. 164, 1984 am. No. 159, 2006 rep. No. 6, 2008
S. 131.....	am. No. 65, 1987; No. 43, 1995; No. 142, 2005; No. 159, 2006 rs. No. 6, 2008



**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 131AA.....	ad. No. 6, 2008
Heading to s. 131A .....	am. No. 142, 2005
S. 131A .....	ad. No. 164, 1984 am. No. 43, 1995; No. 142, 2005
S. 131B .....	ad. No. 6, 2008
<b>Division 2</b>	
Heading to Div. 2 of Part VIII ....	rs. No. 159, 2006
S. 132.....	am. No. 164, 1984; No. 43, 1995; No. 142, 2005 rep. No. 159, 2006 ad. No. 6, 2008
S. 132A .....	ad. No. 159, 2006 rs. No. 6, 2008
S. 132AA.....	ad. No. 6, 2008
S. 132AB.....	ad. No. 6, 2008 am. No. 6, 2008
Ss. 132B–132F .....	ad. No. 159, 2006
S. 133.....	am. No. 164, 1984 rep. No. 159, 2006
S. 134.....	am. No. 28, 1991; No. 43, 1995 rep. No. 159, 2006
S. 135.....	am. No. 164, 1984; No. 43, 1995; No. 142, 2005 rep. No. 159, 2006
Heading to s. 136.....	am. No. 159, 2006
S. 136.....	am. No. 43, 1995; No. 159, 2006
Heading to s. 137.....	am. No. 159, 2006
S. 137.....	am. No. 43, 1995; No. 142, 2005; No. 159, 2006
<b>Division 3</b>	
<b>Subdivision A</b>	
Heading to Subdiv. A of Div. 3.. of Part VIII	ad. No. 159, 2006 rs. No. 6, 2008
S. 137A .....	ad. No. 6, 2008
S. 138.....	am. No. 43, 1995; No. 159, 2006
Subhead. to s. 139(1) .....	ad. No. 6, 2008
S. 139.....	am. No. 43, 1995; No. 159, 2006; No. 6, 2008
S. 140.....	am. No. 43, 1995; No. 1, 1997 rs. No. 159, 2006
S. 141.....	am. No. 43, 1995; No. 142, 2005; No. 159, 2006; No. 6, 2008
S. 141A .....	ad. No. 164, 1984 am. No. 43, 1995; No. 142, 2005; No. 159, 2006
S. 142.....	am. No. 164, 1984; No. 28, 1991; No. 141, 2001; No. 121, 2005
S. 144.....	am. No. 43, 1995; No. 159, 2006
Note to s. 144(1) .....	ad. No. 6, 2008
S. 145.....	am. No. 43, 1995; No. 141, 2001; No. 142, 2005; No. 159, 2006

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted	
Provision affected	How affected
S. 145A .....	ad. No. 164, 1984 am. No. 43, 1995 (as am. by No. 43, 1996); No. 142, 2005; No. 159, 2006
Heading to s. 146.....	rs. No. 6, 2008
S. 146.....	am. No. 28, 1991; No. 6, 2008
S. 146A .....	ad. No. 6, 2008
S. 147.....	rs. No. 159, 2006; No. 6, 2008
S. 148.....	am. No. 159, 2006
<b>Subdivision B</b>	
Subdiv. B of Div. 3 of Part VIII ..	ad. No. 159, 2006
Ss. 148A–148F .....	ad. No. 159, 2006
<b>Subdivision C</b>	
Heading to Subdiv. C of .....	ad. No. 159, 2006
Div. 3 of Part VIII	
S. 149.....	am. No. 164, 1984; No. 99, 1988; Nos. 121 and 142, 2005 rs. No. 159, 2006 am. No. 6, 2008
S. 149A .....	ad. No. 159, 2006 am. No. 6, 2008
<b>Part VIIIA</b>	
Part VIIIA.....	ad. No. 6, 2008
<b>Division 1</b>	
S. 150.....	am. No. 1, 1997; No. 159, 2006 rs. No. 6, 2008
S. 150A .....	ad. No. 135, 2003 am. No. 142, 2005; No. 159, 2006 rs. No. 6, 2008
<b>Division 2</b>	
S. 151.....	am. No. 65, 1985; No. 43, 1995; No. 135, 2003 rs. No. 6, 2008
S. 152.....	am. No. 135, 2003; No. 159, 2006 rs. No. 6, 2008
S. 153.....	am. No. 43, 1995; No. 135, 2003; No. 159, 2006 rs. No. 6, 2008
S. 153A .....	ad. No. 6, 2008
S. 154.....	am. No. 65, 1985; No. 43, 1995; No. 1, 1997; No. 135, 2003; No. 159, 2006 rs. No. 6, 2008
Heading to s. 155.....	am. No. 1, 1997 rs. No. 6, 2008
S. 155.....	am. No. 43, 1995; No. 1, 1997 (as am. by No. 116, 1999); No. 135, 2003 rs. No. 6, 2008
<b>Division 3</b>	
S. 156.....	am. No. 43, 1995 rep. No. 159, 2006 ad. No. 6, 2008

