

MILITARY JURIES

PROCEDURES FOR IDENTIFICATION, SCREENING AND APPOINTMENT

References:

- A. *Defence Force Discipline Act 1982*
- B. *Australian Military Court Rules 2007*
- C. *Australian Military Court Amendment Rules 2008 (No 1)*
- D. CDF Directive 18/2007

Purpose

1. The purpose of this guideline is to provide explanatory detail and to provide guidance relevant to the identification, screening and appointment process for military jurors.

Background

2. The Registrar of the Australian Military Court (AMC) is appointed under the DFDA and is independent from the ADF's chains of command, prosecution and defence. The Registrar is responsible for the identification, screening, appointment and summoning of ADF members for duty as military jurors.

3. References throughout this guideline to military jurors includes reserve military jurors unless detailed otherwise.

4. The Registrar is assisted by a Deputy Registrar with delegated authority and supporting administrative staff.

5. An AMC military jury trial may be conducted at any location within Australia or overseas and including military operational environments. The processes applied for the identification, screening and appointment of military jurors differs to that applied in civilian courts where jurors are panelled at court following the arraignment of the accused. The ADF's military justice system is in support of the operational effectiveness of the ADF and provides for the appointment of military jurors by the Registrar in advance of the accused being arraigned (charged) before the AMC.

Liability for Military Jury Duty

6. Pursuant to the references the Service Chiefs will make available eligible personnel to be randomly identified by the Registrar from the permanent (including reserve personnel undertaking continuous full time service) Navy, Army and Air Force for potential appointment as a military juror. Where an AMC trial by military jury is required, eligible personnel will be randomly identified from the ADF's personnel data bases (PMKEYs). DIRLAUTH has been provided by CDF (Reference D) for the Registrar to liaise directly with personnel identified for, and appointed for military jury duty.

7. All permanent Defence Force members (including Reserve personnel rendering continuous full time service) are liable to serve as a military juror (including a reserve military juror), should such members meet the eligibility requirements or are disqualified, exempted or excused from military jury duty.

8. In special circumstances where it is not reasonably practicable to select a military jury from permanent force members (including CFTS personnel), a military judge may determine that in addition to permanent ADF personnel, that members of the Naval Reserve, Army Reserve and Air Force Reserve are liable to serve as members of a military jury or that only certain members are liable for military jury duty.

9. Personnel data extracted from the PMKEYs data base will form the pool from which ADF personnel will initially be randomly identified for military jury duty in respect of each AMC jury trial. The Registrar and staff have access rights to PMKEYs data for military jury administration.

10. For each military jury trial, a sufficient number of eligible ADF personnel will be randomly identified from the PMKEYs data base by the Registrar. For a jury panel requiring six members (with a minimum of two reserve jurors), a minimum of 20 eligible personnel will be randomly identified. For a 12 person jury (with a minimum of three reserve jurors) a minimum of 40 eligible personnel will be randomly identified from the PMKEYs database.

11. Once randomly identified from the PMKEYs data base, a record to be known as the "Jury Panel List" will be produced by the Registrar's staff and screening of individual members will then follow. Individual screening will commence with the member first appearing at the top of the Jury Panel List and will proceed down the list until the required number of jurors have been screened, and not excluded or excused, for appointment. In the event that after screening the initial Jury Panel List is insufficient, a further Jury Panel List of randomly identified eligible personnel will be produced and the same process of screening applied.

12. Identification of eligible military jurors will have regard to:

- a. the rank of the accused, noting that a potential military juror must not be lower in rank than the accused (DFDA sec 123) and must be an officer or Warrant Officer (Navy), Warrant Officer Class One (Army) or Warrant Officer (RAAF) where the accused is not an officer; and
- b. at least one member of the jury must hold a rank not lower than the naval rank of commander or the rank of lieutenant-colonel or wing commander providing the exigencies of the service permit (DFDA sec 122(2) and (3));

Eligibility – Accused an Officer or Defence Civilian

13. Sec 123(1) DFDA provides that members (including reserve members) of a military jury for the trial of an officer or defence civilian must be officers and have been an officer for a continuous period or cumulative period of not less than three years.

Eligibility – Accused Not an Officer or Defence Civilian

14. Sec 123(2) DFDA provides that to be a member of a military jury for the trial of an accused person who is not an officer or a defence civilian, a member must be an officer or hold a rank not lower than:

- a. Warrant Officer (Navy), Warrant Officer Class One (Army) or Warrant Officer (RAAF); and
- b. Have been an officer, or hold the required rank of Warrant Officer [E] for a continuous or cumulative period of not less than three years.

