



# **Defence Legislation Amendment (Discipline Reform) Act 2021**

**No. 133, 2021**

**An Act to amend the law relating to defence, and  
for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
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# Defence Legislation Amendment (Discipline Reform) Act 2021

No. 133, 2021

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## An Act to amend the law relating to defence, and for related purposes

[Assented to 13 December 2021]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Defence Legislation Amendment (Discipline Reform) Act 2021*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	13 December 2021
2. Schedules 1 to 3	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	13 December 2022
3. Schedule 4	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of the <i>Online Safety Act 2021</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	13 December 2022 (paragraph (a) applies)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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### **3 Schedules**

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Disciplinary infringements

### Part 1—Main amendments

#### *Defence Force Discipline Act 1982*

##### 1 After Part I

Insert:

### Part IA—Disciplinary infringements

#### Division 1—Introduction

##### 9A Simplified outline of this Part

A prescribed defence member (a junior officer or lower rank) may elect to be dealt with under the infringement scheme in this Part in relation to a disciplinary infringement if the member has been given an infringement notice in relation to the infringement. By electing, the member is taken to have admitted the infringement for the purposes of being dealt with under the infringement scheme.

Disciplinary infringements are not service offences. However, if a prescribed defence member has been dealt with under the infringement scheme in relation to a disciplinary infringement (see subsection 9C(3)), the member is not liable to be tried by a service tribunal for an offence arising out of the infringement.

Disciplinary infringements are dealt with by discipline officers and senior discipline officers who may decide to:

- (a) impose a punishment; or
- (b) not impose a punishment if the infringement is trivial; or
- (c) dismiss the infringement if the member has a reasonable excuse; or
- (d) decline to deal with the infringement if it is too serious to be dealt with under this Part.



Discipline officers may only deal with a contravention of a minor disciplinary infringement provision. Senior discipline officers may deal with a contravention of any disciplinary infringement provision and may impose a higher punishment. There are other limitations on the jurisdiction of a discipline officer or senior discipline officer (see section 9F).

A decision by a senior discipline officer to impose a punishment is reviewed by a commanding officer. The commanding officer may confirm the decision or substitute the decision with a decision to impose a reduced punishment or no punishment or to dismiss the infringement with no punishment.

## **9B Object of this Part**

The object of this Part is to provide a means of dealing with minor service discipline matters which:

- (a) is fair and efficient; and
- (b) meets the disciplinary needs of the Defence Force.

## **Division 2—Key provisions**

### **9C Election to be dealt with under the infringement scheme**

- (1) A prescribed defence member may elect to be dealt with under the infringement scheme in relation to a disciplinary infringement if:
  - (a) the member has been given an infringement notice in relation to the infringement; and
  - (b) the election is made within the period specified in the infringement notice.

Note: If the member elects, the member will be taken to have admitted to committing the disciplinary infringement for the purpose of being dealt with under the infringement scheme: see section 9EB.

- (2) If a prescribed defence member has been dealt with under the infringement scheme in relation to a disciplinary infringement (see subsection (3)), the member is not liable to be tried by a service tribunal for an offence arising out of the infringement.

Note: If a prescribed defence member has been charged under this Act for an offence arising out of a disciplinary infringement, there is no

jurisdiction to deal with the member under the infringement scheme in relation to the infringement: see section 9F.

- (3) A prescribed defence member has been dealt with under the infringement scheme in relation to a disciplinary infringement if a discipline officer or senior discipline officer has made one of the following decisions in relation to the infringement (whether or not the decision has been substituted on review under section 9G):
- (a) a decision under paragraph 9FB(1)(a) to impose a punishment;
  - (b) a decision under paragraph 9FB(1)(b) not to impose a punishment;
  - (c) a decision under paragraph 9FB(1)(c) to dismiss the infringement.

Note: A discipline officer or senior discipline officer may also make a decision under paragraph 9FB(1)(d) to decline to deal with a disciplinary infringement. In this case, the defence member may be tried by a service tribunal for an offence arising out of the infringement.

### **9CA Prescribed defence member**

- (1) A *prescribed defence member* is:
- (a) in the Navy—a defence member who holds a rank of or below the rank of lieutenant; or
  - (b) in the Army—a defence member who holds a rank of or below the rank of captain; or
  - (c) in the Air Force—a defence member who holds a rank of or below the rank of flight lieutenant;
- but does not include a member covered by a determination in force under subsection (2).
- (2) A service chief may, by legislative instrument, determine that any of the following is not a *prescribed defence member*:
- (a) a specified defence member, or each member of a specified class of defence members, holding the rank of warrant officer;
  - (b) a specified defence member, or each member of a specified class of defence members, holding the rank of chief petty officer;

- (c) a specified defence member, or each member of a specified class of defence members, holding the rank of flight sergeant.

### **Division 3—Disciplinary infringement provisions**

#### **Subdivision A—Key concepts**

##### **9D When a disciplinary infringement is committed**

- (1) A *disciplinary infringement* is a contravention of a disciplinary infringement provision. If a prescribed defence member contravenes a disciplinary infringement provision, the member commits a disciplinary infringement.
- (2) A provision in Subdivision B or C is a *disciplinary infringement provision*.
- Note: For the punishments that may be imposed on a prescribed defence member who commits a disciplinary infringement, see section 9FB.
- (3) A provision in Subdivision B is a *minor disciplinary infringement provision*.
- Note: Discipline officers may only deal with contraventions of minor disciplinary infringement provisions. Senior discipline officers may deal with a contravention of any disciplinary infringement provision: see section 9F.
- (4) To avoid doubt, a disciplinary infringement is not a service offence.
- Note: For the meaning of *service offence*, see subsection 3(1).

#### **Subdivision B—Minor disciplinary infringement provisions**

##### **9DA Disciplinary infringement provision—absent from duty**

- (1) A prescribed defence member contravenes this subsection if the member:
- (a) is required to attend for duty; and
  - (b) does not attend for the duty.
- (2) A prescribed defence member contravenes this subsection if the member:
- (a) is required to perform a duty; and

- (b) ceases to perform the duty before the member is permitted to do so.

**9DB Disciplinary infringement provision—absent without leave not exceeding 3 hours**

A prescribed defence member contravenes this section if the member:

- (a) is absent without leave; and
- (b) the absence is for a period not exceeding 3 hours.

Note: A senior discipline officer may also have jurisdiction to deal with a contravention of the disciplinary infringement provision in section 9DH which covers absence without leave for a period not exceeding 24 hours.

**9DC Disciplinary infringement provision—disobeying a lawful command**

A prescribed defence member contravenes this section if:

- (a) a person gives the member a lawful command; and
- (b) the person giving the command is a superior officer; and
- (c) the member disobeys the command.

**9DD Disciplinary infringement provision—failing to comply with a general order**

A prescribed defence member contravenes this section if:

- (a) a lawful general order applies to the member; and
- (b) the member does not comply with the order.

**9DE Disciplinary infringement provision—member on guard or on watch**

A prescribed defence member contravenes this section if the member is on guard duty or on watch and the member:

- (a) sleeps at the member's post or on watch; or
- (b) is not on duty at a post but sleeps when the member's duty requires the member to be awake; or
- (c) is intoxicated; or

- (d) leaves the member's post before being regularly relieved or otherwise absents himself or herself from a place where it is the member's duty to be.

