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REPORT TO THE

CHIEF OF THE DEFENCE FORCE

RECOMMENDATIONS FOR APPOINTMENT OF THE

DEPUTY JUDGE ADVOCATE GENERAL – AIR FORCE

Objective ID: BN51894238

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Executive summary

Part XI, Division 1 of the *Defence Force Discipline Act 1982* (DFDA) provides that the Governor-General shall appoint a Judge Advocate General (JAG) and may appoint one or more Deputy Judge Advocates General (DJAG) on a full-time or part-time basis. Individuals hold the office of JAG or DJAG for such period, not exceeding seven years, as is specified in the instrument of appointment. In practice, it is common for an appointment to be made for periods of three to five years, with possible extensions to a maximum of seven years. This provides a degree of flexibility to the appointed individual, and to Defence.

Air Commodore His Honour Judge Gordon Lerve was appointed DJAG – Air Force (DJAG-AF) for a period of five years, from 18 May 2017. His appointment ended at the expiration of 17 May 2022 ^{s47F}

^{s47F}

A process to identify suitable DJAG-AF candidates began in September 2021 ^{s47E(c)}

^{s47E(c)}

While the panel concluded that every candidate was sufficiently competent to perform the duties of a DJAG, Squadron Leader the Honourable Justice Melissa Perry was placed first in the order of merit. Consequently it is proposed that Squadron Leader Perry, on promotion to Air Commodore, be recommended for appointment as the next DJAG-AF, on a part-time basis for a period of five years.

In his capacity as Minister for Defence, the Deputy Prime Minister (DPM) is required by the Cabinet Handbook to make 'significant appointment' recommendations to the Prime Minister (PM), for approval, prior to consideration by the Governor-General for an appointment decision. If the DPM agrees to recommend Justice Perry for appointment as DJAG-AF, it is also appropriate that he seek the concurrence of the Attorney-General of Australia and the Chief Justice of the Federal Court of Australia before writing to the PM.

~~OFFICIAL: Sensitive | Personal Privacy~~**Reference:**

A. Brief for CDF: Selection of Judge Advocate General (JAG) and Deputy Judge Advocate General – Navy (DJAG-N) of 10 November 2020 (BN23007142)

Introduction

1. The JAG is crucial to the Defence Force's discipline system as the office and its functions provide essential oversight of the operation of the DFDA. The JAG also plays a role in the promotion of the jurisprudential welfare and education of the ADF together with the exercise of a beneficial influence upon the legal structure within it. The JAG does not act as a general legal adviser to the ADF as that would be inconsistent with judicial office. The JAG is supported by a DJAG, one from each Service.

2. The appointment of Air Commodore His Honour Judge Gordon Lerve as DJAG-AF expired on 17 May 22. This report details a process that started in September 2021 to identify suitable candidates for you to recommend to the DPM for appointment as DJAG-AF.

JAG and DJAG functions

3. Specific functions of the JAG include making the procedural rules for Service tribunals, providing binding legal reviews of discipline proceedings within the Defence Force, appointing the Chief Judge Advocate (CJA), participating in the appointment of Judge Advocates (JA), Defence Force Magistrates (DFM) and reviewing legal officers, and reporting to the Federal Parliament upon the operation of laws relating to the discipline of the Defence Force. The specific functions of a DJAG include providing binding legal reviews of discipline proceedings within the Defence Force as directed by the JAG.

Legislative criteria

4. Section 180 of the DFDA:

- a. limits eligibility for appointment as a DJAG to present or former judicial officers of a federal court or of a Supreme Court of a State or Territory, or else to a person that has been enrolled as a legal practitioner for not less than five years
- b. permits civilian or military persons to be appointed as a DJAG.

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10. **Legal experience.** In addition to legislated legal criteria described above, it is important that the JAG be selected from present or former judges of Australia's 'superior courts', such as the Federal Court of Australia, Family Court of Australia and the Supreme Court of a State or Territory. Superior courts adjudicate serious cases and can also hear appeals, including those made against lower court, and some superior court, decisions. Such matters and related judgements are aligned with the level of complexity and responsibility required of the JAG. Lower courts such as the Federal Circuit Court of Australia, District or County courts and Magistrates courts are referred to as 'inferior courts'. Inferior courts hear relatively minor cases and are not courts of appeal, and therefore not commensurate with the duties of the JAG.

11. Conversely, DJAG candidates may be drawn from experienced solicitors, or present or former judges of any court (superior or inferior) but must have significant judicial or advocacy experience in criminal law practice and/or discipline law, typically as senior counsel. This was advised to you in Reference A and used to identify eligible DJAG-AF candidates.

Customary arrangements

12. The JAG is traditionally supported by three deputies, one from each Service to provide unique Service knowledge and perspectives to the role. It is custom that the JAG hold the rank of Major General or equivalent, and that DJAGs hold the rank of Brigadier or equivalent. To date, there has been no variation to this arrangement.

13. Each DJAG holds the equivalent rank of Brigadier because the nature of their work (including provision of second opinions on DFDA s154 reports on legal proceedings), and their relationship with command, brings a requirement for confidence that comes from the experience and rank of the incumbent. Review of DFDA s154 reports will involve assessment of work conducted by legal officers holding the rank of Brigadier and below.

