



JUDGE ADVOCATE GENERAL

**DEFENCE FORCE
DISCIPLINE ACT 1982**

*Report for the period
1 January to 31 December 2014*

Department of Defence

Defence Force Discipline Act 1982

*Report for the period
1 January to 31 December 2014*

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JUDGE ADVOCATE GENERAL

HEADQUARTERS AUSTRALIAN DEFENCE FORCE
DEPARTMENT OF DEFENCE
CANBERRA ACT 2600

The Hon Kevin Andrews 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 2014. The report is furnished pursuant to the requirements of section 196A(1) of the *Defence Force Discipline Act 1982*

Yours sincerely,

Rear Admiral The Hon Justice M.J. Slattery RANR
Judge Advocate General
Australian Defence Force

27 May 2015

Enc.

CONTENTS

	Page
PREAMBLE	1-4
MAJOR GENERAL THE HONOURABLE JUSTICE R.R.S. TRACEY, AM, RFD	5
OPERATION OF THE SUPERIOR MILITARY TRIBUNALS	5
STATISTICS	5
APPOINTMENTS	5-6
APPEALS TO THE DFDAT	6
LEGISLATION	6-10
RMJ'S PERFORMANCE MEASURES	10-11
DIRECTOR OF MILITARY PROSECUTIONS	11
DIRECTOR OF DEFENCE COUNSEL SERVICES	11
DISCIPLINE LAW TRAINING	11-14
TRIALS UNDER THE DFDA	14-15
VISITS AND ACTIVITIES	15
THE PANELS OF JUDGE ADVOCATES/DEFENCE FORCE MAGISTRATES AND SECTION 154 REVIEWING OFFICERS	16
CONCLUSION	16
TABLE OF ABBREVIATIONS USED IN REPORT	17
COMPLIANCE INDEX OF REQUIRED INFORMATION FOR STATUTORY AUTHORITIES	18
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
ANNEX Q	RMJ'S PERFORMANCE MEASURES

JUDGE ADVOCATE GENERAL

AUSTRALIAN DEFENCE FORCE

REPORT FOR THE PERIOD 1 JANUARY TO 31 DECEMBER 2014

PREAMBLE

1. Section 196A(1) of the *Defence Force Discipline Act 1982* (DFDA) obliges the Judge Advocate General of the Australian Defence Force (JAG), as soon as practicable after 31 December each year, to prepare and furnish to the Minister for Defence, a report relating to the operation of the DFDA, the regulations and rules of procedure made under it and the operation of any other law of the Commonwealth or of the Australian Capital Territory (ACT), in so far as that law relates to the discipline of the Defence Force. This report is for the 12 month period to 31 December 2014. The office of JAG was created by s.179 of the DFDA. The holder of the office must be, or have been, a judge of a Federal Court or State Supreme Court. The appointment is made by the Governor-General in Executive Council. The Minister may appoint a person to act as JAG or Deputy Judge Advocate General (DJAG) for a period not greater than twelve months¹.

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

- | | | |
|----|-----------|---|
| a. | 1985-1987 | The late Major General the Hon Justice R. Mohr, RFD, ED (of the Supreme Court of South Australia). |
| b. | 1987-1992 | Air Vice Marshal the Hon Justice 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, RANR (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.
- f. 2007-2014 Major General the Hon Justice R.R.S. Tracey, AM, RFD (of the Federal Court of Australia).

3. I was first appointed JAG on 14 May 2015, having acted in the position since 30 July 2014. I satisfy the statutory qualification for appointment by virtue of my appointment as a judge of the Supreme Court of New South Wales. My current appointment as JAG is until 29 July 2017.

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

- a. Reporting annually to Parliament on:
 - (i) The operation of the DFDA, the regulations, the rules of procedure; and
 - (ii) The operation of any other law of the Commonwealth or of the ACT insofar as that law relates to the discipline of the Defence Force²;
- b. Making Procedural Rules for Service tribunals, being:
 - (i) Court Martial and Defence Force Magistrate Rules; and
 - (ii) Summary Authority Rules;
- c. Nominating the judge advocate (JA) for a court martial³ and Defence Force magistrates (DFMs)⁴;

² DFDA s.196A.

³ DFDA s.129B.

⁴ DFDA s.129C.

- d. Nominating to a Service Chief officers to be members of the JAs panel⁵;
- e. Appointing DFMs from officers appointed as members of the JAs panel⁶;
- 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 with the Head Defence Legal (HDL), the Director General Australian Defence Force Legal Services (DGADFLS) and the single Service heads of corps/category.

7. The JAG necessarily also plays a significant role in the promotion of the jurisprudential welfare and education of the Australian Defence Force (ADF).

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

9. During the reporting period, Major General Ian Denis Westwood AM continued to hold the position of Chief Judge Advocate (CJA) established under DFDA s.188A. Colonel Jennifer Ann Woodward continued to serve

⁵ DFDA s.196.

⁶ DFDA s.127

as a full time JA. Group Captain Nina Louise Harvey served as the Registrar of Military Justice (RMJ) established by DFDA s.188F.

10. The position of staff officer to the JAG and CJA was filled during the reporting period by Major Peter Cumines. On behalf of CJA and myself I formally record our gratitude to him for his diligent discharge of his duties.

11. Funding for OJAG for the period of this report was provided by the Office of the Secretary and Chief of the Defence Force 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 (or acting) as DJAGs during the reporting period were:

- a. Commodore The Honourable Justice J.T. Rush RANR,
- b. Brigadier His Honour Judge S.G. Durward SC, and
- c. Air Commodore His Honour Judge M.J.F. Burnett.

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

14. During the reporting period Brigadier D.J. Gunson RFD SC completed his term as DJAG (Army). This marked the culmination of service that commenced in 1969, and included service as an infantry officer before he transferred to the Australian Army Legal Corps in 1980. Brigadier Gunson has made an exceptional contribution over more than 40 years of service, and I wish to record my personal thanks to him for his commitment, service and comradeship.

