

2008

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Defence Legislation Amendment Bill  
2008**

**No.     , 2008**

*(Defence)*

**A Bill for an Act to amend legislation relating to  
defence, and for related purposes**



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1     **A Bill for an Act to amend legislation relating to**  
2     **defence, and for related purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act may be cited as the *Defence Legislation Amendment Act*  
6                     2008.

7     **2 Commencement**

8                     (1) Each provision of this Act specified in column 1 of the table  
9                     commences, or is taken to have commenced, in accordance with  
10                    column 2 of the table. Any other statement in column 2 has effect  
11                    according to its terms.  
12

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</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 on which this Act receives the Royal Assent.	
2. Schedules 1 to 6	On the day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent.	
3. Schedule 7, Parts 1 and 2	The day on which this Act receives the Royal Assent.	
4. Schedule 7, Part 3	On the day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent.	
5. Schedule 7, items 24 to 26	On the day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent.	
6. Schedule 7, items 27 and 28	The day on which this Act receives the Royal Assent.	
7. Schedule 7, items 29 and 30	On the day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent.	
8. Schedule 7, Parts 5, 6 and 7	The day on which this Act receives the Royal Assent.	
9. Schedule 7, item 38	Immediately after the commencement of item 7 of Schedule 2 to the <i>Defence Legislation Amendment Act 2006</i> .	
10. Schedule 7, item 39	Immediately after the commencement of item 59 of Schedule 1 to the <i>Defence Legislation Amendment Act 2006</i> .	
11. Schedule 7, items 40 to 44	The day on which this Act receives the Royal Assent.	
12. Schedule 7, item 45	Immediately after the commencement of item 230 of Schedule 1 to the <i>Defence Legislation Amendment Act 2006</i> .	
13. Schedule 8	The day on which this Act receives the Royal Assent.	

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Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

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(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

7

### **3 Schedule(s)**

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Each Act 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.

1  
2 **Schedule 1—Election for trial by the**  
3 **Australian Military Court**

4 **Part 1—Main amendments**

5 *Defence Force Discipline Act 1982*

6 **1 Subsection 3(1)**

7 Insert:

8 *Schedule 1A offence* means:

- 9 (a) an offence specified in Schedule 1A; or  
10 (b) an offence that is an ancillary offence in relation to an  
11 offence referred to in paragraph (a).

12 **2 After section 111A**

13 Insert:

14 **111B Accused person may elect to be tried by the Australian**  
15 **Military Court—election before commencement of trial**

- 16 (1) At the commencement of dealing with a charge against a person in  
17 respect of a service offence (other than a prescribed offence), the  
18 summary authority must give the person an opportunity to elect, in  
19 accordance with section 111C, to have the charge tried by the  
20 Australian Military Court.

21 Note: If a charge is tried by the Australian Military Court because of an  
22 election under subsection 111C(1), the charge will be tried by a  
23 Military Judge alone: see paragraph 132A(3)(b).

- 24 (2) Subsection (1) does not apply in relation to a charge in respect of a  
25 Schedule 1A offence, unless the person charged with the offence  
26 is:  
27 (a) an officer of or below the rank of rear admiral but above the  
28 rank of lieutenant commander; or  
29 (b) an officer of or below the rank of major-general but above  
30 the rank of major; or  
31 (c) an officer of or below the rank of air vice-marshal but above  
32 the rank of squadron leader.



- 1 (3) The accused person must be given an opportunity to obtain legal  
2 advice in relation to the election if a legal officer is reasonably  
3 available to give such advice.

4 **111C Decision by accused person whether to elect to be tried by the**  
5 **Australian Military Court—decision before**  
6 **commencement of trial**

7 *When election decision must be made*

- 8 (1) If, under section 111B, a summary authority gives an accused  
9 person an opportunity to elect to have a charge tried by the  
10 Australian Military Court, the accused person must decide whether  
11 or not to make the election:  
12 (a) within 24 hours after the opportunity to make the election is  
13 given; or  
14 (b) if the exigencies of service do not permit the person to make  
15 the decision within that time—within such longer period (not  
16 exceeding 14 days) as the summary authority allows.
- 17 (2) The summary authority must ensure that a decision under  
18 subsection (1) is recorded in writing.

19 *Decision to elect to have charge tried by the Australian Military*  
20 *Court*

- 21 (3) If the accused person elects to have the charge tried by the  
22 Australian Military Court, the summary authority must:  
23 (a) refer the charge (the *first charge*) to the Director of Military  
24 Prosecutions; and  
25 (b) unless the Director of Military Prosecutions agrees otherwise,  
26 refer any other charge (including a charge in respect of a  
27 Schedule 1A offence) against the accused person that is  
28 linked to the first charge, and that is being dealt with together  
29 with the first charge, to the Director of Military Prosecutions;  
30 and  
31 (c) inform the Registrar that the charge or charges have been  
32 referred to the Director of Military Prosecutions.
- 33 (4) For the purposes of paragraph (3)(b), a charge (the *first charge*)  
34 against a person is linked to another charge against the person if

1 the first charge and the other charge arise from the same facts or  
2 circumstances.

