



JUDGE ADVOCATE GENERAL

**DEFENCE FORCE
DISCIPLINE ACT 1982**

*Report for the period
1 January to 31 December 2024*

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DEFENCE
CANBERRA ACT 2600

JUDGE ADVOCATE GENERAL

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

Dear Deputy Prime Minister

I submit herewith my report covering the period from 1 January to 31 December 2024. The report is furnished pursuant to the requirements of section 196A(1) of the *Defence Force Discipline Act 1982*.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'John T Rush'.

John T Rush, AO, RFD, KC, RAN
Rear Admiral
Judge Advocate General
Australian Defence Force

04 August 2025

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**JUDGE ADVOCATE GENERAL
AUSTRALIAN DEFENCE FORCE**

REPORT FOR THE PERIOD 1 JANUARY TO 31 DECEMBER 2024

PREAMBLE

1. Section 196A(1) of the *Defence Force Discipline Act 1982* (DFDA) obliges the Judge Advocate General of the Australian Defence Force (JAG), to prepare and furnish to the Minister for Defence a report as soon as practicable after 31 December each year.
2. This Report is for the 12-month period to 31 December 2024.
3. The Office of the JAG (OJAG) is 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.¹
4. Since 1985 there have been eight holders of the office of JAG.²
5. I was appointed JAG on 30 July 2021. I have been appointed for a five-year term. I satisfy the statutory qualification for appointment by virtue of having formerly served as a judge of the Supreme Court of Victoria. I am currently a barrister. Prior to my appointment as JAG I served as Deputy Judge Advocate General – Navy (DJAG-Navy) from 10 March 2014.
6. 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 Australian Capital Territory (ACT) insofar as that law relates to the discipline of the Defence Force.³
 - b. making procedural rules for service tribunals, being:
 - (i) Court Martial and Defence Force Magistrate Rules; and
 - (ii) Summary Authority Rules.

¹ DFDA, s 188.

² The names and dates of the former office holders are set out in Annexure A.

³ DFDA, s 196A.

- c. appointing the Chief Judge Advocate (CJA) and Deputy Chief Judge Advocate (DCJA);⁴
- d. nominating the judge advocate (JA) for a court martial⁵ and Defence Force magistrates (DFMs);⁶
- e. nominating to the Chief of the Defence Force (CDF) or to a service chief, legal officers to be members of the panel of JAs;⁷
- f. appointing DFMs from officers appointed as members of the panel of JAs;⁸
- g. nominating to CDF legal officers to be appointed for the purposes of DFDA s 154(1)(a); and
- h. if requested, providing a final and binding legal report in connection with the internal review of proceedings before service tribunals.

7. The position and functions of JAG and OJAG underscore the legislature's desire for appropriate civilian judicial oversight of the operation of the DFDA and related legislation.

8. Each JAG has been a two-star officer from the reserve service category. Previous JAG Reports have noted that the JAG holds two-star rank and additionally holds or in my case has held the office of a superior court judge. This background means the JAG has a most important leadership role among both permanent and reserve legal officers.

9. The command, technical control and administrative responsibility for legal officers appearing before service tribunals remains with the Chief Counsel, the Director General - Military Legal Service (DGMLS), General Counsel – Military Law (GC-ML) and the single service heads of corps/category/community. I maintain regular contact with the Chief Counsel and DGMLS / GC-ML.

10. The JAG also plays significant roles in promoting the jurisprudential welfare of the ADF and in promoting wider understanding of the operation of the ADF discipline system, both internally and externally to Defence.

11. I share the opinion held by all previous holders of this office that the JAG should not act as general legal adviser to the ADF nor Government; that would be inconsistent with judicial office and independence of the role.

12. Funding for OJAG for the period of this Report was provided by the Associate Secretary Group of Defence.

⁴ DFDA, s 188A and 188EC.

⁵ DFDA, s 129B.

⁶ DFDA, s 129C.

⁷ DFDA, s 196.

⁸ DFDA, s 127.

SIGNIFICANT APPOINTMENTS

Chief Judge Advocate

13. Major General Michael Cowen, AM, KC continued during the reporting period as the CJA. Major General Cowen brings enormous experience and value to the role of CJA. Prior to his appointment as CJA in 2017 Major General Cowen practiced in criminal law in both the United Kingdom and Australia. At the time of his appointment he was a Queen's Counsel prosecutor in Queensland appearing in major criminal trials. Major General Cowen also has significant military experience. He served in Afghanistan with the British Army in 2002 as part of Operation Enduring Freedom. He joined the Australian Army Reserve in 2008.

14. As CJA, Major General Cowen continues to make a significant contribution to ensuring the proper, fair and efficient delivery of military justice in the ADF. His support to me to enable me to fill my functions as JAG has been invaluable.

Deputy Chief Judge Advocate

15. Group Captain Scott Geeves continued his important role as DCJA supporting the CJA, acting as CJA in the absence of Major General Cowen and maintaining his trial schedule.

Deputy Judge Advocates General

16. Section 179 of the DFDA provides for the appointment of Deputy Judge Advocate General(s) (DJAG). The practice since commencement of the DFDA has been to have three DJAGs, with one from each of the services. The DJAGs during the reporting period were:

- a. Commodore James Renwick, AM, CSC, SC, RAN;
- b. Brigadier His Honour Judge Paul Smith, AM; and
- c. Air Commodore Her Honour Justice Melissa Perry.

17. I formally record my gratitude to each of the DJAGs for their support and counsel. They have decades of experience in the ADF discipline system. As well as writing regular reports under DFDA ss 154(3) and 155(3), it is their current experience in civilian criminal courts that presents an invaluable resource for OJAG in shaping its rules and procedures. I thank them for their service to the ADF, much of which is voluntary and is given in addition to their other demanding professional duties as judges or counsel.

18. I congratulate Brigadier Smith upon his appointed as a Member of the Order of Australia in the Military division in the 2024 King's Birthday Honours list recognising both his exceptional service as Deputy Judge Advocate General – Army and his long service to the ADF prior to this appointment.

Reserve Judge Advocates

19. There were two reserve JA/DFMs in 2024. They were:

- a. Commander Greg Sirtes, SC, RAN; and

- b. Wing Commander Sophie Callan, SC.

Registrar of Military Justice

20. Group Captain April-Leigh Rose continued in the role of Registrar of Military Justice (RMJ) after her appointment in October 2021. She continues to bring a practical efficiency, both to trial management and reviews. I wish to acknowledge her support of both myself and CJA in the discharge of our respective offices.

21. Commander Jane Proctor, RAN continued in the role of as Deputy Registrar of Military Justice and has ably assisted the RMJ as acting RMJ in addition to her normal duties.

