



Defence Force Discipline Act 1982

No. 152 of 1982

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Defence Force Discipline Act 1982

No. 152 of 1982

An Act relating to the discipline of the Defence Force and for related purposes

[Assented to 31 December 1982]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Defence Force Discipline Act 1982*.

Commencement

2. (1) Part I and Part XI shall come into operation on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act shall come into operation on a date to be fixed by Proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

“accused person” means a person who has been charged with a service offence;

“active service”, in relation to a member of the Defence Force, means—

- (a) service by the member in connection with operations against the enemy;
- (b) service by the member with a force specified in a declaration by the Governor-General that is in force under sub-section 4 (1);
or
- (c) service by the member in an area specified in a declaration by the Governor-General that is in force under sub-section 4 (2);

“aircraft” includes any machine that can derive support in the atmosphere from the reactions of the air;

“airman” means a member of the Australian Air Force, not being an officer;

“allied force” means a force of another country that is acting in co-operation with the Defence Force;

“another country” means a country other than Australia;

“appoint” includes re-appoint;

“appropriate authority”—

- (a) in relation to proceedings before a court martial, means—
 - (i) a convening authority; or
 - (ii) the President of the court martial;
- (b) in relation to proceedings before a Defence Force magistrate, means—
 - (i) a convening authority; or
 - (ii) the Defence Force magistrate; or
- (c) in relation to proceedings before a summary authority, means the summary authority;

“Australia”, when used in a geographical sense, includes the external Territories;

“authorized officer” means an officer, or an officer included in a class of officers, authorized, in writing, by a chief of staff for the purposes of the provision in which the expression occurs;

“charge” means a charge of a service offence;

“chief of staff” means the Chief of Defence Force Staff, the Chief of Naval Staff, the Chief of the General Staff or the Chief of the Air Staff;

“civil court” means a federal court or a court of a State or Territory;

“civil court offence” means—

- (a) an offence against a law of the Commonwealth (other than a service offence); or
- (b) an offence against a law of a State or Territory;

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- “civil detention facility” means a police station or any other premises in which persons in custody awaiting trial in a civil court may lawfully be detained;
- “constable” means a member, or a special member, of the Australian Federal Police or a member of the police force of a State or Territory;
- “convening authority” means a convening authority appointed under section 102;
- “convicted person” means a person convicted of a service offence by a service tribunal, a reviewing authority or the Defence Force Discipline Appeal Tribunal;
- “custody” means custody under this Act;
- “defence civilian” means a person (other than a defence member) who—
- (a) with the authority of an authorized officer, accompanies a part of the Defence Force that is—
 - (i) outside Australia; or
 - (ii) on operations against the enemy; and
 - (b) has consented, in writing, to subject himself to Defence Force discipline while so accompanying that part of the Defence Force;
- “Defence Force magistrate” means a Defence Force magistrate appointed under section 127;
- “defence member” means—
- (a) a member of the Permanent Naval Forces, the Australian Regular Army, the Regular Army Supplement or the Permanent Air Force; or
 - (b) a member of the Emergency Forces or the Reserve Forces who—
 - (i) is rendering continuous full-time service; or
 - (ii) is on duty or in uniform;
- “Deputy Judge Advocate General” means a Deputy Judge Advocate General appointed under section 179;
- “detainee” means a convicted person on whom a punishment of detention has been imposed;
- “detention centre” means a place, not being a prison, that is operated by the Defence Force as a place for the detention of detainees;
- “document” includes—
- (a) a book, plan, paper, parchment, film or other material on which there is writing or printing or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them;
 - (b) a disc, tape, paper, film or other device from which sounds or images are capable of being reproduced; and

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(c) any other record of information;

“elective punishment” means a punishment set out in column 2 of Table A or B in Schedule 3;

“Emergency Forces” means the Naval Emergency Reserve Forces, the Regular Army Emergency Reserve and the Air Force Emergency Force;

“enemy person” means a person who is—

(a) a representative or agent of the enemy; or

(b) a member of—

(i) an armed force of a body politic that constitutes the enemy; or

(ii) an armed force or other force that constitutes the enemy;

“general order” means—

(a) a Defence Instruction (General), a Defence Instruction (Navy), a Defence Instruction (Army) or a Defence Instruction (Air Force);

(b) any other order, instruction or directive issued by, or under the authority of, a chief of staff; or

(c) a general standing or routine order or instruction in force with respect to the Defence Force or a part of the Defence Force;

“hearing”, in relation to a service tribunal, includes the announcement of the verdict of the tribunal and the taking of action by the tribunal under Part IV in relation to a convicted person;

“institution”, in relation to the Defence Force or an allied force, means a mess, club, band, canteen or other institution of the Defence Force or of the allied force, as the case may be;

“judge advocate”, in relation to a court martial, means the judge advocate of the court martial;

“Judge Advocate General” means the Judge Advocate General appointed under section 179;

“judge advocates’ panel” means the panel referred to in sub-section 196 (1);

“legal officer” means an officer who is a legal practitioner;

“legal practitioner” means a person who is enrolled as a barrister, a solicitor or a barrister and solicitor of a civil court;

“member below non-commissioned rank” means a member of the Defence Force who is not an officer, a warrant officer or a non-commissioned officer;

“mutiny” means a combination between persons who are, or of whom at least 2 are, members of the Defence Force—

(a) to overthrow lawful authority in the Defence Force or in an allied force; or

- (b) to resist such lawful authority in such a manner as to prejudice substantially the operational efficiency of the Defence Force or of, or of a part of, an allied force;

“non-commissioned officer” means—

- (a) a sailor holding a rank not higher than the rank of chief petty officer and not lower than the rank of leading seaman;
- (b) a soldier holding a rank not higher than the rank of staff sergeant and not lower than the rank of lance-corporal; or
- (c) an airman holding a rank not higher than the rank of flight sergeant and not lower than the rank of corporal;

“officer” means—

- (a) in relation to the Australian Navy—a person appointed or in pay as an officer of the Australian Navy, including a person who holds the rank in the Australian Navy of Acting Sub-Lieutenant or of Midshipman; and
- (b) in relation to the Australian Army and the Australian Air Force—a person appointed or in pay as an officer of the Australian Army or the Australian Air Force;

“old system offence” means an offence under previous service law that was committed by a member of the Defence Force at any time during the period of 3 years that ended on the day immediately before the proclaimed date;

“order” includes—

- (a) a general order; and
- (b) a command given to a member of the Defence Force by a superior officer;

“overseas court” means a court of a place outside Australia that has jurisdiction to try charges of offences against the law of that place;

“overseas offence” means an offence against a law of a place outside Australia;

“place of confinement” means—

- (a) a civil detention facility; or
- (b) a detention centre;

“prescribed acquittal” means an acquittal of a service offence by a court martial or a Defence Force magistrate on the ground of unsoundness of mind;

“President”, in relation to a court martial, means the President of the court martial;

“previous service law” means the following laws as in force at any time during the period of 3 years that ended on the day immediately before the proclaimed date:

- (a) the *Naval Defence Act* 1910 and regulations in force under that Act;

- (b) the *Defence Act* 1903 in its application to and in relation to the Australian Navy and the members of the Australian Navy;
- (c) where any law of the United Kingdom applied during that period to or in relation to the Australian Navy or the members of the Australian Navy—that law in that application;
- (d) the *Defence Act* 1903 and the regulations in force under that Act in their application to and in relation to the Australian Army and the members of the Australian Army;
- (e) where any law of the United Kingdom applied during that period to or in relation to the Australian Army or the members of the Australian Army—that law in that application;
- (f) the *Air Force Act* 1923 and regulations in force under that Act;
- (g) the *Defence Act* 1903 in its application to and in relation to the Australian Air Force and the members of the Australian Air Force;
- (h) where any law of the United Kingdom applied during that period to or in relation to the Australian Air Force or the members of the Australian Air Force—that law in that application;

“prisoner” means a convicted person on whom a punishment of imprisonment has been imposed;

“proclaimed date” means the date fixed for the purposes of sub-section 2 (2);

“property” includes money and every thing, animate or inanimate, capable of being the subject of ownership;

“public place”, in relation to a service offence, includes a place that at the time of the commission of the offence—

(a) was used by the public; or

(b) was open to the public,

whether or not on the payment of money;

“punishment” includes a combination of punishments;

“receive”, in relation to property, includes handle, retain, remove, dispose of or realize the property;

“relevant Territory offence”, in relation to an offence against sub-section 61 (1), means the Territory offence referred to in the paragraph of that sub-section that specifies the act or omission that constitutes the first-mentioned offence;

“reparation order” means an order under section 84;

“Reserve Forces” means the Australian Naval Reserve, the Australian Army Reserve and the Australian Air Force Reserve;

“restitution order” means an order under section 83;

“review” means a review by a commanding officer, by a reviewing authority, or by a chief of staff, in accordance with Part IX, of the proceedings of a service tribunal;

- “reviewing authority” means a reviewing authority appointed under section 150;
- “rules of procedure” means rules of procedure in force under section 149;
- “sailor” means a member of the Australian Navy, not being an officer;
- “service land” means land (including a building or other structure) used or occupied by—
- (a) the Defence Force;
 - (b) an allied force; or
 - (c) an institution of the Defence Force or of an allied force;
- “service offence” means—
- (a) an offence against this Act or the regulations;
 - (b) an offence that—
 - (i) is an ancillary offence in relation to an offence against this Act or the regulations; and
 - (ii) was committed by a person at a time when he was a defence member or a defence civilian; or
 - (c) an old system offence;
- “service police officer” means an officer who is a member of a police corps or service, and includes a provost marshal and a deputy provost marshal;
- “service policeman” means—
- (a) a service police officer; or
 - (b) a sailor, soldier or airman who is a member of a police corps or service;
- “service property” means property used by, or in the possession or under the control of—
- (a) the Defence Force;
 - (b) an allied force; or
 - (c) an institution of the Defence Force or of an allied force,
- and “service aircraft”, “service armoured vehicle”, “service missile”, “service ship”, “service vehicle” and “service weapon” have corresponding meanings;
- “service tribunal” means a court martial, a Defence Force magistrate or a summary authority;
- “ship” means a vessel or boat of any description, and includes—
- (a) any floating structure; and
 - (b) any air cushion vehicle;
- “soldier” means a member of the Australian Army, not being an officer;
- “subordinate summary authority” means a subordinate summary authority appointed under sub-section 105 (2);
- “summary authority” means—
- (a) a superior summary authority;
 - (b) a commanding officer; or

(c) a subordinate summary authority;

“superior officer”, in relation to a member of the Defence Force, means another member of the Defence Force who holds a higher rank, or a higher relative rank, in the Defence Force than the member, and includes any other member of the Defence Force who, by virtue of his office or appointment, is entitled to exercise command over the member;

“superior summary authority” means a superior summary authority appointed under sub-section 105 (1);

“Territory offence” means—

(a) an offence against a law of the Commonwealth in force in the Australian Capital Territory other than—

(i) this Act or the regulations; or

(ii) the *Criminal Investigation Act 1982*;

(b) an offence punishable under the Crimes Act, 1900 of the State of New South Wales, in its application to the Australian Capital Territory, as amended or affected by Ordinances in force in that Territory; or

(c) an offence against the *Police Offences Ordinance 1930* of the Australian Capital Territory,

but does not include an offence that is an ancillary offence in relation to an offence to which paragraph (a), (b) or (c) applies;

“the enemy” means a body politic or an armed force engaged in operations of war against Australia or an allied force and includes any force (including mutineers and pirates) engaged in armed hostilities against the Defence Force or an allied force;

“warrant officer” means a sailor, soldier or airman who holds the rank of warrant officer.

(2) A reference in this Act to the Defence Force shall be read as including a reference to a part of that Force.

(3) A reference in this Act to an arm of the Defence Force shall be read as a reference to the Australian Navy, the Australian Army or the Australian Air Force, as the case may be.

(4) For the purposes of sub-paragraph (b) (ii) of the definition of “defence member” in sub-section (1)—

(a) a member of the Emergency Forces or the Reserve Forces shall be deemed to be on duty from the time appointed for him to report to, or to attend at, a specified place for any naval, military or air force service that he is required to render by or under the *Defence Act 1903*, the *Naval Defence Act 1910* or the *Air Force Act 1923* until he is duly released or discharged from that service; and

(b) a member of the Emergency Forces or the Reserve Forces shall be deemed to be on duty while acting, or purporting to act, in his capacity

as a member of the Emergency Forces or the Reserve Forces, as the case may be.

(5) A member of the Defence Force who is serving in a rank or grade to which he has not been duly appointed or promoted shall, while so serving in that rank or grade, be deemed, for the purposes of this Act, to hold that rank or grade.

(6) A member of the Defence Force who holds a rank temporarily (however described) shall, while so holding that rank, be deemed, for the purposes of this Act, to hold that rank.

(7) For the purposes of this Act, a person's membership of the Defence Force is not affected by reason only of his attachment to, or allotment for duty with—

- (a) the armed forces of another country;
- (b) a force raised or organized by the United Nations or another international body; or
- (c) a Peacekeeping Force within the meaning of Division 10 of Part III of the *Repatriation Act 1920*.

(8) For the purposes of this Act, a comparison of the severity of a combination of punishments with that of a single punishment or of another combination of punishments shall be made as follows:

- (a) any punishment on one side of the comparison that is the same as a punishment on the other side of the comparison shall be disregarded;
- (b) if, after the operation of paragraph (a), 2 or more punishments remain for consideration on either side of the comparison, regard shall be had only to the more severe, or the most severe, of the punishments so remaining on that side.

(9) A reference in this Act to the amount of a convicted person's pay for a specific number of days (including a person who has no pay entitlement in respect of the day on which he was convicted) shall be read as a reference to an amount that is the product of—

- (a) the amount that is to be taken, for the purposes of this Act, to be the amount of daily rate of pay applicable in relation to a class of persons in which the person is included, being an amount ascertained in accordance with regulations that are in force for the purposes of this paragraph and are applicable in respect of the day on which the person was so convicted; and
- (b) the number of days specified in the reference.

(10) Regulations made for the purposes of paragraph (9) (a) may provide for an amount of daily rate of pay to be ascertained by reference to a provision of any other regulations under any Act as in force at a particular time or as in force from time to time, or any determination under section 58B of the *Defence Act 1903* as in force at a particular time or as in force from time to time.

(11) A reference to a commanding officer in a provision of this Act that confers a power on a commanding officer includes—

- (a) a reference to an officer performing the duties and functions of a commanding officer by virtue of—
 - (i) a direction given by means of a Defence Instruction (Navy), a Defence Instruction (Army) or a Defence Instruction (Air Force); or
 - (ii) an order, instruction or directive issued by, or under the authority of, a chief of staff; and
- (b) a reference to an officer appointed under sub-section 5 (1) whose instrument of appointment under that section authorizes him to exercise that power,

but does not include a reference to an officer in respect of whom a determination relating to the exercise of that power is in force under sub-section 5 (3).

(12) A reference in this Act to a person who is on guard duty shall be read as including a reference to a person who—

- (a) is posted or ordered to patrol; or
- (b) is a member of a guard or other party mounted or ordered to patrol,

for the purpose of—

- (c) protecting any person, any premises or place or any ship, vehicle, aircraft or other thing;
- (d) preventing or controlling access to, or egress from, any premises or place or any ship, vehicle, aircraft or other thing; or
- (e) regulating traffic by land or water.

(13) For the purposes of this Act, an offence is an ancillary offence in relation to another offence if the first-mentioned offence is an offence against—

- (a) section 6, 7 or 7A of the *Crimes Act* 1914; or
- (b) sub-section 86 (1) of that Act by virtue of paragraph (a) of that sub-section,

that relates to that other offence.

(14) For the purposes of the *Law Reform (Sexual Behaviour) Ordinance* 1976 of the Australian Capital Territory, as in force in that Territory, in its application for the purposes of the definition of “Territory offence” in sub-section (1) of this section, an act of a sexual nature that—

- (a) is done on service land (other than land occupied by married quarters) or in a service ship, service aircraft or service vehicle; or
- (b) is done by a person while he is engaged in a deployment, exercise or operation of the Defence Force or a part of the Defence Force,

shall be taken to have been done otherwise than in private.

(15) For the purposes of any law of the Commonwealth other than this Act, an offence against this Act or the regulations shall not be taken not to be

an offence against a law of the Commonwealth by reason that it forms part of the law regulating the relationship between the Commonwealth and members of the Defence Force and other persons.

Declaration of active service for disciplinary purposes

4. (1) The Governor-General may, by writing under his hand, declare a specified force to be on active service for the purposes of this Act.

(2) The Governor-General may, by writing under his hand, declare the members of the Defence Force who are serving in a specified area to be on active service for the purposes of this Act.

(3) A copy of a declaration made under sub-section (1) or (2) shall be published in the *Gazette*.

Commanding officers for disciplinary purposes

5. (1) For the purposes of this Act, a chief of staff or an authorized officer may, by instrument in writing, appoint an officer to exercise all the powers conferred on a commanding officer by or under this Act or such of those powers as are specified in the instrument of appointment.

(2) An instrument of appointment under sub-section (1) takes effect on the date of the instrument or on such later date as is specified in the instrument.

(3) For the purposes of this Act, a chief of staff or an authorized officer may, by instrument in writing, determine that a commanding officer shall not exercise the powers conferred on a commanding officer by or under this Act or such of those powers as are specified in the instrument.

(4) A determination under sub-section (3) takes effect on the date of the instrument or on such later date as is specified in the determination.

Further provision with respect to certain members of Defence Force

6. (1) In this section, "prescribed class", in relation to members of the Defence Force, means any of the following classes of such members:

- (a) chaplains;
- (b) members who have not attained the age of 18 years;
- (c) members receiving instruction or training;
- (d) detainees detained in detention centres.

(2) The regulations may make further provision relating to the discipline of members of the Defence Force included in a prescribed class and, in particular, may make provision for—

- (a) the exemption of those members from any provision of this Act, other than this section; and
- (b) the modification of any provision of this Act, other than this section, so far as it relates to those members.

Prisoners of war

7. (1) This Act (including the regulations and the rules of procedure) applies to, and in relation to, prisoners of war as if prisoners of war were members of the Defence Force and also defence members.

(2) The regulations may make further provision relating to the discipline of prisoners of war and, in particular, may make provision for—

- (a) the exemption of prisoners of war from any provision of this Act, other than this section; and
- (b) the modification of any provision of this Act, other than this section, so far as it relates to prisoners of war.

(3) The operation of this section is subject to the Convention and to the *Geneva Conventions Act 1957*.

(4) In this section—

“Convention” means the Third Convention, within the meaning of the *Geneva Conventions Act 1957*, being that Convention as having effect subject to and in accordance with any reservation or declaration referred to in sub-section 5 (3) of that Act;

“prisoner of war” means a protected prisoner of war as defined in sub-section 5 (2) of the *Geneva Conventions Act 1957* for whom Australia is responsible.

Extension to external Territories

8. This Act extends to every external Territory.

Extra-territorial operation of Act

9. The provisions of this Act apply, according to their tenor, both in and outside Australia but do not apply in relation to any person outside Australia unless that person is a defence member or a defence civilian.

PART II—CRIMINAL LIABILITY

Common law to apply in relation to service offences

10. Subject to this Part, the principles of the common law with respect to criminal liability apply in relation to service offences other than old system offences.

Recklessness and negligence in relation to a member of the Defence Force

11. (1) Where a member of the Defence Force is charged with a service offence arising out of activities (in this sub-section referred to as “the relevant activities”) upon which the member was engaged in the course of his duty or in accordance with the requirements of the Defence Force, a service tribunal, in deciding whether the member, by act or omission, behaved recklessly shall have regard to the fact that the member was engaged in the relevant activities in the

course of his duty or in accordance with the requirements of the Defence Force, as the case may be.

(2) Where a member of the Defence Force is charged with a service offence arising out of activities (in this sub-section referred to as “the relevant activities”) upon which the member was engaged in the course of his duty or in accordance with the requirements of the Defence Force, a service tribunal, in deciding whether the member, by act or omission, behaved negligently, shall, to the extent that it is required, for that purpose, to have regard to the standard of care of a reasonable person, have regard to the standard of care that would have been exercised by a reasonable person who—

- (a) was a member of the Defence Force with the same training and experience in the Defence Force or other armed force as the member charged; and
- (b) was engaged in the relevant activities in the course of his duty or in accordance with the requirements of the Defence Force, as the case may be.

(3) This section does not, except to the extent expressly provided, affect, modify or alter the principles of the common law that apply in relation to service offences.

(4) In this section, “service offence” does not include an old system offence.

Onus of proof and standard of proof

12. (1) Subject to this section, in proceedings before a service tribunal, the onus of proving that a person charged has committed a service offence is on the prosecution and the standard of proof is proof beyond reasonable doubt.

(2) In proceedings before a service tribunal, the onus of proving a defence is on the person charged and the standard of proof is proof on the balance of probabilities.

- (3) In this section, “defence” means—
 - (a) the defence of unsoundness of mind;
 - (b) the defence set out in section 13;
 - (c) where the service offence charged is an offence against this Act (other than sub-section 61 (1)) or the regulations—a defence set out in the provision creating the offence;
 - (d) where the service offence charged is an offence against sub-section 61 (1)—a defence that, in accordance with the law in force in the Australian Capital Territory, is applicable in relation to the relevant Territory offence, being a defence the onus of proving which is, under that law, upon the person charged;
 - (e) where the service offence charged is an ancillary offence in relation to an offence against this Act or the regulations—a defence that, under the *Crimes Act* 1914, is applicable in relation to the ancillary offence,

being a defence the onus of proving of which is, under that Act, upon the person charged; or

- (f) where the service offence charged is an old system offence—a defence that, in accordance with previous service law, was applicable in relation to the offence, being a defence the onus of proving which is, under that law, upon the person charged.

Diminished responsibility

13. (1) A person is not liable to be convicted of an offence against sub-section 61 (1) in relation to which the relevant Territory offence is murder by reason of any behaviour by way of act or omission on his part if he is, at the time of that behaviour, in such a state of mind as substantially to impair—

- (a) his capacity to understand what he is doing or omitting to do;
- (b) his capacity to control that behaviour; or
- (c) his capacity to know that he ought not to engage in that behaviour.

(2) A person who would, but for sub-section (1), be liable to be convicted of an offence against sub-section 61 (1) in relation to which the relevant Territory offence is murder is liable instead to be convicted of an offence against sub-section 61 (1) in relation to which the relevant Territory offence is manslaughter.

(3) The application of sub-section (1) in relation to one of 2 or more persons charged with an offence against sub-section 61 (1) in relation to which the relevant Territory offence is murder does not affect the liability of the other person or persons to be convicted of the offence charged.

