



JUDGE ADVOCATE GENERAL

**DEFENCE FORCE
DISCIPLINE ACT 1982**

*Report for the period
1 January to 31 December 2012*

© Commonwealth of Australia 2013
ISSN 0817 9956

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Department of Defence.

All Defence information, whether classified or not, is protected from unauthorised disclosure under the *Crimes Act 1914*. Defence information may only be released in accordance with the *Defence Protective Security Manual* (SECMAN 4) and/or Defence Instruction (General) OPS 13-4 – *Release of Classified Information to Other Countries*, as appropriate.

Requests and inquiries should be addressed to Director Defence Publishing Service, CP3-1-102, Department of Defence, CANBERRA ACT 2600.

Printed by CanPrint Communications Pty Limited, Canberra

Department of Defence

Defence Force Discipline Act 1982

*Report for the period
1 January to 31 December 2012*



JUDGE ADVOCATE GENERAL

HEADQUARTERS AUSTRALIAN DEFENCE FORCE
DEPARTMENT OF DEFENCE
CANBERRA ACT 2600

The Hon. Stephen Smith MP
Minister for Defence
Parliament House
CANBERRA ACT 2600

Dear Minister,

I submit herewith my report covering the period from 1 January to 31 December 2012. The report is furnished pursuant to the requirements of section 196A(1) of the *Defence Force Discipline Act 1982*

Yours sincerely,

A handwritten signature in black ink, appearing to read 'R R S Tracey'.

Major General the Hon Justice R R S Tracey, RFD
Judge Advocate General
Australian Defence Force

April 2013

Enc.

CONTENTS

	Page
PREAMBLE	1-5
OPERATION OF THE SUPERIOR MILITARY TRIBUNALS	5
STATISTICS	5
APPOINTMENTS	5-6
APPEALS TO THE DFDAT	6-7
LEGISLATION	7-9
OTHER MILITARY DISCIPLINE LAW REFORM	9-10
PETITIONS FOR REVIEW	10
DELEGATION BY REGISTRAR OF MILITARY JUSTICE	11
OPERATION OF SUB-RULE 6(4) OF THE COURT MARTIAL AND DEFENCE FORCE MAGISTRATE RULES	11
DIRECTOR OF MILITARY PROSECUTIONS	12
DIRECTOR OF DEFENCE COUNSEL SERVICES	12
DISCIPLINE LAW TRAINING	12-17
TRIALS UNDER THE DFDA	17
VISITS AND ACTIVITIES	18
THE PANELS OF JUDGE ADVOCATES/DEFENCE FORCE MAGISTRATES AND SECTION 154 REVIEWING OFFICERS	18
CONCLUSION	18
TABLE OF ABBREVIATIONS USED IN REPORT	19
COMPLIANCE INDEX OF REQUIRED INFORMATION FOR STATUTORY AUTHORITIES	20
ANNEX A	NATURE AND JURISDICTION OF SUMMARY AUTHORITIES
ANNEX B	SUMMARY TRIALS STATISTICS - NAVY
ANNEX C	SUMMARY TRIALS STATISTICS - ARMY
ANNEX D	SUMMARY TRIALS STATISTICS – AIR FORCE
ANNEX E	SUMMARY TRIALS STATISTICS – COMBINED
ANNEX F	NATURE AND JURISDICTION OF DISCIPLINE OFFICERS
ANNEX G	DISCIPLINE OFFICER STATISTICS – NAVY
ANNEX H	DISCIPLINE OFFICER STATISTICS – ARMY
ANNEX I	DISCIPLINE OFFICER STATISTICS – AIRFORCE
ANNEX J	NATURE AND JURISDICTION OF COURTS MARTIAL AND DEFENCE FORCE MAGISTRATES
ANNEX K	COURTS MARTIAL AND DEFENCE FORCE MAGISTRATE TRIAL STATISTICS – NAVY

ANNEX L	COURTS MARTIAL AND DEFENCE FORCE MAGISTRATE TRIAL STATISTICS – ARMY
ANNEX M	COURTS MARTIAL AND DEFENCE FORCE MAGISTRATE TRIAL STATISTICS – AIRFORCE
ANNEX N	COURTS MARTIAL AND DEFENCE FORCE MAGISTRATE TRIAL STATISTICS – COMBINED
ANNEX O	DEFENCE FORCE DISCIPLINE ACT SECTIONS
ANNEX P	LIST OF JUDGE ADVOCATES, DEFENCE FORCE MAGISTRATES AND SECTION 154 REPORTING OFFICERS

**JUDGE ADVOCATE GENERAL
AUSTRALIAN DEFENCE FORCE**

REPORT FOR THE PERIOD 1 JANUARY TO 31 DECEMBER 2012

PREAMBLE

1. Section 196A(1) of the *Defence Force Discipline Act 1982* (DFDA) obliges the Judge Advocate General (JAG), as soon as practicable after 31 December each year, to prepare and furnish to the Minister for Defence, a report relating to the operation of the DFDA, the regulations and rules of procedure made under it and the operation of any other law of the Commonwealth or of the Australian Capital Territory (ACT), in so far as that law relates to the discipline of the Defence Force. This report is for the 12 month period to 31 December 2012. The office of JAG of the Australian Defence Force (ADF) 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 months¹.

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

- | | | |
|----|-----------|---|
| a. | 1985-1987 | The late Major General the Hon Justice R. Mohr, RFD, ED (of the Supreme Court of South Australia). |
| b. | 1987-1992 | Air Vice Marshal the Hon Justice A.B. Nicholson, AO, RFD (Chief Justice of the Family Court of Australia) - appointed in February 1988 but had been acting since Major General Mohr's retirement on 30 July 1987. |
| c. | 1992-1996 | Rear Admiral the Hon Justice A.R.O. Rowlands, AO, RFD (of the Family Court of Australia). |

¹ DFDA s. 188

- d. 1996-2001 Major General the Hon Justice K.P. Duggan, AM, RFD (of the Supreme Court of South Australia).
- e. 2001-2007 Major General the Hon Justice L.W. 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.