14. For the JAG, holding Major General equivalent rank is commensurate with the holding of office of a superior court judge. It reflects the appropriate status and duties of the JAG, including leadership of the military justice system and a need to speak candidly with the Chief of the Defence Force and Service Chiefs.

Appointment process

15. To appoint a DJAG, the DPM (in his capacity as Minister for Defence) is required to make a recommendation to the Governor-General in council. Such recommendation may require two additional steps to precede appointment documentation being presented to the Federal Executive Council. First, if the DPM intends to recommend a DJAG-AF candidate that currently holds judicial office, it is customary to seek the concurrence of the relevant Attorney-General and the Chief Justice/Judge of the jurisdiction in which the person hold office. If this concurrence is required, it should be obtained prior to the next step. Second, according to the Cabinet Handbook, ministers must write to the PM seeking his or, at his discretion, Cabinet's approval of 'significant appointments'.

16. There is historical inconsistency around treatment of DJAG appointments as significant appointments. Since this is the first occasion that the current government will recommend the appointment of a DJAG, it is proposed that the DPM write to the PM to seek approval of the recommended appointee. The correspondence should also ask for an agreed position on whether DJAGs are to be classified as significant for future DJAG appointments.

Selection advisory panel

17. To manage the process for identifying DJAG-AF candidates, a selection advisory panel (SAP) was formed, comprising:

- a. Chair Rear Admiral John 'Jack' Rush, AO, RFD, QC, RAN (JAG)
- b. Member Mr Adrian D'Amico (Chief Counsel for Defence)
- c. Member Air Vice-Marshal Barbara Courtney, AM (Head, Royal Commission into Defence and Veteran Suicide Task Force).

Eligible candidates

18. On 23 September 2021, the Directorate of Senior Officer Management (DSOM) requested the Director General of Military Legal Services (DGMLS) to provide a list of serving Air Force legal officers that would be eligible for appointment as DJAG-AF. ^{s47E(c)}

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Shortlisting

19. On 15 October 2021, the list of officers was reviewed by the JAG, CJA and Deputy Director Senior Officer Management – ADF. ~~s47E(c)~~
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Panel deliberations

23. On 28 April 2022, the SAP met by teleconference to consider shortlisted candidates and establish an order of merit. Deliberations focused on the professional and military experience of each candidate, and their relative fit for the role. ~~s47E(c)~~
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s47E(c)

24. **Curriculum vitae.** A curriculum vitae of each shortlisted candidate is provided in Annex B.

25. **Summary.** The SAP acknowledged that all candidates were sufficiently competent to performing the functions of a DJAG. s47E(c)

s47E(c)

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Merit list

27. At the conclusion of the SAP deliberation, shortlisted DJAG-AF candidates were placed in the following merit-based order:

- a. ~~s22~~ Squadron Leader the Honourable Justice Melissa Perry
- b. ~~s22~~ ~~s47E(c)~~
- c. ~~s22~~
- d. ~~s22~~
- e. ~~s22~~
- f. ~~s22~~

Recommendations

28. **Merit list.** The SAP recommends that you support the merit list detailed above and that you provide the list to the DPM for consideration and selection of his preferred candidate.

29. **Tenure.** The panel recommends that the selected candidate be appointed on a part-time basis, for a five year period from the date of appointment.

30. **Promotion.** The SAP recommends that, if the selected DJAG-AF does not already hold the rank of Air Commodore, you promote the selected officer to that rank effective from the date of appointment.

31. **Acting JAG.** Note that appointment of a candidate other than Squadron Leader Perry will not provide the DPM with internal redundancy to appoint a DJAG as Acting JAG. However, it is noted that this can be risk-managed for short periods through the appointment of other eligible candidates, such as the previous JAG, Rear Admiral Slattery.

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Conclusion

33. The SAP notes that it plays no statutory role in the DPM's decision to appoint a DJAG but the process leading to this report has been designed to provide advice which may assist his consideration of suitable candidates.

34. The merit list detailed earlier in this report was unanimously agreed by the SAP members and the panel recommend it to the DPM, through you. The panel recommends that the selected officer be appointed on a part-time basis for a period of five years.

Annexes:

- A: DJAG-AF candidates
- B: Candidate curriculum vitae

~~OFFICIAL: Sensitive | Personal Privacy~~**ANNEX A TO
BN51894238****DJAG-AF candidates**

1. The table below provides a complete list of Air Force Reserve legal officers considered for appointment as the DJAG-AF, in alphabetical order:

Name & Current Employment	Military Rank	Notes
s47E(c)		
The Honourable Justice Melissa Perry - Federal Court Judge - Defence Force Discipline Appeals Tribunal (DFDAT) member	Squadron Leader	Shortlisted

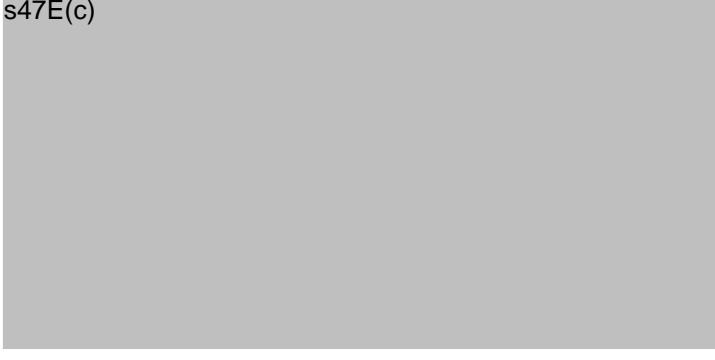
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**ANNEX B TO
BN51894238****Candidate curriculum vitae**

1. The following pages provide a brief summary of key experiences of each shortlisted DJAG-AF candidate, in merit list order:

a. Squadron Leader the Honourable Justice Melissa Perry

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b.

c.

d.

e.

f.

