

AUSTRALIAN DEFENCE FORCE LEGAL SERVICES

LEGAL TASK JOURNAL

DISCIPLINE LAW

LEVEL - ADVANCED AND SPECIALIST

AUSTRALIAN DEFENCE FORCE LEGAL SERVICES
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Qualification

1. In order to satisfy the Legal Task Journal qualification criteria in Discipline law ADF Legal Officers are to have assessed as satisfactory completion of the Task criteria set out below.

Advanced Level Criterion

4. Within the Discipline Law Task Journal – Advanced & Specialist Level, a total of 60 tasks provided there is a minimum of:

- a. 21 tasks in Part A;
- b. 19 tasks in Part B;
- c. 13 tasks in Part C; and
- d. 2 tasks in Part D.

5. Assessment is to be by self-assessment, assessment by an assessor of each completed task and further assessment by a senior assessor of one such assessed task from each Part.

Specialist Level Criterion

6. Within the Discipline Law Task Journal – Advanced & Specialist Level, 95 tasks (inclusive of those tasks completed for the Advanced level) provided there is a minimum of:

- a. 34 tasks in Part A;
- b. 31 tasks in Part B;
- c. 21 tasks in Part C; and
- d. 4 tasks in Part D.

7. Assessment is to be by self-assessment, assessment by an assessor of each completed task and further assessment by a senior assessor of another such assessed task from each Part.

Advanced standard

10. 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.

11. In addition, such a Legal Officer can identify where the 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, policy (but may not fully identify all relevant issues and consequences.)

Specialist standard

12. A Legal Officer has who has attained a 'specialist' standard in Discipline law has a thorough knowledge of criminal law theory, principles and case law.

13. 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.

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Part A – Jurisdiction and Charges

Jurisdiction Determination

1. Demonstrate knowledge of the law and policy relevant to the application of jurisdiction under the DFDA outside Australia. This demonstration of knowledge 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 demonstration of knowledge should include an explanation of the application of any Status of Forces Agreement (SOFA).

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Name			
Date			

Discipline Law Related Defence Instructions

2. Demonstrate knowledge of the application of DI (G) PERS 35-4 *Management and Reporting of Sexual Offences*. Where relevant this demonstration of knowledge 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. reporting of sexual offences.

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Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

ADF prosecution policy

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

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Signature			
Name			
Date			

Service Investigations

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

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Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

7. Demonstrate knowledge of the law and policy on the rights of the accused during a service investigation. Where relevant this demonstration of knowledge should include:
- accused rights in pre-conviction custody;
 - the standard of treatment of persons in custody.

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Signature			
Name			
Date			

8. Demonstrate knowledge of the law and policy on service investigations in the areas of:
- when access to a friend, relative and legal practitioner is permitted;
 - when medical examinations can be undertaken.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

10. Demonstrate knowledge of the law and policy on suspension from duty. Where relevant this demonstration of knowledge should include an explanation of:
- who is authorised to suspend a member from duty;
 - the circumstances in which a member may be suspended from duty;
 - how suspension from duty is effected;
 - the effect of suspension from duty.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

12. Demonstrate knowledge of the law and policy on the apprehension of persons under the DFDA in connection with service offences. Where relevant this demonstration of knowledge should include and 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;
 - the concept of 'reasonable and necessary force' for the purposes of s 92(1) DFDA.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

13. Demonstrate knowledge of arrest without warrant pursuant to the DFDA. Where relevant the demonstration of knowledge 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
Signature			
Name			
Date			

14. Demonstrate knowledge of arrest under warrant pursuant to the DFDA. The demonstration of knowledge should include:
- who may issue a search warrant;
 - the criteria that an authorised officer must apply before issuing a search warrant;
 - the form the warrant is to take;
 - who may execute the warrant;
- And where relevant:
- whether a member can enter private property for the purpose of executing a warrant;
 - an explanation of who can enter a private residence and under what circumstances and restriction such entry can be made.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