DFDA sec 123(3) provides that these eligibility requirements apply only if, and to the extent that the exigencies of the service permit.

15. The 'Jury Panel List' produced from PMKEYs data has been programmed to filter out ADF personnel who do not meet the eligibility criteria and minimum rank requirements, having regard to the rank (if appropriate) of the accused.

Rank

16. The Jury Panel List for each military jury trial will be produced from randomly identified eligible personnel and will potentially include all officers of the same rank as the accused and above where the accused is an officer, and will include Warrant Officers [E] where the accused is Warrant Officer [E] and below. There is no upper rank limitation for a potential military juror, but no personnel lower in rank than the accused will be identified in the 'Jury Panel List'. At least one reserve military juror will be identified to meet the minimum senior military juror rank requirement (Commander [E]), although this will not apply if there is more than one member of the military jury who meets the minimum senior rank.

Exempt and Disqualified Personnel

17. The following categories of personnel will be regarded as exempt or disqualified from liability to serve as a military juror:

- a. Chief of the Defence Force;
- b. Legal officers (a legal officer means an officer who is a legal practitioner);

- c. Chaplains;
- d. Service police officers (a 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);
- e. Warrant officers who are members of a police corps or service;
- f. Persons posted or deployed in a country other than Australia where the military jury trial is to be held in Australia, including members posted to RAN fleet units where the ship will be away from its home port at the time of the subject trial; (to the extent that the exigencies of the Service permit); and
- g. a member of the Defence Force who has been convicted of a Service offence by a Court Martial, Defence Force Magistrate or the Australian Military Court and a punishment in excess of a fine was imposed.

18. The 'Jury Panel List' produced from the PMKEYs data base has been programmed to filter out legal officers, chaplains and service police.

Screening

19. Using the detail from the 'Jury Panel List' the Registrar and staff will make direct contact normally by telephone with the potential military jurors listed for the purposes of:

- a. Checking whether a potential military juror is not disqualified or exempt from military jury duty;
- b. Checking that a potential military juror is eligible to serve as a military juror;
- c. Dealing with any claim by a potential military juror to be excused from military jury duty; and
- d. Identifying any potential military jurors who should not be appointed because they are biased, likely to be biased, or likely to be thought on reasonable grounds to be biased. (Note: the AMCR provides that the Registrar must not appoint a person as a military juror or reserve military juror if the Registrar, believes on reasonable grounds, that the person is biased, is likely to be biased, or is likely to be thought on reasonable grounds to be biased).
- e. Ascertaining individual availability for likely trial dates.

20. **Special procedures for members serving in fleet units.** Where a person identified is posted to an RAN Fleet Unit, the Registrar will firstly consider the promulgated Fleet Activity Schedule to determine whether the unit is scheduled to be at sea or alongside during the proposed period of the trial. If the unit is scheduled to be at sea, the member will not be further

considered. If the unit is not scheduled to be at sea, the Registrar will make contact with the member through the Commanding Officer for the purposes of determining availability and for screening purposes.

21. **Bias.** To assist the screening process, the name rank and service details of prosecution witnesses (as provided by the DMP to the Registrar) together with detail of the Military Judge, Prosecutors and Defending Officers, will be used to ask potential jurors whether they have any knowledge of any of the known trial participants (including all known witnesses and potential military jurors) in order to determine whether any potential issue of bias exists such that a member should not be appointed for military jury duty. If the accused or the DMP has or becomes aware of information about a person who may be unsuitable for military jury duty, the respective counsel should disclose such information to the Registrar as soon as practicable (AMCR 36A). Screened personnel will not be informed of the identity or service particulars of the accused (other than being a trial participant) nor detail of the charges to be heard by the AMC. If during the screening process a potential issue of bias arises in respect of a screened member, this will be recorded at the conclusion of the screening of that member and immediately referred to the Registrar or Deputy Registrar for a determination as to whether the member should be further considered for military juror appointment.