Staff Officer

22. Captain Nicholas Rheinberger continued in the position of Staff Officer to the JAG and CJA and I thank him for his enthusiastic support.

Office Judge Advocate General

23. I acknowledge the dedicated support of our staff, Senior Trial Administrator, Jenny Cameron, Trial Administrators, Jo Mazlin, Iryna Law and Natalie Byrne and Business Manager William Wright.

Expiration of statutory appointments

24. The current position for the expiration of statutory appointments within my office is as follows:

- a. JAG, Rear Admiral Rush, RAN, expiry date 29 July 2026;
- b. DJAG-Navy, Commodore Renwick, RAN, expiry date 29 July 2026;
- c. DJAG-Army, Brigadier Smith, expiry date 09 March 2027;
- d. DJAG-Air Force, Air Commodore Perry, expiry date 09 February 2028;
- e. CJA, Major General Cowen, expiry date 21 September 2027;
- f. DCJA, Group Captain Geeves, expiry date 28 March 2030; and
- g. RMJ, Group Captain Rose, expiry date 30 October 2026.

Section 154 reporting officers

25. Section 154 of the DFDA requires that reviewing authorities obtain a report from a legal officer prior to commencing a review of a service conviction. For a conviction by a court martial or DFM, or a direction given under DFDA ss 145(2) or (5), the legal report must be provided by a legal officer appointed by CDF (or a service chief) on the recommendation of the JAG: DFDA s 154(1)(a).

26. The experiences and perspectives gained by these officers through the provision of legal opinions pursuant to the DFDA s 154 are unique and afford a special opportunity to observe how the DFDA operates.

27. The s 154(1)(a) legal reporting officers during the reporting period were:

- a. Lieutenant Commander His Honour Chief Justice William Alstergren, AO, RAN;
- b. Lieutenant Commander Her Honour Judge Catherine Traill, RAN;
- c. Lieutenant Colonel Emma Shaw;
- d. Major Deputy Chief Magistrate Michael Antrum;
- e. Major Michelle Barnes;
- f. Major Chris Gunson, SC;
- g. Air Commodore His Honour Judge Michael Burnett, AM;
- h. Group Captain Magistrate James Gibson;
- i. Group Captain His Honour Judge Gregory Lynham;
- j. Wing Commander Her Honour Judge Joana Fuller;
- k. Wing Commander Magistrate Glenn Theakston; and
- l. Squadron Leader Magistrate James Lawton.

28. I thank all s 154 officers for their service to the ADF, which is given in addition to their other busy civilian professional duties as judges, magistrates or senior legal practitioners.

Related appointments

29. Ms Francesca Rush took over as Chief Counsel following the retirement of Mr Adrian D-Amico on 29 October 2024. During the reporting period, I have had consultations with both Mr D’Amico and Ms Rush about the development of the ADF discipline system and in promoting both legislative and managerial improvements.

30. Air Commodore Patrick Keane, AM, CSC continued in the role of DGMLS throughout the reporting period. I acknowledge his astute stewardship over the reporting period.

31. The Director of Military Prosecutions is appointed under the DFDA.⁹ Air Commodore Ian Henderson, AM continued in the role of DMP and reports separately as required by DFDA.¹⁰

32. The Director of Defence Counsel Services (DDCS) is appointed under the *Defence Act 1903*. During the reporting period Colonel Joshua Clifford continued in this position.

33. The Inspector General of the ADF (IGADF) is appointed under the Defence Act. The position of IGADF continued to be filled during the reporting period by Mr Jim Gaynor, CSC. I continued to meet with IGADF during the reporting period.

⁹ DFDA, s 188GF.

¹⁰ DFDA, s 196B.

JUDGE ADVOCATE GENERAL ADF CONFERENCE OCTOBER 2024

34. Between 21-25 October 2024 I hosted a conference in Canberra and Sydney for Judge Advocates General, Judges and senior military justice figures from the United States Navy, Army, Marine Corps, Airforce and Coast Guard, United Kingdom, Canada, New Zealand, Singapore, Indonesia and Fiji. The conference allowed in depth discussion on military justice issues facing our partners with similar jurisdictions. In addition to our Five Eyes counterparts it was particularly pleasing to host attendees from the Indo Pacific.

35. One of the issues of interest to all attendees was the handling of sex offending in their respective military jurisdictions.

36. Most jurisdictions have similar special measures available to complainants which reflect modern civilian criminal court practise. Of note Canada has recently ceased military investigations of sex offences in the military for domestically occurring offences. It remains to be seen whether this transfer of jurisdiction to civilian authorities will be successful. Delay, issues of clear jurisdictional ownership by civilian police, the manner of provision of information to complainant and accused alike, and the impact of such matters on military discipline in general are all being monitored.

37. The collective opinion of all attendees was that although sex offending has differing special measures and procedures to proceedings for other offending there is no logical or practical rationale for removing this type of offending from the military discipline system. This conclusion echoes my assessment recorded previously in this report and at para [45] below. It was reassuring that all representatives from comparable military discipline systems held the same opinion. I am satisfied such offending continues to be fairly dealt with within the superior tribunal system (Summary Authorities are not permitted to deal with sex offences under the DFDA).

38. The conference discussed other topics of importance to military discipline with presentations on; operations in large-scale conflicts, rights of election, the Royal Commission into Defence Veterans' Suicides, communication highways and AI, and current issues in war crimes prosecutions.

39. The conference provided a real opportunity for review of and reflection on our discipline system against comparable jurisdictions. I maintain my confidence that the ADF military discipline system meets all required standards and best practice.

40. I thank in particular Major General Cowen and Group Captain Scott Geeves with Staff Officer Captain Nicholas Rheinberger for their planning and organisation which was so important to the success of this conference.

MILITARY JUSTICE ENTITIES

Military Justice Steering Group

41. In 2024 the Military Justice Steering Group (MJSG) was chaired by the Head Joint Support Services Division (HJSSD) Air Vice-Marshal Lara Gunn, CSM. The MJSG continued to oversee matters pertaining to the discipline system of the ADF. A number of recommendations (over recent years) from the JAG Report have been referred to MJSG. I recognise that addressing these matters requires legislative amendment and such amendments being fitted into a busy government legislative agenda, however another year has gone by without any legislative change to these important issues.

