



**JUDGE ADVOCATE GENERAL**

**DEFENCE FORCE  
DISCIPLINE ACT 1982**

*Report for the period  
1 January to 31 December 2016*

Department of Defence

***Defence Force Discipline Act 1982***

*Report for the period  
1 January to 31 December 2016*

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DEPARTMENT OF DEFENCE  
CANBERRA ACT 2600

JUDGE ADVOCATE GENERAL

The Hon Dan Tehan MP  
Minister for Defence Personnel  
Minister for Veterans' Affairs  
Parliament House  
CANBERRA ACT 2600

Dear Minister,

I submit herewith my report covering the period from 1 January to 31 December 2016. 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

18 May 2017

Enc.

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**JUDGE ADVOCATE GENERAL  
AUSTRALIAN DEFENCE FORCE**

**REPORT FOR THE PERIOD 1 JANUARY TO 31 DECEMBER 2016**

**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 2016. 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 2021.<sup>2</sup>

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>3</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>4</sup> and Defence Force magistrates (DFMs);<sup>5</sup>

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<sup>2</sup> The JAG was re-appointed on 9 March 2017.

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

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



- d. Nominating to the Chief of the Defence Force (CDF) or a Service Chief officers to be members of the JAs panel;<sup>6</sup>
  - e. Appointing DFMs from officers appointed as members of the JAs panel;<sup>7</sup>
  - f. Nominating to the CDF legal officers for the purposes of DFDA s.154(1)(a); and
  - g. If requested, providing a final and binding legal report in connection with the internal review of proceedings before Service tribunals.
5. The Office of the JAG and its functions indicate the legislature's desire for 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.129C.

<sup>6</sup> DFDA s.196.

<sup>7</sup> DFDA s.127.

10. As noted in my 2015 Report, Group Captain Ian Scott Henderson AM was appointed as a full time JA and DFM for twelve months commencing on 8 February 2016. In September 2016, his appointment was extended to 30 September 2017.

11. As foreshadowed in my 2015 Report, after a selection process in 2016, Major Michael Cowen QC, a reserve officer, was appointed, on promotion to lieutenant colonel, as a JA (on 30 June 2016) and DFM (on 03 August 2016) for three years. Lieutenant Colonel Cowen joins Captain the Hon Dennis Antill Cowdroy OAM, QC, RANR and Wing Commander Gregory Paul Lynham as the other two reserve officers appointed as JAs and DFMs, thereby continuing the desirable mix of skills and experience that JAs and DFMs drawn from both the permanent and reserve forces bring to the superior discipline system.<sup>8</sup>

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

13. The position of staff officer to the JAG and CJA was filled during the reporting period by Flight Lieutenant Kate Reece. On behalf of CJA and myself I formally record our gratitude to her for her diligent discharge of this role.

14. Funding for the Office of the JAG for the period of this report was provided by the Associate Secretary group of the Department of Defence.

15. 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. The DJAGs during the reporting period were:

- a. Commodore J.T. Rush QC, RANR,<sup>9</sup>
- b. Brigadier His Honour Judge S.G. Durward SC, and
- c. Air Commodore His Honour Judge M.J.F. Burnett RAAF SR.

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<sup>8</sup> See paragraph 40 of my 2015 Report.

<sup>9</sup> Resigned his appointment as a judge of the Supreme Court of Victoria with effect 31 January 2016 and returned to the Bar.

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

17. 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 (DGC).

### **OPERATION OF THE SUPERIOR MILITARY TRIBUNALS**

18. 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**

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

### **APPOINTMENTS**

20. I have already detailed the terms of my own appointment.<sup>10</sup> 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*. With the resignation of Brigadier Jennifer Ann Woodward CSC in 2015,<sup>11</sup> the only remaining appointment in force under the interim measures is that of the CJA.

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

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<sup>10</sup> Outside the reporting period, my appointment was extended on 9 March 2017 until 29 July 2021.

<sup>11</sup> See paragraph 10 of my 2015 Report.

- a. JAG, Rear Admiral Slattery, expiry date 29 July 2021;
- b. CJA, Major General Westwood, expiry date 21 September 2017;
- c. DJAG-Navy, Commodore Rush, expiry date 29 July 2019;
- d. DJAG-Army, Brigadier Durward, expiry date 9 March 2019;
- e. DJAG-Air Force, Air Commodore Burnett, expiry date 9 March 2017; and
- f. RMJ, Group Captain Harvey, expiry date 21 September 2017.

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

#### **APPEALS**

23. During the reporting period, there were three appeals determined by the Defence Force Discipline Appeal Tribunal (DFDAT), one by the Federal Court and one by the Full Federal Court. These were:

- a. *Angre v Chief of Navy (No 1)* [2016] ADFDAT 1
- b. *Angre v Chief of Navy (No 2)* [2016] ADFDAT 2
- c. *Williams v Chief of Army* [2016] ADFDAT 3
- d. *Rowley v Chief of Army* [2016] FCA 1209
- e. *Chief of Navy v Angre* [2016] FCAFC 171

24. In *Angre (No 1)*, Chief of Navy's application for a stay of the proceeding was refused. In *Angre (No 2)*, Able Seaman Angre's application to amend his grounds of appeal was refused. He was, however, granted leave to adduce and rely on certain evidence, exhibits and affidavits in his appeal. The latter aspect of the DFDAT decision in *Angre (No 2)* was appealed to the Full Court of the Federal Court of Australia in *Chief of Navy v Angre*. That appeal was dismissed.

25. In *Williams*, the appeal was dismissed.

26. In *Rowley*, the Federal Court vacated a previous interlocutory order which had restrained Chief of Army from dismissing or discharging 2LT Rowley from the ADF.

## LEGISLATION

### Defence Act

27. On 1 July 2016, the command arrangements for the ADF made by the *Defence Legislation Amendment (First Principles) Act 2015* (*First Principles Act*) came into force.<sup>12</sup>

28. The *First Principles Act* makes five connected changes of relevance to discipline law. First, s.9 of the *Defence Act 1903* was amended to clarify that the CDF has overall command of the Defence Force. Second, s.9 of the *Defence Act* was further amended to explicitly provide that the Vice Chief of the Defence Force (VCDF) is the deputy of the CDF. Third, s.11 of the *Defence Act* was amended to provide for a single system of Defence Instructions issued jointly by the Secretary of the Department of Defence and CDF for the administration of the Defence Force. Fourth, s.21 and Schedule 1 of the *Defence Act* provides for the ranks and corresponding ranks of members (other than for chaplains) in the Defence Force. Finally, Schedule 3 of the *Defence Regulation 2016* repealed the *Defence Force Regulations 1952* and with it Part II concerning the command of different parts of the Defence Force acting together.

