



**JUDGE ADVOCATE GENERAL**

**DEFENCE FORCE  
DISCIPLINE ACT 1982**

*Report for the period  
1 January to 31 December 2015*

Department of Defence

***Defence Force Discipline Act 1982***

*Report for the period  
1 January to 31 December 2015*

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ISSN 0817 9956

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Printed by CanPrint Communications Pty Limited, Canberra



JUDGE ADVOCATE GENERAL

HEADQUARTERS AUSTRALIAN DEFENCE FORCE  
DEPARTMENT OF DEFENCE  
CANBERRA ACT 2600

Senator the Hon Marise Payne  
Minister for Defence  
Parliament House  
CANBERRA ACT 2600

Dear Minister,

I submit herewith my report covering the period from 1 January to 31 December 2015. 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 "M.J. Slattery".

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

13 September 2016

Enc.

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**JUDGE ADVOCATE GENERAL  
AUSTRALIAN DEFENCE FORCE**

**REPORT FOR THE PERIOD 1 JANUARY TO 31 DECEMBER 2015**

**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 2015. The office of JAG was created by s.179 of the DFDA. The holder of the office must be, or have been, a judge of a Federal Court or State Supreme Court. The appointment is made by the Governor-General in Executive Council. The Minister may appoint a person to act as JAG or Deputy Judge Advocate General (DJAG) for a period not greater than twelve months<sup>1</sup>.

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).   |

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<sup>1</sup> 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 Force<sup>2</sup>;
- 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 martial<sup>3</sup> and Defence Force magistrates (DFMs)<sup>4</sup>;

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<sup>2</sup> DFDA s.196A.

<sup>3</sup> DFDA s.129B.

<sup>4</sup> DFDA s.129C.



- d. Nominating to a Service Chief officers to be members of the JAs panel<sup>5</sup>;
  - e. Appointing DFMs from officers appointed as members of the JAs panel<sup>6</sup>;
  - 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.

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<sup>5</sup> DFDA s.196.

<sup>6</sup> DFDA s.127.

10. Brigadier Jennifer Ann Woodward CSC continued to serve as a full time JA until 1 July 2015. She resigned her appointments as a JA, DFM and a reporting officer for the purposes of DFDA s.154(1)(a) in order to take up, on promotion to Brigadier, the appointment of Director of Military Prosecutions (DMP) established under DFDA Part XIA. Major General Westwood and I are most grateful to her for her years of Service as a military judge, JA and DFM and are delighted that her outstanding achievement in these roles was recognised by the award of the Conspicuous Service Cross in the Queens Birthday 2015 Honours.

11. Group Captain Nina Louise Harvey continued to serve as the Registrar of Military Justice (RMJ) established by DFDA s.188F.

12. The position of staff officer to the JAG and CJA was filled during the reporting period by Squadron Leader Elizabeth Scott. On behalf of CJA and myself I formally record our gratitude to her for her diligent discharge of her duties.

13. 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.

14. 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 J.T. Rush QC RANR<sup>7</sup>,
- b. Brigadier His Honour Judge S.G. Durward SC, and
- c. Air Commodore His Honour Judge M.J.F. Burnett.

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

16. Mr Mark Cunliffe PSM continued as HDL and Air Commodore Chris Hanna CSC and bar continued as DGADFLS. Mr Adrian D'Amico continued in the position of Defence General Counsel.

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<sup>7</sup> During the reporting period, Commodore Rush was a judge of the Supreme Court of Victoria, but he resigned that appointment with effect 31 January 2016.

## **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*, the *Military Justice (Interim Measures) Amendment Act 2013*, and *Defence Legislation (Enhancement of Military Justice) Act 2015*.

## **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 eight years following the passage of the *Defence Legislation (Enhancement of Military Justice) Act 2015*.

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 2017;
- c. DJAG-Navy, Commodore Rush, expiry date 29 July 2017, following his re-appointment on 10 March 2016, his original appointment having ceased by operation of DFDA s.186(3) following his resignation of his appointment to the Supreme Court of Victoria on 31 January 2016;
- d. DJAG-Army, Brigadier Durward, expiry date 9 March 2017;
- e. DJAG-Air Force, Air Commodore Burnett, expiry date 9 March 2017; and

- f. RMJ, Group Captain Harvey, expiry date 21 September 2017.

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 (DFDAT)**

22. During the reporting period, there were four appeals determined by the DFDAT in connection with convictions recorded by courts martial and DFM. These were:

- a. Thompson v Chief of Navy [2015] ADFDAT 1;
- b. Jordan v Chief of Air Force [2015] ADFDAT 2;
- c. Jesser v Chief of Air Force [2015] ADFDAT 3; and
- d. Hodge v Chief of Navy [2015] ADFDAT 4.

23. All of the appeals were upheld.

### **LEGISLATION**

24. On 30 June 2015, the *Defence Legislation (Enhancement of Military Justice) Act 2015* received Royal Assent. This Act contains a number of amendments to the *Defence Act 1903*, the DFDA and the *Military Justice (Interim Measures) Act (No 1) 2009*<sup>8</sup>.

#### ***Defence Act 1903***

25. The position of the Director of Defence Counsel Services (DDCS) has received statutory recognition. The DDCS will be appointed in writing by the Chief of the Defence Force (CDF). The *Defence Act 1903* now also outlines the functions and responsibilities of the position, which primarily include the provision of legal representation and advice to persons who have been charged with a service offence or who are entitled to representation before a service inquiry. These amendments enhance the actual and perceived independence of DDCS, which in turn promotes confidence in the Defence

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<sup>8</sup> The following material is taken substantially from the Explanatory memorandum to the Bill.

Force and the broader community in the fairness and impartiality of the discipline system.

***Defence Force Discipline Act 1982***

26. The DFDA has been amended to clarify the character and status of service offences against a law of the Commonwealth. Convictions for service offences by a summary authority continue to be for service purposes only. However, convictions for service offences by a Court Martial or DFM must be disclosed as an offence against a law of the Commonwealth, if required by legislation. The exception to this is offences under Schedule 1A to the DFDA, which are purely service in nature and have no civilian criminal equivalents. Convictions for these offences will be reportable for service purposes only, unless a punishment of imprisonment has been imposed by a Service tribunal.

27. The DFDA has also been amended to remove references to 'old system offences'. These 'old system offences' provisions were initially included as a transitional measure when the DFDA itself was introduced in 1982. The provisions have been rendered obsolete by the effluxion of time.

28. A new Service offence of assault occasioning actual bodily harm has been created. Previously, such offences were charged under the Territory offence provisions of DFDA s.61 relying upon the corresponding law in the Jervis Bay Territory. Because these Territory offence provisions were based on common law (rather than the Criminal Code), they attracted different criminal responsibility principles to those that otherwise apply to offences against the DFDA. The new offence is intended to remove the difficulties and complexity that arise from the application of different criminal responsibility principles. A maximum five year term of imprisonment attaches to this new offence.

29. Additionally, a new Service offence of unauthorised use of a Commonwealth credit card has been created. Following the repeal of the *Financial Management and Accountability Act 1997*, which provided for the offence of misuse of a Commonwealth credit card, it has been necessary to prosecute Defence related credit card misuse under the fraud provisions of the Commonwealth *Criminal Code Act 1995* or the *Crimes Act 1914*. This has posed legal and evidentiary issues that summary authorities are not well equipped to deal with. A maximum five year term of imprisonment attaches to this new offence.

30. The Service offence of commanding or ordering a Service offence be committed has been clarified<sup>9</sup>. The amendments clarify the fault elements and the defences applicable to the offence. Of note, a Defence member may be prosecuted for the offence of commanding or ordering a service offence be committed even if the associated Service offence has not been committed or it was in fact impossible to commit the associated service offence. The amendments are based in part on the offence of incitement under the *Criminal Code 1995*.

