



OFFICIAL

# JUDGE ADVOCATE GENERAL

Australian Defence Force

AF33198257

## PRACTICE NOTE 1 — PUBLICATION OF COURT MARTIAL AND DEFENCE FORCE MAGISTRATE LISTS AND OUTCOMES (VERSION 5)

### PRELIMINARY

1. **Purpose.** Following Chiefs of Services Committee consultation, co-ordinated through the Military Justice Co-ordination Committee, the Office of the Judge Advocate General (OJAG) will publish court martial and Defence Force magistrate (DFM) lists and outcomes. This Practice Note sets out the OJAG policy for publication of this information.
2. **Commencement.** Publication commenced on 31 March 2019 for matters referred on or after this date to the Registrar of Military Justice (RMJ) by the Director of Military Prosecutions (DMP) for court martial or DFM proceedings.
3. **Means of publication.** The OJAG maintains websites on both the internet and Defence Protected Network. All information released pursuant to this Practice Note will be published on both these websites concurrently.
4. **Other publication.** This Practice Note deals only with publication by the OJAG. Accordingly, appropriate attention must be paid by all parties and command (on behalf of the Commonwealth more generally) to the issues identified in sections 140 or 148 of the DFDA, independent of publication by the OJAG (eg, by interested third parties or the media).<sup>1</sup>

### WHAT WILL BE PUBLISHED

5. **General.** The publication of the decisions of courts martial and the decisions and reasons for decision of DFMs is an essential component of the administration of military justice. The responsibility for publication rests with the RMJ.. At the time of publishing both the list and the outcomes, the RMJ will comply with all relevant legislation (including section 74 of the *Evidence (Miscellaneous Provisions) Act 1991* (ACT),) and any non-publication orders as applicable at that time.
6. **Tribunal listings.** The OJAG websites will include a list of all upcoming court martial and DFM proceedings to be conducted in person. The list will not include historic proceedings, telephone or video-conference proceedings. The RMJ will update the list as soon as possible after the date and location of proceedings have been fixed or varied. Enclosure 1 is the template for the list that will be published.

7. The list will include:

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<sup>1</sup> That being: the interests of the security or defence of Australia, the proper administration of justice, public morals or any other matter that might be relevant to a non-publication order.

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- a. location of proceeding
  - b. service(s) of defendant(s)
  - c. type of tribunal (general court martial (GCM), restricted court martial (RCM) or DFM)
  - d. surname and rank of the judge advocate (JA) or DFM
  - e. date(s) and start time(s) of the proceedings
  - f. rank of each defendant
  - g. number of charges, and for DFM trials the relevant legislative provisions and statements of offences
    - (1) For courts martial, only the number of charges will be provided as it is preferable for the panel to not be aware of the charges prior to the arraignment of the defendant.
  - h. security-related access requirements and/or point of contact (if applicable).
    - (1) Where there are security related access requirements, these will be identified and/or a point of contact provided.
    - (2) The internet website will also recommend that the media and general public make prior arrangements to make access quicker and easier on the day.
8. **Outcomes.** The OJAG websites will include all outcomes. The RMJ will update the websites to include this information as soon as possible after the completion of each of the following:
- a. for withdrawals and acquittals: the conclusion of the proceedings
  - b. for one or more convictions: the automatic review
9. The websites will be updated with the outcomes of any subsequent review(s) and appeal(s) (if applicable).
10. Enclosure 2 is the template for the publication of outcomes, which will include:
- a. all information contained in the list:
    - (1) For DFM trials, the details of the charges will be updated to reflect any amendments
    - (2) For courts martial, the details of the charges will be included
  - b. withdrawal of charges (if applicable)

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- c. findings
- d. if convicted of one or more charges:
  - (1) the defendant's surname<sup>2</sup>
  - (2) the punishments and orders
  - (3) a case summary
  - (4) the main points in a legal report pursuant to sections 154 or 155 of the DFDA, and the resulting outcome of any review(s)
  - (5) the outcome of any appeal(s), including a link to any published decisions (if applicable).

11. **Template case summary.** Enclosure 3 is a template case summary. A case summary will be prepared whenever the defendant is convicted of one or more charges. The case summary will include the surname of the defendant,<sup>3</sup> the relevant factual and legal considerations, and will be consistent with any non-publication orders and section 74 of the *Evidence (Miscellaneous Provisions) Act (ACT)*. The RMJ may redact a case summary prior to publication where the case summary in combination with other factors would not comply with other legislative requirements.