3. I was first appointed JAG on 26 September 2007, having acted in the position since 20 June 2007. I satisfy the statutory qualification for appointment by virtue of my appointment as a judge of the Federal Court of Australia. My initial appointment as JAG was until 31 December 2008. I was subsequently appointed as Acting JAG on and from that time until 31 December 2009. I was reappointed as JAG on and from 10 February 2010 for a term of four years. The Office of JAG was vacant from 1 January 2010 until that appointment. As I have previously indicated², I also hold the appointment as President of the Defence Force Discipline Appeal Tribunal (DFDAT). As I there indicated, in my view, there is no conflict between these appointments, but it is appropriate that the fact that I hold both appointments is made apparent to those reading this report.

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

- a. Reporting annually to Parliament on:
 - (1) The operation of the DFDA, the Regulations, the Rules of Procedure; and
 - (2) The operation of any other law of the Commonwealth or of the ACT insofar as that law relates to the discipline of the Defence Force³;
- b. Making Procedural Rules for Service tribunals, being:

² My report for 2008 at paragraph 26

³ DFDA s.196A.

- (1) Court Martial and Defence Force Magistrate Rules (CM/DFM Rules); and
 - (2) Summary Authority Rules (SAR);
- c. Nominating the judge advocate (JA) for a court martial⁴ and Defence Force magistrates (DFMs)⁵;
 - d. Nominating to a Service Chief officers to be members of the JAs panel⁶;
 - e. Appointing DFMs from officers appointed as members of the JAs panel⁷;
 - f. Nominating to a Service Chief legal officers for the purposes of DFDA s.154(1)(a); and
 - g. If requested, providing a final and binding legal report in connection with the internal review of proceedings before Service tribunals.

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

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

⁴ DFDA s.129B.

⁵ DFDA s.129C.

⁶ DFDA s.196.

⁷ DFDA s.127

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

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

9. During the reporting period, Major General Ian Westwood AM continued to hold the position of Chief Judge Advocate (CJA) established under DFDA s.188A. Colonel Geoff Cameron CSC served as the Registrar of Military Justice (RMJ) established by DFDA s.188F until the end of the expiry of his term of appointment on 21 September 2012. He was succeeded by Group Captain Nina Harvey who was appointed by the Minister for Defence in accordance with DFDA s.188FB for a period of two years from 22 September 2012. Following the expiration of his appointment as RMJ, Colonel Cameron retired from the Australian Regular Army. It is appropriate that I acknowledge his service of many years, most recently in his very able discharge of the duties as RMJ. Major General Westwood has asked me to specifically record his gratitude to Colonel Cameron for the assistance and skill that he brought to the former Australian Military Court (AMC).

10. The position of staff officer to the JAG and CJA was filled during the reporting period by Lieutenant Jane Proctor, RAN. On behalf of CJA and myself I formally record my gratitude to her for her diligent discharge of her duties.

11. Funding for OJAG for the period of this report was provided by the Secretary/Chief of the Defence Force (CDF) group of the Department of Defence.

12. Section 179 of the DFDA provides for the appointment of DJAGs, and the practice since commencement of the DFDA has been to have three, comprising one from each of the Services. In office as DJAGs during the reporting period were:

- a. Commodore The Honourable Justice M.J. Slattery RANR,
- b. Brigadier D.J. Gunson RFD SC, and
- c. Air Commodore M.J.F. Burnett FM.

13. I formally record my gratitude to them for their help, support and counsel.

14. Mr Mark Cunliffe PSM continued as HDL and Air Commodore Paul Cronan AM continued as DGADFLS. Mr Adrian D'Amico continued in the position of Defence General Counsel.

OPERATION OF THE SUPERIOR MILITARY TRIBUNALS

15. During the reporting period, trials by court martial and DFM continued in accordance with the provisions of the *Military Justice (Interim Measures) Act (No 1) 2009*, as amended by the *Military Justice (Interim Measures) Amendment Act 2011*.

16. Legislation for a court established under Chapter III of the Constitution was introduced into the Parliament during the reporting period. I will deal with this legislation in more detail later in this report.

STATISTICS

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

APPOINTMENTS

18. I have already detailed the terms of my own appointment and that of the DJAGs. The interim measures instituted by the *Military Justice (Interim Measures) Act (No 1) 2009* included the appointment, by force of law, of the former Chief Military Judge and military judges as CJA and full time judge advocates (JAs) for a period of two years. In the event, the interim measures have continued beyond the two year point, and the terms of those appointments were varied to four years⁸ following the passage of the *Military Justice (Interim Measures) Amendment Act 2011*.

19. During the reporting period, Colonel Peter Morrison RFD, a former military judge and who was serving as a full time JA, resigned in order to take up an appointment to the bench of the ACT Magistrates Court. I am grateful to Colonel Morrison for the commitment and skill that he brought to the discharge of his duties and Major General Westwood has asked me to

⁸ But subject to legislation establishing a Chapter III court being enacted in the meantime.

record his thanks to Colonel Morrison for the enthusiasm and intellectual rigour that he brought to the bench of the former AMC.

20. The two remaining members of the former AMC, Major General Westwood and Colonel Jennifer Woodward, were promoted to those ranks of Major General and Colonel respectively during the reporting period. This was consistent with the terms on which they were initially appointed to the former AMC.