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 157.....	am. No. 159, 2006 rs. No. 6, 2008
S. 158.....	am. No. 43, 1995; No. 159, 2006 rs. No. 6, 2008
S. 159.....	rs. No. 6, 2008
<b>Part IX</b>	
Heading to Part IX.....	rs. No. 159, 2006; No. 6, 2008
Part IX.....	rs. No. 6, 2008
<b>Division 1</b>	
S. 160.....	am. No. 43, 1995 rs. No. 6, 2008
<b>Division 2</b>	
S. 161.....	am. No. 43, 1995; No. 159, 2006 rs. No. 6, 2008
<b>Division 3</b>	
S. 162.....	am. No. 164, 1984; No. 65, 1987; No. 4, 1990; No. 43, 1995; No. 159, 2006 rs. No. 6, 2008
S. 163.....	rep. No. 159, 2006 ad. No. 6, 2008
S. 164.....	am. No. 43, 1995 rep. No. 159, 2006 ad. No. 6, 2008
S. 165.....	rep. No. 159, 2006 ad. No. 6, 2008
S. 165A.....	ad. No. 6, 2008
S. 166.....	am. No. 43, 1995 rep. No. 159, 2006 ad. No. 6, 2008
S. 167.....	rs. No. 6, 2008
Ss. 167A, 167B.....	ad. No. 6, 2008
<b>Division 4</b>	
Div. 4 of Part IX.....	rep. No. 159, 2006 ad. No. 6, 2008
S. 168.....	rs. No. 6, 2008
Ss. 168A–168E.....	ad. No. 6, 2008
S. 169.....	am. No. 164, 1984; No. 43, 1995; No. 159, 2006 rep. No. 6, 2008
<b>Part IXA</b>	
Part IXA.....	ad. No. 43, 1995
S. 169A.....	ad. No. 43, 1995 am. No. 135, 2003; No. 6, 2008
S. 169B.....	ad. No. 43, 1995
Ss. 169BA, 169BB.....	ad. No. 6, 2008
Ss. 169C, 169D.....	ad. No. 43, 1995 am. No. 135, 2003; No. 6, 2008

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 169E .....	ad. No. 43, 1995 am. No. 6, 2008
Subhead. to s. 169F(2) .....	ad. No. 6, 2008
S. 169F .....	ad. No. 43, 1995 am. No. 135, 2003; No. 6, 2008
S. 169FA .....	ad. No. 135, 2003
S. 169FB .....	ad. No. 6, 2008
S. 169G .....	ad. No. 43, 1995 am. No. 6, 2008
S. 169GA .....	ad. No. 6, 2008
S. 169H .....	ad. No. 43, 1995 am. No. 6, 2008
S. 169J .....	ad. No. 43, 1995 am. No. 6, 2008
<b>Part X</b>	
S. 170 .....	am. No. 164, 1984; No. 43, 1995
S. 171 .....	am. No. 43, 1995; No. 6, 2008
S. 172 .....	am. No. 164, 1984; No. 43, 1995; No. 159, 2006
S. 172A .....	ad. No. 6, 2008
Heading to s. 173 .....	am. No. 6, 2008
S. 173 .....	am. No. 159, 2006
S. 175 .....	am. No. 65, 1985; No. 146, 1999; No. 6, 2008
S. 176 .....	am. No. 43, 1995 rs. No. 159, 2006 am. No. 6, 2008
S. 177 .....	am. No. 43, 1995
<b>Part XA</b>	
Part XA .....	ad. No. 164, 1984
S. 178 .....	rs. No. 164, 1984 ad. No. 164, 1984
S. 178A .....	ad. No. 164, 1984 am. No. 43, 1995
S. 178B .....	ad. No. 164, 1984
S. 178C .....	ad. No. 164, 1984 am. No. 43, 1995; No. 1, 1997
S. 178D .....	ad. No. 164, 1984
<b>Part XI</b>	
Heading to Part XI .....	rs. No. 135, 2003; No. 142, 2005; No. 159, 2006
<b>Division 1</b>	
Heading to Div. 1 of Part XI .....	ad. No. 135, 2003
S. 179 .....	am. No. 43, 1995; No. 43, 1996
S. 180 .....	am. No. 164, 1984; No. 43, 1995; No. 142, 2005
S. 181 .....	am. No. 43, 1995
S. 182 .....	am. No. 104, 1988

