



JUDGE ADVOCATE GENERAL

**DEFENCE FORCE
DISCIPLINE ACT 1982**

*Report for the period
1 January to 31 December 2019*

Department of Defence

Defence Force Discipline Act 1982

*Report for the period
1 January to 31 December 2019*

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JUDGE ADVOCATE GENERAL

HEADQUARTERS AUSTRALIAN DEFENCE FORCE
DEPARTMENT OF DEFENCE
CANBERRA ACT 2600

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 2019. The report is furnished pursuant to the requirements of section 196A(1) of the *Defence Force Discipline Act 1982*.

Yours faithfully

A handwritten signature in black ink, appearing to read 'M.J. Slattery', written over a horizontal line.

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

29 June 2020

Enc.

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**JUDGE ADVOCATE GENERAL
AUSTRALIAN DEFENCE FORCE**

REPORT FOR THE PERIOD 1 JANUARY TO 31 DECEMBER 2019

PREAMBLE

1. Section 196A(1) of the *Defence Force Discipline Act 1982* (DFDA) obliges the Judge Advocate General of the Australian Defence Force (JAG), to prepare and furnish to the Minister for Defence a report as soon as practicable after 31 December each year.
2. The report is to consider 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 2019.
3. The Office of the JAG (OJAG) 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
4. 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) — appointed in June 2002, but had been acting since Major General Duggan's retirement in 2001.
 - f. 2007–2014 The late Major General the Hon Justice RRS Tracey, AM, RFD (of the Federal Court of Australia).
5. 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

¹ DFDA, s. 188.

² I was reappointed as JAG on 9 March 2017.

6. 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 (SAR),
- 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 legal officers to be members of the JAs' panel⁶
- e. appointing DFMs from officers appointed as members of the JAs' panel⁷
- 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.

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

8. 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, technical control and administrative responsibility in this regard remains with the Chief Counsel (previously titled Head Defence Legal (HDL), Director-General Military Legal Service (previously titled the Director General Australian Defence Force Legal Services (DGADFLS)) and the single Service heads of corps/category/community.

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

³ DFDA, s. 196A.

⁴ DFDA, s. 129B.

⁵ DFDA, s. 129C.

⁶ DFDA, s. 196.

⁷ DFDA, s. 127.

10. I continue to 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.

11. Funding for OJAG for the period of this Report was provided by the Associate Secretary group of the Department of Defence.

SIGNIFICANT APPOINTMENTS

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

Deputy Judge Advocates General

13. 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, who was followed by Brigadier His Honour Judge Paul Smith
- c. Air Commodore His Honour Judge Gordon Bruce Lerve.

14. Brigadier Durward retired from the ADF on 9 March 2019 and was replaced by Brigadier Smith for a period of three years as DJAG-Army. I wish to record my thanks to him for his service and commitment as DJAG-Army; and in particular, for his ever ready willingness to take on report writing duties at short notice in addition to his heavy civilian judicial workload. I wish will him well in his retirement.

15. I also formally record my gratitude to all the DJAGs 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.

Chief Judge Advocate

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

Deputy Chief Judge Advocate appointment

17. The *Defence Legislation Amendment Act 2019* amended the DFDA in March 2019 to, among other things, vary the remuneration provisions for JAs and DFMs and create the role of Deputy Chief Judge Advocate (DCJA).

18. In October 2019, I recommended to the CDF that he approve a recruitment process for the appointment of a DCJA. The CJA and I considered that a second full-time JA/DFM was required to provide the optimal model to reduce delay in courts martial and DFM proceedings.

19. The CJA had been assisted by four reserve JA/DFMs in the reporting period. As part of achieving the CDF-directed timeframe of completing superior service

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

tribunal proceedings within 12 months, the Registrar of Military Justice (RMJ) aims to list matters for trial in a 5–9 week window from referral of the charges by the Director of Military Prosecutions (DMP). The four reservists were all civilian barristers running busy practices, which reduced their capacity to render assistance within the desired timeframe.

20. While reserve JA/DFMs help supplement the CJA, I considered only having a second full-time JA/DFM could provide the necessary availability and flexibility to help reduce delay. A DCJA was also required to provide redundancy (in case of leave, illness or other unexpected absence) and succession planning for the CJA.

21. Having received the approval of the CDF, a process was undertaken to make a submission to the Remuneration Tribunal (Cth) for the tribunal to set the terms and conditions required under the DFDA for the appointment. This took place in December 2019, and shortly thereafter the process for recruitment began. As was required by the DFDA, the full process for the selection and appointment of a DCJA was made the subject of a notifiable instrument published under the *Legislation Act 2003*. The process mandated under this notifiable instrument involved a call for expressions of interest and the convening of a selection panel, including a non-lawyer senior command officer and a non-military lawyer to assist me.

22. I acknowledge the excellent work by the Directorate of Senior Officer Management in this process. Whilst outside of the reporting period for this JAG Report, the process was completed in March 2020 and saw the appointment of Group Captain Scott Geeves as DCJA.

Reserve Judge Advocates

23. Wing Commander Joana Fuller was appointed as a Reserve JA/DFM in April 2019. Wing Commander Fuller has been a most valuable addition to the panel. I congratulate her on her appointment as judge of the District Court of South Australia on 10 December 2019.

Registrar of Military Justice

24. Group Captain Ian Henderson continues to fulfil the role of RMJ 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.

Expiration of statutory appointments

25. The current position for the expiration of statutory appointments within my office is 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 2021
- d. DJAG-Army, Brigadier Smith, expiry date 9 March 2024
- e. DJAG-Air Force, Air Commodore Lerve, expiry date 17 May 2022
- f. RMJ, Group Captain Henderson, expiry date 31 December 2022.

Section 154 reporting officers

26. 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).

27. 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 discussed later in this Report the challenges faced with the number of experienced legal officer reservists in the discipline system.

28. I thank them for their service to the ADF, which is given in addition to their other demanding professional duties as judges or counsel.

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

- a. Major General Ian Westwood, AO
- b. Captain James Renwick, CSC, SC, RAN
- c. Colonel Paul Smith (until his appointment as DJAG-Army on 10 March 2019)
- d. Group Captain James Gibson
- e. Group Captain Gregory Lynham
- f. Wing Commander Glenn Theakston
- g. Commander Nanette Williams, RAN
- h. Lieutenant Commander Sylvia Emmett, AM, RAN
- i. Lieutenant Commander Catherine Traill, RAN
- j. Major Douglas Campbell, QC
- k. Major Michael Antrum
- l. Major Emma Shaw
- m. Squadron Leader James Lawton.

Related appointments

30. Mr Adrian D'Amico continued in his role as HDL (now Chief Counsel) during the reporting period. As JAG, I had the advantage of meeting with Mr D'Amico several times in 2019. I wish to record my thanks in particular for his support in advancing legislative amendments designed to improve the operation of the DFDA.

31. Commodore Peter Bowers, RAN continued in his role as DGADFLS (now Director General Military Legal Service) during the reporting period. Once again, he worked closely with me throughout the year to ensure that 2019 became a highly

productive year for overdue reforms to the DFDA, starting with the *Defence Legislation Amendment Act 2019*.

32. The 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.

33. The Director of Defence Counsel Services (DDCS) is appointed under the *Defence Act 1903*, s. 110ZA. The position of DDCS was filled by Group Captain Ed Eather. DDCS reports separately.

34. The position of staff officer to the JAG and CJA was filled during the reporting period by Squadron Leader Sarelle Woodward.

35. The OJAG in Canberra is well served by its hard-working civilian personnel, who undertake the very considerable burden of the office's administrative workload. I thank them all for their dedication to the execution of the important work of OJAG.

Vale Major General the Hon Richard Tracey, AM, QC, RFD

36. Major General the Hon Richard Tracey, AM, QC, RFD, who served as JAG between 2007 and 2014, died on 11 October 2019. I wish to honour his remarkable professional life as both an ADF officer and a lawyer by recording his distinguished service.

37. Major General Tracey constantly offered and reoffered his rich intellectual capacities to improve the ADF's discipline system over almost four decades. On his watch he ensured that, modelled on the civilian court system in which he served as a judge, ADF military justice held fast to the judicial oath, 'to do right to all manner of people without fear or favour, affection or ill will'.

38. Richard was a legal scholar from the first. Graduating with LLB (Hons) and an LLM from the University of Melbourne, he taught in positions of increasing seniority at that University's Law School between 1972 and 1981. He obtained an LLM from the University of Illinois Law School and was a teaching fellow there in the mid-1970s.

39. Eventually, legal practice called him. He was admitted to the Victorian Bar in 1982. He practised broadly but was best known for his expertise in federal industrial law and administrative law. He was appointed Queen's Counsel in 1991, in the record time of only nine years. He was quickly in demand at the highest level of advocacy, especially in the field of industrial law. He continued to publish widely, mainly in administrative law, and to lecture part time. He was appointed a judge of the Federal Court of Australia in July 2006.

40. Richard joined the Australian Army Legal Corps (AALC) in 1976, many years before he came to the Bar. He progressed through all the ranks from Captain to Major General in the 38 years between 1976 and 2014, when he retired as JAG. He received the Reserve Forces Decoration (RFD) in 1997.