Note: For the meaning of *intoxicated*, see subsection 3(1).

**9DF Disciplinary infringement provision—failure to perform duty or carry out activity**

A prescribed defence member contravenes this section if:

- (a) the member's office or appointment, or the requirements of the Defence Force, require the member to perform a duty or carry out an activity; and
- (b) the member fails to perform the duty or carry out the activity.

**9DG Disciplinary infringement provision—prejudicial conduct**

- (1) A prescribed defence member contravenes this subsection if the member does an act that is likely to prejudice the discipline of, or bring discredit on, the Defence Force.
- (2) A prescribed defence member contravenes this subsection if the member:
  - (a) omits to perform an act; and
  - (b) the omission is likely to prejudice the discipline of, or bring discredit on, the Defence Force.

**Subdivision C—Disciplinary infringement provisions only within jurisdiction of senior discipline officers**

**9DH Disciplinary infringement provision—absent without leave not exceeding 24 hours**

A prescribed defence member contravenes this section if the member:

- (a) is absent without leave; and
- (b) the absence is for a period not exceeding 24 hours.

Note: A senior discipline officer may also have jurisdiction to deal with a contravention of the disciplinary infringement provision in section 9DB which covers absence without leave for a period not exceeding 3 hours.

**9DI Disciplinary infringement provision—insubordinate conduct**

- (1) A prescribed defence member contravenes this subsection if:
- (a) the member engages in conduct that is threatening, insubordinate or insulting to a person; and
  - (b) the person is a superior officer.
- (2) A prescribed defence member contravenes this subsection if:
- (a) the member uses language that is threatening, insubordinate or insulting about a person; and
  - (b) the language is used in that person's presence; and
  - (c) the person is a superior officer.

**9DJ Disciplinary infringement provision—creating a disturbance etc.**

- A prescribed defence member contravenes this section if:
- (a) the member is on service land, in a service ship, service aircraft or service vehicle or in a public place; and
  - (b) the member creates a disturbance or takes part in creating or continuing a disturbance.

**9DK Disciplinary infringement provision—insulting or provocative words**

- A prescribed defence member contravenes this section if:
- (a) the member is on service land, in a service ship, service aircraft or service vehicle or in a public place; and
  - (b) the member uses insulting or provocative words to another person.

**9DL Disciplinary infringement provision—unauthorised discharge of weapon**

- A prescribed defence member contravenes this section if:
- (a) the member engages in conduct; and
  - (b) the conduct causes, or contributes to, the discharge of a weapon; and
  - (c) the discharge of the weapon is not authorised.

**9DM Disciplinary infringement provision—negligent discharge of weapon**

- (1) A prescribed defence member contravenes this subsection if:
- (a) the member engages in conduct; and
  - (b) the conduct causes, or contributes to, the discharge of a weapon; and
  - (c) the member is negligent as to that result.
- (2) For the purposes of paragraph (1)(c), in deciding whether the prescribed defence member is negligent, to the extent that it is required to have regard to the standard of care of a reasonable person to make that decision, regard is to be had to the standard of care that would have been exercised by a reasonable person who:
- (a) was a defence member with the same training and experience in the Defence Force or other armed force as the prescribed defence member; and
  - (b) was engaged in the conduct in the course of the member's duty or in accordance with the requirements of the Defence Force, as the case may be.

**9DN Disciplinary infringement provision—intoxicated while on duty etc.**

A prescribed defence member contravenes this section if:

- (a) the member is on duty, or reports or should report for duty; and
- (b) the member is intoxicated.

Note: For the meaning of *intoxicated*, see subsection 3(1).

**9DO Disciplinary infringement provision—driving a service vehicle for unauthorised purpose**

A prescribed defence member contravenes this section if:

- (a) the member:
  - (i) drives a service vehicle in any place, whether a public place or not; and
  - (ii) is not authorised to drive that vehicle; or
- (b) the member uses a service vehicle for an unauthorised purpose.

**9DP Disciplinary infringement provision—driving without due care or attention etc.**

- (1) A prescribed defence member contravenes this subsection if:
  - (a) the member drives a service vehicle in any place, whether a public place or not; and
  - (b) the member does so without due care and attention or without reasonable consideration for another person in that place.
- (2) A prescribed defence member contravenes this subsection if:
  - (a) the member drives a vehicle on service land; and
  - (b) the member does so without due care and attention or without reasonable consideration for another person on that land.

**Division 4—Election to be dealt with under the infringement scheme**

**9E Infringement officer may give infringement notice**

- (1) If an infringement officer:
  - (a) believes, on reasonable grounds, that a prescribed defence member has committed a disciplinary infringement; and
  - (b) believes, on reasonable grounds, that the member does not have a reasonable excuse for committing the infringement;the infringement officer may give the member an infringement notice in relation to the infringement.
- (2) The infringement notice must be given as soon as is reasonably practicable after the infringement officer first has reasonable grounds for believing that the member has committed the infringement.
- (3) The infringement notice must:
  - (a) give particulars of the infringement to which the notice relates; and
  - (b) inform the member of the following:
    - (i) the member's right to elect to be dealt with under the infringement scheme in relation to the infringement;
    - (ii) that, if the member so elects, the member will be taken to have admitted committing the infringement for the



- purposes of being dealt with under the infringement scheme in relation to the infringement;
- (iii) the period within which the election must be made;
  - (iv) whether the member will be dealt with by a discipline officer or a senior discipline officer;
  - (v) the penalties that may be imposed by that kind of officer; and
- (c) inform the member that:
- (i) if the member has been dealt with under the infringement scheme in relation to the disciplinary infringement (see subsection 9C(3)), the member is not liable to be tried by a service tribunal for an offence arising out of the infringement; and
  - (ii) if the member does not so elect, the infringement officer may refer the infringement to an authorized member of the Defence Force for the purposes of section 87 so that the authorized member may determine whether there are reasonable grounds to believe that the member has committed a service offence.
- (4) An infringement notice must be in accordance with a form approved by the Chief of the Defence Force.

#### **9EA Election may be withdrawn**

A prescribed defence member may, at any time before a decision is made under section 9FB in relation to a disciplinary infringement, withdraw an election to be dealt with under the infringement scheme in relation to the disciplinary infringement.

#### **9EB Member is taken to have admitted the infringement only for the purpose of being dealt with under the infringement scheme**

If a prescribed defence member elects to be dealt with under the infringement scheme in relation to a disciplinary infringement, the member is taken, for the purpose of being so dealt with but for no other purpose, to have admitted committing the infringement.

### **9EC Consequence of no election or withdrawing election**

If a prescribed defence member is given an infringement notice in relation to a disciplinary infringement and:

- (a) the member does not make an election within the period specified in the notice; or
- (b) the member withdraws the election;

an infringement officer may refer the infringement to an authorized member of the Defence Force for the purposes of section 87 so that the authorized member may determine whether there are reasonable grounds to believe that the member has committed a service offence.

Note: The election may be withdrawn at any time before a decision is made under section 9FB in relation to the disciplinary infringement: see section 9EA.