Squadron Leader the Honourable Justice Melissa Perry

Present position	Justice of the Federal Court of Australia (2013 -)	
Educational and professional qualifications	<p>Doctor of Philosophy – University of Cambridge (1995)</p> <p>Master of Laws – University of Cambridge (1988)</p> <p>Bachelor of Laws – University of Adelaide (1985)</p>	
Relevant experience	<p>2018 - 2025 Deputy President Administrative Appeals Tribunal</p> <p>2018 - 2023 Member Defence Force Discipline Appeals Tribunal</p> <p>2014 - Additional Judge, Supreme Court of the ACT</p> <p>2011 Joined and Commissioned, Royal Australian Air Force (Legal Specialist)</p> <p>2004 Appointed Queen's Counsel (SA)</p> <p>1992 Admitted to SA Bar</p>	
Commitments and Associations	<p>2021 - Honorary Member, Special Joint Data and Policy Subcommittee of the Asian Australian Lawyers Association (NSW Branch)</p> <p>Honorary Member, Diversity Committee of the Women Lawyers Association of NSW</p> <p>2016 - Patron, Hellenic Australian Lawyers Association</p> <p>2015 - Member, Board of Advisors, Research Unit on Military Law and Ethics (University of Adelaide)</p> <p>2014 - Advisory Council Member, Centre for Public International Law and Public Law (Australian National University)</p> <p>2009 - Foundation Fellow, Australian Academy of Law, and former director (2010–2014)</p>	

The following 5 pages have been removed because they are exempt from release under section 47F of the FOI Act.

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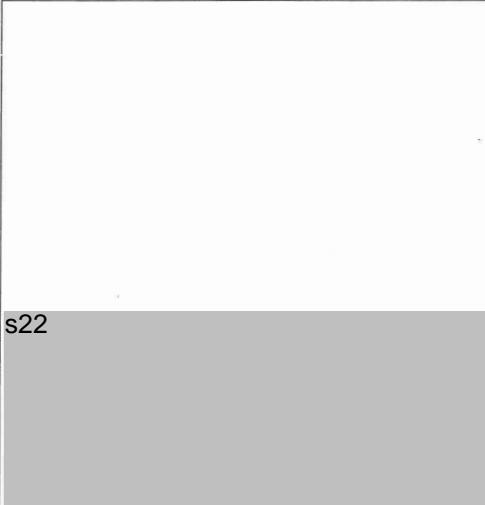
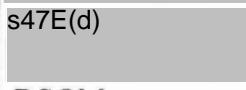
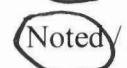
 	DECISION BRIEF FOR CDF: RECOMMENDATIONS FOR APPOINTMENT OF THE DEPUTY JUDGE ADVOCATE GENERAL – AIR FORCE
Group/Service: DPG	Reference: EC22-003680
For information: SEC, ASSOC SEC, VCDF, CN, CA, CAF, DEPSEC DP	Due date: 15 Sep 22 Routine

Purpose

1. The purpose of this brief is to establish a recommendation to the DPM for appointment of the Deputy Judge Advocate General – Air Force (DJAG-AF).

Recommendations

2. That you:
 - a. **Note** that AIRCDRE His Honour Judge Gordon Lerve's tenure as DJAG-AF expired on 17 May 22.
 - b. **Note** that the selection advisory panel established a merit-based list of candidates from a selection process that considered eligible Air Force (Reserve) legal officers.
 - c. **Note** that SQNLDR the Honourable Justice Melissa Perry was identified as first in the order of merit.
 - d. **Agree** to recommend to the DPM that SQNLDR Perry, on promotion to AIRCDRE, be appointed as the DJAG-AF on a part-time basis, for a period of five years.
 - e. **Sign** the attached submission to DPM (Enclosure 2).

 s22  s47E(d) DSOM 12 Sep 22 Contact Officer: s47E(d)	a.  / Please discuss b.  / Please discuss c.  / Please discuss d.  / Please discuss e.  / Please discuss s22  Angus J Campbell GEN CDF 13 Sep 22 Tel: s47E(d)
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Key Issues

3. Subsection 179(2) and of the *Defence Force Discipline Act 1982* (DFDA) provides that the Governor-General may appoint one or more DJAG on a full-time or part-time basis. Section 183 provides that a DJAG will hold office for a period not exceeding seven years. Subsection 180(2) requires a DJAG to be a present or former judicial officer of a federal court or of a Supreme Court of a State or Territory, or be enrolled as a legal practitioner for not less than five years. ~~s47E(c)~~

~~s47E(c)~~

4. AIRCDRE Gordon Lerve was appointed as the DJAG-AF from 18 May 17 until 17 May 22. ~~s47F~~

~~s47F~~

With the federal election and the ADF senior leadership change complete, recommendations for the appointment of a DJAG-AF are now presented for your consideration.

5. **Selection process.** To assist the DPM to recommend a suitable DJAG-AF candidate to the Governor-General for appointment, a process for identifying eligible candidates commenced in Sep 21. A full description of the process is contained in the report at Enclosure 1, however, key points are provided below.