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

- a. JAG, MAJGEN Tracey, expiry date 9 February 2014;
- b. CJA, Major General Westwood, expiry date 21 September 2013;
- c. DJAG-Navy, Commodore Slattery, expiry date 9 March 2014;
- d. DJAG-Army, Brigadier Gunson, expiry date 9 March 2014;
- e. DJAG-Air Force, Air Commodore Burnett, expiry date 9 March 2014;
- f. Full-time JA, Colonel Woodward, expiry date 21 September 2013; and
- g. RMJ, Group Captain Harvey, expiry date 21 September 2014.

22. The officers appointed as JAs and DFMs and Section 154 officers within the reporting period are set out at Annex P.

APPEALS TO THE DFDAT

23. During the reporting period, there were three appeals to the DFDAT in connection with convictions recorded by courts martial and DFM. These were:

- a. *King v Chief of Army* [2012] ADFDAT 4;
- b. *Bateson v Chief of Army* [2012] ADFDAT 3;
- c. *Jones v Chief of Navy* [2012] ADFDAT 2; and

- d. *Li v Chief of Navy* [2012] ADFDAT 1.

The appeals in *King and Bateson* were upheld, the appeal in *Jones* was partly upheld and the appeal in *Li* was dismissed. A subsequent appeal in *Jones* to the Full Bench of the Federal Court was also dismissed.

LEGISLATION

24. The *Military Court of Australia Bill 2012* (Military Court Bill) and the *Military Court of Australia (Transitional Provisions and Consequential Amendments) Bill 2012* (Consequential Amendments Bill) were introduced into the House of Representatives on 21 June 2012. The Bills were subsequently referred to the Senate Legal and Constitutional Affairs Legislation Committee for inquiry and report⁹. Subject to a recommendation that the explanatory memoranda for both Bills be amended to incorporate additional policy rationale for the provisions of the Bills, a majority of the Committee recommended that the Bills be passed.

25. The Military Court Bill establishes the Military Court of Australia in accordance with Chapter III of the Constitution. As noted by the Attorney-General in her second reading speech¹⁰:

- a. The Military Court of Australia will be a separate and uniquely identifiable Federal Court;
- b. Judicial officers cannot be appointed if they are currently serving in the ADF;
- c. Judicial officers appointed to the Military Court will be required to, by reason of experience or training, understand the nature of service in the ADF;
- d. The Court will not include the option of a trial by jury;
- e. The Military Court will consist of two divisions, the General Division, and the Appellate and Superior Division; and

⁹ Available at the Parliament House website.

¹⁰ *House of Representatives Hansard*, 21 June 2012, pages 7413 to 7414.

- f. Although the Military Court of Australia will be a separate Chapter III Court it will be administered through the Federal Court of Australia.

26. As the Senate Legal and Constitutional Affairs Legislation Committee notes¹¹ the Explanatory Memorandum to the Consequential Amendments Bill summarises the major changes made by these amendments, including:

- a. Abolition of the DFDA (the jurisdiction of the DFDA will be absorbed by the Military Court);
- b. The retention of courts martial and DFMs as a residual system for use in the rare instances where the Military Court determines that it is necessary, but not possible, for the Military Court to conduct a trial overseas;
- c. The current internal review mechanisms for convictions and punishments imposed by service tribunals will be maintained but, where an appeal is made to the Military Court from a decision of a court martial or DFM, then these internal review processes will be discontinued;
- d. There will be no appeal rights from a decision of a summary authority to the Military Court, but ADF members charged with service offences may elect to be tried, instead, by the Military Court;
- e. The DFDA will be amended to clarify the status and character of service offences as an offence against a law of the Commonwealth – this will affect when convictions for service offences will need to be disclosed;
- f. Persons found unfit for trial or persons acquitted on the basis of mental impairment will be dealt with similarly to those in the Commonwealth civilian criminal justice system;
- g. The positions of the RMJ and CJA will be abolished (their roles support courts martial and defence force magistrates, which are anticipated to be rarely required in the new system);
- h. Removal of references to 'old system offences', which were a transitional measure when the DFDA was introduced and can no longer be tried due to statutory time limits having now expired;

¹¹ At paragraph 2.17 of the Committee's Report.

- i. The requirement in existing section 63 of the DFDA will continue to require the Director of Military Prosecutions (DMP) to obtain the consent of the Commonwealth Director of Public Prosecutions (CDPP) prior to prosecuting certain serious service offences with civilian criminal law equivalents;
- j. The DMP will continue to exist as a separate statutory office responsible for prosecuting charges in the Military Court; and
- k. Amendments to the *Defence Act 1903* will afford the Office of the Director of Defence Counsel Services (DDCS) statutory recognition and will provide for the functions and responsibilities of the DDCS.

27. Notwithstanding the Committee's recommendation, the Bills were not passed during the reporting period.

28. The Bills provide for a commencement date for the main amendments effected by the Bills to be the earlier of a day fixed by proclamation or ten months after the Bills receive Royal Assent. Consequently, even if the Bills are enacted during the current Parliament, it is likely that a further extension will be required to the appointments by force of law effected by *Military Justice (Interim Measures) Act (No 1) 2009* (as amended) for the former Chief Military Judge and the remaining former military judge.

OTHER MILITARY DISCIPLINE LAW REFORM

29. Defence Legal has developed simplified procedures with guidance and commentary for summary proceedings. The intention is to make it easier for all participants to understand what is required.

30. Defence Legal has also reviewed the chapters of Volume 3 of the Discipline Law Manual which provide guidance to those involved in summary authority proceedings. A revised Chapter 5 – *Discipline Officer Scheme – Minor Disciplinary Infringements* was published electronically in August 2012. Additionally, certain of the forms associated with DFDA proceedings have been updated.

