



**JUDGE ADVOCATE GENERAL**

**DEFENCE FORCE  
DISCIPLINE ACT 1982**

*Report for the period  
1 January to 31 December 2020*

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**JUDGE ADVOCATE GENERAL**

**HEADQUARTERS AUSTRALIAN DEFENCE FORCE  
DEPARTMENT OF DEFENCE  
CANBERRA ACT 2600**

The Hon. Peter Dutton,  
Minister for Defence  
Parliament House  
CANBERRA ACT 2600

Dear Minister

I submit herewith my report covering the period from 1 January to 31 December 2020. 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 'Michael Slattery'.

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

28 June 2021

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**JUDGE ADVOCATE GENERAL  
AUSTRALIAN DEFENCE FORCE**

**REPORT FOR THE PERIOD 1 JANUARY TO 31 DECEMBER 2020**

**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 2020.

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.<sup>1</sup>

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

a. 1985–1987 the late Major General the Honourable Justice R Mohr, RFD, ED (of the Supreme Court of South Australia).

b. 1987–1992 Air Vice Marshal the Honourable 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 Honourable Justice ARO Rowlands, AO, RFD, RAN (of the Family Court of Australia).

d. 1996–2001 Major General the Honourable Justice KP Duggan, AM, RFD (of the Supreme Court of South Australia).

e. 2001–2007 Major General the Honourable 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 Honourable 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.<sup>2</sup>

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<sup>1</sup> DFDA, s. 188.

<sup>2</sup> 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,<sup>3</sup>
- b. making procedural rules for Service tribunals, being:
  - (i) Court Martial and Defence Force Magistrate Rules, and
  - (ii) Summary Authority Rules 2019 (SAR),
- c. appointing the Chief Judge Advocate (CJA) and Deputy Chief Judge Advocate (DCJA)<sup>4</sup>
- d. nominating the judge advocate (JA) for a court martial<sup>5</sup> and Defence Force magistrates (DFMs)<sup>6</sup>
- e. nominating to the Chief of the Defence Force (CDF) or to a Service Chief, legal officers to be members of the panel of JAs<sup>7</sup>
- f. appointing DFMs from officers appointed as members of the panel of JAs<sup>8</sup>
- g. nominating to the CDF legal officers for the purposes of DFDA, s. 154(1)(a), and
- h. 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 from the reserves. 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 for legal officers appearing before service tribunals remains with the Chief Counsel, Director General - Military Legal Service (DGMLS) and the single Service heads of corps/category/community.

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<sup>3</sup> DFDA, s. 196A.

<sup>4</sup> DFDA, s. 188A and s. 188EC

<sup>5</sup> DFDA, s. 129B.

<sup>6</sup> DFDA, s. 129C.

<sup>7</sup> DFDA, s. 196.

<sup>8</sup> DFDA, s. 127.



9. The JAG also plays significant roles in promoting the jurisprudential welfare of the ADF and in promoting wider understanding of the operation of the ADF discipline system.

10. I share the opinion held by all 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 which is due to expire on 29 July 2021.<sup>9</sup> During the reporting period the Directorate of Senior Officer Management (DSOM) initiated a process for the appointment by the Governor-General of my successor as JAG. At the time of this report that process has not resulted in any appointment. But an announcement is expected in July 2021. I wish to acknowledge the excellent work of DSOM in arranging the consultations necessary for this process and the similar process for the appointment of the next DJAG-Navy.

### **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 Paul Smith, and
- c. Air Commodore His Honour Judge Gordon Bruce Lerve.

14. The term of office of DJAG – Navy, Commodore Rush, will expire in July 2021, after the conclusion of the reporting period. I wish to record my sincere thanks to Commodore Rush for his exceptional service and commitment as DJAG – Navy since 2014. Throughout his term of office, he has been ever ready to take on review report duties at short notice. I am most grateful to have had the benefit of his wisdom and his sound and practical contribution to policy discussions within OJAG. DSOM has initiated a process for the appointment by the Governor-General of a successor to Commodore Rush. At the time of this report that process has not resulted in any appointment. But an announcement is expected in July 2021.

15. I formally record my gratitude to all the DJAGs for their support and counsel during the reporting period. They all have decades of experience in the ADF's discipline system. As well as writing regular reports under DFDA ss. 154(3) and 155(3), their current experience in civilian criminal courts is an invaluable resource for OJAG in shaping its rules and procedures. I 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.

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<sup>9</sup> My appointment was extended on 9 March 2017 until 29 July 2021.

### **Chief Judge Advocate**

16. Brigadier Michael Cowen, QC continues to hold the position of CJA, to which he was appointed in September 2017.<sup>10</sup> I have described his rich legal and military background previously.<sup>11</sup> His lengthy experience as a civilian criminal lawyer has informed his initiatives that have tightened standards within the ADF superior discipline system and introduced the best criminal justice trial management practices from other Australian jurisdictions. Examples of these reforms are OJAG's practice notes and the Bench Book for this jurisdiction, discussed later in this Report. These initiatives and CJA's conduct of trials have lessened trial adjournments and communicated to legal practitioners the standards of practice expected of them in this jurisdiction.

17. In addition to CJA's duties conducting trial work within the superior discipline system, the DFDA charges CJA with providing 'administrative assistance' to the JAG.<sup>12</sup> These words in the statute seriously understates the wide range of JAG functions in which I consult the CJA and rely upon his good judgment and counsel. CJA has shown exceptional leadership in bringing the superior discipline system to the high level of confidence that it now commands both within the ADF and in the wider Australian community.

### **Deputy Chief Judge Advocate**

18. I discussed the process for the appointment of a DCJA in my last report.<sup>13</sup> The process was completed in March 2020 and saw the appointment of Group Captain Scott Geeves as DCJA. The need within the superior tribunal discipline system for a second full-time military judge to assist CJA has long been recognised. Group Captain Geeves is already proving the wisdom of creating the office of DCJA.

### **Reserve Judge Advocates**

19. There were four JA/DFMs in 2020. They were:

- a. Group Captain John Devereux
- b. Wing Commander Joana Fuller
- c. Commander Greg Sirtes, SC, and
- d. Lieutenant Colonel Jonathan Hyde.

20. Group Captain Devereux filled the role of JA/DFM for a period of three months between September and December 2020. He was appointed in response to COVID-19 restrictions upon entry into Queensland. His appointment allowed superior discipline tribunal trials to continue in Queensland and the Northern Territory. Group Captain Devereux's readiness to take on this additional role at short notice greatly assisted OJAG in maintaining its capability to conduct trials throughout Australia

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<sup>10</sup> Appointments to the office of CJA are made under DFDA s. 188A.

<sup>11</sup> 2017 JAG Report, paragraph 14.

<sup>12</sup> DFDA s. 188B(1)

<sup>13</sup> 2019 JAG Report, paragraphs 17 to 22.

during the pandemic. OJAG's response to the pandemic is discussed in more detail later in this report.<sup>14</sup>

21. Lieutenant Colonel Hyde decided in December 2020 not to seek to renew his JA appointment with a view to continuing to expand his overall military experience. During his term as JA since 2018, Lieutenant Colonel Hyde has conducted a wide variety of DFM trials. I thank him for his highly committed service as a JA over the last three years.

22. Shortly after the end of the reporting period, pursuant to DFDA, s. 196, I nominated then Flight Lieutenant Sophie Callan, SC to CDF for appointment on the JA's panel. In February 2021, CDF appointed her to the JA's panel and I in turn appointed her as a DFM pursuant to DFDA, s. 196.

### **Registrar of Military Justice**

23. Group Captain Ian Henderson continued to fulfil the role of Registrar of Military Justice (RMJ) during the reporting period. From time to time during the reporting period the Deputy RMJ, Lieutenant Colonel Caroline Coombs acted in the role in RMJ's absence.

24. After the conclusion of the reporting period and before the publication of this report Group Captain Henderson's appointment as the next Director of Military Prosecutions (DMP) was announced. He will retire as RMJ on 30 June 2021 before his otherwise scheduled retirement date of 31 December 2022, upon taking up his appointment as DMP on 1 July 2021.

25. Aspects of Group Captain Henderson's work as RMJ during the reporting period are discussed throughout this report. In addition to that account of his achievements in the role, I wish to acknowledge the close support he provided as RMJ since September 2018 both to CJA and me in the discharge of our respective offices. We have both often called upon his counsel especially where nuanced or creative solutions were needed to otherwise intractable problems. He made a marked improvement to the efficiency and timeliness of ADF superior service tribunal proceedings during his term as RMJ.

### **Expiration of statutory appointments**

26. 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. DJAG-Navy, Commodore Rush, expiry date 29 July 2021
- c. DJAG-Army, Brigadier Smith, expiry date 9 March 2024
- d. DJAG-Air Force, Air Commodore Lerve, expiry date 17 May 2022
- e. CJA, Brigadier Cowen, expiry date 21 September 2022
- f. DCJA, Group Captain Geeves, expiry date 29 March 2025, and

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<sup>14</sup> Under the heading 'OJAG's Response to the COVID-19 Pandemic'.

- g. RMJ, Group Captain Henderson, expiry date 31 December 2022.

### **Section 154 legal officers**

27. 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).

28. 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 operates in practice. I discuss later in this report the current s. 154 reporting processes.

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

- a. Major General Ian Westwood, AO
- b. Air Commodore Michael Burnett, AM
- c. Captain James Renwick, CSC, SC, RAN
- d. Group Captain James Gibson
- e. Group Captain Gregory Lynham
- f. Commander Nanette Williams, RAN
- g. Wing Commander Joana Fuller
- h. Wing Commander Glenn Theakston
- i. Lieutenant Commander Catherine Traill, RAN
- j. Major Michael Antrum
- k. Major Emma Shaw, and
- l. Squadron Leader James Lawton.

30. I thank each of these s. 154 legal officers for their service to the ADF, which is given in addition to their other busy civilian professional duties as judges, magistrates, or legal practitioners.