15. Mr Mark Cunliffe PSM continued as HDL and Air Commodore Paul Cronan AM continued as DGADFLS. Air Commodore Cronan was succeeded by Air Commodore Chris Hanna CSC and bar with effect the start of 2015. That being so, it is appropriate to acknowledge Air Commodore Cronan's significant contribution in the role of DGADFLS, and earlier as Director Military Discipline Reform. Mr Adrian D'Amico continued in the position of Defence General Counsel.

MAJOR GENERAL THE HONOURABLE JUSTICE R.R.S. TRACEY, AM, RFD

16. My appointment as Acting JAG then JAG followed the expiration of Major General Tracey's appointment on 29 July 2014. Major General Tracey had served in the office for seven years. His time as JAG marked the culmination of many years of dedicated service in the most senior and demanding roles of the ADF's military justice system. He provided steady leadership during the period of wrenching change in the structure of the superior military tribunal system wrought by the High Court's decision in *Lane v Morison* (2009) 239 CLR 230. His clear guidance as JAG has proved central to the efficient performance and the ready acceptance of the restored court martial system that has operated since 2009 under the *Military Justice (Interim Measures) Acts*. I am delighted that in the Australia Day Honours for 2014, his service was justly acknowledged in his appointment as a Member of the Order of Australia *for exceptional service in the field of military law, particularly as Judge Advocate General of the Australian Defence Force*.

OPERATION OF THE SUPERIOR MILITARY TRIBUNALS

17. 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* and the *Military Justice (Interim Measures) Amendment Act 2013*.

STATISTICS

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

APPOINTMENTS

19. I have already detailed the terms of my own appointment. 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 JAs respectively 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 six years following the passage of the *Military Justice (Interim Measures) Amendment Act 2013*.

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

- a. JAG, Rear Admiral Slattery, expiry date 29 July 2017;
- b. CJA, Major General Westwood, expiry date 21 September 2015;
- c. DJAG-Navy, Commodore Rush, expiry date 29 July 2017, the acting appointment having been made substantive on 14 May 2015;
- d. DJAG-Army, Brigadier Durward, expiry date 9 March 2017;
- e. DJAG-Air Force, Air Commodore Burnett, expiry date 9 March 2017;
- f. Full-time JA, Colonel Woodward, expiry date 21 September 2015; and
- g. RMJ, Group Captain Harvey, expiry date 21 September 2017 (having been re-appointed for an additional term of three years during the reporting period).

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

APPEALS TO THE DEFENCE FORCE DISCIPLINE APPEAL TRIBUNAL

22. During the reporting period, there were no appeals determined by the Defence Force Discipline Appeal Tribunal.

LEGISLATION

23. As already noted⁷ the *Military Justice (Interim Measures) Act (No 1) 2009* as amended continues the appointment, by force of law, of the former Chief Military Judge and military judges as CJA and full time JAs respectively. That legislation remains in force only until 21 September 2015, unless further amended. At the time of this report a further two year extension to the appointments of the CJA and the full time JA has been

⁷ Paragraphs 15 and 18

foreshadowed in the form of the *Defence Legislation (Enhancement of Military Justice) Bill* 2015, which was introduced in the autumn sittings of the Parliament.

24. Major General Tracey emphasised in his JAG report for 2013 the important need for a decision to be taken either to make permanent the current interim measures legislation or to take some other legislative course such as establishing a Chapter III military court. Reflecting similar comments made in his 2011 report⁸, he said in his 2013 report⁹:

It is desirable that a final decision be taken as to whether the interim measures are to continue indefinitely or whether, for instance, a Chapter III military court is to be created. The interim measures are working satisfactorily.

25. Twelve months later, Major General Tracey's observations are even more apt. There is no more important a decision for maintaining ADF members' confidence in the ADF's military justice system than for the Parliament now to express in legislation its own confidence in a permanent system. Sound legislation resolving the uncertainty that has prevailed since 2009 would justly merit the praise of all defence members affected by and who practise within our military justice system.

26. Additionally a near term decision creating a permanent military system will unlock the opportunity to debate, to refine and to implement much-needed military discipline law reforms that previous JAG reports and this JAG report have identified. These need not be repeated now at any length. But they affect the full range of the operation of the ADF's military justice system. For example they include:

- a. Reviewing the powers of the court martial president to make protective and non-publication orders to make them consistent with civil criminal courts¹⁰;

⁸ JAG Report 2011, paragraph 16.

⁹ Paragraph 27

¹⁰ JAG Report 2011 paragraphs 37-44, a reform then described as "requir[ing] review as a matter of urgency"

- b. Reinforcing the effect of DFDA s 134 to ensure the position and the in-court discretions of the CJA and JAs have some greater analogies to civilian judges¹¹;
- c. Creating a more permanent court martial that can more readily deal with pre-trial issues¹²; and
- d. Greater involvement of the JA in the sentencing process to achieve greater consistency of sentencing both across services and between civilian and service standards in conformity with the policy of DFDA s 70 (1)(a)¹³.

27. The detail of a future permanent military justice system is not the proper subject of this report. But one issue transcends the detail, whatever form a new military justice system may take. Previous JAGs' experiences as is evident from their reports, and my own experience of the present system in operation, are that the JAG's role as a superior Court judge and reservist appointing JA panels is a fundamental guarantee of the independence of JAs and the integrity of our Service tribunals.

28. During the reporting period, the list was effectively managed with the two full-time appointments, and some part-time supplementation by reserve JAs. However, as noted in the 2013 report¹⁴, CJA considers it desirable that a third full-time appointment should be made. Having only two permanent officers performing a critical task (even if partially supplemented by reserve support) presents vulnerability on two fronts:

- a. Lack of succession planning to fill the full-time positions either at the expiry of the current terms or following resignation or incapacity; and
- b. Restrictions imposed by unplanned absences, longer periods of annual leave and individual matters that require sitting time well in excess of the norm.

¹¹ JAG Report 2013 paragraphs 42 – 44.

¹² JAG Report 2013 paragraphs 45.

¹³ JAG Report 2013 paragraphs 46, 47 and 48.