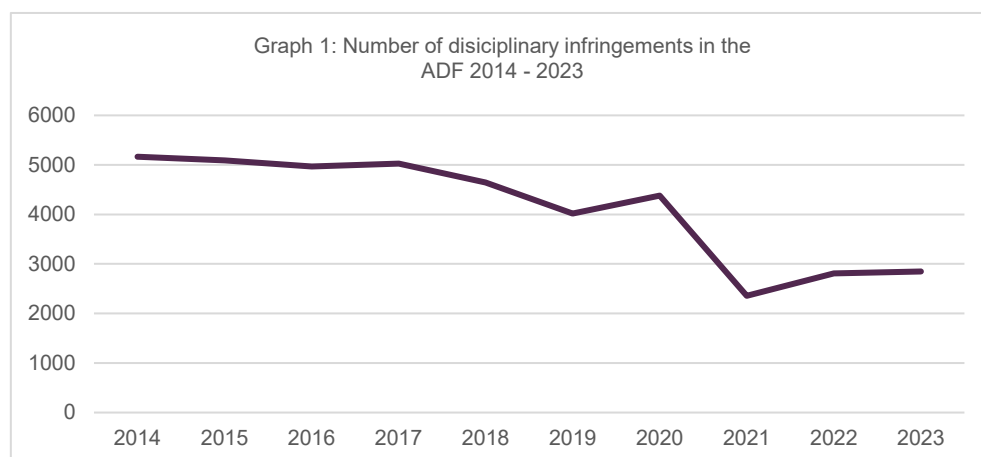
MILITARY JUSTICE ISSUES

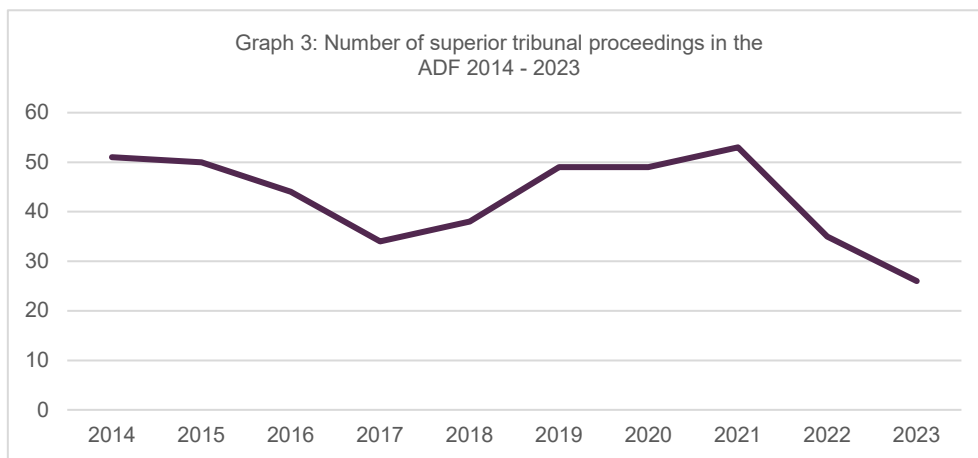
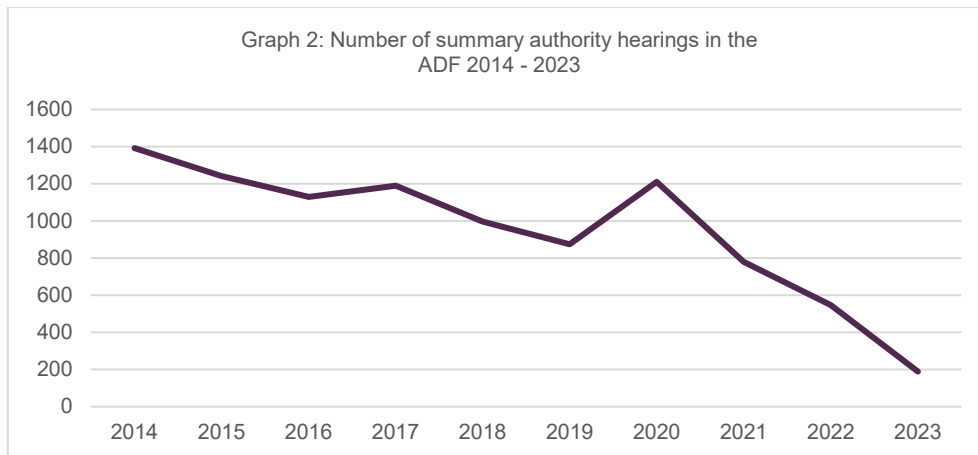
Reduction in use of the discipline system

42. In last year's Report I noted that the impact of changes brought about by the revised *Summary Authority Rules 2019* and the changes to the DFDA by the *Defence Legislation Amendment (Discipline Reform) Act 2021* remained to be seen. I also observed that access to reliable data would be essential to enable me to consider the overall effectiveness of the summary discipline system including the changes to the Discipline Officer Scheme that took effect late in the reporting period.

43. A new case management system to enable proper reporting and analysis of the summary discipline system was activated this year (Defence Enterprise Resource Planning Case Management Solution system (DECMS)). Unfortunately its introduction has been marred by IT issues. The system remains ineffective insofar as the provision of important disciplinary data is concerned. The data provided by DECMS indicates there was 2275 disciplinary infringements across the ADF in 2024, however the reliability of this data set is unknown. I am without any data for summary authority proceedings in 2024. I have reliable data for the superior discipline system for 2024 as they had not yet transited to DECMS. OJAG has undertaken a review of information provided by IGADF over the period 2014-2023. This review demonstrates a marked reduction in use of the summary system. Figures for 2014 recording 1,392 summary proceedings and 2023 recording 189 summary proceedings graphically demonstrate the reduction.

44. The graphs below demonstrates the decline not only in summary authority matters but in the use of the disciplinary infringements. Further, regarding the superior discipline system in 2024 only 29 matters were referred by the DMP to the RMJ. The reasons for the decline in the use of the summary and superior discipline systems requires investigation and will be a focus of my attention over the next twelve months. A copy of the complete use of disciplinary system data from 2014-2023 is contained at Annexure C.





Sexual Offences and consent laws in the ACT applicable in the military discipline system

45. As stated, I continue to hold the view that the superior tribunal system provides a fair efficient system capable of dealing with sex offences as well as all other offences. A complainant has all of the safeguards and special measures available to a complainant in the civilian system (bar one below) and the laws of evidence applicable in the ACT Supreme Court are strictly applied as if the superior tribunal was a court in the Jervis Bay Territory exercising its criminal jurisdiction (s 146 DFDA). The superior tribunal is able to deal with such matters more expeditiously than comparative criminal jurisdictions. See also para 37 concerning the JAG Conference 2024.

Representation of witnesses

46. The military justice system through the DGMLS and the MJSG embraced the JAG proposal that a member's rights and expectations of privacy being enhanced in appropriate cases, by separate legal representation of witnesses where issues of privacy arise. This is particularly relevant in sexual offence proceedings in relation to stored digital data about which there would be a reasonable expectation of privacy (i.e. phones, iPads and the like) and the issue of a summons for such material, or as outlined in last year's Report concerning protected confidence material. During the reporting period this service continued to be available to members through Defence Counsel Services.