31. The power of Service tribunals to issue recognizance release orders has been removed. Service tribunals have been unable to issue enforceable recognizance release orders because of a lack of effective capacity to enforce those orders. Instead, Service tribunals will have the power to impose a non-parole period in respect of a punishment of imprisonment for a period of less than 3 years. In my view there are difficulties in seeking to effectively replace recognizance release orders with a broadened concept of non-parole orders. Further comment appears later in this report.<sup>10</sup>

32. A technical error has been corrected which may have limited the ability of commanding officers (COs) in some circumstances to refer charges to the DMP. Specifically, there have been difficulties in referring charges where the person's chain of command is not clear or the person's CO is unable to refer the charges and must ask another CO to consider the charge (for example, where the CO may be affected by bias). The amendment will provide that a CO or an officer superior to that CO may refer a charge to the DMP.

33. Another technical error has been corrected, which occurred in the Discipline Officer scheme following the enactment of the *Defence Legislation Amendment Act (No 1) 2010*. The error that arose was chief petty officers in the Navy, warrant officers in the Army, and flight sergeants in the Air Force were precluded from being a Discipline Officer in respect of a prescribed defence member at the rank of midshipman or officer cadet. The amendment restores the ability of these senior non-commissioned officers to implement and administer discipline in Defence training environments.

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<sup>9</sup> The difficulty posed by the existing drafting is addressed at Paragraph 33 et seq in the JAG's report for 2009.

<sup>10</sup> Paragraph 43 et seq.

34. A system of penalty units has been introduced into the DFDA within the meaning given under the *Crimes Act 1914*. Accordingly, it will not be necessary to amend the maximum fine for a conviction of a person for an offence to accommodate changes in the Consumer Price Index,<sup>11</sup> as the system of penalty units is now subject to triennial review under the *Crimes Act 1914* following the introduction of the *Crimes Legislation Amendment (Penalty Unit) Act 2015*.

#### ***Military Justice (Interim Measures) Act (No 1) 2009***

35. The statutory appointment arrangements for the CJA and the JA<sup>12</sup> have been further extended for an additional two year period to support the current interim superior tribunal system. The amendments also provide that the statutory time limits of five and 10 years on the CJA's appointment do not apply to the current CJA. The preservation of the appointment arrangements was necessary to continue the effective operations of the superior tribunal system pending a decision in respect of a permanent system to try serious Service offences.

#### **Other legislative amendments**

36. There were a number of other legislative amendments which had a limited impact on the discipline system. The *Defence Legislation Amendment (Military Justice Enhancement - Inspector General ADF) Act 2015* was introduced to enhance the independence of the Inspector-General ADF and provide a statutory basis to support regulatory change, including reallocation of responsibility for investigation of Service related deaths and the management of the ADF redress of grievance process to the Inspector General of the Australia Defence Force (IGADF).

37. The introduction of the *Crimes Legislation Amendment (Powers, Offences and Other Measures) Act 2015* amended the *Criminal Code Act 1995*, including clarifying the war crime offence of outrages upon personal dignity in a non-international armed conflict and inserting the concept of being 'knowingly concerned' in the commission of an offence as an additional form of secondary criminal liability.

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<sup>11</sup> This addresses the issue raised in my report for 2014 at paragraph 32.

<sup>12</sup> As I have noted at Paragraph 10 of this report, Brigadier Woodward has resigned her appointment as a JA and DFM.

38. The *Defence Legislation Amendment (First Principles) Act 2015* was introduced to create a single, integrated Defence organisation. Of relevance to the discipline system, this amendment provides the CDF with full command of the ADF (subject to any directions of the Minister) by removing legislative limitations on the CDF's command and control power. The position of Vice Chief of the Defence Force (VCDF) has also received statutory recognition as a true Deputy of CDF and ensures the VCDF has command and administrative responsibilities subject to the direction of CDF. Finally, the Service Chiefs will no longer have a statutory role to either advise Ministers in the Defence portfolio on single Service matters or issue single Service Defence Instructions under their own name.

### **INTERIM MEASURES**

39. While the *Defence Legislation (Enhancement of Military Justice) Act 2015* has extended Major General Westwood's appointment as CJA until 21 September 2017, and as I shall detail later in this report<sup>13</sup> certain additional short term appointments to the JA/DFM panels are in progress, it is critical that a decision be taken either to make permanent the current Interim Measures legislation or to take some other legislative course. This was a matter that I addressed in my Report for 2014<sup>14</sup>, including references to earlier JAG Reports on the same issue. As I there mentioned, the delay in taking a decision is impeding necessary reform and review of the Interim structure and succession planning.

### **ADDITIONAL APPOINTMENTS TO THE JA/DFM PANELS**

40. In my Report for 2014<sup>15</sup> I referred to the view of CJA and myself that it was desirable to make an additional full-time appointment to the Panels. The issue attained some urgency following Brigadier Woodward's resignation from the Panels to take up the appointment of DMP. I consider that the ADF has been well served with its mix of JAs drawn from both the permanent and reserve streams. The different backgrounds bring different skills and perspectives to the performance of the duties and, significantly, to the development of relevant policy. I am not alone in this view and note, for instance, that Major General Roberts-Smith alluded to the same issue in his

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<sup>13</sup> Paragraph 40 et seq.

<sup>14</sup> Paragraph 23 et seq.

<sup>15</sup> Paragraph 28 et seq.



2004 Report<sup>16</sup>. To this end, I requested that expressions of interest, limited to permanent officers, should be called during the reporting period such that I could consider making a recommendation to CDF for an additional permanent officer to be appointed to the Panels. In the event, I recommended the appointment of Group Captain Ian Scott Henderson AM. CDF agreed that recommendation, and Group Captain Henderson has been appointed to the Panels for a term of twelve months commencing on 8 February 2016.

41. At the end of the reporting period, I initiated similar action, this time restricted to Reserve officers, with a view to being able to recommend an additional Reserve officer appointment to CDF early in 2016.

42. Before leaving this issue, I would like to express my gratitude, and that of CJA, to Captain the Hon Dennis Antill Cowdroy OAM QC RANR and Wing Commander Gregory Paul Lynham, Reserve officers currently appointed to the Panels, who have sat in a significant number of matters, and without whose assistance, it would not have possible to manage the court martial/DFM trial list following Brigadier Woodward's resignation.

### **SUSPENDED TERMS OF IMPRISONMENT**

43. The superior Service tribunals are empowered to impose sentences of civil imprisonment, subject to the requirement at DFDA s.71(1) that the convicted person must also be dismissed from the Defence Force. In the case of sentences of imprisonment, DFDA s.72 applies certain provisions of *Crimes Act 1914*. These originally included the provisions for making recognizance release orders but, as mentioned earlier in this Report<sup>17</sup> the *Defence Legislation (Enhancement of Military Justice) Act 2015* removed this sentencing option because of a lack of effective capacity to enforce those orders. The difficulty in enforcing the orders stemmed principally from the ad hoc nature of Service tribunals<sup>18</sup>. However, the scheme that had been created under *Crimes Act 1914* in relation to sentences of imprisonment imposed on Federal offenders was for a scheme that recognised both recognizance release orders (effectively, either a fully

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<sup>16</sup> Paragraph 65 refers.

<sup>17</sup> Paragraph 31.