31. The publication of trial outcomes for courts martial and DFMs in the service newspapers commenced during the reporting period. I commend this initiative because it enhances the openness and transparency associated with trials before the superior military tribunals, and will also support the principle of general deterrence inherent in the sentencing outcomes following a conviction. However, I understand that in some cases acquittals are not being included in the reporting. This is a matter of

concern because it obscures transparency and openness, and runs the risk of undermining confidence in the integrity of such proceedings if the impression is (wrongly) conveyed that convictions are the inevitable outcome of a prosecution.

PETITIONS FOR REVIEW

32. Following a conviction, there will ordinarily be two aspects of the internal review to be conducted in accordance with Division 3 of Part VIIIA of the DFDA. The first of these is in connection with the efficacy of the conviction, and the other relates to whether or not the punishment should be approved¹².

33. In the case of the review of the conviction, evidence not presented at the trial may only be considered in connection with the review where it was not reasonably available during the proceedings¹³. There is no corresponding provision for the review action of punishments and orders which is carried out in accordance with DFDA s.162. In my view, it would be desirable that a similar restriction be placed on the introduction of matters in mitigation sought to be advanced for the first time in connection with the review. Such a restriction would reinforce the need for all relevant material to have been made available to inform the original sentencing discretion.

34. In practical terms, where a matter is raised in the course of the trial then the prosecutor has the opportunity to respond to it. If need be, the matter can be dealt with as a contested aspect of the proceeding. Where the material is raised for the first time in the course of a petition, the prosecution is not involved in the process at all and there is no logical contradictor to the matters advanced.

¹² Where there has been an unsuccessful appeal to the DFDA the internal review will be limited by the operation of DFDA s.156 to a consideration of the punishment.

¹³ DFDA s.158(2)(a) refers.

DELEGATION BY REGISTRAR OF MILITARY JUSTICE

35. DFDA s. 188FM provides, inter alia, that:

The Registrar may delegate all or any of his or her powers and functions to:

- (a) a defence member holding the rank of lieutenant commander, major or squadron leader.

36. The position of Deputy Registrar of Military Justice (DRMJ), to whom RMJ will ordinarily make a delegation in accordance with this provision, is established in the rank of Commander, Lieutenant Colonel or Wing Commander. That being so, it would be preferable if the legislation were amended to make it clear that the rank specified in the legislation is only a minimum qualification for the delegation.

OPERATION OF SUB-RULE 6(4) OF THE COURT MARTIAL AND DEFENCE FORCE MAGISTRATE RULES

37. Sub-rule 6(4) of the *Court Martial and Defence Force Magistrate Rules* provides that:

At the time of the service of a summons under subsection 138(2) of the Act on a person who is not a defence member, the person serving the summons shall tender to the person named in the summons sufficient money to enable that person to travel between the person's place of residence or employment (whichever is appropriate) and the place of sitting of the court martial or Defence Force magistrate, as the case may be.

38. During the reporting period, the JA to a General Court Martial ruled that, having regard to that provision, service of a summons was not properly effected if the person the subject of the summons was not provided with conduct money at the time of the purported service.

39. The current practice by the Office of the DMP and DDCS is to contact a witness after the summons is 'served' to make the necessary travel arrangements. It would be desirable for the Rule to be amended to reflect modern administrative arrangements for travel and I welcome the recommendations of the Military Justice Co-ordination Committee, which I am advised is scheduled to consider this matter, as to an appropriate new provision.

DIRECTOR OF MILITARY PROSECUTIONS

40. During the reporting period Brigadier Lyn McDade was the DMP appointed under DFDA s.188GF. She is required to report independently to the Minister, for presentation to the Parliament on the operations of her office.

DIRECTOR OF DEFENCE COUNSEL SERVICES

41. The position of DDCS was filled, during the reporting period, by Colonel Penny Cumming.

DISCIPLINE LAW TRAINING

Discipline Law Training for ADF personnel

42. On 25 September 2012, the *Governance of Military Justice Training Manual* (GOVMJTMAN) was promulgated by the CDF and the Secretary, noting that discipline law training is a subset of military justice training. The purpose of the GOVMJTMAN is to provide direction to the Services for the provision of military justice training across Defence.

43. The Vice Chief of the Defence Force (VCDF) is the sponsor of the GOVMJTMAN, DGADFLS is appointed as the Military Justice Training Policy Owner for the ADF and the day-to-day contact is the Military Law Centre (MLC).

44. The promulgation of GOVMJTMAN implements military justice recommendations by:

- a. Mr J.C.S. Burchett, QC in the 2001 *Report of an Inquiry into Military Justice in the Australian Defence Force*:
 - (1) Recommendation 1 – common legal training in discipline law.
 - (2) Recommendation 4 – competency standards for personnel at the summary level.
- b. The Senate Foreign Affairs Defence and Trade References Committee in the 2005 report *The Effectiveness of Australia's Military Justice System*;

- c. The Inspector-General ADF in the 2006-2007 and 2007-2008 Defence Annual Reports; and
- d. Sir Laurence Street, AC, KCMG, QC and Air Marshal Leslie Fisher AO (Retd), in the 2009 Report of the Independent Review on the Health of the Reformed Military Justice System, which recommended the introduction:

of a training continuum for Non-commissioned Officers and junior officers, to better prepare personnel to perform the duties of summary level prosecutor and defending officer, and to participate in the conduct of administrative sanctions and routine inquiries.¹⁴

45. As explained in the GOVMJTMAN:

- a. The structure of the ADF and its diverse workforce presents particular challenges in ensuring consistency within the military justice system. Each Service and joint environment has its own culture and organisational structure; and as a result, the military justice functions and roles within Defence are undertaken at different rank levels and by different branches or categories or specialisations (and other Services equivalents). Sometimes a whole class (such as a specified rank) is given a function, while at other times individual positions at various ranks are given the same functions. The challenge for Defence is to develop and maintain a system that delivers consistently applied processes while being sufficiently flexible to meet the needs of each Service and the joint environment.¹⁵
- b. The Military Justice Competency Framework [set out in the GOVMJTMAN] is the tool designed to meet the challenges detailed above. This framework is based upon the principle that participants must attain certain competencies before undertaking military justice functions. The framework allows flexibility for Services to choose who should receive training and who will deliver that training, but specifies the competency standard to be achieved by such training. The intention of the

¹⁴ Paragraph 1.4, GOVMJTMAN.