### **Related Appointments**

31. Mr Adrian D'Amico continued in his role as Chief Counsel in 2020. During the reporting period I held valuable consultations with Mr D'Amico on a regular basis about the longer-term development of the ADF discipline system and in promoting both legislative and managerial improvements to the system.

32. Commodore Peter Bowers, RAN continued in the role of Director General Military Legal Service (DGMLS) throughout the reporting period. He retired as DGMLS in January 2021, when Air Commodore Patrick Keane AM, CSC assumed

the role of DGMLS. Commodore Bowers now undertakes special duties as a reserve legal officer.

33. I wish to acknowledge the practical support Commodore Bowers gave to OJAG throughout his term as DGMLS. As JAG, I worked with him closely on a wide range of issues for the betterment of the ADF's discipline system. We had frequent discussions about the merits of amendments to the DFDA. And together we addressed ADF legal officers throughout Australia about the ADF's expectations of legal officers in the ADF discipline system.

34. The DMP is appointed under DFDA, s. 188GF. Brigadier Jennifer Woodward, CSC continued to serve as DMP during the reporting period, her appointment having been extended until July 2021. The DMP reports separately as required by DFDA, s. 196B.

35. At the time of this report Brigadier Woodward will shortly retire both as DMP and from permanent service in the ADF. She will continue to contribute to the ADF as a reserve legal officer. I wish to acknowledge and thank her for her many years of dedicated service to the ADF discipline system in varied roles, as counsel, as a judge of the Australian Military Court, as a JA and finally as DMP. In the discharge of her DMP duties she frequently appeared as an advocate before service tribunals, bringing to bear her long experience of the application of discipline law and her high standards of legal analysis. Among the many improvements she made to the office of DMP a signature reform was her commitment to the training, development and continuing legal education of permanent legal officers in the early years in the ADF.

36. The Director of Defence Counsel Services (DDCS) is appointed under the *Defence Act 1903*, s. 110ZA. During the reporting period Group Captain Ed Eather continued to serve in the position of DDCS. In 2020 under Group Captain Eather's leadership DCS consolidated a system of specialist defence and prosecution advocacy panels drawn from more experienced legal officer advocates. I wish to acknowledge Group Captain Eather's most able discharge of his duties as the DDCS. After the reporting period I was pleased to see Group Captain Eather's service in improving the efficiency and effectiveness of legal services acknowledged with his appointment as a Member of the Order of Australia in the 2021 Queen's Birthday honours list.

37. The OJAG, which is based in Canberra, is well served by its hard-working civilian personnel, who undertake the considerable burden of the office administrative workload. I thank them all for their dedication to the execution of the important work of OJAG. I wish to acknowledge the dedicated commitment of OJAG's longest serving staff member, Ms Jennifer MacKenzie, who has taken long service leave in June 2021 after over 40 years of service. Her deep corporate memory of the jurisdiction frequently proved its value in providing seamless support to ADF judicial officers through many legislative and managerial changes.

38. The position of staff officer to the JAG and CJA was filled during the reporting period by Squadron Leader Sarelle Woodward. I wish to acknowledge her most able discharge of her duties in this role.

## **MILITARY JUSTICE ENTITIES**

### **Inspector General of the ADF**

39. 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. Despite the pandemic I met with IGADF regularly during the reporting period, if not in person then by audio-visual means.

40. My meetings with IGADF are a most valuable opportunity to hear the perspective and discuss the judgments of another independent statutory officer about the ADF discipline system. These meetings have been very fruitful in assisting me to analyse and respond to the issues encountered in the operation of that system.

41. My annual reports to the Parliament relate to the operation of the discipline system at both the summary and superior service tribunal levels. CJA and RMJ keep me well informed about the operation of superior service tribunals. DFDA s. 155 reviews supplement that knowledge. IGADF audits the operation of the ADF's summary tribunals down to the unit level. These IGADF audits and s. 154 reviews are a vital information resource for me about whether the summary tribunal system is operating efficiently and fairly.

42. And IGADF's independent powers to deal with complaints about the operation of the ADF discipline system, without interfering with the rights of review of discipline proceedings conferred by the DFDA, assist in maintaining confidence in that system.

### **Military Justice Steering Group**

43. The Military Justice Steering Group (MJSG) has continued to function efficiently during the 2020 reporting period. It is the principal mechanism for jointly engaging Command and legal officers in developing military justice policy and procedures. The MJSG is a dynamic forum in which policy ideas are critically examined and tested against the MJSG's service experience and professional expertise.

44. During the reporting period, among her many roles, the Head of People Capability (HPC), Major General Natasha Fox, AM, CSC continued to chair the MJSG. As chair she deftly managed the often-difficult process of considering and reconciling policy and legislative proposals from Command, OJAG, DMP, and DDCCS. I wish to warmly acknowledge her appointment as a Member of the Order of Australia during the reporting period and the announcement of her appointment as Deputy Chief of Army shortly after the reporting period.

45. The OJAG, Command and regular users of the military discipline system all benefit from the MJSG's operation as a readily accessible forum to decide upon and prioritise the changes needed for fair and efficient superior and summary service tribunals. During 2020 OJAG referred to the MJSG several proposals for amendment to the DFDA that have been discussed in this and previous JAG Reports.

### **Summary Discipline Implementation Team**

46. 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. In addition to my own productive discussions with Rear Admiral Perry during

the reporting period, CJA and RMJ engaged with the SDIT on my behalf to assist the SDIT in their work in considering proposals for the reform of the summary discipline system.

47. During the reporting period the Chiefs of Services Committee (COSC) approved the SDIT's proposals for changes to several aspects of the summary discipline system. These changes have now been developed into proposed amendments to the DFDA. In broad compass the principal proposed amendments would abolish subordinate summary authorities, amend the jurisdiction of superior summary authorities, and extend the scope of the discipline officer scheme. The expansion of the discipline officer scheme would include greater retention of scheme records, balanced by safeguards on access to those records and the introduction of a commanding officer's power to quash or vary disciplinary infringement punishments.

48. As they are described and subject to the final form of legislation, these proposals appear to be consistent with the continued fair and efficient operation of the summary discipline system. But this report later raises a cautionary note about a proposal to introduce a new offence into the DFDA.<sup>15</sup>

### **Joint Military Police Unit**

49. The work of the Joint Military Police Unit (JMPU) provides tri-service policing capability to support ADF commanders at all levels. JMPU's investigative work, through the ADF Investigation Service has an indirect impact upon the speed, fairness and efficiency with which matters are brought to trial in the ADF discipline system.

50. For that reason, as JAG, during the reporting period I maintained contact with the Provost Marshal ADF (PMADF), who is Commander JMPU concerning issues of JMPU capability that may generally impact upon the operation of the ADF discipline system. I was pleased during the reporting period to be able to have useful discussions with former PMADF Colonel Nick Surtees, AM followed by his successor, Captain Glenn Kerr RAN. The product of those discussions is referred to later in the recommendations in this Report.

### **APPEALS**

51. During the reporting period the High Court of Australia considered one appeal from a superior discipline tribunal hearing, *Private R v Brigadier Cowen* [2020] HCA 31 (*Cowen*).

52. The judgment upheld the constitutional validity of the extended jurisdiction of superior service tribunals to deal with charges against service personnel, where the charges could equally have been brought in civilian courts.

53. The case arose out of charges of assault by one ADF member upon another ADF member at a hotel in an entirely civilian context. The accused ADF member sought to restrain the DFM from hearing the charges on the basis that there was no 'service connection' with the ADF that would validate the jurisdiction of a discipline tribunal. In reply, the Commonwealth argued that a 'service status' test (that the accused was a member of the ADF) was sufficient to validate jurisdiction.

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<sup>15</sup> See below under the heading 'Cyber Bullying Offences and ADF Members'

54. Section 61(3) of the DFDA provides a legislative platform that makes a defence member also guilty of an offence under the DFDA, if the defence member commits an offence against the civilian law of the Jervis Bay Territory. The High Court upheld the validity of DFDA, s. 61(3) in all cases where it is sought to be applied. Sweeping aside all the competing arguments about ‘service connection’ and ‘service status’ tests to validate jurisdiction, the Court simply reasoned that obeying civilian law is always a basic requirement of service discipline. The majority in *Cowen* said (at [80]):

A rule that requires defence force personnel always and everywhere to abide by the law of the land is sufficiently connected with s 51(vi) [the Defence Power of the Constitution] because observance of the law of the land is readily seen to be a basic requirement of a disciplined and hierarchical force organised for the defence of the nation.

55. The decision gives far greater certainty to the jurisdiction of superior service tribunals. Over the last 30 years this issue has been the central debating point in most appeals to the High Court that challenged the jurisdiction of courts martial and DFMs. As one judge (Gageler J) in *Cowen* said (at [108]): “the time has come when [this] should be determined once and for all”. It appears that this 30 year debate is now at an end and appeals about service tribunal jurisdiction should markedly diminish.

56. The beneficial reduction in jurisdictional uncertainty from *Cowen* will nevertheless foreseeably lead to an expansion in the range of civilian offences that the DMP may now have to consider in bringing charges against ADF members under DFDA, s. 61(3). The decision may add to the burden of investigative work that the JMPU is asked to undertake and resource and may require the DMP to develop guidelines as to the kind of civilian charges that are generally unsuited to trial in a military context.

57. The number of appeals to the Defence Force Discipline Appeal Tribunal (DFDAT) has markedly reduced during the reporting period. The only case brought to the DFDAT during 2020 was *Mikus v Chief of Army* [2020] ADFDAT 1. The appellant had been found guilty by a DFM on a charge under DFDA, s. 34 of assaulting a subordinate. He appealed to the DFDAT but was unsuccessful in arguing that the DFM’s reasons for conviction were inadequate.

## **EFFICIENCY AND EFFECTIVENESS**

### **Timeliness of Superior Tribunal Proceedings**

58. The RMJ continues to monitor the timeliness of superior tribunal proceedings and reports quarterly to the MJSG and annually to the COSC through Vice Chief of the Defence Force (VCDF).