15. Demonstrate knowledge of pre-conviction custody. Where relevant the demonstration of knowledge should include:
- where a person may be detained once they have been arrested;
 - the responsibilities of a member once a person has been placed in their custody;
 - the responsibilities of the CO once a member has been placed in their custody;
 - an explanation of the time limitation imposed with respect to the duration of custody before the member has to be charged or released;
 - an explanation of the time limits if a member has been charged before the charge is dealt with is charged and dealt on the duration that a persona can be kept in custody before being charged or released.
 - 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
Signature			
Name			
Date			

Analysis of DFDA Investigative Material

16. Demonstrate knowledge of the analysis of investigative material from a Service police investigation. Where relevant the demonstration of knowledge should include an explanation of:
- whether there was jurisdiction to investigate the matter in the first instance;
 - whether the investigation was conducted IAW Part VI of the DFDA;
 - refer to relevant Defence Instructions, for example DI (G) PERS 35-4 *Management and Reporting of Sexual Offences*;
 - whether the investigative material will be admissible taking into account rules of evidence relevant to service tribunals.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

Offences, charges and their prosecution

17. Demonstrate knowledge of DFDA charges to be preferred resulting from a DFDA investigation. Where relevant the demonstration of knowledge should include an explanation of:
- 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 support another charge/s;
 - whether the charges are correctly drafted, this may include advising on duplicity;
 - whether multiplicity/parallel pleading applies;
 - any relevant limitations on charging service offences, such as time limits;
 - whether there is a prima facie case.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

20. Demonstrate knowledge of drafting a charge where a sample charge is not available chapter 4, volume 1 ADFP 201 DLM. The demonstration of knowledge should include a deconstruction of the elements of the charge into physical and fault elements.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

22. Demonstrate knowledge of the law and policy on the consequences of amendments made to the DFDA or DFDA related legislation. Where relevant this demonstration of knowledge should include an explanation of:
- impact of Criminal Code amendment (Theft, Fraud, Bribery and related Offences) Act 2000 on s 61;
 - offences against ss 34, 35, 36A and 40B committed on or after 15 Dec 01 and before 14 Jan 04;
 - any other recent amendments to the DFDA or related legislation.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

23. Demonstrate knowledge of physical elements of an offence. The demonstration of knowledge should include an explanation of:
- the fact that physical elements of an offence may be ‘conduct’, a circumstance in which ‘conduct’ occurs, or a result of ‘conduct’;
 - the relevance of ‘voluntary conduct’.
- And where relevant:
- the concept of absolute and strict liability offences.
 - 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
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

25. Demonstrate knowledge of the concept of ‘intention’. Where relevant the demonstration of knowledge should include an explanation of:
- what amounts as ‘intention’ for the purposes of each limb of physical element;
 - when intention is the default fault element;
 - how ‘intention’ may be inferred in the absence of admissions by the accused.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

26. Demonstrate knowledge of the concept of ‘knowledge’ as a fault element. The demonstration of knowledge should include an explanation of what limb of conduct that ‘knowledge’ is the fault element.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

27. Demonstrate knowledge of the concept of ‘recklessness’ as a fault element. The demonstration of knowledge should include an explanation of:
- what limb of conduct that ‘recklessness’ is the fault element;
 - when recklessness is the default fault element.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

29. Demonstrate knowledge of the concept of ‘unjustifiable’ risk with respect to the fault element recklessness. This demonstration of knowledge should include an explanation of:
- the concept of ‘justifiable’ risk with respect to the fault element recklessness;
 - that whether taking a risk is unjustifiable is a question of fact.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

30. Demonstrate knowledge of the concept of negligence. The demonstration of knowledge should include an explanation of:
- the application of the Criminal Code (Cth) definition of negligence;
 - the required standard of care taking into account s11(2) DFDA;
 - what is meant by ‘high risk’ that some particular result will occur;
 - the implications of the requirement that conduct merits criminal punishment.
- And where relevant:
- the fact that the defence of mistake of fact does not apply where the fault element is negligence;

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

34. Demonstrate knowledge of self-induced intoxication as a defense. The demonstration of knowledge 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 burden of proofs.