41. From the outset of his military career, Richard was an active and engaged member of the AALC, deploying his forbidding legal talents to the advantage of the ADF and its members. Command quickly expressed high confidence in him by appointing him in 1985 at the junior rank of Captain as one of the first JAs to act under the then new DFDA legislation. He immediately set to work in a wide range of trials. One of Richard's early DFM trials became a landmark in Australian

constitutional history, when the High Court upheld his ruling that he had valid trial jurisdiction under the DFDA: *Re Tracey; Ex parte Ryan* (1988) 166 CLR 518.

42. He was appointed as a reviewing JA in 1990 and as a consultant to the Director of Army Legal Services in 1992. Upon his appointment to the Federal Court of Australia in 2006, Richard was made Deputy Judge Advocate General-Army. Soon afterwards in 2007 he was appointed as JAG. The same year a suite of amendments to the DFDA replaced the existing ad hoc court martial system with the Australian Military Court (AMC).

43. But in August 2009, the AMC was declared invalid by the High Court in *Lane v Morrison* (2009) 239 CLR 230. All the AMC's enabling legislation was struck down as invalid. This confronted the ADF's discipline system with perhaps its most destructive constitutional event since Federation. The ADF was singularly fortunate to have Major General Tracey as its JAG at that time. He was a uniquely well-qualified civilian and military lawyer to become a key figure in stabilising and rebuilding a superior service tribunal system deserving of public confidence. With the then Chief Judge Advocate, Major General Ian Westwood AO, and Defence Legal (DL), Richard played a key role in ensuring confidence in the military discipline system, whilst trial by court martial and DFM was restarted.

44. Without fuss and on top of his judicial day job on the Federal Court, he managed the alarming spike in disrupted discipline work generated by the constitutional cancellation of scores of AMC cases awaiting trial. He consulted on the Parliament's *Interim Measures* legislation to revalidate two years of void AMC decisions and three void AMC judicial appointments. He signed off on the ADF's new court martial rules. Then one by one, he carefully unpicked the myriad of perplexing ancillary constitutional and administrative law issues triggered by the *Interim Measures* legislation that started to appear in petitions arriving from individual defence members.

45. In his role as JAG, his company was always uplifting and positive. His counsel was always wise and practical. When encountering a challenging ADF legal problem, his approach was always to listen deeply and well: that first quality of the best judges and senior officers. He would then draw from his long service experience and from his immersion in every nuance of criminal and administrative law to develop a legally sound, often adventurous, but ever-workable solution.

46. By the time he retired as JAG in July 2014, the court martial system was functioning as well as it had before the AMC. Although there was by then no formal Government decision re-adopting courts martial and rejecting other options for a future discipline system, Richard's successful five year oversight had made the court martial/DFM system the widely-accepted de facto first choice.

47. Richard was appointed a member of the Military Division of the Order of Australia in the 2014 Australia Day Honours List in recognition of his exceptional service to military law and in the Office of Judge Advocate General.

48. Richard also contributed to the superior service tribunal discipline system beyond his role as JAG. In 2009, he was appointed President of the Defence Force Discipline Appeals Tribunal (DFDAT). His leadership of the DFDAT from that time until his retirement in 2017 fostered a highly productive period in its jurisprudential history.

49. Over several decades, Richard wrote many significant DFDA legal reports, JAG Reports and DFDAT judgments, analysing the often unique legal problems generated by military service. His work was always a pleasure to read and a model of clarity to apply. One important part of his legacy is that this body of his work will continue to inform Australia's military law for many years to come.

50. Retirement from the bench in August last year saw no diminution in Richard's commitment to public service. He continued in his much prized retirement role of promoting legal officer morale as the Colonel Commandant of the AALC. And late in 2018 he readily accepted appointment as a Royal Commissioner on the Commonwealth's Aged Care Quality and Safety Royal Commission.

51. Major General Tracey's legacy is assured. He was a builder, a re-builder and a leader of the ADF's military justice system at a time of crisis. His lifelong commitment to the profession of arms and the profession of law ensured that ADF members receive the same quality of independent justice as all Australians do in our civilian courts.

MILITARY JUSTICE ENTITIES

Inspector General of the ADF

52. The Inspector General of the ADF (IGADF) is appointed under the *Defence Act 1903*, s. 110B. The position of IGADF continued 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. These meetings with IGADF are a most welcome opportunity to share the perspective of another independent statutory officer charged with the duty of scrutinising the discipline system. I have found these meetings very productive in assisting me to address the issues facing both the summary and superior service tribunals.

53. I report to the Parliament annually, as is required under DFDA, s. 196A concerning the operation of the discipline system at both the summary and superior service tribunal levels. In relation to the operation of superior service, tribunals CJA and RMJ provide necessary information to me. I am also informed about the conduct of superior service tribunals from the reviews conducted under DFDA, ss. 154 and 155.

54. A much larger number of trials are conducted annually throughout the ADF in the summary tribunal system. I rely upon a range of information resources about the conduct of summary discipline tribunals: these include enquiries about particular trials made by the OJAG and the reviews brought to the JAG under DFDA, ss. 154 and 155. But importantly, IGADF audits the operation of the ADF's summary tribunals down to the unit level. The OJAG does not undertake this auditing work itself. The IGADF audits are a most valuable information resource for me about whether or not the summary tribunal system is operating efficiently and fairly for Command and ADF members.

IGADF and complaints about the ADF discipline system

55. From time to time, I receive complaints about the conduct of ADF personnel who are discharging the functions of either a superior or summary tribunal authority under the DFDA. It is important for the maintenance of confidence in the ADF's discipline system that these complaints are both investigated and resolved to a

standard that is fit for the military environment and is no less rigorous than that which is accepted for civilian judicial officers.

56. An example of civilian powers of investigation into complaints about the conduct of judicial officers is the Judicial Commission of New South Wales (the Judicial Commission), which is established under the *Judicial Officers Act 1986* (NSW). In New South Wales, under the *Judicial Officers Act Part 6*, the Judicial Commission holds extensive powers of investigation into complaints about alleged misconduct by judicial officers in that State including misconduct that may affect their fitness for office.

57. IGADF holds substantially equivalent powers of investigation into complaints about ADF personnel when discharging the functions of a discipline tribunal under the DFDA. IGADF's independence and his powers to investigate complaints, under *Defence Act*, s. 110C and regulations made under *Defence Act*, s. 124, are comparable to the powers of civilian bodies such as the Judicial Commission. Like the equivalent civilian models, complaints procedures to IGADF are not a substitute for convicted defence members using the review processes provided for under DFDA, Part VIIIA.

58. I can refer external complaints to IGADF for investigation and resolution. I also have the capacity to initiate an own-motion referral to IGADF concerning the conduct of any defence member in the military discipline system.

59. The powers of IGADF to deal with external complaints about the conduct of ADF judicial officers and to deal with the irregular conduct of service tribunals that come to my attention other than through the DFDA review system assists in maintaining confidence in the ADF discipline system.

Military Justice Steering Group

60. The Military Justice Steering Group (MJSG) has continued to function efficiently during the 2019 reporting period as the principal mechanism for jointly engaging Command and legal officers in developing military justice policy and procedures.

61. During the reporting period the Head of People Capability (HPC), Major General Natasha Fox, CSC continued to chair the MJSG. In that role she effectively brought together and assisted in reconciling proposals from Command, OJAG, and elsewhere to improve the operation of the military discipline system.

62. The MJSG 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. As an example of this process in practice, discussions within the MJSG in 2019 led to the finalisation of the Practice Note on the publication of superior service tribunal proceedings, which commenced on 31 March 2019.

63. The OJAG, Command and regular users of the military discipline system all benefit from this readily accessible forum to bring attention to the need for changes to the conduct of superior and summary service tribunals. During 2019 OJAG referred to the MJSG a number of proposals for amendment to the DFDA, some of which have been discussed in this and previous JAG Reports.

Summary Discipline Implementation Team

64. During the current reporting period Rear Admiral Nigel Perry, CSC, RAN continued to lead the Summary Discipline Implementation Team (SDIT), which was established to give effect to the recommendations of the Summary Discipline System Review (the SDS Review). In November 2017, the Chiefs of Services Committee (COSC) endorsed the recommendations of the SDS Review Report.

65. Staff in OJAG engaged closely with SDIT throughout the reporting period to assist SDIT in their work. This engagement has included regular consultations between SDIT, CJA, RMJ and me. One of the principal areas of productive consultation during the reporting period between SDIT and OJAG concerned the review and simplification of the SAR, which were due to expire in October 2019. As this Report elsewhere explains, in my role as JAG I made new SAR under DFDA, s. 149 in September 2019. Throughout this process, SDIT provided valuable input about the probable practical impact upon the conduct of summary trials of various proposals to simplify the SAR.

66. I highlighted in my 2017 Report⁹ and my 2018 Report¹⁰ my support for Track 1 of the three Tracks proposed in the SDS Review Report, but I expressed my reservations about aspects of Tracks 2 and 3. One of those areas of reservation related to the expansion of the Discipline Officer Scheme. However, after constructive discussions about the proposed changes, SDIT is proposing a model for reform that I would support and which will need ultimately to be authorised by legislation amending the DFDA.

67. Towards the end of the reporting period and into early 2020, SDIT was liaising with OJAG about simplifying the system of election from summary trials to trial by a superior service tribunal. Because of the complexity of the current double election system, this is an issue that a number of previous JAG Reports have described as needing priority attention in reform of the DFDA.¹¹ It is expected that this issue will be resolved during 2020 so that amending legislation can be introduced simplifying the election system.

