



JUDGE ADVOCATE GENERAL

**DEFENCE FORCE
DISCIPLINE ACT 1982**

*Report for the period
1 January to 31 December 2018*

Department of Defence

Defence Force Discipline Act 1982

*Report for the period
1 January to 31 December 2018*

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DEPARTMENT OF DEFENCE
CANBERRA ACT 2600

JUDGE ADVOCATE GENERAL

Senator the Hon. Linda Reynolds, CSC
Minister for Defence
Parliament House
CANBERRA ACT 2600

Dear Minister

I submit herewith my report covering the period from 1 January to 31 December 2018. The report is furnished pursuant to the requirements of section 196A(1) of the *Defence Force Discipline Act 1982*.

Yours faithfully

Rear Admiral The Hon Justice M.J. Slattery, AM, RAN
Judge Advocate General
Australian Defence Force

28 June 2019

Enc.

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**JUDGE ADVOCATE GENERAL
AUSTRALIAN DEFENCE FORCE**

REPORT FOR THE PERIOD 1 JANUARY TO 31 DECEMBER 2018

PREAMBLE

1. Section 196A(1) of the *Defence Force Discipline Act 1982* (DFDA) obliges the Judge Advocate General of the Australian Defence Force (JAG), as soon as practicable after 31 December each year, to prepare and furnish to the Minister for Defence a report relating to the operation of the DFDA, the regulations and rules of procedure made under it and the operation of any other law of the Commonwealth or of the Australian Capital Territory (ACT), in so far as that law relates to the discipline of the Australian Defence Force (ADF). This Report is for the 12 month period to 31 December 2018. The office of JAG was created by s. 179 of the DFDA. The holder of the office must be, or have been, a judge of a Federal Court or State Supreme Court. The appointment is made by the Governor-General in Executive Council. The Minister may appoint a person to act as JAG or Deputy Judge Advocate General (DJAG) for a period not greater than twelve months.¹

2. Former holders of the office of JAG have been:

- a. 1985–1987 The late Major General the Hon Justice R Mohr, RFD, ED (of the Supreme Court of South Australia).
- b. 1987–1992 Air Vice Marshal the Hon Justice AB Nicholson, AO, RFD (Chief Justice of the Family Court of Australia) — appointed in February 1988 but had been acting since Major General Mohr's retirement on 30 July 1987.
- c. 1992–1996 Rear Admiral the Hon Justice ARO Rowlands, AO, RFD, RAN (of the Family Court of Australia).
- d. 1996–2001 Major General the Hon Justice KP Duggan, AM, RFD (of the Supreme Court of South Australia).
- e. 2001–2007 Major General the Hon Justice LW Roberts-Smith, RFD (of the Supreme Court of Western Australia) —

¹ DFDA, s. 188.

appointed in June 2002, but had been acting since Major General Duggan's retirement in 2001.

- f. 2007–2014 Major General the Hon Justice RRS Tracey, AM, RFD (of the Federal Court of Australia).

3. I was first appointed JAG on 14 May 2015, having acted in the position since 30 July 2014. I satisfy the statutory qualification for appointment by virtue of my appointment as a judge of the Supreme Court of New South Wales. My current appointment as JAG is until 29 July 2021.²

4. The functions of the JAG are prescribed by the DFDA and may be summarised as follows:

- a. reporting annually to Parliament on:
 - (i) the operation of the DFDA, the regulations, the rules of procedure; and
 - (ii) the operation of any other law of the Commonwealth or of the ACT insofar as that law relates to the discipline of the Defence Force;³
- b. making procedural rules for Service tribunals, being:
 - (i) Court Martial and Defence Force Magistrate Rules; and
 - (ii) Summary Authority Rules;
- c. nominating the judge advocate (JA) for a court martial⁴ and Defence Force magistrates (DFMs);⁵
- d. nominating to the Chief of the Defence Force (CDF) or a Service chief officers to be members of the JAs' panel;⁶

² I was reappointed as JAG on 9 March 2017.

³ DFDA, s. 196A.

⁴ DFDA, s. 129B.

⁵ DFDA, s. 129C.

⁶ DFDA, s. 196.

- e. appointing DFMs from officers appointed as members of the JAs' panel;⁷
- f. nominating to the CDF legal officers for the purposes of DFDA s. 154(1)(a); and
- g. if requested, providing a final and binding legal report in connection with the internal review of proceedings before Service tribunals.

5. The Office of the JAG and its functions indicate the legislature's desire for appropriate civilian judicial oversight of the operation of the DFDA and related legislation.

6. Each JAG has been a two-star ranking officer of the Reserve Forces. Previous JAG Reports have noted that this status as a superior court judge and the fact that the JAG has held senior military rank, have resulted in the JAG having an important leadership role among both permanent and reserve legal officers. The command and administrative responsibility in this regard remains with the Head Defence Legal (HDL), the Director General Australian Defence Force Legal Services (DGADFLS) and the single Service heads of corps/category.

7. The JAG necessarily also plays a significant role in the promotion of the jurisprudential welfare and education of the ADF.

8. I share the opinion held by previous holders of this office that the JAG should not act as general legal adviser to the ADF nor the Government, as that would be inconsistent with judicial office.

9. Funding for the Office of the JAG for the period of this Report was provided by the Associate Secretary group of the Department of Defence.

SIGNIFICANT APPOINTMENTS

10. I have already detailed the terms of my own appointment.⁸

⁷ DFDA, s. 127.

⁸ My appointment was extended on 9 March 2017 until 29 July 2021.

Chief Judge Advocate

11. Brigadier Michael Cowen, QC continues to hold the position of Chief Judge Advocate (CJA) established under DFDA, s. 188A.

Registrar of Military Justice

12. The reporting period has seen the completion of Group Captain Nina Harvey's term as the Registrar of Military Justice (RMJ). I wish to acknowledge the close and valuable support Group Captain Harvey has given to both CJA and the JAG in this role over the six years since her appointment in 2012. Her managerial analysis and her practical assistance during those years have resulted in tangible improvements to the efficiency and timeliness of ADF superior service tribunal proceedings.

13. Group Captain Henderson was appointed as RMJ on 22 September 2018 until 31 December 2022. The reason for the unusual length of his term of appointment was to better align future RMJ appointments with the ADF posting cycle.

Reserve Judge Advocates

14. As mentioned in my 2017 report,⁹ CDF appointed Lieutenant Commander Sirtes as a JA on 19 February 2018 and I subsequently signed his instrument of appointment as a DFM on 15 March 2018. There has been no other Reserve JA/DFMs appointed during the reporting period; however, trial demand led to recruiting for a fourth reserve JA position, which commenced toward the end of 2018. This resulted in the appointment of Wing Commander Joana Fuller just outside the reporting period.

15. I received 23 expressions of interest in December 2018. An interview panel, comprising CJA, Air Commodore Lerve and I, was convened in January 2019 to consider the six shortlisted candidates. The panel was unanimously of the view that I should nominate Wing Commander Fuller to CDF for appointment as a JA. I did so and CDF appointed her to the JAs' panel on 7 March 2019. I appointed her as a DFM on 23 April 2019.

⁹ 2017 Report at paragraph 21.

Deputy Judge Advocates General

16. Section 179 of the DFDA provides for the appointment of DJAGs. The practice since commencement of the DFDA has been to have three DJAGs, with one from each of the Services. The DJAGs during the reporting period were:

- a. Commodore John Timothy Rush, RFD, QC, RAN
- b. Brigadier His Honour Judge Stuart Gordon Durward, AM, SC
- c. Air Commodore His Honour Judge Gordon Bruce Lerve.

17. I formally record my gratitude to them for their help, support and counsel. I also thank them for their service to the ADF, much of which is voluntary and is given in addition to their other demanding professional duties as judges or counsel.

Section 154 reporting officers

18. Section 154 of the DFDA requires that reviewing authorities obtain a report of a legal officer prior to commencing a review of a service conviction. For a conviction by a court martial or DFM, or a direction given under DFDA, ss. 145(2) or (5), the legal report must be provided by a legal officer appointed by CDF (or a service chief) on the recommendation of the JAG: DFDA, s. 154(1)(a).

19. The experiences and perspectives gained by these officers through the provision of legal opinions pursuant to the DFDA, s. 154 are unique and afford a special opportunity to observe how the DFDA is operating in practice. I have greatly appreciated their input in relation to law reform and their other observations regarding improvements to the operation of the DFDA. I also thank them for their service to the ADF, which is given in addition to their other demanding professional duties as judges or counsel.