¹⁴ Paragraph 27

29. I understand that consideration is being given for a third full-time appointment to be made to the JAs panel maintained under DFDA s.196. In my view this would ideally proceed in 2015 to allow for redundancy and to allow sufficient time for succession planning.

30. The full time CJA and JA now have a demanding annual hearing schedule, taking them to service establishments around Australia on an almost weekly basis. They bear considerable travel and hearing pressures additional to those faced by civilian judges in comparable positions. May I here express my admiration for the professional excellence and diligence with which Major General Westwood and Colonel Woodward have now for some years each discharged their duties facing these pressures to maintain the smooth operation of the military justice system. The capacity for a third full time appointment is therefore an important addition to the OJAG's ability to deal with the expected court martial and DFM trial load.

31. The system's capacity to meet its full trial load has also been well supplemented in the last few months with the appointment late in 2014 of two reserve JAs to the panel of JAs, Captain the Hon Dennis Antill Cowdroy OAM QC RANR and Wing Commander Gregory Paul Lyneham, who have been sitting in court martial and DFM trials since then as required, and for some periods almost continuously. Their welcome appointments demonstrate another workable solution to JA capacity issues, and one which has the advantage of scalability to meet an expanded or contracting workload should service conditions result in unexpected volatility in trial numbers.

32. Two particular law reform matters should be mentioned. First, the maximum available fines for non-defence members under the DFDA should be revised. Provision is made for the punishments that maybe imposed by a court martial or a DFM in Schedule 2 to the DFDA. In the case of a person who is not a member of the Defence Force, the only punishments available are imprisonment or a fine of an amount not exceeding \$500. That maximum fine was inserted in the legislation when it was enacted in 1982. It was then a significant deterrent but it has not since kept pace with inflation. Steps should be taken to adjust the maximum fine available to the superior Service tribunals in connection with such offenders, and, ideally, in such a way that there is an automatic adjustment for the effects of inflation.

33. The same reviewing authority reviewing twice whether punishments are excessive is another law reform matter that should be addressed. DFDA Part VIIIA Division 3 provides for the review of proceedings that have resulted in a conviction. The review extends to both the conviction and

punishment. The legislation does not preclude a reviewing authority considering a petition lodged under DFDA s.153 after that reviewing authority had already conducted an automatic review under DFDA s.152. This is not a significant issue in connection with the underlying conviction, because the various bases upon which action is required will almost inevitably flow directly from the legal report obtained in accordance with DFDA s.154. However, in the case of the punishment, DFDA s.162(1) provides that a reviewing authority shall quash the punishment where it appears to the reviewing authority that the punishment is:

- a. wrong in law, or
- b. is excessive.

The first of these tests is a legal one that will be addressed in the s.154 report. This will extend to the question of whether the punishment is manifestly excessive. However, in the case of a punishment which is legally available (and therefore not manifestly excessive) there remains a discretion for the reviewing authority to mitigate the punishment where he or she considers it to have nonetheless been "excessive".

34. In my view, it is undesirable that a reviewing authority who has conducted the automatic review under DFDA s.152 and reached the view that the punishment was not "excessive" should subsequently consider any petition under DFDA s.153 seeking mitigation of the punishment. Having considered the matter once, there may be a risk in some cases of a reasonable apprehension arising that the reviewing authority has already determined the matter and that he or she will not necessarily address the petition on its merits insofar as the exercise of the discretionary power to mitigate is concerned. This risk can readily be eliminated. Accordingly, I recommend that the legislation be amended to preclude a reviewing authority from considering a petition against the severity of punishment where that reviewing authority has already conducted an earlier review.

RMJ'S PERFORMANCE MEASURES

35. As noted in the 2013 report¹⁵ RMJ reports each month against formal performance measures for the listing and commencement of trials before

¹⁵ Paragraph 49 et seq

court martial and DFM, and for the actioning of other requests to that office. The final report for 2014 is included at Annex Q¹⁶.

DIRECTOR OF MILITARY PROSECUTIONS

36. The Director of Military Prosecutions (DMP) is appointed under DFDA s.188GF. During the reporting period, the DMP was Brigadier Michael Griffin AM. The DMP will report independently to the Minister, for presentation to the Parliament, on the operation of his or her office.

37. In December 2014 Brigadier Griffin announced his resignation as the DMP with effect from January 2015 in order to take up a position as the Australian Law Enforcement Integrity Commissioner. Brigadier Griffin's administration of the office of the DMP has enhanced its level of communications with command in each of the services and promoted court martial and DFM trial efficiency. I wish to acknowledge Brigadier Griffin's most able discharge of his duties as the DMP.

DIRECTOR DEFENCE COUNSEL SERVICES

38. The position of the Director Defence Counsel Services (DDCS) was filled during the reporting period by Colonel Penny Cumming, who was succeeded in the position by Colonel Russell Pearce from January 2015.

39. As the DDCS, Colonel Cumming implemented a comprehensive on line system for the reporting of courts martial and DFM proceedings. It collates rulings, transcripts, case summaries, head notes and post-trial review action in a readily searchable format. It has already proven a most useful initiative, particularly for counsel prosecuting or defending before Service tribunals. I wish to acknowledge Colonel Cumming's most able discharge of her duties as the DDCS.

DISCIPLINE LAW TRAINING

Discipline Law Training for ADF personnel

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

¹⁶ The apparent difference between these figures and the statistics forming part of this report is explained at paragraph 41.

Single-Service

41. 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 (eg, prosecuting/defending officer courses).

Pre-Command Training

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

43. In 2014, the military justice training on pre-command course was as follows:

- a. **Navy:** Five courses instructed, with an approximate total of 65 students comprising officers appointed to Commanding Officer or Executive Officer positions (Major Fleet Units, Minor War Vessels and Shore appointments).
- b. **Army:** One course instructed, with an approximate total of 60 students comprising officers appointed to command units or formations.

- c. **Air Force:** Three courses instructed, with an approximate total of 61 students comprising officers appointed to Officer Commanding or Commanding Officer positions.

