

AUSTRALIAN DEFENCE FORCE LEGAL SERVICES

LEGAL TASK JOURNAL

DISCIPLINE LAW

LEVEL - COMPETENT

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Qualification

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

Competent Level Criterion

2. Within the Discipline Law Task Journal – Competent Level, a total of 59 tasks provided there is a minimum of:

- a. 6 tasks in Part A;
- b. 14 tasks in Part B;
- c. 8 tasks in Part C; and
- d. 26 tasks in Part D.

3. Assessment is to be by self-assessment and assessment by an assessor of each completed task.

Competent Standard

4. A Legal Officer who has attained a ‘competent’ standard in Discipline law has a sound grasp of and can correctly apply the Defence Force Discipline Act and Discipline Law Manuals and directly related policy as drafted.

5. In addition, such a Legal Officer can identify ‘novel’ issues (that are beyond the confines of the Discipline Law Manuals) and obtain the necessary assistance for resolution.

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Part A – Basic Principles

DFDA and Related Legislation

1. Demonstrate knowledge of the law and policy of the scope, nature and effect of Discipline law. Where relevant this should include:
 - a. the history of discipline law;
 - b. the source of discipline law; and
 - c. the reason for discipline law in the ADF.

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2. Demonstrate knowledge of the content and effect of:
 - a. the Defence Force Discipline Act 1982;
 - b. the Defence Force Discipline Rules 1985;
 - c. the Defence Force Discipline Regulations 1985; and
 - d. the Defence Force Discipline (Consequences of Punishment) Rules.

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Discipline Law Manual Volume 1

3. Demonstrate knowledge of the content and effect of Discipline Law Manual Volume 1 in the areas of:
 - a. jurisdiction of service tribunals;
 - b. prosecution of charges and offences;
 - c. summary proceedings.

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4. Demonstrate knowledge of the contents and effect of Discipline Law Manual Volume 1 in the areas of:
- investigation of service offences;
 - criminal responsibility; and
 - the law of evidence.

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5. Demonstrate knowledge of the contents and effect of Discipline Law Manual Volume 1 in the areas of:
- rights of the accused;
 - duties of a prosecutor at summary proceedings; and
 - duties of a defending officer at summary proceedings.

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6. Demonstrate the provision of legal advice to a unit on the content and effect of Discipline Law Manual Volume 1 in the areas of:
- jurisdiction and powers of a court martial;
 - convening a DFM/court martial;
 - functions of court martial members;
 - jurisdiction and powers of a Defence Force Magistrate;
 - functions of a DFM at hearing.

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7. Demonstrate the provision of legal advice to a unit on contents and effect of Discipline Law Manual Volume 1 in the areas of:
- punishments and orders;
 - reviews and appeals;
 - the discipline officer scheme.

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8. Demonstrate the provision of legal advice to a unit on the law and policy in Discipline Law Manual Volume 1 applicable to Territory Offences at unit level.

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Part B – Jurisdiction and Charges

Jurisdiction Determination

9. Demonstrate knowledge of the contents and effect of DI (G) Personnel 45-1 *Jurisdiction under the Defence Force Discipline Act – Guidance for Military Commanders* including:
- a. the initial determination of jurisdiction;
 - b. notification procedures when military jurisdiction is exercised;
 - c. procedures for cases where jurisdiction is unclear; and
 - d. the role of reviewing Service legal officers.

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10. Demonstrate knowledge of the law and policy relevant to the test for the application of jurisdiction under the DFDA within 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’.

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11. Demonstrate knowledge of the application of DI (G) ADMIN 45-2 *Reporting/Investigation of Alleged Offences*. Where relevant this demonstration of knowledge should include an explanation of
- a. the definition of notifiable incidents;
 - b. the roles and responsibilities of Defence Investigative Authorities;
 - c. the role of the Inspector-General Division;
 - d. when investigations should be ceased or suspended; and
 - e. how an investigation is to be dealt with if civil authorities decline to act.

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ADF prosecution policy

12. Demonstrate knowledge of the contents and effect of DI (G) Personnel 45-4 *Australian Defence Force Prosecution Policy*.

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Service Investigations

13. Demonstrate knowledge of the law and policy on service investigations in the areas of:
- who may be appointed an investigating officer under s 101 (1) DFDA;
 - when an investigating officer may question persons.

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Analysis of DFDA Investigative Material

14. Demonstrate knowledge of the analysis of investigative material produced by a non-Service police DFDA 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;
 - reference 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

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Offences, charges and their prosecution

15. Demonstrate knowledge of what a prescribed offence is. Where applicable, this demonstration of knowledge should include an explanation of the relevance of a prescribed offence.

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16. 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.

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17. Demonstrate knowledge of drafting a charge where a sample charge is available chapter 4, volume 1 ADFP 201 DLM. The demonstration of knowledge should include:
- limitations on charging service offences;
 - an explanation of the concept of multiplicity/parallel pleading;
 - how to draft the particulars of a charge;
 - an explanation of the concept of duplicity.