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8. **Merit list.** On 28 Apr 22, a selection advisory panel met to consider the shortlisted candidates. ~~s47E(c)~~

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9. At the conclusion of their discussion, the panel agreed to the following merit-based list, in order of precedence:

a. SQNLDR the Honourable Justice Melissa Perry

s47E(c)



10. While the panel agreed that all candidates were capable of performing the DJAG-AF function, SQNLDR Perry was identified as first in the order of merit. If she is selected for the appointment, she will be the first female officer appointed to be a JAG or DJAG.

s47E(c)



11. **Recommendation.** It is proposed that you recommend to the DPM that SQNLDR Perry, on promotion to AIRCDRE, be appointed as DJAG-AF on a part-time basis, for a period of five years.

Enclosures:

1. Report on Recommendations for Appointment of the Deputy Judge Advocate General – Air Force
2. MS22-001614 Appointment of the Deputy Judge Advocate General – Air Force

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DEPUTY JUDGE ADVOCATE GENERAL – AIR FORCE

SELECTION ADVISORY PANEL INFORMATION PACK

28 April 2022

Skype for Business Meeting (1030h)

INFORMATION PACK

CONTENTS

Flag	Contents
A	Agenda
B	Timeline
C	List of candidates
D	Background
E	Selection considerations
F	DJAG-Air Force candidate CVs

PANEL MEMBERS

Chair	RADM John 'Jack' Rush (JAG)
Panel member	AVM Barbara Courtney (Head RCDVS TF)
Panel member	Mr Adrian D'Amico (Chief Counsel)
Secretariat	s47E(d)

ACCESS TO VIRTUAL MEETING

An Outlook invitation has been forwarded to you for the convening of the selection advisory panel (via Skype for Business).

You will be able to join the meeting by right clicking on the appointment in your diary and selecting 'Join Skype Meeting'. Alternatively, open the appointment and select the 'Join Skype Meeting' link.

It is anticipated that the panel will only require one hour to contemplate the candidate submissions, however, 1.5 hours has been reserved should you require it.

AGENDA

Item	Activity	Start	Who
1.	Introduction/welcome and background information: <ul style="list-style-type: none">▪ role and functions of the JAG and a DJAG▪ important competencies▪ insights into appointment of judicial officers▪ other relevant matters	H	JAG
2.	Discuss candidate submissions and determine prioritised shortlist: <ul style="list-style-type: none">▪ maximum of 3	H+10	Panel
3.	Discuss whether further consultation with candidates is required	H+50	Panel
4.	▪ Closing remarks	H+55	JAG

TIMELINE

Completed activity

Sep 21	Eligible candidates identified
Dec 21	Candidates engaged by JAG to determine interest/availability and invite submissions (EOI & CV)
08 Apr 22	All CVs received

Future activity

28 Apr 22	<p>Panel meeting to:</p> <ul style="list-style-type: none">▪ discuss role, competencies and insights relating to JAG & DJAG appointments▪ discuss DJAG-AF candidates▪ shortlist DJAG-AF candidates▪ discuss method of consultation with shortlisted select candidates, <u>if required</u>
<i>If candidate consultation is not required</i>	
NLT 20 May 22	Brief on recommendations to CDF
NLT 03 Jun 22 (post federal election; after Government is formed)	Submission to MINDEF (including letter to relevant Chief Justice/Judge (if required), letter to PM and Cabinet documentation)
TBD	Submit final papers for Federal Executive Council
<i>If candidate consultation is required</i>	
NLT 20 May 22	Conduct consultation with shortlisted candidates
NLT 03 Jun 22	Brief on recommendations to CDF
NLT 10 Jun 22 (post federal election; after Government is formed)	Submission to MINDEF (including letter to relevant Chief Justice/Judge (if required), letter to PM and Cabinet documentation)
TBD	Submit final papers for Federal Executive Council

LIST OF DJAG-AF CANDIDATES

(in alphabetical order)

Candidate Details	Military Rank
s47E(c)	
The Honourable Justice Melissa Perry Federal Court of Australia	SQNLDR