<sup>18</sup> This was a matter to which the Chief Military Judge of the former Australian Military Court referred at paragraph 53 of his Report for the period 1 October to 31 December 2007.

suspended, or early release regime upon the offender agreeing to comply with conditions attached to that release, but including an undertaking to be of good behaviour) and non-parole orders which effectively set a minimum time that the offender was to serve before being eligible for parole. The recognizance release orders applied to sentences not exceeding three years, and non-parole periods were applied to sentences that exceeded three years. The concepts are quite different, although each operates to provide for the early release of a prisoner on the condition of good behaviour. Because the non-parole regime will ordinarily apply only to more serious offenders who have been sentenced to more than three years imprisonment, the non-parole period is an acknowledgement that one cannot be confident at the time of sentencing that release after a period of service of imprisonment would be appropriate, while at the same time, acknowledging that circumstances may change. The prisoner's attitude and prospects may change and a non-parole order is intended to take account of that. However, unlike the recognizance release order, which will automatically entitle the prisoner to be released upon his or her entering into the recognizance, a non-parole order does not entitle the person in respect of whom it is pronounced to be released at the end of the non-parole period. The person still has to persuade the Parole Board that there are reasonable prospects for their rehabilitation and that they will obey whatever conditions the Board is minded to impose on any such release.

44. Because of the need to involve the Parole Board, fixing a very short non-parole period, or even providing that the prisoner is to be immediately eligible for parole will not necessarily ensure that the prisoner is released as soon as he or she becomes eligible for parole. For this reason, it cannot be viewed as an effective replacement for the concept of recognizance release orders and there is the potential for Service offenders to be treated less favourably than their civilian counterparts because of the fact that Service tribunals are not able to order the release of a Service prisoner sentenced to a term of imprisonment. Rather, any order for release will be dependant upon the decision of the Parole Board.

45. As I indicated at the outset of this discussion, this problem presents some complexity in the context of ad hoc tribunals. When the recognizance release orders were available for Service tribunals, there was no effective mechanism for enforcing a breach. However, the arrangements put in place by the *Defence Legislation (Enhancement of Military Justice) Act 2015* have the potential to disadvantage a Service prisoner in comparison with his or her civilian counterpart.

## **PUBLICATION OF TRIAL OUTCOMES**

46. In the JAG's annual reports for 2012<sup>19</sup> and 2013<sup>20</sup>, Major General Tracey expressed concern as to the selective publication in the Service newspapers of results of trials before courts martial and DFM in such a way as to report convictions, but to not consistently report acquittals. I understand that this practice continues, and share Major General Tracey's concern. As he remarked in the JAG report for 2013<sup>21</sup>, such incomplete reporting

...obscures transparency and openness, and runs the risk of undermining confidence in the integrity of such proceedings if the impression is (wrongly) conveyed that conviction (at least on some counts) is the inevitable outcome of a prosecution.

## **THE ELECTION SCHEME IN SUMMARY AUTHORITY PROCEEDINGS**

47. The DFDA provides an accused in summary proceedings with an automatic right to elect trial by court martial or DFM (superior Service tribunals) for all but a limited number of minor disciplinary offences, known as Schedule 1A offences. But the election scheme is very procedurally complex, especially where Schedule 1A offences and non-Schedule 1A offences are charged together. Recent petitions to the JAG demonstrate the existing scheme is generating irregularities in summary authority proceedings. Reforms to simplify the unnecessary complexities of the existing scheme should be considered.

48. A summary authority must offer under DFDA s.111B the opportunity to elect trial by a superior Service tribunal at the commencement of 'dealing' with a charge before it is ultimately 'tried'. But Schedule 1A offences are presently excluded from automatic election under s.111B to facilitate the summary disposal of these offences and to prevent the unnecessary referral of minor infractions of discipline to superior Service tribunals. However, during the later trial phase, DFDA s.131 provides an accused an additional right to elect to have a Schedule 1A offence dealt with by a court martial or DFM where the circumstances of the Schedule 1A offence reveal (in the opinion of the summary authority) that a more severe

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<sup>19</sup> Paragraph 31.

<sup>20</sup> Paragraph 32.

<sup>21</sup> Ibid.

punishment may be warranted than is usually available to a summary authority. If the accused is offered but declines a s.111B and/or a s.131 election for trial by a superior Service tribunal, then the summary authority must go on to try the charge. If the summary authority subsequently convicts the accused, it may then impose a more severe 'elective punishment'.

49. In this complex election scheme, there is an increased risk of procedural irregularity especially where a summary authority is dealing with an accused charged with two or more offences arising from the same facts or circumstances (linked charges) and these linked charges are a mix of Schedule 1A and non-schedule 1A offences. Particularly in such cases JAG reviews are revealing that s.111B and s.131 elections are:

- a. Sometimes not each being offered when each is required;
- b. Sometimes not being offered at all; or
- c. When offered, are sometimes offered in the wrong phase of the proceedings.

50. Summary authorities have great difficulty in understanding the scheme. They are mostly not legally trained. I well understand their difficulties. The scheme is complex even for experienced lawyers. An example may assist. A summary authority may correctly offer an accused a s.111B election for a non-Schedule 1A offence during the dealing phase. But after the accused decides not to elect to be tried by a superior Service tribunal for this non-Schedule 1A offence, the summary authority will often fail to offer the accused a second opportunity for election, this time during the trial for the linked Schedule 1A offence under s.131 (where the summary authority considers in the circumstances that a punishment from the elective scale of punishments would be appropriate if the accused were to be found guilty of this Schedule 1A offence). It is common for summary authorities to think that the single s.111B election is all that has to be offered. Such procedural irregularities may necessitate that otherwise sound convictions and punishments be quashed. This undermines the effectiveness of the military discipline system to support military commanders in maintaining and enforcing Service discipline.

51. I recommend that the DFDA be amended to simplify the election scheme. There are a number of options for doing this. They involve policy trade-offs of different kinds and will have to be the subject of further policy development. But simplification is possible, whilst preserving the DFDA's

fundamental distinction between Schedule 1A offences and non-Schedule 1A offences. The DFDA's list of Schedule 1A offences was intended to protect the summary system from wholesale elections towards superior Service tribunals. This objective is vitally important. But it is possible to allow an accused a right to elect trial by a superior Service tribunal but at only one point in the dealing and trial processes. A single election point for all offences would significantly reduce the risk of procedural irregularities occurring in summary proceedings.

## DEVELOPMENTS OVERSEAS

52. The jurisdiction of Canadian Service tribunals has recently been clarified by the Supreme Court of Canada in the decision of *R v Moriarity* 2015 SCC 55.

53. Each of the four accused were convicted by Court Martial (in separate trials) of offences punishable under the Canadian *Criminal Code* and/or the *Controlled Drugs and Substance Act*. These federal offences are considered Service offences under the *National Defence Act*, over which Canadian Service tribunals have jurisdiction. This jurisdiction is enlivened through the operation of sections 117(f) and 130(1)(a) of the *National Defence Act* which incorporates by reference these federal offences as Service offences<sup>22</sup>.

54. The issue to be determined in *R v Moriarity* was whether the provisions importing offences under the *Criminal Code* and the *Controlled Drugs and Substance Act* as Service offences were broader than necessary to achieve their purpose, and therefore violated section 7 of the *Canadian Charter of Rights and Freedom* which guarantees the right to life, liberty and security according to the principles of fundamental justice. The accused argued that the sections 117(f) and 130(1)(a) of the *National Defence Act* exceeded the proper purpose of these provisions to create Service offences that *directly* pertain to military discipline, efficiency and morale.

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<sup>22</sup> These provisions are similar in operation to s.61 of the DFDA which gives jurisdiction to Australian Service tribunals over 'territory offences'. Section 61 of the DFDA imports all offences against the law of the Commonwealth or any other law in force in the Jervis Bay Territory (known collectively as 'territory offences') as Service offences for the purposes of the DFDA.