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18. Demonstrate knowledge of the procedure for preferring a charge. Where relevant the demonstration of knowledge should include:
- preparation of charge sheet (PD105);
 - who is authorised to prefer a charge;
 - when the member is to be cautioned;
 - what paperwork is to be provided to the accused method of charging;
 - time limitations if the member is in custody;

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19. Demonstrate knowledge of whether a charge sheet can be amended.

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20. Demonstrate knowledge of whether a charge can be withdrawn once it has been preferred at summary level.

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21. Demonstrate knowledge of the law and policy at the unit level on the prosecution legal burden of proof. Where relevant, this demonstration of knowledge should include an explanation of:
- the requirement to prove every element of the offence;
 - what is meant by 'beyond reasonable doubt'

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22. Demonstrate knowledge of the defence evidential burden.

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23. Demonstrate knowledge of the defence legal burden. Where relevant the demonstration of knowledge should include an explanation of:
- when the defence would bear the legal burden;
 - statutory defences available under the DFDA.

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24. Demonstrate knowledge of general principles of criminal responsibility. Where relevant this demonstration of knowledge should include an explanation of
- the relevance of the Criminal Code (Cth) to DFDA offences;
 - the concept of physical elements;
 - the concept of fault elements.

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25. Demonstrate knowledge of the concept of elements of offences. The demonstration of knowledge should include:
- the application of chap 4 Vol 1 DLM;
 - an explanation of the relationship between physical and fault elements.

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26. Demonstrate knowledge of the concept of an strict liability offence.

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27. Demonstrate knowledge of the concept of an absolute liability offence.

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Discipline Officer Proceedings

28. Demonstrate knowledge of the purpose of the Discipline Officer scheme. This demonstration of knowledge or training is to include an explanation of:
- the appointment of relevant officers and discipline officers; and
 - the jurisdiction of discipline officers;

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Part C – Evidence

Rules of Evidence

29. Demonstrate knowledge of the law and policy on the evidence hierarchy as prescribed in Chap 6, Vol 1 DLM.

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30. Demonstrate knowledge of how the Rules of Evidence apply to DFDA investigations. The demonstration of knowledge should include an explanation of:
- a. the evidence required to ‘prove’ an offence;
 - b. proof of commission of the offence;
 - c. proof of identity;
 - d. the relevance rule.

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31. Demonstrate knowledge of what the onus of proof is for the prosecution and defence in a service tribunal.

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32. Demonstrate knowledge of what is meant by proof beyond reasonable doubt.

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33. Demonstrate knowledge of what is meant by proof on balance of probabilities.

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34. Demonstrate knowledge of whether or not the accused is competent to give evidence.

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35. Demonstrate knowledge of the types of evidence that may be used to prove facts in a service tribunal, such as oral, real, documentary evidence.

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36. Demonstrate knowledge of the examination of witnesses. Where relevant the demonstration of knowledge should include an explanation of:
- the fact that a witness is to be sworn in;
 - the order that witnesses may be called.
 - the general outline of procedure for receiving testimonial evidence.

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37. Demonstrate knowledge of examination in chief. The demonstration of knowledge should include an explanation of:
- the object of examination in chief
 - the use of leading questions
- And where relevant:
- when a party can cross examine their own witness.

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38. Demonstrate knowledge of cross-examination. The demonstration of knowledge should include an explanation of:
- a. the object of cross examination
 - b. the use of leading questions
- And where relevant:
- c. disallowance of improper questions;

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39. Demonstrate knowledge of re-examination. The demonstration of knowledge should include an explanation of:
- a. the purpose of re-examination;
 - b. the use of leading questions.

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Part D – Procedure

Conduct of Summary Proceedings

40. Demonstrate knowledge of the distinction between dealing with and trying a charge.

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41. Demonstrate knowledge of the law and policy applicable to subordinate summary authorities. This demonstration of knowledge should include an explanation of:

- a. how a summary authority is appointed;
- b. the jurisdiction of a subordinate summary authority;

And where relevant:

- c. revocation of appointment;
- d. punishments available to a SUBSA.

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42. Demonstrate knowledge of the options available to a subordinate summary authority at a hearing. This demonstration of knowledge should include an explanation of:

- a. jurisdiction to try a charge, including consideration of jurisdiction;
- b. power to direct that the charge not be proceeded with if the SUBSA does not have jurisdiction to try the charge;
- c. power to refer a charge to a CO or another SUBSA whether or not the charge is within the jurisdiction of the SUBSA.

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43. Demonstrate knowledge of the law and policy applicable to commanding officer summary tribunals. The demonstration of knowledge should include an explanation of:

- a. the jurisdiction of a Commanding Officer;
- b. the appointment of a Commanding Officer.

And where relevant:

- c. revocation of appointment;
- d. punishments available to a CO.

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44. Demonstrate knowledge of the options available to a CO at a hearing. This demonstration of knowledge should include an explanation of:

- a. jurisdiction to try a charge, including consideration of jurisdiction;
- b. power to direct that the charge not be proceeded with if the CO does not have jurisdiction to try the charge;
- c. power to refer a charge to another CO whether or not the charge is within the jurisdiction of the CO.
- d. power to refer a charge to a superior summary authority.
- e. power to refer a charge to a convening authority.

