

# **ADF LEGAL SERVICES**

## **LEGAL TASK JOURNAL**

### **DISCIPLINE LAW**

#### **LEVELS - ADVANCED AND SPECIALIST**

# ADF LEGAL SERVICES

## LEGAL TASK JOURNAL QUALIFICATION CRITERIA

### DISCIPLINE LAW - ADVANCED & SPECIALIST

#### Qualification

1. The Legal Task Journal qualification criteria for advancement in CL in Discipline law are:

#### QUALIFICATION CRITERIA - DISCIPLINE LAW

	<b>Total Tasks</b>	<b>Self-Assessed</b>	<b>Assessor</b>	<b>Senior Assessor</b>
		Minimum number of tasks in each part	Minimum number of tasks in each part	Minimum number of tasks in each part
<b>Advanced</b>	<b>59</b>			<b>4 total</b>
Advanced – Part A		21	21	1
Advanced – Part B		19	19	1
Advanced – Part C		12	12	1
Advanced – Part D		2	2	1
<b>Specialist</b>				
Advanced criteria PLUS	<b>34</b>			<b>4 total</b>
Specialist – Part A		13	13	1
Specialist – Part B		12	12	1
Specialist – Part C		7	7	1
Specialist – Part D		2	2	1

#### Advanced Standard

2. A Legal Officer who has attained an ‘advanced’ standard in Discipline law has a broad knowledge of criminal law, theory and has a sound grasp of section 154 reports.
3. In addition, such a Legal Officer can identify where the ADFP 06.1.1 Discipline Law Manuals may be incomplete and be able to ‘fill’ the gap, identify ‘novel’ issues and propose solutions by synthesising specialist advice and propose amendments to discipline procedures and policy (but may not fully identify all relevant issues and consequences.)

#### Specialist Standard

6. A Legal Officer who has attained a ‘specialist’ standard in Discipline law has a thorough knowledge of criminal law theory, principles and case law.
7. In addition, such a Legal Officer is able to resolve ‘novel’ and complex issues and propose comprehensive legislative and policy amendments that are consistent with broader laws and general legal principles.

# ADF LEGAL SERVICES

## LEGAL TASK JOURNAL

### DISCIPLINE LAW – ADVANCED & SPECIALIST

#### Part A – Jurisdiction and Charges

##### **Jurisdiction Determination**

1. Demonstrate application of knowledge of the law and policy relevant to the application of jurisdiction under the DFDA outside Australia. This should include an explanation of the current position - ‘can proceedings reasonably be regarded as substantially serving the purpose of maintaining or enforcing Service discipline’. Where relevant this should include an explanation of the application of any Status of Forces Agreement (SOFA).

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

##### **Discipline Law Related Defence Instructions**

2. Demonstrate application of knowledge of the applicability of DI (G) PERS 35-4 *Management and Reporting of Sexual Offences*. Where relevant this should include an explanation of:

- a. the definitions of complaint, complainants and respondents, sexual offences and consent;
- b. jurisdiction for sexual offences;
- c. management of sexual offence complaints;
- d. investigation of sexual offence complaints;
- e. outcomes from sexual offence investigation; and
- f. the reporting of sexual offences.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

3. Demonstrate application of knowledge of the applicability of DI (G) PERS 35-3 *Management and Reporting of Unacceptable Behaviour*.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

## ADF prosecution policy

4. Demonstrate application of knowledge of the law and policy applicable to prosecutions under the DFDA. Where relevant, this should include an explanation of:
- who makes the decision to prosecute or not;
  - the factors govern the decision to prosecute;
  - the test as to whether there is a reasonable prospect of conviction; and
  - what disciplinary or alternative options are available to a Commanding Officer/Officer Commanding.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

## Service Investigations

5. Demonstrate application of knowledge of the law and policy on service investigations in the areas of:
- when a caution is to be given by an investigating officer;
  - any obligation of a person to answer questions posed by an investigating officer; and
  - whether an investigating officer can question a person after they have been charged.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