Tri-Service court martial panelling policy

47. Most matters before the superior tribunal are dealt with by DFMs. Courts martial are convened in a small number of cases per year. During the reporting period, after consultation with Command, the RMJ for reasons of efficiency continued drawing court martial panels from all three services. Previously, court martial panels were drawn only from the service of the accused for mainly historical reasons. The CDF and Service Chiefs were supportive of this initiative and the policy became operational from September of 2023. While panel members are drawn from a tri-service pool, there is no guarantee as to the final Service makeup of the panel, because the identification process is both random and service agnostic. The RMJ publishes the panelling policy to all ADF members on the JAG intranet site. During the reporting period this system worked effectively. It is worthy of note the UK has now also moved to tri service panels.

RECOMMENDATIONS OF PRIOR JAG REPORTS

48. The 2023 JAG report, and previous JAG Reports have made recommendations for legislative change, most of which have not been advanced. Annexure H contains a full list of the recommendations which have not been actioned by legislative change. I recognise a number of these recommendations are supported by Defence and MJSG but addressing these matters requires legislative amendment and such amendments being fitted into a busy government legislative agenda. I again set out some of the recommendations to highlight their importance.

Court martial panels imposing sentence

49. Australia is now the only Five Eyes military retaining the historic system of a court martial panel determining guilt and determining penalty. The practice is anachronistic and is a matter which has been raised in JAG Reports for at least ten years:

- a. court martial sentencing was raised in the 2013 JAG Report by the then JAG, the late Major General the Honourable Justice RRS Tracey, AM, QC, RFD;¹¹
- b. explicitly raised as part of proposed superior tribunal procedural reform in the 2017 JAG Report by the previous JAG, Rear Admiral the Honourable Justice MJ Slattery, AM, AM(Mil), RAN;¹² and
- c. raised or mentioned in the 2018,¹³ 2019,¹⁴ 2020,¹⁵ 2021,¹⁶ 2022¹⁷ and 2023¹⁸ JAG Reports.

¹¹ 2013 JAG Report at [46] – [48].

¹² 2017 JAG Report at [84].

¹³ 2018 JAG Report at [47] – [57].

¹⁴ 2019 JAG Report, Annexure J at [6].

¹⁵ 2020 JAG Report at [74].

¹⁶ 2021 JAG Report, Annexure B at [13].

¹⁷ 2022 JAG Report at [40] – [44].

¹⁸ 2023 JAG Report at [44(a)].

50. The Australian system of a court martial panel imposing sentence alone is in urgent need of attention. I acknowledge this recommendation is being advanced through the MJSG.

51. I note the Royal Commission into Defence and Veteran Suicides at Recommendation 34 adopted the JAG concerns that courts martial do not provide reasons for sentence.

Reporting service convictions to civilian authorities

52. In the reporting period, there continued to be technical difficulties in adopting this recommendation but I understand these have been resolved and the recommendation was accepted and will be actioned during 2025.

Warrant Officers sitting on panels

53. I understand the initiative is supported within Defence, but no legislative change has been advanced.

Elections – s 111B

54. I have previously recommended the abolition of the right in s 111B DFDA which allows for senior officers to elect to have matters which would normally be dealt with by a summary authority (including a CO) heard by DFM or court martial (the choice of which presently remains with the DMP).¹⁹ Differential rights of this sort can no longer be justified on the basis simply of senior rank.

Video evidence in chief for complainants in sex offence proceedings

55. There has been no progress in this regard in the reporting period.

Abolition of DMP's right to unilaterally decide the mode of trial

56. In my 2022 Report (and repeated in the 2023 Report) I stated:

“[55] I have already addressed the issue of election as it concerns rank. There is a further anomaly in the election process. An example of this is that whilst a member has (limited) rights of election on most offences, that election does not allow the member to choose a trial before a DFM or a court-martial. The type of tribunal to be convened is entirely the choice of the DMP. The DMP chooses whether the matter will go before a DFM, restricted court-martial or general court martial. In most criminal justice systems, it is the prosecution who determine the charge(s). There is no comparative civilian system in Australia whereby the prosecution unilaterally determines the venue for trial. In most common law jurisdictions, of course, an accused has the right to choose a trial by jury (except where the legislature has made the offence summary only).

[56] ... Other comparative jurisdictions have a more transparent election system. In the UK, any member may elect a court-martial on any offence. In Canada, the maximum penalty of the offence and a right of election will determine the venue. The interests of transparency, openness and fairness of the military discipline system require a change to the election regime which would remove the choice of venue from the DMP.

¹⁹ JAG Report for period to 31 December 2022 [49].

57. An accused member, particularly in cases of more serious offending, has a high interest in the mode of trial. Thus I consider the parliament should give consideration to amending the DFDA so there is a statutory presumption for trial by General Court Martial (GCM) for more serious offences to be determined by the term of imprisonment capable of being imposed.²⁰

DFM Sentencing Powers

58. I recommended last year that consideration be given to increasing sentencing powers of a DFM. This change would be consistent with contemporary standards and promote efficiency and flexibility in a rapidly changing strategic environment for the ADF. No progress has been made in this regard.

NEW RECOMMENDATIONS FOR DFDA AMENDMENTS

Sentencing provisions and Victim Impact Statements

59. The DFDA s 70 lists certain matters to take into account in sentencing, but it has not kept abreast with developments in the criminal law, for example on the use to be made of Victim Impact Statements. DFDA s 70 says a service tribunal shall have regard to the principles of sentencing applied by the civil courts, from time to time, and the need to maintain discipline in the defence force, s 72 states certain provisions of the Crimes Act 1914 apply (in relation to sentencing). I recommend, consistent with Recommendation 20 of the Royal Commission into Defence and Veteran Suicide, that s 70 DFDA should be amended to pick up ss 16AAAA and 16AB concerning the use of Victim Impact Statements and the full sentencing principles of s 16A Crimes Act 2014.

Appointment of JA and DFMs

60. The structure of the DFDA means that if a JA is unable to continue to sit on a court martial before the panel is sworn or affirmed (for whatever reason), the RMJ may appoint (on nomination by the JAG) a new JA to take over (s 123 DFDA). Appreciating the Tribunals are adhoc, the same process cannot be undertaken if a DFM is unable to continue to hear a case once that DFM commences to try the charge or hear the case (s 129A (b)) which would include dealing with pre trial issues. In those circumstances the DFM must direct the registrar to terminate the reference. The registrar can only refer the case to a new DFM to take action under Part IV (i.e. sentencing). There is no provision in the DFDA for the Registrar to refer the case to a new DFM in any other circumstances other than after conviction. This means where a DFM has begun to try a charge or hear the case e.g. make pre trial rulings prior to arraignment and cannot continue for whatever reason, the Registrar must terminate the reference and the whole process has to start afresh i.e. a new referral of the charge sheet from the DMP and everything it entails – service of the charge sheet on the accused etc.

