

ENCLOSURE 4 TO
FORM 46

RIGHT TO LEGAL REPRESENTATION AND PRIVACY NOTIFICATION

Legal Representation

1. If you have not already done so, you are invited to inform the Defence Counsel Services (DCS) by email <DefenceCounselServices@defence.gov.au> of the name of any member of the Defence Force (including the Reserve Forces) whom you wish to assist you in the preparation and conduct of your case. Alternatively, you may have a legal officer assigned to assist you. You are also entitled to be represented by a civilian legal practitioner; however, the costs of such representation will not normally be borne by the Commonwealth.
2. If you provide DCS, in writing, the name and addresses of any witnesses whom you may wish to call, and whose attendance can reasonably be procured, they will be duly summoned to appear on your behalf. You are also entitled to call witnesses as to your character and witnesses who are qualified to give expert opinion evidence, where such evidence is relevant to your case.
3. Should you wish to have produced at the trial any documents that have not been provided to you but which you consider to be material evidence in the case, you should advise DCS of full particulars. Arrangements will be made to comply with all reasonable requests.
4. **For courts martial:** At any time before you are asked to plead at a trial by the court martial, you may make any applications or objections in connection with your case which are authorised by the *Defence Force Discipline Act 1982* (DFDA), s. 141(1), (2) or (3).
5. **For Defence Force magistrate trials:** At any time before you are asked to plead at a trial by the Defence Force magistrate, you may make any applications or objections in connection with your case which are authorised by DFDA, s. 141(1) or (4).

Privacy Notice

6. Australian Privacy Principle (AAP) 5 of the *Privacy Act 1988* requires that 'AAP entities' give notice to individuals about whom personal information has been or may be collected. In accordance with AAP 5, you are advised that the Department of Defence, through the Office of the Judge Advocate General (OJAG), has collected or may collect personal information about you in the course of the Australian Defence Force's (ADF's) maintenance and enforcement of Service discipline.
7. Also, proceedings are generally conducted in public and are open to the media, members of the general public and ADF members.
8. **Details of Australian Privacy Principle Entity.** The APP entity which has collected or may collect personal information about you is the Department of Defence (through the OJAG). The OJAG point of contact is provided in the footer of this notice.
9. **Authority for collection.** The DFDA is the primary legislation authorising and/or requiring the OJAG to collect personal information about you.
10. **Purpose of collection.** The purpose for which the OJAG has collected or may collect personal information about you is the ADF's maintenance and enforcement of Service discipline, and in particular the administration and conduct of court martial and/or Defence Force magistrate proceedings. This can also include the following related purposes: appeals (including appeals to the High Court of Australia, the Federal Court of Australia and/or the

Defence Force Discipline Appeal Tribunal); reviews; the enforcement of punishments and/or orders; post-trial administrative action; reporting requirements; and/or other disciplinary action.

11. **Consequences of non-collection.** The main consequences of the OJAG not collecting the personal information which has been or may be collected about you is that the requirements of the DFDA would/might not be met and/or the conduct of court martial and Defence Force magistrate proceedings would/could be compromised.

12. **Circumstances of collection.** The OJAG has or may itself collect personal information about you for the purposes outlined in paragraph 10 of this notice. In addition, and also for the purposes outlined in paragraph 10 of this notice, the OJAG has obtained or may obtain personal information about you which has been or may be collected by another part of the Department of Defence. This will generally occur as a result of the referral of charges for trial, the prosecution of charges, the defence of an accused person and/or the investigation of/inquiry into allegations.

13. **Nature of collection.** Any personal information collected about you may be collected from you and/or from someone other than you. It will generally relate to your identity, your participation in disciplinary proceedings or investigations, your connection with an alleged offence, and/or your connection with a person allegedly connected to an offence.

14. **Other potential uses.** While the OJAG does not specifically collect personal information for purposes other than those outlined in paragraph 10 of this notice, other laws and/or policies authorise and/or require certain information to be provided in certain circumstances for use by other areas of the Department of Defence in the broader management of the Department of Defence and/or specific individuals, for example, further investigations/inquiries, security reviews and/or administrative action.

15. **Potential disclosures.** In addition to paragraph 10 (purpose of collection) and paragraph 14 of this notice (other potential uses), both of which potentially involve disclosures of personal information, the Department of Defence may also be authorised and/or required to disclose personal information in other circumstances, for example: for the purposes of criminal proceedings, civil proceedings, investigations and/or inquiries; under DFDA, s. 190A; to the Department of Veterans' Affairs in response to a claim for compensation or benefits; and/or under the *Freedom of Information Act 1982*. The OJAG may also publish your personal information in accordance with Practice Note 1 *Publication of court martial and Defence Force magistrate lists and outcomes* (a copy of which is available at: <http://www.defence.gov.au/jag/Court-Martial-Magistrate-Proceedings.asp> or by request).

16. **Other disclosures.** Other than in the circumstances outlined in paragraph 15, the Department of Defence does not usually disclose personal information of the kind collected by the OJAG to any other APP entity, body or person. Similarly, the Department of Defence does not usually disclose personal information of the kind collected by the OJAG to overseas recipients. In rare circumstances, however, there may be authority and/or a requirement to do so, for example: career management action (including posting, deployment and/or security clearances) or for disciplinary proceedings involving witnesses from foreign military forces or ADF witnesses on overseas postings or deployments.

17. **Access, corrections and complaints.** The Department of Defence's APP Privacy Policy is available at: <http://www.defence.gov.au/Privacy.asp> or by request. It contains information about how you may access the personal information that the Department of Defence holds about you, and how you may seek correction of such information. The policy also contains information about how you may complain about a breach of the APPs and how the Department of Defence will deal with a complaint. Complaints about the handling of your personal information can be submitted by e-mail to defence.privacy@defence.gov.au. Once received, your complaint will be forwarded to the appropriate area within the Department of Defence for action.