3 *Decision not to elect to have charge tried by the Australian*  
4 *Military Court*

- 5 (5) If the accused person:  
6 (a) does not elect to have the charge tried by the Australian  
7 Military Court; or  
8 (b) does not make a decision within the time allowed under  
9 subsection (1);  
10 the summary authority must deal with and try the charge.

11 *Withdrawal of election*

12 (6) An accused person who has elected to have a charge tried by the  
13 Australian Military Court may withdraw the election at any time  
14 before a date is fixed for hearing by the Court.

- 15 (7) If an accused person withdraws an election to have a charge tried  
16 by the Australian Military Court:  
17 (a) the Director of Military Prosecutions must inform the  
18 Registrar; and  
19 (b) the Director of Military Prosecutions must refer the charge,  
20 and any other charge referred to the Director of Military  
21 Prosecutions under paragraph (3)(b), to a summary authority;  
22 and  
23 (c) the summary authority must deal with and try the charge or  
24 charges.

### 25 **3 Section 131**

26 Repeal the section, substitute:

#### 27 **131 Accused person may elect to be tried by the Australian Military** 28 **Court—election during trial**

- 29 (1) This section applies to a trial by a superior summary authority, or a  
30 commanding officer, of a charge of a Schedule 1A offence (other  
31 than a custodial offence).

1 (2) However, this section does not apply to a trial by a superior  
2 summary authority if the accused person is an officer referred to in  
3 subsection 111B(2).

4 (3) If, during the trial, the summary authority considers:

5 (a) that the evidence adduced by the prosecution is sufficient to  
6 support the charge; and

7 (b) that, if the accused person were convicted, it would be  
8 appropriate to impose an elective punishment on the person;  
9 the summary authority must, before making a finding in relation to  
10 the charge, give the accused person an opportunity to elect, in  
11 accordance with section 131AA, to have the charge tried by the  
12 Australian Military Court.

13 Note 1: If a charge is tried by the Australian Military Court because of an  
14 election under subsection 131AA(1), the charge will be tried by a  
15 Military Judge alone: see paragraph 132A(3)(b).

16 Note 2: See section 67 and Schedule 3 (in particular, subclauses 1(3) and (4)  
17 and 2(2) and (3) of that Schedule) in relation to the punishments that a  
18 superior summary authority or a commanding officer may impose on a  
19 person convicted of a Schedule 1A offence.

20 (4) The accused person must be given an opportunity to obtain legal  
21 advice in relation to the election if a legal officer is reasonably  
22 available to give such advice.

23 **131AA Decision by accused person whether to elect to be tried by**  
24 **the Australian Military Court—decision during trial**

25 *When election decision must be made*

26 (1) If, under section 131, a summary authority gives an accused person  
27 an opportunity to elect to have a charge of a Schedule 1A offence  
28 tried by the Australian Military Court, the accused person must  
29 decide whether or not to make the election:

30 (a) within 24 hours after the opportunity to make the election is  
31 given; or

32 (b) if the exigencies of service do not permit the person to make  
33 the decision within that time—within such longer period (not  
34 exceeding 14 days) as the summary authority allows.

35 (2) The summary authority must ensure that a decision under  
36 subsection (1) is recorded in writing.

1                                    *Decision to elect to have charge tried by the Australian Military*  
2                                    *Court*

- 3                    (3) If the accused person elects to have the charge tried by the  
4                    Australian Military Court, the summary authority must:  
5                    (a) refer the charge (the ***first charge***) to the Director of Military  
6                    Prosecutions; and  
7                    (b) unless the Director of Military Prosecutions agrees otherwise,  
8                    refer any other charge against the accused person that is  
9                    linked to the first charge, and that is being tried together with  
10                   the first charge, to the Director of Military Prosecutions; and  
11                   (c) inform the Registrar that the charge or charges have been  
12                   referred to the Director of Military Prosecutions.
- 13                   (4) For the purposes of paragraph (3)(b), a charge (the ***first charge***)  
14                   against a person is linked to another charge against the person if  
15                   the first charge and the other charge arise from the same facts or  
16                   circumstances.

17                                    *Decision not to elect to have charge tried by the Australian*  
18                                    *Military Court*

- 19                    (5) If the accused person:  
20                    (a) does not elect to have the charge tried by the Australian  
21                    Military Court; or  
22                    (b) does not make a decision within the time allowed under  
23                    subsection (1);  
24                    the summary authority must proceed with the trial of the charge.

25                                    *Withdrawal of election*

- 26                    (6) An accused person who has elected to have a charge tried by the  
27                    Australian Military Court may withdraw the election at any time  
28                    before a date is fixed for hearing by the Court.
- 29                    (7) If an accused person withdraws an election to have a charge tried  
30                    by the Australian Military Court:  
31                    (a) the Director of Military Prosecutions must inform the  
32                    Registrar; and  
33                    (b) the Director of Military Prosecutions must refer the charge,  
34                    and any other charge referred to the Director of Military

- 1 Prosecutions under paragraph (3)(b), to the summary  
2 authority referred to in subsection 131(1); and  
3 (c) the summary authority must proceed with the trial of the  
4 charge or charges.