APPEALS

68. During the reporting period, there were two appeals determined by the DFDAT. These were:

- a. *McCleave v Chief of Navy* [2019] ADFDAT 1
- b. *Boyson v Chief of Army* [2019] ADFDAT 2

69. In *McCleave*, the appeal was dismissed.

70. The appeal concerned the dismissal by a DFM on 15 December 2017 of an application by the appellant for a permanent stay under ss. 129(1) and 134 of the DFDA of disciplinary proceedings commenced against him by the DMP.

⁹ 2017 JAG Report, paragraph 61.

¹⁰ 2018 JAG Report, paragraphs 76–80.

¹¹ 2015 JAG Report, paragraph 61 and 2016 JAG Report, paragraphs 76–80.

71. The appellant was charged with “knowingly making a false or misleading statement in relation to an application for a benefit” contrary to s. 56(1) of the DFDA, alternatively “recklessly making a false or misleading statement in relation to an application for a benefit” contrary to s. 56(4) of the DFDA. The offending was said to have occurred when the appellant completed an application and signed a declaration claiming an allowance for performing reserve service that he had not in fact done.

72. Following the dismissal of the application for a stay, the appellant entered a plea of guilty to the alternate charge and was convicted and sentenced to be severely reprimanded.

73. The main issue on appeal concerned the assurance given by the appellant’s Executive Officer that no DFDA action would be taken and the extent of any reliance upon that assurance by the appellant. The majority (Hiley (Member) and Garde (Member), Logan J (President) dissenting) dismissed the appeal.

74. In *Boyson*, the appeal was allowed and the applicant’s conviction quashed. A new trial was not ordered.

75. On 3 December 2018, the appellant was convicted by a General Court Martial of an offence of sexual intercourse without consent contrary to s. 61(3) of the DFDA and s. 54(1) of the *Crimes Act 1900* (ACT).

76. On 5 December 2018, the appellant was sentenced to imprisonment for three months, dismissal from the Defence Force and reduction to the rank of lieutenant with seniority in that rank to date from 5 December 2018.

77. The majority (Brereton JA (Deputy President) & Perry J (Member), Logan J (President) dissenting) held that considering the evidence as a whole it was not reasonably open to the Court Martial to conclude guilt beyond a reasonable doubt.

LEGISLATION

Summary Authority Rules

78. In my 2018 Report, I noted that the *Summary Authority Rules 2009* (SAR) would sunset in October 2019 and that a review of the existing SAR had commenced with a view to simplifying the rules and promoting the timeliness, efficiency, transparency, cost effectiveness and accessibility of the summary discipline system.¹²

79. On 9 September 2019, I signed the SAR 2019, which came into effect on 9 March 2020. The Explanatory Statement to the SAR 2019 indicates that:

The purpose of the *Summary Authority Rules 2019* (the Rules) is to prescribe the rules and processes that are to be undertaken by a summary authority in conducting a summary authority proceeding under the Act. The Rules consist of eight Parts that address preliminary matters, charging and summoning an accused person, general provisions for summary authority proceedings, evidence before summary authority proceedings, exhibits, procedure for imposing punishment and orders, recording summary proceedings, and general

¹² 2018 JAG Report, paragraph 80.

summons provisions. The new Rules will also repeal the *Summary Authority Rules 2009* before they sunset on 1 October 2019.

The Rules replace this sunset instrument in substantially different format, having regard to summary discipline reform which is intended to simplify and streamline summary proceedings, in order to enhance natural justice for an accused person. They also update the previous Rules with modernised language and drafting compliance.¹³

80. A major objective in redrafting the SAR was to simplify them to remove unnecessary procedural complexity from trials before summary authorities without sacrificing fairness to the accused member. Several procedural provisions that risked legal error on the part of summary authorities were removed from the existing rules and summary authorities are instead encouraged to refer complex proceedings to superior service tribunals. The changes to the SAR effect a major reduction in the paperwork involved when a plea of guilty is entered based on models commonly used by judicial officers with summary jurisdiction in civilian courts.

81. The redrafted SAR have significantly reduced the number of rules. Re-drafting was a major undertaking and was the product of many hands. I wish to acknowledge the assistance of Head SDIT (HSDIT), who consulted closely with Command in relation to the proposed changes. DMDL undertook the principal burden of the drafting process with, strong input from CJA and RMJ. I wish to particularly thank Deputy DMDL, LTCOL Lauren Sanders, who managed the arduous process throughout, maintaining drafting rigour whilst balancing the comprehensiveness of the rules with the need for simplicity in their operation.

Court Martial and Defence Force Magistrate Rules

82. The purpose of the Court Martial and Defence Force Magistrate Rules (the Rules) is to prescribe the rules and processes that are to be undertaken in court martial and Defence Force Magistrate proceeding under the DFDA. The JAG may, by legislative instrument, make such rules under DFDA, s. 149A. The Rules were due to sunset on 1 April 2020. Amendments to the Rules were discussed in detail at the JAG Conference in 2019 and a number of modernising amendments proposed for consultation with the services and stakeholders at the MJSG. This work was primarily undertaken in 2019.

83. The Rules address preliminary matters, charging and summoning an accused person, general trial provisions for superior service tribunal proceedings, evidence before superior service tribunal proceedings, and procedure for recording of proceedings and dealing with exhibits. New rules have been introduced to deal with tendency/coincidence evidence and procedure. A significant change in the new Rules provides for pre-trial hearings on the application of a party, or on the direction of the JA or DFM. This change promotes trial efficiency by providing an opportunity for more ancillary issues to be determined before the date fixed for trial. The new Rules also change the requirement to swear or affirm a recorder as most proceedings are now electronically recorded.

84. The new Rules took effect in April 2020; however, most of the work in constructing them was undertaken in 2019. I wish to especially acknowledge the

¹³ The Explanatory Statement is available at legislation.gov.au.

work of DJAG-Army, Brigadier His Honour Judge Paul Smith, in driving and managing the drafting process.

POLICY AND PUBLICATIONS

Publication of superior service tribunal proceedings

85. In my 2018 Report, I identified that a final decision on the publication of the listing and outcomes of ADF superior service tribunal proceedings had occurred in March 2019.¹⁴ On 15 March 2019, I signed Practice Note No. 1, which gave effect to the decision on publication. On 29 August 2019, I signed an updated Practice Note, which made some minor procedural changes.

86. For matters referred by the DMP to the RMJ on or after 31 March 2019, the RMJ has published a list and the outcomes of ADF superior service tribunal proceedings. No significant issues have arisen and the process now appears to be routine.

Practice notes

87. Most civilian criminal and civil courts issue practice notes to ensure consistency of practice of the court, and enhance the efficient running of proceedings. Such practice notes give practitioners clear guidance on systems procedure and expectations. In the ADF superior service tribunal system, counsel are generally permanent or reserve legal officers (a member can have private representation but this is seldom the case). The defending officers are generally reservists who practice in different Australian jurisdictions, which have different practices. Consequently, the defending officer may be unfamiliar with the practices of the OJAG registry and superior service tribunals.

88. In 2019, to address the lack of consistent understanding by practitioners of superior service tribunal procedure, OJAG began to issue practice notes. The purpose was to improve efficiency by giving clear guidance to the parties, to assist the parties by publishing the accepted procedure, and to encourage uniformity in approach. Apart from their usefulness to legal practitioners, some practice notes will also assist Command, the media and the wider public to understand better what to expect in dealing with the superior service system. I signed the first practice note relating to the publication of superior service tribunal listings and outcomes in 2019.

89. A further five practice notes were issued by the CJA in 2019:

Practice note 1 – Publication of court martial and Defence Force Magistrate lists and outcomes.

Practice note 2 – Tendering and handing up documents.

Practice note 3 – Summonses.

Practice note 4 – Suspension from duty after conviction.

Practice note 5 – Pre-trial directions hearings.

Practice note 6 – Part IV Sentencing.

90. A further two practice notes have been issued in 2020. The practice notes, which are all available on the JAG website, have contributed to greater efficiency of

¹⁴ 2018 JAG Report, paragraph 70.

proceedings and provided clear direction to the parties on procedure to be followed.

DISCIPLINE LAW TRAINING

Discipline law training for ADF personnel

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

Single Service

92. 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

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

Pre-command training

94. 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, the jurisdiction of service tribunals, the powers of punishment of Summary Authorities and the Discipline Officer scheme.

95. In 2019, the military justice training on pre-command courses was as follows:

- a. Navy: Two courses instructed, with a total of 85 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 a total of 57 students comprising officers appointed to command units or formations.
- c. Air Force: Three courses instructed, with a total of 57 students comprising officers appointed to command, Executive Officer, Detachment Commander, Chief instructor and Executive Warrant Officer positions.

Online DFDA training

96. Training courses relevant to the summary discipline system were available on CAMPUS, the online learning tool which is part of the Defence Learning Branch.

Training for ADF legal officers

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

98. 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. In 2019, the MLC completely revised LTM1 to make it an initial employment course to ensure junior ADF legal officers are provided with the necessary knowledge, skills and abilities they require to undertake their role, functions and responsibilities on first appointment. During 2019, 20 ADF legal officers attended the LTM1 course, as well as two observers.