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45. Demonstrate knowledge of the law and policy applicable to superior summary authority tribunals. The demonstration of knowledge should include an explanation of:

- a. the jurisdiction of a Superior summary authority;
- b. the appointment of a Superior summary authority.

And where relevant:

- c. revocation of appointment;
- d. punishments available to Superior summary authority.

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46. Demonstrate knowledge of the options available to a Superior summary authority at a hearing. This demonstration of knowledge should include an explanation of:
- jurisdiction to try a charge, including consideration of jurisdiction;
 - power to refer a charge to a refer to a convening authority.

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47. Demonstrate knowledge of elective punishments. This demonstration of knowledge should include an explanation of:
- when an elective punishment can be imposed;
 - the differences in procedures depending upon the plea;
 - what documentation is required to be furnished to the accused.

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48. Demonstrate knowledge of when a legal officer may act as defending officer in summary proceedings.

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49. Demonstrate knowledge of the recording of summary proceedings including preparation of the Record of Evidence (PD 104). This demonstration of knowledge is to include certification of the records, and the form.

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Role and Function of a Convening Authority

50. Demonstrate knowledge of the role of a Convening Authority.

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51. Demonstrate knowledge of the courses open to a Convening Authority. Where relevant the demonstration of knowledge should include an explanation of:
- whether or not a charge is to be proceeded with;
 - whether or not the charge may be referred to a Commanding Officer, superior summary authority, DFM or court martial.

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Courts Martial Proceedings

52. Demonstrate knowledge of the types of court martial under the DFDA.

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

53. Demonstrate knowledge of the basis of sentencing principles in the DFDA. This demonstration of knowledge should include an explanation of the principles of sentencing applied by civil courts and the need to maintain discipline in the Defence Force.

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54. Demonstrate knowledge of the scale of punishments table contained in the DFDA. Where applicable, any explanation of particular punishments should include the relevant limitations on the punishment.

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55. Demonstrate knowledge of the consequences of punishments.

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56. Demonstrate knowledge of suspended sentences.

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57. Demonstrate knowledge of the circumstances in which restitution orders may be made. This demonstration of knowledge should include an explanation of what a restitution order is.

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58. Demonstrate knowledge of the circumstances in which a reparation order may be made. This demonstration of knowledge should include an explanation of what a reparation order is and the maximum amount payable.

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Legal Review Process

59. Demonstrate knowledge of the disciplinary review process for a summary hearing including an explanation of:

- when the legal review is required for a subordinate summary authority hearing under s 151 DFDA;
- the process of automatic review by a Commanding Officer; and
- when a legal review is required for a Commanding Officer's hearing under s 154 DFDA.

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60. Demonstrate knowledge of the role of a Reviewing Authority including the consideration of a legal report.

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61. Demonstrate knowledge of the legal review process including:
- the options open to a Reviewing Authority upon automatic review; and
 - the basis for further review under s155 DFDA.

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62. Demonstrate knowledge of the preparation of a legal report for the review process in a summary trial. Where relevant the demonstration of knowledge should include an explanation of:
- grounds for quashing conviction;
 - grounds for quashing or revoking an order.

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63. Demonstrate knowledge of what options are available to a Reviewing Authority when a conviction is incorrect in law.

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64. Demonstrate knowledge of what options are available to a Reviewing Authority when a punishment is wrong in law.

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The Petition Process

65. Demonstrate knowledge of the petition process under s 153 DFDA.

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66. Demonstrate knowledge of the process for further review under s 155 DFDA.

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67. Demonstrate knowledge of the procedure and requirements for submitting a petition against punishment. The demonstration of knowledge should include an explanation of relevant time considerations.

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68. Demonstrate knowledge of the procedure and requirements for submitting a petition against conviction. Where relevant the demonstration of knowledge should include an explanation of relevant time considerations.

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69. Demonstrate knowledge of the responsibilities of a Commanding Officer upon receipt of a petition. Where relevant the demonstration of knowledge should include an explanation of relevant time limitations.

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70. Demonstrate knowledge of the processing of a petition for legal review.

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Discipline Officer Proceedings

71. Demonstrate knowledge of the conduct of Discipline Officer proceedings. Where relevant the demonstration of knowledge should include an explanation of:
- the issue of infringement notices;
 - the right of election by the member;
 - powers of the discipline officer;
 - commencement of punishments; and
 - destruction of discipline officer records.

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Advocacy Knowledge

72. Demonstrate advocacy knowledge in the context of Summary Proceedings by either appearing or by briefing either a Prosecutor or Defending Officer on basic advocacy obligations.

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Management of DFDA Authorisation

73. Demonstrate knowledge of the appointment of DFDA authorised officers.

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74. Demonstrate the management of DFDA authorisation appointment forms.

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Discipline Case Flow Management

75. Demonstrate knowledge of the contents of DI (G) ADMIN 10-8 *Discipline Tracking and Case Flow Management*.

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Miscellaneous (Civil Law)

76. Demonstrate knowledge of the steps to be taken when a defence member or unit is served with a civil court issued subpoena (person or documents).

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