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 183.....	am. No. 43, 1995; No. 159, 2001
S. 184.....	am. No. 43, 1995
S. 185.....	am. No. 65, 1985; No. 43, 1995; No. 43, 1996; No. 142, 2005
Ss. 186–188.....	am. No. 43, 1995
<b>Division 2</b>	
Div. 2 of Part XI.....	ad. No. 135, 2003 rs. No. 159, 2006
S. 188A.....	ad. No. 135, 2003 am. No. 142, 2005 rep. No. 159, 2006
Ss. 188AA–188AL.....	ad. No. 159, 2006
S. 188AN.....	ad. No. 159, 2006
<b>Division 2A</b>	
Div. 2A of Part XI.....	ad. No. 159, 2006
Ss. 188AO–188AZ.....	ad. No. 159, 2006
S. 188B.....	ad. No. 135, 2003 rep. No. 159, 2006
S. 188BB.....	ad. No. 159, 2006
S. 188C.....	ad. No. 135, 2003 am. No. 142, 2005 rep. No. 159, 2006
S. 188D.....	ad. No. 135, 2003 rep. No. 159, 2006
S. 188E.....	ad. No. 142, 2005 rep. No. 159, 2006
<b>Division 3</b>	
Heading to Div. 3 of Part XI.....	rs. No. 159, 2006
Div. 3 of Part XI.....	ad. No. 142, 2005
Heading to s. 188F.....	am. No. 159, 2006
S. 188F.....	ad. No. 142, 2005 am. No. 159, 2006
Heading to s. 188FA.....	am. No. 159, 2006
S. 188FA.....	ad. No. 142, 2005 am. No. 159, 2006
Heading to s. 188FB.....	am. No. 159, 2006
Ss. 188FB–188FM.....	ad. No. 142, 2005 am. No. 159, 2006
<b>Part XIA</b>	
Part XIA.....	ad. No. 142, 2005
<b>Division 1</b>	
Div. 1 of Part XIA.....	ad. No. 142, 2005
S. 188G.....	ad. No. 142, 2005
S. 188GA.....	ad. No. 142, 2005 am. No. 159, 2006

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 188GB .....	ad. No. 142, 2005 am. No. 159, 2006; No. 6, 2008
Ss. 188GC–188GE .....	ad. No. 142, 2005
<b>Division 2</b>	
Div. 2 of Part XIA .....	ad. No. 142, 2005
Ss. 188GF–188GI .....	ad. No. 142, 2005
S. 188GJ .....	ad. No. 142, 2005 am. No. 159, 2006
Ss. 188GK–188GQ .....	ad. No. 142, 2005
<b>Division 3</b>	
Div. 3 of Part XIA .....	ad. No. 142, 2005
S. 188GR .....	ad. No. 142, 2005
<b>Part XII</b>	
S. 190 .....	am. No. 164, 1984; No. 43, 1995; No. 135, 2003; No. 121, 2005
S. 191 .....	am. No. 43, 1995; No. 159, 2006; No. 6, 2008
Heading to s. 193 .....	am. No. 159, 2006
S. 193 .....	am. No. 43, 1995; No. 142, 2005; No. 159, 2006
S. 194 .....	am. No. 164, 1984; No. 43, 1995; No. 142, 2005; No. 159, 2006; No. 6, 2008
S. 194A .....	ad. No. 164, 1984
S. 195 .....	am. No. 43, 1995; No. 1, 1997; No. 159, 2006
S. 196 .....	am. No. 43, 1995; No. 1, 1997 (as am. by No. 116, 1999); No. 135, 2003 rep. No. 159, 2006
S. 196A .....	ad. No. 164, 1984 am. No. 43, 1995; No. 159, 2006
S. 196B .....	ad. No. 164, 1984 am. No. 43, 1995; No. 43, 1996; No. 1, 1997 rep. No. 116, 1999 ad. No. 142, 2005
S. 196C .....	ad. No. 159, 2006
<b>Schedule 1A</b>	
Schedule 1A .....	ad. No. 6, 2008
<b>Schedule 2</b>	
Heading to Schedule 2 .....	rs. No. 159, 2006
Schedule 2 .....	am. No. 159, 2006; No. 6, 2008
<b>Schedule 3</b>	
Schedule 3 .....	am. No. 164, 1984; No. 43, 1995; No. 135, 2003 rs. No. 6, 2008
<b>Schedule 3A</b>	
Schedule 3A .....	ad. No. 164, 1984
<b>Schedule 4</b>	
Schedule 4 .....	am. No. 142, 2005; No. 159, 2006
Schedule 5 .....	rep. No. 159, 2006