99. 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 MLC also worked closely with the Australian National University and University of Adelaide to make LTM2 subjects more practical and pragmatic. 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, 25 students completed the Military Discipline Law unit. Twenty-five students completed the Military Legal Practice unit, which includes the practice of advocacy before Service tribunals.

100. 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). It is conducted biennially, and permanent legal officers without an existing master of laws degree must complete a further four electives from an approved list. During 2019, 30 students completed the discipline law unit.

Ongoing development of discipline law training

101. 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.

102. The MLC revised the Governance of Military Justice Training Manual following the completion of the review into the summary discipline system. The new Military Justice Training Policy was recently approved by VCDF and makes MLC responsible for all online military justice training for the ADF. The MLC has already commenced the design and development of learning management packages for all military justice roles and military justice online training for relevant officers, discipline officers and summary authorities.

Summary Authority Rules 2019 training

103. After the signing of the simplified SAR on 9 September 2019, there were a number of awareness briefs provided to subject matter experts in November and

December 2019. These briefs were conducted by staff from DMDL and SDIT (as well as HSDIT himself).

104. The Military Justice Legal Forum (MJLF) and MJSG were briefed on the impact of the changes to the SAR in meetings during the final quarter of 2019. Information on procedural change and how necessary training would be implemented ADF-wide was provided and discussed.

105. Senior Legal Officers from DMDL provided briefs at several of the Defence Legal Professional Development sessions (in Sydney, Canberra and Brisbane) and DMDL also provided (via email) an update and information brief to subject matter experts to flag the changes and highlight how training was going to be run in early 2020. This was distributed through Service Warrant Officers, and was further provided to the legal fraternity ahead of the 2020 training.

106. Separately, single service training was provided at the pre-command courses for Commanding Officers designated for 2020. That training ranged from:

- a. awareness briefs from HSDIT (in the case of Navy)
- b. more detailed briefs provided by SDIT and DMDL flagging what the changes were and how they were to be implemented (in the case of numerous RAAF Pre Command Courses)
- c. a day-long scenario using the new processes and draft form C2 Charge Sheet and Decision Record as a test run (in the case of Army).

107. Numerous briefs were also provided on the Legal Training Modules about the changes. The LTM2 Discipline Law course was provided briefings by HSDIT, DGADFLS and senior legal officers from DMDL.

108. The simplification of the SAR has been well received across all three Services.

OBSERVATIONS AND RECOMMENDATIONS

Preliminary hearings as to plea

109. The efficiency of trials by court martial will be greatly enhanced by an amendment to the DFDA to enable the JA appointed to the court martial to take a plea of guilty or not guilty at an arraignment hearing before the court martial is assembled and sworn. Such arraignment hearings are commonly conducted in civilian jurisdictions before criminal trials are fixed for hearing, in order for the court to obtain an early indication of the course that the accused person will be taking at the trial.

110. Holding of such hearings is useful for planning the management of trials by court martial. If a plea of guilty is to be entered by the accused member, the arraignment hearing allows that plea to be formally entered at the earliest opportunity. If the plea of guilty is taken at a preliminary hearing, the preparation for the trial can be considerably streamlined, avoiding the need to organise the attendance of prosecution witnesses at the trial. If a plea of not guilty is entered, full-scale preparation for trial can proceed.

111. A court martial under the DFDA is not a permanent court but rather one that is summoned ad hoc. But there is no good reason why a mechanism such as a

deeming provision cannot be used to take such an early plea in anticipation of the assembly of the court martial that is convened under DFDA, s. 119.

112. Holding preliminary hearings for this purpose can be authorised with only minor amendments to the DFDA. As the DFDA currently stands, it is difficult for a plea of guilty or not guilty to be taken before the court martial is convened and sworn. A minor statutory amendment would permit a plea to be taken after the charge sheet is received by the RMJ in anticipation of the court martial assembling and being sworn.

113. The essential features of such an amendment are not complex. They would involve provisions such as the following:

- a. that the accused member shall be arraigned at a hearing before a JA
- b. that the hearing may take place at any time before the time when the court martial that is to try the charge first assembles pursuant to a convening order under DFDA, s. 119
- c. the arraignment is to be treated as having occurred before the court martial, and
- d. rules made by the JAG under s. 149A of the DFDA may make provision in connection with the making of orders and rulings by a JA at a hearing at which the accused member is arraigned.

114. I recommend that such an amendment be made to the DFDA. Similar models for the conduct of arraignment hearings before the assembly of a court martial are employed under the *Armed Forces Act 2006* (UK).¹⁵

Regular reviews of the DFDA

115. As I identified in my 2017 and in my 2018 reports¹⁶ the DFDA faces a continuing risk of procedural obsolescence due to the rapid evolution of criminal procedure in civilian courts. On a regular periodic basis, the DFDA should pick up the best civilian reforms to criminal procedure that can be applied to court martial and DFM trials.

116. DFDA, s. 196A establishes an annual review requirement through JAG Reports. One of the many purposes of JAG Reports is to identify developments in the civilian criminal jurisdiction that may improve the operation of the DFDA. This report continues to fulfil that function.

117. In my view, the system of embedded review by annual JAG Reports would work more effectively if there were regular periodic parliamentary review of the recommendations in the JAG Reports. This could be achieved by way of a commitment to procedurally review the DFDA by legislation at least once every five years. For example, the UK mandates a five yearly cycle of legislative reform to its equivalent military justice legislation – the *Armed Forces Act* (AFA).

118. Although the constitutional history of military discipline legislation is quite different in the UK compared with Australia, the AFA provides a useful example of

¹⁵ Armed Forces Act 2006 (UK), Schedule 16 items 20 and 23.

¹⁶ 2017 JAG Report, paragraphs 86–87 and 2018 JAG Report, paragraphs 87–88.

periodic reviews of discipline legislation at work. First enacted in 2006, the AFA introduced a single system of law that applies to all UK service personnel wherever in the world they are operating. Every five years, renewal is by an Armed Forces Act of Parliament. The five yearly renewals present an opportunity to address beneficial procedural reforms. The most recent renewal of the AFA was in 2016. There must be another before the end of 2021. Between each five-yearly Act, annual renewal is by Order in Council.

119. The DFDA had its own review mechanism in the past but only on a one-off basis. When the DFDA was first enacted in 1982, the Act provided for review after the first three years of operation.¹⁷ That review was undertaken and resulted in the recommendations that led to the introduction into the DFDA of the successful Discipline Officer Scheme for dealing with minor disciplinary infractions. Such reviews could be built permanently into the DFDA so that it is periodically refreshed to pick up the best criminal procedural reforms available from civilian practice that can be applied in courts martial and DFM trials.

Trial disclosure under the DFDA

120. The DFDA should be amended to introduce provisions that require disclosure by the prosecution and by the defence for trials before superior service tribunals. Such disclosure provisions are commonly accepted in civilian criminal trials. Their introduction into the DFDA would be consistent with the military trial context and would make the conduct of trials under the DFDA both fairer and more efficient.

121. Pre-trial and trial disclosure obligations in relation to information relevant to the case against the accused person were imposed on the DMP under the Court Martial and Defence Force Magistrate Rules 2009. These obligations were clarified and expanded during the reporting period through the development of the Court Martial and Defence Force Magistrate Rules 2020. The DMP is now under disclosure obligations that are close to civilian standards of disclosure. For example, the Court Martial and Defence Force Magistrate Rules provide for disclosure by the prosecution of documents such as witness statements, exhibits or other information relevant to the credit of prosecution witnesses or the accused.

122. But providing for increased disclosure obligations in relation to information relevant to the case against the accused through the Court Martial and Defence Force Magistrate Rules, rather than by amending the DFDA, has two major limitations. The first limitation is that the duties apply to the DMP and prosecuting advocates before the service tribunal but not more broadly, for example, to service police. Sometimes important information relevant to the quality of the case against the accused person is in the possession of service police and not the prosecution and therefore arguably is not disclosable. Non-disclosure of such information can affect the fairness of the trial. The second limitation is that the Court Martial and Defence Force Magistrate Rules do not provide any sanctions for non-disclosure. Sanctions that might alter the rights of the accused at trial should be introduced through legislation rather than in the exercise of rulemaking powers.

123. A requirement of disclosure of all material relevant to the case against an accused person lies upon police, as well as prosecutors, in a number of Australian jurisdictions. For example in Queensland the *Criminal Code 1899* (Qld), s. 590AE

¹⁷ *Defence Force Discipline Act 1982*, as amended by *Defence Legislation Amendment Act 1984*, No. 164 of 1984.

provides that for the purposes of disclosure to the accused something is in the 'possession of the prosecution' if it is in the possession of the arresting officer. Further, it is in the arresting officer's possession if he or she is aware of the existence of the thing and it can be located without unreasonable effort.

124. Also, in New South Wales the legislation governing criminal procedure provides sanctions for failure to disclose information that is required to be disclosed. *The Criminal Procedure Act 1986* (NSW), s. 146 provides that the court may refuse to admit such non-disclosed evidence. The *Criminal Procedure Act 1921* (SA), s. 125 contains a similar provision. In Western Australia, the *Criminal Procedure Act 2002* (WA), s. 97 allows the court, the prosecutor or the defence to make adverse comment against the offending party to the jury if there has been non-compliance with the disclosure provisions.