Act or omission in execution of law, &c.

14. A person is not liable to be convicted of a service offence by reason of an act or omission that—

- (a) was in execution of the law; or
- (b) was in obedience to—
 - (i) a lawful order; or
 - (ii) an unlawful order that the person did not know, and could not reasonably be expected to have known, was unlawful.

PART III—OFFENCES

Division 1—Offences relating to operations against the enemy

Aiding enemy

15. (1) A person, being a defence member or a defence civilian, who—

- (a) knowing that it is his duty to defend or destroy it, abandons or surrenders to the enemy a place or post, or a service ship, service aircraft or service armoured vehicle;

- (b) intentionally causes the capture or destruction by the enemy of a service ship, service aircraft or service armoured vehicle;
- (c) having been captured by the enemy, serves with or knowingly aids the enemy in the prosecution of hostilities or of measures likely to influence morale, or knowingly aids the enemy in any other manner whatsoever not authorized by international law;
- (d) intentionally furnishes the enemy with, or permits or enables the enemy to have access to, arms, ammunition, vehicles or supplies of any description or any other thing likely to assist the enemy;
- (e) harbours or protects an enemy person, other than a prisoner of war, knowing him to be an enemy person;
- (f) being engaged on service in connection with operations against the enemy, knowingly gives a false signal, message or other communication, or knowingly alters or interferes with a signal, message or other communication or an apparatus for giving or receiving a signal, message or other communication;
- (g) when ordered by his superior officer, or otherwise under orders, to prepare for or carry out operations against the enemy, does not use his utmost exertions to carry those orders into effect; or
- (h) otherwise by act or omission intentionally imperils the success of operations against the enemy,

is guilty of an offence for which the maximum punishment is imprisonment for 15 years.

(2) It is a defence if a person charged with an offence under sub-section (1) had a reasonable excuse for engaging in the behaviour to which the charge relates.

(3) A person, being a defence member or a defence civilian, who, with intent to assist the enemy, behaves in such a manner as to constitute an offence under sub-section (1) is guilty of an offence for which the maximum punishment is imprisonment for life.

Communication with enemy

16. (1) A person, being a defence member or a defence civilian, who intentionally—

- (a) communicates with, or gives intelligence to, the enemy; or
- (b) does not make known to proper authority any information received by him from the enemy that he knows, or ought reasonably to know, is likely to be directly or indirectly useful in operations against the enemy,

is guilty of an offence for which the maximum punishment is imprisonment for 15 years.

(2) It is a defence if a person charged with an offence under sub-section (1) had a reasonable excuse for engaging in the behaviour to which the charge relates.

(3) A person, being a defence member or a defence civilian, who, with intent to assist the enemy, behaves in such a manner as to constitute an offence under sub-section (1) is guilty of an offence for which the maximum punishment is imprisonment for life.

Leaving post, &c.

17. (1) A defence member who, being engaged on service in connection with operations against the enemy—

- (a) leaves the post, position or other place where it is his duty to be;
- (b) abandons his weapons or other equipment; or
- (c) in any other manner does not properly perform his duty in attack or defence against the enemy,

is guilty of an offence for which the maximum punishment is imprisonment for 5 years.

(2) It is a defence if a person charged with an offence under this section had a reasonable excuse for engaging in the behaviour to which the charge relates.

(3) In this section, “equipment” includes vehicles, ammunition, instruments and tools.

Endangering morale

18. (1) A person, being a defence member or a defence civilian, who, with intent to create despondency or unnecessary alarm, spreads reports relating to operations against the enemy is guilty of an offence for which the maximum punishment is imprisonment for 2 years.

(2) A person, being a defence member or a defence civilian, who, being engaged on service in connection with operations against the enemy, behaves in such a manner as to constitute an offence under sub-section (1) is guilty of an offence for which the maximum punishment is imprisonment for 5 years.

Behaviour after capture by enemy

19. (1) A defence member who, having been captured by the enemy—

- (a) does not take; or
- (b) prevents or discourages any other person captured by the enemy from taking,

any reasonable steps that are available to him or to that other person, as the case may be, to rejoin the force to which he or that other person, as the case may be, belongs is guilty of an offence for which the maximum punishment is imprisonment for 5 years.

(2) A defence member who—

- (a) having been captured by the enemy, with intent to secure favourable treatment for himself, by act or omission, behaves in a manner that is detrimental to other persons so captured; or
- (b) having been captured by the enemy and being in a position of authority over other persons so captured, ill-treats those other persons,

is guilty of an offence for which the maximum punishment is imprisonment for 5 years.

Division 2—Offences relating to mutiny, desertion and unauthorized absence

Mutiny

20. (1) A defence member who intentionally takes part in a mutiny is guilty of an offence for which the maximum punishment is imprisonment for 10 years.

(2) A defence member who intentionally takes part in a mutiny that has as its object, or as one of its objects, the refusal or avoidance of duty or service in connection with operations against the enemy, or the impeding of the performance of such a duty or service, is guilty of an offence for which the maximum punishment is imprisonment for life.

Failure to suppress mutiny

21. (1) A defence member who knows that a mutiny is taking place or is intended and does not take reasonable steps—

- (a) to suppress or prevent the mutiny; or
- (b) to report to proper authority without delay that the mutiny is taking place or is intended,

is guilty of an offence for which the maximum punishment is imprisonment for 2 years.

(2) A defence member who—

- (a) knows that a mutiny is taking place or is intended;
- (b) knows, or ought reasonably to know, that the object or one of the objects of the mutiny is an object referred to in sub-section 20 (2); and
- (c) does not take reasonable steps—
 - (i) to suppress or prevent the mutiny; or
 - (ii) to report to proper authority without delay that the mutiny is taking place or is intended,

is guilty of an offence for which the maximum punishment is imprisonment for 5 years.

Desertion

22. A defence member who—

- (a) with intent to avoid service or further service in connection with operations against the enemy, departs from, or does not attend at, his place of duty without leave;
- (b) while on active service or having been warned for active service, with intent to remain permanently absent without leave, departs from, or does not attend at, his place of duty without leave; or
- (c) while absent without leave, manifests by his behaviour an intent to avoid service in connection with operations against the enemy or active service,

is guilty of an offence for which the maximum punishment is imprisonment for 5 years.

Absence from duty

23. (1) A defence member who does not attend for duty or ceases performance of duty before he is permitted to do so is guilty of an offence for which the maximum punishment is imprisonment for 3 months.

(2) It is a defence if a person charged with an offence under this section had a reasonable excuse for engaging in the behaviour to which the charge relates.

Absence without leave

24. (1) A defence member who is absent without leave is guilty of an offence for which the maximum punishment is imprisonment for 12 months.

(2) It is a defence if a person charged with an offence under this section was absent due to circumstances not reasonably within his control.

Division 3—Offences relating to insubordination and violence

Assault on superior officer

25. (1) A defence member who assaults a superior officer is guilty of an offence for which the maximum punishment is imprisonment for 2 years.

(2) It is a defence if a person charged with an offence under this section neither knew, nor could reasonably be expected to have known, that the person against whom the offence is alleged to have been committed was a superior officer.

Insubordinate behaviour with respect to superior officer

26. (1) A defence member who—

- (a)** behaves in a threatening, insubordinate or insulting manner to a superior officer; or
- (b)** in the presence of a superior officer, uses threatening, insubordinate or insulting language about him,

is guilty of an offence for which the maximum punishment is imprisonment for 6 months.

(2) It is a defence if a person charged with an offence under this section neither knew, nor could reasonably be expected to have known, that the person against whom the offence is alleged to have been committed was a superior officer.

Disobedience of command

27. (1) A defence member who disobeys a lawful command given to him by a superior officer is guilty of an offence for which the maximum punishment is imprisonment for 2 years.

(2) It is a defence if a person charged with an offence under this section neither knew, nor could reasonably be expected to have known, that the person

against whom the offence is alleged to have been committed was a superior officer.

Failure to comply with direction of person in command

28. (1) A person, being a defence member or a defence civilian, who, when in or near a service ship, service aircraft or service vehicle, does not comply with a lawful direction given to him by or with the authority of the person in command of the ship, aircraft or vehicle, being—

- (a) a direction relating to the sailing or handling of the ship, the flying or handling of the aircraft or the handling of the vehicle; or
- (b) a direction affecting the safety of the ship, aircraft or vehicle or persons on board the ship, aircraft or vehicle,

is guilty of an offence for which the maximum punishment is imprisonment for 2 years.

(2) It is a defence if a person charged with an offence under this section had a reasonable excuse for engaging in the behaviour to which the charge relates.

Failure to comply with general order

29. (1) A person, being a defence member or a defence civilian, who does not comply with a lawful general order that is applicable to him is guilty of an offence for which the maximum punishment is imprisonment for 12 months.

(2) It is a defence if a person charged with an offence under this section neither knew, nor could reasonably be expected to have known, of the general order.

Assault on a guard

30. (1) A person, being a defence member or a defence civilian, who assaults a member of the Defence Force or of an allied force who is on guard duty is guilty of an offence for which the maximum punishment is imprisonment for 2 years.

(2) A person, being a defence member or a defence civilian, who, being engaged on service in connection with operations against the enemy, by act or omission, behaves in such a manner as to constitute an offence under sub-section (1) is guilty of an offence for which the maximum punishment is imprisonment for 5 years.

Obstruction of service policeman

31. (1) A person who—

- (a) being a defence member or a defence civilian, obstructs—
 - (i) a service policeman acting in the performance of his duty; or
 - (ii) a person lawfully exercising authority under or on behalf of a service police officer; or
- (b) being a defence member, when called upon to do so, refuses to assist—
 - (i) a service policeman acting in the performance of his duty; or

- (ii) a person lawfully exercising authority under or on behalf of a service police officer,

is guilty of an offence for which the maximum punishment is imprisonment for 12 months.

(2) It is a defence if a person charged with an offence under this section neither knew, nor could reasonably be expected to have known, that the person against whom the offence is alleged to have been committed was a service policeman or a person lawfully exercising authority under or on behalf of a service police officer, as the case may be.

Person on guard or on watch

32. (1) A defence member who, being on guard duty or on watch—

- (a) sleeps at his post or on watch;
- (b) not being on duty at a post, sleeps when his duty requires him to be awake;
- (c) is drunk; or
- (d) leaves his post before he is regularly relieved or otherwise absents himself from a place where it is his duty to be,

is guilty of an offence for which the maximum punishment is imprisonment for 12 months.

(2) A defence member who, being on guard duty or on watch, while engaged on service in connection with operations against the enemy, behaves in such a manner as to constitute an offence under sub-section (1) is guilty of an offence for which the maximum punishment is imprisonment for 5 years.

(3) For the purposes of this section, a person shall be deemed to be drunk if, and only if, his faculties are, by reason of his being under the influence of intoxicating liquor or a drug (not being a drug administered by, or taken in accordance with the directions of, a person lawfully authorized to administer the drug), so impaired that he is unfit to be entrusted with his duty or with any duty that he may be called upon to perform.

(4) It is a defence if a person charged with an offence under this section had a reasonable excuse for engaging in the behaviour to which the charge relates.

Assault, insulting or provocative words, &c.

33. A person, being a defence member or a defence civilian, who, on service land, in a service ship, service aircraft or service vehicle or in a public place—

- (a) assaults another person;
- (b) creates a disturbance or takes part in creating or continuing a disturbance;
- (c) behaves in an obscene manner within the view or hearing of another person; or
- (d) uses insulting or provocative words to another person,

is guilty of an offence for which the maximum punishment is imprisonment for 6 months.

Assault on inferior

34. A defence member who assaults, or ill-treats, a member of the Defence Force who is of inferior rank to the defence member is guilty of an offence for which the maximum punishment is imprisonment for 2 years.

Division 4—Offences relating to performance of duty

Negligent performance of duty

35. A defence member who, by act or omission, negligently performs a duty that he is required by his office or appointment to perform is guilty of an offence for which the maximum punishment is imprisonment for 3 months.

Dangerous behaviour

36. (1) A person, being a defence member or a defence civilian, who, in or in connection with—

- (a) the operation, handling, servicing or storage; or
- (b) the giving of directions with respect to the operation, handling, servicing or storage,

of a ship, aircraft or vehicle or a weapon, missile, explosive or other dangerous thing or equipment, intentionally, by act or omission, behaves in a manner that causes, or is likely to cause, the death of, or grievous bodily harm to, another person is guilty of an offence for which the maximum punishment is imprisonment for 10 years.

(2) A person, being a defence member or a defence civilian, who, in or in connection with—

- (a) the operation, handling, servicing or storage; or
- (b) the giving of directions with respect to the operation, handling, servicing or storage,

of a ship, aircraft or vehicle or a weapon, missile, explosive or other dangerous thing or equipment, recklessly, by act or omission, behaves in a manner that causes, or is likely to cause, the death of, or grievous bodily harm to, another person is guilty of an offence for which the maximum punishment is imprisonment for 5 years.

(3) A person, being a defence member or a defence civilian, who, in or in connection with—

- (a) the operation, handling, servicing or storage; or
- (b) the giving of directions with respect to the operation, handling, servicing or storage,

of a ship, aircraft or vehicle or a weapon, missile, explosive or other dangerous thing or equipment, negligently, by act or omission, behaves in a manner that causes, or is likely to cause, the death of, or grievous bodily harm to, another person is guilty of an offence for which the maximum punishment is imprisonment for 2 years.

(4) This section does not apply in relation to any behaviour of a person in the execution of his duty by reason only that the behaviour causes, or is likely to cause, the death of, or grievous bodily harm to, an enemy person.

Drunkness on duty, &c.

37. (1) A defence member who—

- (a) is drunk on duty; or
- (b) is drunk when he reports or should report for duty,

is guilty of an offence for which the maximum punishment is imprisonment for 6 months.

(2) For the purposes of this section, a person shall be deemed to be drunk if, and only if, his faculties are, by reason of his being under the influence of intoxicating liquor or a drug (not being a drug administered by, or taken in accordance with the directions of, a person lawfully authorized to administer the drug), so impaired that he is unfit to be entrusted with his duty or with any duty that he may be called upon to perform.

Malingering

38. (1) A defence member who, with intent to render or keep himself unfit for duty or service—

- (a) injures himself or causes or permits himself to be injured; or
- (b) by act or omission, causes himself to suffer from a sickness or disability or prolongs or aggravates a sickness or disability from which he is suffering,

is guilty of an offence for which the maximum punishment is imprisonment for 12 months.

(2) A defence member who, with intent to avoid duty or service, falsely represents himself to be suffering from a physical or mental condition is guilty of an offence for which the maximum punishment is imprisonment for 12 months.

***Division 5—Offences relating to ships, vehicles,
aircraft, weapons or property***

Loss of, or hazard to, service ship

39. (1) A defence member who intentionally causes or allows a service ship to be lost, stranded or hazarded is guilty of an offence for which the maximum punishment is imprisonment for 5 years.

(2) A defence member who recklessly causes or allows a service ship to be lost, stranded or hazarded is guilty of an offence for which the maximum punishment is imprisonment for 2 years.

(3) A defence member who negligently causes or allows a service ship to be lost, stranded or hazarded is guilty of an offence for which the maximum punishment is imprisonment for 6 months.

Use of vehicles, &c.

40. (1) A person, being a defence member or a defence civilian, who drives a service vehicle in any place, whether a public place or not, while he is under the influence of intoxicating liquor or a drug to such an extent as to be incapable of having proper control of the vehicle is guilty of an offence for which the maximum punishment is imprisonment for 12 months.

(2) A person, being a defence member or a defence civilian, who drives a vehicle on service land while he is under the influence of intoxicating liquor or a drug to such an extent as to be incapable of having proper control of the vehicle is guilty of an offence for which the maximum punishment is imprisonment for 12 months.

(3) A person, being a defence member or a defence civilian, who drives a service vehicle in any place, whether a public place or not, at a speed, or in a manner, dangerous to another person in that place is guilty of an offence for which the maximum punishment is imprisonment for 6 months.

(4) A person, being a defence member or a defence civilian, who drives a vehicle on service land at a speed, or in a manner, dangerous to another person on that land is guilty of an offence for which the maximum punishment is imprisonment for 6 months.

(5) A person, being a defence member or a defence civilian, who, in driving a service vehicle in any place, whether a public place or not, by act or omission, behaves negligently is guilty of an offence for which the maximum punishment is imprisonment for 3 months.

(6) A person, being a defence member or a defence civilian, who, in driving a vehicle on service land, by act or omission, behaves negligently is guilty of an offence for which the maximum punishment is imprisonment for 3 months.

(7) A person, being a defence member or a defence civilian, who—

(a) drives a service vehicle in any place, whether a public place or not, without being authorized to drive that vehicle; or

(b) uses a service vehicle for an unauthorized purpose,

is guilty of an offence for which the maximum punishment is imprisonment for 3 months.

(8) A person, being a defence member or a defence civilian, who drives a service vehicle in any place, whether a public place or not, without due care and attention or without reasonable consideration for another person in that place is guilty of an offence for which the maximum punishment is—

(a) if the convicted person is a member of the Defence Force—a fine of the amount of the member's pay for 7 days; or

(b) in any other case—a fine of \$100.

(9) A person, being a defence member or a defence civilian, who drives a vehicle on service land without due care and attention or without reasonable

consideration for another person on that land is guilty of an offence for which the maximum punishment is—

- (a) if the convicted person is a member of the Defence Force—a fine of the amount of the member's pay for 7 days; or
- (b) in any other case—a fine of \$100.

(10) It is a defence if a person charged with an offence under sub-section (7) had a reasonable excuse for engaging in the behaviour to which the charge relates.

Low flying

41. (1) A defence member who, intentionally, recklessly or negligently, flies a service aircraft at a height that is less than the minimum height at which he was authorized to fly by or in accordance with a lawful general order is guilty of an offence for which the maximum punishment is imprisonment for 12 months.

(2) It is a defence if a person charged with an offence under this section neither knew, nor could reasonably be expected to have known, of the general order.

Inaccurate certification in relation to ships, &c.

- 42.** A person, being a defence member or a defence civilian, who—
- (a) gives a certificate; or
 - (b) makes or signs, or makes an entry in, a document,

relating to any matter affecting the safety or efficiency of a service ship, service aircraft, service vehicle, service missile or service weapon without having taken reasonable care to ensure the accuracy of the certificate or of the document or entry, as the case may be, is guilty of an offence for which the maximum punishment is imprisonment for 12 months.

Destruction of, or damage to, service property

43. (1) A person, being a defence member or a defence civilian, who intentionally, by act or omission, destroys or damages service property is guilty of an offence for which the maximum punishment is imprisonment for 5 years.

(2) A person, being a defence member or a defence civilian, who recklessly, by act or omission, destroys or damages service property is guilty of an offence for which the maximum punishment is imprisonment for 2 years.

(3) A person, being a defence member or a defence civilian, who negligently, by act or omission, destroys or damages service property is guilty of an offence for which the maximum punishment is imprisonment for 6 months.

(4) It is a defence if a person charged with an offence under sub-section (1) had a reasonable excuse for engaging in the behaviour to which the charge relates.

Loss of service property

44. (1) A person, being a defence member or a defence civilian, who loses any property that is, or forms part of, service property issued for his use, or entrusted to his care, in connection with his duties is guilty of an offence for which the maximum punishment is imprisonment for 6 months.

(2) It is a defence if a person charged with an offence under this section took reasonable steps for the safekeeping of the property to which the charge relates.

Unlawful possession of service property

45. (1) A person, being a defence member or a defence civilian, who, without lawful authority, is in possession of service property is guilty of an offence for which the maximum punishment is imprisonment for 6 months.

(2) It is a defence if a person charged with an offence under this section—

- (a) was not aware that he was in possession of the property to which the charge relates;
- (b) was not aware that the property was service property; or
- (c) had a reasonable excuse for his possession of that property without lawful authority.

Possession of property suspected of having been unlawfully obtained

46. (1) A person, being a defence member or a defence civilian, who is in possession of property that may be reasonably suspected of having been unlawfully obtained is guilty of an offence for which the maximum punishment is imprisonment for 6 months.

(2) It is a defence if a person charged with an offence under this section—

- (a) was not aware that he was in possession of the property to which the charge relates;
- (b) was not aware of the circumstances by reason of which that property may be reasonably suspected of having been unlawfully obtained; or
- (c) had a reasonable excuse for his possession of the property.

(3) It is a defence to a charge of an offence under this section if the property to which the charge relates was not unlawfully obtained.

Stealing and receiving

47. (1) A person, being a defence member or a defence civilian, who dishonestly appropriates (whether or not with a view to gain or for his own benefit) property belonging to another person with the intention of permanently depriving the other person of it is guilty of an offence for which the maximum punishment is imprisonment for 5 years.

(2) A person, being a defence member or a defence civilian, who receives property that to his knowledge has been appropriated in circumstances constituting an offence against sub-section (1) or that has otherwise been

unlawfully obtained is guilty of an offence for which the maximum punishment is imprisonment for 5 years.

(3) For the purposes of sub-section (1), but without affecting the generality of that sub-section—

- (a) a person who has any of the following intents with respect to property belonging to another person shall be deemed to intend permanently to deprive the other person of the property:
 - (i) an intent to use the property as a pledge or security;
 - (ii) an intent to part with the property on a condition as to its return that the person appropriating it may be unable to perform;
 - (iii) an intent to deal with the property in such a manner that it cannot be returned to the other person in the condition in which it was at the time of the appropriation;
 - (iv) in the case of money, an intent to use it at the will of the person appropriating it, although he may intend to repay subsequently to the other person an amount equal to the amount appropriated;
- (b) where property is subject to a trust—
 - (i) the property shall be deemed to belong to any person having a right to enforce the trust; and
 - (ii) a person who intends to defeat the trust shall be deemed to intend permanently to deprive any person having a right to enforce the trust of the property;
- (c) where a person receives or obtains property by or through the mistake of another person and is under an obligation to the other person or to a third person to make restoration, in whole or in part, of the property, or to pay the whole or a part of the proceeds, or of the value, of the property, to the other person or to the third person, as the case may be—
 - (i) the property or proceeds shall, to the extent of that obligation and as against the person who so receives or obtains the property, be deemed to belong to the person to whom the obligation is owed; and
 - (ii) if the person who so receives or obtains the property intends not to make such restoration or payment as is necessary to discharge the obligation, he shall be deemed to intend permanently to deprive the person to whom the obligation is owed of the property;
- (d) where a person receives property from or on account of another person and is under an obligation to the other person to retain and deal with the property or the proceeds of the property in a particular way, the property or proceeds shall, as against the person who so receives the property, be deemed to belong to the person to whom the obligation is owed;

- (e) property shall be deemed to belong to a person if the person has possession or control of it or a proprietary right or interest in it (not being an equitable interest arising by reason only of an agreement to transfer or grant an interest);
- (f) subject to paragraph (g), an assumption by a person of the rights of an owner with respect to property (including, where the person has come by the property in circumstances that do not constitute an offence against this section, a subsequent assumption of a right to the property by keeping or dealing with it as owner) amounts to an appropriation of the property; and
- (g) where property or a right or interest in property is, or purports to be, transferred for value to a person acting in good faith, a subsequent assumption by him of rights that he believes himself to have acquired by virtue of that transfer or purported transfer does not, by reason only of a defect in the title of the transferor, amount to an appropriation of the property.

