

AUSTRALIAN MILITARY COURT



GUIDE FOR MILITARY JURORS

Correct as at [09 May 08]

Please keep this guide with you throughout your time as a military juror

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ABOUT THE AUSTRALIAN MILITARY COURT

The Australian Military Court (AMC) became operational on 1 October 2007, replacing the previous system of trials by Courts Martial and Defence Force Magistrates. Establishing the AMC was a recommendation of the Senate Foreign Affairs, Defence and Trade References Committee in its 2005 report '*The effectiveness of Australia's military justice system*'.

The AMC is established under the *Defence Force Discipline Act 1982* (DFDA), and operates under both the DFDA and the *Australian Military Court Rules 2007* (AMCRs).

The formation of the AMC marks the latest step in the evolution of a more effective system of military justice for the ADF which, while preserving its essential role in maintaining service discipline, emphasises the importance of judicial process and the rights of ADF personnel. The AMC is independent of the ADF chains of command and is able to provide ADF members with a fair and impartial trial.

The AMC is located in Canberra although it is fully deployable with the ability to conduct trial proceedings at any location in Australia and overseas, including in military operational areas.

MILITARY JURIES

Overview

1. Military juries are an integral part of the military justice system. The capacity to be tried by a military jury helps to ensure a fair trial and maintain the confidence of the wider military community and the public in military judicial proceedings.
2. Military juries will be constituted by ADF members (subject to specific selection criteria) as follows:
 - a. 12 members for a Class One offence (with a minimum of 3 reserve military jurors); and
 - b. 6 members for Class Two and Class Three offence (with a minimum of 2 reserve military jurors).

Role of a military jury

3. The role and functions of a military jury are similar in many respects to a jury in a civilian criminal trial, in that a military jury will decide whether the accused:
 - a. is guilty or not guilty of an offence; and,
 - b. was suffering from such unsoundness of mind as not to be responsible in accordance with law for that act or omission.
4. In reaching its decision (the 'verdict') a military jury will consider the evidence presented during the trial as well as any directions from the Military Judge.
5. It is *not* the role of a military jury to:
 - a. decide any punishment to be imposed; or
 - b. give reasons for the verdict.
6. Determining any appropriate punishment which may result from a guilty verdict is the responsibility of the Military Judge.

Appointment of military jurors

7. CDF Directive No 18/2007 requires service chiefs to make ADF personnel available for service as a military juror when required.
8. Service Chief Directives (CA Directive 13/07, CAF Directive 06/08) provide that serving as a military juror is a service requirement when summoned by the Registrar. Failure to comply with the requirements of a summons appointing an ADF member as a military juror will result in the member's non-attendance being reported to the member's commanding officer and Service Chief.

Selection of military jurors

9. Potential military jurors are selected at random from the Navy, Army and Air Force subject to certain eligibility criteria.
10. When a military jury is required, the Registrar will initially screen those selected as potential military jurors to ensure they meet the eligibility criteria to serve on a military jury, and are not:
 - a. disqualified from service as a military juror;
 - b. exempt from service as a military juror;
 - c. biased, likely to be biased or likely to be thought on reasonable grounds to be biased in relation to the case to be tried; or
 - d. entitled to be excused from service as a military juror.
11. Those members who are eligible for military jury duty and not exempt, disqualified, biased or excused will be appointed as military jurors by the Registrar who will issue the appointed juror with a summons.

Eligibility for service as a military juror

12. To be eligible to serve as a military juror, ADF personnel must:
 - a. in cases where the accused is an officer or defence civilian:
 - (1) have been officers for a continuous or cumulative period of a minimum of three years; and
 - (2) not be lower in rank than the accused.

- b. in cases where the accused is not an officer or a defence civilian:
 - (1) hold a rank not lower than Warrant Officer (Navy), Warrant Officer Class One (Army) or Warrant Officer (Air Force); and
 - (2) have been officers or have held the rank of Warrant Officer (Navy) Warrant Officer Class One (Army) Warrant Officer (Air Force) for a continuous or cumulative period of a minimum of three years.

13. At least one member of a military jury must hold a rank not lower than LTCOL [E].

14. Each of the eligibility requirements for military jury duty applies subject to the exigencies of service.

Exemptions from service as a military juror

15. Categories and grounds for being exempt from appointment as a military juror include:

- a. Chief of the Defence Force;
- b. legal officers;
- c. chaplains;
- d. service police; and
- e. persons posted or deployed in a country other than Australia where the military jury trial is held in Australia, including members posted to fleet units which are likely to be deployed at sea at the time of the trial; and
- f. where an ADF member has been convicted of a service offence by a court martial, DFM or the AMC, and a punishment in excess or a fine has been imposed, the member is disqualified from serving as a military juror.