5 *Punishments that may be imposed by summary authority*

- 6 (8) If:  
7 (a) under subsection (5) or (7), a summary authority proceeds  
8 with the trial of a charge of a Schedule 1A offence; and  
9 (b) the summary authority convicts the accused person of the  
10 offence;  
11 the summary authority may impose an elective punishment on the  
12 convicted person in respect of the offence.

13 **4 Before paragraph 132A(3)(c)**

14 Insert:

- 15 (b) if the charge for the offence was referred to the Australian  
16 Military Court for trial because of an election by the accused  
17 person under subsection 111C(1) or 131AA(1)—the offence  
18 is to be tried by a Military Judge alone; and

19 **5 Before Schedule 1**

20 Insert:

21 **Schedule 1A—Certain disciplinary offences**

22 Note: See subsection 3(1).  
23  
24

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<b>Item</b>	<b>Offence against:</b>	<b>Subject matter</b>
1	Subsection 23(1)	Absence from duty
2	Subsection 23(2)	Absence from duty
3	Subsection 24(1)	Absence without leave
4	Subsection 26(1)	Insubordinate conduct
5	Subsection 26(2)	Insubordinate conduct
6	Subsection 27(1)	Disobeying a lawful command
7	Subsection 29(1)	Failing to comply with a general order
8	Subsection 32(1)	Person on guard or on watch

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Item	Offence against:	Subject matter
9	Subsection 35(1)	Negligence in performance of a duty
10	Subsection 37(1)	Intoxicated while on duty etc.
11	Subsection 54A(1)	Custodial offences
12	Subsection 54A(2)	Custodial offences
13	Subsection 60(1)	Prejudicial conduct
14	Subsection 60(1A)	Prejudicial conduct

1 **6 Schedule 3**

2 Repeal the Schedule, substitute:

3 **Schedule 3—Punishments that may be**  
4 **imposed by a summary authority**

5 Note: See section 67.  
6  
7

8 **1 Punishments that may be imposed by a superior summary**  
9 **authority**

10 *Punishments that may be imposed on certain officers*

- 11 (1) A superior summary authority may impose a punishment set out in  
12 column 2 of an item of Table A of this Schedule on an officer  
13 referred to in column 1 of that item who has been convicted of an  
14 offence.  
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**Table A—Punishments that may be imposed by a superior summary authority  
on certain officers**

Item	Column 1 Convicted person	Column 2 Punishment
1	Officer: (a) of or below the rank of rear admiral but above the rank of lieutenant commander; or (b) of or below the rank of major-general but above the	Fine not exceeding the amount of the convicted person's pay for 7 days Severe reprimand Reprimand

**Table A—Punishments that may be imposed by a superior summary authority on certain officers**

Item	Column 1 Convicted person	Column 2 Punishment
	rank of major; or (c) of or below the rank of air vice-marshal but above the rank of squadron leader	

*Punishments that may be imposed on other persons*

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- (2) A superior summary authority may impose an elective punishment, or a punishment set out in column 3 of an item of Table B of this Schedule, on a person referred to in column 1 of that item who has been convicted of an offence (other than a Schedule 1A offence).
- (3) A superior summary authority may impose a punishment set out in column 3 of an item of Table B of this Schedule on a person referred to in column 1 of that item who has been convicted of a Schedule 1A offence.
- (4) A superior summary authority may impose an elective punishment on a person referred to in column 1 of an item of Table B of this Schedule who has been convicted of a Schedule 1A offence (other than a custodial offence) only in accordance with subsection 131AA(8).

**Table B—Punishments that may be imposed by a superior summary authority on other persons**

Item	Column 1 Convicted person	Column 2 Elective punishment	Column 3 Other punishment
1	Officer of or below the rank of lieutenant commander, major or squadron leader 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
2	Person who is not a member of the	Fine exceeding \$100 but not exceeding	Fine not exceeding \$100

**Table B—Punishments that may be imposed by a superior summary authority on other persons**

<b>Item</b>	<b>Column 1 Convicted person</b>	<b>Column 2 Elective punishment</b>	<b>Column 3 Other punishment</b>
	Defence Force	\$250	

**2 Punishments that may be imposed by a commanding officer**

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- (1) A commanding officer may impose an elective punishment, or a punishment set out in column 3 of an item of Table C of this Schedule, on a person referred to in column 1 of that item who has been convicted of an offence (other than a Schedule 1A offence).
- (2) A commanding officer may impose a punishment set out in column 3 of an item of Table C of this Schedule on a person referred to in column 1 of that item who has been convicted of a Schedule 1A offence.
- (3) A commanding officer may impose an elective punishment on a person referred to in column 1 of an item of Table C of this Schedule who has been convicted of a Schedule 1A offence (other than a custodial offence) only in accordance with subsection 131AA(8).