(4) It is a defence to a charge of an offence under sub-section (1) if the person charged—

- (a) appropriated the property in the belief that he had in law the right to interfere with the rights of the other person concerned in respect of the property;
- (b) appropriated the property in the belief that he would have the other person's consent if the other person knew of the appropriation and of the circumstances of it; or
- (c) except where the property came to him as trustee or personal representative, appropriated the property in the belief that the other person concerned could not be discovered by taking reasonable steps.

Looting

48. (1) A person, being a defence member or a defence civilian, who, in the course of operations against the enemy, or in the course of operations undertaken by the Defence Force for the preservation of law and order or otherwise in aid of the civil authorities—

- (a) takes any property left exposed or unprotected in consequence of such operations;
- (b) takes any property from the body of a person killed, wounded, injured or captured in those operations; or
- (c) takes any vehicle, equipment or stores captured from or abandoned by the enemy in those operations,

is guilty of an offence for which the maximum punishment is imprisonment for 5 years.

(2) A person, being a defence member or a defence civilian, who receives any property knowing it to have been taken in circumstances constituting an offence under sub-section (1) is guilty of an offence for which the maximum punishment is imprisonment for 5 years.

(3) It is a defence if a person charged with an offence under this section took or received the property for the service of the Commonwealth or had other reasonable excuse for engaging in the behaviour to which the charge relates.

Division 6—Offences relating to arrest, custody and proceedings before service tribunals

Resisting arrest

49. (1) A person, being a defence member or a defence civilian, who—

(a) refuses to obey a lawful order ordering him into arrest; or

(b) assaults—

(i) a person who has a power of arrest over him under section 89 and who arrests, or attempts to arrest, him in the exercise of that power;

(ii) a person, who carries out, or attempts to carry out, an order for his arrest under section 89;

(iii) a person who arrests, or attempts to arrest, him in pursuance of a warrant under section 88 or 90; or

(iv) a person who has him in custody,

is guilty of an offence for which the maximum punishment is imprisonment for 12 months.

(2) It is a defence if a person charged with an offence under this section neither knew, nor could reasonably be expected to have known, that the person against whom the offence is alleged to have been committed was acting lawfully.

Delay or denial of justice

50. (1) Where a person is in custody on a charge, a defence member who does not take such action as is required of him by or under this Act to have the charge dealt with in accordance with this Act is guilty of an offence for which the maximum punishment is imprisonment for 12 months.

(2) Where a person in custody is entitled to be released, a defence member who does not take such action as is required of him by or under this Act to release, or to order the release of, the first-mentioned person is guilty of an offence for which the maximum punishment is imprisonment for 12 months.

(3) It is a defence if a person charged with an offence under this section had a reasonable excuse for not taking such action as was required of him by or under this Act.

Escape from custody

51. A person, being a defence member or a defence civilian, who escapes from custody is guilty of an offence for which the maximum punishment is imprisonment for 2 years.

False evidence

52. (1) A person, being a defence member or a defence civilian, who, having been sworn or affirmed as a witness in proceedings before a service tribunal, makes a false statement material in those proceedings that he knows to be false or does not believe to be true is guilty of an offence for which the maximum punishment is imprisonment for 5 years.

(2) A person is not to be liable to be convicted of an offence under this section only on the evidence of one witness as to the falsity of the statement alleged to be false.

Contempt, &c., of service tribunal

53. (1) A person, being a defence member or a defence civilian, who, having been served, as provided for by the rules of procedure, with a summons to appear, or having been ordered to appear, as a witness before a service tribunal, without reasonable excuse—

- (a) fails to appear as required by the summons or order; or
- (b) fails to appear and report himself from day to day, unless excused or released from further attendance by the tribunal,

is guilty of an offence for which the maximum punishment is imprisonment for 6 months.

(2) A person, being a defence member or a defence civilian, appearing as a witness before a service tribunal who, without reasonable excuse—

- (a) when lawfully required either to take an oath or make an affirmation—refuses or fails to comply with the requirement;
- (b) refuses or fails to answer a question that he is lawfully required to answer by the tribunal; or
- (c) refuses or fails to produce a document that he was required to produce by a summons served on him, as provided for by the rules of procedure, or by an order,

is guilty of an offence for which the maximum punishment is imprisonment for 6 months.

(3) A person, being a defence member or a defence civilian, who—

- (a) insults a member of a court martial, a judge advocate, a Defence Force magistrate or a summary authority in or in relation to the exercise of his powers or functions as such a member, judge advocate, magistrate or authority, as the case may be;
- (b) interrupts the proceedings of a service tribunal;
- (c) creates a disturbance or takes part in creating or continuing a disturbance in or near a place where a service tribunal is sitting; or
- (d) does any other act or thing that would, if a service tribunal were a court of record, constitute a contempt of that court,

is guilty of an offence for which the maximum punishment is imprisonment for 6 months.

(4) Where an offence under sub-section (3) is committed by a person in relation to a service tribunal, being a court martial or a Defence Force magistrate, during proceedings before the tribunal, the tribunal, if it is of the opinion that it is expedient to do so, may then and there order that the person be taken into custody and call upon the person to show cause why he should not be convicted of the offence.

(5) Where a service tribunal convicts a person under sub-section (4), the maximum punishment for the offence is detention for 21 days.

Unlawful release, &c., of person in custody

54. (1) A defence member who—

- (a) by act or omission, intentionally allows to escape; or
- (b) without authority, releases,

a person who is delivered into his custody or whom it is his duty to guard is guilty of an offence for which the maximum punishment is imprisonment for 2 years.

(2) A person, being a defence member or a defence civilian, who intentionally facilitates the escape of a person from custody or from a place of confinement is guilty of an offence for which the maximum punishment is imprisonment for 12 months.

(3) A person, being a defence member or a defence civilian, who, with intent to facilitate an escape from a place of confinement of another person, conveys anything into that place is guilty of an offence for which the maximum punishment is imprisonment for 12 months.

Division 7—Miscellaneous offences

Falsification of service documents

55. (1) A person, being a defence member or a defence civilian, who, with a view to gain for himself or another person or with intent to deceive, or to cause loss, damage or injury to, another person—

- (a) makes or signs a service document that is false in a material particular;
- (b) makes in a service document an entry that is false in a material particular;
- (c) alters a service document so that the document is false in a material particular;
- (d) suppresses, defaces, makes away with or destroys a service document, or a part of a service document, that it is his duty to preserve or produce; or
- (e) does not make an entry in a service document that it is his duty to make so that the document is rendered false in a material particular,

is guilty of an offence for which the maximum punishment is imprisonment for 2 years.

(2) In sub-section (1), “service document” means a document belonging or pertaining to, or connected with, the Defence Force.

False statement in relation to application for benefit

56. A person, being a defence member or a defence civilian, who, in or in connection with, or in support of, an application for—

- (a) a grant, payment or allotment of money or an allowance;
- (b) leave of absence; or
- (c) any other benefit or advantage,

for himself or another person, being an application arising out of, or based on, membership of, or service in or in connection with, the Defence Force, makes, either orally or in writing, any statement that is to his knowledge false or misleading in a material particular is guilty of an offence for which the maximum punishment is imprisonment for 2 years.

False statement in relation to appointment or enlistment

57. (1) A person who—

- (a) in or in connection with an application for his appointment to or enlistment in the Defence Force, with intent to deceive—
 - (i) makes a false answer to any question set out in a document required to be completed in relation to his appointment or enlistment;
 - (ii) furnishes any false information or document in relation to his appointment or enlistment; or
 - (iii) does not disclose, if and when lawfully required to do so, particulars of any prior service in the Defence Force; and
- (b) as a result of that application, is appointed to or enlisted in the Defence Force,

is guilty of an offence for which the maximum punishment is imprisonment for 3 months.

(2) A defence member who, with intent to deceive—

- (a) makes a false answer to any question set out in a document required to be completed in relation to his appointment or enlistment;
- (b) furnishes any false information or document in relation to his appointment or enlistment; or
- (c) does not disclose, if and when lawfully required to do so, particulars of any prior service in the Defence Force,

is guilty of an offence for which the maximum punishment is imprisonment for 3 months.

Unauthorized disclosure of information

58. (1) A person, being a defence member or a defence civilian, who, without lawful authority, discloses information, the disclosure of which is likely to be prejudicial to the security or defence of Australia is guilty of an offence for which the maximum punishment is imprisonment for 2 years.

(2) It is a defence if a person charged with an offence under this section neither knew, nor could reasonably have been expected to have known, that the disclosure of the information was likely to be prejudicial to the security or defence of Australia.

Dealing in, or possessing, narcotic goods

59. (1) A person, being a defence member or a defence civilian, who, without lawful authority, while outside Australia, sells, or deals or traffics in, narcotic goods, knowing their nature, is guilty of an offence for which the maximum punishment is imprisonment for 10 years.

(2) A person, being a defence member or a defence civilian, who, without lawful authority, while outside Australia, is in possession of narcotic goods, knowing he possesses them and knowing their nature, is guilty of an offence for which the maximum punishment is—

- (a) if the offence is committed in relation to—
 - (i) a substance other than cannabis; or
 - (ii) a quantity of cannabis exceeding 25 grams in mass, imprisonment for 2 years;
- (b) if the convicted person is a member of the Defence Force and the offence is committed in relation to a quantity of cannabis not exceeding 25 grams in mass—a fine of the amount of the member's pay for 7 days; or
- (c) in any other case—a fine of \$100.

(3) A person, being a defence member or a defence civilian, who, while outside Australia, administers to himself narcotic goods (other than cannabis) is guilty of an offence for which the maximum punishment is imprisonment for 2 years.

(4) A person, being a defence member or a defence civilian, who, whether in or outside Australia, uses cannabis is guilty of an offence for which the maximum punishment is—

- (a) if the convicted person is a member of the Defence Force—a fine of the amount of the member's pay for 7 days; or
- (b) in any other case—a fine of \$100.

(5) A defence member who, without lawful authority, while in Australia, is in possession of a quantity of cannabis, not exceeding 25 grams in mass, knowing that he possesses it and knowing its nature, is guilty of an offence for which the maximum punishment is—

- (a) if the convicted person is a member of the Defence Force—a fine of the amount of the member's pay for 7 days; or
- (b) in any other case—a fine of \$100.

(6) In this section—

“cannabis” means a cannabis plant, whether living or dead, and includes, in any form, any flower or fruiting tops, leaves, seeds, stalks or any other

part of a cannabis plant or cannabis plants and any mixture of parts of a cannabis plant or cannabis plants, but does not include cannabis resin or cannabis fibre;

“narcotic goods” has the same meaning as in the *Customs Act* 1901.

Prejudicial behaviour

60. A defence member who, by act or omission, behaves in a manner likely to prejudice the discipline of, or bring discredit upon, the Defence Force is guilty of an offence for which the maximum punishment is imprisonment for 3 months.

Division 8—Other offences

Other offences

61. (1) A person, being a defence member or a defence civilian, is guilty of an offence if—

- (a) he does or omits to do, in the Australian Capital Territory, an act or thing the doing or omission of which is a Territory offence;
 - (b) he does or omits to do, in a public place outside the Australian Capital Territory, an act or thing the doing or omission of which, if it took place in a public place in the Australian Capital Territory, would be a Territory offence; or
 - (c) he does or omits to do (whether in a public place or not) outside the Australian Capital Territory an act or thing the doing or omission of which, if it took place (whether in a public place or not) in the Australian Capital Territory, would be a Territory offence.
- (2) The punishment for an offence against sub-section (1) is—
- (a) if the relevant Territory offence is punishable by a fixed punishment—that fixed punishment; or
 - (b) in any other case—a punishment not more severe than the maximum punishment for the relevant Territory offence.

Division 9—Miscellaneous

Commanding or ordering commission of service offence

62. A defence member who commands or orders the commission of a service offence is guilty of an offence punishable on conviction—

- (a) if the first-mentioned offence is punishable by a fixed punishment—by that fixed punishment; or
- (b) in any other case—by a punishment that is not more severe than that maximum punishment for the first-mentioned offence.

Consent for proceedings for certain offences

63. (1) Except with the consent of the Attorney-General, proceedings under this Act shall not be instituted for—

- (a) an offence against sub-section 61 (1) that is alleged to have been committed in Australia and in relation to which the relevant Territory offence is—
 - (i) treason, murder, manslaughter, rape or bigamy;
 - (ii) an offence in respect of which proceedings could not be brought in the Australian Capital Territory without the consent of a Minister; or
 - (iii) an offence prescribed for the purposes of this section; or
- (b) a service offence that is an ancillary offence in relation to an offence referred to in paragraph (a).

(2) Notwithstanding that a consent has not been given as required by this section to the institution of proceedings against a person for an offence—

- (a) a warrant for the arrest of the person for the offence may be issued in accordance with Part V;
- (b) the person may be arrested for the offence, and kept in custody, or otherwise dealt with, in accordance with Part V; and
- (c) the person may be charged with the offence in accordance with Part V,

but no further steps in the proceedings shall be taken until such consent is obtained.

Punishment for ancillary offences

64. Where a service offence—

- (a) is an ancillary offence in relation to another offence; and
- (b) is punishable otherwise than by a fixed punishment,

then, notwithstanding anything contained in the *Crimes Act* 1914, the punishment for that service offence is a punishment not more severe than the maximum punishment for that offence.

Maximum punishment for old system offence

65. The maximum punishment for an old system offence is the maximum punishment (in this section referred to as “the old system punishment”) provided for that offence by previous service law or, if the old system punishment is specified in column 1 of Schedule 1, the punishment that is specified in column 2 of that Schedule opposite to the reference to the old system punishment.

PART IV—PUNISHMENTS AND ORDERS

Punishment or order to be in respect of a particular conviction

66. (1) Each punishment imposed, and each order made, by a service tribunal shall be imposed or made, as the case may be, in respect of a particular conviction and no other conviction.

(2) In this section, “order” means a restitution order, a reparation order or an order under sub-section 75 (1).

Authorized punishments

67. (1) A court martial or a Defence Force magistrate shall not impose a punishment in respect of a conviction except in accordance with this Part and Schedule 2.

(2) A summary authority shall not impose a punishment in respect of a conviction except in accordance with this Part and Schedule 3.

Scale of punishments

68. (1) The only punishments that may be imposed by a service tribunal on a convicted person are, in decreasing order of severity, as follows:

- (a) imprisonment for life;
- (b) imprisonment for a specific period;
- (c) dismissal from the Defence Force;
- (d) detention for a period not exceeding 2 years;
- (e) reduction in rank;
- (f) forfeiture of service for the purposes of promotion;
- (g) forfeiture of seniority;
- (h) fine, being a fine not exceeding—
 - (i) where the convicted person is a member of the Defence Force—the amount of his pay for 28 days; or
 - (ii) in any other case—\$500;
- (j) severe reprimand;
- (k) restriction of privileges for a period not exceeding 14 days;
- (m) stoppage of leave for a period not exceeding 21 days;
- (n) extra duties for a period not exceeding 3 days;
- (p) reprimand.

(2) The regulations may make provision with respect to the consequences, in relation to a member of the Defence Force, that are to flow from the imposition by a service tribunal on that member of any of the following punishments:

- (a) reduction in rank;
- (b) forfeiture of service for the purposes of promotion;
- (c) forfeiture of seniority;

- (d) restriction of privileges for a period;
- (e) stoppage of leave for a period;
- (f) extra duties for a period.

(3) The commanding officer of a convicted person subject to a punishment specified in paragraph (2) (d) or (f) may moderate the consequences of that punishment in relation to the convicted person in such manner as the commanding officer considers appropriate having regard to the particular circumstances of the case and to any directions, in writing, of a chief of staff.

(4) Notwithstanding that a convicted person is subject to a punishment of stoppage of leave, the commanding officer of the person may, if he is satisfied that it is appropriate to do so, grant leave of absence to the person.

Punishment not to be more severe than maximum punishment

69. The punishment that may be imposed by a service tribunal upon a convicted person in respect of a service offence is a punishment that is not more severe than the maximum punishment for that offence.

Sentencing principles

70. (1) A service tribunal, in determining what action under this Part should be taken in relation to a convicted person, shall have regard to—

- (a) the principles of sentencing applied by the civil courts, from time to time; and
- (b) the need to maintain discipline in the Defence Force.

(2) In so far as the principles referred to in paragraph (1) (a) require the taking into account of any mitigating or aggravating circumstances, the circumstances to be so taken into account in relation to a convicted person shall include—

- (a) his rank, age and maturity;
- (b) his physical and mental condition;
- (c) his personal history;
- (d) the absence or existence in his case of previous convictions for service offences, civil court offences and overseas offences;
- (e) if the service offence involves a victim, his relationship with the victim;
- (f) his behaviour before, during and after the commission of the service offence; and
- (g) any consequential effects of his conviction or proposed punishment.

(3) Where a service tribunal has, in accordance with sub-section (1), determined to impose a fine on a convicted person, the tribunal, in fixing the amount of the fine, shall have regard to the following additional factors:

- (a) the means of the person; and
- (b) the effect of the fine on the person's ability to meet any reparation orders that the tribunal may wish to make.

(4) For the purposes of sub-section (1) the principles referred to in paragraph (a) of that sub-section shall be deemed to include—

- (a) the principle that the period (if any) that a convicted person has spent in custody before action is taken under this Part by a service tribunal in relation to the person should be taken into account by the service tribunal in determining the length of the period of any punishment of imprisonment or detention that it imposes on the person; and
- (b) the principle that, where the offence of which the convicted person is convicted was an offence against section 7 of the *Crimes Act* 1914 and the attempt that constitutes the offence was voluntarily abandoned, the fact and the circumstances of that abandonment should be taken into account in mitigation of any punishment to be imposed in respect of the offence.

Restrictions on power to impose punishments

71. (1) A service tribunal shall not impose a punishment of imprisonment on a member of the Defence Force whom it has convicted of a service offence unless the tribunal also imposes on that member in respect of that conviction or another conviction the punishment of dismissal from the Defence Force.

(2) A service tribunal shall not impose a punishment of detention on a member of the Defence Force whom it has convicted of a service offence if the member, at the time of conviction, had not attained the age of 18 years.

(3) A service tribunal shall not impose a punishment of detention on a member of the Defence Force whom it has convicted of a service offence if it also imposes the punishment of dismissal from the Defence Force in respect of that conviction or another conviction.

Application of Commonwealth Prisoners Act

72. (1) The *Commonwealth Prisoners Act* 1967 (other than sub-section 4 (3)) applies in relation to a service tribunal that imposes a punishment of imprisonment for a specific period on a convicted person as if—

- (a) the service tribunal were a court of, and the person was convicted in, the Australian Capital Territory; and
- (b) the reference in sub-section 4 (2) of that Act to matters to which a court is to have regard in fixing a lesser term of imprisonment in pursuance of sub-section 4 (1) of that Act included a reference to the need to maintain discipline in the Defence Force.

(2) The fixing of a minimum term of imprisonment, or the giving of a direction, by a service tribunal under the *Commonwealth Prisoners Act* 1967 in its application by virtue of sub-section (1) of this section to the service tribunal, shall be taken, for the purposes of this Act, to be an order fixing that minimum term of imprisonment, or giving that direction, as the case may be, made by the service tribunal under this Part.

Imposition of fines

73. (1) A service tribunal that imposes a punishment of a fine shall specify in the decision imposing the punishment the amount of money that is the amount of the fine.

(2) Where a service tribunal convicts a person of 2 or more service offences and imposes 2 or more punishments, being or including fines, the sum of the amounts of those fines shall not exceed the amount of the most severe fine that the tribunal could impose on the person for any one of the service offences of which the person has been so convicted.

Concurrent or cumulative punishments

74. (1) In this section, “prescribed punishment” means a punishment of any of the following kinds:

- (a) imprisonment for a specific period;
- (b) detention;
- (c) restriction of privileges;
- (d) stoppage of leave;
- (e) extra duties.

(2) Subject to this section, where—

- (a) a service tribunal convicts a person of 2 or more service offences and imposes 2 or more prescribed punishments;
- (b) a service tribunal convicts of a service offence a person who is already subject to a prescribed punishment (not being a punishment that is suspended) and, on that conviction, imposes another prescribed punishment;
- (c) a service tribunal convicts of a service offence a person who is already subject to a prescribed punishment (being a punishment that is suspended) and, on that conviction, revokes that suspension and also imposes another prescribed punishment; or
- (d) a service tribunal convicts a person of a service offence that was committed during the period to which an undertaking given by the person in accordance with sub-section 75 (2) relates and, on that conviction, imposes—
 - (i) a prescribed punishment for the service offence to which the conviction relates; and
 - (ii) a prescribed punishment for the service offence in relation to which the undertaking was given,

the punishments so imposed (including, where applicable, the punishment referred to in paragraph (c) the suspension of which is revoked) shall be concurrent.

(3) Where a service tribunal imposes a punishment of imprisonment for a specific period for a service offence and also a punishment of imprisonment for life for another service offence, the punishments shall be concurrent.

(4) Subject to sub-section (5), where—

- (a) a service tribunal convicts a person of 2 or more service offences and imposes 2 or more prescribed punishments that are of the same kind;
- (b) a service tribunal convicts of a service offence a person who is already subject to a prescribed punishment (not being a punishment that is suspended) and, on that conviction, imposes another prescribed punishment that is of the same kind as the prescribed punishment to which the person is already subject;
- (c) a service tribunal convicts of a service offence a person who is already subject to a prescribed punishment (being a punishment that is suspended) and, on that conviction, revokes that suspension and also imposes another prescribed punishment that is of the same kind as the suspended punishment; or
- (d) a service tribunal convicts a person of a service offence that was committed during the period to which an undertaking given by the person in accordance with sub-section 75 (2) relates and, on that conviction, imposes—
 - (i) a prescribed punishment for the service offence to which the conviction relates; and
 - (ii) a prescribed punishment that is of the same kind as the prescribed punishment referred to in sub-paragraph (i) for the service offence in relation to which the undertaking was given,

the tribunal may order that the punishments so imposed (including, where applicable, the punishment referred to in paragraph (c) the suspension of which is revoked) shall be cumulative.

