

LEGAL OFFICER CAREER AND PROFESSIONAL DEVELOPMENT COMMITTEE

OUT-OF-SESSION DECISION OF 28 FEB 12

COMMITTEE DECISION 23/12

Subject: Policy – Change to Annex A to LOSOCS Policy

The Committee noted:

1. The DFRT Decisions on the Legal Officers' Specialist Officer Career Structure (LOSOCS) and the Outline of the LOSOCS dated 21 Mar 11.
2. That the Military Law Centre has requested changes to the wording of Annex A because a number of legal officers have been confused by the current wording.
3. The opportunity has been taken to add words to tasks to make them consistent with the wording of the recently revised Discipline Law tasks.
4. That the DMLC has requested a minor amendment to one task in Operations Law.

The Committee decided to:

1. **Agree** that Annex A to LOSOCS Policy be amended in the manner shown in the attachment.
2. **Approve** the revised Annex A to LOSOCS Policy as at 28 Feb 12.



P.A. CRONAN, AM
AIRCDRE
DGADFLS
Chair, LO CPDC / CDF Delegate

LTM 2 PRE-REQUISITE TASKS – COMPETENT LEVEL

LTM2 Operations Law Pre-requisite Tasks

Tasks required to advance to CL3 9-	The qualification criteria for advancement to CL3 is 9 tasks
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Tasks required	The tasks listed below are to be completed prior to nominating for LTM2 Operations Law 3-
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The Law of Armed Conflict (LOAC) – basic principles

1. Demonstrate **application of** knowledge on the history or development of LOAC. Where relevant, the demonstration of knowledge should include an explanation of:
 - a. sources of international law,
 - b. historical development of international law, and
 - c. basic principles of international law.
2. Demonstrate **application of** knowledge on the basic principles of international law that apply to armed conflict. Where relevant, the demonstration of knowledge should include an explanation of:
 - a. *jus in bello*,
 - b. *jus ad bellum*,
 - c. rights and obligations under the Charter of the United Nations:
 - d. other relevant case law.
3. Demonstrate **application of** knowledge on the basic principles of LOAC. Where relevant, the demonstration of knowledge should include an explanation of:
 - a. military necessity,
 - b. unnecessary suffering, and
 - c. proportionality.

LTM2 Discipline Law Pre-requisite Tasks

Tasks required to advance to CL3 55 The qualification criteria for advancement to CL3 is 55 tasks

Tasks required The tasks listed below are to be completed prior to nominating for LTM2 Discipline Law **18**

Part A – Basic Principles

DFDA and Related Legislation

1. Demonstrate application of 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;
 - c. the reason for discipline law in the ADF; and
 - d. the ‘service connection test’ as applied by the High Court of Australia.

2. Demonstrate application of knowledge of the content and effect of the:
 - a. Defence Force Discipline Act 1982;
 - b. Defence Force Discipline Regulations 1985;
 - c. Court Martial and Defence Force Magistrate Rules 2009;
 - d. Summary Authority Rules 2009; and
 - e. Defence Force Discipline (Consequences of Punishment) Rules 1986.

Part B – Jurisdiction and Charges

Jurisdiction Determination

9. Demonstrate application of knowledge of the contents and effect of DI(G) PERS 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.

Service Investigations

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

Offences, charges and their prosecution

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

17. Demonstrate application of knowledge of drafting a charge. This should include:
 - a. limitations on charging service offences;
 - b. an explanation of the concept of multiplicity/parallel pleading;
 - c. how to draft the particulars of a charge; and
 - d. an explanation of the concept of duplicity.

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

Part C – Evidence

Rules of Evidence

29. Demonstrate application of knowledge of the laws of evidence applicable to court martial and Defence Force magistrate proceedings and the simplified rules of evidence applicable to Summary Authority proceedings.