## **Division 5—Dealing with disciplinary infringements**

### **9F Jurisdiction to deal with a disciplinary infringement**

#### *Discipline officer*

- (1) A discipline officer has jurisdiction to deal with a prescribed defence member under the infringement scheme in relation to a disciplinary infringement if:
  - (a) the member has not been charged under this Act with an offence arising out of the infringement; and
  - (b) the member has elected to be dealt with under the infringement scheme in relation to the infringement (see section 9C); and
  - (c) the member has not withdrawn the election; and
  - (d) the member is of a kind of prescribed defence member specified in the officer's instrument of appointment (see section 9H); and
  - (e) the member:
    - (i) holds the rank of officer cadet; or
    - (ii) if the member is a junior officer—is at least one rank junior to the discipline officer; or
    - (iii) otherwise—is at least 2 ranks junior to the officer; and
  - (f) the infringement is:

- (i) a contravention of a minor disciplinary infringement provision; and
- (ii) of a kind specified in the officer's instrument of appointment (see section 9H).

*Senior discipline officer*

- (2) A senior discipline officer has jurisdiction to deal with a prescribed defence member under the infringement scheme in relation to a disciplinary infringement if:
  - (a) the member has not been charged under this Act with an offence arising out of the infringement; and
  - (b) the member has elected to be dealt with under the infringement scheme in relation to the infringement (see section 9C); and
  - (c) the member has not withdrawn the election; and
  - (d) the member is of a kind of prescribed defence member specified in the officer's instrument of appointment (see section 9H); and
  - (e) the member is at least one rank junior to the officer; and
  - (f) the infringement is of a kind specified in the officer's instrument of appointment (see section 9H).

*A discipline officer or senior discipline officer is not a service tribunal*

- (3) To avoid doubt, the exercise of jurisdiction by a discipline officer or senior discipline officer under this Part is not the exercise of jurisdiction by a service tribunal.

Note: For the meaning of *service tribunal*, see subsection 3(1).

**9FA Procedure in dealing with disciplinary infringements**

- (1) Subject to this section, the procedure followed by a discipline officer or a senior discipline officer in dealing with a prescribed defence member under the disciplinary infringement scheme in relation to a disciplinary infringement is to be in accordance with any requirements specified by the Chief of the Defence Force.
- (2) The Chief of the Defence Force may, by legislative instrument, specify requirements for the purpose of subsection (1).

- (3) The prescribed defence member is not to be represented before the discipline officer or senior discipline officer.
- (4) The prescribed defence member may, when the member appears before the discipline officer or senior discipline officer, call witnesses and present evidence in relation to anything relevant to the exercise of the officer's powers under section 9FB.

**9FB Decisions that may be made by discipline officers or senior discipline officers in dealing with disciplinary infringements**

- (1) A discipline officer or senior discipline officer, in dealing with a prescribed defence member under the infringement scheme in relation to a disciplinary infringement, may decide:
  - (a) to impose a punishment on the member in accordance with subsection (2); or
  - (b) if the officer considers that the infringement is trivial—not to impose a punishment on the member; or
  - (c) if the officer considers that the member has a reasonable excuse for committing the infringement—to dismiss the infringement; or
  - (d) if the officer considers that the infringement is too serious to be dealt with under this Part—to decline to deal with the infringement.

Note 1: If a decision under paragraph (a), (b) or (c) is made the member cannot be tried by a service tribunal for an offence arising out of the infringement, see subsections 9C(2) and (3).

Note 2: If a decision is made under paragraph (d) to decline to deal with the member, the member may be tried by a service tribunal for an offence arising out of the infringement.

*Decision to impose a punishment*

- (2) The following table sets out the punishments that may be imposed by the discipline officer or senior discipline officer in relation to the disciplinary infringement.

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<b>Disciplinary infringement punishments</b>		
<b>Item</b>	<b>Column 1 Kind of officer</b>	<b>Column 2 Punishment</b>
1	Discipline officer	Fine not exceeding the amount of the defence member's pay for one day Restriction of privileges for a period not exceeding 2 days Stoppage of leave for a period not exceeding 3 days Extra duties for a period not exceeding 3 days Extra drill for no more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days Reprimand
2	Senior discipline officer	Fine not exceeding the amount of the defence member's pay for 3 days Severe reprimand Restriction of privileges for a period not exceeding 7 days Stoppage of leave for a period not exceeding 7 days Extra duties for a period not exceeding 7 days Extra drill for no more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days Reprimand

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*Decision to dismiss the infringement*

- (3) If the discipline officer or senior discipline officer decides to dismiss the disciplinary infringement, no punishment may be imposed in relation to the infringement under this Part.

*Decision to decline to deal with the infringement*

- (4) If the discipline officer or senior discipline officer decides to decline to deal with the disciplinary infringement, an infringement

officer may refer the infringement to an authorized member of the Defence Force for the purposes of section 87 so that the authorized member may determine whether there are reasonable grounds to believe that the member has committed a service offence.

### **9FC Commencement of punishments**

- (1) A decision by a discipline officer or senior discipline officer to impose a punishment takes effect:
  - (a) if the punishment is imposed for a period—from the start of the period specified in the decision, which must be a period starting on a day not later than 14 days after the decision is made; or
  - (b) in any other case—at the time the decision is made.
- (2) However, if a decision by a senior discipline officer to impose a punishment is substituted by a decision of a commanding officer under subsection 9G(2), the punishment imposed by the senior discipline officer ceases to have effect at the time the substituted decision is made.

Note: The substituted decision takes effect at the time specified in the substituted decision: see subsection 9G(4).

- (3) This section has effect subject to subsection 9J(4).

## **Division 6—Command review of decisions of senior discipline officers**

### **9G Command review of decisions of senior discipline officers**

- (1) A commanding officer must review a decision by a senior discipline officer under paragraph 9FB(1)(a) to impose a punishment on a prescribed defence member in relation to a disciplinary infringement.

Note: For the conferral of powers of a commanding officer under this Part, see section 5.

- (2) As soon as practicable after the decision is made by the senior discipline officer, the commanding officer must make one of the following decisions:

- (a) a decision to confirm the senior discipline officer's decision to impose the punishment;
- (b) a decision to substitute the senior discipline officer's decision with a decision that:
  - (i) a reduced punishment is imposed; or
  - (ii) no punishment is imposed; or
  - (iii) the infringement is dismissed and no punishment is imposed.

Note: Regardless of whether the decision is confirmed or substituted, the prescribed defence member has been dealt with under the infringement scheme in relation to the infringement: see subsection 9C(3).

- (3) A **reduced punishment** is:
  - (a) if the punishment is for or relates to a period—the same punishment for or relating to a lesser period; or
  - (b) if the punishment is a fine—a lower fine; or
  - (c) any other punishment that occurs after that punishment in column 2 of item 2 of the table in subsection 9FB(2).
- (4) A substituted decision takes effect at the time specified in the decision, which may be a time before the substituted decision is made.
- (5) This section has effect subject to subsection 9J(4).