29. These amendments represent the most significant changes to the command arrangements for the Defence Force since the *Defence Force Reorganization Act 1975*. The CDF issued an order of the day on 1 July 2016 which outlined his expectations in relation to the broadening of command authority in the Defence Force. The most significant legal effects for the purposes of the DFDA were:

- a. Simplifying the basis for members of one Service to give a lawful command or promulgate a lawful order to a member of a different Service;
- b. The replacement of the system of Defence Instructions (General), Defence Instructions (Navy), Defence Instructions (Army) and Defence Instructions (Air Force) with a single

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<sup>12</sup> See paragraph 38 of the 2015 Report.

system of Defence Instructions issued jointly by the Secretary and CDF.<sup>13</sup>

30. The full effect of these changes will only become apparent with time. No unforeseen issues concerning discipline appear to have arisen during the reporting period as a result of the changes wrought by the *First Principles Act*.

#### **DFDA**

31. There were no amendments of significance to the DFDA in 2016.

#### **Other legislative amendments**

32. On 7 December 2016 the *Criminal Code Amendment (War Crimes) Act 2016* amended Division 268 of the *Criminal Code Act 1995* to:

- a. Reflect the distinction that exists in international law between civilians and members of an organised armed group;
- b. Align Australian domestic law with the position at international law in relation to the incidental death of, or injury to, civilians in non-international armed conflict; and
- c. Exclude military personnel from the scope of paragraph 268.65(1)(a) ('human shields'), on the basis that the inclusion of this class of persons does not reflect the position at international law.<sup>14</sup>

33. As the amended provisions are part of Australia's 'war crimes' legislation, the amendments affect potential prosecutions under DFDA, section 61.

34. On 20 September 2016 the *Defence Force Discipline Appeals Regulation 2016* (the Regulation) remade in substantially the same form the *Defence Force Discipline Appeals Regulations 1957*, which were due to

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<sup>13</sup> Noting that the Services will still be able to promulgate orders for Service-unique issues in other forms of documents.

<sup>14</sup> Criminal Code Amendment (War Crimes) Bill 2016, Explanatory Memorandum, pages 3–4.

expire on 1 October 2016. Minor modifications in the remade Regulation included provisions to:

- a. Update phrasing and references throughout the Regulation to conform to current drafting practices,
- b. Provide clarity by inserting a definition of naval vessel, part headings and transitional provisions,
- c. Modernise references to aspects of practice and procedure such as the keeping of records by the Registrar, and
- d. Otherwise preserve the existing arrangements and procedures of the Tribunal.<sup>15</sup>

35. I am satisfied that there was appropriate consultation with my office on the Regulation.

36. If a person (other than a member of the Defence Force) is summonsed to appear as a witness before a Service tribunal, the person is paid such fees and allowances for expenses in relation to the person's attendance that are appropriate and are in accordance with the Public Works Committee Regulations as in force from time to time.<sup>16</sup> On 29 November 2016, the Public Works Committee Regulations 1969 were remade as the *Public Works Committee Regulation 2016*. Consequential changes to the Summary Authority Rules are being progressed.

### **SUPERIOR TRIBUNAL SYSTEM — INTERIM MEASURES**

37. In my Report for 2015 I noted that the superior tribunal system is currently operating under interim measure legislation and that it was critical to maintaining confidence in the administration of military justice in the ADF that a decision be taken in the near term either to make the interim system permanent or to take some other clear legislative course to enhance the independence of judicial officers in the ADF.<sup>17</sup> I also addressed this issue in

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<sup>15</sup> Explanatory Statement to the *Defence Force Discipline Appeals Regulation 2016*, page 1.

<sup>16</sup> Court Martial and Defence Force Magistrate Rules, rule 19; Summary Authority Rules, rule 71.

<sup>17</sup> See paragraphs 17, 39, 84 and 85 of the 2015 Report.

my 2014 Report, and it has been raised to similar effect in the earlier JAG reports of Major General R.R.S. Tracey AM, RDF.

38. When Major General Westwood retires on 21 September 2017 the Interim Measures legislation, which has now for eight years extended the term of office of judicial officers under the former Australian Military Court, will finally cease to have any continuing practical effect. The DFDA provisions that survive past that date only provide for the appointment of a single judicial officer, the CJA, whose office carries the optimal safeguards of independence in execution of the duties of the office. For example, only the CJA will be appointed for a term of office longer than three years and only the CJA's remuneration will be fixed by the Commonwealth Remuneration Tribunal.

39. Public confidence in the administration of fair and impartial justice within the ADF's discipline system is critical. To promote such public confidence it is desirable that a number of other legal officers be appointed as JAs in the ADF with the benefit of these optimal safeguards of independence: long-term non-renewable appointments and remuneration fixed by the Commonwealth Remuneration Tribunal.

40. The DFDA continues to allow the CDF to appoint JAs upon the JAG's nomination. But the existing legislation does not provide optimal safeguards of the independence of such JA appointments: these other JA appointments are only for terms of three years, are renewable and lack the benefit of pay fixed by the Commonwealth Remuneration Tribunal.

41. The near-term passage through the Parliament of legislation supporting the independence of JAs in the discharge of their duties would justly merit the praise of all defence members affected by and who practise within our military discipline system.

## **EFFICIENCY AND EFFECTIVENESS**

42. A number of the topics that are discussed below go directly to the efficiency and effectiveness of the military discipline system. While 'efficiency' and 'effectiveness' are two distinct concepts, for a discipline system to be both fair and just, they must also be considered together. I consider both 'efficiency' and 'effectiveness' to be issues that I am concerned about when reporting on the operation of the military discipline system. It is with that in mind that I welcome any consideration of how to improve timeliness, reduce cost and address unnecessary complexity. For my part, to further enable my monitoring of the operation of the military



discipline system, I have requested various appointments to assist me with the collection of additional data.

### **Military Justice Coordination Committee**

43. As originally constituted, the Military Justice Coordination Committee (MJCC) brought together key military justice stakeholders, including statutory office holders. With time, an issue was identified that resulted in the MJCC not being as effective as hoped — namely, that the Services were usually represented by their legal staff. With the main exception of the Provost Marshal ADF (PM-ADF), the MJCC had become a meeting of senior lawyers and lacked direct command representation.

44. On 09 March 2016, the Chiefs of Staff Committee (COSC) agreed to reconstitute the MJCC as the forum for the development of military justice policy, with Head People Capability as its Chair. The other members of the renewed MJCC are:

- a. HDL,
- b. Inspector-General ADF (IGADF),
- c. Chief of Staff Navy Strategic Command,
- d. Chief of Staff Army Headquarters,
- e. Chief of Staff Air Force Headquarters,
- f. DGADFLS,
- g. DGC, and
- h. Director General Select Strategic Issues Management.