6. Demonstrate application of knowledge of the law and policy on service investigations in the areas of:
- the use of fingerprints, photographs, medical evidence and identification parades; and
  - when a person may be suspended from duty.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

7. Demonstrate application of knowledge of the law and policy on the rights of the accused during a service investigation. Where relevant this should include:

- a. an accused's rights in pre-conviction custody; and
- b. the standard of treatment of persons in custody.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

8. Demonstrate application of knowledge of the law and policy on service investigations in the areas of:

- a. when access to a friend, relative and legal practitioner is permitted; and
- b. when medical examinations can be undertaken.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

9. Demonstrate application of knowledge of the law and policy associated with the difference between a discipline investigation and an administrative investigation. This should include detail of the procedures to be followed when investigations overlap.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

10. Demonstrate application of knowledge of the law and policy on suspension from duty. Where relevant this should include an explanation of:

- a. who is authorised to suspend a member from duty;
- b. the circumstances in which a member may be suspended from duty;
- c. how suspension from duty is effected; and
- d. the effect of suspension from duty.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

11. Demonstrate application of knowledge of the law and policy on the use of a 'summons' under the DFDA. Where relevant this should include an explanation of:
- the difference between a 'summons' and an 'order' to appear before a service tribunal;
  - the types of summonses available;
  - who is authorised to issue a summons; and
  - how to effect service of a summons pursuant to DFD Reg 34.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

12. Demonstrate application of knowledge of the law and policy on the apprehension of persons under the DFDA in connection with service offences. Where relevant this should include an explanation of:
- the types of arrest under the DFDA;
  - what is meant by the term 'reasonably suspects' with respect to arrest;
  - how to 'effect' an arrest; and
  - the concept of 'reasonable and necessary force' for the purposes of s 92(1) DFDA.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

13. Demonstrate application of knowledge of arrest without warrant pursuant to s 89 DFDA. Where relevant this should include:
- the circumstances in which a person may be arrested without a warrant;
  - who may exercise the power of arrest and over whom.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

14. Demonstrate application of knowledge of arrest under warrant pursuant to s 90 DFDA. This should include:

- a. how and when such a warrant may be issued;
- b. by whom may such a warrant be issued;
- c. what record the issuing officer is to make of his/her reason(s) for issuance; and
- d. what mandatory information is to be included in the warrant.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

14A. Demonstrate application of knowledge of the issue and execution of a search warrant pursuant to the DFDA. This should include:

- a. who may issue a search warrant;
- b. the criteria that the issuing officer must apply before issuing a search warrant;
- c. the form the warrant is to take;
- d. who may execute the warrant; and where relevant:
- e. whether a member can enter private property for the purpose of executing a warrant; and
- f. an explanation of who can enter a private residence and under what circumstances and restrictions such entry may be made.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

15. Demonstrate application of knowledge of pre-conviction custody. Where relevant this should include:

- a. where a person may be detained once they have been arrested;
- b. the responsibilities of a member once a person has been placed in their custody;
- c. the responsibilities of the CO once a member has been placed in their custody;
- d. an explanation of the time limits imposed with respect to the duration of custody before the member has to be charged or released;
- e. an explanation of the duties of a CO, a superior authority and (when applicable) CDF, a service chief or an authorized officer, when a member has been charged but not dealt with IAW the time limits prescribed by s95 DFDA; and
- f. an explanation of what condition and restrictions may be imposed if the CO releases a member from custody before the charge is dealt with.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

## Analysis of DFDA Investigative Material

16. Demonstrate application of knowledge of the analysis of investigative material from a Service police investigation. Where relevant this should include an explanation of:

- a. whether there was jurisdiction to investigate the matter in the first instance;
- b. whether the investigation was conducted IAW Part VI of the DFDA;
- c. refer to relevant Defence Instructions, for example DI (G) PERS 35-4 *Management and Reporting of Sexual Offences*;
- d. whether the investigative material will be admissible taking into account the relevant rules of evidence applicable in the relevant service tribunal.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