**Table C—Punishments that may be imposed by a commanding officer on convicted persons**

<b>Item</b>	<b>Column 1 Convicted person</b>	<b>Column 2 Elective punishment</b>	<b>Column 3 Other punishment</b>
1	Officer of or below the naval rank of lieutenant, the rank of captain in the Army or the rank of flight lieutenant 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
2	Non-commissioned officer	Reduction in rank by one rank or, in the case of a corporal of the Army, reduction in rank by one or 2	Fine not exceeding the amount of the convicted person's pay for 7 days Severe reprimand



**Table C—Punishments that may be imposed by a commanding officer on convicted persons**

Item	Column 1 Convicted person	Column 2 Elective punishment	Column 3 Other punishment
		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	Reprimand
3	Member below non-commissioned rank who, at the time he or she committed the service offence of which he or she 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 7 days Extra drill for not more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days Reprimand
4	Member below non-commissioned rank who, at the time he or she committed the service offence of which he or she has	Detention for a period exceeding 7 days but not exceeding 28 days Fine exceeding the	Detention for a period not exceeding 7 days Fine not exceeding the amount of the convicted person's

**Table C—Punishments that may be imposed by a commanding officer on convicted persons**

<b>Item</b>	<b>Column 1 Convicted person</b>	<b>Column 2 Elective punishment</b>	<b>Column 3 Other punishment</b>
	been convicted, was not on active service	amount of the convicted person's pay for 7 days but not exceeding the amount of the convicted person's pay for 28 days	pay for 7 days Severe reprimand Restriction of privileges for a period not exceeding 14 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
5	Person who is not a member of the Defence Force	Fine exceeding \$100 but not exceeding \$250	Fine not exceeding \$100

**3 Punishments that may be imposed by a subordinate summary authority**

A subordinate summary authority may impose a punishment set out in column 2 of an item of Table D of this Schedule on a person referred to in column 1 of that item who has been convicted of an offence.

**Table D—Punishments that may be imposed by a subordinate summary authority on convicted persons**

<b>Item</b>	<b>Column 1 Convicted person</b>	<b>Column 2 Punishment</b>
1	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

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**Table D—Punishments that may be imposed by a subordinate summary authority on convicted persons**

<b>Item</b>	<b>Column 1 Convicted person</b>	<b>Column 2 Punishment</b>
		Reprimand
2	Member below non-commissioned rank	Fine not exceeding the amount of the convicted person'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 not more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days Reprimand

1

2 **Part 2—Consequential amendments**

3 *Defence Force Discipline Act 1982*

4 **7 Subsection 3(1) (definition of *elective punishment*)**

5 Omit “column 2 of Table A or B”, substitute “column 2 of an item of  
6 Table B or C”.

7 **8 Subsection 76(1)**

8 Omit “section 131”, substitute “subsection (3)”.

9 **9 At the end of section 76**

10 Add:

11 (3) The only action that a service tribunal may take under this Part, in  
12 relation to a person for a service offence in relation to which an  
13 undertaking was given under subsection 75(2), is action that could  
14 have been taken under this Part in relation to the person by the  
15 service tribunal that convicted the person of the service offence.

16 **10 Subsection 103(1)**

17 Omit “or 131(4)”.

18 **11 Subsection 103(4)**

19 Omit “Where under section 131”, substitute “If under subsection  
20 111C(1) or 131AA(1)”.

21 **12 At the end of paragraph 103(4)(c)**

22 Add “or”.

23 **13 Subsection 103(5)**

24 Repeal the subsection.

25 **14 Subsections 118(3) and (4)**

26 Repeal the subsections.

1  
2 **Schedule 2—Appeals to the Australian Military**  
3 **Court**

4 **Part 1—Main amendments**

5 *Defence Force Discipline Act 1982*

6 **1 Subsection 67(1)**

7 Omit “The”, substitute “Subject to sections 166, 167 and 167A, the”.

8 **2 Subsections 115(3) and (4)**

9 Repeal the subsections, substitute:

- 10 (3) The Australian Military Court has jurisdiction to hear and  
11 determine appeals from decisions of summary authorities  
12 (including a decision relating to a charge of a custodial offence).

13 Note: Part IX deals with appeals to the Australian Military Court.

14 **3 Subsection 116(1)**

15 After “Australian Military Court”, insert “(including the Court’s  
16 jurisdiction to hear and determine appeals from decisions of summary  
17 authorities)”.

18 **4 Subsection 118(2)**

19 Repeal the subsection, substitute:

20 *Nomination of Military Judge to try charge or hear appeal*

- 21 (2) The Chief Military Judge must nominate the Military Judge who is:  
22 (a) to try a charge referred to the Australian Military Court; or  
23 (b) to hear and determine an appeal to the Australian Military  
24 Court.