55. On appeal to the Court Martial Appeal Court of Canada, the Court held that these provisions, when properly interpreted as requiring a military nexus, were not overbroad. In a unanimous decision, the Supreme Court of Canada upheld the earlier finding that the challenged provisions were not overbroad and therefore constitutional. However, the Supreme Court found the text of the legislation did not impose a requirement to establish a 'direct link' or 'military nexus' between the circumstances of the alleged offences and the discipline, efficiency or morale of the military.

56. In undertaking the overbreadth analysis, the Supreme Court considered whether there was disconnect between the purpose and effect of these provisions. The Court reasoned that the appellants' described the purpose of the provision too narrowly, and as a result, erroneously concluded that there was no rational connection between the purpose of the provision and some of its effects. Rather, the purpose of the provisions should be properly understood as maintaining discipline, efficiency and morale in the military without restriction to circumstances that have a direct link to those values. Therefore, the purpose of maintaining discipline, efficiency and morale is rationally connected to dealing with criminal acts committed by members of the military regardless of the circumstances of the commission of the offence. Sections 117(f) and 130(1)(a) of the *National Defence Act* were found to be broad laws that appropriately furthered the purpose of the system of military justice.

57. This judgement also makes evident that the Canadian position on jurisdiction is similar to that of the United States which gives a Service tribunal jurisdiction over a person solely on the basis of the accused's status as a member of the armed forces.

### **The Position in Australia**

58. The question of the jurisdiction of Service tribunals with respect to Service offences has been considered by the High Court, originally in the matters of *Re Tracey; Ex parte Ryan* (1989) 166 CLR 518, *Re Nolan & Anor; Ex parte Young* (1991) 172 CLR 460, and *Re Tyler & Ors; Ex parte Foley* (1994) 181 CLR 18. More recently, these cases and the jurisdictional question generally were considered by the Court in *Re Aird & Ors; Ex parte Alpert* (2004) 220 CLR 308 and *White v DMP* [2007] HCA 29.

59. Following those decisions, the test as to whether proceedings may be brought against a Defence member before a service tribunal is as laid down by Brennan and Toohey JJ in *Re Tracey*. The position is summarised by their Honours' observation at page 570:

Proceedings may be brought against a Defence member or a Defence civilian for a service offence if, but only if, those proceedings can reasonably be regarded as substantially serving the purpose of maintaining or enforcing service discipline.

60. This requirement for a “Service nexus” before a Service tribunal’s jurisdiction is enlivened can be contrasted with the “Service status” test now applying in Canada and the USA.

### **RMJ’S PERFORMANCE MEASURES**

61. As noted in the 2014 report<sup>23</sup> RMJ reports each month against formal performance measures for the listing and commencement of trials before court martial and DFM, and for the actioning of other requests to that office. The final report for 2015 is included at Annex Q<sup>24</sup>.

### **DIRECTOR OF MILITARY PROSECUTIONS**

62. The DMP is appointed under DFDA s.188GF. As indicated in my Report for 2014<sup>25</sup> Brigadier Michael Griffin AM resigned as DMP in order to take up a position as the Australian Law Enforcement Integrity Commissioner. Brigadier Griffin’s resignation took effect from 19 January 2015. Group Captain John Harris SC performed the duties of DMP on an acting basis until Brigadier Woodward’s appointment on 1 July 2015.

63. As I shall note shortly, DDCS was also filled by a Reserve officer (Colonel Russell Pearce) during 2015. Defence is extremely fortunate to have Reserve officers of the experience and professional standing of Group Captain Harris and Colonel Pearce prepared to make themselves available for extended periods of continuous full-time service.

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<sup>23</sup> Paragraph 49 et seq.

<sup>24</sup> The apparent difference between these figures and the statistics forming part of this report is explained at paragraph 80.

<sup>25</sup> Paragraph 37.

## **DIRECTOR DEFENCE COUNSEL SERVICES**

64. As foreshadowed in my Report for 2014<sup>26</sup> Colonel Russell Pearce filled the position of the DDCS during the reporting period. He will be replaced in 2016 by Colonel Arun Lambert CSC.

65. I have referred earlier<sup>27</sup> to the fact that an amendment to the *Defence Act 1903* effected by the *Defence Legislation (Enhancement of Military Justice) Act 2015* conferred statutory recognition upon the position of DDCS. Such recognition is desirable in that it enhances the independence of that position.

## **INSPECTOR GENERAL AUSTRALIAN DEFENCE FORCE (IGADF)**

66. While the IGADF will report separately, I do wish to formally acknowledge the commitment and contribution of the inaugural IGADF, Mr Geoff Earley AM. On 21 December 2015, Mr Earley completed his term as IGADF. He was instrumental in establishing the office which has done much to reinforce confidence in the military justice system through regular audits, training and reporting. Brigadier James Morgan Gaynor CSC will act as IGADF until a replacement is appointed.

## **DISCIPLINE LAW TRAINING**

### **Discipline Law Training for ADF personnel**

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

#### **Single-Service**

68. 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:

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<sup>26</sup> Paragraph 38.

<sup>27</sup> Paragraph 25.



- 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**

69. 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.

70. In 2015, the military justice training on pre-command course was as follows:

- a. **Navy:** Four courses instructed, with an approximate total of 78 students comprising officers appointed to CO or Executive Officer positions (Major Fleet Units, Minor War Vessels and Shore appointments).
- b. **Army:** One course instructed, with an approximate total of 54 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 CO positions.

### **Vice Chief of the Defence Force Group**

71. The VCDF 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 Trainee Officer's attendance at ADFA, and then more detailed training occurs during Year 1 and Years 2 and 3.
- b. **Campus:** Online DFDA training through the Campus system continued to be utilised in 2015 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 2015 the following number of personnel completed online training:
  - (i) Clerk (course ID 00004077) – 229 personnel
  - (ii) Defending Officer (course ID 00003925) – 713 personnel
  - (iii) Discipline Officer (course ID 00004036) – 829 personnel
  - (iv) Investigating Officer (course ID 00003491) – 680 personnel
  - (v) Prosecuting Officer (course ID 00003933) – 665 personnel
  - (vi) Recorder (course ID 00004022) – 572 personnel
  - (vii) Relevant Officer (course ID 00004023) – 685 personnel
  - (viii) Summary Authority (course ID 00003923) – 534 personnel

### **Inspector General Australian Defence Force**

72. During 2015 the IGADF conducted Military Justice Management Seminars in Darwin, Brisbane, Canberra and at Puckapunyal.

### **Training for ADF Legal Officers**

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

74. **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 2015, 19 ADF legal officers attended the LTM1 course (as well as one civilian lawyer, one paralegal and two overseas military legal officers from Defence Legal).

75. **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, 22 students completed the Military Discipline Law subject. Twenty six students also completed the LTM 2 Military Legal Practice subject which includes the practice of advocacy before service tribunals.

76. **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 Advanced Military Discipline Law subject.

### **Ongoing Development of Discipline Law Training**

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

### **TRIALS UNDER THE DFDA**

78. The statistics for summary trials and the Discipline Officer scheme conducted by the three Services during 2015 are set out in Annexes A to I. As was indicated in the report for 2005<sup>28</sup> responsibility for the Discipline

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<sup>28</sup> Paragraphs 95-96.

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.

79. 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.

80. 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**

81. 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.

82. On 7 November 2015, I conducted a conference at the Canberra office of the JAG with DJAGs, CJA and 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.

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

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

#### **CONCLUSION**

84. The interim arrangements reinstating the system of trial by court martial and DFM continue to operate satisfactorily. However, it is appropriate that I repeat the thrust of the observations included in my Report for 2014<sup>29</sup>. Because the interim arrangements have now been

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<sup>29</sup> Paragraph 58-59.

operating since 2009, the reinstated system has to an extent been accepted by ADF personnel as a *de facto* permanent system.