BACKGROUND

1. Part XI, Division 1 of the *Defence Force Discipline Act 1982* (DFDA) provides that the Governor-General may appoint a Judge Advocate General and one or more Deputy Judge Advocates General on a full-time or part-time basis.
2. **Judge Advocate General.** Specific functions of the Judge Advocate General (JAG) include making the procedural rules for Service tribunals, providing binding legal reviews of discipline proceedings within the Defence Force, appointing the Chief Judge Advocate, participating in the appointment of judge advocates, Defence Force magistrates and reviewing legal officers, and reporting to the Federal Parliament upon the operation of laws relating to the discipline of the Defence Force.
3. Reflecting the importance that Defence places on the independence of the JAG in the discipline system, the DFDA limits eligibility for appointment to the office to present and former judicial officers of a federal court or of a Supreme Court of a State or Territory. s47E(c)
s47E(c) The JAG is crucial to the Defence Force's discipline system as the office and its functions provide essential oversight of the operation of the DFDA.
4. The JAG also plays a role in the promotion of the jurisprudential welfare and education of the ADF together with the exercise of a beneficial influence upon the legal structure within it. The JAG does not act as a general legal adviser to the ADF as that would be inconsistent with judicial office.
5. Since the DFDA came into effect, JAG office holders have been military officers holding the equivalent rank of Major General. The rank is commensurate with the holding of office of a superior court judge and reflects the appropriate status and duties of the JAG, including leadership of the military justice system and a need to speak candidly with CDF and Service Chiefs.
6. Rear Admiral John 'Jack' Rush, RFD, QC, RAN was appointed as the Judge Advocate General from 30 July 2021 until 29 July 2026.
7. **Deputy Judge Advocate General – Air Force.** The JAG is assisted by three Deputy Judge Advocates General (DJAG), one for each Service. The specific functions of a DJAG include providing binding legal reviews of discipline proceedings within the Defence Force as directed by the JAG.
8. Reflecting the importance that Defence places on the independent role of a DJAG in the discipline system, eligibility for appointment to the office is limited to those with significant judicial or advocacy experience, particularly within criminal and military law. Specifically, a DJAG must be a present or former Justice or Judge of a federal court or of a Supreme Court of a State or Territory, or else be enrolled as a legal practitioner and have been so enrolled for not less than five years.
9. Air Commodore His Honour Judge Gordon Lerve was appointed as DJAG-Air Force for a period of five years, from 18 May 2017. His tenure ceases at the expiration of 17 May 22. s47E(c)

SELECTION CONSIDERATIONS

1. While deliberating candidates for shortlisting, you may wish to consider the following issues:
 - a. **Tenure.** The DFDA (s183) requires that the JAG or a DJAG hold office for such period, not exceeding 7 years, as is specified in the instrument of appointment. In practice, it is common for an appointment to be made for periods of 3–5 years. This provides a degree of flexibility to the appointed individual, and to Defence.
 - b. While age is not a discriminator in a candidate's ability to perform the JAG or DJAG roles, it may affect recommendations that you make with respect to tenure and it may play a part in expectations of service beyond a candidate's compulsory retirement age (CRA).
 - c. s47E(c)
- d. **JAG and DJAG offset.** Rear Admiral Rush's tenure as JAG ends on 29 July 2026. Commodore James Renwick's tenure as DJAG-Navy ends on 29 July 2026 and Brigadier Paul Smith's tenure as DJAG-Army ends on 9 March 2024. The panel may wish to consider making a specific recommendation regarding the length of tenure of the next DJAG-Air Force to ensure it remains staggered from the other positions.
- e. s47E(c)
- f. **Redundancy planning – Acting JAG.** The DFDA (s188) states that the Minister may only appoint a person to act as the JAG if that person actually fulfils the eligibility

¹ **SERCAT 2** describes members of the Reserves who do not render service and have no service obligation except for Call Out; they represent the latent (standby) component of the ADF. **SERCAT 3** describes members of the Reserves who provide a contingent contribution to capability by indicating their ability to serve, or who are rendering service to meet a specified task within a financial year. **SERCAT 5** describes members of the Reserves who provide a contribution to capability that extends across financial years and who have security of tenure for the duration of this approved commitment to serve.

requirements for appointment as the JAG. That is, the person must be a present or former Justice or Judge of a federal court or of a Supreme Court of a State or Territory.

g. s47E(c)



h. **Rank.** The current military rank of each candidate should not be a significant focus of deliberations when recommending a person for appointment as DJAG-Air Force. All candidates have extensive civilian legal careers and many will have appropriate experience in military legal matters to perform a DJAG role. With such focus on development of their civilian legal careers, a number of candidates will not have progressed in rank simply due to limitations such as an inability to attend certain promotion or military legal professional courses.

CANDIDATE CVs
(in alphabetical order)

Rank & Name	Enclosure
s47E(c)1
2
3
4
Squadron Leader The Honourable Justice Melissa Perry5

Squadron Leader The Honourable Justice Melissa Perry



FEDERAL COURT OF AUSTRALIA

s47F

The Hon. Justice Melissa Perry
Law Courts Building
Queens Square
Sydney NSW 2000
Australia

s47E(d)

Deputy Director of Senior Officer Management
By email: s47E(d)

11 February 2022

Dear Sir,

I refer to my discussions with the JAG, J Rush RFD QC RAN, regarding the position of Deputy Judge Advocate General RAAF. As requested, please find enclosed a current summary of my professional background and judicial experience, focusing upon skills and experience relevant to the role of a DJAG. I am grateful for the opportunity be considered for this important and independent role in the Defence Force's discipline system.

Please do not hesitate to contact me if you have any questions or require any further information.

s22

(The Hon Justice Melissa Perry)

THE HON JUSTICE MELISSA ANNE PERRY Admitted as a barrister and solicitor, Supreme Court of South Australia 1985; Signed Bar Roll 1992 (SA); Admitted 1999 (NSW); Silk (SA) 2004; Admitted England and Wales 2012 joining Inner Temple.