## **Division 7—Discipline officers, senior discipline officers and infringement officers**

### **9H Appointment of discipline officers and senior discipline officers**

#### *Discipline officers*

- (1) A commanding officer may, by instrument in writing, appoint any of the following defence members to be discipline officers:
  - (a) officers (other than officer cadets);
  - (b) warrant officers;
  - (c) chief petty officers;
  - (d) flight sergeants.

**Schedule 1** Disciplinary infringements  
**Part 1** Main amendments

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Note: For the conferral of powers of a commanding officer under this Part, see section 5.

- (2) A member appointed under subsection (1) is a ***discipline officer***.
- (3) The commanding officer must specify in the member's instrument of appointment the kinds of prescribed defence members and kinds of disciplinary infringements that the member may deal with as a discipline officer.

Note: There are also other limits on the kinds of prescribed defence members and disciplinary infringements a discipline officer may deal with: see subsection 9F(1).

*Senior discipline officers*

- (4) A commanding officer may, by instrument in writing, appoint defence members who hold any of the following ranks to be senior discipline officers:
- (a) in any case—a rank of or above lieutenant commander, major or squadron leader;
  - (b) if the commanding officer is a lieutenant commander, major or squadron leader—a rank of lieutenant in the Navy, captain in the Army or flight lieutenant.

Note: For the conferral of powers of a commanding officer under this Part, see section 5.

- (5) A member appointed under subsection (4) is a ***senior discipline officer***.
- (6) The commanding officer must specify in the member's instrument of appointment the kinds of prescribed defence members and kinds of disciplinary infringements that the member may deal with as a senior discipline officer.

Note: There are also other limits on the kinds of prescribed defence members a senior discipline officer may deal with: see subsection 9F(2).

**9HA Appointment of infringement officers**

- (1) A commanding officer may, by instrument in writing, appoint defence members who hold a rank of or above non-commissioned officer to be infringement officers.



Note: For the conferral of powers of a commanding officer under this Part, see section 5.

- (2) A member appointed under subsection (1) is an *infringement officer*.

## **Division 8—Miscellaneous**

### **9J Consequences of punishments**

- (1) The Chief of the Defence Force or a service chief may, by legislative instrument, make rules with respect to the consequences, in relation to a prescribed defence member, that are to flow from the imposition under this Part on that member of any of the following punishments:
- (a) restriction of privileges;
  - (b) stoppage of leave;
  - (c) extra duties;
  - (d) extra drill.
- (2) The commanding officer of a prescribed defence member who is subject to a punishment referred to in paragraph (1)(a) or (c) may moderate the consequences of that punishment in relation to the member 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 the Chief of the Defence Force or a service chief.
- (3) A direction made under subsection (2) is not a legislative instrument.
- (4) Even if a prescribed defence member is subject to a punishment of stoppage of leave, the commanding officer of the member may, if satisfied that it is appropriate to do so, grant leave of absence to the member.

### **9JA Monthly report by discipline officers and senior discipline officers**

- (1) As soon as practicable after the end of each month, each discipline officer and senior discipline officer must give a report in

accordance with subsection (2) to the officer's commanding officer.

- (2) The report must be in writing and must contain in relation to each disciplinary infringement dealt with by the officer under this Part in the month:
- (a) the name of the prescribed defence member; and
  - (b) the nature of the disciplinary infringement; and
  - (c) the decision made under subsection 9FB(1).

Note: A report under this section is a *Part IA record* for the purposes of section 9JB.

### **9JB Records relating to disciplinary infringements**

- (1) The Chief of the Defence Force may, by legislative instrument, make rules for, or in relation to, the following:
- (a) the keeping of Part IA records;
  - (b) the retention, use or destruction of Part IA records.
- (2) A *Part IA record* is any part of a record that:
- (a) relates to a person's service as a defence member; and
  - (b) is kept by any means under a law of the Commonwealth; and
  - (c) relates to this Part.
- (3) A person must comply with any rules made under subsection (1).

## Part 2—Consequential amendments

### *Defence Force Discipline Act 1982*

#### 2 Subsection 3(1)

Insert:

*disciplinary infringement* has the meaning given by subsection 9D(1).

*disciplinary infringement provision* has the meaning given by subsection 9D(2).

*discipline officer* has the meaning given by subsection 9H(2).

*infringement notice* means a notice given under section 9E.

*infringement officer* has the meaning given by subsection 9HA(2).

*infringement scheme* means Part IA.

*intoxicated*: a person is *intoxicated* if, and only if, the person's faculties are, because of the person being under the influence of intoxicating liquor or a drug (other than a drug administered by, or taken in accordance with the directions of, a person lawfully authorised to administer the drug), so impaired that the person is unfit to be entrusted with the person's duty or with any duty that the person may be called on to perform.

*junior officer* means a defence member who is an officer (other than an officer cadet) who holds:

- (a) in the Navy—a rank of or below the rank of lieutenant; or
- (b) in the Army—a rank of or below the rank of captain; or
- (c) in the Air Force—a rank of or below the rank of flight lieutenant.

*minor disciplinary infringement provision* has the meaning given by subsection 9D(3).

*officer cadet* means a defence member who holds a rank of:

- (a) in the Navy—midshipman; or
- (b) in the Army—staff cadet or officer cadet; or

(c) in the Air Force—officer cadet.

*Part IA record* has the meaning given by section 9JB(2).

*prescribed defence member* has the meaning given by section 9CA.

*reduced punishment* has the meaning given by subsection 9G(3).

*senior discipline officer* has the meaning given by subsection 9H(5).

**3 Paragraph 32(1)(c)**

Omit “(see subsection (5))”.

**4 Subsection 32(2)**

Omit “Note”, substitute “Note 1”.

**5 At the end of subsection 32(2)**

Add:

Note 2: For the meaning of *intoxicated*, see subsection 3(1).

**6 Subsection 32(5)**

Repeal the subsection.

**7 Paragraph 37(1)(b)**

Omit “(see subsection (3))”.

**8 Subsection 37(2)**

Omit “Note”, substitute “Note 1”.

**9 At the end of subsection 37(2)**

Add:

Note 2: For the meaning of *intoxicated*, see subsection 3(1).

**10 Subsection 37(3)**

Repeal the subsection.

**11 Subparagraph 141(1)(b)(i)**

Before “section 144”, insert “subsection 9C(2) or”.

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**12 Subsections 144(3A) and (3B)**

Repeal the subsections.

**13 At the end of section 144**

Add:

Note: If a defence member has been dealt with under the infringement scheme in relation to a disciplinary infringement (see subsection 9C(3)), the member is not liable to be tried by a service tribunal for an offence arising out of the infringement: see subsection 9C(2).

**14 Part IXA**

Repeal the Part.

## Part 3—Transitional provisions

### 15 Definitions

In this Part:

*commencement time* means the time this item commences.

*new infringement scheme* means Part IA of the *Defence Force Discipline Act 1982* as inserted by this Schedule.

*old infringement scheme* means Part IXA of the *Defence Force Discipline Act 1982*.

### 16 New infringement scheme applies to disciplinary infringements at or after the commencement time

The *Defence Force Discipline Act 1982*, as amended by this Schedule, applies in relation to a contravention of a disciplinary infringement provision that occurs, or is alleged to have occurred, at or after the commencement time.