¹⁵ Paragraph 1.5, GOVMJTMAN.

framework is to produce standardised military justice training outcomes across the ADF.¹⁶

- c. Defence members receive military justice training either as a function of their employment or as a requirement for career advancement to acquire the skills needed to perform military justice functions.¹⁷
- d. Military justice training will be assessed as successful when all Defence members have the knowledge, skills and professionalism required to undertake their military justice system roles and functions competently.¹⁸

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

Single Service

47. 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 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 and Education Training courses for both NCOs and officers, and as stand-alone training (for example, prosecuting/defending officer courses).

¹⁶ Paragraph 1.6, GOVMJTMAN.

¹⁷ Paragraph 1.2, GOVMJTMAN.

¹⁸ Paragraph 1.3, GOVMJTMAN.

Pre-Command Training

48. The single-Services require officers, prior to assuming command, to complete their individual pre-command courses. Each pre-command course has a military justice component delivered by staff from the MLC. The Discipline Law course content covers: command responsibilities with respect to the DFDA and associated legislation, the procedures for the proper conduct of Summary Proceedings, DFDA investigations, jurisdiction of Service Tribunals, powers of punishment of Summary Authorities and the Discipline Officer scheme.

49. In 2012, the military justice training on pre-command course was as follows:

- a. **Navy.** Four courses instructed, with an approximate total of 84 students comprising officers appointed to Commanding Officer or Executive Officer positions (Major Fleet Units, Minor War Vessels and Shore appointments).
- b. **Army.** One course instructed, with an approximate total of 42 students comprising officers appointed to command units or formations. A course for Regimental Sergeant Majors designate is conducted concurrently with the pre-command course, and the students on that course sat in during the pre-command military justice module.
- c. **Air Force.** Three courses instructed, with an approximate total of 48 students comprising officers appointed to Officer Commanding or Commanding Officer positions.

VCDF Group

50. The VCDF Group includes the Australian Defence College (ADC). Units of ADC include the Australian Defence Force Academy and Defence Learning Branch (DLB). CAMPUS, the online learning tool, is part of DLB.

- a. **ADFA:** Military justice familiarisation training occurs at the commencement of a cadet's attendance at ADFA, and then more detailed training occurs in Year 1 and Year 2.
- b. **CAMPUS:** Online DFDA training through the CAMPUS system continued to be utilised in 2012 since its inception in 2011. There are eight online courses covering the range of DFDA

roles. The training is scenario based and includes the use of high quality video to demonstrate the conduct of Discipline Officer and Summary Authority trials.

Inspector General of the Australian Defence Force (IGADF)

51. The IGADF makes available a Military Justice Awareness Training package for local delivery.

Training for ADF Legal Officers

52. ADF legal officers receive specialist professional training in discipline law through attendance at different stages of their careers:

- a. **Legal Training Module 1 (LTM 1).** This is the first course of legal training undertaken by ADF legal officers, and provides an introduction to discipline law aimed at the role of junior ADF legal officers. During 2012, two LTM1 courses were conducted with 32 students (plus four civilian lawyers from Defence Legal who also attended).
- b. **Legal Training Module 2 (LTM 2).** This is a graduate diploma level course undertaken by ADF legal officers which is normally conducted within four years post LTM1 and consists of four graduate level subjects. During the reporting period, 27 students completed the Military Discipline Law subject.
- c. **Legal Training Module 3 (LTM 3).** This is a Masters level course undertaken by ADF legal officers which is normally conducted within four years post LTM2. LTM3 consists of three core subjects (Advanced Military Discipline Law, Advanced Military Administrative Law and Advanced Military Operations Law) conducted biennially, plus permanent legal officers without an existing master of laws degree must complete a further five electives from an approved list. No LTM3 core subjects were conducted this year; however, 26 students completed elective subjects.

Ongoing Development of Discipline Law Training

53. The following are the primary means to develop the delivery of military justice training:

- a. **CAMPUS.** The MLC is reviewing the marketing and use of CAMPUS courses, either as the entire training (particularly well suited for competencies such as 'Carry out Court Orderly functions') or to augment instructor-led training (for example, as pre-course learning).
- b. **Greater flexibility in delivery.** Development of military justice modules for delivery by legal officers or other suitable staff in regional localities, particularly well suited for competencies such as 'Perform the duties of a Defending Officer'.
- c. **Efficiency.** The MLC is pursuing options to establish a repository of military justice training resources to improve the efficiency of military justice training. On 1 October 2012, a basic SharePoint site on the intranet was launched to assist ADF Legal Officers conducting Military Justice Training in the ADF. It also contains Military Justice Training Advisory Group training resources. The SharePoint site is in its infancy but will be developed in 2013.

TRIALS UNDER THE DFDA

54. The statistics for summary trials and the Discipline Officer Scheme conducted by the three Services during 2012 are set out in Annexes A to I. As was indicated in the report for 2005¹⁹ responsibility for the Discipline Tracking and Case Flow Management System was transferred to the IGADF. Accordingly, IGADF has provided the statistics for the summary trials for this report drawing upon the electronic system.

55. Statistics for proceedings before court martial and DFM pursuant to the arrangements reinstated by the *Military Justice (Interim Measures) Act (No 1) 2009* appear at Annexes J to N.

¹⁹ Paragraphs 95-96.