22. **Excusal.** The Registrar may excuse a person from serving on a military jury or from acting as a reserve military juror upon consideration of an application from that person or at the Registrar's discretion. The Registrar will consider any request to be excused and in doing so will have regard to:

- a. Whether the member is likely to have separated from the ADF or ceased CFTS at the commencement of the AMC trial;
- b. Whether the military jury duty would result in substantial financial hardship to the member;
- c. Whether the military jury duty would result in substantial hardship to the member or a member of the person's family;
- d. The member's state of health;
- e. Whether the military jury duty would:
 - (i) materially affect the operational effectiveness of the member's unit, ship or base;
 - (ii) materially affect the operational deployment or proposed operational deployment of the member;
 - (iii) materially affect a substantial training commitment of the member;
 - (iv) 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 military jury trial; and
 - g. Any other matter stated in a Practice Note dealing with excusal of military jurors.
23. Individual detail concerning whether a member has a previous conviction before the AMC, court martial or DFM and previous military juror duty will be obtained respectively from the member during the screening process and Registry records.
24. Any request to be excused from military jury duty during the screening process is to be recorded and referred to the Registrar or Deputy Registrar.
25. In circumstances where contact with a member identified for military jury screening purposes cannot reasonably be made by the Registrar or staff, the member will not be screened nor proceed to appointment as a military juror.
26. All screened personnel will be informed that the detail of communication with the Registrar and staff is to be treated as 'Staff-in-Confidence' and that such detail is not to be further disclosed.
27. As a result of the screening process, a member will either be appointed as a military juror or not be further considered for military jury duty in respect of the subject AMC proceeding. Screened personnel who are not appointed for military jury duty may subsequently be randomly identified for military jury duty in respect of other AMC military jury trials.
28. The Registrar and staff will maintain a record of individual juror screening and if requested by either the prosecution or defence, will make available the results of the record of the screening process relevant to the particular trial.

Appointment for Military Jury Duty

29. Once the screening process is completed the required number of military juror members will be appointed by the Registrar by issuing a **Military Jury Summons** to the named military juror. The form of military juror summons is at **Annex A**. A Military Juror Summons will include the following information:

- a. the service number, rank and full name of the military juror;
- b. the date, time and location the military juror is required to attend the AMC for military jury duty.

30. The summons may be served on the military juror by personal service, post, fax or email. The service of a Military Juror Summons will be undertaken by the office of the Registrar and will normally be by email or fax. Failure to attend for military jury duty will be reported to the member's chain of

command and Service Chief.

31. Following appointment as a military juror, the member will be provided with a Guide for Military Jurors (Annex B.)

Application by military juror for withdrawal of summons

32. Grounds for disqualification, exemption or excusal from military jury duty will usually be identified during the screening process. However, following appointment as a military juror and before the AMC jury trial assembles on the date, time and place as detailed within the military juror summons, a military juror may apply to the Registrar to be excused from military jury duty. Any request to be excused from military jury duty following appointment must be made in writing by the member and forwarded to the Registrar through the member's chain of command. Requests for excusal must outline sufficient detail of the reasons for the request and should be made as soon as the reasons for the excusal become apparent.

33. Should the Registrar authorise a request for excusal or determine that a member is not liable for military jury duty, the Registrar will withdraw the summons appointing the military juror. Further screening from the original military jury panel or additional military jury panel will then occur commencing with the next non-screened member. Following the further screening process, a replacement military juror(s) will be appointed by the Registrar.

34. Where the Registrar refuses to approve an application to be excused from military jury duty, the member will be informed of the Registrar's decision. The member may apply in writing to the nominated military judge for a review of the Registrar's decision prior to the military jury assembling.

35. If the military judge decides that the military juror is not liable to serve or should be excused to serve as a military juror, the summons issued to the military juror will be withdrawn and a replacement military juror(s) screened and appointed. The applicant military juror will be informed of the military judge's decision by the Registrar.

Objection to a Military Juror

36. AMCR 37 provides that at any time before a military jury is assembled, the accused person or the DMP may lodge an objection with the Registrar to any member of the military jury on the ground that the military juror:

- a. is ineligible; or
- b. is, or likely to be, biased; or
- c. likely to be thought on reasonable grounds to be biased.

37. An objection to a military juror is to be lodged with the Registrar in writing and set out the grounds for the objection. If the Registrar upholds or overrules an objection on the ground of bias, the Registrar must notify the

military judge before the hearing commences.

38. At anytime before the military jury is assembled, the Registrar may revoke the appointment of a military juror and appoint a replacement (AMCR 40).

39. This policy incorporates relevant amendments by References A-C as at 12 Jun 08.



G. CAMERON, CSC
Colonel
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12 Jun 08

Annexes:

- A. Military Jury Summons
- B. Guide for Military Jurors