25 **5 Before section 132A**

26 Insert:

1 **132 Application of Division**

2 This Division does not apply to an appeal to the Australian  
3 Military Court from a decision of a summary authority.

4 Note: Part IX deals with appeals to the Australian Military Court.

5 **6 Subdivision A of Division 3 of Part VIII (heading)**

6 Repeal the heading, substitute:

7 **Subdivision A—General provisions relating to trials**

8 **7 Before section 138**

9 Insert:

10 **137A Application of Subdivision**

11 This Subdivision does not apply to an appeal to the Australian  
12 Military Court from a decision of a summary authority.

13 Note: Part IX deals with appeals to the Australian Military Court.

14 **8 After subparagraph 149A(a)(x)**

15 Insert:

16 (xa) matters relating to appeals to the Court; and

17 **9 Part IX**

18 Repeal the Part, substitute:

19 **Part IX—Appeals to the Australian Military Court**

20 **Division 1—Definitions**

21 **160 Definitions**

22 In this Part:

23 *appeal* means an appeal to the Australian Military Court under this  
24 Part.

25 *appellant* means a person who has lodged an appeal.

1                    **Part IV order** means a restitution order, a reparation order or an  
2                    order made under subsection 75(1).

## 3                    **Division 2—Bringing of appeals**

### 4                    **161 Appeals to the Australian Military Court**

- 5                    (1) A person who has been convicted of a service offence by a  
6                    summary authority may appeal to the Australian Military Court  
7                    against:
- 8                    (a) his or her conviction; or  
9                    (b) a punishment imposed, or a Part IV order made, by the  
10                    summary authority in respect of his or her conviction.
- 11                    (2) An appeal to the Australian Military Court:
- 12                    (a) must specify the grounds on which the appeal is brought; and  
13                    (b) must be lodged with the Registrar or with such other person  
14                    as is prescribed:
- 15                    (i) within the appropriate period; or  
16                    (ii) within such longer period as the Court, either before or  
17                    after the expiration of the appropriate period, allows.
- 18                    (3) For the purposes of subparagraph (2)(b)(i) and subject to  
19                    subsections (4) and (5), the **appropriate period** is:
- 20                    (a) if the appeal is against a conviction—the period of 14 days  
21                    beginning on the day of the conviction; or  
22                    (b) if the appeal is against a punishment or a Part IV order—the  
23                    period of 14 days beginning on the day on which the  
24                    punishment or the Part IV order takes effect.
- 25                    Note:            Some punishments and orders under Part IV do not take effect unless  
26                    they are approved by a reviewing authority: see subsections 172(2)  
27                    and (3).
- 28                    (4) If a summary authority has reopened proceedings in response to a  
29                    request by a reviewing authority under section 153:
- 30                    (a) the convicted person may not appeal to the Australian  
31                    Military Court in relation to the proceedings until after the  
32                    summary authority has completed dealing with the reopened  
33                    proceedings; and  
34                    (b) for the purposes of subparagraph (2)(b)(i), the **appropriate**  
35                    **period** is:

- 1 (i) if the appeal is against the person's conviction—the  
2 period of 14 days beginning on the day on which, under  
3 Part VIIIA, the person is given notice of the results of  
4 the review of the proceedings (including the reopening  
5 of the proceedings); or  
6 (ii) if the appeal is against a punishment imposed on the  
7 person or a Part IV order made in relation to the  
8 person—the period of 14 days beginning on the day on  
9 which the punishment or the Part IV order takes effect.
- 10 (5) If a reviewing authority gives a convicted person a notice under  
11 subsection 155(2) recommending that the person consider  
12 appealing to the Australian Military Court against the conviction,  
13 or any punishment imposed or order made under Part IV in respect  
14 of the conviction, then, for the purposes of subparagraph (2)(b)(i),  
15 the *appropriate period* is the period of 14 days beginning on the  
16 date on which the notice is given.

### 17 **Division 3—Determination of appeals**

#### 18 **162 Quashing of conviction—conviction unreasonable etc.**

19 If, in an appeal against a conviction by a summary authority, it  
20 appears to the Australian Military Court:

- 21 (a) that, having regard to the evidence, the conviction is  
22 unreasonable or cannot be supported; or  
23 (b) that, as a result of a wrong decision on a question of law, or  
24 of mixed law and fact, the conviction was wrong in law and  
25 that a substantial miscarriage of justice has occurred; or  
26 (c) that there was a material irregularity in the course of the  
27 proceedings before the summary authority and that a  
28 substantial miscarriage of justice has occurred; or  
29 (d) that, in all the circumstances of the case, the conviction is  
30 unsafe or unsatisfactory;

31 the Court must allow the appeal and quash the conviction.

#### 32 **163 Quashing of conviction—new evidence available**

- 33 (1) If, in an appeal against a conviction by a summary authority, it  
34 appears to the Australian Military Court that there is evidence that:



- 1 (a) was not reasonably available during the proceedings before  
2 the summary authority; and  
3 (b) is likely to be credible; and  
4 (c) would have been admissible in the proceedings before the  
5 summary authority;  
6 the Court must receive and consider that evidence.

- 7 (2) If:  
8 (a) the Australian Military Court receives and considers evidence  
9 under subsection (1); and  
10 (b) it appears to the Court that the conviction cannot be  
11 supported having regard to that evidence;  
12 the Court must allow the appeal and quash the conviction.