VISITS AND ACTIVITIES

56. In the course of the year I had regular discussions with legal officers from each of the three services which have covered a wide range of issues relating to the operation of the service discipline system.

57. On the weekend of 21-23 September 2012 I conducted a conference at HMAS Creswell with the DJAG's, CJA, and Colonel Woodward. Because of the geographic separation of the participants, the conference provided a most useful opportunity for informal discussion. The substance of matters discussed are reflected elsewhere in this report.

58. During the reporting period delegations from Russia and Vietnam visited my office for informal discussions. The Russian delegation was led by the First Deputy Chief Military Prosecutor of Russia, Lieutenant General of Justice Mr Nikulishchin. Lieutenant General Tran Van Do, Deputy Chief Justice of the Supreme People's Court, led the delegation from the Supreme Peoples' Court of Vietnam.

**THE PANELS OF JUDGE ADVOCATES/DEFENCE FORCE
MAGISTRATES AND SECTION 154 REVIEWING OFFICERS**

59. Details of the officers performing these functions appear at Annex P.

CONCLUSION

60. The interim arrangements reinstating the system of trial by court martial and DFM continue to operate satisfactorily. These will be replaced by the independent Chapter III civilian Military Court of Australia if the legislation to which I have referred in the body of the report is enacted.

TABLE OF ABBREVIATIONS USED IN REPORT

Abbreviation	Description
ACT	Australian Capital Territory
ADC	Australian Defence College
ADF	Australian Defence Force
AMC	Australian Military Court
CDF	Chief of the Defence Force
CJA	Chief Judge Advocate
CM/DFM Rules	Court Martial and Defence Force Magistrate Rules
DDCS	Director of Defence Counsel Services
DFDA	<i>Defence Force Discipline Act 1982</i>
DFDAT	Defence Force Discipline Appeal Tribunal
DFM	Defence Force Magistrate
DGADFLS	Director General Australian Defence Force Legal Services
DJAG	Deputy Judge Advocate General
DLB	Defence Learning Branch
DMP	Director of Military Prosecutions
GOVMJTMAN	Governance of Military Justice Training Manual
HDL	Head, Defence Legal
IGADF	Inspector General Australian Defence Force
JA	Judge Advocate
JAG	Judge Advocate General
LTM1	Legal Training Module 1
LTM2	Legal Training Module 2
LTM3	Legal Training Module 3
MLC	Military Law Centre
RAN	Royal Australian Navy
RANR	Royal Australian Navy Reserve
RFD	Reserve Forces Decoration
RMJ	Registrar of Military Justice
VCDF	Vice Chief of the Defence Force

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 & objectives	Paragraphs: 4-8
Membership and Staff	Paragraph: 3, 9-10
Information Officer	Jennifer Mackenzie Paralegal to Chief Judge Advocate Department of Defence F-TS-OJAG (PO Box 7906) CANBERRA BC ACT 2610 Telephone: 02 6127 4344 Facsimile: 02 6127 4399
Financial Statement	Paragraphs: 11
Activities and Reports	Paragraphs: 56-58
Operational Problems	Paragraphs: 15-16, 29-39
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.

**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		7	8
24		1					6		61	7
25									2	
26				1		2	4		6	2
27	1						1		17	2
28										
29	2	6		3		6	18		49	25
30										
31										
32										
33(a)							1		2	6
33(b)	1					2			4	1
33(c)										
33(d)							2			1
34						2	2			
35										
36A										1
36B	2								1	
37									1	4
38									1	
39										
40							1			
40A							1			
40B										
40C										
40D										
41										
42										
43	2						2		5	7
44									1	
45										1
46									4	
47C									2	
47P										
48										
49										
50										
51										
53										
54										
54A										
55									1	
56										
57										
58										
59									1	
60	7	4					4		28	11
61									25	2
TOTAL	16	11	0	4	0	12	44	0	218	78

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	7	1		1		3	11		55	9
Conditional conviction without punishment									1	
Unconditional conviction without punishment	1					1	1		8	5
Severe reprimand	5	2		4		2	13		24	10
Extra duties									8	
Extra Drill									1	
Stoppage of leave		1							11	8
Restriction of privileges		4					1		74	31
Suspended fine							1		34	5
Fine Less than 14 Days Pay	7	8		6		6	24		103	32
Fine More than 14 Days Pay									4	1
Forfeiture of service for purposes of promotion										
Forfeiture of seniority							9			
Reduction in rank						1	2			
Suspended detention										
Committed detention									10	7
TOTAL	20	16	0	11	0	13	62	0	333	108

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

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Sect 23	1	4				1	4	4		26
24	7	6				2	8	14		135
25										5
26		2		1		5	14	8		62
27	1	7		1		1	13	11		65
28										
29	15	21		8		20	47	17		212
30										
31										
32	1									
33(a)			2					1		14
33(b)						2	1	2		2
33(c)										
33(d)						1				2
34	1		1			1	4	2		1
35						1	5	4		4
36						1	1			10
36A	10	20		2		1	5	6		118
37							2			11
38										2
39										
40						1				
40A										1
40B										
40C							1			4
40D	1						3	1		9
41										
42										
43							2			10
44	1						3	1		2
45										
46										1
47C										
47P										
48										
49										1
50										
51										
53										
54										
54A										
55	1					2	2	1		12
56							1	1		
57										
58										
59										3
60	11	2	1	2		16	18	12		89
61			9				1			
TOTAL	50	62	13	14	0	55	135	85	0	801