(5) A service tribunal shall not order that prescribed punishments shall be cumulative if the effect of the order would be that the person convicted would be subject to punishment for a total period that exceeds the period of operation of the most severe punishment (being a punishment of the same kind as the first-mentioned punishments) that the tribunal could impose on the person for the service offence, or any one of the service offences, of which the person has been convicted by the tribunal.

(6) Where—

- (a) a person is convicted by a service tribunal of a service offence committed by him while serving a punishment of detention; and
- (b) the service tribunal imposes on him for that service offence a punishment of detention,

that last-mentioned punishment shall commence at the expiration of the period of detention that he was serving when the offence was committed.

Conviction without punishment

75. (1) Instead of imposing a punishment on a convicted person, a service tribunal may make an order that the conviction be recorded as a conviction without punishment.

(2) As a condition of making an order under sub-section (1), a service tribunal may require the convicted person to give an undertaking that he will be of good behaviour for a period of 12 months.

Breach of undertaking to be of good behaviour

76. (1) Where—

- (a) a person has, in accordance with sub-section 75 (2), given an undertaking that he will be of good behaviour for a period of 12 months; and
- (b) a service tribunal convicts the person of a service offence that was committed during that period,

the tribunal may, subject to section 131, if it is satisfied that, by reason of his commission of that offence, the person has failed to be of good behaviour, take action under this Part in relation to him for the service offence in relation to which that undertaking was given.

(2) A service tribunal, before taking action under sub-section (1), shall hear evidence relevant to the determination of what action should be taken.

Taking other offences into consideration

77. (1) Where a convicted person requests a court martial or a Defence Force magistrate to take into consideration, for the purposes of this Part, any other service offence—

- (a) that is similar to the service offence of which he has been convicted;
- (b) that the tribunal has jurisdiction to try; and
- (c) that he admits having committed,

the court martial or the Defence Force magistrate, with the consent of the prosecution, may take the other service offence into consideration.

(2) A court martial or a Defence Force magistrate shall not impose a separate punishment or make a separate order under sub-section 75 (1) in respect of a service offence that it has taken into consideration under sub-section (1).

(3) Where—

- (a) a court martial or a Defence Force magistrate does not take a service offence into consideration under sub-section (1) by reason of—
 - (i) the withholding of consent by the prosecution; or
 - (ii) the rejection of the convicted person's request; or
- (b) a reviewing authority, under sub-section 162 (2), annuls the taking into consideration by a court martial or a Defence Force magistrate of a service offence,

an admission under and for the purposes of paragraph (1) (c) in relation to that service offence is not admissible as evidence in—

- (c) any other proceeding before a service tribunal in respect of that service offence; or

- (d) any proceeding in a civil court in respect of a civil court offence that is substantially the same offence as that service offence.

Suspension of detention

78. (1) Subject to this section, a service tribunal that imposes a punishment of detention may make an order suspending that punishment.

(2) Where a service tribunal imposes on a person 2 or more punishments of detention in respect of 2 or more service offences, the service tribunal shall not make an order suspending any of those punishments unless it also makes an order suspending the other punishment or the other punishments.

(3) Where a service tribunal makes an order suspending a punishment of detention, the punishment does not begin, and shall not be put into execution, while the suspension remains in force.

Suspension of fines

79. (1) A service tribunal that imposes on a member of the Defence Force a punishment of a fine of an amount not less than the amount of the member's pay for 7 days may make an order suspending the whole or a part of that punishment.

(2) A service tribunal that imposes on a person who is not a member of the Defence Force a punishment of a fine of an amount not less than \$100 may make an order suspending the whole or a part of that punishment.

(3) Where a service tribunal makes an order suspending a fine in whole or in part, the fine, or such part of the fine as is suspended, does not take effect while the suspension remains in force.

Revocation of suspension of punishment

80. (1) Subject to sub-section (2), where a person convicted of a service offence by a service tribunal is already subject to a punishment that is suspended, the tribunal may revoke the suspension and, in that event, the punishment that was suspended shall take effect as if it had been imposed at the time of the revocation.

(2) A service tribunal shall not revoke the suspension of a punishment if the tribunal would not have had power to impose the punishment if it had convicted the person of the service offence for which the punishment was imposed.

(3) Where, by virtue of sub-section (2), a service tribunal is not empowered to revoke a suspension that it considers should be revoked, the tribunal may recommend to a reviewing authority that the suspension be revoked by that authority.

(4) Where, under sub-section (3), a service tribunal recommends to a reviewing authority that a suspension of a punishment be revoked, the authority may revoke the suspension and, in that event, the punishment that

was suspended shall take effect as if it had been imposed at the time of the revocation.

Remission of suspended punishment

81. (1) Where—

- (a) a punishment imposed on a member of the Defence Force has been suspended and that suspension has not been revoked; and
- (b) the member ceases to be a member of the Defence Force,

that punishment is remitted.

(2) Where a punishment of detention has been suspended and that suspension has not been revoked, that punishment is remitted at the expiration of—

- (a) a period of 12 months; or
- (b) a period equal to the period for which the punishment of detention was imposed,

whichever is the greater period, commencing on the date of the order under sub-section 78 (1) or 162 (8) suspending that punishment.

(3) Where a punishment of a fine has been suspended in whole or in part and that suspension has not been revoked, that punishment, or so much of that punishment as is suspended, is remitted at the expiration of a period of 12 months commencing on the date of the order under section 79 suspending that punishment.

Remission of punishment of detention on imprisonment

82. Where a service tribunal imposes a punishment of imprisonment on a convicted person who is already subject to a punishment of detention (whether or not that punishment has been suspended), that punishment of detention, or such part of that punishment of detention as has not been served, is remitted.

Restitution orders

83. (1) Where a person is convicted by a service tribunal of a service offence that involved the unlawful obtaining of property by the convicted person, the tribunal, instead of, or in addition to, imposing a punishment or making an order under sub-section 75 (1), may—

- (a) if the whole or any part of the property so unlawfully obtained is in the custody or control of the prosecution—order the property to be repaid or restored to the person appearing to the tribunal to be its owner; or
- (b) if any property (other than money) appearing to the tribunal to have been obtained by the conversion or exchange of any of the property so unlawfully obtained is in the custody or control of the prosecution—order the property to be delivered to the person appearing to the tribunal to be the owner of the property so unlawfully obtained.

(2) Where—

- (a) a person is convicted by a service tribunal of a service offence that involved the unlawful obtaining of property by the convicted person;
- (b) it appears to the tribunal that—
 - (i) some or all of the property so unlawfully obtained was given by the convicted person to another person in exchange for other property; and
 - (ii) the other person did not know, at the time of the exchange, that the property received by him in the exchange had been unlawfully obtained; and
- (c) the whole or a part of the property given by the other person in the exchange is in the custody or control of the prosecution,

the service tribunal may order that, on the restitution by the other person of the property received by him in the exchange to the person appearing to the tribunal to be its owner, the property in the custody or control of the prosecution be restored to the other person.

(3) This section applies in relation to a service offence that has been taken into consideration by a service tribunal under section 77 in determining the appropriate punishment for a service offence of which a person has been convicted by the tribunal as if the tribunal had convicted the person of the service offence so taken into consideration.

(4) Nothing in this section affects any right that a person may have to recover any property delivered or paid in pursuance of an order under this section from the person to whom the property has been so delivered or paid.

Reparation orders

84. (1) Where a person is convicted by a service tribunal of a service offence, the tribunal may, instead of, or in addition to, imposing a punishment or making an order under sub-section 75 (1), order the person to pay such amount as it thinks just by way of reparation to a person who has sustained loss or damage through or by reason of that service offence.

(2) The amount or the sum of the amounts that a person may be ordered to pay by a service tribunal under this section shall not exceed the amount that is prescribed, for the purposes of this section, in relation to the service tribunal.

(3) In making an order under this section, a service tribunal may order payment to be made either in one sum or by instalments.

(4) This section applies in relation to a service offence that has been taken into consideration by a service tribunal under section 77 in determining the appropriate punishment for a service offence of which a person has been convicted by the tribunal as if the tribunal had convicted the person of the service offence so taken into consideration.

(5) Nothing in this section affects any right or remedy that a person may have, apart from this section, in respect of any loss or damage occasioned by a service offence.

Payment of fines

85. (1) A service tribunal may order that a fine shall be paid either in one sum or by instalments.

(2) A fine is payable to the Commonwealth.

**PART V—SUMMONS, ARREST, CUSTODY AND SUSPENSION
FROM DUTY**

Interpretation

86. In this Part, “authorized officer” includes a commanding officer.

Summons and order in the nature of summons

87. (1) Where an authorized member of the Defence Force believes, on reasonable grounds, that a person has committed a service offence, he may—

(a) if the person is a defence member—

(i) charge the defence member with the service offence;

(ii) cause a copy of the charge to be given to the defence member;
and

(iii) order the defence member to appear before a summary authority at a specified time and place to be dealt with in accordance with section 109, 110 or 111; or

(b) whether or not the person is a defence member—cause to be prepared a summons directed to the person specifying the service offence that the person is alleged to have committed and requiring the person to appear before a commanding officer at a time and place specified in the summons to be dealt with in accordance with section 110.

(2) A summons under paragraph (1) (b) shall be served on the person to whom it is directed in a manner specified in the regulations.

(3) Where a summons relating to a service offence is served on a person in accordance with sub-section (2), the person shall be taken, for the purposes of this Act, to have been charged with the offence.

(4) A superior officer may order an accused person, being a defence member, to appear before a service tribunal for any purpose relating to the charge against him.

(5) The appropriate authority may summon an accused person (whether or not a defence member), in a manner provided for in the rules of procedure, to appear before a service tribunal for any purpose relating to the charge against him.

(6) In this section, “authorized member of the Defence Force” means a member of the Defence Force, or a member of the Defence Force included in a class of members of the Defence Force, authorized, in writing, by a commanding officer for the purposes of this section.

Arrest, summons, &c., where accused person not present at hearing before service tribunal

88. (1) Where an accused person is not present at a hearing before a service tribunal (otherwise than by reason of an order under sub-section 139 (2)), an authorized officer may—

- (a) if the accused person is a defence member—order the accused person to appear before the service tribunal for any purpose relating to the charge against him; or
- (b) whether or not the accused person is a defence member—
 - (i) cause to be prepared a summons directed to the accused person requiring him to appear before the service tribunal at a time and place specified in the summons for a purpose specified in the summons relating to the charge against him; or
 - (ii) issue a warrant for the arrest of the accused person.

(2) A summons under paragraph (1) (b) shall be served on the person to whom it is directed in a manner specified in the regulations.

(3) A warrant issued under sub-section (1) shall—

- (a) specify the name of the accused person concerned and the service offence the subject of the charge; and
- (b) state that the warrant is issued because the accused person was not present at a hearing before the service tribunal specified in the warrant.

(4) A constable or a member of the Defence Force may, in execution of a warrant issued in accordance with sub-section (1), arrest the accused person named in the warrant.

(5) A warrant issued under sub-section (1) shall specify a date after which the warrant ceases to have effect.

Arrest without warrant

89. (1) A member of the Defence Force may, without warrant, arrest a person over whom he has a power of arrest if, and only if, he believes on reasonable grounds—

- (a) that the person has committed, or is committing, a service offence;
- (b) that the arrest of the person is necessary in order to achieve one or more of the following purposes:
 - (i) the purpose of ensuring the appearance of the person before a service tribunal in respect of the service offence;
 - (ii) the purpose of preventing a continuation of or repetition of the service offence or the commission of a further service offence;

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- (iii) the purpose of preventing the concealment, loss or destruction of evidence of, or relating to, the service offence;
 - (iv) the purpose of preserving the safety or welfare of the person; and
 - (c) that proceedings under section 87 against the person in respect of the offence would not effectively achieve that purpose or those purposes.
- (2) For the purposes of sub-section (1)—
- (a) an officer has a power of arrest over—
 - (i) a sailor, soldier or airman;
 - (ii) an officer in respect of whom he is a superior officer; or
 - (iii) a defence civilian;
 - (b) a warrant officer or a non-commissioned officer has a power of arrest over a sailor, soldier or airman in respect of whom he is a superior officer;
 - (c) a member of—
 - (i) the regulating staff;
 - (ii) the staff of the officer of the watch; or
 - (iii) the staff of the officer of the day,of a ship or establishment of the Australian Navy has a power of arrest over any sailor;
 - (d) a service policeman or a person lawfully exercising authority under or on behalf of a service police officer has, subject to the regulations, a power of arrest over any person; and
 - (e) where the service offence concerned is mutiny or a service offence involving disorderly or violent behaviour—
 - (i) an officer has a power of arrest over any other officer; and
 - (ii) a warrant officer or a non-commissioned officer has a power of arrest over any other sailor, soldier or airman.
- (3) A power of arrest under sub-section (1) may be exercised—
- (a) personally;
 - (b) by ordering the person concerned into arrest; or
 - (c) by giving an order for the arrest of the person concerned.
- (4) Nothing in sub-section (1) authorizes the arrest, without warrant, of a person who is not a defence member or a defence civilian.
- (5) A constable may, without warrant, arrest a person who he believes, on reasonable grounds, is escaping from custody or has escaped from custody to which he is still liable.

Arrest under warrant

90. (1) Subject to this section, where an authorized officer—

- (a) is satisfied by information on oath or affirmation that there are reasonable grounds for suspecting that a person has committed a service offence; and
- (b) believes on reasonable grounds that proceedings under section 87 would not be effective,

the authorized officer may issue a warrant for the arrest of the person.

(2) An authorized officer shall not issue a warrant under sub-section (1) for the arrest of a person for a service offence unless—

- (a) an affidavit of the informant has been furnished to the authorized officer setting out the reasons for which the issue of the warrant is sought (including the reasons why it is believed that the person has committed the service offence and the reasons why it is claimed that proceedings under section 87 would not be effective);
- (b) the informant or some other person has furnished to the authorized officer, on oath or affirmation, such further information (if any) as the authorized officer requires concerning the reasons for which the issue of the warrant is sought; and
- (c) the authorized officer is satisfied, after considering the affidavit and any such further information, that there are reasonable grounds for the issue of the warrant.

(3) Where an authorized officer issues a warrant under sub-section (1), he shall indicate, by writing under his hand, on the affidavit referred to in sub-section (2), which of the reasons specified in that affidavit, and any other reasons, he has relied on as justifying the issue of the warrant.

(4) A warrant issued under sub-section (1) shall specify the name of the person concerned and the service offence that the person is alleged to have committed.

(5) A constable or a member of the Defence Force may, in execution of a warrant issued in accordance with sub-section (1), arrest the person named in the warrant.

(6) A warrant issued under sub-section (1) shall specify a date after which the warrant ceases to have effect.

Power to enter to make arrest

91. (1) Subject to sub-section (3), where a constable has, under a warrant issued under this Act, power to arrest a person, the constable may enter any premises, by force if necessary, at any time of the day or night for the purpose of arresting the person, and may search the premises for the person, if the constable believes on reasonable grounds that the person is on the premises.

(2) Subject to sub-section (3), where, by virtue of sub-section 89 (5), a constable may, without warrant, arrest a person, the constable may enter any

premises, by force if necessary, at any time of the day or night for the purpose of arresting the person, and may search the premises for the person, if the constable believes on reasonable grounds that the person is on the premises.

(3) Sub-sections (1) and (2) do not authorize a constable to enter premises at any time during the period commencing at 9 o'clock in an evening and ending at 6 o'clock in the next following morning for the purpose of arresting a person if the constable believes, on reasonable grounds, that it will be practicable to arrest the person, either on the premises or elsewhere, at any other time.

Use of force in making arrest

92. (1) A person shall not, in the course of arresting another person under this Act, use more force, or subject the other person to greater indignity, than is necessary to make the arrest or to prevent the escape of the other person after he has been arrested.

(2) A person—

- (a) shall not, in the course of arresting another person under this Act, do an act likely to cause the death of, or grievous bodily harm to, the other person unless the person making the arrest believes on reasonable grounds that the doing of that act is necessary to protect life or to prevent serious injury to any other person (including the person making the arrest); and
- (b) without limiting the application of paragraph (a), shall not, in the course of so arresting another person who is attempting to escape arrest by fleeing, do such an act unless the other person has, if practicable, been called upon to surrender and the person making the arrest believes on reasonable grounds that the other person cannot be apprehended in any other manner.

Persons to be informed of grounds of arrest

93. (1) A person who arrests another person for a service offence shall inform the other person, at the time of the arrest, of the service offence for which he is arrested.

(2) A person who arrests another person for a service offence shall be taken to have complied with sub-section (1) if he informs the other person of the substance of the service offence for which he is arrested, and it is not necessary for him to do so in language of a precise or technical nature.

(3) Sub-section (1) does not apply to or in relation to the arrest of a person—

- (a) if that person ought, by reason of the circumstances in which he is arrested, to know the substance of the service offence for which he is arrested; or
- (b) if that person makes it impracticable, by reason of his actions, for the person making the arrest to inform him of the service offence for which he is arrested.

Civil detention of arrested person

94. (1) A constable may detain a person arrested (whether by himself or by another constable) under this Act at a civil detention facility for such time as is reasonably necessary to enable the arrested person to be delivered into the custody of a service policeman or an authorized officer.

(2) Where—

- (a)** a person has been arrested under this Act and is in the custody of a member of the Defence Force; and
- (b)** a commanding officer or the senior member of the escort of the arrested person certifies, in writing, that it is necessary for the arrested person to be detained in a place of detention and that no suitable place of detention controlled by the Defence Force is reasonably available for the purpose,

a constable may detain the arrested person in a civil detention facility for a period not exceeding 7 days.

Avoidance of delay after arrest

95. (1) Where a member of the Defence Force—

- (a)** arrests a person under this Act; or
- (b)** receives into his custody a person who has been arrested under this Act,

the member shall, as soon as practicable, take all reasonable steps in his power to ensure that the arrested person is delivered into the custody of a commanding officer.

(2) Where a person has been delivered into the custody of a commanding officer, the commanding officer or an officer authorized, in writing, by the commanding officer shall, unless the person has been arrested in execution of a warrant issued under section 88, before the expiration of the period of 24 hours after the person has been delivered into the custody of the commanding officer, either charge the person with a service offence or release him from custody.

(3) Where a person is charged with a service offence in accordance with sub-section (2), the commanding officer shall forthwith cause a copy of the charge to be given to the person.

(4) Where a person is charged with a service offence in accordance with sub-section (2), the commanding officer shall, as soon as practicable, cause proceedings to be commenced for dealing with the charge and, if no such proceedings are commenced before the expiration of a period of 48 hours after the person has been delivered into the custody of the commanding officer, the commanding officer shall, at the expiration of that period, report, in writing, to a convening authority his reasons for not causing those proceedings to be commenced.

(5) Where a person remains in the custody of the commanding officer for a period of 8 days or more without the charge against him having been dealt with, the commanding officer shall, at the expiration of the first 8 day period of such

custody and, thereafter, at the expiration of each subsequent 8 day period of such custody, report, in writing, to a convening authority his reasons for the delay in dealing with the charge.

(6) For the purposes of sub-section (5), a charge that is dealt with by a summary authority by referring it to another summary authority shall be deemed not to have been dealt with.

(7) If due to the exigencies of service it is not reasonably practicable for the commanding officer to make a report in accordance with sub-section (5) on the date on which that report is due, he shall make that report as soon as it becomes reasonably practicable to do so and shall state in that report why it was not reasonably practicable to report on the due date.

(8) Where a person remains in custody for 30 days and the charge against him has not been dealt with within the meaning of sub-section (5), the convening authority to whom a report under sub-section (5) or sub-section (7) has been made shall notify a chief of staff or an authorized officer of the reasons why the charge has not been dealt with.

(9) Upon receipt of a notification in accordance with sub-section (8), the chief of staff or the authorized officer shall, unless he is satisfied that it is proper that the person should continue in custody, order the release of the person from custody.

Time limitation on charges

96. (1) A person shall not be charged with—

- (a) an offence against this Act (other than sub-section 61 (1)) or the regulations; or
- (b) a service offence that is an ancillary offence in relation to an offence referred to in paragraph (a),

after the expiration of a period of 3 years after the time at which the offence is alleged to have been committed.

(2) Notwithstanding anything in sub-section (1), a person may be charged with—

- (a) an offence against section 15, 16, 20 or 22; or
- (b) a service offence that is an ancillary offence in relation to an offence referred to in paragraph (a),

at any time.

(3) A reference in sub-section (1) to a period shall be read as not including a reference to a period during which the person—

- (a) was a prisoner of war;
- (b) was absent without leave; or
- (c) was serving a sentence of imprisonment.

(4) A person shall not be charged with an offence against sub-section 61 (1) or a service offence that is an ancillary offence in relation to an offence against sub-section 61 (1) if the time that has elapsed since the offence is

alleged to have been committed equals or exceeds the period of time that would bar trial by, or institution of proceedings in, a civil court in the Australian Capital Territory for the relevant Territory offence.

(5) A person shall not be charged with, or tried for, an old system offence if he could not have been charged with, or tried for, as the case may be, that offence if the provisions of previous service law imposing a time limitation on such a charge or trial were still in force.

(6) A person who has ceased to be a member of the Defence Force or a defence civilian shall not be charged with a service offence unless—

- (a) the period that has elapsed since he so ceased does not exceed 6 months; and
- (b) the maximum punishment for the service offence is imprisonment for a period of 2 years or a punishment that is more severe than that punishment.

Release from custody

97. (1) A commanding officer or an officer authorized, in writing, by a commanding officer may at any time release from custody a person charged with a service offence and may impose on that person, in relation to that release, such conditions and restrictions, being conditions or restrictions of a kind authorized by a chief of staff, by instrument in writing, for the purposes of this section, as he considers necessary.

(2) An officer referred to in sub-section (1) may at any time vary or revoke a condition or restriction in force in relation to a person under this section.

(3) An officer who—

- (a) imposes a condition or restriction under sub-section (1) on a person; or
- (b) varies or revokes a condition or restriction in force in relation to a person under this section,

shall cause the imposition, variation or revocation to be notified to the person as soon as practicable.

(4) A person released under sub-section (1) may again be taken into custody if, and only if—

- (a) he is in breach of a condition or restriction in force in relation to him under this section; or
- (b) he is arrested for another service offence.

(5) A condition or restriction in force in relation to a person under this section ceases to have effect if—

- (a) a summary authority or a convening authority directs that the charge against the person be not proceeded with;
- (b) the person is acquitted or convicted of the service offence charged; or
- (c) the charge against the person is dismissed.

Suspension from duty on suspicion of offence, &c.

98. (1) Where a member of the Defence Force is charged with a service offence, a civil court offence or an overseas offence, an authorized officer may, by notice in writing served on the member, suspend the member from duty.