Federal Court of Australia
184 Phillip Street
Sydney NSW 2000

Tel: s47F
Mob:
Email

APPOINTMENTS/COMMISSIONS (CURRENT)

- Member, Defence Force Discipline Appeals Tribunal (September 2018 – September 2023)
- Deputy President, Administrative Appeals Tribunal (July 2018 – July 2025)
- Additional Judge, Supreme Court of the Australian Capital Territory (May 2014–)
- Judge, Federal Court of Australia (September 2013–)
- Squadron Leader, RAAF Legal Specialist Reserves (September 2011–)
- Queen's Counsel for South Australia (2004)

s47F

ACADEMIC QUALIFICATIONS AND AWARDS

- LLB (Hons) (University of Adelaide, South Australia)
- LLM, PhD (Gonville and Caius College, University of Cambridge, United Kingdom)

Title of doctoral dissertation: State Succession, Boundaries and Territorial Regimes. The doctoral thesis considered a range of issues associated with boundaries in the event of a succession of States, such as the decolonisation of Africa, the break-up of the former USSR and Yugoslavia, and the unification of Germany, in order to identify the mechanisms and principles by which international boundaries might continue, and new international boundaries be created, following such events.

Scholarships and prizes include the David Murray Scholarship (University of Adelaide), the Shell Cambridge Scholarship, the Yorke Prize (University of Cambridge) awarded for the doctoral thesis, the Gilbert Murray Trust Junior Award (to participate in the 25th Session of the UN International Law Commission Seminar, Geneva, Switzerland) and Woman Advocate of the Year (2013), Women Lawyers Association of NSW.

JUDICIAL EXPERIENCE (2013–)

As a member of the Federal Court, my judicial experience encompasses trials, single judge appeals, and Full Court appeals on which three, or occasionally five, judges sit.

My experience also embraces a diversity of litigation and litigants spanning, for example:

- matters in which litigants appear without legal representation, may not speak English, and may be traumatised, such as in migration matters where there are significant challenges in ensuring that the individual is heard and has a sufficient understanding to effectively participate in the proceedings;
- complex judicial review and constitutional law matters; and
- commercial, intellectual property, tax fraud, and regulatory matters involving substantial quantities of documents, large numbers of witnesses, and/or hard-fought issues of credibility.

My trial experience, including in case-managing trials under the Federal Court's docket system, has afforded me a significant appreciation of the importance of procedure in ensuring that parties feel that

they have been listened to and treated fairly, as well as ensuring that the proceedings are otherwise fair and run in an efficient and cost effective manner. I also facilitate the achievement of practical or agreed solutions to procedural and evidential issues which can de-escalate conflict and assist parties to act co-operatively in the preparation and presentation of their cases.

Since assuming judicial office, I have presided over a number of applications for judicial review of sentences imposed for offences under the *Defence Force Discipline Act 1982* (Cth) with related constitutional issues, and appeals on a question of law from decisions of the Administrative Appeals Tribunal on veterans' entitlements. I was also a member of the five-member bench in *Chief of Navy v Angre* [2016] FCAFC 171; (2016) 244 FCR 457 concerning the meaning of "decision" for the purposes of s 52(1) of the *Defence Force Discipline Appeals Act 1955* (Cth). Furthermore, as a member of the DFDAT, I have participated in a number of appeals against conviction and sentence. In addition, my chambers has had the pleasure of hosting permanent legal officers with the ADF on work experience pursuant to a professional development program in order to afford them the opportunity to observe civilian court proceedings.

I am also on the Federal Court panel for Regulatory and Consumer Protection and have extensive experience particularly in ACCC and other civil penalty matters. These apply the same intuitive synthesis approach to sentencing as that applied in criminal sentencing. Moreover, in my capacity as an acting judge on the ACT Supreme Court I have sat on a number of criminal appeals as a member of the Court of Appeal, as well as matters involving disciplinary action for professional misconduct.

EXPERIENCE AT THE BAR (1992–2013)

I practised at the Bar in Australia from 1992 to September 2013, initially as a member of Bar Chambers, Adelaide, and from 2004 as a member of Sixth Floor Selborne Wentworth Chambers, Sydney. I was appointed Queens Counsel for South Australia in 2004. Subsequently in July 2012 I was admitted to the Bar of England and Wales and was a non-resident member of 20 Essex Street, London, which specialises in public international law.

I acquired extensive litigation and advisory experience in constitutional law, federal administrative law (including migration and environmental law), native title, human rights, discrimination law, taxation, government liability in tort, and appellate advocacy, developing a national practice in these areas. I appeared before all levels of Australian courts, including appearances in over 40 substantive appeals and original jurisdiction matters in the High Court, and represented and advised state, federal and territory governments, governmental agencies, major corporations, and individuals. Before taking silk, I frequently appeared as junior to the Commonwealth Solicitor-General in the High Court. I also appeared before administrative tribunals including the Administrative Appeals Tribunal and the former Administrative Decisions Tribunal (NSW) (now the NSW Civil and Administrative Tribunal).

Cases of significance in which I appeared include the following:

- *JT International SA v Commonwealth; British American Tobacco Australasia Ltd v Commonwealth* (2012) 250 CLR 1 (validity, tobacco plain packaging legislation)
- *Momcilovic v The Queen* (2011) 245 CLR 1 (validity of the Charter of Human Rights and Responsibilities Act 2006 (Vic))
- *Republic of Croatia v Snedden* (2010) 241 CLR 461 (HCA); (2009) 178 FCR 546 (FCAFC); [2009] FCA 30 (extradition of alleged war criminal)
- *Ralph Clarke v Commissioner of Taxation* (2009) 240 CLR 272 (HCA); (2008) 170 FCR 473 (FCAFC) (validity of surcharge on constitutionally protected superannuation funds as it applied to State parliamentarians)
- as amicus curiae, *Qarase v Bainimarama*, Court of Appeal, Fiji Islands, 9 April 2009 (legality of interim military government in Fiji; rule of law in a democratic society under a written constitution)
- *Cubillo v Commonwealth* [2002] HCATrans 216; (2001) 112 FCR 455 (FCAFC); (2000) 103 FCR