Actual or perceived bias

16. In relation to the case to be tried, military jurors must not be:
 - a. biased;
 - b. likely to be biased; or
 - c. likely to be thought on reasonable grounds to be biased.

17. Issues of bias may arise for example where a military juror:
 - a. has a relationship or command relationship with any personnel involved in the trial, including the accused person, members of the defence or prosecution, witnesses, other military jurors or the trial Military Judge; or
 - b. is made aware of any details of the case outside the courtroom which may affect the military juror's ability to remain impartial throughout the trial and make a decision based solely on the evidence presented during the trial and directions of the Military Judge.

18. To reduce the risk of bias, potential military jurors must not (from the beginning of the screening process):
 - a. speak to anyone about the trial; or
 - b. conduct investigations or attempt to find out any further details about the trial.

19. If, at any point during the trial proceedings, a military juror believes that he or she is potentially biased or may be perceived as biased, the military juror must immediately notify the Military Judge.

Excusal from service as a military juror

20. The Registrar will consider any request to be excused from service as a military juror, having regard to:
 - a. whether the member is likely to have separated from the ADF or ceased continuous full time service at the commencement of the trial;
 - b. whether the proposed military jury duty would result in substantial financial hardship to the member;

- c. whether the proposed military jury duty would result in substantial hardship to the member or the member's family; or
- d. the member's state of health;
- e. whether the proposed military jury duty would:
 - (1) materially affect the operational effectiveness of the member's unit, ship or base;
 - (2) materially affect the operational deployment or proposed operational deployment of the member;
 - (3) materially affect a substantial training commitment for the member;
 - (4) affect the ability of the member to take recreation or other approved leave;
- f. whether the member has served as a member of another military jury in the 12 month period prior to the anticipated commencement of the trial; and
- g. any other matter stated in a Practice Note dealing with excusal of military jurors.

21. Any request to be excused from military jury duty is to be made in writing to the Registrar, through the juror's chain of command. A request by email is acceptable.

THE TRIAL

Administrative arrangements

22. During the screening process military jurors will be informed when the trial is scheduled to begin and how long it is expected to run. However, it is important to understand that the length of a trial will vary from case to case and may be extended or shortened without notice due to unexpected developments.

23. Following appointment as a military juror, members will be issued with an Administrative Instruction regarding their military juror duty requirements. The Administrative Instruction will provide detail on the date, time and location of the trial proceeding, travel and accommodation and Service dress requirements.

24. If you are not posted to the locality of the trial, your travel will be arranged by the Office of the Registrar. You are to contact one of the Trial Administrators (Mrs Bianca Joyce (02) 62174046/Mrs Desiree Addinsall (02) 6127 4122) if you have any questions about this requirement.

25. Accommodation for military jurors during the trial will be arranged by AMC trial administrators and details provided within the Administrative Instruction. If you are not posted to the locality of the trial, your accommodation will be booked by the Office of the Registrar. **You must stay at this accommodation and not make alternative arrangements.**

Custom and protocol

26. Both military and legal formalities have been incorporated into the AMC trial procedure.

27. Military jurors are required to wear appropriate service ceremonial dress as detailed within an Administrative Instruction issued to military jurors by the Registrar for the AMC trial proceedings. The Military Judge may vary the dress requirements at trial and military jurors will be duly notified.

28. While the court is in session Military Judges are referred to as “Your Honour”. Outside the courtroom usual service customs of the service apply.

29. At various times during the trial all ADF personnel, regardless of rank, will be instructed by the Clerk of the Court to rise and pay compliments to the court by saluting. Whenever military jurors are required to salute, the senior officer on the military jury will salute on behalf of each military juror.

30. The court room layout for an AMC trial by Military Judge and military jury is attached at Annex A.

Administrative support personnel in the courtroom

31. **Clerk of the Court (CC)** – The principal role of the CC is to attend to the administrative and ceremonial aspects of the trial as it unfolds. In this sense the CC performs roles and functions normally associated with CPOWTR (RAN), RSM/CSM (Army) and WOD (RAAF).

32. **Court Orderly** – The Court Orderly is a junior NCO or equivalent responsible for general administrative support duties during the conduct of the trial at the direction of the CC.

33. **Military Jury Court Officer (MJCO)** – The MJCO is responsible for attending to all the requirements of the jury that arise during the trial, both inside and outside the courtroom. The MJCO will respond to requests from the jury spokesperson, and must ensure that the jury is able to carry out its

duties without external interference or impediment. Additionally the MJCO will:

- a. Ensure that the Military Jury is present and ready before the commencement of the hearing and on return from each adjournment before the Military Judge enters the court room.
- b. Escort the Military Jury to and from the court room.
- c. Ensure that all communications devices possessed by members of the Military Jury are secure in the Military Jury room whenever the Military Jury enters the court room.
- d. Ensure that the Military Jury is able to take meals as required in the Military Jury Room.
- e. Ensure that the Military Jury is not disturbed while sequestered in the military Jury Room.
- f. Pass communications between the Military Jury and the Military Judge if necessary during trial.
- g. Act as driver if necessary to convey the Military Jury to and from their accommodation at the beginning and conclusion of each day of the trial.
- h. Such other tasks as requested by the jury spokesperson nominated by the Military Jury.