61. This adds inefficiency to the process and may cause undue stress to an accused, and presents unnecessary inefficiencies particularly if the Tribunal was sitting abroad. It also means any pre trial rulings by the outgoing DFM are not binding as the proceedings are essentially brought to an end and a new referral required.

62. Consideration should be given to amendment to the DFDA to allow for a new DFM to be nominated and appointed so that the whole process does not have to start

²⁰ For example, DFDA offences carrying five or more years imprisonment.

again. This would bring DFM hearings in line with Courts Martial in this regard and reduce the chance of unnecessary disruption to the proceedings. It, of course, causes real disruption to the proceedings to have to terminate a reference in these circumstances and the remedy is a simple one by amendment of s 129A DFDA. The practical effect would be that a new DFM could be appointed at any time prior to arraignment and the proceedings would continue. The difference between a JA and DFM in this regard is not logical nor appropriate.

Conclusion

63. Made more urgent by a changing strategic environment facing the country, this Report respectfully requests that Parliament address these suggested changes through legislation so as to maintain confidence in the ADF's superior and summary military discipline system.

64. The DFDA has not been substantially reformed since 1982 and recommendations made in successive JAG reports have not been implemented. Legislative reform to the DFDA is still required for it to fully reflect comparable civilian standards for the administration of justice applied in a military context.

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 and objectives	Paragraphs 3–11
Membership and staff	Paragraphs 3, 13–28
Information Officer	Major Jodi Walsh Staff Officer to the Judge Advocate General and Chief Judge Advocate Defence F-TS-OJAG (PO Box 7906) CANBERRA BC ACT 2610 Telephone: 03 6271 5798
Financial Statement	Paragraph 12
Activities and Reports	Paragraphs 34–41
Operational Problems	Paragraphs 42–62
Subsidiaries	Not applicable

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FORMER JUDGE ADVOCATES GENERAL

1. Former holders of the office of JAG have been:
 - a. 1985–1987 the late Major General the Honourable Justice R Mohr, RFD, ED (of the Supreme Court of South Australia).
 - b. 1987–1992 Air Vice Marshal the Honourable Justice AB 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 the late Rear Admiral the Honourable Justice ARO Rowlands, AO, RFD, RAN (of the Family Court of Australia).
 - d. 1996–2001 Major General the Honourable Justice KP Duggan, AM, RFD (of the Supreme Court of South Australia).
 - e. 2001–2007 Major General the Honourable Justice LW 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 the late Major General the Honourable Justice RRS Tracey, AM, RFD (of the Federal Court of Australia).
 - g. 2014–2021 Rear Admiral the Honourable Justice MJ Slattery, AM, AM (Mil), RAN (of the Supreme Court of New South Wales) — appointed in May 2014 but had been acting since Major General Tracey's retirement in 2014.

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NATURE AND JURISDICTION OF THE MILITARY DISCIPLINE SYSTEM

SUMMARY AUTHORITIES

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

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.

DISCIPLINE OFFICERS

4. As of December 2022, there are now two classes of discipline officer – Senior Discipline Officer and Discipline Officer. They 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. Senior Discipline Officers have replaced what used to be the subordinate summary authority jurisdiction now the *Defence Legislation Amendment (Discipline Reform) Act 2021* has come into effect.

5. 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.

6. Discipline officers have jurisdiction to deal with a limited number of offences and to award limited punishments under the DFDA.

COURTS MARTIAL

7. 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.

Jurisdiction of the superior discipline tribunal

8. Courts martial and DFMs 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.

9. The DFM 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 DFM sits alone whereas courts martial require at least four persons (three members and the judge advocate). A DFM gives reasons for decision both on the determination of guilt or innocence and on sentence; courts martial do not give reasons on either. The DMP decides whether charges will be heard by a DFM or a court martial.

Types of court martial

10. 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.

11. 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

12. DFMs are appointed by the JAG from members of the judge advocate's panel. A DFM sits alone when trying a matter and has the same jurisdiction and powers as a restricted court martial.

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USE OF THE DISCIPLINARY SYSTEM 2014 – 2023

DISCIPLINARY INFRINGEMENTS

Table 1: Number of Disciplinary Infringements 2014 – 2023				
Year	Navy	Army	Air Force	ADF Total
2014	1728	2999	438	5165
2015	1690	2985	415	5090
2016	1647	2908	412	4967
2017	1761	2809	457	5027
2018	1694	2568	385	4647
2019	1567	2119	335	4021
2020	1707	2185	490	4382
2021	1289	1831	526	2357
2022	1059	1516	232	2807
2023	820	1658	372	2850

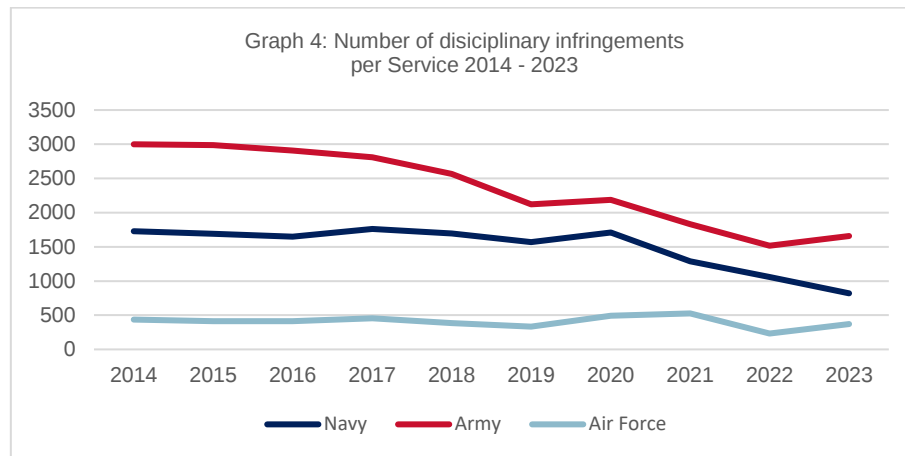
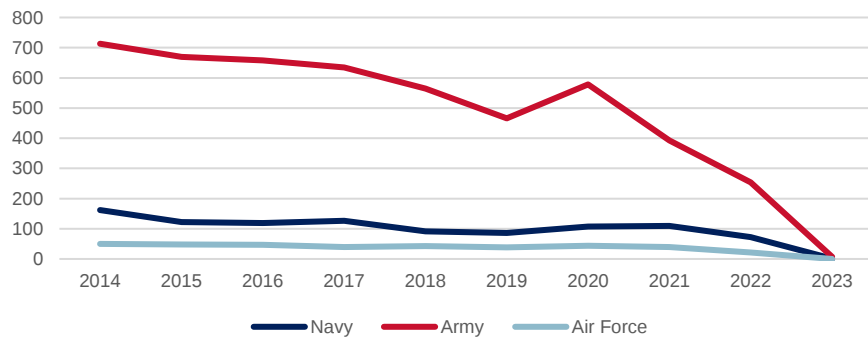