## **Table of Amendments**

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ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

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<b>Provision affected</b>	<b>How affected</b>
<b>Schedule 6</b>	
Schedule 6 .....	am. No. 164, 1984; No. 43, 1995; No. 141, 2001; No. 6, 2008
<b>Schedule 7</b>	
Schedule 7 .....	ad. No. 159, 2006

## **Table A**

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### **Table A**

#### **Application, saving or transitional provisions**

*Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001* (No. 10, 2001)

#### **Schedule 2**

#### **94 Saving—old regulations**

- (1) Regulations that were in effect under any Act immediately before the commencement of this item continue to have effect after that time as if members of an arm of the Defence Force who were members of a particular part or component of that arm immediately before the commencement of this item were still members of that part or component after that time, even if that part or component no longer exists.

Example: Assume that, immediately before the commencement of this item, regulations imposed training obligations on members of the Air Force Specialist Reserve. Those obligations would continue to apply to former members of that Reserve after commencement, even though the Air Force Specialist Reserve itself is no longer mentioned in the *Air Force Act 1923* and the members have now become members of the Air Force Reserve.

- (2) However, regulations that continue in effect under this item do so only to the extent that they are not amended or revoked by later regulations.

#### **95 Regulations about transitional matters**

- (1) The regulations may make provision in relation to other saving and transitional matters in connection with the amendments made by this Schedule.
- (2) In particular, such regulations may deal with the status, after the commencement of the amendments, of persons who were members of the Defence Force immediately before that time.
- (3) Subitem (2) does not limit the scope of subitem (1).
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**Table A**

*Defence Legislation Amendment (Application of Criminal Code) Act 2001*  
(No. 141, 2001)

**4 Application of amendments**

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

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*Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001*  
(No. 159, 2001)

**Schedule 1**

**97 Application of amendments**

The amendments made by this Schedule do not apply to an appointment if the term of the appointment began before the commencement of this item.

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*Defence Legislation Amendment Act 2003* (No. 135, 2003)

**Schedule 1**

**48 Application**

The amendments made by items 21, 31 and 46 of this Schedule apply to appointments made after the commencement of this Act.

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## Table A

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*Defence Legislation Amendment Act (No. 2) 2005* (No. 142, 2005)

### Schedule 1

#### 114 Transitional provision—functions and powers of convening authorities

- (1) This item applies to a function or power conferred on a convening authority by the old law if:
- (a) the function or power relates to a charge (including a proceeding in respect of a charge); and
  - (b) as at the commencement time, the charge or proceeding had not been finally dealt with under the old law.
- (2) If:
- (a) the convening authority performed the function or exercised the power before the commencement time; and
  - (b) a provision of the new law confers a corresponding function or power upon a designated person;
- the new law has effect as if the designated person had performed the function, or exercised the power, under the new law.
- (3) If:
- (a) apart from the amendments made by this Schedule, the convening authority would have been required or permitted to perform the function or exercise the power; and
  - (b) the new law confers a corresponding function or power upon a designated person;
- the designated person may perform the function, or exercise the power, under the new law.
- (4) In this item:
- commencement time** means the time at which item 1 of this Schedule commences.
- designated person** means:
- (a) the Director of Military Prosecutions; or
  - (b) the Registrar of Military Justice; or
  - (c) a judge advocate; or
  - (d) a Defence Force magistrate; or
  - (e) a superior authority.
-

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**Table A**

*new law* means the *Defence Force Discipline Act 1982* as amended by this Schedule.

*old law* means the *Defence Force Discipline Act 1982* as in force before the commencement time.

## **115 Regulations**

The Governor-General may make regulations in relation to transitional matters arising out of the amendments of the *Defence Force Discipline Act 1982* made by this Schedule.

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*Defence Legislation Amendment Act 2006* (No. 159, 2006)

## **Schedule 1**

### **255 Definitions**

In this Part:

*commencement day* means the day on which this Schedule commences.

*new DFDA* means the *Defence Force Discipline Act 1982* as amended by this Schedule.

*new law* means the *Defence Force Discipline Act 1982* and the *Defence Force Discipline Appeals Act 1955* as amended by this Schedule.

*old DFDA* means the *Defence Force Discipline Act 1982* as in force immediately before the commencement day.

### **256 Application of amendments**

- (1) The amendments made by this Schedule apply in relation to a service offence committed by a person on or after the commencement day.
- (2) The amendments made by this Schedule also apply in relation to a service offence committed by a person before the commencement day if, before the commencement day, the person had not been charged with the offence under the old DFDA.

