



Defence Force Discipline (Disciplinary Infringement Records) Rules 2022

I, Angus J Campbell, AO, DSC, Chief of the Defence Force, make the following rules.

Dated 18 July 2022

Angus J Campbell AO, DSC
Chief of the Defence Force

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1 Name

This instrument is the *Defence Force Discipline (Disciplinary Infringement Records) Rules 2022*.

2 Commencement

- (1) Each provision of this instrument 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.

| Commencement information | | |
|---------------------------------|--|------------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this instrument | At the same time as Schedule 1 to the <i>Defence Legislation Amendment (Discipline Reform) Act 2021</i> commences. | 13 December 2022 |

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under subsection 9JB(1) of the *Defence Force Discipline Act 1982*.

4 Objects of this instrument

The objects of this instrument are to:

- (a) facilitate the fair and efficient administration of the infringement scheme and improve the personnel management of prescribed defence members by:
 - (i) requiring appropriate records of disciplinary infringements to be kept; and
 - (ii) only allowing those records to be used for specified purposes; and
- (b) improve service discipline by retaining records of disciplinary infringements at the service level to assist the management of service discipline, provide reports on service discipline and inform inquiries into service discipline.

5 Simplified outline of this instrument

Part 1A records (which are about disciplinary infringements) must be kept and archived.

A Part IA record about a prescribed defence member may be used by the member's commanding officer and other specified persons for personnel or discipline management of the member or unit discipline management. The record is archived with the member's service headquarters when certain events occur, such as a substantive promotion to a higher rank or the service of the member ends. The member's commanding officer and those specified persons cannot use the record after those events occur.

The record may be used at any time by other specified persons for other specified purposes. For example:

- (a) an authorised person posted to the prescribed defence member's service headquarters may use the record for purposes including personnel and discipline management of the member and discipline management of the service; and
- (b) the Inspector-General of the Australian Defence Force may use the record for the purposes of performance of the powers, or exercise of the functions, of the Inspector-General.

6 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) disciplinary infringement;
- (b) Part IA record;
- (c) prescribed defence member.

In this instrument:

Act means the *Defence Force Discipline Act 1982*.

archive a record means storing the record with the relevant service headquarters in a manner that restricts access to the record by a person prevented from doing so under subsection 9(5).

unit includes sub-unit.

7 Disciplinary infringement records that must be kept

- (1) If a prescribed defence member is given an infringement notice in relation to a disciplinary infringement, a record must be kept of:
 - (a) the completed infringement notice form; and
 - (b) any evidence presented by the member, or by a witness called by the member, to the discipline officer or senior discipline officer dealing with the infringement.

Note: For the infringement notice form: see section 9E of the Act. For evidence and witnesses: see subsection 9FA(4) of the Act.

- (2) The prescribed defence member's commanding officer must ensure that the record is retained until it is archived under subsection (3).
- (3) The prescribed defence member's commanding officer must ensure that the record is archived as soon as practicable after any of the following occurs:

- (a) the member does not elect to be dealt with under the infringement scheme;
- (b) the disciplinary infringement is dismissed;
- (c) the member graduates from initial recruit or officer training;
- (d) the member is substantively promoted to a higher rank;
- (e) the service of the member ends.

Ensuring access when prescribed defence member is posted to new unit

- (4) If, before the record is archived, the prescribed defence member is posted to another unit, the member's former commanding officer must ensure that the member's new commanding officer is given access to the record as soon as practicable.

8 Monthly report by discipline officer or senior discipline officer must be kept

- (1) A record of a monthly report given under section 9JA of the Act to a commanding officer must be kept.
- (2) The commanding officer must ensure that the record is archived as soon as practicable after the commanding officer has considered the report.

9 Use of Part 1A records

- (1) A person may only access, make a record of information in, disclose information in or otherwise use a Part 1A record, or part of a Part 1A record, in accordance with this section.

Note: Records kept under section 7 or 8 of this instrument are Part 1A records: see the definition of *Part 1A record* in subsection 9JB(2) of the Act.