### 17 Old infringement scheme continues to apply to disciplinary infringements committed before the commencement time

Despite the amendments of the *Defence Force Discipline Act 1982* made by this Schedule:

- (a) that Act; and
- (b) any instrument made under that Act as in force immediately before the commencement time;

continue to apply, as if those amendments had not been made, in relation to a disciplinary infringement (within the meaning of that Act as in force immediately before the commencement time) that occurs, or is alleged to have occurred, before the commencement time.

### 18 Commanding officer appointed to exercise powers under old infringement scheme may exercise powers under new infringement scheme

- (1) This item applies to an instrument that was:
  - (a) made under subsection 5(1) or (3) of the *Defence Force Discipline Act 1982*; and

(b) in force immediately before the commencement time.

*Translation of references to all Part IXA powers*

- (2) If the instrument specifies all of the powers conferred on a commanding officer by or under the old infringement scheme, the instrument has effect, at and after the commencement time, as if it specified all of the powers conferred on a commanding officer by or under the new infringement scheme.

*Translation of references to particular Part IXA powers*

- (3) If:
- (a) the instrument specifies one or more powers conferred on a commanding officer by or under the old infringement scheme; and
  - (b) a substantially similar power to a specified power is conferred on a commanding officer by or under the new infringement scheme;

then the instrument has effect, at and after the commencement time, as if it specified each substantially similar power.

## Schedule 2—Summary authorities

### Part 1—Removal of subordinate summary authority

#### *Defence Force Discipline Act 1982*

**1 Subsection 3(1) (definition of *subordinate summary authority*)**

Repeal the definition.

**2 Subsection 3(1) (paragraph (a) of the definition of *summary authority*)**

After “authority;”, insert “or”.

**3 Subsection 3(1) (paragraph (b) of the definition of *summary authority*)**

Omit “officer; or”, substitute “officer.”.

**4 Subsection 3(1) (paragraph (c) of the definition of *summary authority*)**

Repeal the paragraph.

**5 Subsection 3(1) (definition of *superior summary authority*)**

Omit “subsection 105(1)”, substitute “section 105”.

**6 Subparagraph 87(1)(a)(iii)**

Omit “or 111”.

**7 Section 105**

Repeal the section, substitute:

**105 Appointment of superior summary authorities**

The Chief of the Defence Force or a service chief may, by instrument in writing, appoint an officer, or each officer included in a class of officers, to be a superior summary authority.



Note: A commanding officer may also be a summary authority. For the conferral on a commanding officer of the powers of a summary authority, see section 5.

**8 Section 105A (heading)**

Omit “, 110 or 111”, substitute “or 110”.

**9 Paragraph 105A(1)(b)**

Omit “, 110 or 111”, substitute “or 110”.

**10 Section 108**

Repeal the section.

**11 Section 111**

Repeal the section.

**12 Subsection 111A(1)**

Omit “, 110 or 111”, substitute “or 110”.

**13 Paragraph 112(a)**

Omit “or 111(2)(c)”.

**14 Paragraph 144(4)(c)**

Omit “110 or 111”, substitute “or 110”.

## Part 2—Jurisdiction and punishments

### *Defence Force Discipline Act 1982*

#### **15 Subsection 3(1) (definition of *active service*)**

Omit “member of the Defence Force”, substitute “defence member”.

#### **16 Subsection 3(1) (definition of *elective punishment*)**

Repeal the definition, substitute:

*elective punishment* means a punishment set out in column 3 of an item in the table in subsection 69B(2) or 69C(2).

#### **17 Subsection 3(1) (definition of *member below non-commissioned rank*)**

Repeal the definition, substitute:

*member below non-commissioned rank* means a defence member who is not an officer, an officer cadet, a warrant officer or a non-commissioned officer.

#### **18 Paragraph 4(1)(b)**

Omit “members of the Defence Force”, substitute “defence force members”.

#### **19 Section 67**

Repeal the section.

#### **20 Subparagraph 68(1)(h)(i)**

Omit “member of the Defence Force—the amount of his or her”, substitute “defence member—the amount of the member’s”.

#### **21 Subsection 68(2)**

Omit “member of the Defence Force”, substitute “defence member”.

#### **22 At the end of section 68A**

Add:

Note: Courts martial and Defence Force magistrates do not have jurisdiction to try custodial offences: see sections 115 and 129.

## **23 After section 69**

Insert:

### **69A Punishments that may be imposed by a court martial or a Defence Force magistrate**

- (1) A court martial or a Defence Force magistrate must not impose a punishment in respect of a conviction except in accordance with this Part.
- (2) The following table sets out the punishments that may be imposed by a court martial or a Defence Force magistrate for an offence.

Note 1: Courts martial and Defence Force magistrates do not have jurisdiction to try custodial offences: see sections 115 and 129.

Note 2: Custodial punishments may be imposed instead of the punishments in the following table for certain non-custodial service offences: see section 68C.

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#### **Punishments that may be imposed by a court martial or a Defence Force magistrate**

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<b>Item</b>	<b>Column 1 Convicted person</b>	<b>Column 2 Punishment</b>
1	Officer	Imprisonment Dismissal from the Defence Force Reduction in rank Forfeiture of service for the purposes of promotion Forfeiture of seniority Fine not exceeding the amount of the convicted person's pay for 28 days Severe reprimand Reprimand
2	Defence member who is not an officer	Imprisonment Dismissal from the Defence Force Detention for a period not exceeding 2 years Reduction in rank

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**Schedule 2** Summary authorities  
**Part 2** Jurisdiction and punishments

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**Punishments that may be imposed by a court martial or a Defence Force magistrate**

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<b>Item</b>	<b>Column 1 Convicted person</b>	<b>Column 2 Punishment</b>
		Forfeiture of seniority Fine not exceeding the amount of the convicted person's pay for 28 days Severe reprimand Reprimand
3	Person who is not a defence member	Imprisonment Fine not exceeding 15 penalty units

---

- (3) However, a restricted court martial or a Defence Force magistrate must 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.

**69B Punishments that may be imposed by a superior summary authority**

- (1) A superior summary authority must not impose a punishment in respect of a conviction except in accordance with this Part.
- (2) The following table sets out punishments that may be imposed by a superior summary authority for an offence (other than a custodial offence). However, a superior summary authority may not impose an elective punishment for a Schedule 1A offence other than in accordance with subsection 131AA(8).

Note 1: An elective punishment may only be imposed on the following persons for a Schedule 1A offence if the person has been given an opportunity to elect to be tried by a court martial or Defence Force magistrate (see sections 131 and 131AA):

- (a) a defence member who holds a rank of, or below, lieutenant commander, major or squadron leader;
- (b) a person who is not a defence member.

An election is not required to be given under section 131 to defence members above those ranks.

Note 2: Custodial punishments may be imposed instead of the punishments in the following table for certain non-custodial service offences. For

custodial offences and custodial punishments, see sections 68A and 68C.