(2) Where an authorized officer suspects on reasonable grounds that a member of the Defence Force has committed a service offence and orders an investigation, an authorized officer may, by notice in writing served on the member, suspend the member from duty.

(3) Where a member of the Defence Force is suspended from duty under sub-section (1), the suspension ceases—

- (a) if the charge is not proceeded with or the prosecution of the charge is abandoned—at the time the member is notified to that effect; or
- (b) in any other case—on the termination of the proceedings before the service tribunal, the civil court or the overseas court hearing the charge.

(4) Where a member of the Defence Force is suspended from duty under sub-section (2), the suspension ceases on the completion of the investigation referred to in that paragraph unless the member concerned is charged with a service offence.

(5) Where on the completion of an investigation referred to in sub-section (2) the member concerned is charged with a service offence, the suspension of the member under that sub-section continues as a suspension of the member under sub-section (1).

(6) A notice under sub-section (1) or (2) shall be served in a manner specified in the regulations.

Suspension from duty after conviction

99. (1) Where a service tribunal imposes upon a member of the Defence Force a punishment that does not take effect unless it is approved by a reviewing authority, the service tribunal or a reviewing authority may, by notice in writing served on the member, suspend the member from duty pending the decision of the reviewing authority.

(2) Where a member of the Defence Force is convicted of a service offence, a civil court offence or an overseas offence, an authorized officer may, by notice in writing served on the member, suspend the member from duty pending a decision as to the termination of his service.

(3) A notice under sub-section (1) or (2) shall be served in a manner specified in the regulations.

Effect of custody or suspension from duty

100. (1) A member of the Defence Force is not required to perform any duty of his office or appointment (other than such duties as may be necessary to

relieve him of that office or appointment) during any period of custody or any period of suspension from duty under section 98 or 99.

(2) The pay entitlement of a member of the Defence Force is not affected during any period of custody, or any period of suspension from duty under section 98 or 99, by reason only of that custody or that suspension.

(3) This section does not affect any requirement to perform a duty, or any pay entitlement, of a member of the Defence Force who is serving a punishment of detention.

PART VI—INVESTIGATION OF SERVICE OFFENCES

Application of *Criminal Investigation Act 1982*

101. (1) The *Criminal Investigation Act 1982* applies in relation to the investigation of service offences subject to such modifications, omissions or additions as are prescribed by this section or by the regulations.

(2) The following provisions of the *Criminal Investigation Act 1982* do not apply in relation to the investigation of service offences:

Part II, section 24, Division 4 of Part III, sections 41 and 42, Division 3 of Part IV, section 62 and Part VII.

(3) For the purposes of the application of the *Criminal Investigation Act 1982* in relation to service offences—

- (a) an investigating officer shall be deemed to be a police officer within the meaning of that Act;
- (b) a service tribunal shall be deemed to be a court; and
- (c) an authorized officer shall be deemed to be a Magistrate.

(4) Subject to sub-section (5), the provisions of the *Criminal Investigation Act 1982*, in its application in relation to the investigation of service offences—

- (a) extend to every external Territory; and
- (b) apply, according to their tenor, both in and outside Australia, but do not apply in relation to any person outside Australia unless that person is a defence member or a defence civilian.

(5) Part V of the *Criminal Investigation Act 1982*, in its application in relation to the investigation of service offences, applies to—

- (a) an investigating officer (other than a constable) as if—
 - (i) a reference in sub-section 58 (1) or 60 (1) or (2) of that Act to a person were a reference to a defence member or a defence civilian;
 - (ii) a reference in sub-section 58 (2) or sub-section 60 (1) of that Act to land or premises were a reference to service land or premises on service land (other than land or premises in Australia occupied by, or comprising, married quarters), as the case requires; and

- (iii) a reference in sub-section 58 (2) or 60 (1) or (3) of that Act to a vessel or vehicle were a reference to a service ship, service aircraft or service vehicle or a ship, aircraft or vehicle on service land, as the case requires; and
- (b) an investigating officer, being a constable, as if paragraph (3) (c) of this section were omitted.
- (6) In this section, “investigating officer” means—
 - (a) a service policeman;
 - (b) a member of—
 - (i) the regulating staff;
 - (ii) the staff of the officer of the watch; or
 - (iii) the staff of the officer of the day,of a ship or establishment of the Australian Navy;
 - (c) a constable; or
 - (d) any other person engaged in the investigation of a service offence.

PART VII—SERVICE TRIBUNALS

Division 1—Convening authorities

Appointment of convening authorities

102. A chief of staff may, by instrument in writing, appoint an officer, or each officer included in a class of officers, to be a convening authority for the purpose of convening courts martial (whether general courts martial or restricted courts martial, or both) and exercising the other powers and functions that are conferred on convening authorities under this Act or the regulations.

Courses open to convening authority

103. (1) Where a charge is referred to a convening authority under paragraph 109 (b), 110 (1) (d) or sub-section 141 (8), 145 (1) or (3) or 194 (7), the convening authority may—

- (a) direct that the charge be not proceeded with;
 - (b) if the charge is a charge that is within the jurisdiction of a superior summary authority or a commanding officer to try (other than a charge referred under sub-section 145 (1) or (3))—refer the charge to the superior summary authority or the commanding officer for trial;
 - (c) refer the charge to a Defence Force magistrate for trial; or
 - (d) convene a general court martial or a restricted court martial to try the charge.
- (2)** Where—
- (a) a reviewing authority under section 160 or 166 orders a new trial of a person; or

- (b) the Defence Force Discipline Appeal Tribunal or the Federal Court of Australia, under the *Defence Force Discipline Appeals Act 1955* orders a new trial of a person,

a convening authority may—

- (c) if the charge is a charge that is within the jurisdiction of a superior summary authority or a commanding officer to try (other than a charge to which an order under section 166 relates)—refer the charge to the superior summary authority or the commanding officer for trial;
- (d) refer the charge to a Defence Force magistrate for trial; or
- (e) convene a general court martial or a restricted court martial to try the charge.

(3) Nothing in sub-section (2) requires a convening authority to proceed with a new trial of a person unless the convening authority is satisfied that there is sufficient cogent evidence to justify a new trial of the person.

(4) Where under section 131—

- (a) an accused person elects to be tried by a Defence Force magistrate; and

(b) the summary authority refers the charge to a convening authority, the convening authority may—

- (c) direct that the charge be not proceeded with;
- (d) refer the charge to a Defence Force magistrate for trial; or
- (e) if no Defence Force magistrate is available or if the authority considers that it would be more appropriate for the charge to be dealt with by a court martial—convene a general court martial or a restricted court martial to try the charge.

(5) Where under section 131—

- (a) an accused person elects to be tried by a court martial; and

(b) the summary authority refers the charge to a convening authority, the convening authority may—

- (c) direct that the charge be not proceeded with; or
- (d) convene a general court martial or a restricted court martial to try the charge.

(6) Where under section 131—

- (a) a convicted person elects to be punished by a Defence Force magistrate; and

(b) the summary authority refers the conviction to a convening authority, the convening authority may—

- (c) refer the case to a Defence Force magistrate to take action under Part IV in relation to the convicted person; or
- (d) if no Defence Force magistrate is available or if the authority considers that it would be more appropriate for the matter to be dealt with by a court martial—convene a general court martial or a restricted court

martial to take action under Part IV in relation to the convicted person.

- (7) Where under section 131—
- (a) a convicted person elects to be punished by a court martial; and
 - (b) the summary authority refers the conviction to a convening authority,
- the convening authority shall convene a general court martial or a restricted court martial to take action under Part IV in relation to the convicted person.

Division 2—Summary Authorities

Interpretation

104. In this Division, “prescribed offence” means—

- (a) an offence against sub-section 61 (1) in relation to which the relevant Territory offence is treason, murder, manslaughter, rape or bigamy;
- (b) a service offence that is an ancillary offence in relation to an offence referred to in paragraph (a); or
- (c) a service offence prescribed for the purposes of this section.

Appointment of certain summary authorities

105. (1) A chief of staff may, by instrument in writing, appoint an officer, or each officer included in a class of officers, to be a superior summary authority.

(2) A commanding officer may, by instrument in writing, appoint an officer, or each officer included in a class of officers, to be a subordinate summary authority.

Jurisdiction of superior summary authority

106. A superior summary authority has jurisdiction to try a charge against—

- (a) an officer who is 2 or more ranks junior to him, being an officer of or below the rank of lieutenant-commander, major or squadron-leader;
 - (b) a warrant officer; or
 - (c) a person who is not a member of the Defence Force,
- in respect of a service offence that is not a prescribed offence.

Jurisdiction of commanding officer

107. (1) A commanding officer has jurisdiction to deal with any charge against any person.

- (2)** A commanding officer has jurisdiction to try a charge against—
- (a) a member of the Defence Force who is 2 or more ranks junior to him, being a member of or below the naval rank of lieutenant, the military rank of captain or the rank of flight lieutenant; or
 - (b) a person who is not a member of the Defence Force,
- in respect of a service offence that is not a prescribed offence.

Jurisdiction of subordinate summary authority

108. (1) A subordinate summary authority has jurisdiction to deal with a charge against a member of the Defence Force who is not an officer in respect of a service offence of a kind notified, in writing, to the authority by the commanding officer who appointed him.

(2) A subordinate summary authority has jurisdiction to try a charge against a member of the Defence Force of, or below, the rank of leading seaman or corporal in respect of a service offence (other than a prescribed offence) of a kind notified, in writing, to the authority by the commanding officer who appointed him.

Dealing with a charge by superior summary authority

109. A superior summary authority to whom a charge is referred by a commanding officer under paragraph 110 (1) (c) may—

- (a) try the charge; or
- (b) refer the charge to a convening authority.

Dealing with a charge by commanding officer

110. (1) In dealing with a charge, a commanding officer may—

- (a) where the charge is within his jurisdiction to try under sub-section 107 (2)—try the charge;
- (b) where the charge is not within his jurisdiction to try under sub-section 107 (2) and he is of the opinion that there is insufficient evidence to support the charge—direct that the charge be not proceeded with;
- (c) where the charge is within the jurisdiction of a superior summary authority to try under section 106—refer the charge to a superior summary authority;
- (d) refer the charge to a convening authority; or
- (e) where it is desirable in the interests of justice or for any other reason—refer the charge to be dealt with by another commanding officer.

(2) A commanding officer may refer a charge under paragraph (1) (c) or (d) whether or not the charge is within his jurisdiction to try under sub-section 107 (2).

Dealing with a charge by subordinate summary authority

111. (1) Unless a commanding officer otherwise directs in a particular case, a charge against a member of the Defence Force who is not an officer, being a charge of a service offence that a subordinate summary authority has jurisdiction to deal with under sub-section 108 (1), shall be dealt with by that authority in accordance with sub-section (2).

(2) In dealing with a charge, a subordinate summary authority may—

- (a) where the charge is within his jurisdiction to try under sub-section 108 (2)—try the charge;

- (b) where the charge is not within his jurisdiction to try under sub-section 108 (2) and he is of the opinion that there is insufficient evidence to support the charge—direct that the charge be not proceeded with; or
- (c) whether or not the charge is within his jurisdiction to try under sub-section 108 (2)—refer the charge to the commanding officer who appointed him or, if so directed by that commanding officer, to another subordinate summary authority.

Discontinuance

112. Where a summary authority, after commencing to deal with a charge—

- (a) refers the charge under paragraph 110 (1) (c) or (e) or 111 (2) (c) or sub-section 141 (9) to another summary authority;
- (b) is unable to conclude the hearing of the charge because of death, illness, transfer or other circumstances; or
- (c) considers that it would not be in the interests of justice to continue,

a summary authority who subsequently deals with the charge shall deal with the charge afresh.

Powers of officer in command of detachment

113. (1) Subject to such limitations and restrictions as are determined, in writing, by a chief of staff or by an authorized officer, in relation to a specified detachment or a detachment included in a specified class of detachments, an officer in command of a detachment has, and may exercise, in relation to a member of the detachment, the powers under this Part of a commanding officer.

(2) In this section, “detachment” means an organized body of members of the Defence Force that is declared by an authorized officer, by instrument in writing, to be a detachment for the purposes of this section, and includes an organized body of members of the Defence Force that is so separated from the unit of the Defence Force to which it belongs that the commanding officer of the unit could not effectively exercise disciplinary powers with respect to that body of members.

Division 3—Courts martial

Types of court martial

114. (1) A court martial shall be either a general court martial or a restricted court martial.

(2) A general court martial shall consist of a President and not less than 4 other members.

(3) A restricted court martial shall consist of a President and not less than 2 other members.

Jurisdiction of court martial

115. (1) A court martial has, subject to section 63, jurisdiction to try any charge against any person.

(2) A court martial has jurisdiction to take action under Part IV in relation to a convicted person if it has been convened under sub-section 103 (6) or (7) for that purpose.

(3) A court martial, before taking action under sub-section (2), shall hear evidence relevant to the determination of what action should be taken.

Eligibility to be member of court martial

116. (1) For the purposes of this Act, a person is eligible to be a member, or a reserve member, of a court martial if, and only if—

- (a) he is an officer;
- (b) he has been an officer for a continuous period of not less than 3 years or for periods amounting in the aggregate to not less than 3 years; and
- (c) he is not junior in rank to the accused person (being a member of the Defence Force) or to any of the accused persons (being members of the Defence Force).

(2) For the purposes of this Act, an officer is eligible to be President of a court martial if, and only if, he holds a rank that is not lower than—

- (a) in the case of a general court martial—the naval rank of captain or the rank of colonel or group captain: or
- (b) in the case of a restricted court martial—the rank of commander, lieutenant-colonel or wing commander.

(3) The requirements set out in paragraph (1) (c) and sub-section (2) apply only if the exigencies of service permit.

Eligibility to be judge advocate

117. For the purposes of this Act, a person is eligible to be the judge advocate of a court martial if, and only if, he is a member of the judge advocates' panel.

Biased members or judge advocate not to be appointed

118. A convening authority shall not appoint as a member or as a reserve member, or as the judge advocate, of a court martial an officer whom he believes to be—

- (a) biased or likely to be biased; or
- (b) likely to be thought, on reasonable grounds, to be biased.

Convening order

119. A convening authority shall, in an order convening a court martial—

- (a) appoint—
 - (i) the President and the other members;

- (ii) an adequate number of reserve members; and
 - (iii) the judge advocate; and
- (b) fix, or provide for the fixing of, the time and place for the assembling of the court martial.

Convening order to be notified to accused person

120. (1) A convening authority shall, as soon as practicable after he makes an order convening a court martial for the purpose of trying an accused person, cause a copy of that order to be given to the accused person.

(2) If an order convening a court martial is subsequently varied, the convening authority shall notify the accused person accordingly.

Objection on ground of ineligibility, &c.

121. At any time before a court martial is sworn or affirmed, the accused person may lodge an objection with the convening authority to any member or reserve member of the court martial or to the judge advocate on the ground that the member or judge advocate—

- (a) is ineligible;
- (b) is, or is likely to be, biased; or
- (c) is likely to be thought, on reasonable grounds, to be biased.

Notification of belief of bias

122. A member or reserve member, or the judge advocate, of a court martial who believes himself—

- (a) to be biased, or likely to be biased; or
 - (b) likely to be thought, on reasonable grounds, to be biased,
- shall notify the convening authority forthwith.

Substitution of members, &c.

123. At any time before a court martial is sworn or affirmed, the convening authority may revoke the appointment of an officer to be a member or reserve member of the court martial or the judge advocate and appoint an officer to be a member or reserve member or the judge advocate, as the case may be, in the place of that first-mentioned officer.

Replacement of members, &c.

124. (1) Where, after a court martial has assembled but before it is sworn or affirmed, the judge advocate—

- (a) finds that a member of the court martial who has not appeared at the place of assembly is not, or is not likely to be, available;
- (b) upholds an objection entered under sub-section 141 (2) to a member of the court martial; or
- (c) finds that, for some other reason, a member of the court martial should be excused from further attendance as such a member,

the judge advocate shall—

- (d) where the member concerned is not the President—appoint a reserve member in the place of that member;
- (e) where the member concerned is the President and the next senior member is not more than one rank junior to the President—appoint that next senior member to be the President in the place of the member concerned; or
- (f) where the member concerned is the President and the next senior member is more than one rank junior to the President—report the situation to the convening authority and request that authority to appoint a President in the place of the member concerned.

(2) Where, after a court martial has assembled but before it is sworn or affirmed, the judge advocate finds that there are insufficient members and reserve members properly to constitute the court martial, the judge advocate shall report the situation to the convening authority and request that authority to appoint such number of new members or new reserve members, or both, as the authority considers necessary.

(3) Where the judge advocate upholds an objection entered under sub-section 141 (3) to himself, he shall report the situation to the convening authority and request that authority to appoint another judge advocate in his place.

Dissolution of court martial

125. (1) Where, after a court martial has assembled but before it is sworn or affirmed, the convening authority considers that by reason of the exigencies of service or for any other reason it is desirable to do so, he may dissolve the court martial.

(2) Where—

- (a) at any time after a court martial is sworn or affirmed, there is an insufficient number of members properly to constitute the court martial; or
- (b) at any time after the accused person's plea of guilty or not guilty has been recorded by a court martial, the judge advocate is unable to attend,

the convening authority shall dissolve the court martial.

(3) Where, at any time after a court martial is sworn or affirmed, the convening authority considers that, in the interests of justice, the court martial should be dissolved, the convening authority shall dissolve the court martial.

(4) Where—

- (a) a court martial has adjourned the hearing of the proceedings before it; and
- (b) the convening authority considers that, by reason of the exigencies of service, it will not be practicable to continue the hearing of the proceedings at a later date,

the convening authority shall dissolve the court martial.

(5) Where a court martial is dissolved under sub-section (1), (2), (3) or (4), a convening authority may convene another court martial in its stead.

(6) Where a court martial is dissolved as mentioned in sub-section (2), (3) or (4) after it has convicted a person but before it has taken action under Part IV in relation to the convicted person, a convening authority may convene another court martial for the purpose of taking such action.

(7) A court martial, before taking action under sub-section (6), shall hear evidence relevant to the determination of what action should be taken.

(8) For the purposes of this Part, a member of a court martial convened under sub-section (6) shall not be taken to be biased by reason only of his having been a member of the court martial that was dissolved as mentioned in that sub-section.

Inability to attend after plea

126. (1) Where the President is unable to attend at any time after the accused person's plea of not guilty or guilty has been recorded by a court martial, the next senior member shall become the President of the court martial and the first-mentioned President shall take no further part in the proceedings.

(2) Where a member of a court martial is unable to attend at any time after the accused person's plea of not guilty or guilty has been recorded by a court martial, that member shall take no further part in the proceedings.

Division 4—Defence Force magistrates

Appointment of Defence Force magistrates

127. (1) The Judge Advocate General may, by instrument in writing, appoint officers to be Defence Force magistrates.

(2) An officer is not eligible to be a Defence Force magistrate unless he is a member of the judge advocates' panel.

Oath or affirmation of Defence Force magistrate

128. (1) A Defence Force magistrate shall, before proceeding to discharge the duties of his office, make and subscribe an oath or affirmation in accordance with the form in Schedule 4.

(2) An oath or affirmation under this section shall be made before the Judge Advocate General or an officer authorized, in writing, by the Judge Advocate General for the purpose.

Jurisdiction and powers of Defence Force magistrate

129. (1) A Defence Force magistrate has the same jurisdiction and powers as a restricted court martial (including the powers of the judge advocate of a restricted court martial).

(2) A Defence Force magistrate has jurisdiction to take action under Part IV in relation to a convicted person if the case has been referred to him under sub-section 103 (6) for that purpose.

(3) A Defence Force magistrate, before taking action under sub-section (2), shall hear evidence relevant to the determination of what action should be taken.

PART VIII—PROCEDURE OF SERVICE TRIBUNALS

Division 1—Trial by summary authority

Trial by summary authority

130. (1) A summary authority shall try a charge in accordance with the following provisions:

- (a) the authority, before hearing any evidence on the charge, shall ask the accused person whether he pleads guilty or not guilty to the charge and, if the accused person pleads guilty and the authority is satisfied that the accused person understands the effect of that plea, the authority shall convict the accused person;
- (b) if the accused person pleads not guilty or the authority is not satisfied that the accused person, in pleading guilty, understands the effect of that plea, the authority shall record a plea of not guilty and proceed to hear the evidence on the charge;
- (c) if the authority, after hearing the evidence on the charge adduced by the prosecution, is of the opinion that that evidence is insufficient to support the charge, the authority shall dismiss the charge;
- (d) if the authority, after hearing the evidence on the charge adduced by the prosecution, is of the opinion that that evidence is sufficient to support the charge, the authority shall proceed with the trial;
- (e) if the authority finds that the charge is not proved, the authority shall dismiss the charge;
- (f) if the authority finds the charge proved, the authority shall convict the accused person;
- (g) if the authority convicts the accused person, the authority shall take action under Part IV in relation to the convicted person.

(2) Where the accused person—

- (a) refuses to plead; or
- (b) does not plead intelligibly,

the summary authority shall record a plea of not guilty and proceed accordingly in accordance with sub-section (1).

(3) Where an accused person who has pleaded not guilty withdraws his plea and pleads guilty, the summary authority shall, if it is satisfied that the accused person understands the effect of that plea, substitute a plea of guilty for

the plea of not guilty and proceed accordingly in accordance with sub-section (1).

(4) A summary authority, before taking action under paragraph (1) (g), shall hear evidence relevant to the determination of what action should be taken.

Election of trial or punishment

131. (1) Where on a trial of a charge a summary authority is of opinion—

- (a) that the evidence adduced by the prosecution is sufficient to support the charge; and
- (b) that, in the event of his convicting the accused person, he is likely to impose an elective punishment,

the summary authority shall give the accused person an opportunity to elect to be tried by a court martial or by a Defence Force magistrate.

(2) Where—

- (a) an accused person is given an opportunity, in accordance with sub-section (1), to elect to be tried by a court martial or by a Defence Force magistrate but fails to do so; or
- (b) an accused person elects to be tried by a court martial or by a Defence Force magistrate but the summary authority considers that the exigencies of service do not permit such a trial without undue delay,

the summary authority shall proceed with the trial of the accused person.

(3) Where a summary authority proposes, in accordance with section 76, to impose on a person an elective punishment for a service offence in relation to which an undertaking was given by the person under sub-section 75 (2), the summary authority shall give the person an opportunity to elect to be punished by a court martial or by a Defence Force magistrate for that service offence and for the other service offence of which the person has been convicted by the summary authority.

(4) Where an accused person makes an election under sub-section (1) or (3), then, subject to paragraph (2) (b), the summary authority shall refer the charge or the conviction, as the case may be, to a convening authority.

