

Additional Estimates: February 2023  
Last updated: 14 February 2023  
Key witness: Air Commodore Ian Henderson

PDR No: SB23-000316  
Military Prosecutions

## Military Prosecutions

**Handling Note:** Director of Military Prosecutions, Air Commodore Ian Henderson to lead on all issues.

### Key Messages

- The Director of Military Prosecutions is an independent statutory office holder responsible for making decisions on the more serious allegations of breaches of service discipline.
- The Director of Military Prosecutions is also responsible for conducting prosecutions before superior service tribunals: namely, general and restricted courts martial, and Defence Force magistrates.
- The Director of Military Prosecutions operates independently of, and free from, command or other influence.
- In this respect, the Director of Military Prosecutions performs a similar function for military prosecutions as Directors of Public Prosecution do for criminal prosecutions.
- Prosecutions before superior service tribunals are conducted to promote good order and discipline; and as such, the military discipline system is complementary to the civilian criminal jurisdiction, whose general purpose is to punish those guilty of criminal conduct.

### Talking Points

- Defence has an internal military discipline system to promote and maintain good order and discipline.
- The *Defence Force Discipline Act 1982* provides 3 mechanisms for dealing with alleged breaches of discipline, in increasing order of severity, as follows:
  - Minor discipline matters, for a limited range of infractions with limited powers of punishment, can be dealt with under an Infringement Scheme.
  - Next, a slightly larger range of service offences with greater but still relatively limited powers of punishment can be dealt with at the unit-level by a summary authority.
  - Finally, any service offence, with the potential to award any punishment up to the maximum available for that offence, can be dealt with by a superior service tribunal.
- Superior service tribunals comprise general and restricted courts martial, and Defence Force magistrates.

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- The Director of Military Prosecutions is responsible for prosecutions before superior service tribunals.
- Where a matter is with the Director of Military Prosecutions, the Director can (in most cases):
  - Direct that a matter not proceed, which brings the disciplinary aspects of a matter to an end
  - Prefer charges and send those charges to be tried by a summary authority
  - Prefer charges and request the Registrar of Military Justice to arrange trial by a general court martial, restricted court martial or Defence Force magistrate.

## Background

- The position of Director of Military Prosecutions (DMP) was established under the *Defence Force Discipline Act 1982* (DFDA) on 10 July 2006. The DMP is an independent statutory office holder appointed by the Minister for Defence and makes decisions on whether or not to prosecute, free from command or other influence.
  - Noting, however, that the DMP cannot prosecute certain serious charges (such as treason, murder, manslaughter, bigamy and aggravated sexual assaults) if allegedly committed inside Australia, without the consent of the Commonwealth Director of Public Prosecutions.
- The DMP prosecutes members of the Australian Defence Force (and limited other groups) accused of committing offences under the DFDA before superior service tribunals.
  - The DMP is also responsible for the conduct of appeals on behalf of Service chiefs before the Defence Force Discipline Appeal Tribunal.
- Noting the potential for overlap between the military discipline system and the civilian criminal jurisdiction, a Memorandum of Understanding was signed by the inaugural DMP with the then Commonwealth, State and Territory Directors of Public Prosecution in 2007.
- A matter falls for consideration by the Office of the Director of Military Prosecutions (ODMP) when:
  - A brief of evidence is received from the service police or a unit-level investigation;
  - A referral from a commanding officer, a person superior in command to a commanding officer, or a superior summary authority; or
  - In certain cases, by the election of an accused person from the summary level.
- The DMP then decides whether to proceed with a prosecution; and if so, what charges to prefer and to choose the mode of trial.

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- Like the civilian Directors of Public Prosecution, the DMP makes their policy publicly available ([DMP Prosecution Policy](#)). The latest version of that prosecution policy was signed on 23 December 2021 by the current DMP.
- The caseload for the ODMP in 2021, which was reasonably typical, was 152 matters. Those cases were managed as follows:
  - 47 were directed not to be proceeded with
  - 29 were referred for trial by summary authority
  - 50 were referred for trial by Defence Force magistrate
  - 2 were referred for trial by restricted court martial
  - 31 were carried over to 2022.
- Note, the number of cases managed in 2021 does not equal 152 due to the way matters 'in' are counted compared with matters 'out'. For example, one brief of evidence 'in' might generate two or more matters 'out'.

## Supporting Information

### Questions on Notice

- None.

### Freedom of Information (FOI) Requests

- None.

### Recent Ministerial Comments

- None.

### Relevant Media Reporting

- While there is regular reporting on individual trials (see Attachment 2 to PDR No: SB23-000050 Sexual Misconduct), there has been no recent media reporting on 'military prosecutions' as such.

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<b>Consultation:</b> Nil	
<b>Cleared by CFO / DPG / DSR:</b> N/A	
<b>Cleared by Deputy Secretary (or equivalent Band 3/3*):</b> <b>Date:</b> 13 February 2023 Matt Yannopoulos, Associate Secretary, Associate Secretary Group	

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