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	1	1	6		14	29	17		50
Conditional conviction without punishment						1				
Unconditional conviction without punishment	1					4	5	1		12
Severe reprimand	7		9	2		13	22	14		21
Extra duties										37
Extra drill								1		17
Stoppage of leave		17								28
Restriction of privileges	1	32				6	1	1		434
Suspended fine	1	1				6	3	3		14
Fine Less than 14 Days Pay	42	18	12	9		27	76	58		399
Fine More than 14 Days Pay							3			
Forfeiture of service for purposes of promotion										
Forfeiture of seniority						4	3	2		
Reduction in rank							12	14		11
Suspended detention										
Committed detention										57
TOTAL	63	69	22	17	0	75	154	111	0	1080

AIR FORCE
JANUARY-DECEMBER 2012

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 GUILTY	N.G.	NUMBER OF TRIALS HELD	CHARGES TRIED GUILTY	N.G.	NUMBER OF TRIALS HELD	CHARGES TRIED GUILTY	N.G.
January							2	3	1
February							3	3	1
March				2	2	2	1	1	
April				2	3		3	4	1
May				2	12		2	6	
June	1	2					7	10	1
July				1	2		4	6	
August							1	2	
September				2	4		2	4	
October				2	9				
November				6	10	2	2	2	2
December				2	3				
TOTAL	1	2	0	19	45	4	27	41	6
			0			0			0

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

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Sect 23										1
24		1					1		5	4
25										
26									4	1
27		2					1		2	2
28										
29	1	4					3		6	7
30										
31										
32	2									
33(a)										
33(b)										
33(c)										
33(d)	1									
34										
35										
36A										
36B									2	
37		2					1		1	
38										
39										
40										
40A									2	1
40B										
40C							2			
40D										
41										
42										
43										
44										
45										
46										
47C										
47P										
48										
49										
50										
51										
53										
54										
54A										
55	1						7		1	
56										
57										
58										
59										
60	4					2			3	7
61							3		1	
TOTAL	9	9	0	0	0	2	18	0	27	23

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							1		7	1
Conditional conviction without punishment									1	
Unconditional conviction without punishment		1								2
Severe reprimand		1					3		3	4
Extra duties									1	1
Extra drill										
Stoppage of leave		3								1
Restriction of privileges		3							3	7
Suspended fine	1						1		3	1
Fine Less than 14 Days Pay	8	2				2	9		9	9
Fine More than 14 Days Pay										
Forfeiture of service for purposes of promotion										
Forfeiture of seniority							1			
Reduction in rank							3			
Suspended detention										
Committed detention									1	5
TOTAL	9	10	0	0	0	2	18	0	28	31

ANNEX E TO
JAG REPORT 2012

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		NUMBER OF TRIALS HELD	CHARGES TRIED		NUMBER OF TRIALS HELD	CHARGES TRIED			
		GUILTY	N.G.		GUILTY	N.G.		GUILTY	N.G.		
January	0	0	0	20	25	1	4	14	13	1	3
February	0	0	0	17	19	2	1	46	47	1	3
March	2	1	1	44	70	4	0	67	77	6	0
April	3	3	0	40	54	4	0	61	69	2	2
May	0	0	0	49	67	1	5	112	138	2	0
June	4	4	0	41	80	1	1	82	96	3	1
July	3	4	0	36	46	2	3	77	87	2	2
August	2	3	4	47	72	0	2	82	88	2	3
September	1	2	0	49	69	2	4	76	82	5	9
October	2	2	0	51	73	3	1	95	102	2	7
November	1	2	0	66	101	3	8	108	128	5	3
December	0	0	0	20	29	2	0	33	39	1	0
TOTAL	18	21	5	480	705	25	29	853	966	32	33

NATURE AND JURISDICTION OF DISCIPLINE OFFICERS

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

NAVY
JANUARY-DECEMBER 2012
DISCIPLINE OFFICER STATISTICS

Infringement	Number
Section 23	276
24	244
27	148
29	854
32(1)	17
35	36
60	88
TOTAL	1663

Action Taken	Number
Punishment Imposed - Fine	259
ROP	287
SOL	384
Extra Duties	69
Extra Drill	81
Reprimand	496
No Punishment Imposed	78
Referred to an Authorised Member	9
TOTAL	1663

**ARMY
JANUARY-DECEMBER 2012**

DISCIPLINE OFFICER STATISTICS

Infringement	Number
Section 23	180
24	345
27	512
29	1069
32(1)	20
35	76
36B	29
60	229
TOTAL	2460

Action Taken	Number
Punishment Imposed - Fine	289
ROP	1009
SOL	284
Extra Duties	253
Extra Drill	80
Reprimand	367
No Punishment Imposed	79
Referred to an Authorised Member	99
TOTAL	2460

**AIR FORCE
JANUARY-DECEMBER 2012**

DISCIPLINE OFFICER STATISTICS

Infringement	Number
Section 23	38
24	33
27	39
29	142
32(1)	22
35	5
60	30
TOTAL	309

Action Taken	Number
Punishment Imposed - Fine	91
ROP	18
SOL	24
Extra Duties	59
Extra Drill	11
Reprimand	86
No Punishment Imposed	16
Referred to an Authorised Member	4
TOTAL	309

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.

ANNEX K TO
JAG REPORT 2012

NAVY

JANUARY-DECEMBER 2012

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		NUMBER OF TRIALS HELD	CHARGES TRIED		NUMBER OF TRIALS HELD	CHARGES TRIED					
		GUILTY	N.G.		QUASHED	WD		GUILTY	N.G.	QUASHED	WD		
January													
February				1		9							
March													
April				1	2								1
May				1	1								
June													
July													
August													
September													
October													
November													
December	1	7	6										
TOTAL	1	7	6	3	3	9	0	0	10	13	6	0	8

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

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Sect 23										1
24										
25										
26									1	
27										
28										
29							1			
30										
31										
32										
33(a)										
33(b)										
33(c)										
33(d)										
34										
35										
36										
36A										
37										
38										
39										
40										
40A										
40B										
40C										
40D										
41										
42										
43										
44										
45										
46										
47C										
47P										
48										
49										
50										
51										
53										
54										
54A										
55									1	
56	3									
57										
58										
59									2	
60									1	1
61	8			1					3	
TOTAL	11	0	0	1	0	0	1	0	8	2