125. Previous JAG Reports have recommended that general provisions to encourage focus on the issues for trial, like those in the *Criminal Procedure Act 1986* (NSW), be introduced into the DFDA¹⁸. I recommend that disclosure provisions be introduced into the DFDA that make it clear that disclosure obligations lie on service police in addition to the DMP and that sanctions for non-disclosure are available.

126. The issue of disclosure is also relevant to the conduct of an accused person's case. An accused person may, for example, present a complex expert report on the first day of a trial with no previous notice of that report having been given to the prosecution. This may put the prosecution at a significant disadvantage if the prosecution has not retained its own expert in the same area of expertise. Alternatively, this can lead to an adjournment of the trial for the prosecution to obtain its own expert. This can involve great cost, particularly where witnesses have been flown to attend the trial from interstate or overseas.

127. In various Australian jurisdictions, provision is made for pre-trial disclosure by the accused person of expert reports. For example, in New South Wales the *Criminal Procedure Act 1986* (NSW), s. 143 provides that the accused must disclose to the prosecution the expert reports to be relied on. Section 146 provides for sanctions, such as the exclusion of the evidence, if disclosure does not occur. Also, s. 146A provides that if a failure to provide pre-trial disclosure occurs a court may make such comment at the trial as appears proper.

128. The ACT has a similar provision. The *Court Procedures Act 2004* (ACT), s. 78 provides that the prosecution and the accused must give written notice of any expert evidence intended to be adduced in the proceedings. This must happen before the date set for trial. Section 79C provides that the court may refuse to admit the expert evidence if there has been a failure to comply with relevant provision. Also, this section specifically provides discretion in the court to grant an adjournment if the other party is prejudiced by non-compliance.

129. In Victoria, the *Criminal Procedure Act 2009* (Vic), s. 183 provides that the accused person must serve an expert report to be relied on at least 14 days before the trial. In Queensland, the *Criminal Code 1899* (Qld), s. 590B provides that advance notice of expert evidence must be given to the prosecution. But in both of these States there are no specified sanctions.

¹⁸ 2017 JAG Report, paragraph 82.

130. These civilian legislative models are designed to enhance the fairness and efficiency of criminal trials. I recommend that the DFDA be amended to require disclosure by parties in advance of a trial before a superior service tribunal of any expert report to be relied and that sanctions be available in the event of non-compliance with this obligation.

Changing profile of the ADF legal reserve

131. The ADF's legal reserves have been evolving for some decades in a way that will soon limit the capability of the legal reserve to support a fair and efficient discipline system. Over this period, the core of highly experienced practitioners in criminal law in civilian courts has been depleted from the legal reserves. If this evolution continues on its present path, the ADF's capability of providing high-quality prosecution and defence advocacy in a military context through the reserves may become compromised. Moreover, that in turn may inhibit the ADF's capability to appoint qualified JAs with deep experience of the criminal law that can be applied in a military context. This is an issue that in my view needs close attention in the near future in the recruiting and development of legal reserves for the better operation of the ADF discipline system.

132. This change in the experience base of the reserves is the product of many factors that have long been in play in both civilian and military legal practice in Australia. First, it is necessary to look at the changes in the civilian practice milieu from which ADF reservists are drawn. Then the changes that have occurred in the ADF's own requirements for legal reservists are discussed.

133. The civilian practice milieu from which ADF reservists are drawn has changed. Since the 1980s, the practice of criminal law in the civilian court system has become far more specialised. Such specialisation has become necessary because of the increasing complexity of the evidentiary and procedural rules that now apply in criminal trials. Some of these rules have been enacted in legislation in each of the states and territories of Australia, and others are the product of judge-made law. In the 1980s, a number of experienced trial advocates regularly undertook both civil and criminal trial work. The ADF often usefully recruited from this group of legal practitioners because their criminal law skills could be used in the discipline system and their civil law skills could be deployed elsewhere to address the broader legal needs of the ADF.

134. Civilian lawyers who practise in both criminal and civil law are now less common and for good reason. Advocates who lack regular experience with the specialised rules that apply to criminal trials can make mistakes that can occasion great injustice to accused persons. And an advocate's inexperience in criminal trials markedly increases the risk of a mistrial, an appeal and a retrial, all of which can be unjust for accused persons and costly for prosecuting authorities.

135. Back in the 1990s, a substantial proportion of the legal reserves in each of the three Services comprised legal officers who had wide experience of criminal trial work in their civilian practices. Fewer reservists have that experience profile now. This change is partly a product of the fact that there are now fewer civilian lawyers who regularly practice in both civil and criminal law than there were in the past, a group from which the ADF commonly recruited its legal reservists.

136. The ADF's own capability requirements for legal reservists have also changed over the last few decades. When I joined the ADF in 1990 for example, the ADF primarily looked to its legal reserve to practice in the field of discipline law, drawing

directly on reservists' civilian experience of criminal trials. But by the late 1990s, the ADF was seeking a broader range of legal expertise from the legal reserve. By then the ADF needed and was looking to recruit reservists who were capable in the fields of administrative law, in conducting boards of inquiry, or had expertise in conflict and dispute resolution, or international and operations law. The need for lawyers with criminal trial experience became one of a number of competing priorities. By 2019, this trend ultimately has left highly experienced criminal lawyers as a relatively small proportion of the legal reserve able to work within the discipline system.

137. This remaining capability has been supplemented by a number of very able permanent legal officers. But as the JAG Reports in the last few years show, the numbers of cases being conducted before superior service tribunals has been slowly declining since *Lane v Morrison* (although it appears now to have stabilised), so the opportunity for permanent legal officers to obtain general criminal law experience in a service context is limited. And the ADF's own training is properly focused on practise in the field of service discipline rather than general criminal law.

138. It is critical for the better administration of justice within the ADF that the JAs appointed in the ADF's superior service tribunal system have practised in depth in criminal law and that before their appointment their experience also includes a substantial component of practice before superior service tribunals. Recent calls for expressions of interest to act as JAs and the DCJA have resulted in very satisfactory appointments. But it is becoming clear to me from the responses to these calls that the range of reserve legal officers who are competitive for these roles is more limited than it once was.

139. A declining base of experienced criminal lawyers has not as yet adversely affected the capability of the discipline system to serve the ADF's needs. But the purpose of raising this matter in this Report is to direct focus on this issue so the risk of such an effect is minimised in the future through appropriate planning and recruitment.

140. Command can address this issue in a number of ways. One possible model would be more targeted recruiting into the legal reserve of experienced criminal lawyers. But the solution that is best designed to support the ADF's discipline capability is a matter for informed discussion and policy development by Command.

CONCLUSION

141. Significant procedural and practical reform of the military discipline system occurred in 2019. The time and effort of many individuals in Defence to update the SAR and the Court Martial and Defence Force Magistrate Rules, along with the implementing policy, manuals and training, are likely to make the ADF's discipline systems more accessible and efficient. All those involved should be rightly commended for their achievements in this outcome.

142. I was also pleased to see the significant steps taken in 2019 to improve the efficiency and effectiveness of the ADF's military discipline system by the implementation of some long overdue legislative reforms. But as this and previous JAG Reports have pointed out, further legislative reform to the DFDA is still required for it to reflect comparable civilian standards for the administration of justice applied in a military context.

TABLE OF ABBREVIATIONS USED IN THIS REPORT

| Abbreviation | Description |
|---------------------|--|
| AALC | Australian Army Legal Corps |
| ACT | Australian Capital Territory |
| AFA | Armed Forces Act (UK) |
| ADF | Australian Defence Force |
| AMC | Australian Military Court |
| CDF | Chief of the Defence Force |
| CJA | Chief Judge Advocate |
| COSC | Chiefs of Service Committee |
| DCJA | Deputy Chief Judge Advocate |
| 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 |
| HSDIT | Head Summary Discipline Implementation Team |
| IGADF | Inspector General of the ADF |
| JA | Judge Advocate |
| JAG | Judge Advocate General of the ADF |
| LTM | Legal Training Module |
| MJLF | Military Justice Legal Forum |
| MJSG | Military Justice Steering Group |
| MLC | Military Law Centre |
| NCO | Non commissioned officer |
| OJAG | Officer of the Judge Advocate General |
| RMJ | Registrar of Military Justice |
| SAR | Summary Authority Rules |
| SDIT | Summary Discipline Implementation Team |
| SDS Review | Summary Discipline System Review |
| XO | Executive Officer |

**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 6–10 |
| Membership and staff | Paragraphs 5, 13–35 |
| 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 11 |
| Activities and Reports | Paragraphs 78–90 |
| Operational Problems | Paragraphs 109-140 |
| 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 2019