Part D – Procedure

Conduct of Summary Proceedings

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

41. Demonstrate application of knowledge of the law and policy applicable to subordinate summary authorities (SUBSA). This should include an explanation of:
 - a. how a SUBSA is appointed;
 - b. the jurisdiction of a SUBSA;
 - c. revocation of appointment as a SUBSA; and
 - d. punishments available to a SUBSA.

42. Demonstrate application of knowledge of the options available to a SUBSA at a hearing. This should include an explanation of:
 - a. jurisdiction to try a charge, including consideration of jurisdiction;
 - b. whether a SUBSA has power to direct that the charge not be proceeded with if the SUBSA does not have jurisdiction to try the charge; and
 - c. whether a SUBSA has power to refer a charge to a CO or another SUBSA, whether or not the charge is within the jurisdiction of the SUBSA.

43. Demonstrate application of knowledge of the law and policy applicable to commanding officer summary tribunals. This should include an explanation of:
 - a. the jurisdiction of a CO;
 - b. the appointment of a CO *per se*, or for disciplinary purposes only;
 - c. revocation of appointment as a CO for disciplinary purposes; and
 - d. punishments available to a CO.

44. Demonstrate application of knowledge of the options available to a CO at a hearing. This 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 (SUPSA);
- e. power to refer a charge to the DMP; and
- f. when a CO is required to refer a charge to the DMP.

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

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

56. Demonstrate application of knowledge of suspended sentences.

Legal Review Process

59. Demonstrate application of knowledge of the disciplinary review process for a summary hearing including an explanation of when a legal review is required for summary authority hearings under s 152 DFDA.

60. Demonstrate application of knowledge of the preparation of a legal report for a legal review under s 152 DFDA. Where relevant this should include an explanation of:

- a. grounds for quashing (or revoking) a conviction (or order) or punishment;
- b. grounds for ordering a new trial; and
- c. substitution of conviction of alternative offence.

61. Demonstrate application of knowledge of a review on a petition under s 153 DFDA. Where relevant this should include an explanation of:

- a. when a petition may be lodged;
- b. time limitations on lodging petitions;
- c. what information is required to be included in a petition; and
- d. timeframe for reviewing authority to complete the review.

LTM2 Administrative Law Pre-requisite Tasks

Tasks required to advance to CL3 35 The qualification criteria for advancement to CL3 is 35 tasks

Tasks required The tasks listed below are to be completed prior to nominating for LTM2 Administrative Law **12**

Part A

Military Administrative Law

1. Demonstrate **application of** knowledge of the scope, nature, content and effect of administrative law, and its application to the ADF.
6. Demonstrate knowledge of the contents and effect of:
 - a. [DI\(G\) PERS 34-2 – Complaints of Discrimination and Harassment Through the Human Rights and Equal Opportunity Commission;](#)
 - b. [DI\(G\) PERS 35-2 – Application of the Sex Discrimination Act to the Australian Defence Force;](#)
 - c. [DI\(G\) PERS 35-3 – Management and Reporting of Unacceptable Behaviour;](#)
and
 - d. [DI\(G\) PERS 35-7 – Defence Equity Adviser Network.](#)

Part B

Administrative Sanctions

17. Demonstrate **application of** knowledge of the legislative and policy framework applicable to administrative sanctions in the ADF, including [DI\(G\) PERS 35-6 Formal Warnings and Censures in the Australian Defence Force.](#)
18. Demonstrate **application of** knowledge of the content and effect of the [Defence \(Personnel\) Regulations 2002.](#)

Initiating Administrative Sanctions

20. Demonstrate **application of** knowledge of the procedures involved in issuing formal warnings and censures and other administrative sanctions. Where relevant, the demonstration of knowledge should include an explanation of:
 - a. the requirements of [DI\(G\) PERS 35-6 – Formal Warnings and Censures in the Australian Defence Force;](#)
 - b. a notice to show cause;
 - c. disclosure of evidence and other relevant materials;
 - d. delivery of the notice;
 - e. the opportunity for the member to reply;
 - f. a response;
 - g. the separation of *initiating* and *imposing* authorities;
 - h. decision of the initiating authority;
 - i. submission to the imposing authority;
 - j. decision of the imposing authority;
 - k. recording and notification of the decision; and
 - l. imposition of the formal warning or censure in accordance with [DI\(G\) PERS 35-6 – Formal Warnings and Censures in the Australian Defence Force.](#)