(5) A person who has elected to be tried or punished by a court martial or by a Defence Force magistrate may, by notice to the convening authority, withdraw his election at any time before the order convening the court martial is signed or before a date is fixed for hearing by a Defence Force magistrate.

(6) Where, in accordance with sub-section (5), a person withdraws an election to be tried by a court martial or by a Defence Force magistrate, the summary authority shall proceed with the trial of the person.

(7) Where—

- (a) a summary authority proceeds with the trial of a person in accordance with sub-section (2) or (6) and convicts the person;

- (b) a person convicted by a summary authority is given an opportunity, in accordance with sub-section (3), to elect to be punished by a court martial or by a Defence Force magistrate but fails to do so; or
- (c) in accordance with sub-section (5), a person convicted by a summary authority withdraws an election to be punished by a court martial or by a Defence Force magistrate,

the summary authority may proceed to impose an elective punishment on the convicted person.

(8) A summary authority shall not impose an elective punishment except in accordance with this section.

Division 2—Trial by court martial or Defence Force magistrate

Trial by court martial

132. (1) A court martial shall try a charge in accordance with the following provisions:

- (a) before the court martial commences to hear the evidence on the charge, the judge advocate shall ask the accused person whether he pleads guilty or not guilty to the charge and, if the accused person pleads guilty and the judge advocate is satisfied that the accused person understands the effect of that plea, the court martial shall convict the accused person;
- (b) if the accused person pleads not guilty or if the judge advocate is not satisfied that the accused person, in pleading guilty, understands the effect of that plea, the court martial shall record a plea of not guilty and proceed to hear the evidence on the charge;
- (c) if the judge advocate, after hearing the evidence on the charge adduced by the prosecution, rules that that evidence is insufficient to support the charge, the court martial shall dismiss the charge;
- (d) if the judge advocate, after hearing the evidence on the charge adduced by the prosecution, rules that that evidence is sufficient to support the charge, the court martial shall proceed with the trial;
- (e) if the court martial finds the accused person not guilty, the court martial shall acquit the accused person;
- (f) if the court martial finds the accused person guilty, the court martial shall convict the accused person;
- (g) if the court martial convicts the accused person, the court martial shall take action under Part IV in relation to the convicted person.

(2) Where an accused person—

- (a) refuses to plead; or
- (b) does not plead intelligibly,

the court martial shall record a plea of not guilty and proceed accordingly in accordance with sub-section (1).

(3) Where, under paragraph (1) (a), an accused person pleads guilty to a service offence that is one (other than the first) of 2 or more charges stated in the charge sheet in the alternative, the court martial shall—

- (a) if the convening authority notifies the court martial that he does not object to the acceptance of the plea—accept the plea and proceed accordingly in accordance with sub-section (1); or
- (b) in any other case—record a plea of not guilty and proceed accordingly in accordance with sub-section (1).

(4) Where an accused person who has pleaded not guilty withdraws his plea and pleads guilty, the court martial shall, if the judge advocate is satisfied that the accused person understands the effect of that plea, substitute a plea of guilty for the plea of not guilty and proceed accordingly in accordance with sub-section (1).

(5) A court martial, before taking action under paragraph (1) (g), shall hear evidence relevant to the determination of what action should be taken.

Determination of questions by court martial

133. (1) Subject to section 134, in any proceeding before a court martial—

- (a) the President shall preside; and
- (b) every question shall be determined by the members of the court martial.

(2) Every question determined by the members of the court martial shall be decided by a majority of the votes of the members.

(3) Subject to sub-sections (4) and (5), in the case of an equality of votes on any question referred to in sub-section (2), the President has a casting vote.

(4) In the case of an equality of votes on the question whether an accused person is guilty or not guilty of a service offence, the court martial shall find the accused person not guilty.

(5) In the case of an equality of votes on the question whether an accused person, at the time of the act or omission the subject of the charge, was suffering from such unsoundness of mind as not to be responsible, in accordance with law, for that act or omission, the court martial shall find that the person was, at that time, suffering from such unsoundness of mind.

Powers of judge advocate

134. (1) In proceedings before a court martial, the judge advocate shall give any ruling, and exercise any discretion, that, in accordance with the law in force in the Australian Capital Territory, would be given or exercised by a judge in a trial by jury.

(2) Where, for any purpose in connection with the giving of a ruling, or the exercise of a discretion, by a judge in a trial by jury in the Australian Capital Territory, the judge would, in accordance with the law in force in that Territory, sit in the absence of the jury, the judge advocate shall, for any

purpose in connection with the giving of such a ruling, or the exercise of such a discretion, by him, sit without the members of the court martial.

(3) Notwithstanding sub-sections (1) and (2), in a proceeding before a court martial, the members of the court martial shall determine what action shall be taken under Part IV in relation to a convicted person, but the judge advocate shall give a ruling on any question of law arising in connection with the making of such a determination.

(4) A ruling given by the judge advocate in accordance with sub-section (1) or (3) and a decision made by the judge advocate under sub-section 141 (5) or (6) is binding on the court martial.

(5) The judge advocate when sitting without the members of a court martial may exercise such of the powers of the court martial or the President as are necessary for the performance of his duties.

(6) The powers conferred on the judge advocate by this section are in addition to any other powers conferred on the judge advocate by any other provision of this Act, the regulations or the rules of procedure.

Trial by Defence Force magistrate

135. (1) A Defence Force magistrate shall try a charge in accordance with the following provisions:

- (a) before the Defence Force magistrate commences to hear the evidence on the charge, the Defence Force magistrate shall ask the accused person whether he pleads guilty or not guilty to the charge and, if the accused person pleads guilty and the Defence Force magistrate is satisfied that the accused person understands the effect of that plea, the Defence Force magistrate shall convict the accused person;
- (b) if the accused person pleads not guilty or if the Defence Force magistrate is not satisfied that the accused person, in pleading guilty, understands the effect of that plea, the Defence Force magistrate shall record a plea of not guilty and proceed to hear the evidence on the charge;
- (c) if the Defence Force magistrate, after hearing the evidence on the charge adduced by the prosecution, rules that that evidence is insufficient to support the charge, the Defence Force magistrate shall dismiss the charge;
- (d) if the Defence Force magistrate, after hearing the evidence on the charge adduced by the prosecution, rules that that evidence is sufficient to support the charge, the Defence Force magistrate shall proceed with the trial;
- (e) if the Defence Force magistrate finds the accused person not guilty, the Defence Force magistrate shall acquit the accused person;
- (f) if the Defence Force magistrate finds the accused person guilty, the Defence Force magistrate shall convict the accused person;

(g) if the Defence Force magistrate convicts the accused person, the Defence Force magistrate shall take action under Part IV in relation to the convicted person.

(2) Where an accused person—

- (a) refuses to plead; or
- (b) does not plead intelligibly,

the Defence Force magistrate shall record a plea of not guilty and proceed accordingly in accordance with sub-section (1).

(3) Where, under paragraph (1) (a), an accused person pleads guilty to a service offence that is one (other than the first) of 2 or more charges stated in the charge sheet in the alternative, the Defence Force magistrate shall—

- (a) if the convening authority notifies the Defence Force magistrate that he does not object to the acceptance of the plea—accept the plea and proceed accordingly in accordance with sub-section (1); or
- (b) in any other case—record a plea of not guilty and proceed accordingly in accordance with sub-section (1).

(4) Where an accused person who has pleaded not guilty withdraws his plea and pleads guilty, the Defence Force magistrate shall, if the Defence Force magistrate is satisfied that the accused person understands the effect of that plea, substitute a plea of guilty for the plea of not guilty and proceed accordingly in accordance with sub-section (1).

(5) A Defence Force magistrate, before taking action under paragraph (1) (g), shall hear evidence relevant to the determination of what action should be taken.

Representatives of parties before court martial or Defence Force magistrate

136. A person shall not represent a party before a court martial or a Defence Force magistrate unless he is—

- (a) where the trial is held in Australia—a member of the Defence Force or a legal practitioner; or
- (b) where the trial is held in a place outside Australia—a person referred to in paragraph (a) or a person qualified to practise before the courts of that place.

Representation of accused person

137. (1) A convening authority shall if, and to the extent that, the exigencies of service permit, cause an accused person awaiting trial by a court martial or by a Defence Force magistrate to be afforded the opportunity to be represented at the trial, and to be advised before the trial, by a legal officer.

(2) An accused person who is advised or represented in accordance with sub-section (1) shall be so advised or represented without expense to him.

(3) Nothing in this section prevents the operation of any scheme of legal aid, advice or assistance under a law of the Commonwealth or of a State or Territory.

Division 3—General

Procedural powers

138. (1) For the purposes of a proceeding before a service tribunal, the service tribunal may—

- (a) take evidence on oath or affirmation; and
- (b) adjourn a hearing from time to time and from place to place as appears to the tribunal to be necessary or expedient having regard to the administration of justice or the exigencies of service.

(2) For the purposes of the hearing of a proceeding before a service tribunal, the appropriate authority may summon a person, in a manner provided for in the rules of procedure, to appear before the tribunal to give evidence and to produce such documents (if any) as are referred to in the summons.

(3) For the purposes of the hearing of a proceeding before a service tribunal, a superior officer may order a defence member to appear before the tribunal to give evidence and to produce such documents (if any) as are referred to in the order.

(4) A service tribunal or, if the service tribunal is a court martial, the President of the court martial—

- (a) may require a person appearing before the tribunal to give evidence either to take an oath or to make an affirmation; and
- (b) may administer, or cause to be administered, an oath or affirmation to a person so appearing before the tribunal.

(5) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence given by him will be true.

Accused person to be present at hearing

139. (1) Subject to sub-section (2), a hearing before a service tribunal shall be held in the presence of the accused person.

(2) Where a service tribunal or, in the case of a court martial, the President, considers that, by reason of the disorderly behaviour of the accused person, it is impossible to continue the hearing in his presence, the tribunal or, in the case of a court martial, the President may order that the accused person be removed from the place of hearing and held in custody elsewhere.

(3) The President shall not make an order under sub-section (2) unless he has first consulted the judge advocate.

Public hearings

140. (1) Subject to this section, the hearing of proceedings before a court martial or a Defence Force magistrate shall be in public.

(2) In proceedings before a court martial or a Defence Force magistrate, the President of the court martial or the Defence Force magistrate may, if he considers it necessary in the interests of the security or defence of Australia, the proper administration of justice or public morals—

- (a)** order that some or all of the members of the public shall be excluded during the whole or a specified part of the proceedings; or
- (b)** order that no report of, or relating to, the whole or a specified part of the proceedings shall be published.

(3) The President of a court martial shall not make an order under sub-section (2) unless he has first consulted the judge advocate.

(4) Where proceedings before a court martial or a Defence Force magistrate are held in a secure place, the appropriate chief of staff shall cause such steps to be taken as will permit the public to have reasonable access, subject to an order (if any) in force under sub-section (2), to the proceedings.

(5) In sub-section (4), “secure place” means a place the entry to which is controlled by guards who are constables or members of the Defence Force.

Applications and objections

141. (1) At any time before an accused person is asked to plead at a trial by a service tribunal, the accused person—

- (a)** may do any one or more of the following:
 - (i)** apply for an adjournment on the ground that he has not had an adequate opportunity to prepare his defence or to choose a person to represent or advise him;
 - (ii)** apply to secure the attendance of witnesses or additional witnesses on his behalf;
 - (iii)** if he is charged with more than one service offence, apply for each charge to be heard separately;
 - (iv)** if he is charged with one or more other persons, apply to be dealt with separately on the ground that he would otherwise be prejudiced in his defence;
 - (v)** make such other applications as he considers relevant in connection with the trial; and
- (b)** may enter an objection to the charge on any ground, including any of the following grounds:
 - (i)** that, by virtue of section 144, he is not liable to be tried by the service tribunal for the service offence with which he has been charged;
 - (ii)** that the charge was made in contravention of section 96;

- (iii) that he has, in the exercise of the royal prerogative of mercy, been pardoned for the service offence with which he has been charged or for a civil court offence that is substantially the same offence;
- (iv) that the charge does not disclose a service offence or is otherwise wrong in law;
- (v) that the service tribunal does not have jurisdiction.

(2) At any time before a court martial is sworn or affirmed, the accused person may enter an objection to any member or reserve member of the court martial on the ground that the member—

- (a) is ineligible;
- (b) is, or is likely to be, biased; or
- (c) is likely to be thought, on reasonable grounds, to be biased.

(3) At any time before an accused person is asked to plead at a trial by a court martial, the accused person may enter an objection to the judge advocate on the ground that the judge advocate—

- (a) is ineligible;
- (b) is, or is likely to be, biased; or
- (c) is likely to be thought, on reasonable grounds, to be biased.

(4) At any time before an accused person is asked to plead at a trial by a service tribunal other than a court martial, the accused person may—

- (a) enter an objection to the service tribunal on the ground that the service tribunal is ineligible; or
- (b) except in the case of a trial by a summary authority, enter an objection to the service tribunal on the ground that the service tribunal—
 - (i) is, or is likely to be, biased; or
 - (ii) is likely to be thought, on reasonable grounds, to be biased,

but nothing in this sub-section shall be taken, by implication, to authorize trial by a summary authority who—

- (c) is, or is likely to be, biased; or
- (d) is likely to be thought, on reasonable grounds, to be biased.

(5) Where—

- (a) an accused person makes an application under paragraph (1) (a); and
- (b) in the case of a court martial, the judge advocate, or in any other case, the service tribunal is satisfied that the interests of justice require that the application be granted,

the service tribunal or the judge advocate, as the case may be, shall grant the application.

(6) Where—

- (a) an accused person enters an objection under paragraph (1) (b) or sub-section (2), (3) or (4); and

- (b) in the case of a court martial, the judge advocate, or in any other case, the service tribunal is satisfied that the accused person has substantiated his objection,

the service tribunal or the judge advocate, as the case may be, shall allow the objection.

(7) An application or objection under sub-section (1), (2) or (3) with respect to a trial by a court martial may be notified to the judge advocate of the court martial at any time after the making of the order convening the court martial and, on the notification of such an application or objection, the judge advocate shall sit without the members of the court martial for a hearing of that application or objection.

(8) Where a Defence Force magistrate or a judge advocate grants an application, or allows an objection, under this section, the Defence Force magistrate or the judge advocate may refer the charge against the accused person to a convening authority.

(9) Where a summary authority grants an application, or allows an objection, under this section, the summary authority may refer the charge against the accused person to another summary authority.

Alternative offences

142. (1) For the purposes of this section—

- (a) an offence against this Act (other than sub-section 61 (1)) is an alternative offence in relation to another such offence if the first-mentioned offence is specified in column 2 of Schedule 6 opposite to the reference to the other offence in column 1 of that Schedule;
- (b) an offence against section 7 of the *Crimes Act* 1914, being a service offence that is an ancillary offence in relation to an offence against this Act or the regulations is an alternative offence in relation to that offence against this Act or the regulations;
- (c) an offence against sub-section 61 (1) is an alternative offence in relation to another such offence if the relevant Territory offence in relation to the first-mentioned offence is an alternative offence in relation to the relevant Territory offence in relation to the other offence against sub-section 61 (1);
- (d) a Territory offence is an alternative offence in relation to another Territory offence if a court in the Australian Capital Territory could, in a trial of a person on a charge of the other Territory offence, convict the person of the first-mentioned Territory offence; and
- (e) an old system offence is an alternative offence in relation to another old system offence if, in accordance with previous service law, a court martial could, in a trial of a person on a charge of the other old system offence, have convicted the person of the first-mentioned old system offence.

(2) Where a service tribunal acquits a person of a service offence but is satisfied beyond reasonable doubt of facts that prove that the person is guilty of another service offence that is an alternative offence in relation to the offence of which the person has been acquitted, the service tribunal may convict the person of that other offence.

Condonation no bar to proceedings

143. Proceedings under this Act for a service offence shall not be barred on the ground of condonation of the offence.

Previous acquittal or conviction

144. (1) Where a person has been acquitted or convicted of a service offence, the person is not liable to be tried by a service tribunal for the same offence or for an offence that is substantially the same offence.

(2) Where, under section 77, a court martial or a Defence Force magistrate has taken a service offence into consideration in relation to a convicted person, the person is not liable to be tried by a service tribunal for the same offence or for an offence that is substantially the same offence.

(3) Where—

- (a) a person has been acquitted or convicted by a civil court of a civil court offence; or
- (b) a person has been acquitted or convicted by an overseas court of an overseas offence,

the person is not liable to be tried by a service tribunal for a service offence that is substantially the same offence.

(4) For the purposes of this section—

- (a) the dismissal of a charge under section 130, 132 or 135 shall be deemed to be an acquittal of the service offence the subject of the charge;
- (b) the dismissal of a charge under previous service law shall be deemed to be an acquittal of the service offence the subject of the charge;
- (c) a direction under section 103, 110 or 111 that a charge be not proceeded with shall be deemed not to be an acquittal of the service offence the subject of the charge; and
- (d) the dismissal of a charge of a civil court offence against a person, or the discharge of a person in proceedings on a charge of a civil court offence, by a civil court, under section 19B of the *Crimes Act 1914* or any corresponding provision of a law of a State or Territory, shall be deemed to be an acquittal of the offence.

Unsoundness of mind

145. (1) Where a summary authority considers that an accused person, by reason of unsoundness of mind, may not be able to understand the proceedings against him and accordingly may be unfit to stand trial, the authority shall refer the charge to a convening authority.

(2) Where a court martial or a Defence Force magistrate is satisfied that an accused person, by reason of unsoundness of mind, is not able to understand the proceedings against him and accordingly is unfit to stand trial, the court martial or the Defence Force magistrate shall so find and shall direct that the person be kept in strict custody until the pleasure of the Governor-General is known.

(3) Where, in a trial of a charge by a summary authority of an accused person, evidence is adduced that shows, or tends to show, that the accused person, at the time of the act or omission the subject of the charge, was suffering from such unsoundness of mind as not to be responsible, in accordance with law, for that act or omission, the authority shall refer the charge to a convening authority.

(4) Where, in a trial of a charge by a court martial or a Defence Force magistrate, the court martial or the Defence Force magistrate finds that the accused person, at the time of the act or omission the subject of the charge, was suffering from such unsoundness of mind as not to be responsible, in accordance with law, for that act or omission, the court martial or the Defence Force magistrate shall find the accused person not guilty on the ground of unsoundness of mind and shall acquit the person of the charge on the ground of unsoundness of mind.

(5) Where an accused person is acquitted by a court martial or a Defence Force magistrate of a charge on the ground of unsoundness of mind, the court martial or the Defence Force magistrate shall record the ground of the acquittal and shall direct that the accused person be kept in strict custody until the pleasure of the Governor-General is known.

Rules of evidence

146. (1) Subject to regulations in force under sub-section (2), the rules of evidence in force in the Australian Capital Territory apply in relation to proceedings before a service tribunal as if the tribunal were a court of that Territory and as if those proceedings were criminal proceedings in a court of that Territory.

(2) The regulations may make rules of evidence to be applied in relation to proceedings before a service tribunal that are in addition to or in substitution for, or that modify, the rules of evidence that, apart from the regulations, would apply in relation to such proceedings by virtue of sub-section (1).

Judicial notice of service matters

147. In addition to the matters of which judicial notice may be taken by a court under the rules of evidence referred to in section 146, a service tribunal shall take judicial notice of all matters within the general service knowledge of the tribunal or of its members.

Record of proceedings to be kept

148. A service tribunal shall keep a record of its proceedings and shall include in that record such particulars as are provided for by the rules of procedure.

Rules of procedure

149. (1) The Judge Advocate General may make rules of procedure, not inconsistent with this Act (including the regulations), providing for or in relation to the practice and procedure to be followed by service tribunals and, in particular, providing for or in relation to—

- (a) the attendance of witnesses;
- (b) the production of documents;
- (c) the administration of oaths and affirmations;
- (d) the forms to be used for or in relation to the purposes of proceedings before a service tribunal;
- (e) the service of any process of a service tribunal;
- (f) charge sheets in proceedings before a service tribunal;
- (g) the manner and form of charges brought before a service tribunal; and
- (h) the recording of proceedings of a service tribunal.

(2) Sections 48, 49 and 50 of the *Acts Interpretation Act* 1901 apply in relation to rules of procedure made under this section as if references in those sections of that Act to regulations were references to rules of procedure.

(3) The *Statutory Rules Publication Act* 1903 applies in relation to rules of procedure as if a service tribunal were a Court within the meaning of that Act.

PART IX—REVIEW OF PROCEEDINGS OF SERVICE TRIBUNALS

Division 1—Appointment of reviewing authorities

Appointment of reviewing authorities

150. A chief of staff may, by instrument in writing, appoint an officer, or each officer included in a class of officers, to be a reviewing authority for the purpose of reviewing proceedings of service tribunals (whether all service tribunals or service tribunals of a specified kind) and exercising any other powers and functions that are conferred on reviewing authorities by this Act or the regulations.

Division 2—Automatic and other reviews

Preliminary automatic review by commanding officer

151. (1) As soon as practicable after a subordinate summary authority convicts a person of a service offence, the authority shall transmit the record of the proceedings to the commanding officer of the authority.

(2) Subject to this section, the commanding officer shall, as soon as practicable after receiving the record referred to in sub-section (1), review the proceedings in accordance with this Part and, for that purpose, he shall be deemed to be a reviewing authority.

(3) The commanding officer may, but is not required to, obtain a report under section 154.

(4) The commanding officer shall, as soon as practicable after completing the review of the proceedings, transmit the record of the proceedings and a report of the results of that review to an appropriate legal officer.

(5) The legal officer shall, as soon as practicable after receiving the record of the proceedings and the report referred to in sub-section (4), consider that record and report and may, if he thinks fit, transmit that record and report to a reviewing authority.

(6) In sub-section (4), “appropriate legal officer”, in relation to a commanding officer or to a commanding officer included in a class of commanding officers, means a legal officer who is an authorized officer in relation to that commanding officer or to that class of commanding officers.

Automatic review by reviewing authority

152. (1) As soon as practicable after a service tribunal (other than a subordinate summary authority) convicts a person of a service offence or gives a direction in relation to a person under sub-section 145 (2) or (5), the service tribunal shall transmit the record of the proceedings to a reviewing authority.

(2) A reviewing authority shall, as soon as practicable after receiving a record of proceedings under sub-section (1) or sub-section 151 (5), review the proceedings in accordance with this Part.

Review on petition to reviewing authority

153. (1) Where a service tribunal convicts a person of a service offence or gives a direction in relation to a person under sub-section 145 (2) or (5), the person may, within 90 days after that conviction or the giving of that direction or such further period as a reviewing authority allows, lodge with the reviewing authority a petition for a review of the proceedings concerned.