13 **164 Quashing of conviction—person suffering from mental**  
14 **impairment**

- 15 (1) Subject to subsection (3), if, in an appeal against a conviction by a  
16 summary authority, it appears to the Australian Military Court that  
17 the summary authority should have found that the appellant, by  
18 reason of mental impairment, was not able to understand the  
19 proceedings against him or her and, accordingly, was unfit to stand  
20 trial, the Court must:  
21 (a) allow the appeal; and  
22 (b) quash the conviction; and  
23 (c) direct that the appellant be kept in strict custody until the  
24 pleasure of the Governor-General is known.
- 25 (2) Subject to subsection (3), if, in an appeal against a conviction by a  
26 summary authority, it appears to the Australian Military Court that,  
27 at the time of the act or omission to which the conviction relates,  
28 the appellant was suffering from such mental impairment as not to  
29 be responsible, in accordance with law, for that act or omission, the  
30 Court must:  
31 (a) allow the appeal and quash the conviction; and  
32 (b) substitute for the conviction an acquittal on the ground of  
33 mental impairment; and  
34 (c) direct that the appellant be kept in strict custody until the  
35 pleasure of the Governor-General is known.

- 1 (3) The Australian Military Court must not quash a conviction under  
2 this section if there are grounds for quashing the conviction under  
3 section 162 or 163.

4 **165 Australian Military Court may order new trial**

- 5 (1) If, in an appeal, the Australian Military Court quashes a conviction  
6 of a person of a service offence, the Court may, if it considers that  
7 in the interests of justice the person should be tried again, order a  
8 new trial of the person for the service offence.

- 9 (2) If the Australian Military Court orders a new trial of a person under  
10 subsection (1), the trial must be by the Australian Military Court.

11 Note: Division 2 of Part VIII deals with trials by the Australian Military  
12 Court.

- 13 (3) If the Australian Military Court orders a new trial of a person under  
14 subsection (1), the Court must make such further orders for the  
15 custody of the person pending the new trial as the Court considers  
16 appropriate.

17 **165A Person taken to have been acquitted**

18 For the purposes of this Act, if the Australian Military Court  
19 quashes a conviction of a person of a service offence and does not  
20 order a new trial of the person for the offence, the person is taken  
21 to have been acquitted of the offence.

22 **166 Substitution of conviction for alternative offence**

- 23 (1) If, in an appeal, the Australian Military Court quashes a conviction  
24 of a person of a service offence (the *original offence*) but  
25 considers:  
26 (a) that the summary authority that convicted the person could  
27 have found the person guilty of another offence, being:  
28 (i) a service offence that is an alternative offence, within  
29 the meaning of section 142, in relation to the original  
30 offence; or  
31 (ii) a service offence with which the person was charged in  
32 the alternative and in respect of which the summary  
33 authority did not record a finding; and

- 1 (b) that the summary authority, because of its finding that the  
2 person was guilty of the original offence, must have been  
3 satisfied beyond reasonable doubt of facts that prove that the  
4 person was guilty of the other offence;  
5 the Australian Military Court may substitute for the conviction of  
6 the original offence a conviction of the other offence.
- 7 (2) If, under subsection (1), the Australian Military Court substitutes  
8 for the conviction of the original offence a conviction of another  
9 service offence, the Court may take such action under Part IV, in  
10 relation to the convicted person, as the summary authority that  
11 convicted the person could have taken under that Part if the  
12 summary authority had convicted the person of the other service  
13 offence.
- 14 (3) However, the Australian Military Court must not do any of the  
15 following under subsection (2):
- 16 (a) impose a punishment for the other service offence unless the  
17 summary authority had imposed a punishment for the  
18 original offence;
- 19 (b) make a reparation order with respect to the other service  
20 offence unless the summary authority had made a reparation  
21 order with respect to the original offence;
- 22 (c) if the summary authority had imposed a punishment (the  
23 *original punishment*) for the original offence—impose a  
24 punishment for the other service offence that is more severe  
25 than the original punishment;
- 26 (d) if the summary authority had made a reparation order (the  
27 *original reparation order*) with respect to the original  
28 offence—make a reparation order with respect to the other  
29 service offence that is for an amount that exceeds the amount  
30 of the original reparation order.

### 31 **167 Powers of Court in an appeal against a punishment**

- 32 (1) In an appeal by a convicted person against a punishment imposed  
33 on the person by a summary authority, the Australian Military  
34 Court, in its discretion, may confirm, quash or vary the  
35 punishment.
- 36 (2) If the Australian Military Court quashes the punishment:  
37 (a) the punishment does not take effect; and

- 1 (b) the Court may take such action under Part IV (including  
2 imposing a punishment or making an order or both) in  
3 relation to the convicted person as the summary authority  
4 could have taken under that Part in relation to the person.
- 5 (3) If the Australian Military Court varies the punishment, the  
6 punishment takes effect as varied.
- 7 (4) The Australian Military Court must not vary a punishment imposed  
8 on a convicted person by a summary authority in such a way that  
9 the varied punishment would not be a punishment that the  
10 summary authority could have imposed on the person under  
11 Part IV.