85. But of course it is not permanent, and a decision is necessary as a matter of urgency. Without a decision, it is not possible to embark properly on reform. With Major General Westwood's tenure as CJA coming to an end in 2017, it will be difficult to attract a suitable replacement while the uncertainty surrounding the interim system remains, because it precludes the offer of an appointment for a meaningful term of years.

## TABLE OF ABBREVIATIONS USED IN REPORT

<b>Abbreviation</b>	<b>Description</b>
ACT	Australian Capital Territory
ADC	Australian Defence College
ADF	Australian Defence Force
ADFA	Australian Defence Force Academy
CDF	Chief of the Defence Force
CJA	Chief Judge Advocate
CO	Commanding Officer
DCCS	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
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
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: 3-8
Membership and Staff	Paragraph: 3, 9-12, 14, 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: 13
Activities and Reports	Paragraphs: 81-82
Operational Problems	Paragraphs: 24-51
Subsidiaries	Not Applicable

## **NATURE AND JURISDICTION OF SUMMARY AUTHORITIES**

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

### **Superior Summary Authorities**

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

### **Commanding Officers**

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

### **Subordinate Summary Authorities**

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



NAVY  
JANUARY-DECEMBER 2015

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					1	2			4	6		
February					7	10	1		8	11		
March					11	15		2	15	15		1
April					3	7			12	13	1	
May					12	14	3	6	8	8		1
June					9	24	2		15	20	2	
July	1	1			17	23		1	11	14	4	
August					10	13	2		12	13		
September					9	15	3		7	7	1	
October					6	7			10	9	2	
November					10	17	2		9	11	1	
December					8	21			11	13		1
<b>TOTAL</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>103</b>	<b>168</b>	<b>13</b>	<b>9</b>	<b>122</b>	<b>140</b>	<b>11</b>	<b>3</b>

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

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
<b>Sect 23</b>							2			16
<b>24</b>	1	1				5	4			37
<b>25</b>						2				2
<b>26</b>							3			7
<b>27</b>	1					2	1			10
<b>28</b>										
<b>29</b>	8					8	8			79
<b>30</b>										
<b>31</b>										
<b>32</b>						1	1			3
<b>33(a)</b>							1			2
<b>33(b)</b>							1			1
<b>33(c)</b>										
<b>33(d)</b>										
<b>34</b>						2				
<b>35</b>							4			1
<b>36</b>										1
<b>36A</b>										1
<b>37</b>										7
<b>38</b>										
<b>39</b>										
<b>40</b>										
<b>40A</b>										
<b>40B</b>										
<b>40C</b>										1
<b>40D</b>						1				1
<b>41</b>										
<b>42</b>										7
<b>43</b>										4
<b>44</b>										
<b>45</b>										1
<b>46</b>										
<b>47C</b>							2			2
<b>47P</b>										
<b>48</b>										
<b>49</b>										
<b>50</b>										
<b>51</b>										
<b>53</b>										
<b>54</b>										
<b>54A</b>										
<b>55</b>	2									27
<b>56</b>										1
<b>57</b>										1
<b>58</b>										
<b>59</b>										2
<b>60</b>	2	1		1		3	6			25
<b>61</b>				1			1			3
<b>TOTAL</b>	<b>14</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>24</b>	<b>34</b>	<b>0</b>	<b>0</b>	<b>242</b>

## 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	4	2		2		4	9			39
Conditional conviction without punishment	2					2	2			11
Unconditional conviction without punishment										1
Severe reprimand	1			1		6	8			39
Extra duties										13
Extra Drill										1
Stoppage of leave		2								7
Restriction of privileges		4								56
Suspended fine						3	3			5
Fine Less than 14 Days Pay	1	1				16	15			102
Fine More than 14 Days Pay										5
Forfeiture of service for purposes of promotion							1			
Forfeiture of seniority	1			1		2	2			1
Reduction in rank										
Suspended detention										
Committed detention										14
<b>TOTAL</b>	<b>9</b>	<b>9</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>33</b>	<b>40</b>	<b>0</b>	<b>0</b>	<b>294</b>

ARMY  
JANUARY-DECEMBER 2015

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		NUMBER OF TRIALS HELD	CHARGES TRIED		NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED
		GUILTY	N.G.		QUASHED	GUILTY		N.G.	QUASHED	
January	1	2		3	3		8	9		
February	3	3		11	14	1	34	40	3	
March				12	16	1	45	46	4	
April				24	25	1	67	74	2	
May	1	1		22	29		56	60	1	
June				23	24	1	75	87	3	
July	1	2		31	38	1	48	50	4	
August	6	6		22	31	1	79	82	2	
September				20	29	1	62	68	3	
October				28	31	2	54	63	1	
November	2	2	1	25	37		92	101	6	
December	1	1		23	33	2	49	60	1	
<b>TOTAL</b>	<b>15</b>	<b>17</b>	<b>1</b>	<b>244</b>	<b>310</b>	<b>7</b>	<b>669</b>	<b>740</b>	<b>30</b>	

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

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Sect 23	2	5						1		18
24	4	3					7	6		78
25	1	2					1	2		2
26		3	1			1	7	4		30
27	5	1		2		6	10	5		49
28										
29	12	30	2	3		12	45	23		178
30										
31										
32		4								3
33(a)										19
33(b)										5
33(c)				1				1		2
33(d)	2						2	1		4
34	3						1			1
35	3	1		2		2	4	2		4
36A	2						2	1		11
36B	8	29	1	1		4	6	10		164
37		2					1	1		12
38										
39										
40				1						2
40A										
40B										
40C			1				1			4
40D						1		1		6
41										
42										
43						1	2	1		8
44		2					1	1		6
45										1
46										1
47C										17
47P										
48										
49										
50										
51										
53										
54										
54A										
55	3									3
56						4				1
57										
58										
59										
60	12	8	1	2		9	18	8		90
61	6					10				37
TOTAL	63	90	6	12	0	50	108	68	0	756

## 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	7	6	2	5		6	34	18		50
Conditional conviction without punishment						1	1			1
Unconditional conviction without punishment						1	6	3		8
Severe reprimand	13	3	1	1		14	18	10		19
Extra duties								1		21
Extra drill		3								12
Stoppage of leave		4								19
Restriction of privileges		65						5		371
Suspended fine	3			1		4	5	3		18
Fine Less than 14 Days Pay	45	24	4	9		25	58	45		358
Fine More than 14 Days Pay	1	1				2	1			6
Forfeiture of service for purposes of promotion										
Forfeiture of seniority						8	1			1
Reduction in rank	1						2	10		22
Suspended detention										
Committed detention										72
<b>TOTAL</b>	<b>70</b>	<b>106</b>	<b>7</b>	<b>16</b>	<b>0</b>	<b>61</b>	<b>126</b>	<b>95</b>	<b>0</b>	<b>978</b>

AIR FORCE  
JANUARY-DECEMBER 2015

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

	SUPERIOR SUMMARY AUTHORITY				COMMANDING OFFICER				SUBORDINATE SUMMARY AUTHORITY			
	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED
		GUILTY	N.G.			GUILTY	N.G.			GUILTY	N.G.	
January					1	2			3	5		
February					3	4	3	1	1	1	1	
March					1	1			1	2		
April	1	2			3	3			5	6		
May					1	1			5	7		
June					3	3	1		7	7		
July	3	3		1	2	3			4	3		1
August					3	3			4	4	1	
September					9	12			10	10		
October					6	11			3	4		
November					2	2			3	7	1	
December					1	4			2	1	1	
<b>TOTAL</b>	<b>4</b>	<b>5</b>	<b>0</b>	<b>1</b>	<b>35</b>	<b>49</b>	<b>4</b>	<b>1</b>	<b>48</b>	<b>57</b>	<b>4</b>	<b>1</b>