<b>Punishments that may be imposed by a superior summary authority</b>			
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Convicted person</b>	<b>Standard punishment</b>	<b>Elective punishment</b>
1	Defence member who is an officer: (a) in the Navy—of or below the rank of rear admiral but not below the rank of commander; or (b) in the Army—of or below the rank of major-general but not below the rank of lieutenant colonel; or (c) in the Air Force—of or below the rank of air vice-marshal but not below the rank of wing commander	Forfeiture of seniority Fine not exceeding the amount of the convicted person’s pay for 14 days Severe reprimand Reprimand	Not applicable
2	Defence member who is an officer: (a) in the Navy—of the rank of lieutenant commander; or (b) in the Army—of the rank of major; or (c) in the Air Force—of the rank of squadron leader	Fine not exceeding the amount of the convicted person’s pay for 7 days Severe reprimand Reprimand	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
3	Junior officer	Fine not exceeding the amount of the convicted person’s pay for 7 days Severe reprimand Extra duties for a period not exceeding 7 days	Reduction in rank by one rank Forfeiture of seniority Fine exceeding the amount of the convicted person’s pay for 7 days but not exceeding the amount

**Schedule 2** Summary authorities  
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<b>Punishments that may be imposed by a superior summary authority</b>			
<b>Item</b>	<b>Column 1 Convicted person</b>	<b>Column 2 Standard punishment</b>	<b>Column 3 Elective punishment</b>
		Reprimand	of the convicted person's pay for 14 days
4	Officer cadet	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 7 days Extra duties for a period not exceeding 7 days Extra drill for not more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days Reprimand	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
5	Defence member who holds a rank of: (a) warrant officer; or (b) non-commissioned officer	Fine not exceeding the amount of the convicted person's pay for 7 days Severe reprimand Extra duties for a period not exceeding 7 days Reprimand	Reduction in rank by: (a) one rank; or (b) if the member is a corporal in the Army—one or 2 ranks 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

<b>Punishments that may be imposed by a superior summary authority</b>			
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Convicted person</b>	<b>Standard punishment</b>	<b>Elective punishment</b>
			days
6	Member below non-commissioned rank who, at the time the member committed the service offence of which the member has been convicted, was on active service	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 Stoppage of leave for a period not exceeding 7 days Extra duties for a period not exceeding 7 days Extra drill for not more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days Reprimand	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
7	Member below non-commissioned rank who, at the time the member committed the service offence of which the member has been convicted, was not on active service	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 Stoppage of leave for a period not exceeding 7 days	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

**Schedule 2** Summary authorities  
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<b>Punishments that may be imposed by a superior summary authority</b>			
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Convicted person</b>	<b>Standard punishment</b>	<b>Elective punishment</b>
		Extra duties for a period not exceeding 7 days	
		Extra drill for not more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days	
		Reprimand	
8	Person who is not a defence member	Fine not exceeding 3 penalty units	Fine not exceeding 7 penalty units

Note: For *active service*, see subsection 3(1).

**69C Punishments that may be imposed by a commanding officer**

- (1) A commanding officer must not impose a punishment in respect of a conviction except in accordance with this Part.
- (2) The following table sets out punishments that may be imposed by a commanding officer for an offence (other than a custodial offence). However, a commanding officer may not impose an elective punishment for a Schedule 1A offence other than in accordance with subsection 131AA(8).

Note 1: If the offence is a Schedule 1A offence, a commanding officer may only impose an elective punishment on a person if the person has been given an opportunity to elect to be tried by a court martial or Defence Force magistrate, see sections 131 and 131AA.

Note 2: Custodial punishments may be imposed instead for certain non-custodial service offences. For custodial offences and custodial punishments, see sections 68A and 68C.

<b>Punishments that may be imposed by a commanding officer</b>			
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Convicted person</b>	<b>Standard punishment</b>	<b>Elective punishment</b>
1	Junior officer	Fine not exceeding the amount of the	Fine exceeding the amount of the



<b>Punishments that may be imposed by a commanding officer</b>			
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Convicted person</b>	<b>Standard punishment</b>	<b>Elective punishment</b>
		convicted person's pay for 7 days Severe reprimand Extra duties for a period not exceeding 7 days Reprimand	convicted person's pay for 7 days but not exceeding the amount of the convicted person's pay for 14 days
2	Officer cadet	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 7 days Extra duties for a period not exceeding 7 days Extra drill for not more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days Reprimand	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
3	Defence member who is a warrant officer	Fine not exceeding the amount of the convicted person's pay for 7 days Severe reprimand Extra duties for a period not exceeding 7 days Reprimand	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

**Schedule 2** Summary authorities  
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<b>Punishments that may be imposed by a commanding officer</b>			
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Convicted person</b>	<b>Standard punishment</b>	<b>Elective punishment</b>
4	Defence member who is a non-commissioned officer	Fine not exceeding the amount of the convicted person's pay for 7 days Severe reprimand Extra duties for a period not exceeding 7 days Reprimand	Reduction in rank by: (a) one rank; or (b) if the member is a corporal in the Army—one or 2 ranks 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
5	Member below non-commissioned rank who, at the time the member committed the service offence of which the member has been convicted, was on active service	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 Stoppage of leave for a period not exceeding 7 days Extra duties for a period not exceeding 7 days Extra drill for not more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days Reprimand	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

<b>Punishments that may be imposed by a commanding officer</b>			
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Convicted person</b>	<b>Standard punishment</b>	<b>Elective punishment</b>
6	Member below non-commissioned rank who, at the time the member committed the service offence of which the member has been convicted, was not on active service	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 Stoppage of leave for a period not exceeding 7 days Extra duties for a period not exceeding 7 days Extra drill for not more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days Reprimand	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
7	Person who is not a defence member	Fine not exceeding 3 penalty units	Fine not exceeding 7 penalty units

Note: For *active service*, see subsection 3(1).

#### **24 Subsections 71(1), (2) and (3)**

Omit "member of the Defence Force", substitute "defence member".

#### **25 Subsections 79(1) and (2)**

Omit "member of the Defence Force", substitute "defence member".

#### **26 Paragraph 81(1)(a)**

Omit "member of the Defence Force", substitute "defence member".

**27 Paragraph 84(2)(a)**

Omit “member of the Defence Force”, substitute “defence member”.

**28 Subparagraph 87(1)(a)(iii)**

Omit “summary authority”, substitute “commanding officer”.

**29 After paragraph 87(1)(b)**

Insert:

(ba) if the authorized member is the Director of Military Prosecutions:

- (i) if the person is a defence member—charge the defence member with the service offence, cause a copy of the charge to be given to the defence member and order the defence member to appear before a superior summary authority at a specified time and place to be dealt with in accordance with section 109; or
- (ii) 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 superior summary authority at a time and place specified in the summons to be dealt with in accordance with section 109; or

**30 Subparagraph 87(1)(c)(i)**

Repeal the subparagraph.

**31 Paragraph 87(1A)(a)**

After “(b)”, insert “, (ba)”.

**32 Paragraph 87(1A)(b)**

Omit “and (b)”, substitute “, (b) and (ba)”.

**33 Subsection 87(2)**

Omit “shall”, substitute “or subparagraph (1)(ba)(ii) must”.

**34 Subsection 103(1)**

Omit “109(b)”, substitute “109(1)(c)”.

**35 Paragraph 103(1)(a)**

Omit “proceeded with;”, substitute “proceeded with; or”.