12 **167A Powers of Court in an appeal against a Part IV order**

- 13 (1) In an appeal by a convicted person against a Part IV order made in  
14 relation to the person by a summary authority, the Australian  
15 Military Court, in its discretion, may confirm, revoke or vary the  
16 order.
- 17 (2) If the Australian Military Court revokes the Part IV order:  
18 (a) the order does not take effect; and  
19 (b) the Court may take such action under Part IV (including  
20 imposing a punishment or making an order or both) in  
21 relation to the convicted person as the summary authority  
22 could have taken under that Part in relation to the person.
- 23 (3) If the Australian Military Court varies the Part IV order, the order  
24 takes effect as varied.
- 25 (4) The Australian Military Court must not vary a Part IV order made  
26 in relation to a convicted person by a summary authority in such a  
27 way that the varied order would not be an order that the summary  
28 authority could have made in relation to the person under Part IV.

29 **167B Frivolous or vexatious appeals**

30 If the Australian Military Court dismisses an appeal on the grounds  
31 that the appeal was frivolous or vexatious, the Court may order that  
32 any punishment of detention imposed on the appellant in the  
33 proceedings in relation to which the appeal was brought must be  
34 taken to commence on the day the appeal is dismissed.

1 **Division 4—General provisions relating to appeals**

2 **168 Representation of parties in an appeal**

3 (1) Subject to subsection (2), sections 136 and 137 apply in relation to  
4 an appeal as if:

- 5 (a) references to a trial were references to an appeal; and  
6 (b) references to an accused person were references to an  
7 appellant.

8 Note: Section 188GB deals with appearances by or on behalf of the Director  
9 of Military Prosecutions in proceedings before the Australian Military  
10 Court.

11 (2) Subsection 137(1) applies in relation to an appeal as if the  
12 reference to an accused person awaiting trial by the Australian  
13 Military Court were a reference to an appellant in an appeal before  
14 the Australian Military Court.

15 **168A Hearings**

16 (1) The Australian Military Court may determine an appeal:

- 17 (a) by holding a hearing; or  
18 (b) by considering, without holding a hearing, the documents or  
19 other material provided to the Court in relation to the appeal.

20 However, the Court must hold a hearing if it appears to the Court  
21 that the issues for determination cannot be adequately determined  
22 in the absence of the parties.

23 (2) For the purpose of determining an appeal, the Australian Military  
24 Court may order a party to the appeal or the Director of Military  
25 Prosecutions to produce such documents or other information as  
26 the Court specifies in the order.

27 (3) If the Australian Military Court decides to hold a hearing for the  
28 purpose of determining an appeal, the hearing must, subject to  
29 subsection (4), be held in the presence of the appellant.

30 (4) If:

- 31 (a) the Australian Military Court decides to hold a hearing for  
32 the purpose of determining an appeal; and

1 (b) the Court considers that, by reason of the disorderly  
2 behaviour of the appellant, it is impossible to continue the  
3 hearing in his or her presence;  
4 the Court may order that the appellant be removed from the place  
5 of hearing and be held in custody elsewhere.

6 **168B Evidence**

- 7 (1) Section 146A applies to an appeal in the same way as it applies to  
8 proceedings before a summary authority.
- 9 (2) For the purposes of subsection (1):
- 10 (a) references to proceedings before a summary authority are to  
11 be read as references to an appeal before the Australian  
12 Military Court; and
- 13 (b) references to a summary authority are to be read as  
14 references to the Australian Military Court; and
- 15 (c) in subsection 146A(1), the words “(including proceedings for  
16 the purpose referred to in subsection 111A(1))” are to be  
17 omitted.

18 **168C Judicial notice of service matters**

19 In determining an appeal, the Australian Military Court must take  
20 judicial notice of all matters within the general service knowledge  
21 of the Court.

22 **168D Record of proceedings to be kept**

- 23 (1) The Australian Military Court:
- 24 (a) must keep a record of an appeal determined by the Court; and  
25 (b) must include in that record such particulars as are required by  
26 the rules of procedure.
- 27 (2) A record referred to in subsection (1) must not be made publicly  
28 available but may be published for service purposes in accordance  
29 with the rules of procedure.

30 **168E Use of video and audio links**

31 Subdivision B of Division 3 of Part VIII applies to appeal  
32 proceedings before the Australian Military Court.

1 **10 Section 188GB**

2 Omit “a trial of a charge by”, substitute “proceedings before”.

3 **11 Subparagraphs 188GB(b)(i) and (ii)**

4 Omit “trial is”, substitute “proceedings are”.

5 **12 At the end of subsection 191(1)**

6 Add:

7 ; or (e) the determination or dismissal of an appeal under Part IX.