45. The expectation is that the MJCC will be the primary command-oriented body responsible for consideration of military discipline reform prior to presentation to COSC. The first meeting of the renewed MJCC occurred on 12 July 2016. At that meeting Command advanced an increasing perception of the delay, complexity, inaccessibility and the cost of superior and summary Service tribunals. The concerns Command has raised in this way must be rapidly addressed.

46. As JAG I strongly welcome this renewal of the MJCC. The renewed Committee provides an effective vehicle for Command focus on reinvigorating the operations of the superior and summary military justice systems. I have already had detailed discussions with the Chair and other members of the MJCC. These discussions include possible changes the JAG can initiate to the Summary Rules and Court Martial and Defence Force Magistrate Rules and changes to practices that when made should improve access to and reduce delays, complexity and costs in all Service tribunals. I intend to remain closely engaged with the renewed MJCC as it undertakes its important work in the future.

47. To facilitate the work of the MJCC, and to also ensure a forum for the regular meeting of statutory office holders, HDL concurrently advised COSC of his intent to convene a separate forum for the periodic information exchange on military justice legal issues between relevant stakeholders. This separate forum is called the Military Justice Legal Forum (MJLF). The MJLF membership comprises the main statutory office holders and other interested legal stakeholders, as well as the PM-ADF.

48. The reconstituted MJCC and newly-formed MJLF are currently looking closely at the discipline system, examining the role that it plays in maintaining and enforcing Service discipline and ensuring that the discipline system is operating as effectively and efficiently as possible. The focus has been on ensuring that the system is: trusted, contemporary, effective, just and fair, simple, timely, transparent and cost-conscious. There have been two important initiatives flowing from this: improving the timeliness of court martial and DFM proceedings; and reviewing the summary system.

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

49. In response to Command's increased expression of the concerns already indicated, in the first half of 2016, the Registrar of Military Justice conducted a desk-top review of the timeliness of the superior tribunal system. The review looked at only those matters then visible to RMJ, the ones that proceeded to trial before a superior tribunal. Based on the available material, she identified that for about 70% of those matters it took about 23 months from the time a matter came to the attention of proper

authorities in Defence (for example, command or a Defence Investigative Authority) to initial completion.<sup>18</sup>

50. This delay is wholly unsatisfactory. More demanding time standards are imperative for bringing matters to trial in superior tribunals and then completing them. In consultation with the MJCC, RMJ has developed a mechanism for testing tighter time standards. After comprehensive engagement with the Director of Military Prosecutions (DMP), the Director of Defence Counsel Services (DDCS), Defence Legal (DL) and the PM-ADF, CDF was briefed and his support obtained for a test period in which the goal would be to complete 70% of matters in 12 months. This test period commenced on 1 October 2016 and will run until 31 December 2017.

51. While it is early in the test period, initial indications of increased timeliness are positive. The RMJ monthly report<sup>19</sup> will be modified in 2017 to report against the new time standards and track progress. I firmly commend the Registrar for her proactive development of these new time standards and am pleased all other participants in the disciplinary system are working together to improve timeliness.

52. The issue of reducing delay in hearings and procedural efficiency in courts martial and DFM trials highlights my concern that the form of the DFDA legislation has fallen well behind civilian best practice. For example in New South Wales the *Criminal Procedure Act 1986* Chapter 3, Part 3, Division 3 makes extensive provision for steps to reduce delay and inefficiency in the conduct of criminal trials. Such provisions have long been used in civilian criminal courts and with appropriate adaptation to the Services can and should readily be included in the DFDA.

### **Summary Discipline System Review**

53. An early outcome of the renewed MJCC was the identification that it would be timely, as an ongoing business improvement measure, to conduct a review of the efficiency and effectiveness of the summary discipline system — noting that the superior tribunal system had already been the

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<sup>18</sup> Initial completion being either a dismissal or finding of not guilty on all charges, or completion of the automatic review of a guilty finding.

<sup>19</sup> See Annex P.

subject of recent review and various policy proposals have been the subject of Ministerial correspondence in 2015 and 2016.

54. Commodore Nigel Perry, RANR has been appointed to lead a Summary Discipline System Review, with assigned staff and legal support. The Review is due to report to the MJCC by July 2017.

55. I was appropriately consulted during the preliminary phase to establish the Review. I have subsequently personally met with the Review team, as have the CJA, RMJ and Group Captain Ian Henderson. I have offered them my ongoing availability to consult with them to assist their Review in 2017.

### **Reviews and Petitions of Guilty Findings**

56. Currently, all guilty findings are subject to automatic review by command. This is consistent with the purpose and constitutional basis for a military discipline system.

57. A member may:

- a. Also lodge a petition for review by a reviewing authority, and
- b. Request further review by either CDF or a Service Chief.

58. At each stage, a legal report is required. A member also has a right to appeal to the DFDAT, although only with respect to a conviction or prescribed acquittal (that is, not with respect to punishment or related orders).

59. I am concerned that three levels of internal review accompanied by an external appeal process no longer, if it ever did, represents best practice. I believe this is an issue that will need to be further considered. In the meantime, it is my intention to:

- a. Appoint additional legal officers of suitable experience to assist in the timely completion of legal reports on superior tribunal proceedings in connection with the automatic review process or on petition for review; and
- b. Where a petition concerning conviction at either the summary and superior tribunal level is being considered, encourage the timely lodging of petition so that a single reviewing authority can

complete both the automatic review and the petition, accompanied by a single legal report.

## **REVIEW OF DFDA PART VI - INVESTIGATION OF SERVICE OFFENCES**

60. Part VI of the DFDA concerns the investigation of Service offences. Part VI was a late addition to the DFDA in 1984. The Defence Legislation Amendment Bill 1984 enacted into the DFDA provisions of the Criminal Investigation Bill 1981. It was originally intended that the provisions of the (expected to be legislated) *Criminal Investigation Act 1982* would apply by way of incorporation into the DFDA, subject to suitable modifications. This legislative approach potentially had numerous advantages, including that the DFDA provisions would automatically be amended as and when the incorporated legislation was amended.

61. Unfortunately the potential advantages never materialised as the Criminal Investigation Bill 1981 lapsed when Parliament was dissolved in 1983. In the intervening years, Part VI DFDA has not been significantly amended, with the result that both the investigative powers and authorities granted to investigating officers, and the safeguards granted to ADF members, have not necessarily kept pace with changes in comparable civilian jurisdictions.