## Offences, charges and their prosecution

17. Demonstrate application of knowledge of DFDA charges to be preferred resulting from a DFDA investigation. Where relevant this should include an explanation of:

- a. whether the recommended charge/s are supported by the evidence provided and if not what evidence is required to support the charge/s or whether the evidence provided supports another charge/s;
- b. whether the charges are correctly drafted, this may include advising on duplicity;
- c. whether multiplicity/parallel pleading applies;
- d. any relevant limitations on charging service offences, such as time limits, including where an offender has left the ADF; and
- e. whether there is a prima facie case.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

18. Demonstrate application of knowledge of the difference between a disciplinary offence and a criminal offence.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

19. Demonstrate application of knowledge of the difference between a statutory alternative charge and ‘in the alternative charge’. Where relevant this should include an explanation of when an alternative charge or a statutory alternative charge may be relied upon.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

20. Demonstrate application of knowledge of drafting a charge. This should include a deconstruction of the elements of the charge into physical and fault elements.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

21. Demonstrate application of knowledge of drafting a territory-based offence.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

22. Demonstrate application of knowledge of the law and policy on the consequences of amendments made to the DFDA or DFDA related legislation. Where relevant this should include an explanation of:

- a. impact of *Criminal Code Amendment (Theft, Fraud, Bribery and related Offences) Act 2000* on DFDA s 61;
- b. offences against ss 34, 35, 36A and 40B committed on or after 15 Dec 01 and before 14 Jan 04; and
- c. any other recent amendments to the DFDA or related legislation.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

23. Demonstrate application of knowledge of physical elements of an offence. This should include an explanation of:

- a. the fact that physical elements of an offence may be ‘conduct’, a circumstance in which ‘conduct’ occurs, or a result of ‘conduct’;
- b. the relevance of ‘voluntary conduct’; and where relevant:
- c. the concept of absolute and strict liability offences; and
- d. the implications of loss of memory with respect to proving the requisite criminal intent to carry out the physical act of an offence.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

24. Demonstrate application of knowledge of fault elements of an offence. This should include knowledge of default fault elements.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

25. Demonstrate application of knowledge of the concept of ‘intention’. Where relevant this should include an explanation of:

- a. what amounts to ‘intention’ for the purposes of each limb of physical element;
- b. when intention is the default fault element; and
- c. how ‘intention’ may be inferred in the absence of admissions by the accused.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

26. Demonstrate application of knowledge of the concept of ‘knowledge’ as a fault element. This should include an explanation of to what limb of conduct is ‘knowledge’ the fault element.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

27. Demonstrate application of knowledge of the concept of ‘recklessness’ as a fault element. This should include an explanation of:

- a. to what limb of conduct is ‘recklessness’ the fault element; and
- b. when recklessness is the default fault element.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

28. Demonstrate application of knowledge of the concept of ‘substantial’ risk with respect to the fault element of recklessness.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

29. Demonstrate application of knowledge of the concept of ‘unjustifiable’ risk with respect to the fault element of recklessness. This should include an explanation of:

- a. the concept of ‘justifiable’ risk with respect to the fault element of recklessness; and
- b. whether taking a risk is unjustifiable is a question of fact.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

30. Demonstrate application of knowledge of the concept of negligence. This should include an explanation of:

- a. the application of the Criminal Code (Cth) definition of negligence;
- b. the required standard of care taking into account s.11(2) DFDA;
- c. what is meant by ‘high risk’ that some particular result will occur;
- d. the implications of the requirement that conduct merits criminal punishment; and where relevant:
- e. the fact that the defence of mistake of fact does not apply where the fault element is negligence;

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

31. Demonstrate application of knowledge of what is meant by ‘voluntary conduct’.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

32. Demonstrate application of knowledge of the circumstances in which there is no criminal responsibility. Where relevant this should include an explanation of the circumstances involving:

- a. lack of capacity;
- b. mistake or ignorance; and
- c. external factors.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

33. Demonstrate application of knowledge of the law and policy on intoxication. Where relevant this should include an explanation of

- a. when a person is intoxicated; and
- b. an explanation of the types of intoxication.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