And where relevant:

- d. the circumstances in which self-induced intoxication may be a defence to fault elements of a basic intent crime;
- e. relationship of intoxication of other defences.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

35. Demonstrate knowledge of the defence of duress. The demonstration of knowledge should include an explanation of:
- what is meant by the term duress;
 - the circumstances in which duress may be relied upon as a defence;
 - the limitation which applies to the use of the defence of duress.
 - the relevant burden of proofs.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

36. Demonstrate knowledge of the defence of superior orders. The demonstration of knowledge should include:
- the principle of this defence;
 - whether this is a defence that can be relied upon;
 - an explanation of the relevant burden of proofs.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

37. Demonstrate knowledge of the defence of sudden or extraordinary emergency. The demonstration of knowledge should include:
- what is meant by the term sudden emergency or extraordinary emergency;
 - when the defence of sudden or extraordinary emergency may be relied upon;
 - an explanation of the relevant burden of proofs.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

39. Demonstrate knowledge of the law and policy on defences to assault based charges. This demonstration of knowledge should include an explanation of
- the relevance of consent to assault based charges;
 - the concept of 'self defence', including objective and subjective tests;
 - the relevant burden of proof.

And where relevant:

- the application of intoxication with respect to self defence;
- proximity of danger;
- provoked assaults and mixed motives;
- the relevance of proportionality

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

41. Demonstrate knowledge of the offence of complicity and common purpose pursuant to s11.2 Criminal Code. The demonstration of knowledge should include an explanation of:
- what constitutes 'complicity and common purpose under the Criminal Code and how it is relevant to ADF members.
 - the applicable fault element.
 - the relevant term aids, abets, counsels or procures.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

42. Demonstrate knowledge of the offence of 'innocent agency' pursuant to s11.3 Criminal Code. This demonstration of knowledge should detail the elements of this offence and any relevant definitions of terms such as 'procurer'.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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Part B – Evidence

Rules of Evidence

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

54. Demonstrate knowledge of the evidentiary requirements when the accused pleads guilty. This demonstration of knowledge should include an explanation of explaining what a formal admission is.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

56. Demonstrate knowledge of what is meant by judicial notice. This demonstration of knowledge should include an explanation of the application of s147 DFDA.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

57. Demonstrate knowledge of what is meant by presumptions of facts. Where relevant the demonstration of knowledge should include an explanation of:
- what is meant by conclusive presumptions;
 - what a rebuttable presumption is.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

58. Demonstrate knowledge of the privilege against self incrimination in service tribunals. Where relevant the demonstration of knowledge should include an explanation of:
- when a service tribunal may require a witness to give particular evidence contrary to the general rule;
 - whether a witness can be granted immunity from prosecution based on the evidence provided

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

59. Demonstrate knowledge of the concepts and application of legal professional privilege in a service tribunal. The demonstration of knowledge should include:
- an explanation of what documents and communications may be protected as confidential communications;
 - who's privilege it is and who can waive it.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

62. Demonstrate knowledge of the relevance rule. The demonstration of knowledge should include an explanation of:
- the test of what is relevant pursuant to s 55 Evidence Act;
 - the concept of provisional relevance pursuant to s 57(1) Evidence Act.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

63. Demonstrate knowledge of the law and policy on the rule against hearsay. The demonstration of knowledge should include an explanation of:
- what the hearsay rule is;
 - the operation of the rule against hearsay;
 - the term 'previous representation'; and
 - when the hearsay rule applies.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

65. Demonstrate knowledge of the application of hearsay rule with respect to evidence of an admission. The demonstration of knowledge should include an explanation of:
- what an admission is as defined in s 81 Evidence Act;
 - the requirements that must be satisfied before evidence of an admission is admissible in a service tribunal.
- And where relevant:
- any evidentiary rules in relation to questioning that resulted in a formal admission;
 - the application of ss 101J, 101JA and 101K DFDA.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