20. The s. 154(1)(a) legal reporting officers during the reporting period were:

- a. Major General Ian Westwood, AO
- b. Captain Dennis Cowdroy, OAM, RAN
- c. Captain James Renwick, SC, RAN

- d. Colonel Paul Smith
- e. Group Captain James Gibson
- f. Group Captain Michael O'Brien
- g. Commander Fabian Dixon, RFD, SC, RAN
- h. Wing Commander Gregory Lynham
- i. Wing Commander Glenn Theakston
- j. Lieutenant Commander Sylvia Emmett, AM, RAN
- k. Lieutenant Commander Gregory Sirtes, SC, RAN (until his appointment as a judge advocate)
- l. Lieutenant Commander Catherine Traill, RAN.

Related appointments

21. Mr Mark Cunliffe, PSM continued as HDL until 6 November 2018, when he was succeeded by Mr Adrian D'Amico. I wish to acknowledge Mr Cunliffe's transformative role as the inaugural HDL, and to thank him for his frequent practical assistance to me in my role as JAG in promoting many legislative and managerial improvements to the ADF discipline system. I look forward to working with Mr D'Amico in his new role.

22. Commodore Peter Bowers, RAN continued in his role as DGADFLS.

23. The Director of Military Prosecutions (DMP) is appointed under DFDA, s. 188GF. Brigadier Jennifer Woodward, CSC continued as DMP during the reporting period. The DMP reports separately as required by DFDA, s. 196B. I wish to acknowledge Brigadier Woodward's most able discharge of her duties as DMP during the reporting period.

24. The Director of Defence Counsel Services (DDCS) is appointed under the *Defence Act 1903*, s. 110ZA. The position of DDCS was filled during the reporting period by Colonel Arun Lambert, CSC. DDCS reports separately. I wish to acknowledge Colonel Lambert's most able discharge of his duties as DDCS during the reporting period.

25. The Inspector General of the ADF (IGADF) is appointed under the Defence Act, s. 110B. The position of IGADF continues to be filled during the reporting period by Mr Jim Gaynor CSC. IGADF reports separately as required by Defence Act, s. 110R. I met quarterly with IGADF during the reporting period. My regular consultations with IGADF about the operation of the military justice system have given me both a better insight into the wider trends in offending within the ADF and sharper focus on the need for particular legislative reforms to the DFDA. I wish to thank IGADF for this continued independent support in the execution of my office as JAG.

26. The position of staff officer to the JAG and CJA was filled during the reporting period by Lieutenant Commander Patience Neal, RAN. On behalf of CJA and myself I formally record our gratitude to her for her diligent discharge of this role. Her sound judgment and administrative assistance were especially valuable during her 2017 – 2018 term at OJAG, a period which saw a change in CJA and a change in RMJ. She concluded her service at OJAG in January 2019 and was posted to DCS.

Expiration of statutory appointments

27. The current position so far as the expiration of statutory appointments within my office are as follows:

- a. JAG, Rear Admiral Slattery, expiry date 29 July 2021;
- b. CJA, Brigadier Cowen, expiry date 21 September 2022;
- c. DJAG–Navy, Commodore Rush, expiry date 29 July 2019;
- d. DJAG–Army, Brigadier Durward, expiry date 9 March 2019;
- e. DJAG–Air Force, Air Commodore Lerve, expiry date 17 May 2022; and
- f. RMJ, Group Captain Henderson, expiry date 31 December 2022.

MILITARY JUSTICE COORDINATION COMMITTEE

28. The Military Justice Coordination Committee (MJCC) has continued to function efficiently during the 2018 reporting period as the principal mechanism for jointly engaging command and legal officers in developing military justice policy and procedures. As part of the First Principles

Review, at the end of 2018 the MJCC was renamed the Military Justice Steering Group (MJSJG) but without change to its functions. Future JAG Reports will refer to it under its amended name. But during the 2018 reporting period it was known as the MJCC and is so described in this report.

29. During the reporting period the Head of People Capability (HPC), Rear Admiral Brett Wolski, AM, RAN continued to chair the MJCC. He effectively brought together and assisted in reconciling the different proposals from command, my office and elsewhere to improve the operation of the military discipline system.

30. The MJCC operates as a dynamic forum in which policy ideas are discussed and tested against the full range of service experience and professional expertise available within it. Discussions within the MJCC in 2018 about the publication of superior service tribunal proceedings (examined later in this report) are an excellent example of this process in practice. The MJCC's work on this issue resulted in final approval of a publication regime: (1) that is consistent with the intent of the DFDA; and (2) in which command's role in advancing submissions about publication decisions is well defined and understood.

31. My office, command and regular users of the military discipline system all benefit from this readily accessible forum to bring attention to systemic inefficiencies and to the need for changes to the conduct of superior and summary service tribunals.

32. Rear Admiral Wolski retired as chair of the MJCC at the end of 2018. I wish to thank him for his strong role from 2016 in reinvigorating the MJCC. Major General Natasha Fox, CSC has now succeeded him both in the role of HPC and as chair of the MJCC.

STATISTICS

33. Statistics for trials conducted under the DFDA during the reporting period are set out in Annexes to this Report.

APPEALS

34. During the reporting period, there were three appeals determined by the Defence Force Discipline Appeal Tribunal (DFDAT). These were:

- a. *Herbert v Chief of Air Force* [2018] ADFDAT 1

- b. *Betts v Chief of Army* [2018] ADFDAT 2
- c. *Randall v Chief of Army* [2018] ADFDAT 3

35. In *Herbert* and *Betts*, the appeals were dismissed.

36. In *Randall*, the appeal was allowed, the convictions were quashed and the sentences imposed were set aside. A new trial was not ordered.

LEGISLATION

Defence Force Discipline Act 1982

37. The 2017 JAG Report pointed out that the DFDA had not kept pace with reforms since the 1980s in civilian models of criminal procedure,¹⁰ with the DFDA not having had the benefit of procedural reform for over a decade. The 2017 Report recommended a series of changes to begin to update the DFDA as measured against those models.

38. Substantial progress has been made in bringing those recommendations to fruition, as will be described in this Report. The legislative response has been timely and well adapted to bringing about the changes that both my JAG Reports and previous JAG reports of Major General Tracey have long recommended. This represents a shift in focus to rebuilding the capacity and efficiency of the court martial system and has moved past the years of no change commencing in September 2009 that followed *Lane v Morrison*¹¹ during the operation of the *Military Justice (Interim Measures)* suite of legislation. None of this *Interim Measures* legislation modernised procedural aspects of the DFDA.

39. That changed significantly for the better during the reporting period and I was pleased to see the introduction Defence Legislation Amendment Bill 2018, which was subsequently passed by Parliament and on 1 March 2019 the *Defence Legislation Amendment Act 2019* (the DLA Act) received Royal Assent. While outside the reporting period, the original Bill was introduced in 2018; hence I have included it in this report.

¹⁰ 2017 JAG Report at paragraphs 76–9.

¹¹ [2009] HCA 29; (2009) 239 CLR 230.

40. The DLA Act contained a number of amendments to the DFDA and the *Defence Reserve Service (Protection) Act 2001*. For the purposes of this report, only the amendments to the DFDA will be summarised.

41. The DLA Act gives effect to a number of recommendations of previous JAG Reports and to policy initiatives developed by Defence Legal to enhance the independence of JAs and DFMs. The DLA Act introduces into the DFDA the determination of remuneration for DFMs by the Remuneration Tribunal, an important feature of judicial independence.¹² It provides for the terms and conditions of appointment of the CJA to be determined not by command but by the JAG.¹³ It extends the term of service of members of the JAs' panel to terms of five years, increasing the tenure of judicial officers and reducing the frequency of reappointment.¹⁴

42. The DLA Act also introduces a new s. 196AA into the DFDA. This new section provides for the termination of appointments to the JAs' panel by CDF. The purpose of this amendment is to confine the power to terminate a JA's appointment. The DFDA as it previously stood would have arguably allowed terminations from the JAs' panel by command for reasons unrelated to proven judicial misbehaviour or incapacity. This amendment confines the termination power to proven misbehaviour or incapacity. But this otherwise beneficial legislation has a technical omission that should be corrected in the near term.

43. The independence of JAs is largely secured, as it is for civilian judges, by the terms of their appointment, their remuneration and the limited power to remove them from office. The scheme under the DFDA is to divide the power to appoint JAs between CDF and the JAG. CDF is only empowered to appoint JAs to the panel, upon the recommendation of the JAG.¹⁵ The division of power between the JAG and CDF on appointment helps secure the independence of the appointee from command. The same security should be provided upon termination from the panel. Unfortunately, the new DFDA, s. 196AA does not provide for this same division of power of dismissal. In legislation that is otherwise a clear advance on the past, it is a matter which should be adjusted in the near term.

