

AUSTRALIAN MILITARY COURT PRACTICE NOTE 6

STAY OF EXECUTION ON PUNISHMENT

This practice note sets out the procedures to be followed when an application is made for a stay of execution of punishment by a convicted person pursuant to subsection 176(2) of the *Defence Force Discipline Act 1982*.

1. Unless otherwise directed by a Military Judge, any application for a stay of execution of punishment (stay application) must be made in writing in accordance with the attached Form and given to the Registrar of the Australian Military Court, together with any supporting material. A copy of the stay application must be delivered to the Director of Military Prosecutions by the convicted person

2. The Chief Military Judge will appoint a Military Judge to determine the stay application. Where practicable, the stay application will be determined by a Military Judge other than the Military Judge who convicted the convicted person, imposed the punishment or made any relevant order.

3. The Military Judge may make directions about how the stay application is to be determined, for example by way of making oral submissions by audio link or otherwise or the delivery of written submissions, and may set time limits for any steps to be taken. Before making any such directions the Military Judge may, by email or audio link or otherwise invite submissions from the convicted person and the Director of Military Prosecutions on the directions to be made.

4. The Military Judge may consider an ex parte application for an interim stay of execution of punishment.

5. The Military Judge may order that the execution of part or all of a punishment be stayed for a fixed period, with liberty to apply for a variation or extension of that order.



I.D. WESTWOOD, AM
Brigadier
Chief Military Judge
Australian Military Court

// February 2008

Application for Stay of Execution of Punishment

Defence Force Discipline Act 1982

To: The Registrar, Australian Military Court

1. On (date), (name of Judge) convicted (name of convicted person) and made the following order in relation to punishment: *(state the order)*

2. On (date) the convicted person appealed against conviction/conviction and punishment/punishment/the following order of the Court/part of the order of the court.
(if appeal from only part of order, state the part appealed from)

3. The grounds of the appeal are set out in the attached Notice of Appeal

4. The convicted person [will/will not] seek to put further evidence before the Defence Force Discipline Appeals Tribunal
(if further evidence is sought is to be put before the DFDAT state briefly the nature of the evidence and what is sought to be proved, noting subsection 23(2) of the Defence Force Discipline Appeals Act 1955)

5. The convicted person applies for a stay of execution of the punishment.

6. The orders sought by the convicted person in this application for stay of execution of punishment are:
(state orders sought)

7. The grounds and particulars relied upon for the application for stay of execution of punishment are:
(state specifically , the grounds and particulars on which it is relied to support the application for the stay of execution of punishment.

8. Evidence in support of the application for stay of execution of punishment is/is not attached.¹

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Convicted Person

¹ Evidence should normally be by way of affidavit