1 (FCA); (1999) 89 FCR 528 (FCA) (Stolen Generations Case (false imprisonment))

- *Commonwealth v Yarmirr* (2001) 208 CLR 1 (the relevance of Australia's international rights and obligations in the territorial sea to the recognition of native title rights and interests offshore)
- *Nulyarimma v Thompson* (1999) 96 FCR 153 (FCAFC) (whether alleged acts of genocide give rise to criminal offences or civil actions under Australian law)
- *Re The Residential Tenancies Tribunal of New South Wales v Henderson; Ex parte the Defence Housing Authority* (1997) 190 CLR 410 (*intergovernmental immunities*)

Advice provided to the ADF prior to my appointment to the bench included a substantial advice on human rights as they apply to members of the ADF. In addition, in 2011 I was engaged as counsel assisting the Inspector-General of Intelligence and Security in her inquiry into the actions of Australian agencies regarding the overseas arrest and detention of Mr Mamdouh Habib from 2001–2005 (abridged report available at: <https://www.igis.gov.au/what-we-do/inquiries>).

VOLUNTARY PROFESSIONAL ACTIVITIES (CURRENT)

2021–	Honorary Member , Special Joint Data and Policy Subcommittee, Asian Australian Lawyers Association (NSW Branch) and Women Lawyers Association of NSW Diversity Committee established to address cultural diversity within the legal profession and unconscious cultural bias
2016–	Patron , Hellenic Australian Lawyers Association
2015–	Advisory Council Member , Centre for Public International Law and Public Law, Australian National University
2014–	Member, Board of Advisors , Research Unit on Military Law and Ethics, University of Adelaide
2014–	Section Editor , Administrative Law, Australian Law Journal
2011–	Advisory Committee Member , Gilbert + Tobin Centre of Public Law, University of New South Wales
2009–	Foundation Fellow , Australian Academy of Law, and former director (2010–2014)
2006–	Law School External Advisory Board Member , University of Adelaide

Judicial Council on Cultural Diversity

In addition to the voluntary roles described above, I serve as the Federal Court representative on the Judicial Council on Cultural Diversity (JCCD) reporting to the Council of Chief Justices (2013–), the Cultural Diversity Advocate on the Federal Court, and as a member of the associated Cultural Diversity Justice Network (the CDJN). The JCCD is an advisory body formed to assist Australian courts, judicial officers and administrators to positively respond to Australia's diverse needs, including the particular issues that arise in Aboriginal and Torres Strait Islander communities. The CDJN provides advice and assists in developing resources related to the work of the JCCD.

Among other things, I chair the specialist committee established by the JCCD and comprised of judges, tribunal members, leading academics in the interpreting field, and representatives of peak interpreting bodies. The specialist committee pooled its expertise in a collaborative way to prepare the *National Recommended Standard for Working with Interpreters in Court and Tribunal* (JCCD, 2017) which included draft model rules of court and practice notes, together with detailed educative annotations to the recommended standards. The recommended standards were finalised following a period of public consultation in which valuable feedback was received from relevant stakeholders and incorporated into

the standards and a second edition will shortly be published.

The recommended standards have led to the creation of a specialist accreditation in interpreting in legal contexts and have been, or are in the process of being, implemented in various jurisdictions including New South Wales, the ACT, and Queensland. I also worked with the Federal Court Rules Committee with respect to the implementation of the National Standards in that jurisdiction. The recommended standards have been embraced by the interpreting profession both nationally and internationally and this would appear to be the first occasion on which detailed standards of this nature have been developed.

I was also a member of the editorial working group with Chief Justice Kourakis and Justice Blokland which assisted in the preparation of *Modern Slavery: Guidance for Australian Courts* (2021), produced at the request of the JCCD with the assistance of the Judicial College of Victoria. This resource focuses on the circumstances in which modern slavery issues may arise in Australian courts and provides guidance to assist judicial officers hearing matters in which such issues arise.

EXTRA-CURRICULAR ACTIVITIES (PREVIOUS)

I was a Visiting Fellow at the Lauterpacht Centre for International Law at the University of Cambridge for three months in 2005–2006. I also undertook visiting judicial fellowships at the Flinders University Law School, Adelaide, in September 2016 and at the ANU Law School, Canberra, in October 2019, during which I spoke with, and presented to, students at different stages of their law degrees on a variety of topics. In addition, I was nominated by the then Hon Chief Justice Gleeson, to attend the United Nations Colloquium and Workshop for Judges and Lawyers on the Justiciability of Economic, Social and Cultural Rights in the Pacific held in Fiji in June 2006.

Among other things, I served on the Administrative Review Council (ARC) from 2006 to 2013, an independent statutory body which reported to the Commonwealth Attorney-General. The ARC was responsible for supervising the health of the administrative law system in Australia including by commenting on draft legislation and preparing reports advising on principles to guide legislators, government departments, and administrative decision-makers. Members of the ARC included heads of government departments, the Commonwealth Ombudsman, and the President of the AAT.