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 | | | | | 3 | 3 | | | 3 | 3 | | |
| February | | | | | 3 | 3 | | | 6 | 6 | | |
| March | | | | | 9 | 8 | 2 | | 6 | 8 | | |
| April | 1 | 1 | | | 3 | 5 | | | 7 | 7 | | 1 |
| May | 2 | 2 | | | 7 | 10 | | | 11 | 11 | | |
| June | | | | | 7 | 7 | | | 6 | 7 | | |
| July | | | | | 2 | 2 | | | 11 | 8 | 5 | |
| August | | | | | 7 | 14 | 2 | | 6 | 6 | 1 | |
| September | | | | | 3 | 3 | 1 | | 8 | 8 | 1 | |
| October | 1 | 1 | | | 4 | 11 | 1 | | 8 | 10 | | 1 |
| November | | | | | 3 | 2 | 1 | | 10 | 9 | | 1 |
| December | | | | | 5 | 6 | 2 | | 4 | 5 | | |
| TOTAL | 4 | 4 | 0 | 0 | 56 | 74 | 7 | 2 | 86 | 88 | 7 | 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 | | | | | | | | | | 9 |
| 24 | 3 | | | | | | 3 | | | 24 |
| 25 | | | | | | | 1 | | | |
| 26 | | | | | | | 1 | | | 7 |
| 27 | | | | | | | | | | 9 |
| 28 | | | | | | 1 | | | | |
| 29 | 9 | | | 2 | | 2 | 7 | | | 20 |
| 30 | | | | | | | | | | |
| 31 | | | | | | | | | | |
| 32 | | | | | | | | | | |
| 33(a) | | | | | | | | | | 5 |
| 33(b) | | | | | | | 2 | | | 5 |
| 33(c) | | | | | | | | | | |
| 33(d) | | | | | | | | | | 1 |
| 33A | | | | | | | | | | |
| 34 | 1 | | | 1 | | 1 | 1 | | | |
| 35 | | | | | | | | | | |
| 36 | | | | | | | | | | 1 |
| 36A | | | | | | | | | | |
| 36B | | | | | | | | | | |
| 37 | | | | | | | | | | 3 |
| 38 | | | | | | | | | | |
| 40 | | | | | | | | | | 2 |
| 40A | | | | | | | | | | 1 |
| 40B | | | | | | | | | | |
| 40C | | | | | | | 1 | | | |
| 40D | | | | | | | 2 | | | 1 |
| 41 | | | | | | | | | | |
| 42 | | | | | | | | | | |
| 43 | | | | | | | | | | 2 |
| 44 | | | | | | | | | | |
| 45 | | | | | | | | | | |
| 46 | | | | | | | | | | 1 |
| 47C | | | | | | | | | | 7 |
| 47P | | | | | | | | | | |
| 47Q | 1 | | | | | | 1 | | | 2 |
| 48 | | | | | | | | | | |
| 49 | | | | | | | | | | |
| 50 | | | | | | | | | | |
| 51 | | | | | | | | | | |
| 53 | | | | | | | | | | |
| 54 | | | | | | | | | | |
| 54A | | | | | | | | | | |
| 55 | | | | 1 | | | | | | |
| 56 | | | | | | | | | | |
| 57 | | | | | | | | | | |
| 58 | | | | | | | | | | |
| 59 | | | | | | | | | | |
| 60 | 3 | | | | | 3 | 2 | | | 17 |
| 61 | | | | | | | | | | |
| TOTAL | 17 | 0 | 0 | 4 | 0 | 7 | 21 | 0 | 0 | 117 |

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 | 5 | | | 1 | | 4 | 5 | | | 13 |
| Conditional conviction without punishment | 1 | | | | | | | | | 1 |
| Unconditional conviction without punishment | | | | | | | 2 | | | 4 |
| Severe reprimand | 7 | | | 1 | | 2 | 3 | | | 10 |
| Extra duties | | | | | | | | | | |
| Extra Drill | | | | | | | | | | |
| Stoppage of leave | | | | | | | | | | 8 |
| Restriction of privileges | | | | | | | | | | 52 |
| Suspended fine | | | | 1 | | | 1 | | | 2 |
| Fine Less than 14 Days Pay | 8 | | | 3 | | 2 | 13 | | | 48 |
| Fine More than 14 Days Pay | | | | | | | 1 | | | 1 |
| Forfeiture of service for purposes of promotion | | | | | | | | | | |
| Forfeiture of seniority | | | | | | 1 | | | | |
| Reduction in rank | | | | | | | | | | |
| Suspended detention | | | | | | | | | | |
| Committed detention | | | | | | | | | | 17 |
| TOTAL | 21 | 0 | 0 | 6 | 0 | 9 | 25 | 0 | 0 | 156 |

ARMY
JANUARY-DECEMBER 2019

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 | | | | | 1 | 1 | | | 5 | 7 | | |
| February | | | | | 11 | 18 | | | 22 | 24 | | 2 |
| March | | | | | 6 | 9 | | | 33 | 36 | | 3 |
| April | | | | | 6 | 14 | | | 42 | 44 | 1 | 1 |
| May | 3 | 3 | | | 18 | 19 | 4 | | 46 | 55 | 2 | |
| June | 3 | 3 | | | 26 | 39 | | 1 | 59 | 74 | 1 | 2 |
| July | 1 | 1 | | | 15 | 24 | 2 | | 27 | 28 | 3 | 2 |
| August | 2 | 2 | | | 25 | 35 | 1 | | 40 | 55 | 1 | 1 |
| September | | | | | 17 | 49 | | 1 | 57 | 63 | 4 | 7 |
| October | 2 | 2 | 2 | | 23 | 29 | 4 | 8 | 49 | 55 | | 5 |
| November | 1 | 1 | | | 20 | 32 | | | 51 | 57 | 2 | 6 |
| December | | | | | 20 | 28 | 4 | | 35 | 37 | | 3 |
| TOTAL | 12 | 12 | 2 | 0 | 188 | 297 | 15 | 10 | 466 | 535 | 14 | 32 |

**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 | 1 | 4 | | | | | 4 | | | 19 |
| 24 | 2 | 3 | | | | | 6 | 6 | | 59 |
| 25 | | | | | | | | | | 2 |
| 26 | | 1 | | 4 | | | 1 | 4 | | 32 |
| 27 | 1 | | | 1 | | 2 | 6 | 4 | | 32 |
| 28 | | | | | | | 1 | | | |
| 29 | 15 | 25 | 1 | 4 | | 9 | 22 | 14 | | 151 |
| 30 | | | | | | | | | | |
| 31 | | | | | | | | | | |
| 32 | | | | | | | | | | 3 |
| 33(a) | | | | | | | 1 | | | 9 |
| 33(b) | | | | | | | | 1 | | 9 |
| 33(c) | | | | | | | | | | 1 |
| 33(d) | | 1 | | | | | | 2 | | 5 |
| 33A | | | | | | | | | | 3 |
| 34 | | | | | | 2 | 1 | 2 | | 2 |
| 35 | | 1 | | 2 | | | 4 | | | 2 |
| 36 | | | | | | | | | | |
| 36A | 2 | 1 | | | | | 2 | | | 5 |
| 36B | 11 | 20 | | | | 3 | 6 | 6 | | 87 |
| 37 | 1 | | | | | 1 | | 1 | | 4 |
| 38 | | | | | | | | | | |
| 40 | | | | | | | | | | |
| 40A | 1 | | | | | 1 | | | | 1 |
| 40B | | | | | | | | | | |
| 40C | | | | | | | | | | |
| 40D | | | | | | | | | | 2 |
| 41 | | | | | | | 1 | 1 | | 6 |
| 42 | | | | | | | | | | |
| 43 | 1 | | | | | 1 | | 1 | | 10 |
| 44 | 2 | | | | | | | | | 1 |
| 45 | | | | | | | 2 | | | 19 |
| 46 | | | | | | | | | | |
| 47C | | | | | | | | | | 3 |
| 47P | | | | | | | | | | |
| 47Q | | | | | | | | | | 1 |
| 48 | | | | | | | | | | |
| 49 | | | | | | | | | | |
| 50 | | | | | | | | | | |
| 51 | | | | | | | | | | |
| 53 | | | | | | | | | | |
| 54 | | | | | | | | | | |
| 54A | | | | | | | | | | |
| 55 | 1 | | | 2 | | 1 | | | | 4 |
| 56 | | | | | | | | | | |
| 57 | | | | | | | | | | |
| 58 | | | | | | | | 1 | | |
| 59 | | | | | | | | | | 1 |
| 60 | 10 | 3 | | 3 | | 6 | 12 | 11 | | 98 |
| 61 | | | | | | | | | | |
| TOTAL | 48 | 59 | 1 | 16 | 0 | 26 | 69 | 54 | 0 | 571 |

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 | 5 | 1 | 1 | 4 | | 2 | 22 | 9 | | 36 |
| Conditional conviction without punishment | | | | | | 1 | 1 | | | 2 |
| Unconditional conviction without punishment | 1 | 1 | | 1 | | | 5 | 3 | | 14 |
| Severe reprimand | 8 | | | 5 | | 7 | 15 | 1 | | 21 |
| Extra duties | | | | | | | | | | 29 |
| Extra drill | | | | | | | | | | 5 |
| Stoppage of leave | | 1 | | | | | | | | 31 |
| Restriction of privileges | 2 | 37 | | | | | | 1 | | 261 |
| Suspended fine | | | | 2 | | 3 | 6 | 2 | | 11 |
| Fine Less than 14 Days Pay | 43 | 26 | | 10 | | 13 | 35 | 33 | | 263 |
| Fine More than 14 Days Pay | | | | | | | | 3 | | 8 |
| Forfeiture of service for purposes of promotion | | | | | | | | | | |
| Forfeiture of seniority | | | | | | | 1 | | | |
| Reduction in rank | | | | | | 2 | 7 | 6 | | 5 |
| Suspended detention | | | | | | | | | | |
| Committed detention | | | | | | | | | | 52 |
| TOTAL | 59 | 66 | 1 | 22 | 0 | 28 | 92 | 58 | 0 | 738 |