**Table A**

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**257 Before commencement day, Director of Military Prosecutions requested trial by court martial or Defence Force magistrate**

*Trial by court martial*

- (1) Subitem (2) applies if, before the commencement day:
- (a) the Director of Military Prosecutions requested the Registrar of Military Justice to convene a court martial to try a charge of a service offence that was committed by a person before the commencement day; and
  - (b) the Registrar of Military Justice either:
    - (i) had not convened the court martial; or
    - (ii) had convened the court martial, but the person had not been asked to plead at the trial.
- (2) If this subitem applies, then:
- (a) if a court martial had been convened before the commencement day—on the commencement day, the court martial is taken to have been dissolved; and
  - (b) on the commencement day, the Director of Military Prosecutions:
    - (i) is taken to have withdrawn the request; and
    - (ii) is taken to have requested the Registrar of the Australian Military Court to refer the charge to the Australian Military Court for trial; and
  - (c) on and after the commencement day, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

*Trial by Defence Force magistrate*

- (3) Subitem (4) applies if, before the commencement day:
- (a) the Director of Military Prosecutions requested the Registrar of Military Justice to refer a charge of a service offence that was committed by a person before the commencement day to a Defence Force magistrate for trial; and
  - (b) the Registrar of Military Justice:
    - (i) had not referred the charge; or
    - (ii) had referred the charge, but the person had not been asked to plead at the trial.
-

**Table A**

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- (4) If this subitem applies, then:
- (a) if the charge had been referred to a Defence Force magistrate before the commencement day—on the commencement day, the reference is taken to have been terminated; and
  - (b) on the commencement day, the Director of Military Prosecutions:
    - (i) is taken to have withdrawn the request; and
    - (ii) is taken to have requested the Registrar of the Australian Military Court to refer the charge to the Australian Military Court for trial; and
  - (c) on and after the commencement day, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

*Elections for trial by court martial or Defence Force magistrate*

- (5) If:
- (a) before the commencement day, a person made an election under subsection 131(1) of the old DFDA to have a charge against him or her tried by a court martial or Defence Force magistrate; and
  - (b) because of subitem (2) or (4), the Director of Military Prosecutions is taken to have requested the Registrar of the Australian Military Court to refer the charge to the Australian Military Court for trial;
- the person may withdraw the election by written notice to the Registrar of the Australian Military Court at any time before a date is fixed for hearing by the Court.

**258 Before commencement day, trial by court martial or Defence Force magistrate discontinued***Trial by court martial*

- (1) Subitem (2) applies if, before the commencement day:
- (a) a court martial convicted a person of a service offence committed before the commencement day, but the court martial had not taken action under Part IV of the old DFDA; and
  - (b) the court martial was dissolved under section 125 of the old DFDA before the court martial had taken such action; and
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- (c) under subsection 125(6) of the old DFDA, the Registrar of Military Justice:
  - (i) had not convened a new court martial for the purpose of taking such action; or
  - (ii) had convened a new court martial for the purpose of taking such action, but the new court martial had not begun to hear evidence relevant to determining what action should be taken.
- (2) If this subitem applies, then:
  - (a) if a new court martial was convened before the commencement day—on the commencement day, the new court martial is taken to have been dissolved; and
  - (b) on the commencement day, the Director of Military Prosecutions is taken to have requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action under Part IV of the new DFDA in relation to the person; and
  - (c) on and after the commencement day, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

*Trial by Defence Force magistrate*

- (3) Subitem (4) applies if, before the commencement day:
  - (a) a charge of, or conviction for, a service offence that was committed by a person before the commencement day was referred to a Defence Force magistrate; and
  - (b) a Defence Force magistrate:
    - (i) in relation to a charge—had convicted the person of the offence, but had not taken action under Part IV of the old DFDA; or
    - (ii) in relation to a conviction—had not taken action under Part IV of the old DFDA; and
  - (c) the reference was terminated under section 129A of the old DFDA before action had been taken under Part IV; and
  - (d) under subsection 129A(4) of the old DFDA, the Registrar of Military Justice either:
    - (i) referred the conviction to another Defence Force magistrate to take action under Part IV of the old DFDA; or

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- (ii) convened a court martial to take action under Part IV of the old DFDA; and
  - (e) the new Defence Force magistrate or court martial had not begun to hear evidence relevant to determining what action should be taken.
- (4) If this subitem applies, then:
- (a) if the conviction was referred to another Defence Force magistrate before the commencement day—on the commencement day, the reference is taken to have been terminated; and
  - (b) if a court martial was convened before the commencement day—on the commencement day, the court martial is taken to have been dissolved; and
  - (c) on the commencement day, the Director of Military Prosecutions is taken to have requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action under Part IV of the new DFDA in relation to the person; and
  - (d) on and after the commencement day, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

**259 Before commencement day, Director of Military Prosecutions requested imposition of punishment by court martial or Defence Force magistrate**