59. Against a target of completing 70% of superior tribunal proceedings within 365 days of Defence becoming aware of a matter, in 2020 only 43% of matters were completed in that timeframe. It took 463 days to complete 70% of matters. While a significant improvement over 2016,<sup>16</sup> still more is required.

60. I understand work is underway to better identify the causes of delay, but three positive steps that are already assisting or should assist in the future are:

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<sup>16</sup> 2016 JAG Report, paragraph 68.



- a. Since the appointment of the fulltime DCJA in April 2020, 84% of trials were completed inside the target of 75 days from the date of referral by the DMP to the RMJ.
- b. Upon the RMJ assuming responsibility for managing the automatic review process in 2019, 91% of automatic reviews in 2020 were completed inside the target of 45 days.
- c. The reform of the investigative provisions of the DFDA brought about by the *Regulatory Powers (Standardisation Reform) Act 2021* should assist with those cases that require access to evidence held off-Base by third parties. This Act, giving wider search powers to service police, implements recommendations made in the 2018 JAG Report.<sup>17</sup>

### **Rules Made under the DFDA Commencing in 2020**

61. The Court-Martial and DFM Rules 2020 and the Summary Authority Rules 2019 (SAR) both commenced during the reporting period.

62. The introduction and early operation of the Court-Martial and DFM Rules 2020 proceeded smoothly. Usage of the full powers conferred by these rules to leverage further improvements in trial efficiency will expand over the next few years, particularly as practitioners in the superior discipline system become more familiar with them. The development and content of these rules was explained in my last report.<sup>18</sup>

63. I signed the SAR on 9 September 2019, and they came into effect on 9 March 2020. The major objective in rewriting the SAR was to remove unnecessary procedural complexity from trials before summary authorities but without sacrificing fairness to the accused member. The SAR significantly reduce the amount of paperwork in summary trials, particularly where a plea of guilty is taken. As is explained later in this report, broad pre-commencement training for the SAR took place in early 2020 to acquaint summary authorities with the changes.

64. It is too early to assess the impact of the SAR on summary trial efficiency. Informal feedback during pre-commencement training and early operation has been positive. But a more formal assessment should be undertaken, possibly in conjunction with IGADF's routine audits of the operation of the summary discipline system.

### **DFDA Amendments - the President's Discretionary Powers**

65. Court martial proceedings during the reporting period have highlighted again the need to amend the DFDA to transfer certain discretionary powers in the President of the court martial to the JA. The exercise of these powers by the President adds unnecessary inefficiency and potential unfairness to courts martial.

66. DFDA, ss. 140, 148, and 148A-D confer discretionary powers in the President of a court martial to make orders concerning the closure of the court, non-publication orders, and allowing evidence or submissions to be given by way of audio or audio-

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<sup>17</sup> 2018 JAG Report paragraphs 58 - 65

<sup>18</sup> 2019 JAG Report paragraph 82 - 84

visual link. These provisions also require the President to seek advice from the JA prior to making any orders on these matters.

67. There are many reasons for this to change. First, invoking any of these sections can raise complex issues of law and discretionary considerations, which in a civilian criminal trial would always be determined by the judge, never by the jury. As a senior ADF officer with appropriate legal expertise, a JA is in a better position than the President to determine issues of closing the court, publication, and how evidence or submissions are to be received.

68. Second, the present provisions risk unfairness to the accused person. In making or resisting an application under any of these provisions, either party may have to refer to matters not relevant to a fact in issue in the trial but the revelation of which may prejudice the fair trial of the accused person. For example, an accused person may not wish to reveal a defence, nor finalise a decision on calling witnesses until the close of the prosecution case. An application before the President revealing the identity of witnesses not ultimately called, may prejudice a defence case.

69. Third, the present provisions DFDA, ss. 148A-D promote inefficiency in the trial and for the wider ADF. When officers sit on a court martial panel, they are drawn away from other service duties. It is vital that their time at the court martial is used efficiently. Most witnesses in the disciplinary jurisdiction are ADF members. Applications by the prosecution or the defence for witnesses to give evidence remotely are common due to the nature of ADF service. The parties need to know before the start of the trial how a witness is to give evidence, so that arrangements can be made for travel or for a video-link. Currently, only the court martial President can make an order for video-link evidence. As a practical matter this can only take place after the court martial is convened and sworn, on the first day of the trial. This causes great uncertainty for the parties until the last-minute. It causes practical difficulties for them in arranging their evidence and in turn for the ADF, in organising witnesses and facilities. The option of convening the court martial just for the purpose of making such orders and then adjourning the trial to commence later is both impractical, disruptive and unnecessarily expensive.

70. Fourth, the demands imposed by the COVID-19 pandemic have increased the need for this change to ss. 148A-D. Many of the difficulties described in the last paragraph became acutely evident in a general court martial held in 2020, in which COVID-19 restrictions required most of the witnesses to remain in Papua New Guinea. Applications for these witnesses to give evidence by video-link could not be made until the first day of the trial. In any comparable civilian jurisdiction such applications would have been made well in advance of the trial. The COVID-19 pandemic has intensified demand for witnesses in all Australian jurisdictions to give evidence using audio-visual technology, to which courts and legislatures have responded by facilitating its use. DFDA, ss. 148A-D should be amended to allow this technology to be used efficiently and without unfairness in military trials.

71. The 2011 JAG Report described the need to amend DFDA ss. 140 and 148 in the manner proposed here as 'as a matter of urgency'.<sup>19</sup> In that Report, calling for review of these provisions, my predecessor as JAG, the late Major General the Honourable RRS Tracey, AM, RFD, QC emphasised their potential for unfairness and adverted to their wider disadvantages:

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<sup>19</sup> 2011 JAG Report, paragraphs 38 to 44

40. In my view, and consistent with the arrangements in the civil criminal courts involving a trial before a judge and jury, these discretions under DFDA s.140 and s.148 should be vested in the JA rather than the president.

41. Such orders are discretionary, but require proper weight to be given to the legal concept of open justice. In all other courts, these are discretions that would be exercised by the judicial officer. Reasons would be given and any exercise of the discretion, or refusal to do so, could be challenged in a higher court.

42. In the case of a court martial the matter is further complicated if the protective orders are sought in connection with material to which objection might be taken in the course of the trial. The president and members of the court martial panel are, of course, analogous to a civilian jury in that they will be required to return a verdict on the basis of the evidence properly admitted in the trial and the JAs directions. Protective orders will ordinarily have to be sought at the outset of the proceedings so as to avoid inadvertent disclosure during the trial. It may be, depending upon the course of the evidence, that material of concern is not ultimately admissible. If the president has had to consider it with a view to making a protective order, there is a risk that the panel would have to be discharged.

43. The legislation gives no guidance as to what is intended by the requirement that the president "consult" with the JA before making an order of the kind specified at DFDA s.140. As a result it is unclear whether this is intended to occur in open court or privately and there is the related issue as to whether the president is required to give reasons for any decision.

44. In my view the existing arrangements require review as a matter of urgency.

72. The need to review these provisions of the DFDA is no less urgent than it was in 2011. All these legal discretions should be transferred from the president to the JA, who is far better placed to deal with and give reasons for decisions on these matters.

### **Other DFDA Amendments Relevant to Efficiency and Effectiveness**

73. Recent JAG reports have made other recommendations for amendments to the DFDA to improve the efficiency and effectiveness of the superior and summary discipline system. The commencement of the Court Martial and DFM Rules 2020, and the publication of practice notes have improved the procedural management of superior tribunal proceedings. But some of the changes necessary to introduce civilian best practice into the military context of discipline tribunal proceedings can only be achieved by amending the DFDA.

74. Prior JAG reports, particularly the 2017, 2018 and 2019 reports, more fully explain the need for these amendments. But the most pressing amendments, which would significantly add to trial efficiency may be briefly identified. Accused persons should be arraigned and trial management commenced before the JA alone, before the assembly of the court-martial.<sup>20</sup> JAs and DFMs should be given trial management powers as close as possible to those already conferred on civilian criminal courts.<sup>21</sup> To reduce the risk of error in sentencing decisions by courts martial, the JA should

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<sup>20</sup> 2019 JAG Report paragraphs 109 – 114.

<sup>21</sup> 2019 JAG Report paragraphs 120 – 130 and 2017 JAG Report paragraph 82 and Annex P.

have greater involvement in formulating the reasoning of the court martial panel, including sitting with the panel in a decision-making role.<sup>22</sup>

75. As to the summary discipline system, the principal reform still required is the simplification of the system by which accused persons before a summary authority may elect to be tried by a superior disciplinary tribunal. The present complex double election system produces confusion and error and should be reduced to a single election.<sup>23</sup>

## LEGISLATION

### Command Power to Dismiss Judge Advocates

76. The *Defence Legislation Amendment Act 2019* (the DLA Act) introduced timely reforms to the DFDA. These reforms included the creation of the position of DCJA. But one omission from the DLA Act requires early rectification. If the present form of the DFDA is not rectified, superior tribunal trials are at risk of being challenged on the grounds that JAs are not sufficiently independent of Command. I raised this matter in my 2018 report.<sup>24</sup> The Parliament's attention to this issue in the near term is highly desirable.

77. The DLA Act introduced s. 196AA into the DFDA. This new section provides for CDF to terminate the appointment of members of the JAs Panel. The purpose of s. 196AA was to confine the power to terminate a JA's appointment. As the DFDA had stood prior to the DLA Act, it would have arguably allowed a JA's appointment to the JA's panel be terminated by CDF for discretionary reasons unrelated to proven misbehaviour or incapacity. This amendment usefully confined the available discretionary termination power to 'misbehaviour', or an inability to perform duties 'because of physical or mental incapacity'.

78. But the amendment leaves any judgment as to what constitutes 'misbehaviour' to Command, and specifically to CDF alone. This structure should be corrected as it may create a perception that JAs are not independent of Command.