¹² DFDA, s. 127A.

¹³ DFDA, s. 188AA.

¹⁴ DFDA, s. 196(2)(a).

¹⁵ DFDA, s. 196(2).

44. The DLA Act also makes provision for the appointment of a Deputy CJA. My office has requested over some years that a second permanent JA be available to assist CJA. It is important to have someone who can act in the role of CJA immediately should that be required, and who can assist CJA in dealing with his workload of trials. The present system of reserve JAs is a vital supplement to the CJA's role in keeping the discipline system operational and providing flexible scalability should the numbers of superior service tribunal trials increase. But another permanent appointment is needed.

45. Technical and other minor amendments have been made to the DFDA. While I welcome all those amendments, I note that some of them were long overdue and I emphasise the importance of keeping the disciplinary legislation up-to-date.

46. As welcome as these changes are, the renewed focus on DFDA reform needs to be continued and further improvements should be considered. These improvements should occur on a staged basis, so the approach that this Report takes is to focus upon the reasons for the next group of suggested improvements. These have been mentioned in previous reports but two of them are now expanded in more detail. They are, (1) sentencing procedural reform; and (2) modernising service police powers.

EFFICIENCY AND EFFECTIVENESS

DFDA Sentencing Reforms: provision of reasons when convicted by a court martial panel

47. In courts martial held under the DFDA, the JA is not directly involved in the sentencing decision-making process.¹⁶ The JA instructs the court martial panel and they then retire to consider among themselves an appropriate punishment under DFDA, Part IV. This is in contrast to all civilian criminal trials involving a jury. In a civilian context the jury decides whether the accused is guilty or not guilty. If the accused is found guilty, the civilian jury is discharged and the judge alone proceeds to consider an appropriate sentence for the convicted person.

48. As a result of this structure, in practice courts martial held under the DFDA do not give reasons for the punishments they impose. The present DFDA sentencing procedure risks undetected sentencing error,

¹⁶ DFDA, ss. 132 and 133.

misunderstanding by the convicted member being punished, and the loss of the power of general deterrence through the punishment process.

49. The 2017 JAG report discussed¹⁷ that the DFDA be amended so that the JA could sit with the members of the court martial when they consider punishment under DFDA, Part IV and help formulate the reasons of the court martial for the sentence. This was based on the model used in the United Kingdom. A similar model also exists in New Zealand.

50. The principal rationale for this recommendation was to move to a system where there is a requirement to provide reasons for sentence. The principal reasons indicating this change may be shortly stated as follows.

51. Though specialised for a military context, the ADF's superior tribunal discipline system should be seen as no less fair, efficient and accountable than its civilian equivalents throughout Australia. Reasons for sentence are an accepted fundamental benchmark of all civilian criminal justice systems in Australia. Nowhere else in Australia other than in the ADF can one be sentenced to a lengthy term of imprisonment without reasons. Reasons for sentencing decisions are delivered in all Australian criminal jurisdictions through legally trained judges, who are familiar with the principles of sentencing, and who are used to producing reasons for sentence.

52. The publication of reasons for decision enhances the general deterrent effect of the punishment imposed, as the basis of the decision can be understood. The provision of reasons on sentence is fundamental to the fairness and efficiency of sentence review. The giving of public reasons for punishments is an important aspect of defending sentencing decisions in the public domain. The requirement to give reasons will place punishments imposed under the DFDA in the same position as sentences imposed by civilian judicial officers, enabling well-informed commentators to scrutinise and understand the decisions.

53. The giving of reasons for decision is one of the fundamental ways that any judicial system is accountable to the public and builds public confidence. Community expectation is that sound decisions should be justified by a logical process of reasoning, applying relevant criteria and can withstand the scrutiny of being published and examined. Producing reasons to answer this expectation enhances confidence in the processes of justice. Moreover, the discipline of having to write and publish reasons itself

¹⁷ 2017 JAG Report at paragraph 84.

reduces the likelihood of error and shows transparently that the process of sentencing has been conducted in accordance with law rather than on an arbitrary basis.

54. The ADF has not had to deal in recent years with Defence members who must be punished with long terms of imprisonment as a result of a court martial conviction. But the DFDA must be ready for situations where a punishment of a lengthy term of imprisonment must be imposed. It is important to have the improvements proposed here in place before that situation arises. In the last 30 years, the requirement to give reasons for decisions has become more rigorous in every aspect of judicial and administrative decision making. The DFDA should now be adjusted to provide this capability in order to meet the standards of current community expectations of justice.

55. In my 2017 Report, I referred to the model used in the United Kingdom in which both the JA and general service officers cooperate to determine sentences and reasons for sentences as I had observed the United Kingdom's process operating in practice, and it appeared to be widely accepted.¹⁸

56. A different solution to the same issue (the provision of reasons for sentence) has been adopted in Canada and the United States (with a limited exception). In those countries, the court martial panel plays no role in sentencing. Rather, it is the military judges who determine sentences and provides reasons (like a criminal trial in Australian civilian courts). The one exception being that in the United States a convicted person can elect to be sentenced by the court martial panel, in which case the procedure is essentially the same as the current Australian DFDA procedure.

57. Which of these models, or another version again, best suits Australia would be a matter for informed debate. What is important, however, is moving promptly to a system where reasons for sentence are given.

Empowering Service Police to Conduct Modern Investigations

58. Service Police operating under the DFDA lack many modern law enforcement powers that are routinely found in Commonwealth, State and Territory criminal investigation legislation. Views will reasonably differ about the scope of additional investigative powers that the DFDA should confer

¹⁸ See the 2017 JAG Report at paragraphs 131–2.

on service police and the safeguards that should accompany the exercise of these powers. The precise balance between any increase in service police powers and their attendant safeguards is a matter for Parliament to consider.

59. The present powers of service police are outdated and not well adapted to the modern ADF. The scope of these powers needs review in the near term with a view to being brought up to date with appropriate safeguards, so the powers reflect the realities of modern police investigation.

60. One example of this will suffice. ADF service police investigators operating under DFDA, Part VI, Division 6, lack the express powers held by civilian police in equivalent search situations to gain quick, direct and efficient technical access to digitally stored information on electronic devices in the possession of suspects.¹⁹ Digital information is a frequent source of highly probative evidence in contemporary civilian prosecutions. The fact that civilian investigators have these express powers, and ADF investigators do not, frustrates investigators and commanders and tends to undermine the authority of the ADF service police, and in turn undermines the effectiveness of the ADF discipline system.

61. That service police lack these powers is not the result of considered policy-making. Civilian police powers have been substantially expanded in the last 30 years, but little or no equivalent change has taken place to the DFDA. The present disparity in powers between service police and civilian police is largely an accident of different rates of law reform: the reform to the DFDA being the far slower of the two.

62. Defence members, like other Australian citizens, encounter the many pressures that lead to criminal activity that may be committed or facilitated by the use of digital information or through the Internet. Managerial improvements have been made within the ADF in 2017 and 2018 to the capacity of service police to respond to these kinds of challenges. But responses so far have been limited to programs such as the ADF Military Police Reform Program (MPRP) that drive organisational changes for service police. But the MPRP does not address the issue of equipping of service police with modern law enforcement powers.

¹⁹ See for example the *Law Enforcement (Powers and Procedures) Act 2002* (NSW), ss. 75A and 75B.

63. Defence Legal is examining the scope of the investigative powers of service police. Broad reform is needed to ensure the powers of service police are contemporary, comprehensive, fit for the purpose of modern investigations and balanced by suitable limits and safeguards.

64. Not all the existing powers of civilian police will be suitable for service police. But a basic suite of the additional powers that have long been accepted as available to their civilian counterparts is a starting point for the discussion of what additional powers with safeguards are now appropriate for service police.

65. Conferring additional investigation powers on service police will in turn demand even higher performance standards from them. This is an important consequential resourcing issue that will need to be addressed in due course, so that service police investigations will provide fairly-obtained and admissible evidence for service tribunals.

Other Procedural Reforms for Superior Service Tribunals

66. There has also been significant progress in remedying the position of mentally impaired ADF members. Legislation is under construction for the provision of appropriately modern, flexible and efficient mechanisms to deal with mentally impaired ADF members who have to appear before superior service tribunals. As a result of the 2017 JAG Report, and discussions within the MJCC, this issue has already be the subject of detailed instructions to the Parliamentary draftsman. The technicalities of producing well-crafted legislation on this subject have meant that the matter is still under discussion. But legislation on this issue is soon expected to be available for consideration by the Parliament.