AIR FORCE
JANUARY-DECEMBER 2019

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 | 1 | | | 1 | 3 | | | 1 | 1 | | |
| February | 1 | 1 | | | | | | | 2 | | 2 | |
| March | | | | | 1 | | 1 | | 3 | 4 | | |
| April | | | | | | | | | 1 | 1 | | |
| May | | | | | 1 | 1 | | | 2 | 3 | | |
| June | | | | | 3 | 3 | | | | | | |
| July | | | | | 3 | 6 | | | 4 | 5 | | |
| August | 1 | 9 | | | 4 | 3 | 2 | 2 | 3 | 2 | 1 | |
| September | | | | | 1 | 4 | | | 8 | 8 | 1 | |
| October | | | | | 4 | 6 | | | 4 | 10 | | |
| November | | | | | 2 | 3 | | 1 | 9 | 9 | | 1 |
| December | | | | | | | | | 2 | 1 | 1 | |
| TOTAL | 3 | 11 | 0 | 0 | 20 | 29 | 3 | 3 | 39 | 44 | 5 | 1 |

**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 | | | | | | | | | | |
| 24 | | 3 | | | | | 1 | | | 6 |
| 25 | | | | | | | | | | |
| 26 | | 1 | | | | | | | | 1 |
| 27 | 1 | 1 | | | | 1 | | | | |
| 28 | | | | | | | | | | |
| 29 | 2 | | | | | 2 | 3 | | | 21 |
| 30 | | | | | | | | | | |
| 31 | | | | | | | | | | |
| 32 | | | | | | | | | | |
| 33(a) | | | 1 | | | | | | | |
| 33(b) | | | | | | | | | | 1 |
| 33(c) | | | | | | | | | | |
| 33(d) | | | | | | | | | | |
| 33A | | 1 | | | | | | | | |
| 34 | | | | | | | | | | |
| 35 | | | | | | | | | | 1 |
| 36 | | | | | | | | | | |
| 36A | | | | | | | | | | |
| 36B | 1 | | | | | | | | | |
| 37 | | | | | | | | | | 1 |
| 38 | | | | | | | | | | |
| 40 | | | | | | | | | | |
| 40A | | | | | | | 1 | | | |
| 40B | | | | | | | | | | |
| 40C | 3 | | | | | | | | | |
| 40D | | | | | | | | | | 2 |
| 41 | | | | | | | | | | |
| 42 | | | | | | | | | | |
| 43 | | | | | | | | | | 1 |
| 44 | | | | | | | | | | |
| 45 | | | | | | | | | | |
| 46 | | | | | | | | | | |
| 47C | | | | | | | 1 | | | |
| 47P | | | | | | | | | | |
| 47Q | | | | | | | | | | 3 |
| 48 | | | | | | | | | | |
| 49 | | | | | | | | | | |
| 50 | | | | | | | | | | |
| 51 | | | | | | | | | | |
| 53 | | | | | | | | | | |
| 54 | | | | | | | | | | |
| 54A | | | | | | | | | | |
| 55 | 1 | | | | | 1 | | | | 2 |
| 56 | | | | | | | | | | 1 |
| 57 | | | | | | | | | | |
| 58 | | | | | | | | | | |
| 59 | | | | | | | | | | |
| 60 | 12 | 1 | | | | 1 | 1 | | | 4 |
| 61 | | | | | | | | | | |
| TOTAL | 20 | 7 | 1 | 0 | 0 | 5 | 7 | 0 | 0 | 44 |

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 | 5 | | 1 | | | 1 | | | | 16 |
| Conditional conviction without punishment | | | | | | | | | | |
| Unconditional conviction without punishment | | | | | | | | | | 5 |
| Severe reprimand | 12 | | | | | | 2 | | | 2 |
| Extra duties | | | | | | | | | | 1 |
| Extra drill | | | | | | | | | | 1 |
| Stoppage of leave | | | | | | | | | | 3 |
| Restriction of privileges | | 7 | | | | | | | | 4 |
| Suspended fine | 1 | | | | | | | | | |
| Fine Less than 14 Days Pay | 17 | | 2 | | | 4 | 6 | | | 12 |
| Fine More than 14 Days Pay | | | | | | | | | | |
| Forfeiture of service for purposes of promotion | | | | | | | | | | |
| Forfeiture of seniority | | | | | | | | | | |
| Reduction in rank | | | | | | | | | | 4 |
| Suspended detention | | | | | | | | | | |
| Committed detention | | | | | | | | | | 1 |
| TOTAL | 35 | 7 | 3 | 0 | 0 | 5 | 8 | 0 | 0 | 49 |

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 | 1 | 1 | 0 | 0 | 5 | 7 | 0 | 0 | 9 | 11 | 0 | 0 |
| February | 1 | 1 | 0 | 0 | 14 | 21 | 0 | 0 | 30 | 30 | 2 | 2 |
| March | 0 | 0 | 0 | 0 | 16 | 17 | 3 | 0 | 42 | 48 | 0 | 3 |
| April | 1 | 1 | 0 | 0 | 9 | 19 | 0 | 0 | 50 | 52 | 1 | 2 |
| May | 5 | 5 | 0 | 0 | 26 | 30 | 4 | 0 | 59 | 69 | 2 | 0 |
| June | 3 | 3 | 0 | 0 | 36 | 49 | 0 | 1 | 65 | 81 | 1 | 2 |
| July | 1 | 1 | 0 | 0 | 20 | 32 | 2 | 0 | 42 | 41 | 8 | 2 |
| August | 3 | 11 | 0 | 0 | 36 | 52 | 3 | 4 | 49 | 63 | 3 | 1 |
| September | 0 | 0 | 0 | 0 | 21 | 56 | 1 | 1 | 73 | 79 | 6 | 7 |
| October | 3 | 3 | 2 | 0 | 31 | 46 | 5 | 8 | 61 | 75 | 0 | 6 |
| November | 1 | 1 | 0 | 0 | 25 | 37 | 1 | 1 | 70 | 75 | 2 | 8 |
| December | 0 | 0 | 0 | 0 | 25 | 34 | 6 | 0 | 41 | 43 | 1 | 3 |
| TOTAL | 19 | 27 | 2 | 0 | 264 | 400 | 25 | 15 | 591 | 667 | 26 | 36 |

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 2019**

DISCIPLINE OFFICER STATISTICS

| Infringement | Number |
|---------------------|---------------|
| Section 23 | 337 |
| 24 | 113 |
| 27 | 188 |
| 29 | 775 |
| 32(1) | 11 |
| 35 | 12 |
| 60 | 131 |
| TOTAL (1) | 1567 |

| Action Taken | Number |
|---|---------------|
| Punishment Imposed - Fine | 278 |
| ROP | 228 |
| SOL | 351 |
| Extra Duties | 285 |
| Extra Drill | 6 |
| Reprimand | 339 |
| No Punishment Imposed | 77 |
| Referred to an Authorised Member | 3 |
| TOTAL (1) | 1567 |

ARMY
JANUARY-DECEMBER 2019
DISCIPLINE OFFICER STATISTICS

| Infringement | Number |
|---------------------|---------------|
| Section 23 | 169 |
| 24 | 260 |
| 27 | 426 |
| 29 | 952 |
| 32(1) | 15 |
| 35 | 55 |
| 60 | 242 |
| TOTAL (1) | 2119 |

| Action Taken | Number |
|---|---------------|
| Punishment Imposed - Fine | 288 |
| ROP | 595 |
| SOL | 374 |
| Extra Duties | 348 |
| Extra Drill | 145 |
| Reprimand | 298 |
| No Punishment Imposed | 62 |
| Referred to an Authorised Member | 9 |
| TOTAL (1) | 2119 |

**AIR FORCE
JANUARY-DECEMBER 2019
DISCIPLINE OFFICER STATISTICS**

| Infringement | Number |
|---------------------|---------------|
| Section 23 | 41 |
| 24 | 17 |
| 27 | 79 |
| 29 | 150 |
| 32(1) | 2 |
| 35 | 13 |
| 60 | 33 |
| TOTAL (1) | 335 |

| Action Taken | Number |
|---|---------------|
| Punishment Imposed - Fine | 80 |
| ROP | 52 |
| SOL | 49 |
| Extra Duties | 16 |
| Extra Drill | 12 |
| Reprimand | 90 |
| No Punishment Imposed | 31 |
| Referred to an Authorised Member | 5 |
| TOTAL (1) | 335 |

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 2019

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 | | | | | | | | | | | 1 | 1 | | | |
| March | | | | | | | | | | | 1 | | 1 | | |
| April | | | | | | | | | | | 3 | 3 | 1 | | 2 |
| May | | | | | | | | | | | 2 | 12 | | | 1 |
| June | | | | | | | | | | | 1 | 1 | | | |
| July | | | | | | | | | | | 4 | 4 | 5 | | |
| August | | | | | | | | | | | 4 | 6 | 1 | | 2 |
| September | | | | | | | | | | | | | | | |
| October | | | | | | | | | | | 1 | 1 | | | |
| November | | | | | | | | | | | 3 | 7 | | | 1 |
| December | | | | | | | | | | | | | | | |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 20 | 35 | 8 | 0 | 6 |