12. **Acquittals, reviews and defendant's name.** The defendant's name will not be published in the 'Outcomes', nor will a case summary be published, for any and all charges where there was an acquittal or where convictions were quashed on petition, further review or appeal. However, the defendant may at any time request the RMJ to include the defendant's name in the 'Outcomes'. This request can be through the defending officer or directly to the RMJ.

13. **Duration of publication.** A matter will be published for two years following the date of publication of the automatic review outcome. As soon as reasonably practicable after the expiration of two years the RMJ will cause all of the details pertaining to a matter to be archived and removed from the publicly available list. Any request for details of matters so archived should be made through the RMJ who will deal with the request or refer the request to the appropriate authority.

14. **Notification to command prior to publication.** The RMJ will notify command prior to publishing the listing of a matter and prior to publishing the outcomes.

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<sup>2</sup> Except where the defendant was under the age of 18 at the date of the offence.

<sup>3</sup> Except where the defendant was under the age of 18 at the time of offending. To prohibit publication by third parties, a defendant should seek a non-publication order under DFDA, ss. 140 or 148.

- a. **Listing.** The RMJ will send an advance copy of the listing notice to the relevant superior authority and Service HQ COS ten working days prior to publication of the listing notice.<sup>4</sup> This was also occur for any updates.<sup>5</sup>
- b. **Outcomes.** In addition to the post-trial notification email that the RMJ sends to command within one working day of receipt of the findings and punishments sheet, an advance copy of the case summary will be provided to the relevant superior authority and Service HQ COS three working days prior to publication of the outcomes by the RMJ.<sup>6</sup> This was also occur for any updates arising from petitions and appeals.

## NON-PUBLICATION

15. **Grounds.** Publication of the list and outcomes will be consistent with any orders of a Service tribunal and other legislative requirements.<sup>7</sup> There are four grounds on which a Service tribunal may order that information not be published, namely:

- a. the interests of the security or defence of Australia<sup>8</sup>
- b. the proper administration of justice<sup>9</sup>
- c. public morals<sup>10</sup>
- d. other matters considered relevant.<sup>11</sup>

16. **Non-publication orders — role for command.** In civilian proceedings, it is common practice for the legal representatives of the prosecution and the defence to be heard in relation to the publication of reasons for decisions and reports of proceedings. Due to the unique nature of DFDA proceedings, in addition to the prosecution and the defence, command also have the opportunity to seek leave to be heard.<sup>12</sup> Without prejudice to an application in a particular case, command would not usually make applications for non-publication orders on behalf of a defendant — that responsibility lies with the defending officer (on instructions from the defendant).<sup>13</sup>

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<sup>4</sup> The RMJ may agree to a different distribution list with each Service.

<sup>5</sup> Notification of updates may be sent to a nominated POC.

<sup>6</sup> The RMJ may agree to a different distribution list with each Service.

<sup>7</sup> For example, *Evidence (Miscellaneous Provisions) Act (ACT)*, s. 74.

<sup>8</sup> DFDA, ss. 140 and 148.

<sup>9</sup> DFDA, ss. 140 and 148.

<sup>10</sup> DFDA, ss. 140 and 148.

<sup>11</sup> In accordance with DFDA, s. 148.

<sup>12</sup> DFDA, s. 140(2) set out the criteria to be considered in making an order that no report be published. One of these is “the security or defence of Australia”, a matter on which command is an appropriate representative of the Commonwealth.

<sup>13</sup> Command would usually make applications concerning protected identity status, including where the defendant has that status, as coming under the interests of the security or defence of Australia.

17. **Notice of opportunity to make submissions.** As part of the initial consultation on the date and location for a proceeding, the RMJ will advise counsel and command that they will have the opportunity to make, or seek leave to make, submissions on non-publication orders at any stage of the proceedings.<sup>14</sup>

18. **Making of non-publication orders.** It is a matter for the President (following direction from the JA on questions of law), JA<sup>15</sup> or the DFM to rule on any non-publication application made by the prosecution, the defence, command or other interested parties. An application for non-publication should be made as early as possible in the proceedings.<sup>16</sup>

19. **Legal representation for command.** For the purposes of paragraph 8, command may be represented by in-house or external counsel.<sup>17</sup>

## MISCELLANEOUS

20. **Legal protection for RMJ.** At every stage in authorising and executing the publication of lists and outcomes, the RMJ and those assisting the RMJ have protections against legal action pursuant to section 193 of the DFDA.