62. DL and the PM-ADF are conducting a thorough review of Part VI. This is most welcome and has my support.

## **DEVELOPMENTS OVERSEAS**

63. The Supreme Court of Canada continues to be a source of helpful comparative jurisprudence. In *R v Cawthorne*, 2016 SCC 32, the Supreme Court of Canada considered whether a power by the Minister of National Defence to appeal to the Court Martial Appeal Court of Canada or to the Supreme Court of Canada was unconstitutional. The main issue was whether such appeal powers under the National Defence Act were consistent with the Canadian Charter of Rights and Freedoms because they allow appeals to be initiated by the Minister of National Defence, whom it was alleged was not an 'independent prosecutor'.

64. Relevantly, the Supreme Court held that:

- a. Prosecutors must not act for improper purposes, such as purely partisan motives; and

- b. There was nothing within the statutory scheme created by the National Defence Act, nor in evidence before the Court, to suggest that the Minister had acted, or was required to act, for any improper purposes that were not for the public good.

65. Accordingly, the decision affirmed the constitutionality of the current framework for 'Crown appeals' within the Canadian military justice system.

### **Australian position**

66. There is currently no right of prosecution appeal from decisions at first-instance by a summary authority, court martial panel or DFM. There is a right for CDF or a Service Chief to appeal from decisions of the DFDAT to the Full Court of the Federal Court on a question of law.<sup>20</sup> The usual right of appeal from a decision of the Federal Court to the High Court, with special leave, is also available.<sup>21</sup>

67. As these rights of appeal by CDF or a Service Chief have never been the subject of legal challenge, the decision of the Supreme Court of Canada is a useful analysis of the legal issues associated with a right of appeal vested in someone other than a statutorily independent prosecutor or an attorney-general.

### **RMJ'S PERFORMANCE MEASURES**

68. The 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 2016 is included at Annex Q.<sup>22</sup>

69. As I indicated at paragraph 47, the RMJ monthly report will be modified in 2017 to report against the new timeline benchmarks and track progress during the 2017 test period.

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<sup>20</sup> *Defence Force Discipline Appeals Act 1955*, s.33.

<sup>21</sup> *Federal Court of Australia Act 1976*, s.33.

<sup>22</sup> The apparent difference between these figures and the statistics forming part of this report is explained at paragraph 80.

## **DIRECTOR OF MILITARY PROSECUTIONS**

70. The DMP is appointed under DFDA s.188GF. Brigadier Woodward continued as DMP during the reporting period. The DMP reports separately.<sup>23</sup>

## **DIRECTOR DEFENCE COUNSEL SERVICES**

71. As foreshadowed in my Report for 2015,<sup>24</sup> Colonel Arun Lambert CSC replaced Colonel Russell Pearce as the DDCS at the start of the reporting period. DDCS reports separately.

## **INSPECTOR GENERAL AUSTRALIAN DEFENCE FORCE**

72. In my 2015 Report,<sup>25</sup> I noted that Mr Geoff Earley AM completed his term as IGADF in December 2015 and that Brigadier James Morgan Gaynor CSC would be acting IGADF until a replacement was appointed. As it transpired, Brigadier Gaynor was subsequently selected and appointed, following his resignation from the Army, as IGADF with effect 1 December 2016. Mr Gaynor has extensive experience in discipline matters and I look forward to working with him in his new role.

## **DISCIPLINE LAW TRAINING**

### **Discipline law Training for ADF personnel**

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

#### **Single-Service**

74. 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>23</sup> DFDA s. 196B.

<sup>24</sup> Paragraph 64.

<sup>25</sup> Paragraph 66.

- a. **Navy:** Military justice training occurs on recruit/initial officer courses and on promotion courses for both non-commissioned officers (NCOs) and officers.
- b. **Army:** Military justice training occurs on recruit/initial officer courses and on promotion courses for both NCOs and officers.
- c. **Air Force:** Military justice training occurs on recruit/initial officer courses, Professional Military Education and Training courses for both NCOs and officers, and as stand-alone training (for example, prosecuting/defending officer courses).

### **Pre-Command Training**

75. 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.

76. In 2016, the military justice training on pre-command course was as follows:

- a. **Navy:** Five courses instructed, with an approximate total of 92 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 64 students comprising officers appointed to command units or formations.
- c. **Air Force:** Three courses instructed, with an approximate total of 58 students comprising officers appointed to command, Executive Officer, Detachment Commander, Chief instructor and Executive Warrant Officer positions.



### Vice Chief of the Defence Force Group

77. 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 2016 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 2016 the following number of personnel completed online training:
  - (i) Clerk (course ID 00004077) – 136 personnel
  - (ii) Defending Officer (course ID 00003925) – 616 personnel
  - (iii) Discipline Officer (course ID 00004036) – 680 personnel
  - (iv) Investigating Officer (course ID 00003491) – 703 personnel
  - (v) Prosecuting Officer (course ID 00003933) – 601 personnel
  - (vi) Recorder (course ID 00004022) – 620 personnel
  - (vii) Relevant Officer (course ID 00004023) – 664 personnel
  - (viii) Summary Authority (course ID 00003923) – 502 personnel

### Training for ADF Legal Officers

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

79. **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 2016, 20 ADF legal officers attended the LTM1 course (as well as one graduate Australian Public Service (APS) lawyer, one administrative APS personnel and one overseas military legal officer, all from Defence Legal).

80. **Legal Training Module 2 (LTM2).** This is a graduate certificate level course undertaken by ADF legal officers, which is normally conducted within four years post LTM1. The course consists of four graduate level subjects (Military Discipline Law, Military Administrative Law, Military Operations Law, and Military Legal Practice). During the reporting period, 27 students completed the Military Discipline Law subject. Twenty four students completed the Military Legal Practice subject, which includes the practice of advocacy before Service tribunals.

81. **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 officers without an existing master of laws degree must complete a further four electives from an approved list. During the reporting period, the Advanced Military Discipline Law subject did not run. It will be run in 2017.

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

82. 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**

83. The statistics for summary trials and the Discipline Officer scheme conducted by the three Services during 2016 are set out in Annexes A to I. As was indicated in the report for 2005,<sup>26</sup> 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.

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<sup>26</sup> Paragraphs 95–6.

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

85. 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**

86. As in previous years, I had regular discussions with legal officers, both permanent and reserve, and senior commanders from the three Services. I also held the annual JAG Conference on Saturday 19 November 2016. Attendees included the CJA, DJAGs, JAs/DFMs and RMJ. The substance of the matters discussed is reflected elsewhere in this report.

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

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

### **CONCLUSION**

88. I am particularly gratified to see the work being done by the RMJ and others to monitor and improve the timeliness of superior tribunal proceedings. It is pleasing to see that significant good work continues on administering the discipline system, as well as making such improvements as can be made without legislative change. I am concerned, though, that the current interim arrangements for trial by court martial and DFM have not been resolved.