34. Demonstrate application of knowledge of self-induced intoxication as a defence. This should include an explanation of:

- a. the definition of self-induced intoxication;
- b. the relevance of Criminal Code (Cth) approach in distinguishing between crimes of basic intent and those of specific intent for the purposes of relying upon intoxication as a defence;
- c. the relevant burdens of proof; and where relevant:
- d. the circumstances in which self-induced intoxication may be a defence to fault elements of a basic intent crime; and
- e. the relationship of intoxication to other defences.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

35. Demonstrate application of knowledge of the defence of duress. This should include an explanation of:

- a. what is meant by the term duress;
- b. the circumstances in which duress may be relied upon as a defence;
- c. the limitation which applies to the use of the defence of duress; and
- d. the relevant burdens of proof.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

36. Demonstrate application of knowledge of the defence of superior orders. This should include:

- a. the principle of this defence;
- b. whether this is a defence that can be relied upon; and
- c. an explanation of the relevant burdens of proof.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

37. Demonstrate application of knowledge of the defence of sudden or extraordinary emergency. This should include:

- a. what is meant by the terms ‘sudden emergency’ or ‘extraordinary emergency’;
- b. when the defence of sudden or extraordinary emergency may be relied upon; and
- c. an explanation of the relevant burdens of proof.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

38. Demonstrate application of knowledge of the defence of ignorance of the law. This should include an explanation of when the defence is likely to be available.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

39. Demonstrate application of knowledge of the law and policy on defences to assault-based charges. This should include an explanation of:
- a. the relevance of consent to assault-based charges;
  - b. the concept of 'self defence', including objective and subjective tests;
  - c. the relevant burdens of proof; and where relevant:
  - d. the applicability of intoxication to self defence;
  - e. proximity of danger;
  - f. provoked assaults and mixed motives; and
  - g. the relevance of proportionality.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

40. Demonstrate application of knowledge of an attempt offence pursuant to s11.1 Criminal Code. This should include an explanation of:
- a. when an attempt offence occurs; and
  - b. what is meant by preparatory conduct.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

41. Demonstrate application of knowledge of the offence of complicity and common purpose pursuant to s 11.2 Criminal Code. This should include an explanation of:
- a. what constitutes 'complicity and common purpose' under the Criminal Code and how it is relevant to ADF members;
  - b. the applicable fault element; and
  - c. the relevant term out of 'aids, abets, counsels or procures'.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

42. Demonstrate application of knowledge of the offence of 'innocent agency' pursuant to s 11.3 Criminal Code. This should detail the elements of this offence and any relevant definitions of terms such as 'procurer'.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

43. Demonstrate application of knowledge of the offence of ‘incitement’ pursuant to s 11.4 Criminal Code. This should detail the elements of the offence and any relevant definitions.

	<b>Member</b>	<b>Assessor</b>	<b>Senior Assessor</b>
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

44. Demonstrate application of knowledge of the offence ‘accessories after the fact’ pursuant to s 6 Crimes Act (Cth). This should detail the elements of the offence and any relevant definitions.

	<b>Member</b>	<b>Assessor</b>	<b>Senior Assessor</b>
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

45. Demonstrate application of knowledge of the offence of ‘conspiracy’ pursuant to s 11.5 Criminal Code. This should detail the elements of the offence and any relevant definitions.

	<b>Member</b>	<b>Assessor</b>	<b>Senior Assessor</b>
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

# ADF LEGAL SERVICES

## LEGAL TASK JOURNAL

### DISCIPLINE LAW – ADVANCED & SPECIALIST

#### Part B – Evidence

##### Rules of Evidence

46. Demonstrate application of knowledge of the standard of proof for evidentiary determinations.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

47. Demonstrate application of knowledge of who may give evidence at a service tribunal. This should include an explanation of the competence and compellability of witnesses.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

48. Demonstrate application of knowledge of whether or not co-accused are compellable.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

49. Demonstrate application of knowledge of whether or not the accused's spouse and family can object to giving evidence for the prosecution.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