21. **Related procedures.** To the extent that this Practice Note does not expressly cover variations in procedure or in circumstances relating to publication by or consequent upon a Service tribunal's direction, the Service tribunal and the RMJ will follow Court Martial and Defence Force Magistrate Rules 2020, rule 5.<sup>18</sup>

22. **Access to other documentation.** Courts martial and DFM proceedings generate a range of other documentation. Requests for such other documentation will continue to be actioned through existing legal and administrative channels. Most requests by individuals other than the defendant will need to be made under the *Freedom of Information Act 1982*. Inquiries in relation to access to other documentation should be directed to the RMJ.



**JT Rush, RFD, QC**  
RADM, RAN JAG–  
ADF  
14 Dec 21

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<sup>14</sup> This notification by the RMJ will be carried out in the discharge of the RMJ's functions to provide administrative and management services in connection with trials: DFDA, s. 188FA.

<sup>15</sup> For example, if the non-publication order relates to evidence heard on a *voir dire*.

<sup>16</sup> Further guidance is available in the *Superior Tribunal Manual*, Chapter 6. See also chapter 13 of the Court Martial and Defence Force Magistrate Bench Book.

<sup>17</sup> Representation of command should be discussed with Defence Legal.

<sup>18</sup> See DFDA, ss. 134 and 146(2) as well as Court Martial and Defence Force Magistrate Rules, r. 5..

**Enclosures:**

1. Template list
2. Template outcomes
3. Template case summary

**LIST**

START DATE, TIME AND ESTIMATED DURATION	LOCATION AND ACCESS	PROCEEDING NUMBER	SERVICE/STATUS OF ACCUSED PERSON	TRIBUNAL AND PURPOSE	JUDGE ADVOCATE / DEFENCE FORCE MAGISTRATE	ACCUSED PERSON(S)	CHARGE(S)
	<p>For general information on access to and attendance at proceedings <a href="#">click here</a>                      To make arrangements to attend, the point of contact is specified below.</p>	<p>RMJ Proceeding Number</p>	<p>Navy                      Army                      Air Force                      Defence civilian                      Prisoner of war</p> <p>For information on jurisdiction <a href="#">click here</a></p>	<p><b>Tribunal:</b>                      - <b>GCM</b> (general court martial)                      - <b>RCM</b> (restricted court martial)                      - <b>DFM</b> (Defence Force magistrate proceeding)</p> <p>For information on types of service tribunals <a href="#">click here</a></p> <p><b>Purpose:</b>                      - Case management hearing                      - Trial                      - Sentencing</p> <p>For information on types of proceedings <a href="#">click here</a></p>	<p>JA / DFM rank and surname                      For information on JAs and DFMs <a href="#">click here</a></p>	<p>Rank(s) of accused person(s)</p>	<p>For courts martial, details are not provided so the panel is not inadvertently aware of the charges prior to the arraignment of the accused.</p> <p>Stipulate DFDA provision(s), other provision(s) and statement(s) of offence</p> <p>For information on offences <a href="#">click here</a></p>
	<p>Establishment</p> <p><u>Point of contact</u>                      Rank and name:                      E-mail:                      Telephone:</p>						

## OUTCOMES

DATE(S)	LOCATION	PROCEEDING NUMBER	SERVICE/ STATUS OF ACCUSED	TRIBUNAL	JUDGE ADVOCATE / DEFENCE FORCE MAGISTRATE	ACCUSED	CHARGES	PLEAS AND FINDINGS	PUNISHMENTS AND ORDERS	CASE SUMMARY	REVIEWS AND APPEALS
All sitting dates	Establishment	RMJ Proceeding Number	Navy Army Air Force Defence civilian Prisoner of war	<b>GCM</b> (general court martial) <b>RCM</b> (restricted court martial) <b>DFM</b> (Defence Force magistrate proceeding)	JA / DFM rank and surname	Rank of accused and surname. Omit surname if NG on all charges or all convictions quashed on review/appeal.	DFDA provision(s), other provision(s) and statement(s) of offence	<b>Pleas:</b> - Withdrawn - Not proceeded with - Plea in bar - Guilty - Not guilty  <b>Findings:</b> - Plea to alternative charge accepted - Guilty - Prescribed acquittal - Not guilty	Not applicable OR As per findings and/or punishment sheet	Link provided to case summary	<b>Reviews:</b> - Not applicable - Upheld (conviction and punishment confirmed) - Quashed - Orders  <b>Appeals:</b> - Not applicable - Allowed (conviction quashed) - Dismissed (conviction upheld) - Orders