Personal use

- (2) A prescribed defence member may access, make a record of information in, disclose information in or otherwise use a Part 1A record, or part of a Part 1A record, that is about the member.

Use for functions, powers and duties under the Act

- (3) A person performing a function or duty or exercising a power under the Act may access, make a record of information in, disclose information in or otherwise use a Part 1A record, or part of a Part 1A record, only to the extent necessary to perform that function or duty or exercise that power.

Note: See also section 9EB of the Act which deals with the purposes for which a prescribed defence member is taken to have admitted committing a disciplinary infringement.

Other uses

- (4) A person referred to in an item of the following table may access, make a record of information in, disclose information in or otherwise use a Part 1A record, or part of a Part 1A record, that is about a prescribed defence member:
 - (a) for a purpose referred to in that item; or
 - (b) as required or permitted by law.

Note 1: The following are examples for the purposes of paragraph (b) of this subsection:

Section 9

- (a) disclosure may be required by Court order;
- (b) the *Privacy Act 1988* may require that a person be given access to personal information in a Part 1A record that is about the person.

Note 2: A person may have a number of capacities that are referred to in the table. The table applies to the person in respect of the capacity in which the person is accessing, making a record of information in, disclosing information in or otherwise using a Part 1A record or part of a Part 1A record.

| Purposes | | |
|-----------------|--|--|
| Item | Person | Purposes |
| 1 | a person performing a function or duty or exercising a power under this instrument | the performance of the function or duty or exercise of the power |
| 2 | (a) the commanding officer of the prescribed defence member; or (b) another person in the member's chain of command; or (c) if the member is detached to a unit or an Australian Defence Force Training establishment—the commanding officer of that unit or establishment | the following: (a) personnel management of the member; (b) discipline management of the member; (c) discipline management of the member's unit or the unit or establishment to which the member is detached |
| 3 | a person posted to a service career management agency | personnel management of the prescribed defence member |
| 4 | a person posted to the Joint Military Police Unit | an investigation of the prescribed defence member being undertaken by the Joint Military Police Unit |
| 5 | an authorised person posted to the prescribed defence member's service headquarters (see subsection (6)) | the following: (a) personnel management of the member; (b) management of the member's service record; (c) assessing whether the member is suitable for a particular appointment or to perform a particular duty; (d) discipline management of the member; (e) discipline management of the service; (f) reporting on, or providing information about, service discipline to the Parliament, the Government, the Chief of the Defence Force, the Vice Chief of the Defence Force or a service chief; (g) providing information to an internal or external inquiry into, or relating to, service discipline |
| 6 | Inspector-General of the Australian Defence Force or an authorised person (see subsection (7)) | the performance of the powers, or exercise of the functions, of the Inspector-General of the Australian Defence Force |

Use of Part 1A records by prescribed defence member's chain of command or career management agency not permitted after certain events occur

- (5) Despite subsection (4), a person referred to in item 2 or 3 of the table in subsection (4) must not access, make a record of information in, disclose information in or otherwise use, a Part 1A record, or part of a Part 1A record, about a disciplinary infringement of a prescribed defence member if:
- (a) the Part 1A record is required to be archived under subsection 7(3) or 8(2);
or
 - (b) any of the following events have occurred after the infringement notice for that infringement was given:
 - (i) the member does not elect to be dealt with under the infringement scheme in relation to the disciplinary infringement;
 - (ii) the disciplinary infringement is dismissed;
 - (iii) the member graduates from initial recruit or officer training;
 - (iv) the member is substantively promoted to a higher rank;
 - (v) the service of the member ends.

Note: A Part 1A record may be about more than one disciplinary infringement and more than one prescribed defence member. Access etc. to only part of the record may be prohibited under paragraph (b).

Authorisation

- (6) An officer who is performing the functions of a Chief of Staff of a service headquarters may authorise a person posted to the service headquarters for the purposes of item 5 of the table in subsection (4).
- (7) The Inspector-General of the Australian Defence Force may authorise a person for the purposes of item 6 of the table in subsection (4).