79. The independence of JAs is largely secured, as it is for civilian judges, by the terms of their appointment, their remuneration and the power to remove them from office. The scheme under the DFDA divides the power to appoint JAs between CDF and the JAG. CDF is only empowered to appoint JAs to the panel, upon the recommendation of the JAG. The division of power between the JAG and CDF on appointment helps secure the independence of the appointed JA from Command.

80. The same division of power should be provided for in relation to a decision to terminate from the JA's panel. But the new DFDA, s. 196AA does not yet do this. Section 196AA should be amended to provide that JAs can only be dismissed by CDF with the concurrence of the JAG. This would more closely reflect the independence from Command of CJA and DCJA, who may only be dismissed from their respective offices by the JAG.<sup>25</sup>

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<sup>22</sup> 2018 JAG Report paragraphs 47 – 57 and 2017 JAG Report paragraphs 84, 131 – 132 and Annex P.

<sup>23</sup> 2017 JAG Report Annex P and 2015 JAG Report paragraphs 47 – 51.

<sup>24</sup> 2018 JAG Report, paragraphs 42 and 43.

<sup>25</sup> DFDA, s. 188EA (1) in the case of CJA and s. 188EJ (1) in the case of DCJA.

### **Term of Appointment of s. 154(1)(a) Legal Officers**

81. The term of appointment of s.154(1)(a) legal officers by CDF is for a period not exceeding three years: s.154(1A). This period is now shorter than the term of appointment of legal officers to the JA's panel, which by s.196A(2A) is for a specified period of no more than five years, having been increased from a three year term. CJA and DCJA may be appointed and reappointed for terms not exceeding five years up to a maximum of 10 years: ss. 188 and 188EC. And RMJ's term of appointment is for five years: s.188FD.

82. Section 154(1)(a) legal officers should be appointed for a term of five years. This amendment will provide greater continuity in s. 154 appointments and will reduce the frequency of the JAG recommending and CDF reappointing these legal officers. There are no disadvantages in amending the legislation to provide a longer term of appointment, which is more consistent with the terms of all other legal officers engaged in the superior discipline system. Adapting legal expertise to s. 154 reviews can take time, so it is desirable to take advantage of a s. 154 legal officer's expertise over a longer period before another appointment or reappointment is required.

### **Protection of the Independence of Judicial Deputy Judge Advocate Generals**

83. The DFDA contains several provisions protecting the independence of the JAG, DJAGs, the ADF's judicial officers and RMJ. One of those provisions, s. 186, relates to the termination of the appointment of the JAG and DJAGs. In its present form s. 186 gives insufficient protection to DJAGs who are judicial officers of State courts. Since the passing of the DFDA almost 40 years ago, many DJAGs have been District and County Court judges of States. At present, DJAG – Army and DJAG – Air Force are judges of the District Court of Queensland and New South Wales respectively.

84. Under DFDA, s. 186(1) the Governor-General may terminate the appointment of a JAG or DJAG 'not being a Justice or Judge of a federal court or of a Supreme Court of a State or Territory' for misbehaviour or incapacity. DFDA, s. 186(3) provides that such 'a Justice or Judge' will automatically cease to be a JAG or DJAG upon no longer holding office as such 'a Justice or Judge'.

85. These provisions prevent the Executive from terminating the appointment of a JAG or DJAG who is such 'a Justice or Judge' on those grounds, other than when the justice or judge also ceases to hold office as a justice or a judge. As a practical matter that will only occur if the justice or judge retires or is removed from office under applicable State or Territory legislation securing the independence of judges.

86. DFDA ss. 186(1), (3) and (4) provide as follows:

#### 186 Termination of appointment

(1) The Governor-General may terminate the appointment of the Judge Advocate General, or a Deputy Judge Advocate General, not being a Justice or Judge of a federal court or of a Supreme Court of a State or Territory:

(a) for misbehaviour; or

(b) if the Judge Advocate General, or the Deputy Judge Advocate General, (as the case may be) is unable to perform the duties of his or her office because of physical or mental incapacity.

.....

(3) A Judge Advocate General, or a Deputy Judge Advocate General, who is a Justice or Judge of a federal court or of a Supreme Court of a State or Territory ceases to hold office if he or she no longer holds office as such a Justice or Judge.

(4) A Deputy Judge Advocate General who is not a Justice or Judge of a federal court or of a Supreme Court of a State or Territory ceases to hold office if he or she ceases to be a legal practitioner.

87. DFDA s. 186(2) provides for automatic termination upon bankruptcy and does not need additional consideration in this context. The legislation appears to have been drafted on the assumption that a DJAG who is not a judge or justice of a federal court or Supreme Court of a State or Territory would usually be a legal practitioner. But that is not the case. DJAGs have commonly been District Court or County Court judges.

88. DFDA, s. 186 operates on the basis that if some matter of misbehaviour or incapacity places a JAG's or a DJAG's appointment under consideration for termination that the same matter is likely to result in the consideration of their removal as a justice or a judge. Having congruence between removal as a JAG or DJAG and removal of a justice or a judge, secures the independence of judicial officers holding these statutory offices: ensuring that being JAG or DJAG is compatible with judicial office. They cannot be threatened with termination by the Executive except on the same grounds that would warrant their removal as judges. But if by misbehaviour or incapacity they were removed as a Justice or a judge, then they would automatically cease to hold office as JAG or DJAG.

89. But s. 186 does not mention judges of District or County Courts of the States. Such District or County Court judges hold State judicial commissions which are generally terminable by State Parliaments only upon the same basis 'as a Justice or Judge of a federal court or of a Supreme Court of a State or Territory'. Given the near identity between the position of the two groups of judges there is no principled basis for denying District or County Court judges the same protection as 'a Justice or Judge of a federal court or of a Supreme Court of a State or Territory'. It is anomalous that the protections for both groups of judges are not the same.

90. I recommend therefore that DFDA, s. 186 be amended to remove District Court and County court judges from the operation of s. 186(1) and s. 186 (2) and to include them within the operation of s. 186(3).

### **Cyber Bullying Offences and ADF Members**

91. I express a note of caution about one aspect of forthcoming proposals to amend the DFDA as a result of the work of the SDIT. It is proposed to introduce into the DFDA a cyber bullying offence. A proposed s. 48A, would make it an offence for a defence member to use a social media service or relevant electronic service 'in a way that a reasonable person would regard as offensive or as threatening, intimidating, harassing or humiliating another person'. The offence would provide a maximum punishment of imprisonment for two years and may be chargeable before summary discipline authorities.

92. The closest provision to this proposal in Commonwealth legislation appears to be *Criminal Code Act 1995* (Cth) (Criminal Code) s. 474.17, which makes it an offence to use a carriage service in a way that 'reasonable persons would regard as being, in all the circumstances, menacing, harassing or offensive' and which provides for a penalty of up to three years imprisonment. The wording of s. 474.17 provides a more demanding test for criminal liability than the proposed s. 48A and consequently

carries a higher maximum penalty. As a ‘territory offence’<sup>26</sup> this offence is currently available for use in the discipline system.

93. This proposed s. 48A offence requires no connection to the discipline of the Defence Force beyond the accused being a member of the Defence Force. This is exceptional. Other offences in the DFDA generally have either explicit connection to service in the Defence Force or have either a close civilian criminal law counterpart with equivalent penalties. But this proposed provision is not overtly connected to the performance of service in the Defence Force or to Defence property and it would more readily impose criminal liability on a Defence member for conduct in the general community than applies to other members of the general community.

94. Most of the DFDA provisions impose criminal liability on a Defence member in the performance of Defence duties or in relation to Defence property, or in order to not to prejudice service discipline. But occasionally, the DFDA imposes on Defence member’s criminal obligations without overt connection to Defence property, duties or discipline. For example, DFDA s. 33A creates an offence of assault occasioning actual bodily harm by defence members in a ‘public place’, without any other connection to service duty, property or discipline. But s. 33A has an exact counterpart (and with equivalent penalties) in the civilian law of the Commonwealth and of all States and Territories. DFDA s. 33A’s congruence with its civilian legislative equivalents means that Defence members charged under that section are not being treated more harshly than other members of the community.

95. There may be good reason for drafting a broad cyber-bullying offence applicable to Defence members, either in their cyber communications between one another, or in a manner likely to undermine service discipline. But care should be taken before legislatively intruding into the otherwise private lives of Defence members by imposing obligations on their private behaviour stricter than those required of other Australian citizens, and then giving summary discipline authorities the power to enforce those obligations. Alternatively, a provision equivalent to Criminal Code s. 474.17 could be included in the DFDA, but it would attract a more serious penalty and be even less suitable for trial by a summary discipline authority.

96. Should the Parliament nevertheless decide to enact this or similarly broadly drafted offences, I would encourage appropriate guidance to be issued about preferring charges of this offence, in the form of prosecution guidelines and guidance to summary authorities.

## **POLICY AND PUBLICATIONS**

### **Practice notes**

97. The 2019 JAG Report explained how in 2019 OJAG commenced issuing practice notes like those commonly used by civilian courts.<sup>27</sup> Practice notes publish a court’s standard operating procedures to ensure consistency in practice before the court. They give practitioners, who may come from different jurisdictions, clear guidance of a court’s expectations of them and what procedures they can expect the court to impose.

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<sup>26</sup> DFDA, s. 61

<sup>27</sup> 2019 JAG Report paragraphs 87 – 90.

98. The objective of OJAG's practice notes is to improve trial efficiency by giving clear guidance to the parties about court martial and DFM procedures. The CJA issued a further three practice notes in 2020. These were:

Practice Note 7 – Witness availability

Practice Note 8 – COVID-19 pandemic: measures in response,<sup>28</sup> and

Practice Note 9 – Witnesses warranting special consideration.

99. Practice Note 7 requires an officer of at least one star rank to confirm that a witness is unavailable to give evidence. This practice note was designed to reduce inconsistencies in the approaches taken by Commands to the unavailability of witnesses due to the exigencies of service.