50. Demonstrate application of knowledge of whether or not the person or persons constituting the service tribunal are competent to give evidence.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

51. Demonstrate application of knowledge of the difference between direct, and circumstantial evidence.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

52. Demonstrate application of knowledge of what constitutes documentary evidence for the purposes of a service tribunal.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

53. Demonstrate application of knowledge of the ways in which documentary evidence may be adduced in a service tribunal.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

54. Demonstrate application of knowledge of the evidentiary requirements when the accused pleads guilty. This should include an explanation of formal admissions.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

55. Demonstrate application of knowledge of agreements as to facts and how they may be relied upon in a service tribunal.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

56. Demonstrate application of knowledge of what is meant by judicial notice. This should include an explanation of the application of s 147 DFDA.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

57. Demonstrate application of knowledge of what is meant by presumptions of facts. Where relevant this should include an explanation of:

- a. what is meant by conclusive presumptions; and
- b. what a rebuttable presumption is.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

58. Demonstrate application of knowledge of the privilege against self incrimination in service tribunals. Where relevant this should include an explanation of:

- a. when a service tribunal may require a witness to give particular evidence contrary to the general rule; and
- b. whether a witness can be granted immunity from prosecution based on the evidence provided.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

59. Demonstrate application of knowledge of the concept and application of client legal privilege in a service tribunal. This should include:
- a. an explanation of what documents and communications may be protected as confidential communications;
  - b. whose privilege it is and who can waive it.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

60. Demonstrate application of knowledge of whether or not a member of the clergy has a right to claim privilege as a witness. This should include an explanation of what is a religious confession.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

61. Demonstrate application of knowledge of when evidence could be excluded on the basis of public interest. This should include an explanation of what a service tribunal must take into account when deciding to make a direction.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

62. Demonstrate application of knowledge of the 'relevance rule'. This should include an explanation of:
- a. the test of what is relevant pursuant to s 55 Evidence Act; and
  - b. the concept of provisional relevance pursuant to s 57(1) Evidence Act.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

63. Demonstrate application of knowledge of the law and policy on the rule against hearsay. This should include an explanation of:

- a. what the hearsay rule is;
- b. the operation of the rule against hearsay;
- c. the term ‘previous representation’; and
- d. when the hearsay rule applies.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

64. Demonstrate application of knowledge of whether or not evidence can be relevant for a non-hearsay purpose. This should include an explanation of the application of s 60 Evidence Act (Cth).

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

65. Demonstrate application of knowledge of the application of the hearsay rule with respect to evidence of an admission. This should include an explanation of:

- a. what an admission is as defined in s 81 Evidence Act;
- b. the requirements that must be satisfied before evidence of an admission is admissible in a service tribunal; and where relevant:
- c. any evidentiary rules in relation to questioning that resulted in a formal admission; and
- d. the application of ss 101J, 101JA and 101K DFDA.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

66. Demonstrate application of knowledge of whether or not evidence of first hand admission is admissible.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

67. Demonstrate application of knowledge of whether or not evidence of a representation made by a person is admissible.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

68. Demonstrate application of knowledge of whether an admission by one accused is admissible as evidence against a co-accused.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

69. Demonstrate application of knowledge of the admissibility of an admission that is influenced by violence or oppressive inhuman treatment.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

70. Demonstrate application of knowledge of the first hand hearsay representations. Where relevant this should include an explanation of:

- a. the application of the exception to the hearsay rule where the maker of a first hand representation is not available to give evidence; and
- b. the application of the exception to the hearsay rule where the maker of a first hand representation is available to give evidence.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

71. Demonstrate application of knowledge of remote hearsay. Where relevant This should include an explanation of the application of:
- a. the exception to some representations in business records;
  - b. the exceptions with respect to a representation about a person's health or feelings;
  - c. the exceptions to evidence of reputations concerning certain relationships, family history and persons age; and
  - d. the exceptions with respect to evidence of a public right.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