**36 Paragraph 103(1)(b)**

Repeal the paragraph, substitute:

- (b) if the charge has not been referred under subsection 145(1) or (3)—refer the charge to be dealt with by a summary authority in accordance with section 109 or section 110; or

**37 Subsection 103(1) (note 1)**

Omit “paragraph 87(1)(c)”, substitute “subsection 87(1)”.

**38 Subsection 105A(3)**

Repeal the subsection (including the note), substitute:

- (3) If a charge is referred to the Director of Military Prosecutions under this section, the charge may only be dealt with by a summary authority under section 109 or 110 in accordance with paragraph 103(1)(b).

**39 Section 106**

Repeal the section, substitute:

**106 Jurisdiction of superior summary authority**

- (1) A superior summary authority has jurisdiction to deal with any charge against any person.
- (2) A superior summary authority has jurisdiction to try a charge of a service offence (other than a prescribed offence) against:
  - (a) a defence member who holds a rank of, or below, rear admiral, major-general or air vice-marshal and who is:
    - (i) if the charge is tried while the member is on active service—one or more ranks junior to the superior summary authority; or
    - (ii) in any other case—2 or more ranks junior to the superior summary authority; or
  - (b) a person who is not a defence member.

Note: A superior summary authority may be disqualified from trying a charge under subsection 108A(1).

#### 40 Subsection 107(2)

Repeal the subsection (including the note), substitute:

- (2) A commanding officer has jurisdiction to try a charge of a service offence (other than a prescribed offence) against:
- (a) a defence member who holds a rank of, or below, lieutenant in the Navy, captain in the Army or flight lieutenant and who is:
    - (i) if the charge is tried while the member is on active service—one or more ranks junior to the commanding officer; or
    - (ii) in any other case—2 or more ranks junior to the commanding officer; or
  - (b) a person who is not a defence member.

Note: A commanding officer may be disqualified from trying a charge under subsection 108A(1).

#### 41 Section 109

Repeal the section, substitute:

#### 109 Dealing with a charge by superior summary authority

- (1) In dealing with a charge, a superior summary authority may:
- (a) where the charge is within the authority's jurisdiction to try under subsection 106(2)—make a decision to try the charge under that subsection; or
  - (b) where the charge is not within the authority's jurisdiction to try under subsection 106(2) and the authority is of the opinion that there is insufficient evidence to support the charge—direct that the charge be not proceeded with; or
  - (c) in any case—refer the charge to the Director of Military Prosecutions; or
  - (d) where it is desirable in the interests of justice or for any other reason—refer the charge to be dealt with by another superior summary authority.

Note: A charge may be referred to the superior summary authority by:

- (a) the Director of Military Prosecutions under paragraph 87(1)(ba) or 103(1)(b); or
- (b) a commanding officer under paragraph 110(1)(c); or

- (c) another superior summary authority under paragraph (d) of this subsection.

(2) A superior summary authority may refer a charge under paragraph (1)(c) whether or not the charge is within the authority's jurisdiction to try under subsection 106(2).

#### **42 Paragraph 110(1)(d)**

Before “refer”, insert “in any case—”.

#### **43 At the end of subsection 110(1)**

Add:

- Note: A charge may be referred to the commanding officer by:
- (a) an authorized member of the Defence Force (who may be the Director of Military Prosecutions, see the definition of *authorized member of the Defence Force* in subsection 87(6) under paragraph 87(1)(a) or (b); or
  - (b) the Director of Military Prosecutions under paragraph 103(1)(b); or
  - (c) another commanding officer under paragraph (e) of this subsection.

#### **44 Paragraph 112(a)**

Before “110(1)(c)”, insert “109(1)(d) or”.

#### **45 Subsection 131(1)**

Omit “superior summary authority, or a commanding officer”, substitute “summary authority”.

#### **46 Subsection 131(3) (note 4)**

Repeal the note, substitute:

- Note 3: For elective punishments that may be imposed by a summary authority for a Schedule 1A offence, see sections 69B and 69C.

#### **47 Section 131A**

Omit “superior summary authority or commanding officer” (first occurring), substitute “summary authority”.

#### **48 Section 131A**

Omit “superior summary authority or commanding officer, as the case may be, shall”, substitute “summary authority must”.

**49 Paragraph 144(4)(c)**

After “103,” insert “109”.

**50 Paragraph 172(2)(d)**

Omit “member of the Defence Force that exceeds the amount of his or her”, substitute “defence member that exceeds the amount of the defence member’s”.

**51 Paragraph 197(2)(a)**

Omit “member of the Defence Force”, substitute “defence member”.

**52 Schedules 2, 3 and 3A**

Repeal the Schedules.



## Part 3—Transitional provisions

### 53 Definitions

In this Part:

*commencement time* means the time this item commences.

*new law* means the *Defence Force Discipline Act 1982* as amended by this Schedule.

### 54 New law applies to service offences committed at or after the commencement time

The new law applies in relation to a service offence committed, or alleged to have been committed, by a person at or after the commencement time.

### 55 Application of new law to charges at or after commencement time for service offences committed before the commencement time

- (1) Subject to subitems (2) and (3), the new law also applies in relation to a service offence if:
- (a) the offence was committed, or alleged to have been committed, by a person before the commencement time; and
  - (b) the person had not been charged with the offence under the *Defence Force Discipline Act 1982* before the commencement time.

*New punishments etc. do not apply*

- (2) The following provisions of the new law do not apply in relation to the service offence:
- (a) the definition of *active service* in subsection 3(1);
  - (b) the definition of *elective punishment* subsection 3(1);
  - (c) the definition of *member below non-commissioned rank* in subsection 3(1);
  - (d) subparagraph 68(1)(h)(i);
  - (e) sections 69A, 69B and 69C;
  - (f) subsections 71(1) and (3).

*Old punishments etc. continue to apply*

- (3) Despite the amendments of the *Defence Force Discipline Act 1982* made by this Schedule, the following provisions of that Act continue to apply, as if those amendments had not been made, in relation to the service offence:
- (a) the definition of **active service** in subsection 3(1);
  - (b) the definition of **elective punishment** subsection 3(1);
  - (c) the definition of **member below non-commissioned rank** in subsection 3(1);
  - (d) section 67;
  - (e) subparagraph 68(1)(h)(i);
  - (f) subsections 71(1) and (3);
  - (g) Schedules 2, 3 and 3A (as modified by any regulations, in force immediately before the commencement time, made under that Act for the purposes of paragraph 6(2)(b) of that Act).

**56 Old law continues to apply to charges before the commencement time**

Despite the amendments of the *Defence Force Discipline Act 1982* made by this Schedule, that Act continues to apply, as if those amendments had not been made, in relation to a service offence if:

- (a) the offence was committed, or alleged to have been committed, by a person before the commencement time; and
- (b) the person had been charged with the offence under the *Defence Force Discipline Act 1982* before the commencement time.

**57 Certain instruments made for the purposes of the old law to apply for purposes of new law**

*Active service*

- (1) A declaration that was:
- (a) made under subsection 4(1) of the *Defence Force Discipline Act 1982*; and
  - (b) in force immediately before the commencement time;

has effect, at and after the commencement time, as if it had been made for the purposes of subsection 4(1) of the new law.