**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 | | | | | | | | | 1 | |
| 24 | | | | | | | | | | |
| 25 | | | | | | | | | 1 | |
| 26 | | | | | | | 1 | | | |
| 27 | | | | | | | | | | |
| 28 | | | | | | | | | | |
| 29 | | | | | | | | | | |
| 30 | | | | | | | | | | |
| 31 | | | | | | | | | | |
| 32 | | | | | | | | | | |
| 33(a) | 4 | | | | | | | | | |
| 33(b) | | | | | | | | | | |
| 33(c) | | | | | | | | | | |
| 33(d) | | | | | | | | | | |
| 33A | | | | | | | | | | |
| 34 | 1 | | | | | | | | | |
| 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 | | | | | | | | | | |
| 56 | | | | | | | | | | |
| 57 | | | | | | | | | | |
| 58 | | | | | | | | | | |
| 59 | | | | | | | | | | |
| 60 | 1 | | | | | | 13 | | | |
| 61 | 4 | | | 3 | | | 3 | | 3 | |
| TOTAL | 10 | 0 | 0 | 3 | 0 | 0 | 17 | 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 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 | | | | | | | | | | |
| Conditional conviction without punishment | | | | | | | | | 1 | |
| Unconditional conviction without punishment | | | | | | | | | | |
| Severe reprimand | 1 | | | | | | 1 | | | |
| Suspended fine | | | | | | | | | | |
| Fine Less than 14 Days Pay | 2 | | | | | | 1 | | 1 | |
| Fine More than 14 Days Pay | | | | | | | | | | |
| Forfeiture of service for purposes of promotion | 1 | | | | | | | | | |
| Forfeiture of seniority | 3 | | | | | | 13 | | 2 | |
| Reduction in rank | 3 | | | | | | 3 | | | |
| Suspended detention | | | | | | | | | | |
| Committed detention | | | | | | | | | 2 | |
| Dismissal | 3 | | | 3 | | | 2 | | | |
| Imprisonment | | | | | | | | | | |
| TOTAL | 13 | 0 | 0 | 3 | 0 | 0 | 20 | 0 | 6 | 0 |

ARMY

JANUARY-DECEMBER 2019

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 | | | | | | | | | | | 2 | 4 | | | 1 |
| February | | | | | | | | | | | 3 | 3 | | | 1 |
| March | | | | | | | | | | | 3 | 3 | | 2 | 6 |
| April | | | | | | | | | | | | | | | |
| May | | | | | | | | | | | 4 | 9 | 3 | | 11 |
| June | | | | | | | | | | | | | | | |
| July | | | | | | | | | | | 3 | 2 | 1 | | |
| August | | | | | | | | | | | 2 | 4 | | | 18 |
| September | | | | | | | | | | | | | | | |
| October | | | | | | | | | | | 1 | 1 | | | |
| November | | | | | | | | | | | 2 | 1 | 1 | | |
| December | | | | | | | | | | | 2 | 3 | 9 | | |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 22 | 30 | 14 | 2 | 37 |

**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 | | | | | | | 1 | | | |
| 30 | | | | | | | | | | |
| 31 | | | | | | | | | | |
| 32 | | | | | | | | | | |
| 33(a) | | | 1 | | | | | | | 2 |
| 33(b) | | 1 | | | | 1 | | | | 2 |
| 33(c) | | | | | | | | | | |
| 33(d) | | | | | | | | | | |
| 33A | | | | | | | | | | |
| 34 | | | | | | | 1 | | | |
| 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 | | | | | | 2 | 2 | | | |
| 56 | | | | | | 1 | | | | |
| 57 | | | | | | | | | | |
| 58 | | | | | | | | | | |
| 59 | | | | | | | | | | |
| 60 | | | | | | | 1 | | | 1 |
| 61 | | | | | | 4 | 4 | | | 5 |
| TOTAL | 0 | 2 | 1 | 0 | 0 | 8 | 9 | 0 | 0 | 10 |

Details of Quashed Convictions

| DFDA Sect | Rank | Short Summary of Offence | Reason for quashing |
|------------------|-------------|----------------------------------|--------------------------------|
| 61 | CPL | Act of indecency without consent | Due to a material irregularity |
| 60 | CPL | Prejudicial conduct | Due to a material irregularity |

**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 | | | | | | | | 1 |
| Conditional conviction without punishment | | | | | | | | | | |
| Unconditional conviction without punishment | | | | | | | | | | |
| Severe reprimand | | | | | | 1 | 1 | | | 2 |
| Suspended fine | | | | | | | | | | 3 |
| Fine Less than 14 Days Pay | | 1 | | | | 1 | 1 | | | 1 |
| Fine More than 14 Days Pay | | | | | | | | | | 2 |
| Forfeiture of service for purposes of promotion | | | | | | | | | | |
| Forfeiture of seniority | | | | | | | 1 | | | |
| Reduction in rank | | | 1 | | | 2 | 7 | | | |
| Suspended detention | | | | | | | | | | 1 |
| Committed detention | | | | | | | | | | 4 |
| Dismissal | | | | | | 6 | 4 | | | |
| Imprisonment | | | | | | | 2 | | | |
| TOTAL | 0 | 2 | 1 | 0 | 0 | 10 | 16 | 0 | 0 | 14 |

AIR FORCE
JANUARY-DECEMBER 2019

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 | | | | | | | | | | | 2 | 9 | 4 | | |
| March | | | | | | | | | | | | | | | |
| April | | | | | | | | | | | | | | | |
| May | | | | | | | | | | | | | | | |
| June | | | | | | | | | | | | | | | |
| July | | | | | | | | | | | 1 | 1 | | | |
| August | | | | | | | | | | | 1 | 3 | | | 1 |
| September | | | | | | | | | | | 2 | 4 | | | |
| October | | | | | | | | | | | 1 | | 3 | | |
| November | | | | | | | | | | | | | | | |
| December | | | | | | | | | | | | | | | |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 7 | 17 | 7 | 0 | 1 |

**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 | | | | | | | | | | |
| 30 | | | | | | | | | | |
| 31 | | | | | | | | | | |
| 32 | | | | | | | | | | |
| 33(a) | 1 | | | | | | | | | |
| 33(b) | | | | | | | | | | |
| 33(c) | | | | | | | | | | |
| 33(d) | | | | | | | | | | |
| 33A | | | | | | | | | | |
| 34 | | | | | | | | | | |
| 35 | | | | | | | | | | |
| 36 | | | | | | | | | | |
| 36A | | | | | | | | | | |
| 36B | | | | | | | | | | |
| 37 | | | | | | | | | | |
| 38 | | | | | | | | | | |
| 40 | | | | | | | | | | |
| 40A | | | | | | | | | | |
| 40C | | | | | | | | | | |
| 40D | | | | | | | | | | |
| 42 | | | | | | | | | | |
| 43 | | | | | | | | | | 2 |
| 44 | | | | | | | | | | |
| 45 | | | | | | | | | | |
| 46 | | | | | | | | | | |
| 47C | | | | | | | | | | |
| 47P | | | | | | | | | | |
| 47Q | | | | | | | | | | |
| 48 | | | | | | | | | | |
| 49 | | | | | | | | | | |
| 50 | | | | | | | | | | |
| 51 | | | | | | | | | | |
| 53 | | | | | | | | | | |
| 54 | | | | | | | | | | |
| 55 | | | | | | | | | | |
| 56 | | | | | | | | | | |
| 57 | | | | | | | | | | |
| 58 | | | | | | | | | | |
| 59 | | | | | | | | | | |
| 60 | | | | 2 | | | | | | 2 |
| 61 | 2 | | | | | 7 | 1 | | | |
| TOTAL | 3 | 0 | 0 | 2 | 0 | 7 | 1 | 0 | 0 | 4 |

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 | | | | | | | | | | 2 |
| Conditional conviction without punishment | | | | | | | | | | |
| Unconditional conviction without punishment | | | | | | | | | | |
| Severe reprimand | | | | | | | | | | 2 |
| Suspended fine | 2 | | | | | | | | | |
| Fine Less than 14 Days Pay | 1 | | | 1 | | 5 | | | | 4 |
| Fine More than 14 Days Pay | | | | | | | | | | |
| Forfeiture of service for purposes of promotion | | | | | | | | | | |
| Forfeiture of seniority | | | | 1 | | 7 | | | | |
| Reduction in rank | 1 | | | | | | 1 | | | |
| Suspended detention | | | | | | | | | | |
| Committed detention | | | | | | | | | | |
| Dismissal from ADF | | | | | | | 1 | | | |
| Imprisonment | | | | | | | | | | |
| TOTAL | 4 | 0 | 0 | 2 | 0 | 12 | 2 | 0 | 0 | 8 |

COMBINED JANUARY - DECEMBER 2019

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 | 4 | 0 | 0 | 1 |
| February | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 6 | 13 | 4 | 0 | 1 |
| March | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4 | 3 | 1 | 2 | 6 |
| April | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 3 | 1 | 0 | 2 |
| May | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 6 | 21 | 3 | 0 | 12 |
| June | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 |
| July | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 8 | 7 | 6 | 0 | 0 |
| August | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 7 | 13 | 1 | 0 | 21 |
| September | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 4 | 0 | 0 | 0 |
| October | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 2 | 3 | 0 | 0 |
| November | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | 8 | 1 | 0 | 1 |
| December | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 3 | 9 | 0 | 0 |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 49 | 82 | 29 | 2 | 44 |

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 |