72. Demonstrate application of knowledge of the opinion rule. This should include an explanation of;
- a. when evidence of an opinion may be admitted;
  - b. when opinion evidence on a matter of common knowledge is admissible;
  - c. when opinion evidence on an ultimate issue is admissible; and
  - d. when opinion evidence contained in certain official documents is admissible.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

73. Demonstrate application of knowledge of the exception of lay opinion to the opinion rule.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

74. Demonstrate application of knowledge of the exception of expert opinion to the opinion rule. Where relevant this should include an explanation of:
- a. whether a service tribunal is bound to accept evidence of an expert even if it is not contradicted; and
  - b. the operation of the exception for expert evidence in cases of intoxication.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

75. Demonstrate application of knowledge of ‘character evidence’ in relation to evidence concerning the accused in a service tribunal. This should include an explanation of:

- a. when it is permissible for evidence to be adduced that tends to show the accused is a person of bad character or reputation for the purpose of leading to the conclusion that he or she is a person likely to have committed the offence charged; and where relevant:
- b. what ‘tendency reasoning’ is and what requirements must be satisfied if such evidence is to be adduced;
- c. whether a service tribunal may direct that particular evidence is admissible despite a party’s failure to provide necessary notice of ‘tendency evidence’;
- d. what ‘coincidence reasoning’ is and what requirements must be satisfied if such evidence is to be adduced;
- e. whether a service tribunal may direct that particular evidence is admissible despite a party’s failure to provide necessary notice of ‘coincidence evidence’.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

76. Demonstrate application of knowledge of the admissibility of evidence of the character, reputation or past conduct of witnesses other than the accused in a service tribunal.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

77. Demonstrate application of knowledge of the admissibility of visual identification evidence relating to an accused adduced by the prosecution. This should include:

- a. the requirements set out in the Evidence Act on the admissibility of visual identification;
- b. the factors that a service tribunal must take into account when deciding whether it was reasonable to hold an identification parade.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

78. Demonstrate application of knowledge of the admissibility of picture identification adduced by the prosecution. This should include an explanation of:
- a. the exclusionary rules for evidence adduced by the prosecution; and
  - b. when the exclusionary rules do not apply.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

79. Demonstrate application of knowledge of evidence improperly or illegally obtained. This should include an explanation of:
- a. when evidence has been improperly or illegally obtained;
  - b. the test for admission;
  - c. the application of s 101ZB DFDA in consideration of s 138 Evidence Act; and where relevant:
  - d. the relevant burdens of proof.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

80. Demonstrate application of knowledge of the general discretion to exclude evidence pursuant to s 135 Evidence Act. This should include an explanation of the powers of a service tribunal to refuse to admit a particular item into evidence, including the power to limit the use to be made of evidence.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

81. Demonstrate application of knowledge of the discretion to exclude evidence of an admission pursuant to s 90 Evidence Act (Cth). This should include an explanation of the circumstances in which a service tribunal may refuse to admit such evidence.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

82. Demonstrate application of knowledge of the exclusion of prejudicial evidence adduced by the prosecution pursuant to s 137 Evidence Act.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

83. Demonstrate application of knowledge of reviving memory. Where relevant This should include an explanation of:

- a. when a witness may use a document to revive their memory;
- b. the factors that a service tribunal must take into account in deciding whether to give leave to allow a document to be used in a witness box to revive memory; and
- c. the factors that a service tribunal must take into account in deciding whether to give leave to allow a document to be read aloud as part of evidence.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

84. Demonstrate application of knowledge of cross-examination as to credit. This should include an explanation of what this is, and where relevant:

- a. when an accused may be cross examined on a matter relevant only to credit;
- b. admissibility rules relating to evidence that is relevant only to credit; and
- c. the effect of cross examination as to credit.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

85. Demonstrate application of knowledge of whether a party can split its case. This should include an explanation of the general principle, and where relevant, the two exceptions, re-opening a case to meet an objection and evidence in rebuttal by the prosecutor.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

86. Demonstrate application of knowledge of corroboration. This should include an explanation of:

- a. the abolition of most corroboration requirements; and
- b. the functions of the members of the court martial panel and the judge-advocate regarding corroboration.