Trial procedure

34. Some of the stages of a trial in the AMC relevant to a military jury include:

- a. ***Pleading to the charges and arraignment.*** At the commencement of the trial the accused person will be asked to enter a plea to the charge or charges. The charge or charges will be read out to the accused in full and the accused will be required to enter a plea to each charge separately.
- b. ***Objection by accused person or prosecuting officer to military juror.*** At any time after the military jury is assembled and before the jury is sworn or affirmed, the accused person or prosecuting officer may object to any military juror or reserve military juror on the ground that the military juror (or reserve military juror):
 - (1) is biased;
 - (2) is likely to be biased; or

- (3) is likely to be thought, on reasonable grounds to be biased.

A military juror may be questioned in connection with the challenge and such questioning will take place in the absence of other military jurors or potential members of the military jury. Where an objection is made to a military juror (or reserve military juror) the military judge will rule on the objection.

- c. **Administration of oaths or affirmations for jury members.** Following any objections (is applicable) to individual jurors by either the accused or prosecuting officer, military jurors will be sworn or affirmed as directed by the Military Judge by the CC after the accused person has been arraigned. The military juror oath or affirmation is as follows:
- “I...[swear by Almighty God] / [solemnly, sincerely and truly declare and affirm] that I will duly administer justice according to law without fear or favour, affection or ill-will, that I will well and truly try the accused [person] / [persons] before the Australian Military Court according to the evidence, and that I will not disclose the vote or opinion of any member of the military jury unless required to do so in due course of law.”*
- d. **Prosecutor’s opening address.** The prosecutor will make an opening address to the court prior to prosecution witnesses being called. This address will outline the elements of the offence/s which must be proven, the alleged facts on which the prosecutor relies, and the nature of evidence that will be adduced.
- e. **Defending officer’s opening address.** After the prosecution’s case has been concluded (through the examination of witnesses and the presentation of evidence), the defending officer will give an opening address and present the case for the defence.
- f. **Examination of witnesses.** When witnesses are called, they will initially be questioned by the party that called them to give evidence (examination-in-chief). The other party will then have the opportunity to question the witness (cross-examination) and, if necessary, the party that called the witness will have another opportunity to ask questions (re-examination).
- g. **Closing addresses.** At the conclusion of the prosecution and defence cases, the prosecutor and the defending officer may make a closing address.

- h. **Summing up and jury deliberation.** After the closing addresses the Military Judge will sum up the evidence and provide directions to the military jury on the law relating to the case. The jury then retires to consider its verdict in private.
- i. **Manner of voting of military jury.** Directions will be given by the Military Judge. The Australian Military Court Rules provide that on any question to be determined by the military jury, the members of the military jury must vote orally, in order of seniority commencing with the most junior in rank.
- j. **Verdict.** When the jury has reached a verdict the court will reassemble and subject to directions from the Military Judge, the jury spokesperson will announce the verdict in open court. After the military jury has announced its verdict the jury will then be discharged by order of the Military Judge.

Confidentiality requirements

35. All aspects of the trial, including the summons for appointment as a military juror, must be treated as 'Staff-in-Confidence'.

36. In order to comply with confidentiality obligations, military jurors must not speak to anyone about the trial, except as required during the performance of the military jury's functions. This includes other military personnel, family, friends and particularly any other trial participants (with the exception of other military jurors in the course of the military jury's deliberations).

37. The deliberations of a military jury are confidential. The jury will not give reasons for its decision, and jurors are not permitted to reveal any aspect of the jury's deliberations, subject to any direction from a Military Judge. The oath/affirmation for military jurors requires that military jurors "not disclose the vote or opinion of any member of the military jury unless required to do so in due course of law."

38. Confidentiality obligations continue to apply after the jury has delivered its verdict and the trial has been concluded.

AFTER THE TRIAL

39. Once the verdict has been delivered, the Military Judge will discharge the jury. Following discharge by the Military Judge, members will no longer have an obligation to render military jury duty for the trial proceeding. Travel to home unit locations will be undertaken.

40. Military jurors must continue to uphold their oath or affirmation (as relevant) and not disclose any aspect of the military jury's deliberations, or any aspect of the trial not conducted in the public domain.

41. CDF Directive 18/2007 provides that for career management purposes, a member's service as a military juror will not be mentioned or taken into account (positively or negatively) for the purpose of a member's performance report, except in a neutral manner to account for periods of absence.

42. Military jurors are excused from further service as a juror for a period of 12 months from the conclusion of the trial.