67. The 2017 Report comprehensively sets out a list of other reforms recommended by the previous JAG, Major General Tracey and myself that have yet to be acted on and continue to require the attention of the Parliament.²⁰ Those reforms are still needed but have not been repeated in this report. Their detail can be found by reference to the 2017 JAG report.²¹

²⁰ 2017 JAG Report at paragraph 86.

²¹ 2017 JAG Report at Annex P.

Timeliness of superior service tribunal proceedings

68. In my 2017 Report, I discussed progress on improving the timeliness of superior service tribunal proceedings.²² The RMJ continued to monitor timeliness in 2018. In summary, in 2018:

- a. 57% of matters were completed within 12 months; and
- b. it took 393 days to complete 70% of matters.

69. The MJCC is taking an active interest in the timeliness of superior service tribunal proceedings and I expect to soon see a move from monitoring timeliness to constructively discussing what reforms are needed to drive down the time taken to complete matters without affecting the fairness or integrity of individual proceedings.

Publication of superior service tribunal proceedings

70. A final decision about the publication of the listing and outcomes of ADF superior service tribunal proceedings was made on 15 March 2019, just outside the reporting period. In the 2017 JAG Report²³ I highlighted the need to expand the publication of the listing and the outcomes of superior service tribunal trials. As explained in the 2017 JAG Report, the relevant starting point for analysis on this topic, is DFDA, s. 140(1), which mandates, subject to well-defined limitations, that “the hearing of proceedings before a Court martial and a Defence Force Magistrate should be in public”.

71. During the reporting period, detailed discussion on this publication issue took place through the MJCC. The issue was then closely addressed by the then CDF, Air Chief Marshal Binskin, and later by the present CDF, General Campbell. And on 15 March 2019, a final model that is substantially similar to that proposed in the 2017 JAG Report was approved by CDF and adopted in the form of a Practice Note. Such variations as have taken place to the proposal outlined in the 2017 JAG Report are responsive to the need for command to manage personnel and security issues that are special to the ADF, and for which DFDA, s. 140(2) allows limited exceptions from full publication.

²² 2017 JAG Report at paragraphs 68–72.

²³ 2017 JAG Report at paragraphs 88–96.

72. Under the new Practice Note No. 1, the published trial list will include the service and rank of the accused, the location and date of the proceeding, the type of tribunal, and a point of contact. For Defence Force magistrate trials, the number of charges and the relevant legislative provisions and statements of offences are provided. For courts martial (which have a similarity to jury trials), only the number of charges are provided, as it is preferable for the court martial panel to not be aware of the charges prior to the arraignment of the accused person.

73. The published outcomes include similar information to the list (updated as necessary), the findings and, if applicable, the punishments and orders. Where the accused is convicted of one or more charges, the outcomes include the name of the convicted person. Other persons, such as complainants or witnesses, are not to be identified. The outcomes are updated, as applicable, with the results of any reviews, petitions or appeals.

74. The new publication policy brings ADF practice into closer alignment with that of civilian courts and the armed forces of the United Kingdom, Canada and the United States. While the wider effects of the new Practice Note No. 1 in opening up access to ADF superior tribunal proceedings will be assessed over time, it is recognised that many of those effects will be difficult to measure. But in the longer term, wider publication of superior discipline tribunal proceedings should result in improvements in superior service tribunal proceedings at several levels.

75. I expect that publication of superior service tribunal listings and outcomes will have the following effects: increasing public confidence in the administration of ADF military discipline; increasing the general deterrent effect of service tribunal decisions; making ADF trial outcomes more readily accessible to the wider Australian community so as to meet community expectations of the publication of all criminal outcomes in respect of adult Australians; adding to the gravity of decisions by Defence members to elect from summary to superior proceedings; encouraging better standards of advocacy in superior service tribunals; increasing public scrutiny of proceedings, thereby tending to improve the timing, efficiency and cost of these proceedings; and finally, removing an anomalous inconsistency between the non-publication of ADF trial outcomes and the open publication of outcomes of DFDAT proceedings.²⁴

²⁴ 2017 JAG Report at paragraphs 97–102.

Summary Discipline Review and Summary Authority Rules

76. The 2017 JAG Report discussed the work of the Summary Discipline System (SDS) Review. The Chiefs of Services Committee (COSC) endorsed the recommendations of the SDS Review's Report in November 2017.²⁵

77. During the current reporting period Rear Admiral Nigel Perry, CSC, RAN was appointed to head the Summary Discipline Implementation Team (SDIT) that was tasked with giving effect to the recommendations of the SDS Review Report.

78. Rear Admiral Perry and his team commenced their implementation work during the reporting period. Staff in my office have engaged closely with them in this task. Regular discussions have been held between the SDIT, CJA, RMJ and myself and are ongoing at the time of this Report.

79. The 2017 JAG Report highlighted areas of my support for Track 1 of the 3 Tracks proposed in the SDS Review Report but pointed out that I had concerns with aspects of Tracks 2 and 3.²⁶ One of these concerns relates to the degree of expansion of the Discipline Office Scheme being proposed and the terms upon which any expansion will occur. As the work of the SDIT continued during the reporting period, constructive discussions about these differences of perspective have continued.

80. The SDIT has also been consulted concerning the Summary Authority Rules (SAR). The current SAR were promulgated in 2009 and will sunset in October 2019. A review of the existing SAR commenced during the reporting period to plan to simplify the rules and promote the timeliness, efficiency, transparency, cost effectiveness and accessibility of the Summary Discipline System. The process of consultation about the SAR will continue throughout 2019.

The conduct and culture of ADF legal officers

81. In November 2018, the COSC decided to implement a program to remind legal officers of command leadership requirements, and to reinforce proper standards of professional behaviour. This COSC decision reinforced

²⁵ 2017 JAG Report at paragraph 56.

²⁶ 2017 JAG Report at paragraph 61.

from command's perspective an issue I have raised on a number of occasions since assuming office as JAG in May 2014: namely the need for legal officers to exhibit the highest standards of professional conduct before superior service tribunals.

82. This issue was the subject of a JAG Minute I issued on 4 February 2015 to all legal officers practising before service tribunals. In that Minute I noted that nothing I said should inhibit legal officers from vigorously protecting their clients' legal rights before service tribunals. But I emphasised in the Minute that the following standards of conduct were expected of legal officers for the following reasons:

Trials in the ADF Military Justice system should maintain the very highest standards of professional civility. Courtroom courtesy is a vital part of this civility. Courtesy is due to the Court and its staff, to witnesses and to other legal officers.

Courtesy is important in courtrooms for several reasons. It marks our respect for the Court's application of the rule of reason according to law and our respect for the autonomy and the rights of all involved in that process. Showing professional courtesy also affirms that the Court is a place where each side is able to be heard, and seen to be heard, both fully and fairly. In a true sense when we appear in the Courtroom, whether as judges or as advocates, we are all acting as ministers of justice.

It is equally important that as commissioned officers, legal officers set the appropriate example for junior members present in court by displaying the courtesy and respect due to rank that the custom of each of the services requires. Anything else will be perceived as unprofessional by the broader profession of arms and has the real risk of undermining the discipline, the maintenance of which is the very purpose of the DFDA.

83. In response to COSC's November 2018 decision, DGADFLS mandated that all legal officers should complete a Legal Officers Awareness Course. DGADFLS conducted this course both online and through a series of presentations to legal officers around Australia in the second half of 2018. I independently joined in these presentations. My purpose in doing so was not to give command's perspective on the COSC decision: that was the role of DGADFLS. Indeed, I do not share every one of command's criticisms of legal officers that led to the COSC decision. Rather my purpose was to emphasise that the high standards that command expects separately promote the proper administration of justice before service tribunals.

84. DGADFLS and I spoke to our complementary perspectives at tri-service legal officers training nights in Perth, Adelaide, Canberra, Sydney and Melbourne between September and November 2018. CJA joined DGADFLS to give similar presentations in Darwin, Townsville and Brisbane over the same period.

85. At these presentations, DGADFLS outlined practical approaches to proper standards of behaviour by reference to One Defence Leadership behaviours including accountabilities, advising command, accepting diverse perspectives in the management of legal teams, the responsible use of public resources and the need for respect in managing conflict. CJA and I discussed the dynamics of trial conduct and gave practical examples of how to improve courtroom performance and to manage intense courtroom conflicts. We also discussed the pressures on lawyers in the courtroom, in trial preparation and in advising.