Vice Chief of the Defence Force Group

44. The Vice Chief of the Defence Force Group includes the Australian Defence College (ADC). Units of ADC include the Australian Defence Force Academy (ADFA) 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 2014 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. In 2014 the following number of personnel completed online training:
 - (i) Clerk (course ID 00004077) – 310 personnel
 - (ii) Defending Officer (course ID 00003925) – 881 personnel
 - (iii) Discipline Officer (course ID 00004036) – 870 personnel
 - (iv) Investigating Officer (course ID 00003491) – 807 personnel
 - (v) Prosecuting Officer (course ID 00003933) – 763 personnel
 - (vi) Recorder (course ID 00004022) – 450 personnel
 - (vii) Relevant Officer (course ID 00004023) – 714 personnel
 - (viii) Summary Authority (course ID 00003923) – 619 personnel

Inspector General Australian Defence Force

45. The Inspector General Australian Defence Force (IGADF) makes available a Military Justice Awareness Training package for local delivery.

Training for ADF Legal Officers

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

47. **Legal Training Module 1 (LTM1).** This is the first course of legal training undertaken by ADF legal officers, and provides an introduction to discipline law aimed at the role of junior ADF legal officers. During 2014, 26 ADF legal officers attended the LTM1 course (plus three other civilian lawyers/ paralegal staff from Defence Legal also attended).

48. **Legal Training Module 2 (LTM2).** 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, 25 students completed the Military Discipline Law subject.

49. **Legal Training Module 3 (LTM3).** This is a Masters level course undertaken by ADF legal officers which is normally conducted within four years post LTM2. LTM3 consists of three core subjects (Advanced Military Discipline Law, Advanced Military Administrative Law and Advanced Military Operations Law) conducted biennially, plus permanent legal offices without an existing master of laws degree must complete a further four electives from an approved list. During the reporting period, 25 students completed the Administrative Law subject.

Ongoing Development of Discipline Law Training

50. The MLC is continuing to develop a repository of military justice training resources to improve the efficiency of military justice training. The MLC also plans in 2015 to continue its review of the discipline law training and assessment strategies detailed within the *Governance of Military Justice Training Manual*.

TRIALS UNDER THE DFDA

51. The statistics for summary trials and the Discipline Officer scheme conducted by the three Services during 2013 are set out in Annexes A to I.

As was indicated in the report for 2005¹⁷ 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.

52. 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.

53. There is an apparent discrepancy between these figures and those recorded in the RMJ performance report. This is because the RMJ figures reflect the number of trials whereas the annual statistics reflect the number of accused persons. So, for instance, if three co-accused were to be tried by the one court martial, RMJ would reflect this as one trial whereas the main statistics will continue to show three matters proceeding to trial and results by rank and offence in connection with each accused.

VISITS AND ACTIVITIES

54. 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.

55. In October 2014, CJA and I attended an inaugural conference for Military Judges organised by the Judge Advocate General for New Zealand, Mr Christopher Hodson QC, in conjunction with a conference for Judges of the Court Martial of New Zealand and Judges of the Court Martial Appeal Court. The conference provided a most useful opportunity to examine the operation of recent reforms instituted by New Zealand and to conduct informal discussions with colleagues from Canada and the United States. The United Kingdom was not represented at this conference.

56. On 15 November 2014, I conducted a conference at the Canberra office of the JAG with DJAGs, CJA, Colonel Woodward and RMJ, and Deputy RMJ. Because of the geographic separation of the participants, the conference provided a most useful opportunity for informal discussion. The substance of matters discussed is reflected elsewhere in this report.

¹⁷ Paragraphs 95-96.

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

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

CONCLUSION

58. The interim arrangements reinstating the system of trial by court martial and DFM continue to operate satisfactorily. Because the interim arrangements have now been operating for more than five years and have been extended twice the reinstated system has to an extent been accepted by ADF personnel as a *de facto* permanent system.

59. But of course it is not permanent. So, I re-emphasize Major General Tracey's conclusion¹⁸ to his 2013 report and add: it is now highly desirable in that a final decision be taken as to whether the interim measures are to be made permanent or whether, for instance, a Chapter III military court is to be created. While the measures in place remain "interim" it is difficult to address the much-needed reforms that this and previous JAG reports have suggested for improving the operation of the military justice system.

¹⁸ See JAG Report for 2013 paragraph 68

TABLE OF ABBREVIATIONS USED IN REPORT

Abbreviation	Description
ACT	Australian Capital Territory
ADC	Australian Defence College
ADF	Australian Defence Force
ADFA	Australian Defence Force Academy
CJA	Chief Judge Advocate
DDCS	Director of Defence Counsel Services
DFDA	<i>Defence Force Discipline Act 1982</i>
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
HDL	Head, Defence Legal
IGADF	Inspector General Australian Defence Force
JA	Judge Advocate
JAG	Judge Advocate General of the Australian Defence Force
LTM1	Legal Training Module 1
LTM2	Legal Training Module 2
LTM3	Legal Training Module 3
MLC	Military Law Centre
NCOs	National Commissioned Officers
RANR	Royal Australian Navy Reserve
RMJ	Registrar of Military Justice

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: 3-8
Membership and Staff	Paragraph: 3, 9-10, 12, 19-21
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	Paragraph: 11
Activities and Reports	Paragraphs: 54-56
Operational Problems	Paragraphs: 24-29, 32-34
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.