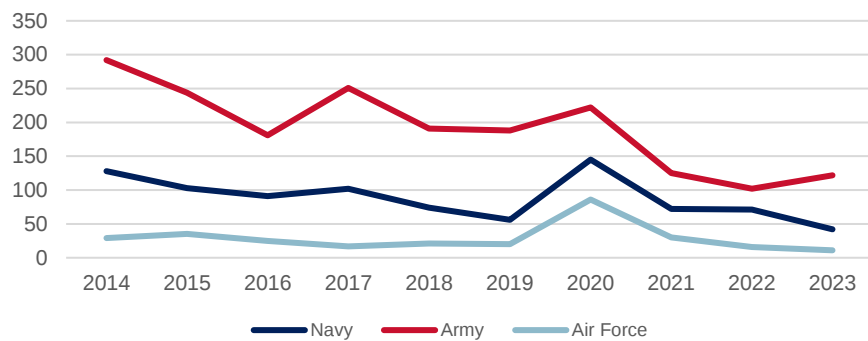
Table 2: Number of Summary Authority Hearings 2014 – 2023																
	SUBSA						CO						SUPSA			Combined matters
Year	Navy	Army	Air Force	ADF Total	Navy	Army	Air Force	ADF Total	Navy	Army	Air Force	ADF Total	Year Total			
2014	162	713	50	925	128	292	29	449	2	15	1	18	1392			
2015	122	669	48	839	103	244	35	382	1	15	4	20	1241			
2016	119	658	47	824	91	181	25	297	0	8	0	8	1129			
2017	127	635	40	802	102	251	17	370	1	15	1	17	1189			
2018	92	564	43	699	74	191	21	286	1	10	1	12	997			
2019	86	466	39	591	56	188	20	264	4	12	3	19	874			
2020	107	578	44	729	145	222	86	453	5	18	6	29	1211			
2021	110	393	40	543	72	125	30	227	2	3	4	9	779			
2022	72	254	22	348	71	102	16	189	2	5	2	9	546			
2023	1*	7*	0	8*	42	122	11	175	1	4	1	6	189			
*note: SUBSA trials were no longer legislated, these matters have been investigated and determined to be input errors.																

*note: SUBSA trials were no longer legislated, these matters have been investigated and determined to be input errors.

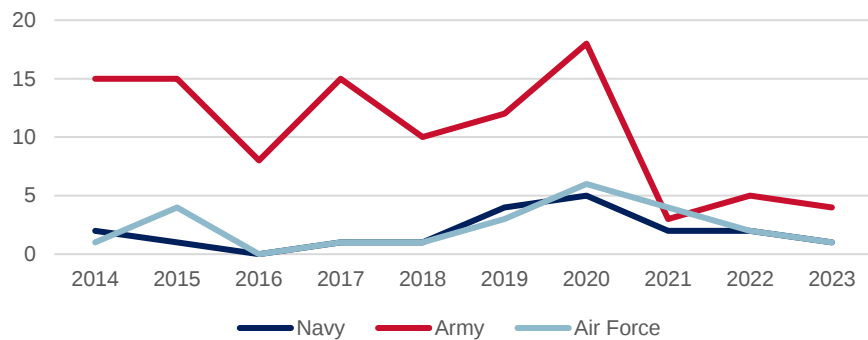
Graph 5: Number of SUBSA hearings per Service
2014 - 2023



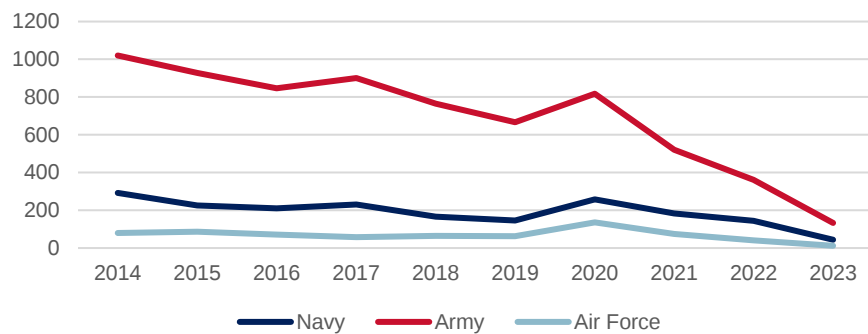
Graph 6: Number of CO hearings per Service
2014 - 2023



Graph 7: Number of SUPSA hearings per Service
2014 - 2023



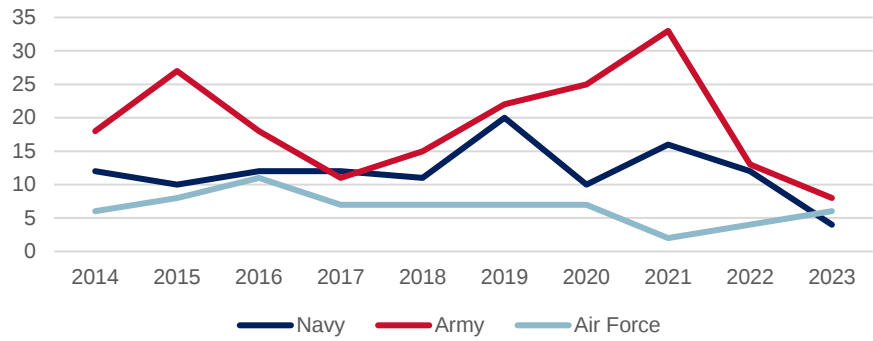
Graph 8: Combined number of summary authority matters
per Service 2014 - 2023