86. In conjunction with DGADFLS, CJA and I will continue to encourage the highest standards of professional conduct among legal officers in their work in service tribunals.

JAG REPORTS AND REGULAR REVIEWS OF THE DFDA

87. As I identified in my 2017 Report²⁷ and have reiterated in this Report, the DFDA encounters a continuing risk of procedural obsolescence. The DFDA can be better protected against this risk. DFDA, s. 196A embeds an annual review requirement through JAG reports, such as this Report, so the Parliament can be better informed as to how the DFDA should be updated to reflect civilian criminal procedure.

88. As I said last year, in my view the JAG system of embedded review by annual reports would work far more effectively if there were some kind of mandated periodic Parliamentary response to the JAG's reports. This would enable the JAG to better fulfil this important function. For example, this could be by way of a commitment to procedurally update the DFDA by legislation at least once every five years. The United Kingdom's Defence legislation mandates a five yearly cycle of legislative reform to its equivalent military justice legislation. Such regular reviews could be built into the DFDA, so it is regularly refreshed to reflect current standards of civilian criminal justice.

²⁷ 2017 JAG Report at paragraphs 86–7.

DISCIPLINE LAW TRAINING

Discipline law training for ADF personnel

89. The following paragraphs outline the discipline law training provided in the ADF in the reporting period.

Single-Service

90. Primary delivery points for military justice in the Services are on initial appointment; subsequent promotion courses; and trade-specific training (for example, for Service Police and Coxswains). The broad breakdown of delivery is:

- a. **Navy:** Military justice training occurs on recruit/initial officer courses and on promotion courses for both non-commissioned officers (NCOs) and officers.
- b. **Army:** Military justice training occurs on recruit/initial officer courses and on promotion courses for both NCOs and officers.
- c. **Air Force:** Military justice training occurs on recruit/initial officer courses, Professional Military Education and Training courses for both NCOs and officers, and as stand-alone training (for example, prosecuting/defending officer courses).

Australian Defence Force Academy

91. Military justice familiarisation training occurs at the commencement of a Trainee Officer's attendance at Australian Defence Force Academy, and then more detailed training occurs in Years 1, 2 and 3.

Pre-command training

92. Prior to assuming command, each of the Services requires officers to complete single-Service pre-command courses. Each pre-command course has a military justice component delivered by staff from the Military Law Centre (MLC). The discipline law course content covers: command responsibilities with respect to the DFDA and associated legislation, the procedures for the proper conduct of summary proceedings, DFDA investigations, jurisdiction of service tribunals, powers of punishment of Summary Authorities and the Discipline Officer scheme.

93. In 2018, the military justice training on pre-command courses was as follows:

- a. **Navy:** Five courses instructed, with an approximate total of 76 students comprising officers appointed to Commanding Officer or Executive Officer positions (Major Fleet Units, Minor War Vessels and shore appointments).
- b. **Army:** One course instructed, with an approximate total of 60 students comprising officers appointed to command units or formations.
- c. **Air Force:** Three courses instructed, with an approximate total of 68 students comprising officers appointed to command, Executive Officer, Detachment Commander, Chief instructor and Executive Warrant Officer positions.

Online DFDA training

94. The Defence People Group includes the Defence Learning Branch (DLB). Campus, the online learning tool, is part of DLB. Online DFDA training through Campus continued to be utilised in 2018 since its inception in 2011. There are eight online courses covering the range of DFDA roles. The training is scenario based and includes the use of high quality video to demonstrate the conduct of Discipline Officer and Summary Authority trials.

95. In 2018, the following number of personnel completed online training:

Course / Proficiency	Course title	Proficiency title	Total	Navy	Army	RAAF	Civ.
209425 / P109906	Summary proceedings famil/refresh	Clerk (summary proceedings) familiarisation and refresher	205	8	183	13	1
209426 / P109907	Defending officer famil/refresh	Defending officer familiarisation and refresher	1390	296	962	129	3
209427 / P109908	Discipline officer famil/refresh	Discipline officer familiarisation and refresher	867	52	753	60	2
209428 /	Prosecuting	Prosecuting	1129	56	946	126	1

P109909	officer famil/refresh	officer familiarisation and refresher					
209429 / P109910	Recorder (summary proceed) famil	Recorder (summary proceedings) familiarisation and refresher	757	57	685	14	1
209430 / P109911	Relevant officer famil/refresh	Relevant officer familiarisation and refresher	836	38	637	160	1
209432 / P109912	Summary authority famil/refresh	Summary authority familiarisation and refresher	361	4	342	13	2
209433 / P109913	Unit investigate offr famil/refresh	Unit level investigating officer familiarisation and refresher	1014	11	923	80	0

Training for ADF legal officers

96. ADF legal officers receive specialist professional training in discipline law through attendance at three primary stages of their career.

97. **Legal Training Module 1 (LTM1).** This is the first course of legal training undertaken by ADF legal officers, and provides an introduction to discipline law aimed at the role of junior ADF legal officers. During 2018, 24 ADF legal officers attended the LTM1 course, as well as three Australian Public Service observers.

98. **Legal Training Module 2 (LTM2).** This is a graduate certificate level course undertaken by ADF legal officers, which is normally conducted within four years post LTM1. The course consists of four graduate level subjects (Military Discipline Law, Military Administrative Law, Military Operations Law, and Military Legal Practice). During the reporting period, 21 students completed the Military Discipline Law unit. Twenty eight students completed the Military Legal Practice unit, which includes the practice of advocacy before Service tribunals.

99. **Legal Training Module 3 (LTM3).** This is a Masters level course undertaken by ADF legal officers, which is normally conducted within four years post LTM2. LTM3 consists of three core subjects (Advanced Military

Discipline Law, Advanced Military Administrative Law and Advanced Military Operations Law) conducted biennially, and permanent legal officers without an existing master of laws degree must complete a further four electives from an approved list. During 2018, the Advanced Military Discipline Law was not run. It will be run in 2019.

Ongoing development of discipline law training

100. The MLC continually reviews discipline law training and assessment strategies and the *Governance of Military Justice Training Manual* to ensure discipline law training is relevant and up to date.

TRIALS UNDER THE DFDA

101. The statistics for summary trials and the Discipline Officer scheme conducted by the three Services during 2018 are set out in Annexes A to I. As was indicated in the Report for 2005,²⁸ responsibility for the Discipline Tracking and Case Flow Management System was transferred to the IGADF. Accordingly, IGADF has provided the statistics for the summary trials for this Report.

102. Statistics for proceedings before courts martial and DFMs appear at Annexes J to O.

CONCLUSION

103. I was pleased to see the significant steps taken in 2018 to improve the efficiency and effectiveness of the military discipline system by the implementation of some long overdue legislative reforms. But as this report points out, further legislative reform to the DFDA is urgently required for it to reflect comparable civilian standards in the administration of justice.

104. It is now critical to update the mental health provisions of the DFDA to current civilian standards to ensure fairness to all persons charged with service offences. Equally long overdue is reform of the investigation powers of service police. And persons tried and convicted by court martial should be given reasons for the imposition of punishments upon them.

105. In 2019, among my principal tasks I will continue to work with Defence Legal in updating the SAR and in the implementation of a robust

²⁸ 2005 JAG Report at paragraphs 95–6.

scheme for publication of upcoming superior tribunal proceedings and their outcomes.

