

Australian Military Court – Fact Sheet

- **The new Australian Military Court (AMC) modernises the Australian Defence Force’s military justice system and its administration.**
 - **The AMC meets the operational and peacetime needs of the ADF in maintaining and enforcing service discipline.**
 - **It is judicially independent from the military chain of command and executive, and is fully deployable and able to conduct court hearings within Australia and overseas, including operational areas.**
 - **Where appropriate, and available, civilian criminal matters will continue to be referred to the civilian jurisdictions.**
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What is the Australian Military Court?

A key feature of recent reforms to Defence’s military justice system is the creation of the Australian Military Court (AMC) commencing from 1 October 2007. The AMC will be judicially independent from the Service chains of command and executive, and replaces and modernises the current system of trial by courts martial (military line officer presiding with panel members and a judge advocate) and Defence Force Magistrates (legal officer appointed by the command). The AMC will be presided over by a Military Judge and there will be provision for trial by Military Judge and Military Jury or Military Judge alone.

The Australian Military Court will meet the disciplinary needs of the ADF in maintaining and enforcing Service discipline by trying more serious or complex Service offences. The Court will be fully deployable and be able to sit anywhere in Australia and in overseas locations, including operational environments.

Why does the ADF have a court separate to the civilian courts?

Comparable military courts to the AMC have been established by Australia’s common law allies.

Defence personnel are subject to civil law and military law at all times.

The Australian Military Court has been created by Parliament under the defence power of the Australian Constitution. Military service tribunals are established under the Defence Force Discipline Act (DFDA) for the specific purpose of maintaining and enforcing service discipline. The High Court in a line of recent decisions has accepted that the defence power authorised the establishment of Service tribunals outside Chapter III of the Constitution.

Some offences are considered far more serious (that is impacting on discipline) when committed in a military context than if committed under the civil law, for example an assault on a superior or a subordinate, theft and drug offences. Additionally, the DFDA provides for service offences that are specific to the ADF and the conduct of

military operations such as Absence Without Leave, Desertion, and Mutiny for which there are no civilian equivalent. It would not be practical nor meet the operational needs of the ADF for such offences to be determined by civil authorities. The need to maintain and enforce Service discipline within the ADF arises in all geographical locations no matter where the ADF is deployed, in peacetime, times of conflict and during peacekeeping operations.

How does it work?

The AMC will be presided over by a Chief Military Judge and two permanent Military Judges, all of whom are legal practitioners appointed by the Governor General. The legislation also provides for the appointment of Reserve military judges. The AMC will conduct trials by Military Judge and Military Jury and in certain cases by Military Judge alone. The Military Judges are independent from the military chains of command and executive in the performance of their judicial functions.

The Military Jurors will perform a role akin to jury members in a civilian court system and determine on the evidence whether an accused person is guilty or not guilty of the Service offence.

If an accused is found guilty, punishment as provided for by the DFDA will be imposed by the presiding Military Judge taking into account the sentencing principles applied by civil courts and the need to maintain discipline in the Defence Force.

Essentially, the trial procedures of the AMC are very similar to those of civil courts exercising criminal jurisdiction. The general principles and laws of criminal responsibility as provided for within the Criminal Code (Commonwealth) apply in respect of Service offences prosecuted before the AMC. The presumption of innocence to the accused applies as it does in a civil court which means that the prosecution is obliged to prove the case against an accused beyond reasonable doubt.

All prosecutions will be conducted through the office of the statutorily independent Director of Military Prosecutions. A new Director of Defence Counsel Services provides legal representation for the accused.

The Registrar of the AMC, who is statutorily independent, will assist the Chief Military Judge with the administration of the court and discharge statutory functions.

The Act has also introduced rights of appeal from decisions of the AMC to the Defence Force Discipline Appeals Tribunal (presided over by tribunal members who may be Federal Court, State or Territory Justices or Judges). In the case of the accused it is available on both conviction and punishment or court order. In the case of the DMP it is available for punishment or order only. The Act will also provide the right for an accused to elect trial by the AMC for certain categories of disciplinary offences.