ANNEX B TO
JAG REPORT 2014

NAVY
JANUARY-DECEMBER 2014

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					6	5	2	2	8	9		
February					15	16	1		17	19		
March					9	11		2	11	11		1
April	1	1			22	23	1	5	16	18		
May					10	16	3		20	20	3	2
June	1	1			6	8			17	19	2	
July					11	15	1		19	19	2	
August					9	11			14	16	1	
September					10	17	1		5	9		
October					6	8	3		13	12	1	
November					9	15	2		9	10	1	
December					15	40	2		13	15		
TOTAL	2	2	0	0	128	185	16	9	162	177	10	3

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

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Sect 23				1		1	2		17	1
24	4	2				2	9		55	1
25									1	
26						1	2		17	1
27		2		1		22	3		19	1
28										
29	10	5		5		8	13		43	11
30										
31										
32									3	
33(a)									3	2
33(b)									2	
33(c)										
33(d)							2			1
34							2		2	
35	1						1		1	
36										
36A										
36B		1								1
37				1		1	1		4	2
38										
39										
40		1								
40A									1	
40B										
40C										
40D										
41										
42							2			
43									3	
44										
45										
46										
47C							1		6	
47P										
48										
49										
50										
51										
53										
54										
54A										
55							1		5	
56									1	
57										
58										
59										
60	6	1	1				12		27	4
61									1	
TOTAL	21	12	1	8	0	35	51	0	211	25

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	12	2		6		20	12		26	4
Conditional conviction without punishment		1				1	5		15	
Unconditional conviction without punishment										
Severe reprimand	5					1	9		24	1
Extra duties									7	6
Extra Drill									2	
Stoppage of leave		1					1		24	8
Restriction of privileges		2					1		70	4
Suspended fine	1			1		1	5		7	
Fine Less than 14 Days Pay	9	7	1	2		9	28		97	5
Fine More than 14 Days Pay									9	1
Forfeiture of service for purposes of promotion										
Forfeiture of seniority						7	4			
Reduction in rank							1		1	
Suspended detention										
Committed detention									15	1
TOTAL	27	13	1	9	0	39	66	0	297	30

ANNEX C TO
JAG REPORT 2014

ARMY
JANUARY-DECEMBER 2014

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					3	6			8	8		
February	2	7			17	26	3		24	26	2	
March	2	3			21	35	2	1	71	82	4	3
April	1	1			21	36	1		55	61	4	2
May					28	47	1	2	75	85	3	
June	2	2			32	45	5		75	85	3	
July	1	1			27	36			58	70		2
August	2	3	3		27	37			80	100	1	3
September	1	1			27	43	5		55	67	2	2
October					24	47	9		68	89		3
November	2	2			38	59	1		90	103	4	
December	2	2			27	33	3		54	64	2	
TOTAL	15	22	3	0	292	450	30	3	713	840	25	15

**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	12					2	1		33
24	6	7				2	16	2		108
25		3				1		2		6
26	2	5		1		4	7			38
27	4	3				2	17	6		84
28		1								2
29	37	53	1	3		21	45	8		214
30										1
31										
32										9
33(a)		2					1	2		23
33(b)										4
33(c)								1		2
33(d)		2		1				1		4
34							1			2
35	2	1				6	5	1		10
36										4
36A	2	1					1	1		8
36B	10	33		2			15	5		116
37		2					1	2		19
38										1
39										
40										2
40A										3
40B										
40C	9						2			2
40D						1	1	1		1
41										
42										
43							1			9
44	1									1
45							1			
46										
47C				2						3
47P										
48										
49										1
50										
51										
53										
54										1
54A										1
55	4	1		1	2		7			16
56										
57										
58										
59										1
60	16	11	1	7		13	15	12		94
61				3			1			
TOTAL	94	137	2	20	2	50	139	45	0	823

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	19	5	1	4		14	25	11		60
Conditional conviction without punishment		1								1
Unconditional conviction without punishment	6	2		2		3	13	2		22
Severe reprimand	6			6		7	25	10		25
Extra duties		1								40
Extra drill										23
Stoppage of leave		11								29
Restriction of privileges	16	111					1			425
Suspended fine	6			2		1	6	2		13
Fine Less than 14 Days Pay	59	22	1	16		29	79	27		364
Fine More than 14 Days Pay						1	2			13
Forfeiture of service for purposes of promotion										
Forfeiture of seniority						6	3	3		
Reduction in rank						1	6	8		9
Suspended detention										
Committed detention							1			42
TOTAL	112	153	2	30	0	62	161	63	0	1066

ANNEX D TO
JAG REPORT 2014

AIR FORCE
JANUARY-DECEMBER 2014

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									2	4	1	
February					2	4			4	4		
March					2	3	1		2	2		
April									2	2		
May					5	9			4	4		
June					3	4			6	8		
July									2	2		
August	1	1			7	11			7	9		
September					3	3			9	9		
October					3	3			5	6		
November					2	4			2	2		
December					2	1	1		5	4	6	
TOTAL	1	1	0	0	29	42	2	0	50	56	7	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							1	4
24									3	1
25										
26									1	1
27									4	3
28										
29	6	1		1		2	4		13	6
30										
31										
32										
33(a)									1	1
33(b)										1
33(c)										
33(d)				1						2
34										
35										
36										1
36A		1								2
36B	3			1						
37										
38										
39										
40									1	
40A										
40B										
40C										
40D										
41										
42										
43									1	
44										
45										
46										
47C										
47P										
48										
49										
50										
51										
53										
54										
54A										
55						1			2	
56									2	
57										
58										
59										
60	4	1					7		11	1
61									2	
TOTAL	13	4	0	3	0	3	11	0	42	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	1		2		1	4		3	12
Conditional conviction without punishment		1							7	
Unconditional conviction without punishment										
Severe reprimand	2			1			1		3	
Extra duties									2	
Extra drill										1
Stoppage of leave									1	5
Restriction of privileges		1							4	6
Suspended fine	1			1		1	2		5	3
Fine Less than 14 Days Pay	11	2				2	7		19	10
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									3	
TOTAL	15	5	0	4	0	4	15	0	50	37

ANNEX E TO
JAG REPORT 2014

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	9	11	2	2	18	21	1	0
February	2	7	0	0	34	46	4	0	45	49	2	0
March	2	3	0	0	32	49	3	3	84	95	4	4
April	2	2	0	0	43	59	2	5	73	81	4	2
May	0	0	0	0	43	72	4	2	99	109	6	2
June	3	3	0	0	41	57	5	0	98	112	5	0
July	1	1	0	0	38	51	1	0	79	91	2	2
August	3	4	3	0	43	59	0	0	101	125	2	3
September	1	1	0	0	40	63	6	0	69	85	2	2
October	0	0	0	0	33	58	12	0	86	107	1	3
November	2	2	0	0	49	78	3	0	101	115	5	0
December	2	2	0	0	44	74	6	0	72	83	8	0
TOTAL	18	25	3	0	449	677	48	12	925	1073	42	18