	<b>Member</b>	<b>Assessor</b>	<b>Senior Assessor</b>
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

# ADF LEGAL SERVICES

## LEGAL TASK JOURNAL

### DISCIPLINE LAW – ADVANCED & SPECIALIST

#### Part C – Procedure

#### Conduct of Summary Proceedings

87. Demonstrate application of knowledge of the perception of bias with respect to a summary authority making a decision to try a matter.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

88. Demonstrate application of knowledge of applications and objections. Where relevant this should include an explanation of:

- a. when applications or objections can be made;
- b. available applications or objections;
- c. a summary authority's responsibilities to deal with the application or objection.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

#### Summary Proceedings Issues

89. Demonstrate application of knowledge of the responsibilities of the summary authority during a trial. This should include the application of the simplified rules of evidence.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

90. Demonstrate application of knowledge of public access to a summary hearing.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

## **Elections for trial by a court martial or Defence Force magistrate**

91. Demonstrate application of knowledge of the ‘upfront’ right to elect trial before a court martial or Defence Force magistrate. This should include an explanation of:

- a. in respect of what offences the right arises;
- b. what ranks it applies to;
- c. when the election must be given;
- d. time within which the election must be made; and
- e. what paperwork must be raised.

	<b>Member</b>	<b>Assessor</b>	<b>Senior Assessor</b>
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

92. Demonstrate application of knowledge of the ‘during trial’ right to elect trial before a court martial or Defence Force magistrate. This should include an explanation of the circumstances in which such a right arises, and the affect on punishment that may be awarded if the accused elects to continue to be tried by the summary authority.

	<b>Member</b>	<b>Assessor</b>	<b>Senior Assessor</b>
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

## **Role and Function of a Superior Authority (s 5A DFDA).**

93. Demonstrate application of knowledge of the appointment and role of a superior authority.

	<b>Member</b>	<b>Assessor</b>	<b>Senior Assessor</b>
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

## **Role and Function of the PMADF and ADFIS**

94. Demonstrate application of knowledge of the role and function of the PMADF and ADFIS. This should include an explanation of the right of the PMADF to refer an investigation report directly to the DMP.

	<b>Member</b>	<b>Assessor</b>	<b>Senior Assessor</b>
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

**Role and Function of the DMP**

95. Demonstrate application of knowledge of the appointment, role, functions and independence of the Director of Military Prosecutions.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

96. Demonstrate application of knowledge of the sources of referral of charges to the DMP.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

97. Demonstrate application of knowledge of the options available to the DMP when charges are referred to ODMP.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

**Court martial and Defence Force magistrate Proceedings**

98. Demonstrate application of knowledge of the process of referral of charges to the Registrar of Military Justice, and the role and functions of the Registrar in convening a court martial or referring a charge to a Defence Force magistrate for trial.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

99. Demonstrate application of knowledge of the selection, role and functions of a court martial. This should include an explanation of the eligibility to be a President of a court martial, a Judge Advocate and a member of the court martial panel, and the rights and obligations of these positions.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

100. Demonstrate application of knowledge of the role and functions of a Defence Force magistrate. This should include an explanation of the eligibility to be a Defence Force magistrate.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

101. Demonstrate application of knowledge of pre-trial administration and directions hearings for a court martial or Defence Force magistrate trial.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

### **Sentencing Principles, the Scale and Consequences of Punishments at Service Tribunals**

102. Demonstrate application of knowledge of the commencement of punishments, imposed in both summary and court martial or Defence Force magistrate hearings. Where relevant, this should include an explanation of:

- a. the default position;
- b. the effect of cumulative and concurrent punishments;
- c. when summary punishments are subject to review before commencement; and
- d. when a summary authority may specify the commencement date of a punishment.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

103. Demonstrate application of knowledge of a stay of execution of punishment. This should include an explanation of:
- a. when and how is a stay of a summary punishment granted;
  - b. who is authorised to stay a summary punishment;
  - c. what are the process and the grounds for seeking a stay of a punishment imposed following a court martial or Defence Force magistrate trial;
  - d. any statutory provisions regarding a stay of the punishment of dismissal; and
  - e. the implications of a stay.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