What kind of offences will be tried?

The Australian Military Court will meet the disciplinary needs of the ADF in maintaining and enforcing Service discipline by trying more serious or complex Service offences. The AMC will only exercise jurisdiction under the DFDA where proceedings can reasonably be regarded as substantially serving the purposes of

maintaining or enforcing Service discipline, including for offences committed outside of Australia. Where appropriate, and available, civilian criminal matters will continue to be referred to the civilian jurisdictions.

Some examples of offences that may be tried by the AMC include those committed while deployed on military operations in Australia and overseas, including assaults, theft, and offences concerning Service property, fraud, and drug offences. The AMC has jurisdiction to try all offences committed by Service personnel overseas subject to host nation laws and Status of Forces Agreements and provided such proceedings can reasonably be regarded as maintaining or enforcing service discipline.

What types of punishments or outcomes can result from a trial at the Australian Military Court?

An accused person may be acquitted or found guilty on the evidence heard and determined by the AMC. The DFDA provides that if found guilty, a range of punishments may be considered by the presiding Military Judge in exercising sentencing discretion, including the imposition of a fine or reduction in rank and in the more serious cases, imprisonment, dismissal from the Defence Forces and detention.

Why was there a need to change Courts Martials and Defence Force Magistrates?

The ADF is committed to a military justice system that is as effective and fair as possible.

In response to the Senate's Report into '*The Effectiveness of Australia's Military Justice System*' (dated 16 June 2005), the Government announced significant reforms and enhancements to the ADF's military justice system. As part of these enhancements, the Government agreed to the establishment of a permanent Australian Military Court to replace the individually convened Courts Martial and Defence Force Magistrates trials.

These changes will balance the necessity of the maintenance and enforcement of effective discipline which is integral to the function of command, and the preparedness of the ADF for military operations, with the protection of individuals and their rights.

The AMC legislation does not increase the jurisdiction of the AMC beyond that of the Service tribunals it will replace. In respect of serious offences committed within Australia such as treason, murder, manslaughter and serious sexual offences, the consent of the Director of Public Prosecutions is still required.

How do you know ADF members will be given a fair trial?

Essentially, the trial procedures of the AMC are very similar to those of civil courts exercising criminal jurisdiction. AMC proceedings will be presided over by a Military Judge. The general principles and laws of criminal responsibility as provided for within the Criminal Code (Commonwealth) apply in respect of Service offences prosecuted before the AMC. The onus and standard of proof in disciplinary proceedings before the AMC are generally the same as in proceedings before a civilian court. Trials with a Military Jury will be akin to a civilian jury trial.

The selection of the Chief Military Judge and Military Judges is through an independent merit process. The Military Judges will be selected from any current qualified Permanent and Reserve ADF legal officers or any other person who satisfies the statutory selection criteria. The Chief Military Judge and Military Judge appointments will be made by the Governor-General.

Specific employment conditions have been put in place to ensure independence, impartiality and security of tenure of the military judges (including the Chief Military Judge):

- Statutory appointment of military judges (qualified legal officers) by the Governor General;
- Security of tenure (10-year fixed term appointments);
- Security of salary with remuneration set by the Commonwealth Remuneration Tribunal; and
- Appointment and termination by the Governor General.

The AMC will have the status of a ‘court of record’ where records are publicly available except where the court decides it would be inappropriate to do so (for example, if it would be contrary to the interests of security or defence of Australia, the proper administration of justice or public morals).

The AMC is one of a range of enhancements to the military justice system being introduced by Defence. These enhancements are the most significant changes since the current Defence Force Discipline Act was introduced more than two decades ago.

For further information about the range of enhancements to the Military Justice System visit, www.defence.gov.au/mjs