(2) Where—

- (a) a person appeals, or applies for leave to appeal, to the Defence Force Discipline Appeal Tribunal; and
- (b) the Tribunal dismisses the appeal or the application for leave to appeal,

the person may, within 60 days after that dismissal or such further period as a reviewing authority allows, lodge with the reviewing authority a petition for a review of the proceedings of the service tribunal the subject of that appeal or application for leave to appeal.

(3) A petition under sub-section (1) or (2) shall set out the grounds on which the petitioner relies for the exercise of the power of review in accordance with this Part.

(4) On receipt of a petition under sub-section (1) or (2), a reviewing authority shall, as soon as practicable and, in any event, within 30 days after the receipt—

- (a) review the proceedings in accordance with this Part having regard to the grounds set out in the petition; and
- (b) notify the petitioner, in writing, of the result of that review.

(5) Notwithstanding anything in sub-section (4), a reviewing authority shall not, in a review of proceedings referred to in sub-section (2), exercise any of his powers under Division 3 or 4 other than his powers under section 162.

Report to be obtained before commencement of review

154. (1) A reviewing authority shall not commence a review without first obtaining a report on the proceedings from a legal officer appointed, by instrument in writing, for the purposes of this section by a chief of staff on the recommendation of the Judge Advocate General.

(2) Subject to sub-section (4), a reviewing authority, in making a review, is bound by any opinion on a question of law set out in a report obtained under sub-section (1).

(3) A reviewing authority may refer a report obtained under sub-section (1) to the Judge Advocate General or, if the Judge Advocate General so directs, to a Deputy Judge Advocate General.

(4) On a reference under sub-section (3) of a report, the Judge Advocate General or the Deputy Judge Advocate General may dissent from any opinion on a question of law set out in the report and, if he does so, he shall furnish to the reviewing authority, in writing, his own opinion on that question, which opinion is binding on the reviewing authority.

Further review by chief of staff

155. (1) A review by a reviewing authority does not prevent a further review of the proceedings concerned by a chief of staff if it appears to him that there are sufficient grounds for a further review.

(2) Subject to sub-section (3), a chief of staff shall conduct a further review under sub-section (1) in accordance with this Part and, for that purpose, he shall be deemed to be a reviewing authority.

(3) A chief of staff shall not commence a review without first obtaining a report on the proceedings from the Judge Advocate General or, if the Judge Advocate General so directs, from a Deputy Judge Advocate General.

(4) A chief of staff, in making a review, is bound by any opinion on a question of law set out in a report obtained under sub-section (3).

Effect on reviews of appeals to Defence Force Discipline Appeal Tribunal

156. (1) Subject to sub-section (2), where, at any time before or after a reviewing authority commences to review proceedings of a service tribunal that have resulted in a conviction or a prescribed acquittal, the convicted person or the prescribed acquitted person, as the case may be, lodges an appeal, or an application for leave to appeal, to the Defence Force Discipline Appeal

Tribunal, the reviewing authority shall not exercise any of his powers under Division 3 or 4 in relation to that review.

(2) Where the Defence Force Discipline Appeal Tribunal dismisses the appeal, or the application for leave to appeal, the reviewing authority may proceed with a review, not being a review under section 153, but shall not exercise any of his powers under Division 3 or 4 other than his powers under section 162.

(3) In this section, “prescribed acquitted person” means a person who has been acquitted of a service offence by a court martial or a Defence Force magistrate on the ground of unsoundness of mind.

Division 3—Action on review of proceedings that have resulted in a conviction

Interpretation

157. In this Division, “review” means a review under this Part of proceedings of a service tribunal that have resulted in a conviction.

Quashing of conviction, &c.

158. (1) Subject to sub-section (5), where in a review it appears to the reviewing authority—

- (a) that the conviction is unreasonable, or cannot be supported, having regard to the evidence;
- (b) that, as a result of a wrong decision on a question of law, or of mixed law and fact, the conviction was wrong in law and that a substantial miscarriage of justice has occurred;
- (c) that there was a material irregularity in the course of the proceedings and that a substantial miscarriage of justice has occurred; or
- (d) that, in all the circumstances of the case, the conviction is unsafe or unsatisfactory,

he shall quash the conviction.

(2) Subject to sub-section (5), where in a review it appears to the reviewing authority that there is evidence that—

- (a) was not reasonably available during the proceedings;
- (b) is likely to be credible; and
- (c) would have been admissible in the proceedings,

he shall receive and consider that evidence and, if he considers that the conviction cannot be supported having regard to that evidence, he shall quash the conviction.

(3) Subject to sub-section (5), where in a review the reviewing authority is satisfied that, at the time of the act or omission the subject of the charge, the convicted person was suffering from such unsoundness of mind as not to be

responsible, in accordance with law, for that act or omission, the reviewing authority shall—

- (a) quash the conviction;
- (b) substitute for the conviction so quashed an acquittal on the ground of unsoundness of mind; and
- (c) direct that the person be kept in strict custody until the pleasure of the Governor-General is known.

(4) Where in a review it appears to the reviewing authority that the court martial or the Defence Force magistrate should have found that the convicted person, by reason of unsoundness of mind, was not able to understand the proceedings against him and accordingly was unfit to stand trial, the reviewing authority shall quash the conviction and direct that the person be kept in strict custody until the pleasure of the Governor-General is known.

(5) A reviewing authority shall not quash a conviction under sub-section (3) or (4) if there are grounds for quashing the conviction under sub-section (1) or (2).

Person deemed to have been acquitted

159. For the purposes of this Act, where a reviewing authority quashes a conviction of a person of a service offence and does not order a new trial of the person for the offence, the person shall be deemed to have been acquitted of the offence.

New trial

160. (1) Where in a review the reviewing authority—

- (a) quashes a conviction that was recorded within the preceding 6 months; and
- (b) considers that, in the interests of justice, the person who was convicted should be tried again for the service offence of which he was convicted,

the reviewing authority may order a new trial of the person for that offence.

(2) An order under sub-section (1) for the new trial of a person lapses unless the new trial commences within a period of 6 months commencing on the day on which the order is made.

(3) Where a reviewing authority makes an order under sub-section (1) for a new trial of a person, the reviewing authority may make such further orders for the custody of the person pending the new trial as the authority thinks appropriate.

Substitution of conviction of alternative offence

161. (1) Where in a review the reviewing authority quashes the conviction of a person of a service offence (in this section referred to as “the original offence”) but considers—

- (a) that the service tribunal could in the proceedings have found the person guilty of another offence, being—
 - (i) a service offence that is an alternative offence, within the meaning of section 142, in relation to the original offence; or
 - (ii) a service offence with which the person was charged in the alternative and in respect of which the service tribunal did not record a finding; and
- (b) that the service tribunal, by reason of the finding of the service tribunal finding that the person was guilty of the original offence, must have been satisfied beyond reasonable doubt of facts that prove that the person was guilty of the other offence,

the reviewing authority may substitute for the conviction of the original offence a conviction of the other offence.

(2) Where under sub-section (1) a reviewing authority substitutes for the conviction of the original offence a conviction of another service offence, the reviewing authority may take such action in relation to the convicted person as could have been taken under Part IV by the service tribunal that convicted the convicted person of the original offence if that service tribunal had convicted him of that other service offence, but the reviewing authority—

- (a) shall not impose a punishment for that other service offence or make a reparation order with respect to that other service offence unless a punishment was imposed for the original offence or a reparation order was made with respect to the original offence, as the case may be; and
- (b) shall not impose a punishment for that other service offence that is more severe than the punishment that was imposed for the original offence and shall not make a reparation order with respect to that other service offence that is for an amount that exceeds the amount of the reparation order that was made with respect to the original offence.

Review of action under Part IV

162. (1) Where in a review it appears to the reviewing authority that the action taken by a service tribunal under Part IV (whether by the imposition of a punishment or the making of an order or both) in relation to a convicted person—

- (a) is wrong in law; or
- (b) is excessive,

the reviewing authority shall quash the punishment or revoke the order or both quash the punishment and revoke the order, as the case may be.

(2) Where—

- (a) a court martial or a Defence Force magistrate has taken a service offence into consideration in relation to a convicted person under section 77 and the conviction of the convicted person is quashed; or
- (b) a reviewing authority considers that a court martial or a Defence Force magistrate, in purporting to take a service offence into consideration in relation to a convicted person under section 77, exceeded the powers conferred by that section,

the reviewing authority shall annul the taking into consideration of that service offence and, thereupon, that service offence shall be deemed not to have been taken into consideration by the court martial or Defence Force magistrate.

(3) Where in a review it appears to the reviewing authority that a summary authority has imposed an elective punishment on a convicted person otherwise than in accordance with section 131, the reviewing authority shall quash the punishment.

(4) Where in a review it appears to the reviewing authority that a summary authority—

- (a) has continued a trial of a person under paragraph 131 (2) (b) in circumstances where the exigencies of service would have permitted trial by a court martial or by a Defence Force magistrate without undue delay; and
- (b) as a result of that trial, has convicted the person of a service offence and imposed an elective punishment,

the reviewing authority shall quash that punishment.

(5) Where a reviewing authority quashes a punishment or revokes an order under sub-section (1), (3) or (4) in relation to a convicted person, the reviewing authority may take such action in relation to the convicted person as could have been taken under Part IV by the service tribunal that convicted the convicted person of the service offence of which he was convicted, but the reviewing authority shall not impose a punishment that is more severe than the punishment that was imposed by the service tribunal or make a reparation order for an amount that exceeds the amount of the reparation order that was made by the service tribunal.

(6) Where in a review it appears to the reviewing authority that a service tribunal has imposed a punishment of imprisonment on a convicted person and has not fixed a lesser term of imprisonment during which the person is not to be eligible to be released on parole under sections 4 (1) and (2) of the *Commonwealth Prisoners Act 1967* in its application, by virtue of sub-section 72 (1) of this Act, to the service tribunal, the reviewing authority may fix such a lesser term of imprisonment.

(7) Section 72 applies in relation to the fixing of a lesser term of imprisonment under sub-section (6) as if the reviewing authority were the service tribunal concerned.

(8) Where in a review it appears to the reviewing authority that a service tribunal that has imposed a punishment of detention on a convicted person should have made an order under sub-section 78 (1) suspending that punishment, the reviewing authority may, if he thinks fit, make an order suspending that punishment or such part of that punishment as has not been served.

(9) Where a reviewing authority makes an order suspending a punishment of detention or such part of a punishment of detention as has not been served, the punishment, or that part of the punishment, does not begin, and shall not be put into execution, while the suspension is in force.

Division 4—Action on review of proceedings that have resulted in an acquittal on the ground of unsoundness of mind

Interpretation

163. In this Division, “review” means a review under this Part of proceedings before a court martial or a Defence Force magistrate that have resulted in a prescribed acquittal.

Quashing of prescribed acquittal, &c.

164. (1) Subject to sub-section (4), where in a review it appears to the reviewing authority—

- (a) that the prescribed acquittal is unreasonable, or cannot be supported, having regard to the evidence;
- (b) that, as a result of a wrong decision on a question of law, or of mixed law and fact, the prescribed acquittal was wrong in law and that a substantial miscarriage of justice has occurred;
- (c) that there was a material irregularity in the course of the proceedings and that a substantial miscarriage of justice has occurred; or
- (d) that, in all the circumstances of the case, the prescribed acquittal is unsafe or unsatisfactory,

he shall quash the prescribed acquittal.

(2) Subject to sub-section (4), where in a review it appears to the reviewing authority that there is evidence that—

- (a) was not reasonably available during the proceedings;
- (b) is likely to be credible; and
- (c) would have been admissible in the proceedings,

he shall receive and consider that evidence and, if he considers that the prescribed acquittal cannot be supported having regard to that evidence, he shall quash the prescribed acquittal.

(3) Where in a review it appears to the reviewing authority that the service tribunal should have found that the person, by reason of unsoundness of mind, was unable to understand the proceedings against him and accordingly was unfit to stand trial, the reviewing authority shall quash the prescribed acquittal

and direct that the person be kept in strict custody until the pleasure of the Governor-General is known.

(4) A reviewing authority shall not quash a prescribed acquittal under sub-section (1) or (2) if there are grounds for quashing the prescribed acquittal under sub-section (3).

Person deemed to have been acquitted

165. For the purposes of this Act, where a reviewing authority quashes a prescribed acquittal of a person of a service offence and does not give a direction under sub-section 164 (3) with respect to the person or order a new trial of the person for the offence, the person shall be deemed to have been acquitted of the offence without qualification.

New trial

166. (1) Where in a review the reviewing authority—

- (a) quashes a prescribed acquittal that was recorded within the preceding 6 months; and
- (b) considers that, in the interests of justice, the person who was acquitted should be tried again for the service offence of which he was acquitted,

the reviewing authority may order a new trial of the person for that offence.

(2) An order under sub-section (1) lapses unless the new trial commences within a period of 6 months commencing on the day on which the order is made.

(3) Where a reviewing authority makes an order under sub-section (1) for a new trial of a person, the reviewing authority may make such further orders for the custody of the person pending the new trial as the authority thinks appropriate.

Division 5—Action on review of certain punishments and orders that are subject to approval by reviewing authority

Interpretation

167. In this Division, “review” means a review of a punishment specified in section 172 or of an order specified in that section.

Approved punishment or order to take effect as determined

168. Where in a review the reviewing authority approves a punishment or an order, the reviewing authority shall determine when the punishment or order is to take effect.

Punishments or orders not approved to be quashed or revoked

169. (1) Where in a review the reviewing authority does not approve a punishment or an order, the reviewing authority shall quash the punishment or revoke the order, as the case may be.

(2) Where a reviewing authority quashes a punishment or revokes an order under sub-section (1) in relation to a convicted person, the reviewing authority may take such action in relation to the convicted person as could have been taken under Part IV by the service tribunal that convicted the convicted person of the service offence of which he was convicted, but the reviewing authority shall not impose a punishment that is more severe than the punishment that was imposed by the service tribunal or make a reparation order for an amount that exceeds the amount of the reparation order that was made by the service tribunal, as the case may be.

PART X—EXECUTION AND ENFORCEMENT OF PUNISHMENTS AND ORDERS

Warrants of commitment

170. (1) Subject to this section, an authorized officer may—

- (a) issue a warrant for the commitment of a prisoner to a prison in a State or Territory; or
- (b) issue a warrant for the commitment of a detainee to a detention centre.

(2) A warrant issued under sub-section (1) shall specify—

- (a) the name of the prisoner or detainee;
- (b) the place to which the prisoner or detainee is to be committed; and
- (c) the punishment that has been imposed on the prisoner or detainee.

(3) A warrant under sub-section (1) may require all service policemen and members and special members of the Australian Federal Police to convey the prisoner or detainee specified in the warrant to such prison or detention centre as is specified in the warrant and there to deliver him into the custody of the officer in charge of the prison or detention centre or some other officer doing duty at the prison or detention centre, and the warrant may be executed by any service policeman or member or special member of the Australian Federal Police.

(4) Where a person is delivered into custody at a prison or detention centre in pursuance of a warrant under sub-section (1), the person may, subject to this Act, be detained in that prison or any other prison in the same State as the first-mentioned prison, or the detention centre, as the case requires, for as long as his detention is necessary for the execution of the punishment by reason of which the warrant was issued.

Commencement of punishments and orders

171. (1) Subject to this Act, a punishment imposed, or an order made, by a service tribunal, a reviewing authority or the Defence Force Discipline Appeal Tribunal takes effect forthwith and a punishment for a specific period commences on the day on which it is imposed.

(2) Subject to section 72, where 2 or more punishments are to be cumulative, they shall take effect one after the other in accordance with the order in which they are recorded.

Punishments and orders subject to approval

172. (1) The punishment of dismissal from the Defence Force imposed by a service tribunal does not take effect unless approved by a reviewing authority.

(2) The following punishments when imposed by a summary authority do not take effect unless approved by a reviewing authority:

- (a) detention;
- (b) reduction in rank;
- (c) forfeiture of seniority;
- (d) a fine imposed on a member of the Defence Force that exceeds the amount of his pay for 14 days.

(3) A restitution order or a reparation order imposed by a service tribunal does not take effect unless approved by a reviewing authority.

(4) A person on whom a punishment of dismissal from the Defence Force is imposed may be kept in custody pending approval under sub-section (1) of the punishment.

(5) A person on whom a punishment of detention is imposed by a summary authority may be kept in custody pending approval under sub-section (2) of the punishment and, if the punishment is approved, any day on which the person was so kept in custody counts as a day of that detention.

Suspension of operation of restitution orders and reparation orders

173. (1) Subject to sub-section (2), the operation of a restitution order or a reparation order, being a restitution order or a reparation order made by a court martial or a Defence Force magistrate, is suspended—

- (a) until the expiration of the period during which, under the *Defence Force Discipline Appeals Act 1955*, an application for leave to appeal, or an appeal, against the conviction in relation to which the order was made may be lodged, but not in any case beyond the time specified in paragraph (b); and
- (b) if an application for leave to appeal, or an appeal, against the conviction is duly lodged—until the application is finally dismissed or is withdrawn or the appeal is finally determined or abandoned.

(2) Where a reviewing authority is satisfied that the title to the property in relation to which a restitution order is made is not in dispute, the reviewing authority may direct that sub-section (1) shall not apply in relation to the order.

(3) Where the operation of a restitution order or a reparation order is suspended by virtue of sub-section (1), the order does not take effect if the conviction in relation to which the order is made is quashed on appeal.

Recovery of fines, &c.

174. (1) The amount that is due and payable of any fine imposed on a person under this Act or the *Defence Force Discipline Appeals Act 1955* may be—

- (a) recovered by deduction from any pay, wages or salary payable to the person by the Commonwealth; or
- (b) without prejudice to recovery in accordance with paragraph (a), recovered by action in a civil court of competent jurisdiction as a debt due to the Commonwealth.

(2) An amount that is due and payable under any reparation order made against a person may be recovered as follows:

- (a) the amount may be recovered by deduction from any pay, wages or salary payable to the person by the Commonwealth and an amount equal to the amount so recovered may be paid by the Commonwealth to the person in whose favour the reparation order was made; or
- (b) without prejudice to recovery in accordance with paragraph (a), the amount may be recovered by action in a civil court of competent jurisdiction as a debt due to the person in whose favour the reparation order was made.

(3) Where any fine or reparation is directed to be paid by instalments and default is made in the payment of any instalment, all instalments then remaining unpaid thereupon become due and payable.

(4) Nothing in this section affects any right or remedy that a person may have, apart from this section, in respect of any loss or damage occasioned by an offence.

Evidence of fine, &c.

175. (1) An authorized officer may issue a certificate stating that—

- (a) a specified amount of a fine is due and payable by a specified person under this Act or the *Defence Force Discipline Appeals Act 1955*; or
- (b) a specified amount is due and payable by a specified person under a reparation order.

(2) A certificate purporting to be issued under sub-section (1) and purporting to be signed by an authorized officer shall be received in any civil court without further proof and is *prima facie* evidence of the facts stated in it.

Stay of execution of punishment

176. Where a service tribunal has imposed a punishment on a convicted person and the convicted person—

- (a) lodges a petition under section 153 with respect to the conviction or punishment; or
- (b) notifies a reviewing authority that he has appealed, or applied for leave to appeal, under the *Defence Force Discipline Appeals Act 1955* against the conviction,

the reviewing authority may order that the execution of the punishment shall be stayed in whole or in part pending the determination of the appeal or petition.

Unlawful absence

177. Where a convicted person becomes unlawfully at large during the period of his detention or imprisonment, the time during which he is unlawfully at large shall be deemed not to be time spent in serving that detention or imprisonment.

Regulations relating to detention centres

178. The regulations may make provision for or in relation to—

- (a) the remission of punishments of detention of detainees detained in detention centres; and
- (b) the conduct and administration of detention centres.

PART XI—JUDGE ADVOCATE GENERAL AND DEPUTY JUDGE ADVOCATES GENERAL

Judge Advocate General and Deputy Judge Advocates General

179. (1) There shall be a Judge Advocate General, who shall be appointed by the Governor-General to hold his appointment on either on a full-time basis or a part-time basis.

(2) The Governor-General may appoint one or more Deputy Judge Advocates General, who shall be so appointed to hold their appointments either on a full-time basis or on a part-time basis.

(3) The Judge Advocate General shall have such functions, powers and duties as are conferred on him by this Act or any other law.

(4) A Deputy Judge Advocate General shall exercise or perform such of the functions, powers or duties of the Judge Advocate General as the Judge Advocate General directs.

Qualifications for appointment

180. (1) A person shall not be appointed as the Judge Advocate General unless he is or has been a Judge of a federal court or of a Supreme Court of a State or Territory.

(2) A person shall not be appointed as a Deputy Judge Advocate General unless—

- (a) he is or has been a Justice or Judge of a federal court or of a Supreme Court of a State or Territory; or
- (b) he is enrolled as a legal practitioner and has been so enrolled for not less than 5 years.

(3) A defence member may be appointed as a Deputy Judge Advocate General but a defence member so appointed shall hold his appointment on a full-time basis.

Appointment of Judge as Judge Advocate General or Deputy Judge Advocate General not to affect tenure, &c.

181. (1) The appointment of the holder of a judicial office as the Judge Advocate General or a Deputy Judge Advocate General, or service by the holder of a judicial office as the Judge Advocate General or a Deputy Judge Advocate General, does not affect his tenure of that judicial office or his rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of that judicial office and, for all purposes, his service as the Judge Advocate General or a Deputy Judge Advocate General shall be taken to be service as the holder of that judicial office.

(2) In sub-section (1), "judicial office" means an office of Justice of the High Court or of Judge of a court created by the Parliament.

Arrangement for appointment of the holder of a judicial office of a State or of the Northern Territory

182. (1) The Governor-General may, for the purpose of appointing to the office of Judge Advocate General or Deputy Judge Advocate General a person who is the holder of a judicial office of a State or of the Northern Territory, enter into such arrangement with the Governor of that State or the Administrator of that Territory, as the case may be, as is necessary to secure that person's services.

(2) An arrangement under sub-section (1) may provide for the Commonwealth to reimburse a State or the Northern Territory with respect to the services of the person to whom the arrangement relates.

Terms and conditions of appointment, &c.

183. (1) The Judge Advocate General or a Deputy Judge Advocate General holds office for such period, not exceeding 7 years, as is specified in the instrument of his appointment.

(2) A person who has attained the age of 65 years shall not be appointed as the Judge Advocate General or a Deputy Judge Advocate General and a person shall not be appointed as the Judge Advocate General or a Deputy Judge Advocate General for a period that extends beyond the day on which he will attain the age of 65 years.