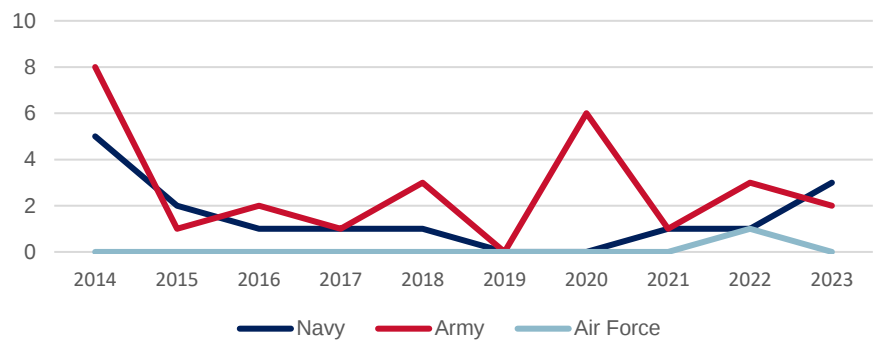
SUPERIOR TRIBUNAL PROCEEDINGS

Table 3: Number of Superior Tribunal Proceedings 2014 - 2023														
	Defence Force magistrate				Restricted court martial				General court martial					
Year	Navy	Army	Air Force	ADF Total	Navy	Army	Air Force	ADF Total	Navy	Army	Air Force	ADF Total	Combined matters	
2014	12	18	6	36	5	8	0	13	2	0	0	2	51	
2015	10	27	8	45	2	1	0	3	0	2	0	2	50	
2016	12	18	11	41	1	2	0	3	0	0	0	0	44	
2017	12	11	7	30	1	1	0	2	2	0	0	2	34	
2018	11	15	7	33	1	3	0	4	0	1	0	1	38	
2019	20	22	7	49	0	0	0	0	0	0	0	0	49	
2020	10	25	7	42	0	6	0	6	0	1	0	1	49	
2021	16	33	2	51	1	1	0	2	0	0	0	0	53	
2022	12	13	4	29	1	3	1	5	0	0	1	1	35	
2023	4	8	6	18	3	2	0	5	1	2	0	3	26	

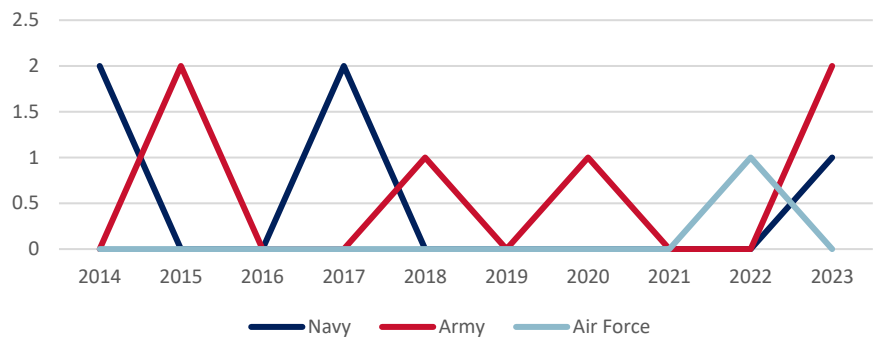
Graph 9: Number of Defence Force magistrate proceedings per Service 2014 - 2023



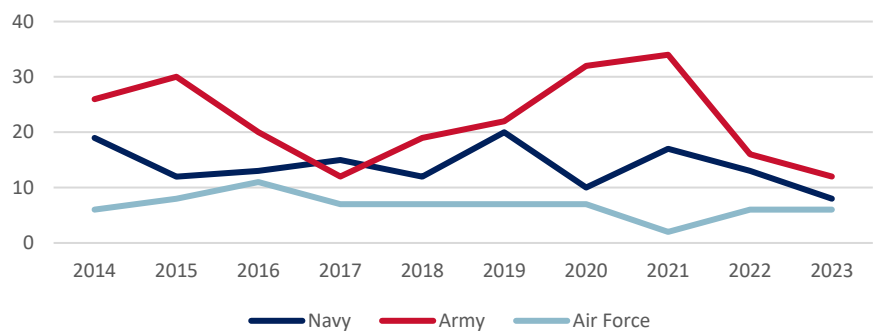
Graph 10: Number of restricted court martial proceedings per Service 2014 - 2023



Graph 11: Number of general court martial proceedings per Service 2014 - 2023



Graph 12: Combined number of superior tribunal proceedings per Service 2014 - 2023



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ANNEX D TO
JAG REPORT 2024

NAVY

JANUARY-DECEMBER 2024

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											2	9			2
March															
April											2	4			2
May															
June											1	1			2
July															
August															
September															
October															
November	1	4		158	1	3		2			3	7	12		6
December											1	2			
TOTAL	1	4	0	158	1	3	0	2	0	12	9	23	12	0	12

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									1	2
27										
28										
29										
30										
31										
32										
33(a)										
33(b)										
33(c)										
33(d)										
33A										
34										2
35										
36										
36A										
36B										
37										
38										
39										
40										
40A										
40C										
40D										
42										
43										
44										
45										
46										
47C							1			
47P										
47Q							9			
48										
49										
50										
51										
53										
54										
55							1			
56							1			
57										
58										
59										
60										
61						1	2		5	4
TOTAL	0	0	0	0	0	1	14	0	6	9

**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									1	2
Conditional conviction without punishment										
Unconditional conviction without punishment										1
Severe reprimand										
Suspended fine										
Fine Less than 14 Days Pay										4
Fine More than 14 Days Pay										
Forfeiture of service for purposes of promotion										
Forfeiture of seniority									1	
Reduction in rank							11			
Suspended detention										
Committed detention							2		4	2
Dismissal						1	4			
Imprisonment							2			
TOTAL	0	0	0	0	0	1	19	0	6	9

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ANNEX E TO
JAG REPORT 2024

ARMY

JANUARY-DECEMBER 2024

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											2	3	4		1
March											1	1			
April											2	3			
May															
June											1	4			
July											1	2			
August											2	1			1
September											2	3			3
October															
November											1	2			2
December											1	2			28
TOTAL	0	0	0	0	0	0	0	0	0	0	13	21	4	0	35

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							1			
27										
28										
29										
30										
31										
32										
33(a)										
33(b)										
33(c)										
33(d)										
33A										
34				1			1			
35							1			
36										
36A										
36B										
37										
38										
39										
40										
40A										
40C										
40D										
42										
43										
44										
45										
46										
47C	1									
47P										
47Q	1									
48										
49										
50										
51										
53										
54										
55										
56										2
57										
58										
59										
60				4		1	3			1
61				1			2			1
TOTAL	2	0	0	6	0	1	8	0	0	4

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

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

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ANNEX F TO
JAG REPORT 2024

AIR FORCE

JANUARY-DECEMBER 2024

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											1	1			
June															
July											1		1		
August															
September											1	1			
October															
November						1	4			5	2	1	1		4
December															
TOTAL	0	0	0	0	0	1	4	0	0	5	5	3	2	0	4

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

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

**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									1	
Conditional conviction without punishment										
Unconditional conviction without punishment										
Severe reprimand	1									
Suspended fine										
Fine Less than 14 Days Pay	4			1					1	
Fine More than 14 Days Pay										
Forfeiture of service for purposes of promotion										
Forfeiture of seniority	3									
Reduction in rank										
Suspended detention										
Committed detention										
Dismissal from ADF						1				
Imprisonment										
TOTAL	8	0	0	1	0	1	0	0	2	0