TABLE OF ABBREVIATIONS USED IN REPORT

Abbreviation	Description
ACT	Australian Capital Territory
ADF	Australian Defence Force
ADFA	Australian Defence Force Academy
CDF	Chief of the Defence Force
CJA	Chief Judge Advocate
COSC	Chiefs of Service Committee
DDCS	Director of Defence Counsel Services
DFDA	<i>Defence Force Discipline Act 1982</i>
DFDAT	Defence Force Discipline Appeal Tribunal
DFM	Defence Force Magistrate
DGADFLS	Director General Australian Defence Force Legal Services
DJAG	Deputy Judge Advocate General
DL	Defence Legal
DLB	Defence Learning Branch
DMP	Director of Military Prosecutions
HDL	Head of Defence Legal
HPC	Head People Capability
IGADF	Inspector General of the ADF
JA	Judge Advocate
JAG	Judge Advocate General of the ADF
LTM	Legal Training Module
MJCC	Military Justice Coordination Committee
MJSG	Military Justice Steering Group
MLC	Military Law Centre
MPRP	Military Police Reform Program
NCO	Non commissioned officer
OJAG	Officer of the Judge Advocate General
RANR	Royal Australian Navy Reserve
RMJ	Registrar of Military Justice
SAR	Summary Authority Rules
SDIT	Summary Discipline Implementation Team
SDS	Summary Discipline System

COMPLIANCE INDEX OF REQUIRED INFORMATION FOR STATUTORY AUTHORITIES

(Senate Hansard, 11 November 1982, pp 2261 – 2262)

Enabling Legislation	<i>Defence Force Discipline Act 1982</i>
Responsible Minister	Minister for Defence
Powers, functions and objectives	Paragraphs 3 – 8
Membership and staff	Paragraphs 3, 10 – 32
Information Officer	Jennifer Mackenzie Paralegal to Chief Judge Advocate Department of Defence F-TS-OJAG (PO Box 7906) CANBERRA BC ACT 2610 Telephone: 02 6127 4344
Financial Statement	Paragraph 9
Activities and Reports	Paragraphs 87 – 102
Operational Problems	Paragraphs 47 – 86
Subsidiaries	Not applicable

NATURE AND JURISDICTION OF SUMMARY AUTHORITIES

1. There are three levels of summary authorities created under the DFDA:
 - a. superior summary authorities;
 - b. commanding officers; and
 - c. subordinate summary authorities.

Superior Summary Authorities

2. Superior summary authorities (SUPSAs) are appointed by instrument by certain senior officers pursuant to the DFDA. SUPSAs are usually themselves senior officers within a command.

Commanding Officers

3. The power of a commanding officer to hear a matter under the Act is derived from his/her position in command and there is no separate discipline appointment required, although an officer may be appointed by instrument as a commanding officer for disciplinary purposes.

Subordinate Summary Authorities

4. Subordinate summary authorities (SUBSAs) are appointed by instrument by commanding officers pursuant to the DFDA to assist them in the enforcement of discipline within their command. Their jurisdiction and powers of punishment are substantially less than those of a commanding officer.

NAVY
JANUARY-DECEMBER 2018

STATISTICS OF TRIALS AND OUTCOMES FOR MEMBERS OF THE NAVY BEFORE SUMMARY AUTHORITIES

	SUPERIOR SUMMARY AUTHORITY				COMMANDING OFFICER				SUBORDINATE SUMMARY AUTHORITY			
	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED
		GUILTY	N.G.			GUILTY	N.G.			GUILTY	N.G.	
January					2	2	1	1	4	4	1	
February					11	23	2	1	9	11	1	
March					5	4		1	11	12	1	1
April					7	7	3		8	8		
May					9	8	6		6	8		
June	1	1			8	11			8	9		
July					5	9			7	8		
August					8	16			4	5	1	
September					7	10		1	7	9		1
October					4	3	2	1	10	15		
November					6	5	3	2	9	23	2	1
December					2	3			9	11		
TOTAL	1	1	0	0	74	101	17	7	92	123	6	3

**CONVICTIONS FOR OFFENCES COMMITTED BY RANK FOR MEMBERS OF THE NAVY
BEFORE SUMMARY AUTHORITIES**

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Sect 23		1					1			15
24	1									41
25						1				2
26						1	3			19
27	1						1			27
28										
29	3			8		6	3			29
30										
31										
32										1
33(a)										4
33(b)						1				1
33(c)										2
33(d)						1				3
33A										
34										
35							1			1
36										
36A										
36B										
37						1				4
38										
40										
40A							1			1
40B										
40C										
40D										1
41										
42										
43						1	1			4
44										
45										
46										
47C										2
47P										
47Q							1			5
48										
49										
50										
51										
53										
54										
54A										
55	1	1								2
56										1
57										
58										
59										
60		1		1		2				14
61							1			1
TOTAL	6	3	0	9	0	14	13	0	0	180

PUNISHMENTS IMPOSED BY RANK ON MEMBERS OF THE NAVY BEFORE SUMMARY AUTHORITIES

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Reprimand	3	1		2		1	3			24
Conditional conviction without punishment										1
Unconditional conviction without punishment	2			1		1	1			9
Severe reprimand	3			6		6	4			14
Extra duties										6
Extra Drill										2
Stoppage of leave										18
Restriction of privileges										49
Suspended fine							1			4
Fine Less than 14 Days Pay	3	2		6		8	9			82
Fine More than 14 Days Pay										4
Forfeiture of service for purposes of promotion										
Forfeiture of seniority						1	2			
Reduction in rank						1	1			
Suspended detention										
Committed detention										4
TOTAL	11	3	0	15	0	18	21	0	0	217

ARMY
JANUARY-DECEMBER 2018

STATISTICS OF TRIALS AND OUTCOMES FOR MEMBERS OF THE ARMY BEFORE SUMMARY AUTHORITIES

	SUPERIOR SUMMARY AUTHORITY				COMMANDING OFFICER				SUBORDINATE SUMMARY AUTHORITY			
	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED
		GUILTY	N.G.			GUILTY	N.G.			GUILTY	N.G.	
January					4	5			4	3	1	1
February					12	23	2		18	23		1
March	1	1			11	17			41	44	1	2
April					11	16			29	33	1	1
May	3	2	1		18	33			60	73	1	7
June					15	19			67	81	2	1
July					12	18		1	49	59	2	
August					31	50	2		77	89	2	4
September	3	3			12	13	4		52	63	1	1
October	1	1			21	30	4		39	41	1	4
November	2	1		1	28	33	6	1	75	91	2	5
December					16	28			53	60	1	1
TOTAL	10	8	1	1	191	285	18	2	564	660	15	28

**CONVICTIONS FOR OFFENCES COMMITTED BY RANK FOR MEMBERS OF THE ARMY
BEFORE SUMMARY AUTHORITIES**

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Sect 23	2	5				1	3			22
24	8	6		1		1	3	8		79
25										4
26	1	3					7	2		18
27	3						4	1		32
28										
29	12	35	1	10		7	34	28		176
30										
31										
32										4
33(a)	2					1	1			12
33(b)							2			11
33(c)										
33(d)							2			3
33A										
34							2	2		2
35		1		1		1	5	2		4
36								1		
36A							1			4
36B	9	37		3			9	13		102
37		1						1		6
38										
40										2
40A				1						1
40B										
40C							1			2
40D						1	5			2
41										
42										
43						1		1		
44	1						1			2
45										2
46										
47C										1
47P										
47Q							1			3
48										
49										
50										
51										
53										
54										
54A										
55	2						1			12
56	1					1				1
57										
58										
59										
60	5	5		2		10	16	8		89
61										
TOTAL	46	93	1	18	0	24	98	67	0	596

PUNISHMENTS IMPOSED BY RANK ON MEMBERS OF THE ARMY BEFORE SUMMARY AUTHORITIES

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Reprimand	12		1	7		10	29	13		39
Conditional conviction without punishment							1	1		2
Unconditional conviction without punishment	5	1				1		2		5
Severe reprimand	4			4		7	18	8		19
Extra duties								1		33
Extra drill										17
Stoppage of leave		3								35
Restriction of privileges	3	66					1			276
Suspended fine	1					1	3	3		16
Fine Less than 14 Days Pay	33	24		13		11	57	45		303
Fine More than 14 Days Pay	1						1			4
Forfeiture of service for purposes of promotion										
Forfeiture of seniority						2	3			
Reduction in rank							3	12		11
Suspended detention										
Committed detention										33
TOTAL	59	94	1	24	0	32	116	85	0	793

AIR FORCE
JANUARY-DECEMBER 2018

STATISTICS OF TRIALS AND OUTCOMES FOR MEMBERS OF THE AIR FORCE BEFORE SUMMARY AUTHORITIES

	SUPERIOR SUMMARY AUTHORITY				COMMANDING OFFICER				SUBORDINATE SUMMARY AUTHORITY			
	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED
		GUILTY	N.G.			GUILTY	N.G.			GUILTY	N.G.	
January					1	3			1	4		
February	1	4			2	4			1	1		
March					2	6			2	2		
April					1	2			1	1		
May					4	7			2	1	1	
June					1	1			5	9		
July					1	1			5	7		
August					5	10	1		7	8	2	
September									6	10	2	1
October					3	4	2		5	5		
November					1	1			6	6	2	1
December									2	3		
TOTAL	1	4	0	0	21	39	3	0	43	57	7	2