89. I have made a number of observations and comments about the interim arrangements in this and previous Reports. To date I have said that while the interim arrangements operated satisfactorily day-to-day, there was nonetheless an urgent need for a decision so as to move beyond the 'interim' system brought in back in 2009. As well as allowing Defence members to have confidence in the system, as I have kept noting, Major General Westwood's appointment as CJA expires on 21 September 2017

and he cannot be extended.<sup>27</sup> There is also a pressing need to appoint one or more full-time JAs and DFMs to maintain the preferable mix of permanent and reserve officers, and this is constrained until appropriate terms and conditions are enabled by legislation.

90. It is highly desirable for this issue to be addressed as a matter of priority.

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<sup>27</sup> Indeed, previously he graciously agreed to continue serving beyond his own preferred retirement date to allow a proper process for succession.

## 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
APS	Australian Public Service
CDF	Chief of the Defence Force
CJA	Chief Judge Advocate
CO	Commanding Officer
COSC	Chiefs of Staff Committee
DDCS	Director of Defence Counsel Services
DFDA	<i>Defence Force Discipline Act 1982</i>
DFDAT	Defence Force Discipline Appeal Tribunal
DFM	Defence Force Magistrate
DGADFLS	Director General Australian Defence Force Legal Services
DGC	Defence General Counsel
DJAG	Deputy Judge Advocate General
DL	Defence Legal
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
MJCC	Military Justice Coordination Committee

MJLF	Military Justice Legal Forum
MLC	Military Law Centre
NCOs	Non Commissioned Officers
PM-ADF	Provost Marshal Australian Defence Force
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, 9-13, 15, 20-22
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: 14
Activities and Reports	Paragraphs: 80
Operational Problems	Paragraphs: 27-62
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 2016

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					2	3			3	3	1	
February					11	18	1	2	7	7		1
March					18	22	2		13	13	1	1
April					5	18			7	8	1	1
May					6	5	2	2	12	9	4	3
June					5	5			15	14	3	1
July					11	20	3	1	11	12	1	
August					9	13			17	19	1	2
September					7	10		2	8	7	2	
October					5	6			11	13		
November					10	9	6		10	12	2	
December					2	7			5	6		
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>91</b>	<b>136</b>	<b>14</b>	<b>7</b>	<b>119</b>	<b>123</b>	<b>16</b>	<b>9</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>										25
24	2	2				1	6			46
25										3
26						1				12
27		2					2			4
29	3	2		9		6	8			43
30										
31										
32							1			
33(a)						1				4
33(b)										1
33(c)										
33(d)										
34							1			
35										1
36										
36A										
36B	1	2								
37						1				4
38										
39										
40										2
40A										2
40B										
40C										
40D							1			7
41										
42										
43										2
44										
45										1
46										
47C	2									
47P										
47Q										4
48										
49										
50										
51										
53										
54										
54A										
55						2				3
56										
57										
58										
59										
60	3			1		3	3			26
61				1						1
<b>TOTAL</b>	<b>11</b>	<b>8</b>	<b>0</b>	<b>11</b>	<b>0</b>	<b>15</b>	<b>22</b>	<b>0</b>	<b>0</b>	<b>191</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	2			7		2	5			31
Conditional conviction without punishment										4
Unconditional conviction without punishment	1						2			4
Severe reprimand	1						3			18
Extra duties										7
Extra Drill										1
Stoppage of leave		3								16
Restriction of privileges		1					1			65
Suspended fine	1			1		4				8
Fine Less than 14 Days Pay	10	8		3		8	11			85
Fine More than 14 Days Pay							1			
Forfeiture of service for purposes of promotion										
Forfeiture of seniority				1		2	2			
Reduction in rank				1			4			
Suspended detention										
Committed detention										9
<b>TOTAL</b>	<b>15</b>	<b>12</b>	<b>0</b>	<b>13</b>	<b>0</b>	<b>16</b>	<b>29</b>	<b>0</b>	<b>0</b>	<b>248</b>

ARMY  
JANUARY-DECEMBER 2016

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	4			10	14	1	
February					5	7			24	25		1
March					10	14			54	61	1	
April					18	21		1	63	65	2	1
May	3	3			17	19			62	69	1	1
June					15	21	6		56	72		2
July	1	1			10	12			44	47		
August	1	1			22	35			71	78	2	5
September	1	1			16	18			75	86	1	2
October					25	36	1	1	68	76	2	1
November	1	1			30	43	2		80	89	6	1
December	1	1			10	12	1	1	51	60	1	
<b>TOTAL</b>	<b>8</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>181</b>	<b>242</b>	<b>10</b>	<b>3</b>	<b>658</b>	<b>742</b>	<b>17</b>	<b>14</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		5					3	1		16
24		2				1	7	4		62
25										5
26						1	11	2		48
27		2				1	9	2		60
29	12	32	1	3		4	36	14		161
30										
31										1
32										7
33(a)										4
33(b)						1	1			4
33(c)										
33(d)						1	1	2		
34	2		1	1						1
35		1					4	1		10
36								1		
36A		1					1	1		4
36B	13	32	1	1		5	7	12		182
37		2								8
38										
39										
40	1									
40A										2
40B										
40C						1	1			1
40D						1	1			3
41										
42										
43							1			7
44										3
45								1		2
46										
47C										4
47P										
47Q							1			1
48										
49										
50										
51										
53										
54										
54A										
55						2	2	1		9
56						1	1			
57										
58										
59							1			1
60	2	3				9	18	7		84
61										1
<b>TOTAL</b>	<b>30</b>	<b>80</b>	<b>3</b>	<b>5</b>	<b>0</b>	<b>28</b>	<b>106</b>	<b>49</b>	<b>0</b>	<b>691</b>

## PUNISHMENTS IMPOSED BY RANK ON MEMBERS OF THE ARMY BEFORE SUMMARY AUTHORITIES

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Reprimand	12			1		8	27	10		47
Conditional conviction without punishment		3				1	6			11
Unconditional conviction without punishment	1									
Severe reprimand		1	1			4	15	4		18
Extra duties								1		38
Extra drill		1								19
Stoppage of leave		10								37
Restriction of privileges		52					2			334
Suspended fine			1			2	1	4		8
Fine Less than 14 Days Pay	26	27	3	5		15	55	35		342
Fine More than 14 Days Pay		1					3			3
Forfeiture of service for purposes of promotion										
Forfeiture of seniority	1					4	5			
Reduction in rank						1	9	4		3
Suspended detention										
Committed detention										19
<b>TOTAL</b>	<b>40</b>	<b>95</b>	<b>5</b>	<b>6</b>	<b>0</b>	<b>35</b>	<b>123</b>	<b>58</b>	<b>0</b>	<b>879</b>