100. Practice Note 9 makes provision for the protection of vulnerable witnesses. The *Evidence (Miscellaneous Provisions) Act 1991* (ACT), (E(MP) Act) Chapter 4, which applies in superior discipline system trials, sets out special requirements to safeguard witnesses giving evidence in sexual assault or similar proceedings. Practice Note 9 ensures that counsel give adequate notice to RMJ of the need to make special courtroom arrangements for such witnesses, including the exclusion of members of the public under DFDA, s. 140. The practice note also protects witnesses where the E(MP) Act would apply by analogy, or where witnesses are otherwise vulnerable, for example because of their current or previous relationship with an accused person.

101. All practice notes are available on the JAG website. Experience of their operation since 2019 has shown that witnesses, legal practitioners, Command, the media and the wider public regularly consult them to understand the procedure to be followed at courts martial and DFM trials.

### **Publication of Superior Service Tribunal Proceedings**

102. On 31 March 2019, OJAG commenced publishing trial lists and outcomes of court martial and DFM proceedings. Trial lists and outcomes are now published both on the internet and on the Defence Protected Network under a protocol defined in Practice Note 1 – Publication of Court Material and Defence Force Magistrate Outcomes. The objectives in introducing such trial publication were set out in my 2017 JAG Report.<sup>29</sup> They include: increasing public acceptance of and confidence in the administration of military discipline through the ADF's superior tribunals; increasing general deterrence; providing military trial transparency for the Australian community that is equivalent to civilian criminal trials; and encouraging better standards of advocacy.

103. On 7 April 2020, IGADF instigated an own-initiative inquiry into the first 12 months of operation of this new trial publication regime. IGADF directed Air Vice Marshall Leigh Gordon AM, CSM and Captain Penny Campbell RAN to conduct this inquiry, with assistance from Colonel Jens Streit. The overall objective of the inquiry was to measure the performance of trial publication against the initial objectives in introducing trial publication.

104. The inquiry adopted a comprehensive methodology. It interviewed a wide range of persons involved in or affected by the administration of military justice. These included CDF, VCDF, JAG, Chief of Staff ADF headquarters, CJA, RMJ, DMP and

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<sup>28</sup> See paragraphs 131–133.

<sup>29</sup> 2017 JAG Report, paragraphs 88 to 96.



DDCS. It also surveyed a sample of accused persons, their defending officers and prosecuting officers, who had appeared in trials in the review period. It also sought the views of a sample of the commanding officers of accused persons. It examined the more than 40 trials that had taken place since the commencement of trial publication.

105. The inquiry report was completed on 27 October 2020. Its clearest finding (Finding 3) assessed whether one of the principal objectives of the publication of trial lists and outcomes had been achieved. The inquiry relevantly found:

The publication of court martial and Defence Force magistrate trial lists and outcomes has enhanced the maintenance of service discipline by contributing to greater transparency, promoting public and ADF confidence in the superior service tribunal system and achieving consistency with the publication of Defence Force Discipline Appeal Tribunal outcomes.

106. The inquiry indicated that it was either too early to make findings about some of the other objectives of the publication of trial lists and outcomes, or that the evidence to do so was presently insufficient. The enquiry made recommendations, which are currently under consideration and proposed a further review in four years when more evidence would be available.

107. The inquiry attempted to measure with the available data the degree of additional transparency that trial publication afforded in superior tribunal proceedings. The inquiry was informed that freedom of information (FOI) requests are not required for civilian criminal trials, as enough trial information is already publicly available. The inquiry found that the Defence FOI disclosure log lists ten FOI decisions relating to information about superior tribunals between June 2011 and August 2020 but that no FOI requests are recorded since trial publication commenced. The inquiry also found that fewer media enquiries will be made through Defence channels about trials, presumably because information could now be obtained by the media more directly. The inquiry also favourably compared the degree of overall detail in Defence's current publication of trial lists with the ACT Magistrates Court and the ACT Supreme Court.

108. A Command concern at the time that trial publication was introduced was the impact that the publication of names of accused persons in trial lists might have on the welfare of Defence members and their families. But the inquiry found that the operation of Practice Note 1 has focused Command's attention on upcoming trials, and as a result, has placed Command in a better position to support accused persons.

109. I thank the IGADF for initiating this valuable inquiry into the initial 12 months of the publication of trial lists and outcomes under Practice Note 1. The authors of the report undertook detailed analysis of the operation of Practice Note 1 and made some useful recommendations, which will help secure and improve its future operation.

### **OJAG Bench Book**

110. In February 2020, OJAG launched the Court Martial and Defence Force Magistrate Bench Book (the Bench Book) for the court martial and DFM jurisdiction. Most civilian criminal law jurisdictions make available to practitioners bench books, which traverse standard criminal law jury directions and the elements of offences. The Bench Book is now available to all Defence members through a link on the JAG

intranet website, and a link via Defence Legal resources. Access to topics is gained through hyperlinks via the index.

111. The Bench Book covers the jurisdiction and practice and procedure of the different superior tribunals, all standard criminal jury directions, all offences and defences under the DFDA and commonly encountered offences under the ACT and Commonwealth legislation. It contains sections dealing with issues which are peculiar to the exercise of the DFDA superior tribunal jurisdiction, such as the making of non-publication orders and dealing with material sought under summons. The Bench Book embeds hyperlinks to all relevant legislation, and case authorities linked to relevant topics. Lastly, it incorporates a section on sentencing in the jurisdiction, traversing relevant principles, practice and procedure.

112. The Bench Book comprises a huge body of legal work, the compilation of which required careful attention to detail. Both CJA and DJAG - Army pushed on the arduous process of preparing and publishing the Bench Book in its final comprehensive yet highly usable form. I wish to acknowledge and thank them for volunteering to undertake this substantial project in addition to their other regular judicial duties. The result of their work is an invaluable resource for practitioners in this complex jurisdiction, where relevant statements of legal principle would not otherwise be widely accessible. Much of the material may also be of assistance to those involved in summary discipline proceedings.

113. The Bench Book also embeds a link to a significant body of work by the Honourable Justice RA Hulme of the Supreme Court of NSW. I am grateful to Justice Hulme for allowing us access to his annual work in compiling a compendium of NSW Court of Criminal Appeal cases. His Honour has generously given us permission to use this material. The index to the Bench Book has a link entitled 'NSW Court of Criminal Appeal Cases 2010-2020'. Much of the material is relevant to aspects of the Uniform Evidence Acts applied in the military discipline jurisdiction.

114. The Bench Book is an example of the ADF superior discipline system adopting and using established tools of the civilian criminal justice system to promote the integrity and fairness of trials and provide support to legal practitioners in the presentation of their cases for prosecution and defence.

## **DISCIPLINE LAW TRAINING**

### **Discipline law training for ADF personnel**

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

#### **Single Service**

116. 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**

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

### **Pre-command training**

118. 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.

119. In 2020, the military justice training on pre-command courses was as follows:

- a. Navy: Two courses instructed, with a total of 88 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 72 students comprising officers appointed to command units or formations.
- c. Air Force: Three courses instructed, with a total of 55 students comprising officers appointed to command, Executive Officer, Detachment Commander, Chief instructor and Executive Warrant Officer positions.

### **Online DFDA training**

120. A number of e-Learning training courses were developed by the MLC and launched via CAMPUS – the Defence online learning tool – which were relevant to the summary discipline system. These courses were developed in line with the new rules, policies and guides that were issued during the reporting period. They provided a contemporary means for ADF members to gain an understanding of fundamental parts of the discipline system.

### **Training for ADF legal officers**

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

122. Legal Training Module 1 (LTM1). LTM1 is an initial employment course undertaken at the beginning of an ADF legal officer's career. It aims to provide junior ADF legal officers with the necessary knowledge, skills and abilities they require to undertake their role, functions and responsibilities on first appointment. In 2020, due to COVID-19, the first LTM1 course scheduled for March was postponed. To support the growing capability needs of the Military Legal Service, the MLC re-designed LTM1 to allow it to be delivered in an online format to students in their home

locations. Students and instructors from all over Australia were able to undertake the instruction and assessment online, and still provided the normal robust education and training experience required from this course. Two courses were held using this format, with 20 students undertaking the first and 18 undertaking the second course.

123. Legal Training Module 2 (LTM2). Post initial employment training for ADF legal officers is undertaken through a number of academic subjects through the Australian National University (ANU) and the University of Adelaide (UoA). The core subjects include units on military discipline, military administrative law, operational law and military legal practice. Ongoing work between the MLC and ANU/UoA has been undertaken to ensure that ADF Legal Officers receive the right education and training at the right time in their careers through these courses. Again, due to COVID-19, there was a need to move the delivery of the LTM2 Military Discipline Law course online. 29 students undertook this course with a further 18 students undertaking an online version of the LTM2 Military Legal Practice course, which includes the practice of advocacy before Service Tribunals.

124. 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 2020, 30 students completed the Advanced Military Administrative Law unit.

### **Ongoing development of discipline law training**

125. Since VCDF approved the Military Justice Training Policy, further work was undertaken by the MLC to provide for a robust governance structure to support wider military justice training within the ADF. Ensuring consistent training aims, principles and training that is fit-for-purpose was central to the work that was undertaken.

126. A number of introductory e-Learning courses relating to various summary discipline roles and functions were designed and are now available for all ADF members to undertake through CAMPUS. These can be used by the Service Training Authorities to support their training provided to ADF members through initial military training, promotion courses and supervisor/command training. Courses relating to the Discipline Officer Scheme and summary authority hearings were launched and overall feedback provided to the MLC was very positive. The courses were regarded as user-friendly and provided the right amount of information and guidance to ensure people undertaking these summary discipline roles and functions understood their responsibilities and obligations.

### **Summary Authority Rules 2019 training**

127. With the new SAR commencing on 9 September 2019 and applying to all charges preferred on or after 9 March 2020, necessary training commenced in late January and continued until mid-March 2020.