**CONVICTIONS FOR OFFENCES COMMITTED BY RANK FOR MEMBERS OF THE AIR FORCE
BEFORE SUMMARY AUTHORITIES**

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Sect 23										5
24	1					1	3			5
25										
26	1						1			
27						2				7
28										
29	4	1				5	5			28
30										
31										
32										1
33(a)						1				1
33(b)										
33(c)										1
33(d)						1				1
33A	1									
34										
35										1
36										
36A										
36B		1				1	2			
37										
38										
40	1									
40A										
40B										
40C										
40D										
41										
42										
43										1
44										
45										
46										1
47C										2
47P										
47Q										
48										
49										
50										
51										
53										
54										
54A										
55										1
56						1				
57										
58										
59										
60			1			1	2			8
61										
TOTAL	8	2	1	0	0	13	13	0	0	63

PUNISHMENTS IMPOSED BY RANK ON MEMBERS OF THE AIR FORCE BEFORE SUMMARY AUTHORITIES

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Reprimand	2					2	3			7
Conditional conviction without punishment										1
Unconditional conviction without punishment							2			
Severe reprimand						3	1			7
Extra duties										4
Extra drill										2
Stoppage of leave										5
Restriction of privileges		2								21
Suspended fine						4	2			3
Fine Less than 14 Days Pay	6		1			8	7			31
Fine More than 14 Days Pay										2
Forfeiture of service for purposes of promotion										
Forfeiture of seniority										
Reduction in rank	1									
Suspended detention										
Committed detention										4
TOTAL	9	2	1	0	0	17	15	0	0	87

COMBINED STATISTICS OF TRIALS AND OUTCOMES FOR MEMBERS BEFORE SUMMARY AUTHORITIES

	SUPERIOR SUMMARY AUTHORITY				COMMANDING OFFICER				SUBORDINATE SUMMARY AUTHORITY			
	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED
		GUILTY	N.G.			GUILTY	N.G.			GUILTY	N.G.	
January	0	0	0	0	7	10	1	1	9	11	2	1
February	1	4	0	0	25	50	4	1	28	35	1	1
March	1	1	0	0	18	27	0	1	54	58	2	3
April	0	0	0	0	19	25	3	0	38	42	1	1
May	3	2	1	0	31	48	6	0	68	82	2	7
June	1	1	0	0	24	31	0	0	80	99	2	1
July	0	0	0	0	18	28	0	1	61	74	2	0
August	0	0	0	0	44	76	3	0	88	102	5	4
September	3	3	0	0	19	23	4	1	65	82	3	3
October	1	1	0	0	28	37	8	1	54	61	1	4
November	2	1	0	1	35	39	9	3	90	120	6	7
December	0	0	0	0	18	31	0	0	64	74	1	1
TOTAL	12	13	1	0	286	425	38	9	699	840	28	33

NATURE AND JURISDICTION OF DISCIPLINE OFFICERS

1. Discipline officers are able to deal with minor disciplinary infringements by defence members below the rank of lieutenant in the Navy, captain in the Army and flight lieutenant in the Air Force.
2. A commanding officer may appoint an officer or warrant officer to be a discipline officer by instrument under the DFDA. There is no trial before a discipline officer and the member must elect to be dealt with by a discipline officer. The procedure is used where the commission of the infringement is not in dispute and the role of the discipline officer is only to award a punishment.
3. Discipline officers have jurisdiction to deal with a limited number of offences and to award limited punishments under the DFDA.

**NAVY
JANUARY-DECEMBER 2018**

DISCIPLINE OFFICER STATISTICS

Infringement	Number
Section 23	273
24	175
27	153
29	978
32(1)	6
35	17
60	92
TOTAL (1)	1694

Action Taken	Number
Punishment Imposed - Fine	355
ROP	233
SOL	300
Extra Duties	328
Extra Drill	6
Reprimand	394
No Punishment Imposed	75
Referred to an Authorised Member	6
TOTAL (1)	1697

ARMY
JANUARY-DECEMBER 2018
DISCIPLINE OFFICER STATISTICS

Infringement	Number
Section 23	307
24	235
27	478
29	1103
32(1)	28
35	139
60	278
TOTAL (1)	2568

Action Taken	Number
Punishment Imposed - Fine	328
ROP	778
SOL	393
Extra Duties	401
Extra Drill	193
Reprimand	365
No Punishment Imposed	101
Referred to an Authorised Member	9
TOTAL (1)	2568

**AIR FORCE
JANUARY-DECEMBER 2018**

DISCIPLINE OFFICER STATISTICS

Infringement	Number
Section 23	35
24	11
27	83
29	200
32(1)	1
35	10
60	45
TOTAL (1)	385

Action Taken	Number
Punishment Imposed - Fine	89
ROP	46
SOL	105
Extra Duties	35
Extra Drill	12
Reprimand	89
No Punishment Imposed	23
Referred to an Authorised Member	2
TOTAL (1)	401

NATURE AND JURISDICTION OF COURTS MARTIAL AND DEFENCE FORCE MAGISTRATES

Courts Martial

1. A court martial is a service tribunal which is created for the purpose of trying a defence member or a defence civilian on a specific charge or charges, usually of a serious nature. In certain circumstances a court martial may also be convened solely for the purpose of determining punishment in respect of a person who has been convicted by another service tribunal.

Types of Court Martial

2. A court martial may be either a general court martial or a restricted court martial. A general court martial comprises a president, who is not below the rank of colonel or equivalent and not less than four other members. A restricted court martial comprises a president, who is not below the rank of lieutenant colonel or equivalent, and not less than two other members. A judge advocate, who is a legal officer who has been appointed to the judge advocate's panel and has been enrolled as a legal practitioner for not less than five years, is appointed to assist the court martial with legal matters.

3. A general court martial has wider powers of punishment than a restricted court martial. A general court martial may impose the punishment of life imprisonment in certain cases where that punishment is provided for in the legislation creating the offence or in any other case may impose imprisonment for a fixed period or for any period not exceeding the maximum period provided by the legislation creating the offence. A restricted court martial may impose imprisonment for a period not exceeding six months.

Defence Force Magistrate

4. Defence Force magistrates are appointed by the JAG from members of the judge advocate's panel. A Defence Force magistrate sits alone when trying a matter and has the same jurisdiction and powers as a restricted court martial.

Choice of Tribunal

5. Courts martial and Defence Force magistrates have jurisdiction to hear any charge against any member of the Defence Force or a Defence civilian. Prior to the commencement of the DFDA in 1985, there was no Defence Force magistrate and all higher level matters were tried by a court martial.

6. The Defence Force magistrate jurisdiction was introduced so that matters which had been referred to the higher level of jurisdiction could be tried with less formality than in the case of a court martial. It was also seen to have certain administrative and other advantages. A Defence Force magistrate sits alone whereas courts martial require at least four persons (three members and the judge advocate). A Defence Force magistrate gives reasons for decision both on the determination of guilt or innocence and on sentence; courts martial do not give reasons on either.

NAVY

JANUARY-DECEMBER 2018

STATISTICS FOR TRIALS AND OUTCOMES FOR COURTS MARTIAL AND DEFENCE FORCE MAGISTRATES

	GENERAL COURT MARTIAL					RESTRICTED COURT MARTIAL					DEFENCE FORCE MAGISTRATE				
	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD
		GUILTY	N.G.				GUILTY	N.G.				GUILTY	N.G.		
January											1	3			
February											1	6			2
March						1	11				2	4			
April											1	1			1
May															
June											3	4	2		2
July											1	1			6
August															
September															
October															
November															
December											2	3			1
TOTAL	0	0	0	0	0	1	11	0	0	0	11	22	2	0	12

**CONVICTIONS FOR OFFENCES COMMITTED BY RANK FOR MEMBERS OF THE NAVY
FOR COURTS MARTIAL AND DEFENCE FORCE MAGISTRATES**

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Sect 23										
24										
25										
26	1									
27										
28										
29										
30										
31										
32										
33(a)										
33(b)										
33(c)			1							
33(d)			2							
33A	1									
34										
35										
36										
36A										
36B										
37										
38										
40										
40A										
40C										
40D										
42										
43										
44										
45										
46										
47C										
47P										
47Q										
48										
49										
50										
51										
53										
54										
55									1	
56	1						3			
57										
58										
59										
60			1			3	1	1		
61			7			2	2		6	
TOTAL	3	0	11	0	0	5	6	1	7	0