AIR FORCE  
JANUARY-DECEMBER 2016

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

	SUPERIOR SUMMARY AUTHORITY				COMMANDING OFFICER				SUBORDINATE SUMMARY AUTHORITY			
	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED
		GUILTY	N.G.			GUILTY	N.G.			GUILTY	N.G.	
January												
February				1	3							
March				6	7			6	6			
April				4	6	1		6	5	6		
May				1		2		7	7			1
June				4	4	2		10	15			
July				1		1		1		1		
August				2	4			4	4			
September				1	2			7	8	2		
October				2	2			4	5			
November				1	2							
December				2	5			2	4	1		
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>25</b>	<b>35</b>	<b>6</b>	<b>0</b>	<b>47</b>	<b>54</b>	<b>10</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
24							1			6
25										1
26							2			1
27		1								4
29		2				4	2			27
30										
31										
32										
33(a)										1
33(b)										3
33(c)										
33(d)										
34										
35										
36										
36A										1
36B	2	5					1			
37	1						1			
38										
39										
40										1
40A										1
40B										
40C										
40D										
41										
42										
43	1									2
44						1				
45										
46										
47C										
47P										
48										
49										
50										
51										
53										
54										
54A										
55										
56										
57										
58										
59										
60										
61						2	1			13
TOTAL	4	8	0	0	0	7	8	0	0	62



**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					4			6
Conditional conviction without punishment										1
Unconditional conviction without punishment										6
Severe reprimand						2	1			5
Extra duties										2
Extra drill		2								1
Stoppage of leave		4								6
Restriction of privileges		1								14
Suspended fine							2			1
Fine Less than 14 Days Pay	3	6				6	4			24
Fine More than 14 Days Pay										
Forfeiture of service for purposes of promotion										
Forfeiture of seniority						1				
Reduction in rank										
Suspended detention										
Committed detention										
<b>TOTAL</b>	<b>3</b>	<b>14</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>9</b>	<b>11</b>	<b>0</b>	<b>0</b>	<b>66</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	0	0	0	0	5	7	0	0	13	17	2	0
February	0	0	0	0	17	28	1	2	31	32	0	2
March	0	0	0	0	34	43	2	0	73	80	2	1
April	0	0	0	0	27	45	1	1	76	78	9	2
May	3	3	0	0	24	24	4	2	81	85	5	5
June	0	0	0	0	24	30	8	0	81	101	3	3
July	1	1	0	0	22	32	4	1	56	59	2	0
August	1	1	0	0	33	52	0	0	92	101	3	7
September	1	1	0	0	24	30	0	2	90	101	5	2
October	0	0	0	0	32	44	1	1	83	94	2	1
November	1	1	0	0	41	54	8	0	90	101	8	1
December	1	1	0	0	14	24	1	1	58	70	2	0
<b>TOTAL</b>	<b>8</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>297</b>	<b>413</b>	<b>30</b>	<b>10</b>	<b>824</b>	<b>919</b>	<b>43</b>	<b>24</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 2016

DISCIPLINE OFFICER STATISTICS

Infringement	Number
Section 23	309
24	176
27	167
29	884
32(1)	3
35	27
60	81
<b>TOTAL (1)</b>	<b>1647</b>

Action Taken	Number
<b>Punishment Imposed - Fine</b>	328
ROP	171
SOL	226
Extra Duties	208
Extra Drill	17
Reprimand	598
No Punishment Imposed	89
Referred to an Authorised Member	10
<b>TOTAL (1)</b>	<b>1647</b>

**ARMY**  
**JANUARY-DECEMBER 2016**  
**DISCIPLINE OFFICER STATISTICS**

<b>Infringement</b>	<b>Number</b>
<b>Section 23</b>	263
<b>24</b>	266
<b>27</b>	624
<b>29</b>	1319
<b>32(1)</b>	31
<b>35</b>	95
<b>60</b>	310
<b>TOTAL (1)</b>	<b>2908</b>

<b>Action Taken</b>	<b>Number</b>
<b>Punishment Imposed - Fine</b>	309
<b>ROP</b>	1157
<b>SOL</b>	383
<b>Extra Duties</b>	364
<b>Extra Drill</b>	202
<b>Reprimand</b>	384
<b>No Punishment Imposed</b>	87
<b>Referred to an Authorised Member</b>	22
<b>TOTAL (1)</b>	<b>2908</b>

**AIR FORCE  
JANUARY-DECEMBER 2016  
DISCIPLINE OFFICER STATISTICS**

<b>Infringement</b>	<b>Number</b>
<b>Section 23</b>	43
<b>24</b>	24
<b>27</b>	61
<b>29</b>	217
<b>32(1)</b>	9
<b>35</b>	14
<b>60</b>	44
<b>TOTAL (1)</b>	<b>412</b>

<b>Action Taken</b>	<b>Number</b>
<b>Punishment Imposed - Fine</b>	120
<b>ROP</b>	53
<b>SOL</b>	34
<b>Extra Duties</b>	50
<b>Extra Drill</b>	11
<b>Reprimand</b>	123
<b>No Punishment Imposed</b>	16
<b>Referred to an Authorised Member</b>	5
<b>TOTAL (1)</b>	<b>412</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 2016

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	1	1		
February											1	1			1
March											2	1	3		2
April											1	1			1
May											1	2			
June											2	2	61		1
July											2	30	1		
August											1	7			
September															
October															
November						1				6					
December											1	2			
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>12</b>	<b>47</b>	<b>66</b>	<b>0</b>	<b>5</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									1	
26										
27										
28										
29										
30										
31										
32										
33(a)									1	
33(b)										
33(c)										
33(d)										
33A										
34						1	1			
35										
36										
36A										
36B										
37										
38										
39										
40										
40A										
40C										
40D										
41										
42										
43										
44										
45										
46										
47C										
47P										
47Q										
48										
49										
50										
51										
52										
53										
54										
55										
56										
57										
58										
59										
60	3						2			
61	30						1		7	
TOTAL	33	0	0	0	0	1	4	0	9	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 NAVY  
FOR COURTS MARTIAL AND DEFENCE FORCE MAGISTRATES**

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Reprimand										
Conditional conviction without punishment										
Unconditional conviction without punishment							1			
Severe reprimand									2	
Suspended fine										
Fine Less than 14 Days Pay						1			2	
Fine More than 14 Days Pay										
Forfeiture of service for purposes of promotion										
Forfeiture of seniority	1					1				
Reduction in rank	2						1			
Suspended detention									2	
Committed detention									2	
Dismissal	30								7	
Imprisonment										
<b>TOTAL</b>	<b>33</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>15</b>	<b>0</b>