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 2014
DISCIPLINE OFFICER STATISTICS

Infringement	Number
Section 23	338
24	205
27	231
29	843
32(1)	1
35	50
60	60
TOTAL (1)	1728

Action Taken	Number
Punishment Imposed - Fine	316
ROP	118
SOL	255
Extra Duties	226
Extra Drill	65
Reprimand	637
No Punishment Imposed	101
Referred to an Authorised Member	10
TOTAL (1)	1728

ANNEX H TO
JAG REPORT 2014

ARMY
JANUARY-DECEMBER 2014
DISCIPLINE OFFICER STATISTICS

Infringement	Number
Section 23	166
24	369
27	591
29	1292
32(1)	40
35	150
60	391
TOTAL (1)	2999

Action Taken	Number
Punishment Imposed - Fine	328
ROP	1072
SOL	515
Extra Duties	423
Extra Drill	142
Reprimand	395
No Punishment Imposed	104
Referred to an Authorised Member	20
TOTAL (1)	2999

**AIR FORCE
JANUARY-DECEMBER 2014**

DISCIPLINE OFFICER STATISTICS

Infringement	Number
Section 23	31
24	28
27	71
29	261
32(1)	8
35	11
60	28
TOTAL (1)	438

Action Taken	Number
Punishment Imposed - Fine	196
ROP	36
SOL	36
Extra Duties	32
Extra Drill	16
Reprimand	96
No Punishment Imposed	18
Referred to an Authorised Member	8
TOTAL (1)	438

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 2014

NAVY

JANUARY-DECEMBER 2014

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

	GENERAL COURT MARTIAL					RESTRICTED COURT MARTIAL					DEFENCE FORCE MAGISTRATE				
	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD
		GUILTY	N.G.				GUILTY	N.G.				GUILTY	N.G.		
January						1	4			1					
February						1	1			1					
March						1		1							
April											2	2	1		
May											1	1			2
June											1	1			1
July											1	2			
August											1	2			
September											1	1			
October	2		10			1	1				1	2			
November											1	1			
December						1	3			2	3	4			4
TOTAL	2	0	10	0	0	5	9	1	0	4	12	16	1	0	7

One matter was withdrawn by DMP prior to trial

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

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Sect 23										
24										
25										
26									1	
27										
28										
29	1			1						
30										
31										
32										
33(a)									1	
33(b)										
33(c)										
33(d)										
34							1			
35										
36										
36A										
37										
38										
39										
40										
40A										
40B										
40C									1	
40D										
41										
42										
43							1			
44										
45										
46										
47C										
47P										
48										
49										
50										
51										
53										
54										
54A										
55										
56										
57										
58										
59										
60	1			2		1	4			2
61	3					2	1		2	
TOTAL	5	0	0	3	0	3	7	0	5	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	1						2			
Conditional conviction without punishment									1	
Unconditional conviction without punishment				1						
Severe reprimand	1					1	1		1	
Suspended fine										
Fine Less than 14 Days Pay	3						3		1	2
Fine More than 14 Days Pay	1									
Forfeiture of service for purposes of promotion										
Forfeiture of seniority	1					1	2			
Reduction in rank				1		1				
Suspended detention									2	
Committed detention									1	
Dismissal						1			1	
Imprisonment										
TOTAL	7	0	0	2	0	4	8	0	7	2

ANNEX L TO
JAG REPORT 2014

ARMY

JANUARY-DECEMBER 2014

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	7			1	3	35			
March						2		2			1	6			2
April											2	2			1
May						3	3	3			1	1			
June															
July											3	17			5
August											2	3	1		2
September											1	1			
October															
November											2	5			
December											3	7			1
TOTAL	0	0	0	0	0	8	10	5	0	1	18	77	1	0	11

Four matters were withdrawn by DMP prior to trial

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										1
25										1
26										
27										
28										
29										1
30										
31										
32										
33(a)										1
33(b)										
33(c)										
33(d)										
34								1		
35										
36										
36A										
37										
38										
39										
40										
40A										
40B										
40C										
40D										
41										
42										
43										
44										
45										
46										
47C										
47P										
48										
49										
50										
51										
52						2				
54										
54A										
55	1					1	1			
56						1	1			3
57										
58										
59										
60						2				3
61	1			28		1	3	1		33
TOTAL	2	0	0	28	0	7	5	2	0	43

Details of Quashed Convictions

DFDA Sect	Rank	Short Summary of Offence	Reason for quashing

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

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Reprimand										
Conditional conviction without punishment										1
Unconditional conviction without punishment										
Severe reprimand	1					1				1
Suspended fine								1		
Fine Less than 14 Days Pay	1					2		1		2
Fine More than 14 Days Pay								1		2
Forfeiture of service for purposes of promotion										
Forfeiture of seniority						1	1	1		
Reduction in rank	1			7		2	4			
Suspended detention										1
Committed detention				28			4			22
Dismissal						2		1		16
Imprisonment						2				10
TOTAL	3	0	0	35	0	10	9	5	0	55

ANNEX M TO
JAG REPORT 2014

AIR FORCE
JANUARY-DECEMBER 2014

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															
March											1	1			
April											1	3			
May															
June															
July											1				9
August															
September															
October															
November											3	3			
December															
TOTAL	0	0	0	0	0	0	0	0	0	0	6	7	0	0	9

One matter was withdrawn by DMP prior to trial

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

[illegible]

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

[illegible]