128. Delivery of the training involved a centralised team of legal officers who had undertaken the 'train-the-trainer' session to ensure consistency, supported by a member of the SDIT who was able to provide command perspective on the changes. Oversight of the training was conducted by DGMLS and HSDIT.

129. There were two sessions of training conducted: one aimed at summary appointments and the other at those who fulfil unit discipline appointments. Both sessions took approximately two hours to complete and used a simple unit level discipline scenario to demonstrate how the changes were to be implemented by units.

130. Some 54 ADF sites were visited with approximately 84 Summary Authority courses and 110 Unit Discipline courses run. Course attendances ranged from 20 to 200, depending on the location, with attendance being recorded.

## **OBSERVATIONS AND RECOMMENDATIONS**

### **OJAG's Response to the COVID-19 Pandemic**

131. The OJAG reacted promptly to the challenges posed in early 2020 by the COVID-19 pandemic. After holding formal and informal discussions with the DMP, DDCS and Command, on 9 April 2020 the CJA signed Practice Note 8 — *COVID-19 Pandemic: Measures in Response*. The practice note introduced several new measures and modified some existing practice notes. The practice note's new measures and modifications required the parties to provide greater information about potential witnesses, modified the dates for issuing summonses, made electronic filing mandatory, and required leave for more than one counsel for each side to appear at the bar table.

132. The practice note proved very effective. In what was a singular achievement in comparison to equivalent civilian jurisdictions, after the practice note was issued, no superior tribunal proceedings were substantially delayed due to the COVID-19 pandemic. Practice Note 8 is now being updated for continued relevance in a 'COVID normal' environment.

133. Existing practices in OJAG also facilitated a robust response to COVID-19 workplace restrictions. For example, in 2019 the OJAG Registry had commenced moving towards a digital workflow for forms, correspondence and transmitting the record of proceedings during the automatic review (and, if applicable, petition) process. In early 2020, a full digital workflow was adopted. This facilitated home-based and other remote work policies, while continuing to provide full support for superior tribunal proceedings.

134. I wish to acknowledge and commend the leading role that CJA and RMJ played in ensuring OJAG's rapid and effective response to the COVID-19 pandemic. They quickly consulted relevant stakeholders before issuing and implementing the new practice note. Further, they undertook the intense day-to-day administrative work of keeping trials on track despite the disruptions of the pandemic. An example of this was arranging for the appointment of Group Captain Devereux, who is a resident of Queensland, as a JA to provide the capability for superior tribunal trials to proceed in that State, despite its border closures.

135. Yet another factor in the successful response to the pandemic was the timely coming into force of the DLA Act, which added to the DFDA Part XI, Division 2A and created the position of DCJA. CJA drove the process of obtaining Remuneration Tribunal determinations for DCJA's salary and seeking expressions of interest for the position through 2019. The appointment in March 2020 of Group Captain Geeves as an additional permanent military judicial officer to assist CJA increased OJAG's responsiveness to the pandemic's disruptions.

136. Pandemic restrictions in relation to the Fleet led to the postponement of discussions which were taking place in late 2019 and early 2020 between RMJ and Commander Australian Fleet about holding a suitable Navy court martial on one of Navy's major fleet units. Hearing superior tribunal proceedings close to Defence members is a focal relevant consideration for RMJ when convening superior tribunal proceedings under DFDA s. 119. It is expected that when pandemic restrictions ease that these discussions will resume.

137. The DJAGs performed an important advisory role to OJAG during the pandemic due to their day-to-day involvement as judges or counsel in civilian courts. They regularly gave OJAG the benefit of their direct experience of these civilian courts adapting their processes to the COVID-19 pandemic.

### **DFDA, s. 154 legal officers**

138. Legal officers are appointed under DFDA, s. 154 to conduct automatic reviews of both summary and superior discipline tribunal proceedings. Special appointment by CDF under s. 154(1)(a) is required for a legal officer to undertake reviews of convictions or directions given by court martial or by a DFM. Otherwise a 'legal officer', defined under the DFDA as being an officer who is a legal practitioner, can review summary proceedings under s. 154(1)(b).

139. In 2019 RMJ was given the exclusive function of allocating the automatic reviews of court martial and DFM proceedings to particular s. 154(1)(a) legal officers. This step was taken to strengthen confidence in the automatic review process at the superior tribunal level. No ADF judicial officer has any role in determining which s. 154(1)(a) legal officer undertakes a s. 154(1)(a) review. All s. 154(1)(a) reviews during the 2020 reporting period were allocated in accordance with this process.

140. In allocating a particular s.154(1)(a) review RMJ consults the list of s.154(1)(a) legal officers on a rotational basis, seeking the first legal officer who has availability consistent with competing professional duties, to undertake the review. RMJ ascertains availability by inquiring whether the automatic review can be determined within 14 days. This has resulted in the near complete compliance with the key performance indicators set for automatic reviews.

141. Legal officers also undertake reviews of summary discipline proceedings under s. 154(1)(a). These are generally more junior legal officers without the same experience as the judges and senior legal practitioners who undertake s. 154(1)(a) reviews. Currently with limited exceptions, only legal officers who have attained professional Legal Level 3 (LL3) can undertake this review work. In my view, caution should be exercised in relaxing this requirement. Section 154 review work requires a sound appreciation of the operation of the criminal law and the principles of criminal appeals embedded within DFDA. Such appreciation is unlikely to develop earlier than with attaining the LL3 standard.

### **Victim Impact Statements**

142. The 2017 JAG Report identified the need for greater definition of and transparency in considering the interests of victims of alleged offences and other affected persons during ADF trials. The Report foreshadowed publication of practice notes on those subjects.<sup>30</sup> Practice Note 9 deals with the subject of vulnerable witnesses.

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<sup>30</sup> 2017 JAG Report, paragraphs 133 and 134.

143. Practice Note 6, published in 2019, and operational throughout the reporting period, gives guidance as to applicable procedures for the giving of victim impact statements. The practice note refers to the application of *Crimes Act 1914 (Cth)* (Crimes Act), s. 16A(2)(ea) to victim impact statements in the superior military discipline jurisdiction and requires all the provisions of *Crimes Act*, ss. 16AAAA and s. 16AB to be complied with during sentencing before superior service tribunals. Crimes Act, ss. 16AB sets out the requirements for giving victim impact statements, including by whom and how they may be given, and it confers flexibility to adapt victim impact statement procedure to the needs of each case.

### **Joint Military Police Unit**

144. Aspects of the investigative work of the JMPU have a direct relationship with trial efficiency in the superior discipline system. When investigations are conducted in accordance with applicable procedures, fewer contests take place at trial about the admissibility of the evidence gathered as a result. That in turn promotes fairness to Defence members, faster trials, fewer retrials, and less overall delay in the resolution of superior tribunal discipline proceedings. For example, Service Police work that does not comply with relevant search and investigation procedures can lead to the DMP remitting briefs of evidence back for reinvestigation by JPMU.

145. The relationship between JPMU's work and trial efficiency calls for two comments: the first about legal advisory support for JPMU, and the second about minimising conflict between State and Territory legislation and Defence legislation authorising what equipment JPMU personnel can deploy in police searches.

146. First, ADF military police must demonstrate high standards of investigation and compliance with applicable search and investigation procedures. Their compliance standards should be no less rigorous than those of civilian police forces. Most State and Federal civilian police forces have substantial in-house legal departments which are readily accessible to give on the spot legal advice to police to resolve the difficult issues that frequently arise during investigations.

147. JPMU presently has limited in-house legal capability, notwithstanding its ability to seek assistance from other Joint Capability Group legal resources. But JPMU will soon have to manage a forthcoming expansion of powers from the *Regulatory Powers (Standardisation Reform) Act 2021*. I recommend that the present level of JPMU's in-house legal assistance be reviewed to ensure that its investigators are well supported in meeting existing and anticipated requirements for the proper and lawful gathering of evidence for trial.

148. Second, the DFDA and other relevant Commonwealth legislation empowers military police to use reasonable and necessary force in the execution of their duties. But JPMU presently faces an issue as to whether Defence legislation is currently sufficiently prescriptive to authorise the employment of certain policing equipment, to overcome the differential application of State and Territory legislation restricting the use of such equipment. If legislative boundaries are unclear about what equipment military police can use during searches, trials may be lengthened in determining what evidence resulting from such searches is admissible. Views may differ about the range of immunities or exemptions that Defence legislation should give to military police to carry such equipment. But for trial efficiency military police should have legislative certainty about their capability under State and Commonwealth law.

## **Action on the Annual JAG Report and recommended DFDA amendments**

149. This Report shows that important amendments to the DFDA to increase trial efficiency that the last JAG, the late Major General the Honourable RRS Tracey and I have both recommended for nearly a decade have not yet been legislated. Action on a number of these recommendations is overdue but now seems in prospect.

150. In the past, the JAG Report's recommendations for amending the DFDA have not been routinely considered for action within Defence by a body with the function of considering proposals for legislative reform. But the revival of the Military Justice Co-ordination Committee in 2016 as the body with active responsibility for this function, chaired by HPC, and its later development into the MJSG have significantly streamlined the process for considering the JAG's Annual Report recommendations.

151. Not all the JAG's recommendations will be taken up by Defence. The JAG's Report is to the Parliament, not the Executive. One of its purposes is to inform public debate about the operation of the DFDA and Commonwealth legislation affecting the discipline of the ADF.

152. There are still several past recommendations to address as has been indicated earlier in this report. These were comprehensively summarised in my 2017 Report<sup>31</sup> and were followed by other recommendations in 2018 and 2019 Reports. The JAG's recommendations should be considered annually, and a decision made whether to adopt them as part of Defence's current legislative agenda.

153. The JAG Report is produced as a result of close consultation with CJA, the DJAGs, DCJA, RMJ and current DFDA s. 154(1)(a) officers. In most civilian jurisdictions the Chief Justice of the State or Territory is directly consulted for input to annual law reform affecting civil and criminal procedure in that jurisdiction. The annual JAG report is the equivalent process in the military discipline jurisdiction.