ARMY

JANUARY-DECEMBER 2016

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	12			
March											1		2		
April						1		2			3	2	1		
May											1	1	1		
June						1	11	17			1	1			
July															
August											2	1	1		
September											4	7	2	2	5
October											1	2			2
November											2	6	1		1
December											2	5	5		
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>11</b>	<b>19</b>	<b>0</b>	<b>0</b>	<b>18</b>	<b>37</b>	<b>13</b>	<b>2</b>	<b>8</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				1						
28										
29										
30										
31										
32										
33(a)	1						1			
33(b)							1			
33(c)										
33(d)										
33A										
34						1	1			
35										
36										
36A										
36B										
37										
38										
39										
40										
40A										
40C										
40D										
41										
42										
43										
44										
45										
46										
47C										
47P										
47Q										
48										
49										
50										
51										
52										
53										
54										
55										1
56			2							1
57										
58										
59										
60	1		1	2			4			
61	1		2	9		6	2			12
TOTAL	3	0	5	12	0	7	9	0	0	14

**Details of Quashed Convictions**

<b>DFDA Sect</b>	<b>Rank</b>	<b>Short Summary of Offence</b>	<b>Reason for quashing</b>
61 60	CPL CPL	Act of indecency without consent Prejudicial conduct	Conviction was unsound at law Conviction was unsound at law

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

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Reprimand				6						
Conditional conviction without punishment				1						
Unconditional conviction without punishment										
Severe reprimand	1		1	4		5	1			
Suspended fine				1						
Fine Less than 14 Days Pay	1			1		6	2			
Fine More than 14 Days Pay	1		1			1	1			
Forfeiture of service for purposes of promotion										
Forfeiture of seniority			1				1			
Reduction in rank			3			1	1			
Suspended detention										2
Committed detention										
Dismissal	1						3			12
Imprisonment										
<b>TOTAL</b>	<b>4</b>	<b>0</b>	<b>6</b>	<b>13</b>	<b>0</b>	<b>13</b>	<b>9</b>	<b>0</b>	<b>0</b>	<b>14</b>

AIR FORCE  
JANUARY-DECEMBER 2016

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															
April															
May															
June											1				2
July											1	1			2
August											3	14	5		
September															
October											2	4			1
November											2	6			1
December											1	4			1
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>11</b>	<b>29</b>	<b>10</b>	<b>0</b>	<b>11</b>



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

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Sect 23										
24										
25							2		1	
26										
27										
28										
29										
30										
31										
32										
33(a)										
33(b)										
33(c)										
33(d)										
33A	1									
34							1			
35										
36										
36A										
36B										
37										
38										
39										
40										
40A										
40C										
40D										
41										
42										
43										
44										
45										
46										
47C										
47P										
47Q										10
48										
49										
50										
51										
52										
53										
54										
55									1	
56										
57										
58										
59										
60	1								6	
61						2	1		3	
TOTAL	2	0	0	0	0	2	4	0	11	10

**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						2				
Suspended fine	2								1	
Fine Less than 14 Days Pay	2								6	
Fine More than 14 Days Pay										
Forfeiture of service for purposes of promotion										
Forfeiture of seniority									1	
Reduction in rank						2	4			
Suspended detention							1		2	
Committed detention									3	10
Dismissal from ADF										
Imprisonment										
<b>TOTAL</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>5</b>	<b>0</b>	<b>13</b>	<b>10</b>

COMBINED JANUARY - DECEMBER 2016

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	1	1	1	0	0
February	0	0	0	0	0	0	0	0	0	0	2	13	0	0	1
March	0	0	0	0	0	0	0	0	0	0	3	1	5	0	2
April	0	0	0	0	0	1	0	2	0	0	4	3	1	0	1
May	0	0	0	0	0	0	0	0	0	0	3	3	1	0	2
June	0	0	0	0	0	1	11	17	0	0	4	3	66	0	5
July	0	0	0	0	0	0	0	0	0	0	3	31	1	0	2
August	0	0	0	0	0	0	0	0	0	0	6	22	6	0	0
September	0	0	0	0	0	0	0	0	0	0	4	7	2	2	5
October	0	0	0	0	0	0	0	0	0	0	3	6	0	0	3
November	0	0	0	0	0	1	0	0	0	6	4	12	1	0	2
December	0	0	0	0	0	0	0	0	0	0	4	11	5	0	1
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>11</b>	<b>19</b>	<b>0</b>	<b>6</b>	<b>41</b>	<b>113</b>	<b>89</b>	<b>2</b>	<b>24</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  
Group Captain Ian Henderson AM  
Lieutenant Colonel Michael Cowen QC  
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  
Group Captain Gordon Lerve