*Punishment imposed by court martial*

- (1) Subitem (2) applies if, before the commencement day:
- (a) the Director of Military Prosecutions requested the Registrar of Military Justice to convene a court martial to take action under Part IV of the old DFDA in relation to a conviction for a service offence that was committed by a person before the commencement day; and
  - (b) the Registrar of Military Justice:
    - (i) had not convened the court martial; or
    - (ii) had convened the court martial, but the court martial had not begun to hear evidence relevant to determining what action should be taken.
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- (2) If this subitem applies, then:
- (a) if a court martial had been convened before the commencement day—on the commencement day, the court martial is taken to have been dissolved; and
  - (b) on the commencement day, the Director of Military Prosecutions is taken to have:
    - (i) withdrawn the request; and
    - (ii) requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action under Part IV of the new DFDA in relation to the person; and
  - (c) on and after the commencement day, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

*Punishment imposed by Defence Force magistrate*

- (3) Subitem (4) applies if, before the commencement day:
- (a) the Director of Military Prosecutions requested the Registrar of Military Justice to refer a conviction for a service offence that was committed by a person before the commencement day to a Defence Force magistrate to take action under Part IV of the old DFDA; and
  - (b) the Registrar of Military Justice:
    - (i) had not referred the conviction; or
    - (ii) had referred the conviction, but the Defence Force magistrate had not begun to hear evidence relevant to determining what action should be taken.
- (4) If this subitem applies, then:
- (a) if the conviction had been referred to a Defence Force magistrate before the commencement day—on the commencement day, the reference is taken to have been terminated; and
  - (b) on the commencement day, the Director of Military Prosecutions is taken to have:
    - (i) withdrawn the request; and
    - (ii) requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action under Part IV of the new DFDA in relation to the person; and
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- (c) on and after the commencement day, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

*Elections to be punished by court martial or Defence Force magistrate*

- (5) If:
- (a) before the commencement day, a person made an election under subsection 131(2A) or (3) of the old DFDA to be punished by a court martial or Defence Force magistrate in relation to his or her conviction; and
  - (b) because of subitem (2) or (4), the Director of Military Prosecutions is taken to have requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action;

the person may withdraw the election by written notice to the Registrar of the Australian Military Court at any time before a date is fixed for hearing by the Court.

**260 On or after the commencement day, Director of Military Prosecutions requests trial by court martial or Defence Force magistrate**

*Trial by court martial*

- (1) Subitem (2) applies if, on or after the commencement day, the Director of Military Prosecutions requests the Registrar of Military Justice to convene a court martial to try a charge of a service offence that was committed by a person before the commencement day.
- (2) If this subitem applies, then:
- (a) immediately after the request is made, the Director of Military Prosecutions:
    - (i) is taken to have withdrawn the request; and
    - (ii) is taken to have requested the Registrar of the Australian Military Court to refer the charge to the Australian Military Court for trial; and
  - (b) after the request is made, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

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*Trial by Defence Force magistrate*

- (3) Subitem (2) applies if, on or after the commencement day, the Director of Military Prosecutions requests the Registrar of Military Justice to refer a charge of a service offence that was committed by a person before the commencement day to a Defence Force magistrate for trial.
- (4) If this item applies, then:
- (a) immediately after the request is made, the Director of Military Prosecutions:
    - (i) is taken to have withdrawn the request; and
    - (ii) is taken to have requested the Registrar of the Australian Military Court to refer the charge to the Australian Military Court for trial; and
  - (b) after the request is made, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

*Elections made for trial by court martial or Defence Force magistrate*

- (5) If:
- (a) after the commencement day, a person makes an election under subsection 131(1) of the old DFDA to have a charge against him or her tried by a court martial or Defence Force magistrate; and
  - (b) because of subitem (2) or (4), the Director of Military Prosecutions is taken to have requested the Registrar of the Australian Military Court to refer the charge to the Australian Military Court for trial;

the person may withdraw the election by written notice to the Registrar of the Australian Military Court at any time before a date is fixed for hearing by the Court.