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ANNEX G TO
JAG REPORT 2024

COMBINED JANUARY - DECEMBER 2024

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											4	12	4		3
March											1	1			
April											4	7			2
May											1	1			
June											2	5			2
July											2	2	1		
August											2	1			1
September											3	4			3
October															
November	1	4			158	2	7			7	6	10	13		12
December											2	4			28
TOTAL	1	4			158	2	7			7	27	47	18		51

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RECOMMENDATIONS FROM PREVIOUS JAG REPORTS FOR FURTHER ACTION

	JAG Recommendation	Year/s Recommended
1.	Provision for the award of a general sentence. Amend DFDA s. 66 to permit the imposition of a general sentence to be imposed for the entirety of the wrongdoing on which the offender stands convicted.	2009, 2010, 2017
2.	Pre-trial submissions applications or objections. Amend DFDA s. 141 to also allow submission of pre-trial applications by the prosecution.	2011, 2017
3.	Suspended detention. Amend DFDA s. 78 to permit Service tribunals to suspend sentences of detention for one course of conduct but determine for other reasons that the sentence should not be suspended for another course of conduct.	2011, 2017
4.	The intended operation of DFDA s. 36, dangerous conduct. Review DFDA s. 36 to clarify scope and intended operation of the offence of 'dangerous conduct'.	2011, 2017
5.	The accused's attendance at all hearings. Amend DFDA s. 139 to allow for the accused to be absent from court during purely procedural hearings.	2011, 2017, 2021
6.	The power of the President at a court martial to make protective orders and non-publication orders. Amend DFDA ss. 140, 148, and 148A-D such that all discretions that would ordinarily be given or exercised by a judge sitting with a jury in a civil criminal proceedings are vested in the JA, rather than the President, consistent with the approach in DFDA s. 134(1).	2011, 2013, 2014, 2017, 2020, 2021
7.	Consideration of evidence not reasonably available during proceedings. Amend DFDA s. 162 to permit a reviewing authority, in reviewing whether the punishment should be approved, to consider evidence not presented at the trial only where the evidence was not reasonably available during the proceedings.	2012, 2017
8.	Court martial panels imposing sentence. Panels impose sentence without reasons. Australia is the only five eyes jurisdiction where this occurs. Sentencing should be undertaken with involvement of the Judge Advocate with full reasons.	2013, 2014, 2017, 2018, 2020, 2021, 2022, 2023
9.	Judge Advocates' independence. To afford a JA greater independence, transfer the appointment of a JA from CDF to the Governor-General. Additionally, to promote public confidence, have the appointments be long-term and non-renewable.	2013, 2016, 2017
10.	Amend DFDA s. 153 to preclude a reviewing authority from considering a petition against the severity of punishment, where that reviewing authority has already conducted an earlier review. This would reduce double handling of the same issue.	2014, 2017
11.	Early release from imprisonment. Review the arrangements for the early release of a Defence member sentenced to imprisonment on condition of good behaviour in view of the removal of recognisance release orders.	2015, 2017
12.	Right to elect a trial by Superior Service tribunal. Amend the election scheme in summary authority proceedings to allow election at only one point in the dealing and trial processes.	2015, 2017, 2020, 2023

13.	Simplify review framework. Three levels of internal review of guilty findings and an external appeal process (DFDAT) does not represent best practice and requires further consideration.	2016, 2017
14.	Aligning with civilian criminal trial management. Provisions to reduce delay and inefficiency in the conduct of criminal trials have long been used in civilian criminal courts (ie. Criminal Procedure Act 1986 (NSW), Ch 3, Pt 3, Div 3) and should be included in the DFDA. JAs and DFMs should be given trial management powers as close as possible to those already conferred on civilian criminal courts.	2016, 2017, 2021
15.	Mandated parliamentary response to JAG reports and 5 yearly parliamentary review of DFDA. There should be a mandated periodic parliamentary response to the JAG's reports to better enable the JAG to fulfil their important function.	2017, 2018, 2019
16.	Disclosure obligations for expert evidence. The DFDA should be amended to require disclosure by parties in advance of trial before a superior service tribunal of any expert report to be relied upon.	2017, 2019, 2021
17.	Mentally impaired ADF members before service tribunals. The DFDA needs to align with civilian standards in fairly managing such defendants.	2017, 2021, 2022
18.	Give modern powers to ADF investigators. The DFDA should be amended to give Service Police enforcement powers that are routinely found in Commonwealth, State and Territory criminal investigation legislation.	2017, 2018, 2020
19.	Dismissal of Judge Advocates. DFDA s. 196AA should be amended to provide that Judge Advocates can only be dismissed by the CDF with the concurrence of the JAG.	2018, 2020, 2021
20.	Formal assessment of the Summary Authority Rules (SAR). A more formal assessment of the impact of the SAR should be undertaken, possibly in conjunction with IGADF's routine audits of the operation of the summary discipline system.	2020, 2021
21.	Term of appointment of s. 154 legal officers. Amend DFDA s. 154(1)(a) to allow legal officers to be appointed for a term of five years.	2020, 2021
22.	Protection of the independence of Judicial Deputy Judge Advocate Generals. Amend DFDA s. 186 to remove District Court and County Court judges from the operation of s.186(1) and s.186(2) and to include them within the operation of s.186(3).	2020, 2021
23.	Elections – DFDA s. 111B. Introduce equity in the rank at which a member may make an election to the superior tribunal.	2022, 2023
24.	Abolition of DMP's right to unilaterally decide mode of trial. Currently the decision of whether the accused is tried by a Defence Force Magistrate of Court Martial is only available to the Director of Military Prosecutions (DMP). Election regimes should be changed to remove the choice of venue from the DMP to a fairer system.	2022, 2023

25.	Reporting service convictions to civilian authorities. DFDA s. 190A provides for circumstances in which Defence may disclose the fact of a conviction for a service offence to an authority of the Commonwealth or of a State or a Territory. Defence should develop a policy to ensure DFDA s. 190A is utilised.	2022, 2023
26.	Sex offence proceedings before the superior system. The only procedure currently not available in a sex offence proceeding before the superior tribunal is the use of video recorded evidence in chief in accordance with the rules of evidence which apply in the ACT. This is because the applicable ACT legislation in defining a 'police officer' who can record the evidence does not include a service police member. This needs amendment.	2022, 2023
27.	Warrant Officers sitting on court martial panels. Warrant Officers sitting on court martial panels for ranks below them will add significant benefit to the system.	2022, 2023
28.	Sentencing powers of a Defence Force Magistrate. Increase sentencing powers of DFMs for consistency with contemporary standards and promote efficiency and flexibility in a rapidly changing strategic environment for the ADF.	2023