# OFFICE OF THE REGISTRAR OF MILITARY JUSTICE REPORT FOR THE PERIOD JANUARY - DECEMBER 2016

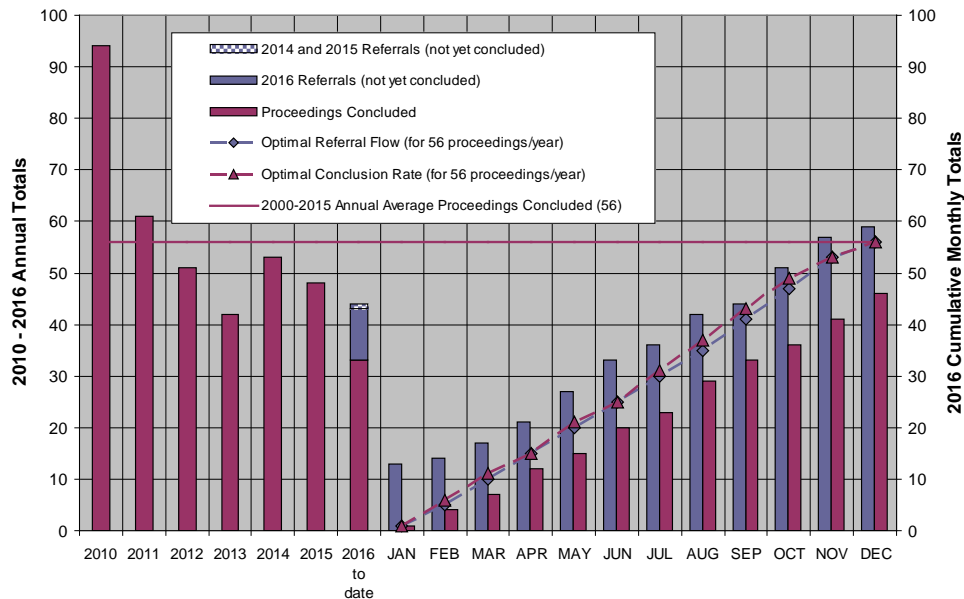
Current wef COB 31 Dec 16

## 1. ORMJ Process

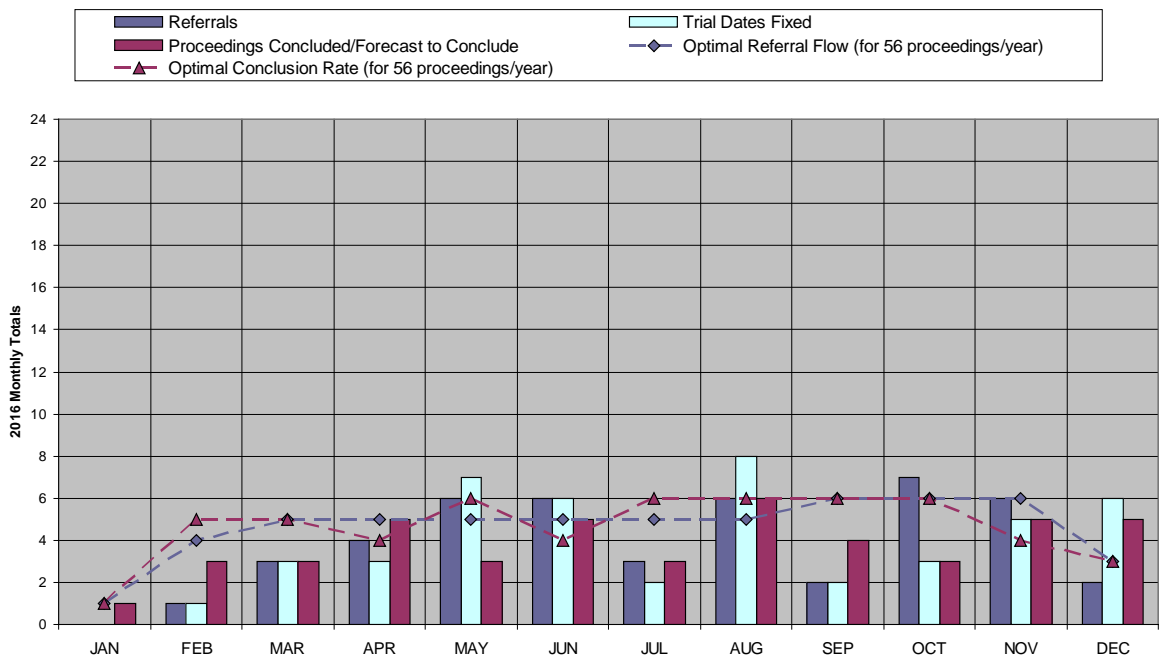
- The RMJ's powers are triggered upon receipt of a referral from the DMP.
- RMJ aims to list the proceedings (fix a date) within two weeks and commence the proceedings within three months (see Item 4 KPIs for details of indicators and performance against these indicators).

## 2. Court Martial and Defence Force Magistrate Proceedings\*

### Court Martial and Defence Force Magistrate Proceedings



### 2016 Monthly Workflow





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

- **Number of referrals carried over from 2014: 1.** This matter is currently stayed pending the outcome of an appeal to the Defence Force Discipline Appeal Tribunal (DFDAT). It is anticipated that DFDAT's decision will be handed down in early 2017.
- **Number of referrals carried over from 2015: 12.** This is higher than desirable (a maximum of 10). All 12 were listed prior to the end of 2015, 2 commenced in 2015, all have now been finalised
- **Number of referrals for 2016 to date: 46.**
- **Total referrals dealt with during 2016 to date: 59.** None of these involve co-accused.

**LISTINGS**

- **Number of referrals listed (includes proceedings concluded, part-heard & pending commencement): 59/59.** Of these, 46 have already concluded, 1 is part-heard and on hold pending the outcome of the DFDAT appeal, 1 is part heard and expected to conclude next year and this year, 1 is listed to commence and expected to conclude this year, 1 is listed to commence this year but is not expected to conclude until next year and 11 are listed for the new year.
- **Number of referrals awaiting listing: Nil.**

**PROCEEDINGS**

- **Number of proceedings concluded: 46/59.** Of the 46 proceedings concluded, none involved co-accused. Of the 46 proceedings concluded, 3 were concluded as a result of all charges being withdrawn after the proceedings commenced but prior to the accused person being arraigned. Accordingly, 43 proceedings, involving 43 accused persons, have proceeded to finding.
- **Number of proceedings part heard: 2/59.** One of these is the matter on hold pending a DFDAT appeal. The other commenced in Dec 16 and is expected to conclude in Jan 17.
- **Number of proceedings listed but pending commencement: 11/59.** Of the 11, 1 is listed to commence and expected to conclude in Jan 17, 1 is listed to commence in Jan 17 and expected to conclude in Feb 17, 6 are listed to commence and expected to conclude in Feb 17, 1 is listed to commence in Feb 17 and expected to conclude in Mar 17, and 2 are listed to commence and expected to conclude in Mar 17.

**WORKLOAD/WORKFLOW**

- **New listings.** There are still listings available in December, however, it is unlikely that matters pending listing or new referrals will be listed during this time due to the impact of stand down and the need to provide sufficient time for defence preparation.
- **Workload.** The total number of referrals for 2016 to date (59) is above the forecast\* (56), and the number of matters concluded (46) is well below the forecast\* (56).
- **Workflow.** Leaving aside the 13 referrals carried over from 2014 and 2015, and the fact that the number of referrals received in May, Jun and Aug was above forecast\* (5 forecast, 6 received) and October (7 received; 5 forecast\*), the number of referrals received this year to date (46) is well below the forecast\* (56).

**PERFORMANCE**

- **Performance against KPI.** Performance against both KPI is 'green'.

\* **Note:** The forecasts are based on the average of 56 concluded proceedings per year since 2000, 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
Within two weeks of receipt of referral from DMP or appointment of defending officer by DDCCS (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 style="text-align: center;"><b>90%</b></p> <p style="text-align: center;">Average: 5.34 days</p> <p style="text-align: center;">Number of matters NOT listed within two weeks: 6/59</p>	<ul style="list-style-type: none"> <li>- A delay of concern is classified as a delay of more than two weeks (i.e. two weeks in addition to the two weeks envisaged by the KPI).</li> <li>- There are no delays of concern (the 6 delays are 2 x 14 days, 10 days, 6 days, 3 days and 2 days).</li> </ul>
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 style="text-align: center;"><b>83%</b></p> <p style="text-align: center;">Average: 2.12 months</p> <p style="text-align: center;">Number of matters NOT commenced/commencing within three/four months: 9/59</p>	<ul style="list-style-type: none"> <li>- A delay 'of concern' is classified as a delay of more than one month (i.e. in addition to the three/four months envisaged by the KPI). <b>There are 3 delays of concern,</b> one of 6 weeks and two of 5 weeks. Two are due to a combination of the length/complexity of proceedings and availability of counsel and the other due to the availability of counsel. The other six delays are 25 days, 14 days, 10 days, 7 days and 2 x 5 days (i.e. relatively short delays).</li> </ul>