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

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Sect 23						1				4
24	1	1				3				4
25						2				
26	2						1			5
27		2					1			6
28										
29	5	1	1			2	1			28
30										
31										
32										1
33(a)							5			
33(b)				2						3
33(c)										
33(d)							1			
34						1				
35										
36A	1									1
36B	1	1								1
37			1							
38										
39										
40										1
40A										
40B										
40C							1			
40D										
41										
42										
43										1
44										1
45	1									
46										
47C							3			
47P										
48										
49										
50										
51										
53										
54										
54A										
55							1			
56										
57										
58										
59										
60	2	2		2		3	2			10
61		1				1	18			
<b>TOTAL</b>	<b>13</b>	<b>8</b>	<b>2</b>	<b>4</b>	<b>0</b>	<b>13</b>	<b>34</b>	<b>0</b>	<b>0</b>	<b>66</b>



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

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Reprimand		1				3	1			7
Conditional conviction without punishment										
Unconditional conviction without punishment	1			2						2
Severe reprimand	1		1			1	10			14
Extra duties										3
Extra drill			1							3
Stoppage of leave										4
Restriction of privileges		3								24
Suspended fine						3	2			5
Fine Less than 14 Days Pay	9	4	1	2		5	5			53
Fine More than 14 Days Pay										3
Forfeiture of service for purposes of promotion										
Forfeiture of seniority						2	1			1
Reduction in rank							3			
Suspended detention										
Committed detention							2			1
<b>TOTAL</b>	<b>11</b>	<b>8</b>	<b>3</b>	<b>4</b>	<b>0</b>	<b>14</b>	<b>24</b>	<b>0</b>	<b>0</b>	<b>120</b>

COMBINED STATISTICS OF TRIALS AND OUTCOMES FOR MEMBERS BEFORE SUMMARY AUTHORITIES

	SUPERIOR SUMMARY AUTHORITY				COMMANDING OFFICER				SUBORDINATE SUMMARY AUTHORITY			
	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED
		GUILTY	N.G.			GUILTY	N.G.			GUILTY	N.G.	
January	1	2	0	0	5	7	0	0	15	20	0	0
February	3	3	0	0	21	28	5	1	43	52	1	3
March	0	0	0	0	24	32	0	3	61	63	1	5
April	1	2	0	0	30	35	0	1	84	93	5	2
May	1	1	0	0	35	44	3	6	69	75	0	2
June	0	0	0	0	35	51	3	1	97	114	3	3
July	5	6	0	1	50	64	1	2	63	67	6	5
August	6	6	0	0	35	47	3	0	95	99	1	2
September	0	0	0	0	38	56	3	1	79	85	4	3
October	0	0	0	0	40	49	2	3	67	76	3	1
November	2	2	1	0	37	56	2	0	104	119	5	6
December	1	1	0	0	32	58	2	1	62	74	2	2
<b>TOTAL</b>	<b>20</b>	<b>23</b>	<b>1</b>	<b>0</b>	<b>382</b>	<b>527</b>	<b>24</b>	<b>19</b>	<b>839</b>	<b>937</b>	<b>31</b>	<b>34</b>

### **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 2015

DISCIPLINE OFFICER STATISTICS

Infringement	Number
Section 23	371
24	170
27	216
29	840
32(1)	1
35	26
60	66
<b>TOTAL</b>	<b>1690</b>

Action Taken	Number
<b>Punishment Imposed - Fine</b>	325
ROP	171
SOL	309
Extra Duties	168
Extra Drill	4
Reprimand	609
No Punishment Imposed	86
Referred to an Authorised Member	18
<b>TOTAL</b>	<b>1690</b>

**ARMY**  
**JANUARY-DECEMBER 2015**  
**DISCIPLINE OFFICER STATISTICS**

<b>Infringement</b>	<b>Number</b>
<b>Section 23</b>	249
<b>24</b>	365
<b>27</b>	624
<b>29</b>	1277
<b>32(1)</b>	30
<b>35</b>	122
<b>60</b>	318
<b>TOTAL</b>	<b>2985</b>

<b>Action Taken</b>	<b>Number</b>
<b>Punishment Imposed - Fine</b>	375
<b>ROP</b>	1291
<b>SOL</b>	289
<b>Extra Duties</b>	405
<b>Extra Drill</b>	163
<b>Reprimand</b>	330
<b>No Punishment Imposed</b>	118
<b>Referred to an Authorised Member</b>	14
<b>TOTAL</b>	<b>2985</b>

**AIR FORCE  
JANUARY-DECEMBER 2015  
DISCIPLINE OFFICER STATISTICS**

<b>Infringement</b>	<b>Number</b>
<b>Section 23</b>	65
<b>24</b>	10
<b>27</b>	72
<b>29</b>	213
<b>32(1)</b>	3
<b>35</b>	8
<b>60</b>	44
<b>TOTAL</b>	<b>415</b>

<b>Action Taken</b>	<b>Number</b>
<b>Punishment Imposed - Fine</b>	84
<b>ROP</b>	104
<b>SOL</b>	27
<b>Extra Duties</b>	50
<b>Extra Drill</b>	5
<b>Reprimand</b>	130
<b>No Punishment Imposed</b>	11
<b>Referred to an Authorised Member</b>	4
<b>TOTAL</b>	<b>415</b>

## **NATURE AND JURISDICTION OF COURTS MARTIAL AND DEFENCE FORCE MAGISTRATES**

### **Courts Martial**

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

### **Types of Court Martial**

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

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

### **Defence Force Magistrate**

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

### **Choice of Tribunal**

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

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

NAVY

JANUARY-DECEMBER 2015

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

	GENERAL COURT MARTIAL					RESTRICTED COURT MARTIAL					DEFENCE FORCE MAGISTRATE				
	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD
		GUILTY	N.G.				GUILTY	N.G.				GUILTY	N.G.		
January															
February											1	4			2
March											2	1		1	2
April					1		7				1	1			
May															
June															
July															
August											2	5			7
September											1	1			
October															
November						1	2								
December											3	5			4
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>7</b>	<b>0</b>	<b>0</b>	<b>10</b>	<b>17</b>	<b>0</b>	<b>1</b>	<b>15</b>



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

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Sect 23										
24										
25										
26										
27										
28										
29				2						
30										
31										
32										
33(a)										
33(b)									1	
33(c)										
33(d)										
34										
35						4				
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										
56										
57										
58										
59										
60	1						1			
61				2			1		7	
<b>TOTAL</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>4</b>	<b>2</b>	<b>0</b>	<b>8</b>	<b>0</b>

**Details of Quashed Convictions**

<b>DFDA Sect</b>	<b>Rank</b>	<b>Short Summary of Offence</b>	<b>Reason for quashing</b>
61	LS	Obtaining a financial advantage by deception	Due to a material irregularity

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

ARMY

JANUARY-DECEMBER 2015

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

	GENERAL COURT MARTIAL					RESTRICTED COURT MARTIAL					DEFENCE FORCE MAGISTRATE				
	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD
		GUILTY	N.G.				GUILTY	N.G.				GUILTY	N.G.		
January															
February											1	2			3
March											3	12	6		1
April					1		1		4		3	16	2		1
May											2	7			6
June											2	2	3		1
July											7	10	7		2
August											2	3			
September															
October											2	31			
November	2				6										
December											5	7	2		1
<b>TOTAL</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>4</b>	<b>27</b>	<b>90</b>	<b>20</b>	<b>0</b>	<b>15</b>