### Review and Petition of Summary Authority Proceedings

104. Demonstrate application of knowledge of preparation of a legal report for an automatic legal review under s 152 DFDA of summary authority proceedings. Where relevant this should include an explanation of:

- a. grounds for quashing (or revoking) a conviction (or order) or punishment;
- b. grounds for ordering a new trial; and
- c. substitution of conviction of alternative offence.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

105. Demonstrate application of knowledge of a review on petition under s 153 DFDA. Where relevant this should include an explanation of:

- a. when a petition may be lodged;
- b. time limitations on lodging petitions;
- c. what information is required to be included in a petition; and
- d. timeframe for reviewing authority to complete review.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

106. Demonstrate application of knowledge of a further review under s 155 DFDA. Where relevant this should include an explanation of:
- a. when a further review may be sought;
  - b. who may conduct a further review;
  - c. whether a legal report from the Judge Advocate General or Deputy Judge Advocate General is required, and if so, at what time in the review and whether CDF or a Service Chief is bound by opinions set out in a report.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

### **Punishments and Orders – Commencement and subject to approval**

107. Demonstrate application of knowledge of the commencement of punishments and orders under s 171 DFDA. Where relevant this should include an explanation of:
- a. when a punishment takes effect;
  - b. whether a summary authority may delay commencement of punishment;
  - c. impact of punishment of dismissal on custody; and
  - d. commencement of cumulative punishments.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

108. Demonstrate application of knowledge of the requirement for approval of certain punishments and orders. This should include the powers and duties of the reviewing authority in respect of punishments imposed by a summary authority or a court martial or Defence Force magistrate under s 172 DFDA.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

**The Appeals Process**

109. Demonstrate application of knowledge of the bases of appeal from a court martial or Defence Force magistrate to the DFDAT. This should include an explanation of:

- a. who may appeal and against what;
- b. grounds of appeal;
- c. with whom appeals may be lodged: and
- d. time limitations.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

**Pre-Trial Legal Advice**

110. Demonstrate the provision of pre-trial legal advice with respect to a court martial or Defence Force magistrate trial.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

**Discipline Case Flow Management**

111. Demonstrate discipline tracking and case flow management responsibilities in DI(G) ADMIN 10-8 *Discipline Tracking and Case Flow Management* including:

- a. the implications of the Privacy Act within case flow management;
- b. the management of access control; and
- c. when a disciplinary outcome becomes eligible to be included in statistics.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

112. – 113. Blank. (Removed from Amendment 3).

# ADF LEGAL SERVICES

## LEGAL TASK JOURNAL

### DISCIPLINE LAW – ADVANCED & SPECIALIST

#### Part D – Executive and Parliamentary Procedure

##### Discipline Related Ministerial Documentation

114. Demonstrate the provision of a legal review relating to a response to a discipline related Ministerial.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

115. Demonstrate the provision of a legal review concerning a cabinet submission that takes into account the contents of the Defence Ministerial, Parliamentary and Cabinet Handbook.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

##### Discipline Policy

116. Demonstrate application of knowledge of the ‘process’ of amending discipline policy.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

117. Demonstrate application of knowledge of the effect of internal policy in discipline matters. Where relevant, advice should include the effect of non-compliance with policy on a discipline matter.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

118. Demonstrate application of knowledge of the broader ‘policy considerations’ (as opposed to just the ‘process’) in amending discipline policy.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

### **Legislative Amendment Process and Parliamentary Inquiry**

119. Demonstrate application of knowledge of the creation, amendment and repeal of Acts, Statutory Rules or other legislative instruments.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

120. Demonstrate application of knowledge of the legislative discipline amendment process.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			

121. Demonstrate the provision of a legal review relating to the preparation of a government response to a Parliamentary Inquiry report.

	Member	Assessor	Senior Assessor
<b>Signature</b>			
<b>Name</b>			
<b>Date</b>			