68. Demonstrate knowledge of the use of an admission in respect of a case of a co-accused.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

70. Demonstrate knowledge of the first hand hearsay representations. Where relevant the demonstration of knowledge should include an explanation of:
- the application of the exception to the hearsay rule where the maker of a first hand representation is not available to give evidence;
 - 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
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

74. Demonstrate knowledge of the exception of expert opinion to the opinion rule. Where relevant the demonstration of knowledge should include an explanation of:
- whether a service tribunal is bound to accept evidence of an expert even if it is uncontradicted;
 - the operation of the exception for expert evidence in cases of intoxication.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

75. Demonstrate knowledge of ‘character evidence’ in relation to evidence concerning the accused in a service tribunal. The demonstration of knowledge should include an explanation of:
- 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:
- what ‘tendency reasoning’ is and what requirements must be satisfied if such evidence is to be adduced;
 - whether a service tribunal may, direct that particular evidence is admissible despite a party’s failure to provide necessary notice of ‘tendency evidence’;
 - what ‘coincidence reasoning’ is and what requirements must be satisfied if such evidence is to be adduced;
 - 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
Signature			
Name			
Date			

76. Demonstrate knowledge of the admissibility of evidence of the character, reputation or past conduct of other persons in a service tribunal.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

77. Demonstrate knowledge of the admissibility of visual identification evidence relating to an accused adduced by the prosecution. The demonstration of knowledge should include:
- the requirements set out in the Evidence Act on the admissibility of visual identification;
 - 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
Signature			
Name			
Date			

78. Demonstrate knowledge of the admissibility of picture identification adduced by the prosecution. The demonstration of knowledge should include an explanation of:
- the exclusionary rules for evidence adduced by the prosecution;
 - when the exclusionary rules do not apply;

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

79. Demonstrate knowledge of evidence improperly or illegally obtained. The demonstration of knowledge should include an explanation of:
- when evidence has been improperly or illegally obtained;
 - the test for admission; and
 - the application of s 101ZB DFDA in consideration of s 138 Evidence Act.
- And where relevant:
- the relevant burden of proofs.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

80. Demonstrate knowledge of the general discretion to exclude evidence pursuant to s 135 Evidence Act. This demonstration of knowledge 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
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

83. Demonstrate knowledge of reviving memory. Where relevant the demonstration of knowledge should include an explanation of:
- when a witness may use a document to revive their memory;
 - the factors that a service tribunal must take into account in deciding to give leave to allow a document to be used in a witness box to revive memory;
 - the factors that a service tribunal must take into account in deciding to give leave to allow a document to be read aloud as part of evidence.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

84. Demonstrate knowledge of cross-examination as to credit. This demonstration of knowledge should include an explanation of what this is and where relevant:
- when an accused may be cross examined on a matter relevant only to credit.
 - admissibility rules relating to evidence that is relevant only to credit.
 - the effect of cross examination as to credit.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

86. Demonstrate knowledge of corroboration. The demonstration of knowledge should include an explanation of:
- a. the abolition of most corroboration requirements.
 - b. the function of JA and members of a court martial.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

**AUSTRALIAN DEFENCE FORCE LEGAL SERVICES
LEGAL TASK JOURNAL
DISCIPLINE LAW
LEVEL – ADVANCED & SPECIALIST**

Part C – Procedure

Conduct of Summary Proceedings

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

88. Demonstrate knowledge of applications and objections. Where relevant the demonstration of knowledge should include an explanation of:
- a. when applications or objections can be made;
 - b. available applications or objections;
 - c. summary authorities responsibilities to deal with the application or objection.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

Summary Proceeding Issues

89. Demonstrate knowledge of the responsibilities of the summary authority during a trial.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