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

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

**Details of Quashed Convictions**

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

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

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Reprimand	1									
Conditional conviction without punishment										
Unconditional conviction without punishment										1
Severe reprimand						3				
Suspended fine	1									
Fine Less than 14 Days Pay	1					6				1
Fine More than 14 Days Pay							1			3
Forfeiture of service for purposes of promotion										
Forfeiture of seniority						6	1			
Reduction in rank	1						17			
Suspended detention							2			1
Committed detention							15			38
Dismissal from ADF	6					8				1
Imprisonment	2					1				
<b>TOTAL</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>24</b>	<b>36</b>	<b>0</b>	<b>0</b>	<b>45</b>

AIR FORCE  
JANUARY-DECEMBER 2015

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

	GENERAL COURT MARTIAL					RESTRICTED COURT MARTIAL					DEFENCE FORCE MAGISTRATE				
	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD
		GUILTY	N.G.				GUILTY	N.G.				GUILTY	N.G.		
January															
February											1	1			
March											1	1	1		2
April											3	22			3
May															
June															
July															
August											1	2			
September											1	2			1
October											1	3			
November															
December															
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>8</b>	<b>31</b>	<b>1</b>	<b>0</b>	<b>6</b>



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

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

**Details of Quashed Convictions**

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

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

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Reprimand										
Conditional conviction without punishment										
Unconditional conviction without punishment										
Severe reprimand							1		3	
Suspended fine										
Fine Less than 14 Days Pay	1						1			
Fine More than 14 Days Pay									2	
Forfeiture of service for purposes of promotion										
Forfeiture of seniority	1								1	
Reduction in rank							3			
Suspended detention							1			
Committed detention							2		19	
Dismissal from ADF									1	
Imprisonment										
<b>TOTAL</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>8</b>	<b>0</b>	<b>26</b>	<b>0</b>

COMBINED JANUARY - DECEMBER 2015

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

	GENERAL COURT MARTIAL					RESTRICTED COURT MARTIAL					DEFENCE FORCE MAGISTRATE				
	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD
		GUILTY	N.G.				GUILTY	N.G.				GUILTY	N.G.		
January	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
February	0	0	0	0	0	0	0	0	0	0	3	7	0	0	5
March	0	0	0	0	0	0	0	0	0	0	6	14	7	1	5
April	0	0	0	0	0	2	0	8	0	4	7	39	2	0	4
May	0	0	0	0	0	0	0	0	0	0	2	7	0	0	6
June	0	0	0	0	0	0	0	0	0	0	2	2	3	0	1
July	0	0	0	0	0	0	0	0	0	0	7	10	7	0	2
August	0	0	0	0	0	0	0	0	0	0	5	10	0	0	7
September	0	0	0	0	0	0	0	0	0	0	2	3	0	0	1
October	0	0	0	0	0	0	0	0	0	0	3	34	0	0	0
November	2	0	0	0	6	1	2	0	0	0	0	0	0	0	0
December	0	0	0	0	0	0	0	0	0	0	8	12	2	0	5
<b>TOTAL</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>3</b>	<b>2</b>	<b>8</b>	<b>0</b>	<b>4</b>	<b>45</b>	<b>138</b>	<b>21</b>	<b>1</b>	<b>36</b>

**DEFENCE FORCE DISCIPLINE ACT**

**LIST OF SECTIONS USED IN STATISTICS**

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

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

**LIST OF JUDGE ADVOCATES AND DEFENCE FORCE MAGISTRATES**

Major General Ian Westwood AM, Chief Judge Advocate  
Captain the Hon Dennis Cowdroy OAM RANR  
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  
Group Captain Michael O'Brien  
Wing Commander Gordon Lerve  
Lieutenant Andrew Eckhold RANR

# OFFICE OF THE REGISTRAR OF MILITARY JUSTICE

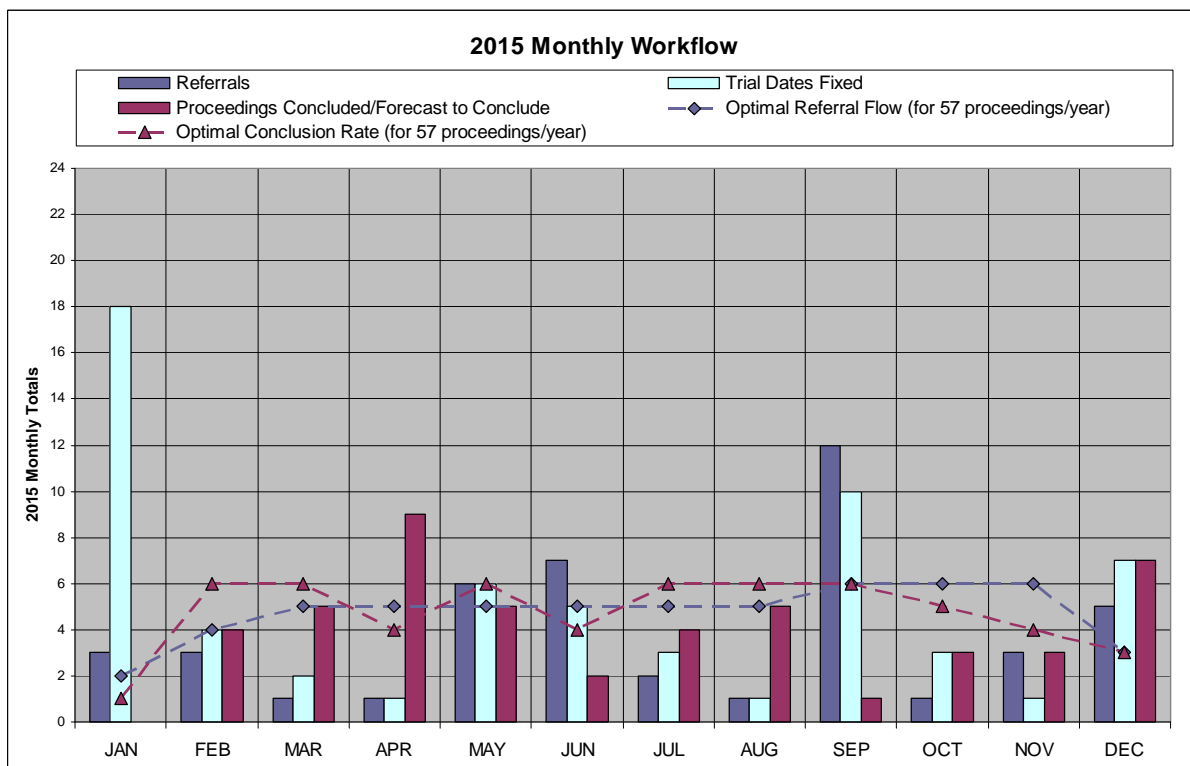
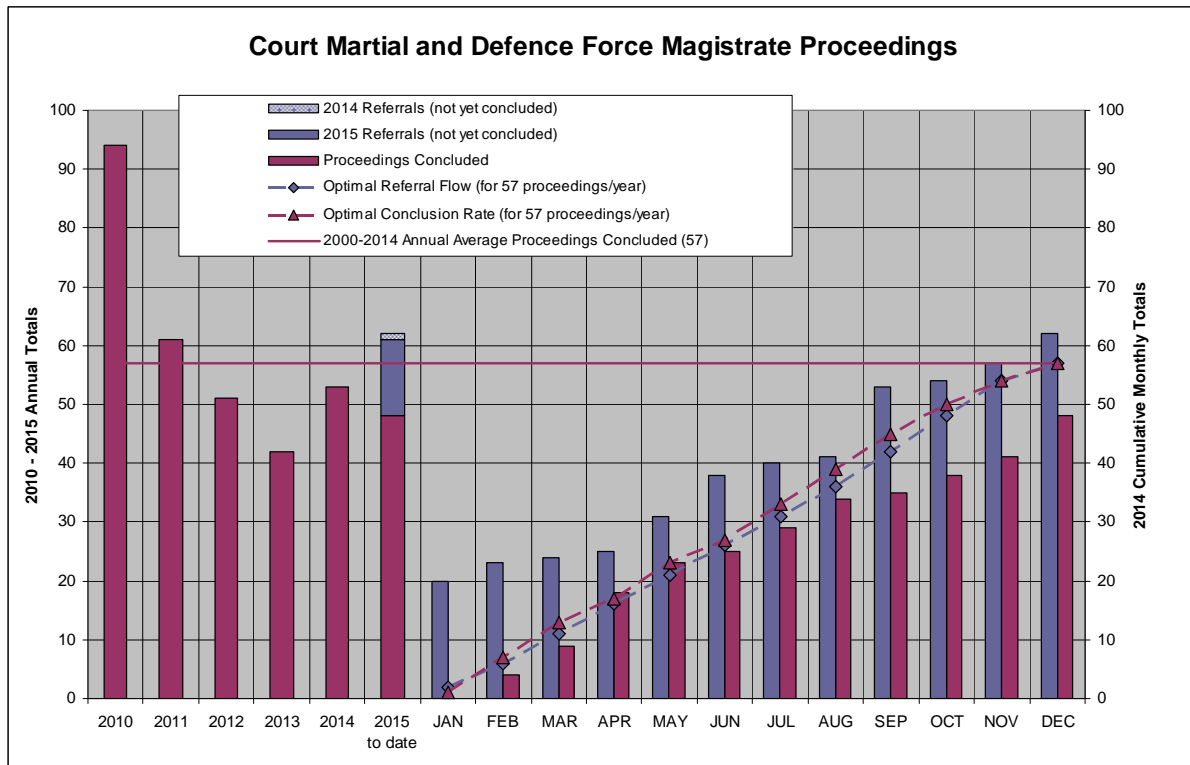
## REPORT FOR THE PERIOD JANUARY – DECEMBER 2015 (INCLUSIVE)