**261 On or after commencement day, trial by court martial or Defence Force magistrate discontinued**

*Trial by court martial*

- (1) Subitem (2) applies if, on or after the commencement day:
- (a) the Registrar of Military Justice dissolves a court martial under section 125 of the old DFDA; and

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- (b) the dissolution happens:
    - (i) after the court martial has convicted a person of a service offence committed before the commencement day; and
    - (ii) before the court martial has taken action under Part IV of the old DFDA in relation to the person.
  - (2) If this subitem applies, then:
    - (a) immediately after the court martial is dissolved, the Director of Military Prosecutions is taken to have requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action under Part IV of the new DFDA in relation to the person; and
    - (b) after the court martial is dissolved, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

*Trial by Defence Force magistrate*

- (3) Subitem (4) applies if, on or after the commencement day:
  - (a) the Registrar of Military Justice terminates a reference to a Defence Force magistrate under section 129A of the old DFDA in relation to a charge of, or conviction for, a service offence that was committed by a person before the commencement day; and
  - (b) the termination happens:
    - (i) in relation to a charge—after the person has been convicted but before the Defence Force magistrate has taken action under Part IV of the old DFDA in relation to the person; and
    - (ii) in relation to a conviction—before the Defence Force magistrate has taken action under Part IV of the old DFDA in relation to the person.
- (4) If this subitem applies, then:
  - (a) immediately after the reference is terminated, the Director of Military Prosecutions is taken to have requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action under Part IV of the new DFDA in relation to the person; and

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- (b) after the reference is terminated, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

**262 On or after the commencement day, Director of Military Prosecutions requests imposition of punishment by court martial or Defence Force magistrate**

*Punishment imposed by court martial*

- (1) Subitem (2) applies if, on or after the commencement day, the Director of Military Prosecutions requests the Registrar of Military Justice to convene a court martial to take action under Part IV of the old DFDA in relation to a conviction for a service offence that was committed before the commencement day.
- (2) If this subitem applies, then:
  - (a) immediately after the request is made, the Director of Military Prosecutions:
    - (i) is taken to have withdrawn the request; and
    - (ii) is taken to have requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action under Part IV of the new DFDA; and
  - (b) after the request is made, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

*Punishment imposed by Defence Force magistrate*

- (3) Subitem (4) applies if, on or after the commencement day, the Director of Military Prosecutions requests the Registrar of Military Justice to refer a conviction for a service offence that was committed by a person before the commencement day to a Defence Force magistrate to take action under Part IV of the old DFDA in relation to the person.
- (4) If this subitem applies, then:
  - (a) immediately after the request is made, the Director of Military Prosecutions:
    - (i) is taken to have withdrawn the request; and
    - (ii) is taken to have requested the Registrar of the Australian Military Court to refer the conviction to the

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Australian Military Court to take action under Part IV of the new DFDA; and

- (b) after the request is made, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

*Elections made for punishment by court martial or Defence Force magistrate*

(5) If:

- (a) after the commencement day, a person makes an election under subsection 131(2A) or (3) of the old DFDA to be punished by a court martial or Defence Force magistrate in relation to his or her conviction; and
- (b) because of subitem (2) or (4), the Director of Military Prosecutions is taken to have requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action;

the person may withdraw the election by written notice to the Registrar of the Australian Military Court at any time before a date is fixed for hearing by the Court.

**263 Registrar of Military Justice and Director of Military Prosecutions**

(1) If:

- (a) a person has been appointed as the Registrar of Military Justice before the commencement day; and
- (b) the appointment is in force immediately before the commencement day;

then, on the commencement day:

- (c) the appointment is taken to have included the appointment of the person as the Registrar of the Australian Military Court under section 188FB of the new DFDA; and
- (d) the person is taken to have made and subscribed an oath or affirmation as the Registrar of the Australian Military Court before a Military Judge under section 188FF of the new DFDA.

(2) If:

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- (a) a person is appointed as the Registrar of the Australian Military Court under section 188FB of the new DFDA after the commencement day; and
- (b) immediately before the appointment, there was a service offence that:
  - (i) was committed before the commencement day; and
  - (ii) had not been finally dealt with;

then:

- (c) the appointment is taken to include the appointment of the person as the Registrar of Military Justice under section 188FB of the old DFDA; and
  - (d) when the person makes and subscribes an oath or affirmation as the Registrar of the Australian Military Court before a Military Judge under section 188FF of the new DFDA, the person is taken also to have made and subscribed an oath or affirmation as the Registrar of Military Justice before the Judge Advocate General under section 188FF of the old DFDA.
- (3) The person who is the Director of Military Prosecutions immediately before the commencement day is taken, on the commencement day, to have made and subscribed an oath or affirmation before a Military Judge under section 188GJ of the new DFDA.
- (4) If:
- (a) a person is appointed as the Director of Military Prosecutions after the commencement day; and
  - (b) immediately before the appointment, there was a service offence that:
    - (i) was committed before the commencement day; and
    - (ii) had not been finally dealt with;

then, when the person makes and subscribes an oath or affirmation before a Military Judge under section 188GJ of the new DFDA, the person is taken also to have made and subscribed an oath or affirmation before the Judge Advocate General under section 188GJ of the old DFDA.

**264 Regulations prescribing transitional matters**

The Governor-General may make regulations in relation to transitional matters arising out of the amendments made by this Schedule.