Details of Quashed Convictions

DFDA Sect	Rank	Short Summary of Offence	Reason for quashing

**PUNISHMENTS IMPOSED BY RANK ON MEMBERS OF THE NAVY
FOR COURTS MARTIAL AND DEFENCE FORCE MAGISTRATES**

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Reprimand							1			
Conditional conviction without punishment										
Unconditional conviction without punishment										
Severe reprimand	1					2			2	
Suspended fine									1	
Fine Less than 14 Days Pay	1					1				
Fine More than 14 Days Pay			3						2	
Forfeiture of service for purposes of promotion										
Forfeiture of seniority									1	
Reduction in rank			1			2				
Suspended detention									3	
Committed detention									3	
Dismissal	1		8			6			1	
Imprisonment			4						1	
TOTAL	3	0	16	0	0	11	1	0	14	0

ARMY

JANUARY-DECEMBER 2018

STATISTICS FOR TRIALS AND OUTCOMES FOR COURTS MARTIAL AND DEFENCE FORCE MAGISTRATES

	GENERAL COURT MARTIAL					RESTRICTED COURT MARTIAL					DEFENCE FORCE MAGISTRATE				
	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD
		GUILTY	N.G.				GUILTY	N.G.				GUILTY	N.G.		
January											1	6			
February											4	8	1		
March											2	1	1		
April															
May											3	1	3		1
June						1	10				1	4			
July															
August						1	2		2		1	3			3
September															
October															
November	1	1				1		1			1	4			11
December											2	6	1		1
TOTAL	1	1	0	0	0	3	12	1	0	2	15	33	6	0	16

**CONVICTIONS FOR OFFENCES COMMITTED BY RANK FOR MEMBERS OF THE ARMY
FOR COURTS MARTIAL AND DEFENCE FORCE MAGISTRATES**

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Sect 23										
24										
25										
26										
27										1
28										
29						2				2
30										
31										
32										
33(a)										1
33(b)										1
33(c)										
33(d)										
33A										
34						5				
35										
36										
36A										
36B										
37										
38										
40										
40A										
40C						1				
40D										
42										
43				1		1				
44										
45										
46										
47C										
47P										
47Q										
48										
49										
50										
51										
53										
54										
55										
56										
57										
58										
59										1
60	3			11		4		2		2
61	2					5				1
TOTAL	5	0	0	12	0	18	0	2	0	9

Details of Quashed Convictions

DFDA Sect	Rank	Short Summary of Offence	Reason for quashing

**PUNISHMENTS IMPOSED BY RANK ON MEMBERS OF THE ARMY
FOR COURTS MARTIAL AND DEFENCE FORCE MAGISTRATES**

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Reprimand						1				
Conditional conviction without punishment										
Unconditional conviction without punishment										
Severe reprimand	3					1				2
Suspended fine				1						1
Fine Less than 14 Days Pay	3					3				3
Fine More than 14 Days Pay				1						
Forfeiture of service for purposes of promotion										
Forfeiture of seniority										
Reduction in rank	1			11		13		2		
Suspended detention										
Committed detention								2		2
Dismissal	2			10		4				4
Imprisonment	1									
TOTAL	10	0	0	23	0	22	0	4	0	12

AIR FORCE
JANUARY-DECEMBER 2018

STATISTICS FOR TRIALS AND OUTCOMES FOR COURTS MARTIAL AND DEFENCE FORCE MAGISTRATES

	GENERAL COURT MARTIAL					RESTRICTED COURT MARTIAL					DEFENCE FORCE MAGISTRATE				
	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD
		GUILTY	N.G.				GUILTY	N.G.				GUILTY	N.G.		
January															
February											3	5	2		2
March															
April															
May															
June															
July											1	2	2		
August															
September											2	3			1
October											1	2			3
November															
December															
TOTAL	0	0	0	0	0	0	0	0	0	0	7	12	4	0	6

**CONVICTIONS FOR OFFENCES COMMITTED BY RANK FOR MEMBERS OF THE AIR FORCE
FOR COURTS MARTIAL AND DEFENCE FORCE MAGISTRATES**

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Sect 23										
24										
25										
26										
27										
28										
29	1									
30										
31										
32										
33(a)	2									
33(b)										
33(c)										
33(d)										
33A	1								1	
34										
35										
36										
36A										
36B										
37										
38										
40										
40A										
40C										
40D										
42										
43	1									
44										
45										
46										
47C										
47P										
47Q										
48										
49										
50										
51										
53										
54										
55										
56										
57										
58										
59										
60									2	
61	2								2	
TOTAL	7	0	0	0	0	0	0	0	5	0

Details of Quashed Convictions

DFDA Sect	Rank	Short Summary of Offence	Reason for quashing

**PUNISHMENTS IMPOSED BY RANK ON MEMBERS OF THE AIR FORCE
FOR COURTS MARTIAL AND DEFENCE FORCE MAGISTRATES**

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Reprimand										
Conditional conviction without punishment										
Unconditional conviction without punishment	1									
Severe reprimand	1									
Suspended fine	1									
Fine Less than 14 Days Pay	1									
Fine More than 14 Days Pay	1									
Forfeiture of service for purposes of promotion										
Forfeiture of seniority	1									
Reduction in rank	3									
Suspended detention										
Committed detention									4	
Dismissal from ADF	3								1	
Imprisonment										
TOTAL	12	0	0	0	0	0	0	0	5	0

COMBINED JANUARY - DECEMBER 2018

STATISTICS FOR TRIALS AND OUTCOMES FOR COURTS MARTIAL AND DEFENCE FORCE MAGISTRATES

	GENERAL COURT MARTIAL					RESTRICTED COURT MARTIAL					DEFENCE FORCE MAGISTRATE				
	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD
		GUILTY	N.G.				GUILTY	N.G.				GUILTY	N.G.		
January	0	0	0	0	0	0	0	0	0	0	2	9	0	0	0
February	0	0	0	0	0	0	0	0	0	0	8	19	3	0	4
March	0	0	0	0	0	1	11	0	0	0	4	5	1	0	0
April	0	0	0	0	0	0	0	0	0	0	1	1	0	0	1
May	0	0	0	0	0	0	0	0	0	0	3	1	3	0	1
June	0	0	0	0	0	1	10	0	0	0	4	8	2	0	2
July	0	0	0	0	0	0	0	0	0	0	2	3	2	0	6
August	0	0	0	0	0	1	2	0	0	2	1	3	0	0	3
September	0	0	0	0	0	0	0	0	0	0	2	3	0	0	1
October	0	0	0	0	0	0	0	0	0	0	1	2	0	0	3
November	1	1	0	0	0	1	0	1	0	0	1	4	0	0	11
December	0	0	0	0	0	0	0	0	0	0	4	9	1	0	2
TOTAL	1	1	0	0	0	4	23	1	0	2	33	67	12	0	34

DEFENCE FORCE DISCIPLINE ACT

LIST OF SECTIONS USED IN STATISTICS

Section Number	Description
23	Absence from duty
24	Absence without leave
25	Assaulting a superior officer
26	Insubordinate conduct
27	Disobeying a lawful command
28	Failing to comply with a direction in relation to a ship, aircraft or vehicle
29	Failing to comply with a general order
30	Assaulting a guard
31	Obstructing or refusing to assist a police member
32	Offences while on guard or watch
33(a)	Assault on another person
33(b)	Creating a disturbance
33(c)	Obscene conduct
33(d)	Insulting or provocative words to another person
33A	Assault occasioning actual bodily harm
34	Assaulting a subordinate
35	Negligent performance of duty
36	Dangerous conduct
36A	Unauthorised discharge of weapon
36B	Negligent discharge of weapon
37	Intoxicated while on duty etc
38	Malingering
39	Causing loss, stranding or hazarding of a Service ship
40	Driving while intoxicated
40A	Dangerous driving
40C	Driving a Service vehicle for unauthorised purpose
40D	Driving without due care or attention etc
41	Flying a Service aircraft below the minimum height
42	Giving inaccurate certification
43	Destroying or damaging Service property
44	Losing Service property
45	Unlawful possession of Service property
46	Possession of property suspected of having been unlawfully obtained
47C	Theft

Section Number	Description
47P	Receiving
47Q	Unauthorised use of a Commonwealth credit card
48	Looting
49	Refusing to submit to arrest
49A	Assault against arresting person
50	Delaying or denying justice
51	Escape from custody
52	Giving false evidence
53	Contempt of Service tribunal
54	Unlawful release etc of person in custody
55	Falsifying Service documents
56	False statement in relation to application for a benefit
57	False statement in relation to appointment or enlistment
58	Unauthorised disclosure of information
59	Dealing or possession of narcotic goods
60	Prejudicial conduct
61	Offences based on Territory offences
62	Commanding or ordering a Service offence to be committed

DEFENCE FORCE DISCIPLINE ACT 1982

Report for the period 1 January to 31 December 2018