21. Demonstrate **application of** knowledge of the right of an ADF member to procedural fairness if imposition of an administrative sanction is considered against the member. Where relevant, the demonstration of knowledge should include an explanation of:

- a. the fact that natural justice imposes upon decision-makers an obligation to flexibly adopt fair procedures, appropriate and adapted to the circumstances of the particular case;
- b. the fact that there are two main aspects to the concept of natural justice, namely:
 - (1) An opportunity to be heard before a decision that may affect him/her adversely in an individual way is made. This is called the hearing rule.
 - (2) A decision-maker must not be biased. The fact that bias may be actual or perceived and it may manifest itself in the decision maker's personal associations, interests or in the structure of the decision-making process.

One of Task 23 or 25 only

23. Demonstrate **application of** knowledge of the action required of an initiating officer when issuing a notice to show cause. Where relevant, the demonstration of knowledge should include an explanation of:

- a. the proposed action;
- b. the disclosure and attachment of evidence, policy, statements, and other information relied upon for action;
- c. the requirement to afford the member an opportunity to respond.

Response to a Notice to Show Cause

25. Demonstrate **application of** knowledge of assisting an ADF member to prepare a response to a notice to show cause for an administrative sanction. Where relevant, the demonstration of knowledge should include an explanation of:

- a. facts and conclusions to be drawn from the evidence;
- b. disclosure and attachment of any relevant facts, evidence or other relevant material that could include:
 - (1) a denial of the facts;
 - (2) new evidence;
 - (3) an explanation of the circumstances;
 - (4) character references.
- c. a request for extensions of time;
- d. what action, if any, the decision-maker should take.

Decision Making

26. Demonstrate **application of** knowledge of the content and effect of [ADFP 06.1.3 Guide to Administrative Decision-Making](#) as it relates to administrative decision-making in the ADF.

Part C

Redress of Grievance

32. Demonstrate **application of** knowledge of the various internal options for making a complaint. Where relevant, the demonstration of knowledge should include the following matters:

- a. the chain of command;
- b. harassment hotline;
- c. alternate dispute resolution; and
- d. lodgement of a redress of grievance in accordance with [DI\(G\) PERS 34 – 1 – Redress of Grievance – Tri-Service Procedures](#).

Administrative Inquiries

36. **Purpose.** Demonstrate **application of** knowledge of the objectives of an administrative inquiry. Where relevant, the demonstration of knowledge should include an explanation of the following objectives:

- a. to collect and assemble information and, in some cases, preserve documents and equipment;
- b. to gather the best available information with the least possible delay;
- c. to establish facts known to be true and those that may be inferred from all the available information;
- d. to make findings on the basis of the information collected; and
- e. to make recommendations arising from the findings concerning remedial or other action, including administrative action or the initiation of a separate investigation by Service or civil police.

37. **General.** Demonstrate **application of** knowledge of the legislative and policy framework of military administrative inquiries, including [Defence \(Inquiry\) Regulations 1985](#) and [ADFP 06.1.4 Administrative Inquiries Manual 2nd Edition](#).

38. **Quick Assessment.** Demonstrate **application of** knowledge of the law and policy applicable to a quick assessment. Where relevant, the demonstration of knowledge should include an explanation of DI (G) ADMIN 67-2 Quick Assessment, including:

- a. the purpose and requirement to conduct a Quick Assessment;
- b. the application of administrative law to Quick Assessments;
- c. appointment;
- d. limits on a Quick Assessment; and
- e. reporting requirements involved in a Quick Assessment.