ANNEX N TO
JAG REPORT 2014

COMBINED JANUARY - DECEMBER 2014

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	1	4	0	0	1	0	0	0	0	0
February	0	0	0	0	0	4	8	0	0	2	3	35	0	0	0
March	0	0	0	0	0	3	0	3	0	0	2	7	0	0	2
April	0	0	0	0	0	0	0	0	0	0	5	7	1	0	1
May	0	0	0	0	0	3	3	3	0	0	2	2	0	0	2
June	0	0	0	0	0	0	0	0	0	0	1	1	0	0	1
July	0	0	0	0	0	0	0	0	0	0	5	19	0	0	14
August	0	0	0	0	0	0	0	0	0	0	3	5	1	0	2
September	0	0	0	0	0	0	0	0	0	0	2	2	0	0	0
October	2	0	10	0	0	1	1	0	0	0	1	2	0	0	0
November	0	0	0	0	0	0	0	0	0	0	6	9	0	0	0
December	0	0	0	0	0	1	3	0	0	2	6	11	0	0	5
TOTAL	2	0	10	0	0	13	19	6	0	5	36	100	2	0	27

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	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
47P	Receiving

Section Number	Description
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

LIST OF JUDGE ADVOCATES AND DEFENCE FORCE MAGISTRATES

Major General Ian Westwood AM, Chief Judge Advocate
Captain the Hon Dennis Cowdroy OAM RANR
Colonel Jennifer Woodward
Wing Commander Greg Lynham

LIST OF ACTIVE S.154 OFFICERS

Major General Ian Westwood AM, Chief Judge Advocate
Captain the Hon Dennis Cowdroy OAM RANR
Captain James Renwick SC RANR
Commander Fabian Dixon SC RANR
Colonel Paul Smith
Colonel Jennifer Woodward
Wing Commander Gordon Lerve
Lieutenant Andrew Eckhold RANR

OFFICE OF THE REGISTRAR OF MILITARY JUSTICE

REPORT FOR THE PERIOD JANUARY – DECEMBER 2014 (INCLUSIVE)

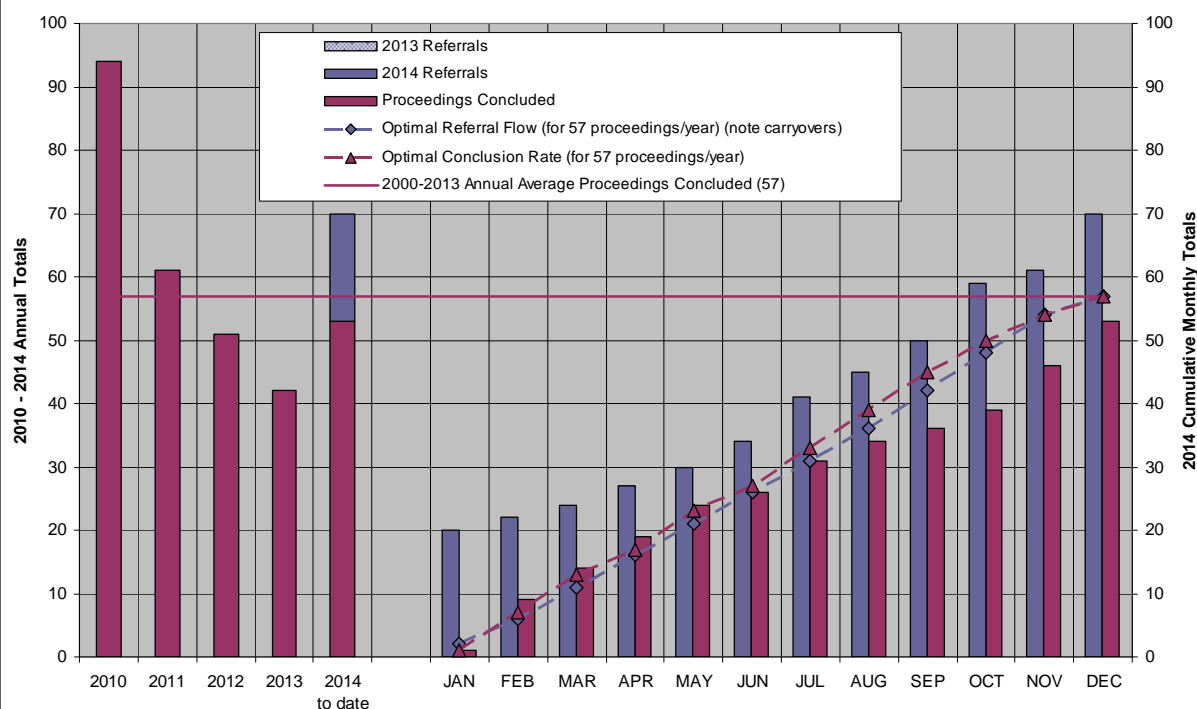
Current wef COB 31 Dec 14

1. ORMJ Process

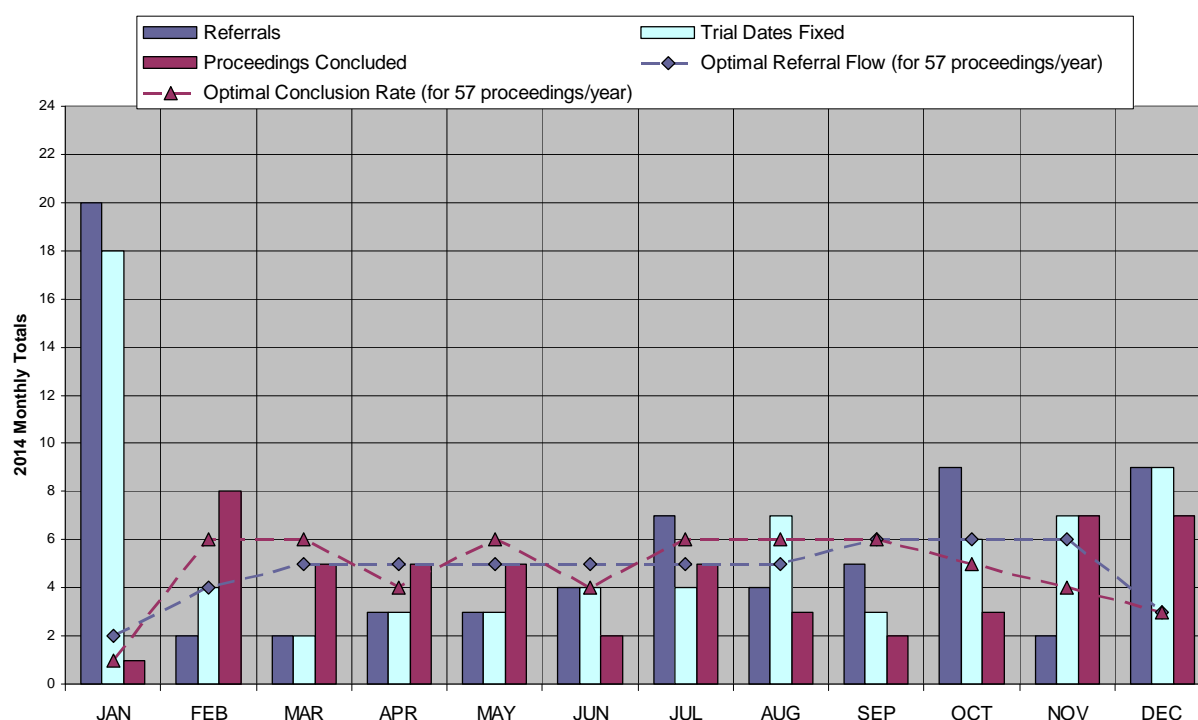
- The RMJ's powers are triggered upon receipt of a referral from the DMP.
- On receipt of the referral, RMJ aims to list the proceedings (fix a date) within two weeks and have the proceedings commence within three months (see Item 4 KPIs for details of indicators and performance against these indicators).