154. I am very pleased that under Major General Fox the MJSG has placed several of the recommendations made in recent JAG Reports on the MJSG's current agenda. I recommend that the MJSG when setting its workplan for approval should automatically consider the most recent JAG Report to ensure that the JAG's recommendations for legislative reform are regularly addressed.

## **CONCLUSION**

155. During 2020 the ADF superior tribunal discipline system successfully managed the unpredictable disruptions of the COVID-19 pandemic, whilst maintaining its trial schedules. The year also saw the successful adoption and use of the SAR and the Court Martial and Defence Force Magistrate Rules. All those involved in achieving these outcomes should rightly be commended.

156. But as this and previous reports have pointed out, further legislative reform to the DFDA is urgently required for it to reflect comparable civilian standards in the administration of justice in a military context. This Report respectfully requests that Parliament now address these required changes through legislation that will maintain confidence in the ADF superior and summary military discipline system. Such legislation would justly merit the praise of the many ADF members and other Australians directly and indirectly affected by the daily operations of the DFDA.

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<sup>31</sup> 2017 JAG Report, Annex P.



## TABLE OF ABBREVIATIONS USED IN THIS REPORT

<b>Abbreviation</b>	<b>Description</b>
ACT	Australian Capital Territory
ADF	Australian Defence Force
ANU	Australian National University
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
DGMLS	Director General - Military Legal Services
DJAG	Deputy Judge Advocate General
DLA Act	Defence Legislation Amendment Act 2019
DMP	Director of Military Prosecutions
DSOM	Director of Senior Officer Management
HPC	Head People Capability
IGADF	Inspector General of the ADF
JA	Judge Advocate
JAG	Judge Advocate General of the ADF
JMPU	Joint Military Police Unit
LTM	Legal Training Module
MJSG	Military Justice Steering Group
MLC	Military Law Centre
NCO	Non commissioned officer
OJAG	Office of the Judge Advocate General
PMADF	Provost Marshall of the ADF
RMJ	Registrar of Military Justice
SAR	Summary Authority Rules 2019
SDIT	Summary Discipline Implementation Team
UoA	University of Adelaide

**COMPLIANCE INDEX OF REQUIRED INFORMATION  
FOR STATUTORY AUTHORITIES**

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

Enabling Legislation	<i>Defence Force Discipline Act 1982</i>
Responsible Minister	Minister for Defence
Powers, functions and objectives	Paragraphs 3–8
Membership and staff	Paragraphs 3, 12–29
Information Officer	Squadron Leader Sarelle Woodward Staff Officer 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 102–114
Operational Problems	Paragraphs 76–101
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.

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NAVY  
JANUARY-DECEMBER 2020

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					4	2	1	2	1	1		
February					7	11			7	12		
March					8	9			5	5		
April					22	26	4	2	11	12		1
May	1	1			13	17			14	12	2	2
June					6	5	2		12	11		1
July					12	16			16	20	1	
August	4	4			20	20	3		7	6	1	
September					21	41			11	13		
October					18	40			8	10		
November					9	11			8	12		
December					5	6			7	7	1	
<b>TOTAL</b>	<b>5</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>145</b>	<b>204</b>	<b>10</b>	<b>4</b>	<b>107</b>	<b>121</b>	<b>5</b>	<b>4</b>

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

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Sect 23	1	2					2			22
24	3	2					1			26
25										1
26										11
27	2					2	1			21
28										
29	14	32	1			6	11			66
30										
31										
32										1
33(a)										4
33(b)										1
33(c)										
33(d)				1						3
33A										
34							1			2
35							1			1
36										
36A										1
36B	1									1
37										2
38										
40										3
40A										
40B										
40C										
40D		1		1			1			3
41										
42							1			1
43		1								1
44										
45										
46										
47C										
47P										
47Q			2			5				1
48										
49										
50										
51										
53										
54										
54A										
55		1								4
56										1
57										
58										
59										
60	2	10		1			4			39
61										
TOTAL	23	49	3	3	0	13	23	0	0	216

## 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	5	1	1		4	9			31
Conditional conviction without punishment	1	1								4
Unconditional conviction without punishment										1
Severe reprimand	1					2	4			19
Extra duties		1								3
Extra Drill										6
Stoppage of leave										4
Restriction of privileges		19								85
Suspended fine	1	2	1				1			8
Fine Less than 14 Days Pay	20	30	2	2		11	19			129
Fine More than 14 Days Pay							1			3
Forfeiture of service for purposes of promotion										
Forfeiture of seniority						2				
Reduction in rank				1						
Suspended detention										
Committed detention										24
<b>TOTAL</b>	<b>28</b>	<b>58</b>	<b>4</b>	<b>4</b>	<b>0</b>	<b>19</b>	<b>34</b>	<b>0</b>	<b>0</b>	<b>317</b>

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ARMY  
JANUARY-DECEMBER 2020

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

	SUPERIOR SUMMARY AUTHORITY				COMMANDING OFFICER				SUBORDINATE SUMMARY AUTHORITY			
	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED
		GUILTY	N.G.			GUILTY	N.G.			GUILTY	N.G.	
January					4	4						
February					9	9	3	1	15	18		1
March					9	15			22	31		
April	1	1			29	32	4	4	65	73	1	1
May	3	3			27	32	1	3	104	116	3	9
June	1	1			24	35	2		63	71	1	3
July					18	22		2	58	78		
August	7	5	2		23	32	1		57	73	5	2
September	1	1			31	36	5	2	56	62	1	2
October					26	41			40	45	1	2
November	3	6			12	16		1	46	52		5
December	2	3			10	14			52	61		3
<b>TOTAL</b>	<b>18</b>	<b>20</b>	<b>0</b>	<b>2</b>	<b>222</b>	<b>288</b>	<b>16</b>	<b>13</b>	<b>578</b>	<b>680</b>	<b>12</b>	<b>28</b>

**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					1	2		15
24						2	3	2		44
25										1
26	1	4					5	4		24
27	5	5		2		2	6	5		82
28										
29	25	30		4		10	35	11		278
30										
31										
32		2								1
33(a)		2						2		10
33(b)										12
33(c)										4
33(d)							1	1		4
33A										
34						2	1	1		1
35						2	1	2		4
36										
36A							1			3
36B	8	20		2		1	8	5		70
37								1		4
38										
40										2
40A				1						3
40B										
40C				1		1		1		2
40D							1	1		8
41										
42										
43	1							1		7
44										1
45							1	1		3
46										
47C										3
47P										
47Q										2
48										
49										
50										
51										
53										
54										
54A										
55							1	1		6
56										3
57										2
58										
59										
60	7	10		2		2	18	9		100
61										1
<b>TOTAL</b>	<b>47</b>	<b>74</b>	<b>0</b>	<b>12</b>	<b>0</b>	<b>22</b>	<b>83</b>	<b>50</b>	<b>0</b>	<b>700</b>

## 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	11	11		2		4	19	14		56
Conditional conviction without punishment				1						2
Unconditional conviction without punishment		2					7	1		8
Severe reprimand	8	4		3		5	13	6		38
Extra duties		1								32
Extra drill		3								9
Stoppage of leave										33
Restriction of privileges		15								356
Suspended fine	2	1		3		2	1			33
Fine Less than 14 Days Pay	38	53		7		15	50	27		345
Fine More than 14 Days Pay	1	2								8
Forfeiture of service for purposes of promotion										
Forfeiture of seniority						2	1	1		
Reduction in rank								7		7
Suspended detention										
Committed detention										38
<b>TOTAL</b>	<b>60</b>	<b>92</b>	<b>0</b>	<b>16</b>	<b>0</b>	<b>28</b>	<b>91</b>	<b>56</b>	<b>0</b>	<b>965</b>

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AIR FORCE  
JANUARY-DECEMBER 2020

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												
February									3	4		
March									2	2		
April				25	24	1	1		1	1		
May				5	6				11	16		1
June				4	6	3			5	7		
July	1	1		6	7	1			5	10		1
August	4	4		40	42				7	7		
September									2	2	1	
October				2	3				5	7		
November				3	4	2			3	3		
December	1	1		1	1							
<b>TOTAL</b>	<b>6</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>86</b>	<b>93</b>	<b>7</b>	<b>1</b>	<b>44</b>	<b>59</b>	<b>1</b>	<b>2</b>

**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
<b>Sect 23</b>	3									1
<b>24</b>	1						1			1
<b>25</b>				2						1
<b>26</b>	1		2				2			3
<b>27</b>							1			4
<b>28</b>										
<b>29</b>	58	19		1			3			22
<b>30</b>										
<b>31</b>										
<b>32</b>										
<b>33(a)</b>										2
<b>33(b)</b>										1
<b>33(c)</b>										
<b>33(d)</b>										1
<b>33A</b>										
<b>34</b>										
<b>35</b>							1			
<b>36</b>										
<b>36A</b>										
<b>36B</b>										7
<b>37</b>						1				
<b>38</b>										
<b>40</b>										
<b>40A</b>										1
<b>40B</b>										
<b>40C</b>										1
<b>40D</b>										
<b>41</b>										
<b>42</b>										
<b>43</b>										1
<b>44</b>										
<b>45</b>										
<b>46</b>										
<b>47C</b>										
<b>47P</b>										
<b>47Q</b>						1				
<b>48</b>										
<b>49</b>										
<b>50</b>										
<b>51</b>										
<b>53</b>										
<b>54</b>										
<b>54A</b>										
<b>55</b>										
<b>56</b>										2
<b>57</b>										
<b>58</b>										
<b>59</b>										
<b>60</b>	2	2	1			2	2			4
<b>61</b>										
<b>TOTAL</b>	<b>65</b>	<b>21</b>	<b>3</b>	<b>3</b>	<b>0</b>	<b>4</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>52</b>