**Case Summary  
Office of the Judge Advocate General**

**DEFENDANT:** <rank> <Surname><sup>1</sup>  
**TYPE OF COURT:** General / Restricted Court Martial / Defence Force Magistrate  
**DATE OF TRIAL:** <DD Month YYYY>  
**VENUE:** <Name of establishment>

**Charges and plea**

	<b>Statement of Offence</b>	<b>Plea</b>
Charge 1	<statement of offence>	Withdrawn / Not Guilty / Guilty
Charge 2	<statement of offence>	Withdrawn / Not Guilty / Guilty
Alternative to Charge 2	<statement of offence>	Withdrawn / Not Guilty / Guilty

**Pre-Trial: Closed court and non-publication orders<sup>2</sup>**

Application made:	No / Yes, by Defence / Prosecution / Commonwealth / <Other> for closed court / non-publication order
Determination:	<statement of order made> or <brief summary of reasons for not granting application>

**Trial: Facts<sup>3</sup> and legal principles**

Nil, as the case proceeded by way of a guilty plea.

**Findings**

	<b>Finding</b>
Charge 1	Not Applicable / Not Guilty / Guilty
Charge 2	Not Applicable / Not Guilty / Guilty / Not Proceed With
Alternative to Charge 2	Not Applicable / Not Guilty / Guilty

**Sentencing: Facts<sup>4</sup> and legal principles**

<sup>1</sup> Unless requested otherwise by the defendant, the name is to be deleted if all convictions subsequently quashed on petition, further review or appeal. PMKeyS number not to be included. Do not include the name if the defendant was under the age of 18 at the date of the offence.

<sup>2</sup> *Defence Force Discipline Act 1982*, ss 140 and 148.

<sup>3</sup> No identifiable personal information of anyone other than the accused (if convicted) to be included.

<sup>4</sup> No identifiable personal information of anyone other than the defendant to be included. Do not mention defendant's actual age, but can refer to whether or not a youthful offender

- *This summary is not intended to be a substitute for the reasons of the Service tribunal or to be used in any later consideration of the tribunal's reasons.*

&lt;text&gt;

**Punishments and orders**

Charge 1	<punishment / orders>
(Alternative to) Charge 2	<punishment / orders>

**Outcome on automatic review**

A legal report under DFDA, s. 154(1) was prepared for the Reviewing Authority on <insert date of automatic review> and advised:

	<b>Conviction</b>	<b>Punishments / Orders</b>
Charge 1	May be upheld / Must be quashed as [insert one sentence summary]	May be upheld / Wrong in law, must be quashed/revoked and a new, no more severe punishment/order, imposed <sup>5</sup>
(Alternative to) Charge 2	May be upheld / Must be quashed	May be upheld / Wrong in law, must be quashed/revoked and a new, no more severe punishment/order, imposed

The automatic review was completed on <insert date of automatic review>.

	<b>Conviction</b>	<b>Punishments / Orders</b>
Charge 1	Upheld / Quashed / Quashed, new trial ordered / Quashed, conviction on <statement of offence> substituted	Upheld / Quashed / Revoked / Varied
(Alternative to) Charge 2	Upheld / Quashed / Quashed, new trial ordered / Quashed, conviction on <statement of offence> substituted	Upheld / Quashed / Revoked / Varied

**Outcome on petition**

A legal report under DFDA, s. 154(1) was prepared for the Reviewing Authority on <insert date of automatic review> and advised:

	<b>Conviction</b>	<b>Punishments / Orders</b>
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<sup>5</sup> This text is indicative only. Take care to reflect the actual legal advice.

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Charge 1	May be upheld / Must be quashed as [insert one sentence summary]	May be upheld / Wrong in law, must be quashed/revoked and a new, no more severe punishment/order, imposed <sup>6</sup>
(Alternative to) Charge 2	May be upheld / Must be quashed	May be upheld / Wrong in law, must be quashed/revoked and a new, no more severe punishment/order, imposed

The review on petition was completed on <insert date of review on petition>.

	<b>Conviction</b>	<b>Punishments / Orders</b>
Charge 1	Upheld / Quashed / Quashed, new trial ordered / Quashed, conviction on <statement of offence> substituted	Upheld / Quashed / Revoked / Varied
(Alternative to) Charge 2	Upheld / Quashed / Quashed, new trial ordered / Quashed, conviction on <statement of offence> substituted	Upheld / Quashed / Revoked / Varied

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<sup>6</sup> This text is indicative only. Take care to reflect the actual legal advice.

- *This summary is not intended to be a substitute for the reasons of the Service tribunal or to be used in any later consideration of the tribunal's reasons.*