2. Court Martial and Defence Force Magistrate Proceedings*

Court Martial and Defence Force Magistrate Proceedings



2014 Monthly Workflow



3. RMJ Analysis/Comments (SOME CONCERN/SERIOUS CONCERN)**REFERRALS**

- Number of referrals for 2014: 70** (plus 3 which were subsequently withdrawn prior to convening/referral and which are therefore not included for statistical purposes). The 70 referrals include 14 referrals carried over from 2013 and 56 referrals received during the course of 2014. The 70 referrals also count as two separate referrals a matter referred for GCM for 4 co-accused which, following the conviction of 2 of the co-accused and dissolution of the proceedings, reverted for Part IV action (punishments and orders). Of the 70 referrals, 6 involved co-accused (4 x 2 co-accused, 1 x 3 co-accused and 1 x 4 co-accused), bringing the number of accused persons to 79.

LISTINGS

- Number of referrals listed (includes proceedings concluded, part-heard & pending commencement): 69/70** (53 concluded and 16 to be carried over into 2015).
- Number of referrals awaiting listing: 1/70** (listing on hold pending outcome of the DFDAT appeal; to be carried over into 2015).

PROCEEDINGS

- Number of proceedings concluded: 53/70.** Of the 53 proceedings, 2 involved co-accused (1 x 2 co-accused and 1 x 4 co-accused), bringing the total number of accused persons to 57. (Of note, 6 of these proceedings (1 x RCM and 5 x DFM) pertaining to 7 of these accused persons resulted in all charges being withdrawn. This means that 47 proceedings pertaining to 50 accused persons continued through until at least finding, with 2 convicted persons still awaiting Part IV action (punishments and orders)).
- Number of proceedings part heard: 2/70** (to be carried over into 2015)
- Number of proceedings listed but pending commencement: 14/70** (to be carried over into 2015).
- Current workload.** The overall number of referrals (70) is well above, but the number of matters concluded (53) just below, the annual average of 57 (see next dot point on workflow).
- Current workflow.** This year, the workflow has ranged from a high of 14 referrals carried over from last year and 9 referrals in October and December (which, combined, have meant a very busy start and end to the year and a large number of matters carried over into 2015) to a low of 2 referrals per month in February, March and November (which has meant that a number of months in the middle of the year in particular could not be as effectively utilized as they might have been).

4. KPIs	Performance (ON TRACK/SOME CONCERN/SERIOUS CONCERN)	Comments
<p>Within two weeks of receipt of referral by RMJ from DMP, 90% of matters are to be listed (trial date fixed).</p> <p>[Note: up to 10% will legitimately require longer. This will be closely managed]</p>	<p>91%</p> <p>Average: 7.9 days</p> <p>Number of matters NOT listed within two weeks: 6/70</p>	<p>- 6 'out of time' listings, with 3 'of concern' (a delay of 2 weeks or more).</p> <p>- Numbers of weeks/days by which timeline exceeded: 7 wks (Navy matter) [Reasons: counsel availability and ship schedule (and therefore witness availability)]; 5 weeks (a Navy matter) [Reasons: deployment of accused and receipt of BOE]; 2 wks (Air Force matter) [Reasons: counsel availability/readiness to proceed and surgery dates for accused person]; 2 x 1 week (Army matters); and 3 days (Army matter).</p>
<p>Within three months of receipt of referral by RMJ from DMP, 80% of proceedings are to have commenced (if spans Xmas stand down then an additional month is allowed).</p> <p>[Note: up to 20% will legitimately require longer. These will be closely managed]</p>	<p>81%</p> <p>Average: 2.5 months</p> <p>Number of matters NOT commenced within three/four months: 13/70</p>	<p>- 12 'out of time' listings, with 5 'of concern' (a delay of one month or more).</p> <p>- Numbers of weeks/days by which timeline exceeded: 13wks (the same Navy matter as above) [Reasons: as per above]; 11wks (Army matter) [Reasons: mental health of accused person]; 10 wks (a Navy matter) [Reasons: primarily counsel availability/readiness to proceed]; 6 wks (a Navy matter) [Reasons: over-run of court martial]; 5wks (an Army matter) [Reasons: Primarily witness availability]; 4 wks (a Navy matter); 2 x 3 weeks (2 x Navy matters); 2 wks (a Navy matter); 9 days (an Army matter); 7 days (a Navy matter); and 2 x 5 days (a Navy matter and an Air Force matter).</p>
<p>ORMJ will action 95% of all requests within specified timeframe/28 days if none specified.</p>	<p>100%</p>	<p>Examples include: Privacy Complaints, FOI requests, Single Access Mechanism (SAM) requests, other requests for documents, requests for statistics, etc.</p>