(3) The Judge Advocate General or a Deputy Judge Advocate General holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

Oath or affirmation of Judge Advocate General and Deputy Judge Advocate General

184. (1) The Judge Advocate General or a Deputy Judge Advocate General shall, before proceeding to discharge the duties of his office, make and subscribe an oath or affirmation in accordance with the form in Schedule 4.

- (2) An oath or affirmation under this section shall be made—
- (a) in the case of the Judge Advocate General—before a Judge of the Federal Court of Australia; or
 - (b) in the case of a Deputy Judge Advocate General—before a Judge of the Federal Court of Australia or the Supreme Court of a State or Territory.

Remuneration, &c.

185. (1) Subject to this section, the Judge Advocate General or a Deputy Judge Advocate General shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

(2) The Judge Advocate General and a Deputy Judge Advocate General shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act* 1973.

(4) If a person who is a Justice or Judge of a federal court or of a Supreme Court of a State or Territory is appointed as the Judge Advocate General or as a Deputy Judge Advocate General, he is not, while he receives salary or annual allowance as such a Justice or Judge, entitled to remuneration under this Act.

(5) In the case of a defence member who is a Deputy Judge Advocate General, if the remuneration to which he would be entitled as a Deputy Judge Advocate General exceeds the pay to which he is entitled as a defence member, he shall receive, in respect of his office as a Deputy Judge Advocate General only an amount equal to the excess.

Termination of appointment

186. (1) The Governor-General may terminate the appointment of the Judge Advocate General or a Deputy Judge Advocate General (not being a Justice or Judge of a federal court or of a Supreme Court of a State or Territory) by reason of the misbehaviour or physical or mental incapacity of the Judge Advocate General or the Deputy Judge Advocate General, as the case may be.

(2) If the Judge Advocate General or a Deputy Judge Advocate General (not being a Justice or Judge of a federal court or of a Supreme Court of a State or Territory) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit, the Governor-General shall terminate the appointment of the Judge Advocate General or the Deputy Judge Advocate General, as the case may be.

(3) A Judge Advocate General or a Deputy Judge Advocate General who is a Justice or Judge of a federal court or of a Supreme Court of a State or Territory ceases to hold office if he no longer holds office as such a Justice or Judge.

(4) A Deputy Judge Advocate General who is not a Justice or Judge of a federal court or of a Supreme Court of a State or Territory ceases to hold office if he ceases to be a legal practitioner.

Resignation

187. The Judge Advocate General or a Deputy Judge Advocate General may resign his office by writing signed by him and delivered to the Governor-General.

Acting Judge Advocate General or Deputy Judge Advocate General

188. (1) The Minister may appoint a person who is eligible for appointment as Judge Advocate General or a Deputy Judge Advocate General—

- (a) to act as Judge Advocate General or a Deputy Judge Advocate General, as the case may be, during a vacancy in the office concerned, whether or not an appointment has previously been made to that office; or
- (b) to act as the Judge Advocate General or a Deputy Judge Advocate General, as the case may be, during any period, or during all periods, when the Judge Advocate General or a Deputy Judge Advocate General is absent from duty or from Australia, or is, for any other reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) The Minister may—

- (a) subject to this Act, determine the terms and conditions of appointment including remuneration and allowances, of a person acting as Judge Advocate General or a Deputy Judge Advocate General; and
- (b) terminate such an appointment at any time.

(4) Where a person is acting as Judge Advocate General or a Deputy Judge Advocate General in accordance with paragraph (1) (b) and the office of Judge Advocate General or a Deputy Judge Advocate General becomes vacant while that person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(5) The appointment of a person to act as Judge Advocate General or a Deputy Judge Advocate General ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Minister.

(6) While a person is acting as Judge Advocate General or a Deputy Judge Advocate General, he has and may exercise all the powers, and shall perform all the functions, of the Judge Advocate General or a Deputy Judge Advocate General, as the case may be, under this Act.

(7) The appointment of a person under sub-section (1) is not invalidated, and shall not be called in question, by reason of a defect or irregularity in or in connection with his appointment.

(8) The validity of anything done by a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

PART XII—MISCELLANEOUS

Royal prerogative of mercy

189. Nothing in this Act limits or affects the royal prerogative of mercy.

Jurisdiction of civil courts in relation to offences

190. (1) Subject to the Constitution, a civil court does not have jurisdiction to try a charge of a service offence.

(2) Subject to sub-sections (3), (4) and (5), the jurisdiction of a civil court to try a charge for a civil court offence is not affected by this Act.

(3) Where a court martial or a Defence Force magistrate has, under section 77, taken a service offence into consideration in relation to a convicted person, the person is not liable to be tried by a civil court for a civil court offence that is substantially the same offence.

(4) A civil court does not have jurisdiction to try a charge of a civil court offence that—

- (a) is an ancillary offence in relation to an offence against this Act (other than sub-section 61 (1)) or the regulations; and
- (b) was committed by a person at a time when he was a defence member or a defence civilian.

(5) Where a person has been acquitted or convicted of a service offence, the person is not liable to be tried by a civil court for a civil court offence that is substantially the same offence.

(6) For the purposes of this section—

- (a) the dismissal of a charge under section 130, 132 or 135 shall be deemed to be an acquittal of the service offence the subject of the charge;

- (b) the dismissal of a charge under previous service law shall be deemed to be an acquittal of the service offence the subject of the charge; and
- (c) a direction under section 103, 110 or 111 that a charge be not proceeded with shall be deemed not to be an acquittal of the service offence the subject of the charge.

Evidentiary certificate

191. (1) An authorized officer may issue a certificate setting out such facts as he considers relevant with respect to—

- (a) the acquittal or conviction of a person of a service offence;
- (b) the dismissal of a charge of a service offence against a person under section 130, 132 or 135;
- (c) the dismissal of a charge of an offence against a person under previous service law; or
- (d) the taking of a service offence into consideration in relation to a person under section 77.

(2) A certificate purporting to be issued under sub-section (1) and purporting to be signed by an authorized officer shall be received in evidence in any civil court or service tribunal without further proof and is *prima facie* evidence of the facts stated in it.

Evidence of warrant of commitment

192. An instrument purporting to be a warrant of commitment under section 170 and purporting to be signed by an authorized officer shall be received in evidence in any civil court without further proof and is *prima facie* evidence of the facts stated in it.

Protection of members of courts martial, &c.

193. (1) A member of a court martial, a judge advocate, a Defence Force magistrate, a summary authority or a reviewing authority has, in the performance of his duties as such a member, judge advocate, magistrate or authority, as the case may be, the same protection and immunity as a Justice of the High Court.

(2) A legal practitioner or other person appearing before a service tribunal on behalf of a party has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

(3) Subject to this Act, a person summoned to attend or appearing before a service tribunal as a witness has the same protection as a witness in proceedings in the High Court.

Persons found to be of unsound mind

194. (1) Where a direction has been given under section 145, 158 or 164 that a person be kept in strict custody until the pleasure of the Governor-General is known, the Governor-General may, by writing signed by him, order that the person be detained in safe custody in such place and in

accordance with such directions, if any, as the Governor-General specifies in the order.

(2) The Governor-General may, from time to time, by writing signed by him, vary an order made under sub-section (1), either as to the place specified in the order or the directions so specified, or as to both, in such manner as he thinks fit.

(3) The Governor-General may, by writing signed by him, order that a person detained in safe custody in pursuance of an order made under sub-section (1) (being a person who, by reason of unsoundness of mind, has been acquitted of the service offence with which he was charged) be released from custody either unconditionally or subject to such conditions as are specified in the order.

(4) Where the Governor-General orders that a person be released from custody subject to conditions, the Governor-General may, at any time, by writing signed by him—

- (a) vary or revoke any or all of the conditions or impose additional conditions; or
- (b) revoke the order.

(5) Where an order in respect of a person under sub-section (3) is revoked or the person fails to comply with a condition of such an order, the person may, without warrant, be arrested by any constable and may be detained in safe custody in accordance with the order made in respect of the person under sub-section (1) as if the order under sub-section (3) had not been made.

(6) Upon the Governor-General making an order under sub-section (3) that a person be released from custody unconditionally or upon the Governor-General revoking all the conditions subject to which a person has been released from custody in pursuance of an order made under that sub-section, the order made under sub-section (1) in respect of the person ceases to have effect.

(7) Where an order is made under sub-section (1) in respect of a person who, by reason of unsoundness of mind, is unfit to be tried, he shall be detained until the Governor-General is satisfied by the certificate in writing of not less than 2 duly qualified medical practitioners that the person has become of sound mind and is fit to be tried, and, upon the Governor-General being so satisfied, the Governor-General may, by writing signed by him, refer the charge to a convening authority and, pending the decision of the convening authority under section 103, order the removal of the person to such custody as is specified in the order.

(8) For the purposes of the preceding provisions of this section, "Governor-General" means the Governor-General acting with the advice of the Attorney-General.

(9) The Governor-General may make arrangements with the Governor of a State or the Administrator of the Northern Territory for or in relation to the

detention in institutions maintained by the State or the Northern Territory, as the case may be, of persons in respect of whom orders are made under sub-section (1).

Supply of record of proceedings

195. (1) Subject to this section, a person who has been tried by a court martial or a Defence Force magistrate is, upon application made to the Attorney-General before the expiration of a period of 10 years commencing on the date of the delivery of the verdict in the trial and upon the payment of the prescribed fee (if any), entitled to be supplied with a copy of the record of the proceedings of the trial.

(2) Subject to this section, where a person tried by a court martial or a Defence Force magistrate has died before the expiration of a period of 10 years commencing on the date of the delivery of the verdict in the trial, his legal personal representative or, subject to sub-section (3), a person approved by the Attorney-General as that person's representative is, upon application made to the Attorney-General before the expiration of a period of 1 year commencing on the date of the death of the deceased person and upon the payment of the prescribed fee (if any), entitled to be supplied with a copy of the record of the proceedings of the trial.

(3) If there is a legal personal representative of a deceased person, the Attorney-General shall not approve a person as a representative of a deceased person unless the Attorney-General is satisfied that the legal personal representative has declined to take action in relation to the making of the application under sub-section (2).

(4) Nothing in this section authorizes, or requires, the supply of a copy of the record of evidence the publication of which was prohibited by an order under sub-section 140 (2).

(5) Nothing in this section affects the power of a civil court to make an order for the discovery of documents or the giving of evidence in, or the production of documents to, a civil court.

(6) Where the record of the proceedings of a trial to which an application under sub-section (1) or (2) relates is held by a chief of staff, the Attorney-General may make arrangements with the chief of staff for the supply of a copy of the record to the applicant.

Judge advocates' panel

196. (1) There shall be a panel of officers to be known as the judge advocates' panel.

(2) A chief of staff may, by writing signed by him, appoint officers nominated by the Judge Advocate General to be members of the judge advocates' panel.

(3) An officer is not eligible for appointment to the judge advocates' panel unless he is enrolled as a legal practitioner and has been so enrolled for not less than 5 years.

(4) The Judge Advocate General shall require an officer appointed under sub-section (2) to make and subscribe an oath or affirmation in accordance with the form in Schedule 5.

(5) An oath or affirmation under sub-section (4) shall be made before the Judge Advocate General or an officer authorized, in writing, by the Judge Advocate General for the purpose.

Regulations

197. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations shall not prescribe a punishment for a person convicted of an offence under the regulations other than—

- (a) where the convicted person is a member of the Defence Force—a punishment referred to in paragraph 68 (1) (h), (j), (k), (m), (n) or (p); or
- (b) in any other case—a punishment referred to in paragraph 68 (1) (h).

SCHEDULE 1

Section 65

CORRESPONDING PUNISHMENTS

Item	Column 1 Punishment in accordance with previous service law	Column 2 Corresponding punishment under this Act
1	Penal servitude	Imprisonment for a specific period
2	Dismissal with disgrace from Her Majesty's Service	Imprisonment for 2 years
3	Cashiering Dismissal from Her Majesty's Service	Dismissal from the Defence Force

SCHEDULE 2

Section 67

PUNISHMENTS THAT MAY BE IMPOSED BY A COURT MARTIAL OR A DEFENCE FORCE MAGISTRATE

1. Subject to clause 2, a court martial or a Defence Force magistrate may impose punishments on convicted persons in accordance with the table in this Schedule.

2. A restricted court martial or a Defence Force magistrate shall not impose any of the following punishments:

- (a) imprisonment for life;
- (b) imprisonment for a period exceeding 6 months;
- (c) detention for a period exceeding 6 months.

TABLE OF PUNISHMENTS

Column 1 Convicted Person	Column 2 Punishment
Officer	Imprisonment Dismissal from the Defence Force Reduction in rank Forfeiture of service for the purposes of promotion Forfeiture of seniority Fine of an amount not exceeding the amount of the convicted person's pay for 28 days Severe reprimand Reprimand
Member of the Defence Force who is not an officer	Imprisonment Dismissal from the Defence Force Detention for a period not exceeding 2 years Reduction in rank Forfeiture of seniority Fine not exceeding the amount of the convicted person's pay for 28 days Severe reprimand Reprimand
Person who is not a member of the Defence Force	Imprisonment Fine of an amount not exceeding \$500.

SCHEDULE 3

Section 67

**PUNISHMENTS THAT MAY BE IMPOSED BY A
SUMMARY AUTHORITY**

1. Subject to section 131, a superior summary authority may impose punishments on convicted persons in accordance with Table A in this Schedule.

2. Subject to section 131, a commanding officer may impose punishments on convicted persons in accordance with Table B in this Schedule.

3. A subordinate summary authority may impose punishments on convicted persons in accordance with Table C in this Schedule.

TABLE A—SUPERIOR SUMMARY AUTHORITY

Column 1	Column 2	Column 3
Convicted person	Elective punishment	Other punishment
Officer of or below the rank of lieutenant commander, major or squadron leader or warrant officer	Fine exceeding the amount of the convicted person's pay for 7 days but not exceeding the amount of the convicted person's pay for 14 days	Fine not exceeding the amount of the convicted person's pay for 7 days Severe reprimand Reprimand
Person who is not a member of the Defence Force	Fine exceeding \$100 but not exceeding \$250	Fine not exceeding \$100

TABLE B—COMMANDING OFFICER

Column 1	Column 2	Column 3
Convicted person	Elective punishment	Other punishment
Officer of or below the rank of lieutenant in the Navy, captain in the Army or flight lieutenant or warrant officer	Fine exceeding the amount of the convicted person's pay for 7 days but not exceeding the amount of the convicted person's pay for 14 days	Fine not exceeding the amount of the convicted person's pay for 7 days Severe reprimand Reprimand
Non-commissioned officer of the Australian Navy	Reduction in rank by not more than one rank	Fine not exceeding the amount of the convicted person's pay for 28 days Severe reprimand Stoppage of leave for a period not exceeding 21 days Reprimand
Non-commissioned officer of the Australian Army or the Australian Air Force	Reduction in rank by not more than one rank Forfeiture of seniority Fine exceeding the amount of the convicted person's pay for 7 days but not exceeding the amount of the convicted person's pay for 14 days	Fine not exceeding the amount of the convicted person's pay for 7 days Severe reprimand Reprimand
Member below non-commissioned rank in the Navy		Detention for a period not exceeding 42 days Reduction in rank Forfeiture of seniority Fine not exceeding the amount of the convicted person's pay for 28 days Severe reprimand Restriction of privileges for a period not exceeding 14 days

SCHEDULE 3—continued

Column 1	Column 2	Column 3
Convicted person	Elective punishment	Other punishment
		Stoppage of leave for a period not exceeding 21 days Extra duties for a period not exceeding 3 days Reprimand
Member below non-commissioned rank in the Army or the Air Force who, at the time he committed the service offence of which he has been convicted, was on active service	Detention for a period exceeding 14 days but not exceeding 42 days Fine exceeding the amount of the convicted person's pay for 14 days but not exceeding the amount of the convicted person's pay for 28 days	Detention for a period not exceeding 14 days Fine not exceeding the amount of the convicted person's pay for 14 days Severe reprimand Restriction of privileges for a period not exceeding 14 days Extra duties for a period not exceeding 3 days Reprimand
Member below non-commissioned rank in the Army or the Air Force who, at the time he committed the service offence of which he has been convicted, was not on active service	Detention for a period exceeding 7 days but not exceeding 28 days Fine exceeding the amount of the convicted person's pay for 7 days but not exceeding the amount of the convicted person's pay for 28 days	Detention for a period not exceeding 7 days Fine not exceeding the amount of the convicted person's pay for 7 days Severe reprimand Restriction of privileges for a period not exceeding 14 days Extra duties for a period not exceeding 3 days Reprimand
Person who is not a member of the Defence Force	Fine exceeding \$100 but not exceeding \$250	Fine not exceeding \$100

TABLE C—SUBORDINATE SUMMARY AUTHORITY

Column 1	Column 2	Column 3
Subordinate Summary Authority	Convicted Person	Punishment
A subordinate summary authority who is— (a) an officer of the Navy of or above the rank of commander; or (b) an officer of the Navy of or above the rank of lieutenant holding an appointment of Executive Officer of a ship or naval establishment	Sailor of the rank of leading seaman	Fine not exceeding the amount of the convicted person's pay for 7 days Severe reprimand Stoppage of leave for a period not exceeding 21 days Reprimand
	Sailor below the rank of leading seaman	Fine not exceeding the amount of the convicted person's pay for 7 days Severe reprimand Restriction of privileges for a period not exceeding 14 days Stoppage of leave for a period not exceeding 21 days Extra duties for a period not exceeding 3 days Reprimand

SCHEDULE 3—continued

Column 1	Column 2	Column 3
Subordinate Summary authority	Convicted person	Punishment
Any other subordinate summary authority	Non-commissioned officer of, or below, the rank of leading seaman or corporal	Fine not exceeding the amount of the convicted person's pay for 3 days Severe reprimand Reprimand
	Member below non-commissioned rank	Fine not exceeding the amount of the convicted person's pay for 3 days Severe reprimand Stoppage of leave for a period not exceeding 7 days Restriction of privileges for a period not exceeding 7 days Extra duties for a period not exceeding 3 days Reprimand

SCHEDULE 4

Sections 128 and 184

OATH

I, *A.B.*, do swear that I will well and truly serve Her Majesty in the office of _____ and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will: So help me God!

AFFIRMATION

I, *A.B.*, do solemnly and sincerely promise and declare that I will well and truly serve Her Majesty in the office of _____ and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will.

SCHEDULE 5

Section 196

OATH

I, *A.B.*, do swear that I will well and truly serve Her Majesty in the office of judge advocate and I will do right to all manner of people according to law, without fear or favour, affection or ill-will: So help me God!

AFFIRMATION

I, *A.B.*, do solemnly and sincerely promise and declare that I will well and truly serve Her Majesty in the office of judge advocate and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will.

SCHEDULE 6

Section 142

ALTERNATIVE OFFENCES

Item	Column 1 Offence	Column 2 Alternative offence
1	Offence against sub-section 15 (3) relating to an act or omission	Offence against sub-section 15 (1) relating to that act or omission
2	Offence against sub-section 16 (3) relating to an act or omission	Offence against sub-section 16 (1) relating to that act or omission
3	Offence against sub-section 18 (2)	Offence against sub-section 18 (1)

SCHEDULE 6—continued

Item	Column 1 Offence	Column 2 Alternative offence
4	Offence against sub-section 20 (1)	Offence against sub-section 21 (1)
5	Offence against sub-section 20 (2)	Offence against sub-section 21 (2)
6	Offence against section 22	Offence against section 24
7	Offence against section 24	Offence against section 23
8	Offence against section 25	Offence against section 33 relating to an act or omission of the kind referred to in paragraph 33 (a) or (b)
9	Offence against section 26	Offence against section 33 relating to an act or omission of the kind referred to in paragraph 33 (b) or (d)
10	Offence against sub-section 30 (1)	Offence against section 33 relating to an act or omission of the kind referred to in paragraph 33 (a) or (b)
11	Offence against sub-section 30 (2)	(a) Offence against sub-section 30 (1) (b) Offence against section 33 relating to an act or omission of the kind referred to in paragraph 33 (a) or (b)
12	Offence against sub-section 31 (1) relating to an act or omission of the kind referred to in paragraph 31 (1) (a)	Offence against section 33 relating to an act or omission of the kind referred to in paragraph 33 (a) or (b)
13	Offence against sub-section 32 (1) that relates to an act or omission of the kind referred to in paragraph 32 (1) (c)	Offence against section 37 relating to an act or omission of the kind referred to in paragraph 37 (1) (a)
14	Offence against sub-section 32 (1) relating to an act or omission of the kind referred to in paragraph 32 (1) (d)	Offence against section 23
15	Offence against sub-section 32 (2) relating to an act or omission	Offence against sub-section 32 (1) relating to that act or omission
16	Offence against sub-section 32 (2) relating to an act or omission of the kind referred to in paragraph 32 (1) (c)	Offence against sub-section 37 (1) relating to an act or omission of the kind referred to in paragraph 37 (1) (a)
17	Offence against sub-section 32 (2) relating to an act or omission of the kind referred to in paragraph 32 (1) (d)	Offence against section 23
18	Offence against section 34	Offence against section 33 relating to an act or omission of the kind referred to in paragraph 33 (a) or (b)
19	Offence against sub-section 36 (1)	(a) Offence against sub-section 36 (2) (b) Offence against sub-section 36 (3)
20	Offence against sub-section 36 (2)	Offence against sub-section 36 (3)
21	Offence against sub-section 39 (1)	(a) Offence against sub-section 39 (2) (b) Offence against sub-section 39 (3)
22	Offence against sub-section 39 (2)	Offence against sub-section 39 (3)
23	Offence against sub-section 40 (3)	(a) Offence against sub-section 40 (5) (b) Offence against sub-section 40 (8)
24	Offence against sub-section 40 (4)	(a) Offence against sub-section 40 (6) (b) Offence against sub-section 40 (9)
25	Offence against sub-section 40 (5)	Offence against sub-section 40 (8)
26	Offence against sub-section 40 (6)	Offence against sub-section 40 (9)
27	Offence against sub-section 43 (1)	(a) Offence against sub-section 43 (2) (b) Offence against sub-section 43 (3)
28	Offence against sub-section 43 (2)	Offence against sub-section 43 (3)
29	Offence against section 46	Offence against section 45

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SCHEDULE 6—continued

Item	Column 1 Offence	Column 2 Alternative offence
30	Offence against sub-section 47 (1)	(a) Offence against sub-section 47 (2) (b) Offence against section 45 (c) Offence against section 46
31	Offence against sub-section 48 (1)	Offence against sub-section 48 (2)
32	Offence against sub-section 59 (1)	Offence against sub-section 59 (2)