CONTACT DETAILS

Physical location:

Australian Military Court
Unit 5/101 Tennant Street
FYSHWICK ACT 2609

Mailing address:

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F-TS-1L-AMC
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CANBERRA ACT 2600

Registrar

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geoff.cameron@defence.gov.au
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Deputy Registrar

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Trial Administrators

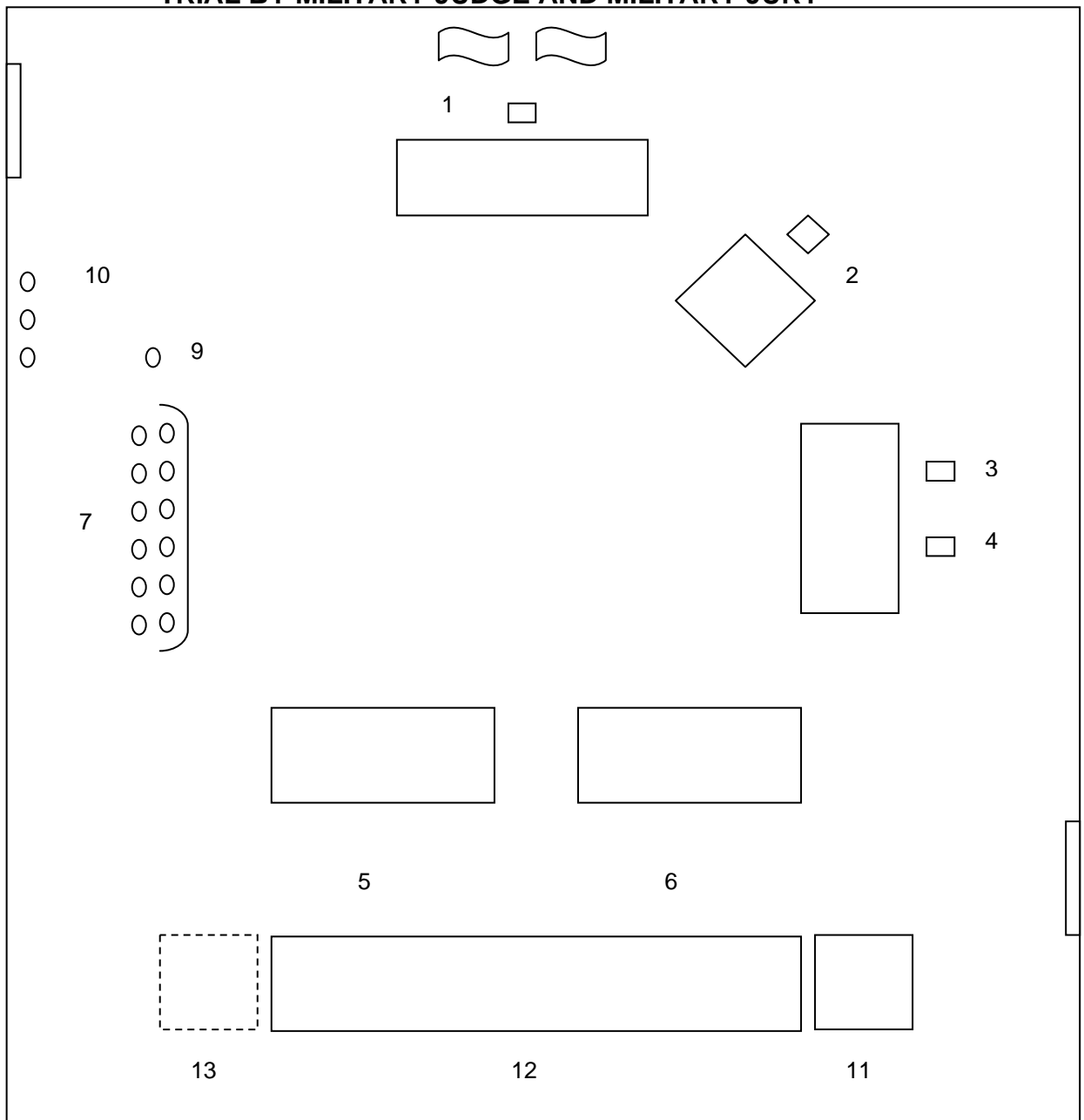
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Annex A - Court Room Layout

TRIAL BY MILITARY JUDGE AND MILITARY JURY



- 1 Military Judge
- 2 Witness
- 3 Clerk of the Court
- 4 Court Recorder
- 5 Prosecutor(s)
- 6 Defending Officer(s) and accused.
- 7 Military Jury (6 or 12 members as required)
- 8 Senior Officer on Military Jury
- 9 Military Jury Court Officer
- 10 Reserve Military Jury members
- 11 Court Orderly
- 12 Public Seating
- 13 Escort Officer (if required)