Other committees on which I served while at the Bar included the human rights and equal opportunity committees of the NSW Bar Association. I was also a mentor with the New South Wales Bar Association Junior Women's Mentoring Scheme and the Sydney University Women's Mentoring Program for many years.

PRESENTATIONS AND PUBLICATIONS

Before and after assuming judicial office, I have published widely and presented nationally and internationally on diverse topics, as indicated in the select list of topics which I have separately set out below. Presentations and publications of particular relevance to the military sphere include the following:

- international law and the global water crisis (Hellenic Australian Lawyers Association Conference, Rhodes, Greece, July 2018; Annual Kirby Lecture, ANU, Canberra, September 2018, published in (2018) 36 Australian Year Book of International Law 1; Environment Institute of Australia and New Zealand Annual Conference, 2018, Sydney);
- implications from a rule of law perspective of automated weapons and artificial intelligence (Washington DC, International Women Judges Association 2016 Biannual Conference, May 2016; Army Training Night, September 2016; Research Unit on Military Law and Ethics, University of Adelaide, November 2016; Supreme and Federal Court Judges' Conference, Perth, January 2017);
- human rights and their application to the ADF (ADF Training Night, 26 November 2014);

- the implications of the rule of law for the ADF (ADF Training Night, 21 July 2011); and
- challenges for administrative law posed by automated decision-making and machine learning (ADF Training Night, 24 July 2014; inaugural International Public Law Conference held by the Cambridge Centre for Public Law, University of Cambridge, 15-17 September 2014; keynote address, Council of Australasian Tribunals 2015 Annual Conference; panel, NSW Law Society Future of Law and Innovation in the Profession Conference on Artificial Intelligence, 25 July 2019; chapter entitled “iDecide: Digital Pathways to Decision” published in Boughery, J, and Miller, K, (eds), *The Automated State: Implications, Challenges and Opportunities for Public Law* (Federation Press, 2021).

In addition, I regularly judge moots and competitions including (most recently):

- the Lex:lead (Lawyers for Economic Advancement and Development) 2022 international essay competition;
- the finals of the 2021 Australian Red Cross and Australian Law Students' Association International Humanitarian Law Moot and the 2021 Sir Harry Gibbs Constitutional Law Moot; and
- the forthcoming final of the Jessup International Law Moot to be held on 12 February 2022.

SELECT LIST OF TOPICS THE SUBJECT OF PRESENTATIONS AND PUBLICATIONS

- Cultural diversity and mentoring in the legal profession
- Promoting women in the law and creating a more egalitarian profession
- Constitutional law including federal judicial power under Chapter III of the Constitution and constitutional limitations and implications
- Native title including as co-author and later, co-editor, of a major textbook
- Environmental regulation in a federal system
- The impact of rising sea-levels on maritime territory
- Judicial independence
- Legal ethics
- Treaty construction in domestic courts
- Disqualification of judges and administrative decision-makers
- Federal discrimination law
- Challenges for justice in a culturally and linguistically diverse society
- The role of interpreters as “enablers of justice”
- Bullying and sexual harassment in the legal profession following publication of the International Bar Association report in May 2019
- Oral and written advocacy
- Good practice in administrative decision-making and writing statements of reasons
- How Australian courts adapted their practices in response to the pandemic
- Mental health in the workplace in challenging times (podcast for the series ‘Leading through Change’, an initiative of the Victorian Workplace Mental Wellbeing Collaboration)



**THE HON RICHARD MARLES MP
DEPUTY PRIME MINISTER
MINISTER FOR DEFENCE**

Ref No: MS22-001614

The Hon James Allsop AO
Chief Justice
Federal Court of Australia
Level 17, Law Courts Building
184 Phillip Street
Queens Square
SYDNEY NSW 2000

Dear Chief Justice

The Chief of the Defence Force, General Angus Campbell AO DSC, has recommended that Squadron Leader the Hon Justice Melissa Perry, of the Federal Court of Australia, be appointed as a Deputy Judge Advocate General of the Australian Defence Force.

This is a statutory appointment made by the Governor-General pursuant to section 179 of the *Defence Force Discipline Act 1982* (the Act). The Judge Advocate General and deputies perform a crucial part in the Defence Force's discipline system including oversight of the operation of the Act, making procedural rules for Service tribunals and providing binding legal reviews of discipline proceedings within the Defence Force.

I support General Campbell's proposal and it is my intention that Justice Perry be appointed on a part-time basis to allow her to continue to discharge her Federal Court duties. I seek your concurrence before advancing the recommendation to the Governor-General for consideration at a meeting of the Federal Executive Council. I am similarly seeking concurrence of the Attorney-General, the Hon Mark Dreyfus KC MP.

I would appreciate your earliest consideration of this request.

Yours sincerely

s22

RICHARD MARLES

3/10/22



CHIEF JUSTICE'S CHAMBERS
FEDERAL COURT OF AUSTRALIA
Law Courts Building
Queens Square Sydney NSW 2000
s47F

18 October 2022

The Hon Richard Marles MP
Deputy Prime Minister
Minister for Defence
Parliament House
CANBERRA ACT 2600

Email: minister@defence.gov.au

Dear Minister

Thank you for your letter of 3 October 2022, received in my chambers on 17 October 2022.

I am happy to concur with the proposed appointment of Justice Perry as Deputy Judge Advocate General of the Australian Defence Force.

Yours sincerely,

s22


The Hon James Allsop
Chief Justice
Federal Court of Australia