Details of Quashed Convictions

DFDA Sect	Rank	Short Summary of Offence	Reason for quashing

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

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Reprimand										
Conditional conviction without punishment										
Unconditional conviction without punishment									4	
Severe reprimand							1			
Suspended fine	1									
Fine Less than 14 Days Pay	6						1			
Fine More than 14 Days Pay	1								1	
Forfeiture of service for purposes of promotion										
Forfeiture of seniority	6								1	
Reduction in rank	1			1						
Suspended detention										1
Committed detention									2	2
Dismissal				1						
Imprisonment				1						
TOTAL	15	0	0	3	0	0	2	0	8	3

**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							2			
26										1
27							1			
28										
29										
30										
31										
32										
33(a)										1
33(b)										
33(c)										
33(d)										
34										
35										
36										
36A										
37										
38										
39										
40										
40A										
40B										
40C				4						
40D										
41										
42										
43										
44										
45										
46										
47C							1			
47P										
48										
49										
50										
51										
53										
54										
54A										
55				5		4	2			
56						1				
57										
58										
59										
60						3	7			1
61		1				1	2			8
TOTAL	0	1	0	9	0	9	15	0	0	11

Details of Quashed Convictions

DFDA Sect	Rank	Short Summary of Offence	Reason for quashing
27	SGT	Disobeying a lawful command	Matter of law
60	SGT	Prejudicial conduct	Matter of law
61	SGT	Giving false evidence	Matter of law
61	SGT	Obtaining a financial advantage by deception	Matter of law

**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							2			
Conditional conviction without punishment										
Unconditional conviction without punishment										
Severe reprimand			1			1	2			2
Suspended fine						1	2			
Fine Less than 14 Days Pay	1			4		2	4			2
Fine More than 14 Days Pay						2				2
Forfeiture of service for purposes of promotion										
Forfeiture of seniority				5		5				
Reduction in rank						1	4			
Suspended detention										3
Committed detention										1
Dismissal										2
Imprisonment										
TOTAL	1	0	0	10	0	12	17	0	0	12

AIR FORCE

JANUARY-DECEMBER 2012

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 GUILTY	QUASHED N.G.	NUMBER OF TRIALS HELD	CHARGES TRIED GUILTY	QUASHED N.G.	NUMBER OF TRIALS HELD	CHARGES TRIED GUILTY	QUASHED N.G.	WD
January										
February							1	1		2
March							3	18		11
April										
May							1	1		
June										
July										
August										
September				1	2					
October							1	4		
November							2	4	2	
December							1	1		
TOTAL	0	0	0	1	2	0	9	29	2	13

**ONVICTIONS 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				2						
28										
29							1			
30										
31										
32										
33(a)										
33(b)										
33(c)										
33(d)										
34										
35										
36										
36A										
37										
38										
39										
40										
40A										
40B										
40C		3								
40D										
41										
42										
43		2								
44										
45										
46										
47C										
47P										
48										
49										
50										
51										
53										
54										
54A										
55				2					3	
56										
57										
58										
59										
60				1						
61				6			2		8	
62		1								
TOTAL	6	0	0	11	0	0	3	0	11	0

Details of Quashed Convictions

DFDA Sect	Rank	Short Summary of Offence	Reason for quashing

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

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Reprimand										
Conditional conviction without punishment										
Unconditional conviction without punishment										
Severe reprimand	2			6			1			
Suspended fine									2	
Fine Less than 14 Days Pay				8			1			
Fine More than 14 Days Pay									1	
Forfeiture of service for purposes of promotion										
Forfeiture of seniority				2			2			5
Reduction in rank	4									
Suspended detention									3	
Committed detention									1	
Dismissal from ADF				1						3
Imprisonment				1						
TOTAL	6	0	0	17	0	0	4	0	15	0

DEFENCE FORCE DISCIPLINE ACT

LIST OF SECTIONS USED IN STATISTICS

Section Number	Description
23	Absence from duty
24	Absence without leave
25	Assaulting a superior officer
26	Insubordinate conduct
27	Disobeying a lawful command
28	Failing to comply with a direction in relation to a ship, aircraft or vehicle
29	Failing to comply with a general order
30	Assaulting a guard
31	Obstructing or refusing to assist a police member
32	Offences while on guard or watch
33(a)	Assault on another person
33(b)	Creating a disturbance
33(c)	Obscene conduct
33(d)	Insulting or provocative words to another person
34	Assaulting a subordinate
35	Negligent performance of duty
36(1)	Dangerous conduct
36(2&3)	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

Section Number	Description
47C	Theft
47P	Receiving
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(1)	Dealing in or possession of narcotic goods
59(5, 6 or 7)	Dealing in or possession of narcotic goods
60	Prejudicial conduct
61	Offences based on territory offences
62	Commanding or ordering a service offence to be committed

LIST OF JUDGE ADVOCATES AND DEFENCE FORCE MAGISTRATES

Major General Ian Westwood AM, Chief Judge Advocate
Colonel Jennifer Woodward
Group Captain Peter Burke

LIST OF ACTIVE S.154 OFFICERS

Major General Ian Westwood AM, Chief Judge Advocate
Colonel Jennifer Woodward
Colonel Roger Brown RFD
Group Captain Peter Burke
Commander the Hon Justice Dennis Cowdroy OAM RANR
Commander Fabian Dixon SC RANR
Lieutenant Colonel Stuart Durward SC
Wing Commander Gordon Lerve

DEFENCE FORCE DISCIPLINE ACT 1982
Report for the period 1 January to 31 December 2012