**Table A****Schedule 2****2 Transitional provision**

Despite the amendment of subsection 101F(2) of the *Defence Force Discipline Act 1982* made by item 1 of this Schedule, a list that:

- (a) was made under that subsection before the commencement of this item; and
  - (b) that is in force immediately before the commencement;
- continues in force, and may be dealt with, after the commencement as if it had been made under that subsection as amended.

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*Defence Legislation Amendment Act 2008* (No. 6, 2008)

**Schedule 8****1 Definitions**

In this Schedule:

**commencement day** means the day on which Schedules 1 to 6 to this Act commence.

**main amendments made by this Act** means the amendments and repeals made by the following provisions of this Act:

- (a) Schedule 1;
- (b) Schedule 2;
- (c) Schedule 3;
- (d) Schedule 4;
- (e) Part 2 of Schedule 5;
- (f) Part 3 of Schedule 7;
- (g) items 24 to 26, 29 and 30 of Schedule 7.

**old DFDA** means the *Defence Force Discipline Act 1982* as in force immediately before the commencement day.

**old law** means the *Defence Force Discipline Act 1982* and the *Defence Force Discipline Appeals Act 1955* as in force immediately before the commencement day.

**2 Application of main amendments made by this Act**

- (1) The main amendments made by this Act apply in relation to a service offence committed by a person on or after the commencement day.

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- (2) The main amendments made by this Act also apply in relation to a service offence committed by a person before the commencement day if, before the commencement day:
- (a) the person had not been charged with the offence under the old DFDA; or
  - (b) the person had been charged with the offence under the old DFDA but no action to deal with the charge had been taken under the old DFDA.

### **3 Application of amendments of offences and disciplinary infringements**

- (1) The amendments made by the following provisions of this Act apply in relation to acts and omissions that take place on or after the commencement day:
- (a) Part 1 of Schedule 5;
  - (b) Schedule 6.
- (2) For the purposes of this item, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the commencement day, the act or omission is alleged to have taken place before the commencement day.

### **4 Continued application of old law to proceedings in progress before commencement day**

- (1) This item applies if, before the commencement day:
- (a) a person had been charged with a service offence under the old DFDA; and
  - (b) proceedings dealing with the charge of the offence had been commenced under the old DFDA; and
  - (c) those proceedings (including any appeal to the Defence Force Discipline Appeal Tribunal) had not been finally determined under the old law.
- (2) Despite the main amendments made by this Act, and subject to subitem (3), the old law continues to apply after the commencement day in relation to the proceedings, including any review under Part IX of the old DFDA, as if those amendments had not been made.
- (3) A review of the proceedings must not be commenced under section 155 of the old DFDA after the end of 31 December 2008.



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**Table A****4A Application of amendments to trials by the Australian Military Court of multiple charges or accused persons together**

The amendments made by items 2, 30A and 30B of Schedule 7 to this Act apply in relation to a charge of a service offence against an accused person that is to be tried by the Australian Military Court if, before the commencement of those items, the accused person:

- (a) had not made an election in relation to the charge under subsection 132A(2) or (3) of the *Defence Force Discipline Act 1982*, as in force before the commencement of those items; and
- (b) had not been asked to plead in relation to the charge.

**5 Summary Authority Rules**

Rules made by the Judge Advocate General under section 149 of the old DFDA that were in force immediately before the commencement day continue in force on and after that day as if they had been made by the Chief Military Judge under section 149 of the *Defence Force Discipline Act 1982* as amended by item 10 of Schedule 3 to this Act.

**6 Proceedings before examining officers**

- (1) If, before the repeal of section 130A of the *Defence Force Discipline Act 1982* by item 27 of Schedule 7 to this Act:
  - (a) a legal officer had started to hear evidence in relation to a charge under that section; but
  - (b) the officer had not completed hearing the evidence;the officer must complete hearing the evidence in relation to the charge as if the repeal had not happened.
- (2) If, before the repeal of section 130A of the *Defence Force Discipline Act 1982* by item 27 of Schedule 7 to this Act:
  - (a) a commanding officer had, under that section, given a legal officer a direction to hear evidence in relation to a charge; but
  - (b) the legal officer had not started to hear the evidence;the direction is taken not to have been made.

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**7 Appointments of reviewing authorities**

An appointment made under section 150 of the old DFDA that was in force immediately before the commencement day continues in force on and after that day as if the appointment had been made under subsection 150(1) of the *Defence Force Discipline Act 1982* as inserted by item 2 of Schedule 4 to this Act.

**8 Regulations may deal with transitional, saving or application matters**

The Governor-General may make regulations dealing with matters of a transitional, saving or application nature relating to amendments and repeals made by this Act.