***Consequences of punishments***

- (2) Rules that were:
- (a) made under subsection 68(2) of the *Defence Force Discipline Act 1982*; and
  - (b) in force immediately before the commencement time;
- have effect, at and after the commencement time, as if the rules had been made for the purposes of subsection 68(2) of the new law.

***Manner of summons***

- (3) Regulations that were:
- (a) made for the purposes of subsection 87(2) of the *Defence Force Discipline Act 1982*; and
  - (b) in force immediately before the commencement time;
- have effect, at and after the commencement time, as if the regulations had been made for the purposes of subsection 87(2) of the new law.

***Appointment of superior summary authorities***

- (4) An instrument that was:
- (a) made under subsection 105(1) of the *Defence Force Discipline Act 1982*; and
  - (b) in force immediately before the commencement time;
- has effect, at and after the commencement time, as if it had been made for the purposes of section 105 of the new law.

***Regulations***

- (5) The amendment of paragraph 197(2)(a) of the *Defence Force Discipline Act 1982* made by this Schedule does not affect the continuity of any regulations made under that Act that were in force immediately before the commencement time.

## Schedule 3—Service offences

### Part 1—New service offences

#### *Defence Force Discipline Act 1982*

##### 1 After section 35

Insert:

##### 35A Failure to perform duty or carry out activity

- (1) A defence member commits an offence if:
- (a) the member's office or appointment, or the requirements of the Defence Force, require the member to perform a duty or carry out an activity; and
  - (b) the member fails to perform the duty or carry out the activity.

Maximum punishment: Dismissal from the Defence Force.

- (2) Strict liability applies to paragraph (1)(b).

*Defence*

- (3) Subsection (1) does not apply if the member has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

##### 2 After Division 5A of Part III

Insert:

#### Division 5B—Cyber-bullying offences

##### 48A Cyber-bullying

- (1) A defence member commits an offence if:
- (a) the member uses a social media service or relevant electronic service; and

- (b) the member does so in a way that a reasonable person would regard as offensive or as threatening, intimidating, harassing or humiliating another person.

Maximum punishment: Imprisonment for 2 years.

- (2) For the purposes of subsection (1):
  - (a) **social media service** means a social media service within the meaning of section 9 of the *Enhancing Online Safety Act 2015* but includes an exempt service (within the meaning of that section); and
  - (b) **relevant electronic service** has the same meaning as in the *Enhancing Online Safety Act 2015*.

#### **48B Failure to comply with removal order**

- (1) A defence member commits an offence if:
  - (a) a removal order applies to the member; and
  - (b) the member fails to comply with the removal order.

Maximum punishment: Imprisonment for 2 years.

- (2) Subsection (1) does not apply if it is not reasonably practicable for the member to comply with the order.

Note 1: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

Note 2: A service tribunal may make a removal order if the member is convicted of an offence against section 48A.

### **3 After section 56**

Insert:

#### **56A Failure to comply with requirement to notify change in circumstances**

- (1) A defence member or a defence civilian (the **recipient**) commits an offence if:
  - (a) the recipient receives a benefit arising out of, or based on, the recipient's membership of, or service in or in connection with, the Defence Force; and

- (b) the recipient is required as a condition of receiving that benefit to notify a person of a change in circumstances relating to the recipient's entitlement to the benefit; and
- (c) the recipient fails to comply with that requirement.

Maximum punishment: Imprisonment for 6 months.

- (2) Strict liability applies to paragraph (1)(c).
- (3) For the purposes of subsection (1), **benefit**:
  - (a) means:
    - (i) a grant; or
    - (ii) a payment; or
    - (iii) an allotment of money; or
    - (iv) an allowance; or
    - (v) a leave of absence; or
    - (vi) any other benefit or advantage; and
  - (b) is not limited to property.

#### **4 Subparagraph 68C(2)(a)(i)**

After “43,” insert “48A,”.

#### **5 After section 84**

Insert:

#### **84A Removal order—cyber-bullying offence**

- (1) Where:
  - (a) a person is convicted by a service tribunal of an offence against subsection 48A(1) (cyber-bullying); and
  - (b) the offence involved providing material on a social media service or relevant electronic service (within the meaning of section 6 of the *Enhancing Online Safety Act 2015*);the tribunal may, instead of, or in addition to, imposing a punishment or making an order under subsection 75(1), make an order under subsection (2).
- (2) The tribunal may order the person to take reasonable action to remove, retract, recover, delete or destroy the material.

- (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.

Note: Failure to comply with an order under this section is an offence: see section 48B.

## **6 Schedule 1A (after table item 9)**

Insert:

9A Subsection 35A(1) Failure to perform duty or carry out activity

## **7 Schedule 1A (after table item 10)**

Insert:

10A Subsection 48A(1) Cyber-bullying

10B Subsection 48B(1) Failure to comply with removal order

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## Part 2—Consequential amendments

### *Defence Force Discipline Act 1982*

#### **8 Subsection 3(1)**

Insert:

*removal order* means an order under subsection 84A(2).

#### **9 Subsection 66(2)**

After “reparation order”, insert “, a removal order”.

#### **10 Subsection 172(3)**

Omit “or a reparation order”, substitute “, a reparation order or a removal order”.

### *Defence Force Discipline Appeals Act 1955*

#### **11 Section 38 (heading)**

Repeal the heading, substitute:

#### **38 Restitution orders, reparation orders and removal orders**

#### **12 Section 38**

Omit “or reparation order”, substitute “, reparation order or removal order”.



## **Part 3—Transitional provisions**

### **13 Definitions**

In this Part:

*commencement time* means the time this item commences.

### **14 Application of new service offences**

- (1) Section 35A of the *Defence Force Discipline Act 1982* as inserted by this Schedule applies in relation to a failure that occurs at or after the commencement time.
- (2) Division 5B of Part IIIA of the *Defence Force Discipline Act 1982* as inserted by this Schedule applies in relation to conduct engaged in at or after the commencement time.
- (3) Section 56A of the *Defence Force Discipline Act 1982* as inserted by this Schedule applies in relation to a failure that occurs at or after the commencement time including in relation to:
  - (a) a benefit received before, at or after the commencement time;  
and
  - (b) a condition of receiving a benefit that existed before, at or after the commencement time.

## Schedule 4—Contingent amendments

### *Defence Force Discipline Act 1982*

#### **1 Paragraph 48A(2)(a)**

Omit “section 9 of the *Enhancing Online Safety Act 2015*”, substitute “section 13 of the *Online Safety Act 2021*”.

#### **2 Paragraph 48A(2)(b)**

Repeal the paragraph, substitute:

- (b) *relevant electronic service* means a relevant electronic service within the meaning of section 13A of the *Online Safety Act 2021* but includes an exempt service (within the meaning of that section).

#### **3 Paragraph 84A(1)(b)**

Omit “section 6 of the *Enhancing Online Safety Act 2015*”, substitute “section 10 of the *Online Safety Act 2021*”.

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[*Minister’s second reading speech made in—  
House of Representatives on 12 August 2021  
Senate on 2 September 2021*]

(98/21)

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