**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	4	2	1	1		1	1			18
Conditional conviction without punishment	1						1			4
Unconditional conviction without punishment										
Severe reprimand	2					2	3			1
Extra duties										4
Extra drill										1
Stoppage of leave										1
Restriction of privileges		3								12
Suspended fine						2				1
Fine Less than 14 Days Pay	62	18	2	2		2	5			32
Fine More than 14 Days Pay										
Forfeiture of service for purposes of promotion										
Forfeiture of seniority										
Reduction in rank							1			
Suspended detention										
Committed detention										1
<b>TOTAL</b>	<b>69</b>	<b>23</b>	<b>3</b>	<b>3</b>	<b>0</b>	<b>7</b>	<b>11</b>	<b>0</b>	<b>0</b>	<b>75</b>

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COMBINED STATISTICS OF TRIALS AND OUTCOMES FOR MEMBERS BEFORE SUMMARY AUTHORITIES

	SUPERIOR SUMMARY AUTHORITY				COMMANDING OFFICER				SUBORDINATE SUMMARY AUTHORITY			
	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED
		GUILTY	N.G.			GUILTY	N.G.			GUILTY	N.G.	
January	0	0	0	0	8	6	1	2	1	1	0	0
February	0	0	0	0	16	20	3	1	25	34	0	1
March	0	0	0	0	17	24	0	0	29	38	0	0
April	1	1	0	0	76	82	9	7	77	86	1	2
May	4	4	0	0	45	55	1	3	129	144	5	12
June	1	1	0	0	34	46	7	0	80	89	1	4
July	1	1	0	0	36	45	1	2	79	108	1	1
August	15	13	0	2	83	94	4	0	71	86	6	2
September	1	1	0	0	52	77	5	2	69	77	2	2
October	0	0	0	0	46	84	0	0	53	62	1	2
November	3	6	0	0	24	31	2	1	57	67	0	5
December	3	4	0	0	16	21	0	0	59	68	1	3
<b>TOTAL</b>	<b>29</b>	<b>31</b>	<b>0</b>	<b>0</b>	<b>453</b>	<b>585</b>	<b>33</b>	<b>18</b>	<b>729</b>	<b>860</b>	<b>18</b>	<b>34</b>

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### **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.

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**NAVY  
JANUARY-DECEMBER 2020**

**DISCIPLINE OFFICER STATISTICS**

<b>Infringement</b>	<b>Number</b>
<b>Section 23</b>	327
<b>24</b>	164
<b>27</b>	145
<b>29</b>	905
<b>32(1)</b>	6
<b>35</b>	34
<b>60</b>	123
<b>TOTAL (1)</b>	<b>1704</b>

<b>Action Taken</b>	<b>Number</b>
<b>Punishment Imposed - Fine</b>	541
<b>ROP</b>	322
<b>SOL</b>	164
<b>Extra Duties</b>	226
<b>Extra Drill</b>	26
<b>Reprimand</b>	334
<b>No Punishment Imposed</b>	83
<b>Referred to an Authorised Member</b>	8
<b>TOTAL (1)</b>	<b>1704</b>

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**ARMY**  
**JANUARY-DECEMBER 2020**  
**DISCIPLINE OFFICER STATISTICS**

<b>Infringement</b>	<b>Number</b>
<b>Section 23</b>	130
<b>24</b>	216
<b>27</b>	517
<b>29</b>	1044
<b>32(1)</b>	10
<b>35</b>	47
<b>60</b>	221
<b>TOTAL (1)</b>	<b>2185</b>

<b>Action Taken</b>	<b>Number</b>
<b>Punishment Imposed - Fine</b>	379
<b>ROP</b>	559
<b>SOL</b>	294
<b>Extra Duties</b>	371
<b>Extra Drill</b>	149
<b>Reprimand</b>	361
<b>No Punishment Imposed</b>	65
<b>Referred to an Authorised Member</b>	7
<b>TOTAL (1)</b>	<b>2185</b>

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**AIR FORCE  
JANUARY-DECEMBER 2020  
DISCIPLINE OFFICER STATISTICS**

<b>Infringement</b>	<b>Number</b>
<b>Section 23</b>	<b>34</b>
<b>24</b>	<b>16</b>
<b>27</b>	<b>82</b>
<b>29</b>	<b>290</b>
<b>32(1)</b>	<b>6</b>
<b>35</b>	<b>10</b>
<b>60</b>	<b>52</b>
<b>TOTAL (1)</b>	<b>490</b>

<b>Action Taken</b>	<b>Number</b>
<b>Punishment Imposed - Fine</b>	<b>159</b>
<b>ROP</b>	<b>50</b>
<b>SOL</b>	<b>35</b>
<b>Extra Duties</b>	<b>42</b>
<b>Extra Drill</b>	<b>9</b>
<b>Reprimand</b>	<b>170</b>
<b>No Punishment Imposed</b>	<b>24</b>
<b>Referred to an Authorised Member</b>	<b>1</b>
<b>TOTAL (1)</b>	<b>490</b>

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## **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.

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NAVY

JANUARY-DECEMBER 2020

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

	GENERAL COURT MARTIAL					RESTRICTED COURT MARTIAL					DEFENCE FORCE MAGISTRATE				
	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD
		GUILTY	N.G.				GUILTY	N.G.				GUILTY	N.G.		
January															
February											3	1	2		
March															
April											1		2		
May															
June											2	1	1		1
July															
August															
September															
October											1	1	1		
November											2	2	1		
December											1	8	4		
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>10</b>	<b>13</b>	<b>11</b>	<b>0</b>	<b>1</b>

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

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Sect 23										
24	1									
25										
26										
27										
28										
29										
30										
31										
32										
33(a)										
33(b)										
33(c)										
33(d)										
33A									1	
34				4						
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				3						
61				1			1		2	
<b>TOTAL</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>3</b>	<b>0</b>

**Details of Quashed Convictions**

<b>DFDA Sect</b>	<b>Rank</b>	<b>Short Summary of Offence</b>	<b>Reason for quashing</b>

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

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Reprimand	1									
Conditional conviction without punishment										
Unconditional conviction without punishment										
Severe reprimand				7					1	
Suspended fine										
Fine Less than 14 Days Pay									2	
Fine More than 14 Days Pay										
Forfeiture of service for purposes of promotion										
Forfeiture of seniority										
Reduction in rank							1		1	
Suspended detention										
Committed detention										
Dismissal				1						
Imprisonment										
<b>TOTAL</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>4</b>	<b>0</b>



ARMY

JANUARY-DECEMBER 2020

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		2		
March											5	13	10		
April											1			2	
May											1	3			
June											4	5			
July											1	1			
August											5	7			
September	1	1	3								1		3		
October											2	8			3
November						6		6			4	4	1		
December															
<b>TOTAL</b>	<b>1</b>	<b>1</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>0</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>25</b>	<b>41</b>	<b>16</b>	<b>2</b>	<b>3</b>

**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										
28										
29						1				
30										
31										
32										
33(a)										3
33(b)										
33(c)										
33(d)										
33A										2
34	1					1				
35										
36										
36A										
36B										
37										
38										
40										
40A										
40C										
40D										
42										
43										
44										
45										
46										
47C										1
47P										
47Q										
48										
49										
50										
51										
53										
54										
55	2						1			
56										
57										
58										
59										
60	2					7				
61	8	4				1	3			5
<b>TOTAL</b>	<b>13</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>10</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>11</b>

**Details of Quashed Convictions**

<b>DFDA Sect</b>	<b>Rank</b>	<b>Short Summary of Offence</b>	<b>Reason for quashing</b>
61	OCDT	Non-consensual distribution of intimate image	Conceded jurisdictional error

**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	3			4
Conditional conviction without punishment										
Unconditional conviction without punishment										
Severe reprimand	2									2
Suspended fine						1				
Fine Less than 14 Days Pay	1					7	1			7
Fine More than 14 Days Pay						1				1
Forfeiture of service for purposes of promotion										
Forfeiture of seniority	1					1	3			
Reduction in rank	2					1				
Suspended detention										2
Committed detention										2
Dismissal	9	4								1
Imprisonment										
<b>TOTAL</b>	<b>15</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>12</b>	<b>7</b>	<b>0</b>	<b>0</b>	<b>19</b>

AIR FORCE  
JANUARY-DECEMBER 2020

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	3			
March															
April															
May											1		3		
June															
July											1	3			8
August															
September															
October											1	2			
November											1	1			1
December											1	1			
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>7</b>	<b>10</b>	<b>3</b>	<b>0</b>	<b>9</b>

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

**Details of Quashed Convictions**

<b>DFDA Sect</b>	<b>Rank</b>	<b>Short Summary of Offence</b>	<b>Reason for quashing</b>

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

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



COMBINED JANUARY - DECEMBER 2020

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	0	0	0	0	0
February	0	0	0	0	0	0	0	0	0	0	6	4	4	0	0
March	0	0	0	0	0	0	0	0	0	0	5	13	10	0	0
April	0	0	0	0	0	0	0	0	0	0	2	0	2	2	0
May	0	0	0	0	0	0	0	0	0	0	2	3	3	0	0
June	0	0	0	0	0	0	0	0	0	0	6	6	1	0	1
July	0	0	0	0	0	0	0	0	0	0	2	4	0	0	8
August	0	0	0	0	0	0	0	0	0	0	5	7	0	0	0
September	1	1	3	0	0	0	0	0	0	0	1	0	3	0	0
October	0	0	0	0	0	0	0	0	0	0	4	11	1	0	3
November	0	0	0	0	0	6	0	6	0	0	7	7	2	0	1
December	0	0	0	0	0	0	0	0	0	0	2	9	4	0	0
<b>TOTAL</b>	<b>1</b>	<b>1</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>0</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>42</b>	<b>64</b>	<b>30</b>	<b>2</b>	<b>13</b>

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## DEFENCE FORCE DISCIPLINE ACT

### LIST OF SECTIONS USED IN STATISTICS

<b>Section Number</b>	<b>Description</b>
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

<b>Section Number</b>	<b>Description</b>
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