Current wef COB 31 Dec 15

### 1. ORMJ Process

- The RMJ's powers are triggered upon receipt of a referral from the DMP.
- 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\*





### 3. RMJ Analysis/Comments (SOME CONCERN/SERIOUS CONCERN)

#### REFERRALS

- **Number of referrals carried over from 2014: 17.** This is considerably higher than desirable (a maximum of 10). Of the 17 referrals carried over from last year, 16 were listed prior to the end of 2014 and have since been completed. The 17<sup>th</sup> matter had directions hearings in Jun, Jul, Aug, Sep and Nov 15 and has now been stayed pending the outcome of an appeal to the Defence Force Discipline Appeal Tribunal (DFDAT) (filed in Dec 15 and currently awaiting a hearing date).
- **Number of referrals for 2015 to date: 45** (plus 2 which were subsequently withdrawn prior to convening/referral and which are therefore not included for statistical purposes).
- **Total referrals: 62** (not including 2 which were withdrawn prior to convening/referral). Of the 62 referrals, 6 involve 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 70.

#### LISTINGS

- **Number of referrals listed (includes proceedings concluded, part-heard & pending commencement): 61/62.**
- **Number of referrals awaiting listing: 1/62.** This matter was referred in Jun 15 and is 'on hold' while the mental health of the accused is ascertained. It is anticipated that a decision as to whether it will proceed will be made in Mar 16.

#### PROCEEDINGS

- **Number of proceedings concluded: 48/62.** Of the 48 proceedings concluded, 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 involved to 56. [Note: of the 48 proceedings concluded, 7 were concluded as a result of all charges being withdrawn after the proceedings commenced but prior to the accused person being arraigned. Of these 7 proceedings, 1 involved 3 co-accused and 1 involved 2 co-accused. Accordingly, 41 proceedings, involving 46 accused persons, have proceeded to finding].
- **Number of proceedings part heard: 3/62.** One of these is on hold pending the DFDAT appeal. The other two are listed to resume, and expected to conclude, in Jan 16 (the accused has been convicted and is awaiting punishment) and Feb 16 (on recommencement the DFM will hand down his finding).
- **Number of proceedings listed but pending commencement: 10/62.** Of the 10, 5 are listed to commence in Feb 16, 2 are listed to commence in Mar 16 and 3 are listed to commence in Apr 16.

#### WORKLOAD/WORKFLOW

- **Available listings.** There is currently no issue with listing availability in early 2016.
- **Workload.** The total number of referrals for 2015 (62) is above the forecast\* (57), and the number of matters concluded (48) is tracking below the forecast\* (57).
- **Workflow.** Leaving aside the 17 referrals carried over from 2014, and notwithstanding the high number of referrals in June (7, as compared to the 4 forecast\*) and September (12, as compared to the 6 forecast\*) and December (5, as completed to the 3 forecast\*), the number of referrals received this year (45) was lower than the 57 forecast\*. This is largely due to the low number of referrals received in Mar, Apr, Aug and Oct (1 per month, as compared to the 5-6 forecast\*). The referral flow has also created peaks and troughs which, with lean resourcing, has inevitably had a flow on for the progression of matters. ORMJ will work closely with the new DMP and new DDCS in 2016 in an attempt to even out referral flow and reduce the impact of peaks and troughs.

#### PERFORMANCE

- **Performance against KPI.** Performance against all KPI remains 'green' (see below). The availability of JAs/DFMs (currently being addressed) posed a risk of delay, but was not ultimately instrumental in the delays experienced and/or the number of matters to be carried over into 2016. The more significant delays have been attributable to external appeals and the accused's mental health. Other significant factors in delays/matters carried over have included: referral flow and availability of counsel, accused and witnesses. See previous and below comments for further information.

\* **Note:** The forecasts are based on the average of 57 concluded proceedings per year, historical trends and anticipated peaks and troughs (i.e. reduced activity periods, known operations and exercises, etc).

4. KPIs	Performance (ON TRACK/SOME CONCERN/SERIOUS CONCERN)	Comments
<p>Within two weeks of receipt of referral from DMP or appointment of defending officer by DDCS (whichever occurs later), 90% of matters are to be listed (trial date fixed). [Note: up to 10% will legitimately require longer. This will be closely managed]</p>	<p><b>94%</b> Average: 9.7 days Number of matters NOT listed within two weeks: 4/62</p>	<p>- 4 'out of time' listings, with 3 'of concern' (a delay of 2 weeks or more). - Numbers of weeks/days by which timeline exceeded: currently 24 weeks (Navy matter) (listing is still on hold due to mental health of accused person); 19 weeks (Navy matter (listing had to be placed on hold pending Defence Force Discipline Appeal Tribunal decision)); 4 weeks (Navy matter) (deployment of accused and witnesses); and 2 days (Navy 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). [Note: up to 20% will legitimately require longer. These will be closely managed]</p>	<p><b>84%</b> Average: 2.7 months Number of matters NOT commenced within three/four months: 10/62</p>	<p>- 10 'out of time' proceedings, with 5 'of concern' (a delay of one month or more). - Numbers of weeks/days by which timeline exceeded: 15 weeks (Navy matter (commencement had to be placed on hold pending Defence Force Discipline Appeal Tribunal decision)); currently 12 weeks (Navy matter) (listing is still on hold due to mental health of accused person); 6 weeks (Navy matter (availability of counsel)); 6 weeks (Army matter (availability of JA and counsel)); 5 weeks (Army matter (witness availability)); 5 weeks (Air Force matter (counsel availability)); 4 Weeks (Navy matter); 3 weeks (Navy matter); 2 weeks (Army matter); 2 Weeks (Army matter); and 1 week (Army matter).</p>
<p>ORMJ will action 95% of all requests within specified timeframe/28 days if none specified.</p>	<p><b>100%</b></p>	<p>Examples include: Privacy Complaints, FOI requests, Single Access Mechanism (SAM) requests, other requests for documents, requests for statistics, etc.</p>