Examining officers

91. Demonstrate knowledge of the use of an Examining Officer under the DFDA. The demonstration of knowledge should include an explanation of:
- the function and powers of an examining officer;
 - purpose of directing an examining officer to hear evidence;
And where relevant:
 - when an examining officer should be directed to hear evidence.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

92. Demonstrate knowledge of the procedure at a hearing by an examining officer.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

Role and Function of a Convening Authority

93. Demonstrate knowledge of the law and procedures to be followed to effect an appointment of a Convening Authority.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

Role and Function of DMP

94. Demonstrate knowledge of the role and functions of Director of Military Prosecutions

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

Defence Force Magistrate Proceedings

95. Demonstrate knowledge of the law and policy on the appointment of Defence Force Magistrates.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

96. Demonstrate knowledge of the jurisdiction and powers of a DFM

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

97. Demonstrate knowledge of the process of engaging the jurisdiction and powers of a DFM.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

98. Demonstrate knowledge of the referring of a charge to a DFM. This demonstration of knowledge should include an explanation of the factors to be taken into account by the convening authority before deciding to refer a charge to a DFM.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

99. Demonstrate knowledge of the public access to a DFM (or court martial).

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

100. Demonstrate knowledge of the process of the conduct of DFM proceedings to a defence member including right to legal representation.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

101. Demonstrate knowledge of the advantages and disadvantages of a DFM trial including:

- a. jurisdiction of a DFM;
- b. powers of punishment of a DFM;
- c. the process of referring a charge to a DFM;

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

102. Demonstrate knowledge of current practices and procedures for pre hearing DFM administration.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

103. Demonstrate knowledge of current practices and procedures for post hearing DFM administration.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

Courts Martial Proceedings

104. Demonstrate knowledge of the power of a Convening Authority to convene a court martial and his/her courses of action.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

105. Demonstrate knowledge of the process of the conduct of court martial proceedings including:
- a. jurisdiction of a court martial;
 - b. documentation to be provided by the Convening Authority; and
 - g. power of punishment held by court martial.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

106. Demonstrate knowledge of the process of the conduct of court martial proceedings including:
- a. jurisdiction of a court martial;
 - b. documentation to be provided by the Convening Authority; and
 - c. power of punishment held by court martial.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

107. Demonstrate knowledge of the eligibility to be a member of a court martial.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

108. Demonstrate knowledge of pre hearing court martial administration.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

109. Demonstrate knowledge of the commencement of punishments. Where relevant the demonstration of knowledge should include an explanation of:
- the default position;
 - the effect of cumulative and concurrent punishments;
 - when punishments are subject to review before commencement; and
 - when a summary authority may specify the commencement date of a punishment.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

110. Demonstrate knowledge of a stay of execution of punishment. The demonstration of knowledge should include an explanation of:
- the process for seeking a stay;
 - who is authorised to stay a punishment; and
 - the implications of a stay.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

The Appeals Process

111. Demonstrate knowledge of the basis of appeal to DFDAT. The demonstration of knowledge should include an explanation of:
- who may appeal;
 - grounds of appeal;
 - with whom appeals may be lodged: and
 - time limitations.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

Pre-Trial Legal Advice

112. Demonstrate the provision of pre-trial legal advice with respect to a court martial or DFM trial.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

Discipline Case Flow Management

113. Demonstrate discipline tracking and case flow management responsibilities including:
- the implications of the Privacy Act within case flow management;
 - the management of access control; and
 - when a disciplinary outcome becomes eligible to be included in statistics.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

**AUSTRALIAN DEFENCE FORCE LEGAL SERVICES
LEGAL TASK JOURNAL
DISCIPLINE LAW
LEVEL – 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 knowledge of the ‘process’ of amending discipline policy.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

Legislative Amendment Process and Parliamentary Inquiry

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

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

120. Demonstrate knowledge of the legislative discipline amendment process.

	Member	Assessor	Senior Assessor
Signature			
Name			
Date			

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
Signature			
Name			
Date			