1

2 **Part 2—Consequential amendments**

3 *Defence Force Discipline Act 1982*

4 **13 Subsection 3(1) (definition of *prescribed acquittal*)**

5 Repeal the definition.

6 **14 Subsections 71(1A), (2) and (3)**

7 Omit “whom it has”, substitute “who has been”.

8 **15 After subsection 103(2)**

9 Insert:

10 (2A) If, under section 165, the Australian Military Court orders a new  
11 trial of a person, the Director of Military Prosecutions may request  
12 the Registrar to refer the charge that was the subject of the  
13 proceedings to which the appeal relates to the Australian Military  
14 Court for a new trial.

15 **16 Subsection 103(3)**

16 After “(2)”, insert “or (2A)”.

17 **17 At the end of subsection 144(1)**

18 Add:

19 Note: If a person has been convicted of a service offence by a summary  
20 authority, the Australian Military Court may, in an appeal against the  
21 conviction, quash the conviction and order a new trial of the person  
22 for the offence: see section 165.

23 **18 After section 172**

24 Insert:

25 **172A Suspension of operation of restitution orders and reparation  
26 orders made by a summary authority**

27 (1) The operation of a restitution order or a reparation order made by a  
28 summary authority is suspended:

29 (a) until the expiration of the period in which, under Part IX, an  
30 appeal to the Australian Military Court against the order, or



1 the conviction in relation to which the order was made, may  
2 be lodged, but not in any case beyond the time specified in  
3 paragraph (b); and

4 (b) if such an appeal is lodged—until the appeal is finally  
5 determined or abandoned.

6 (2) If, in relation to a restitution order, the summary authority is  
7 satisfied that the title to the property in relation to which the order  
8 is made is not in dispute, the summary authority may direct that  
9 subsection (1) is not to apply to the order.

10 (3) If the operation of a restitution order or a reparation order is  
11 suspended under subsection (1), the order does not take effect if the  
12 conviction in relation to which the order is made is quashed on  
13 appeal.

14 Note: The heading to section 173 is altered by adding at the end “**made by the Australian**  
15 **Military Court**”.

## 16 **19 Subsection 176(1)**

17 Repeal the subsection, substitute:

18 (1) If:

19 (a) a summary authority has imposed a punishment on a  
20 convicted person; and

21 (b) the convicted person notifies the summary authority that he  
22 or she has appealed to the Australian Military Court under  
23 Part IX against the conviction or the punishment;

24 the summary authority must order that the execution of the  
25 punishment be stayed, in whole or in part, pending the  
26 determination of the appeal.

## 27 **20 Subsection 194(1)**

28 Omit “or 158”, substitute “or 164”.

## 29 ***Defence Force Discipline Appeals Act 1955***

### 30 **21 Section 4 (at the end of the definition of *convicted person*)**

31 Add “(other than under Part IX of the *Defence Force Discipline Act*  
32 *1982*)”.

### 33 **22 Section 4 (at the end of the definition of *conviction*)**

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1                   Add “(other than under Part IX of the *Defence Force Discipline Act*  
2                   1982)”.

3                   **23 Section 4 (at the end of the definition of *court order*)**

4                   Add:  
5                   ; but does not include an order made in an appeal under Part IX of  
6                   the *Defence Force Discipline Act 1982*.

7                   **24 Section 4 (definition of *prescribed acquittal*)**

8                   After “Court”, insert “(other than under Part IX of the *Defence Force*  
9                   *Discipline Act 1982*)”.

10                  **25 Section 4 (definition of *prescribed acquitted person*)**

11                  After “Court”, insert “(other than under Part IX of the *Defence Force*  
12                  *Discipline Act 1982*)”.

13                  **26 Section 4 (at the end of the definition of *punishment*)**

14                  Add “(other than under Part IX of that Act)”.

1  
2 **Schedule 3—Evidence in summary**  
3 **proceedings**  
4

5 *Defence Force Discipline Act 1982*

6 **1 At the end of subsection 111A(1)**

7 Add:

8 Note: A summary authority is not bound by the rules of evidence and may  
9 hear any evidence that it considers to be of assistance and relevance in  
10 proceedings for the purpose referred to in this subsection: see  
11 section 146A.

12 **2 Subsection 111A(2)**

13 Omit “Without limiting the generality of subsection 146(2), regulations  
14 made by virtue of that subsection”, substitute “The regulations”.

15 **3 Subsection 146(1)**

16 Omit “proceedings before a service tribunal”, substitute “a trial by the  
17 Australian Military Court”.

18 Note: The heading to section 146 is replaced by the heading “**Evidence in trials by the**  
19 **Australian Military Court**”.

20 **4 Paragraph 146(1)(a)**

21 Omit “the tribunal”, substitute “the Australian Military Court”.

22 **5 Paragraph 146(1)(b)**

23 Omit “the proceedings were criminal proceedings”, substitute “the trial  
24 were a criminal proceeding”.

25 **6 Subsection 146(2)**

26 Omit “proceedings before a service tribunal”, substitute “trials by the  
27 Australian Military Court”.

28 **7 Subsection 146(2)**

29 Omit “such proceedings”, substitute “such trials”.

30 **8 After section 146**

31 Insert:

---

1 **146A Evidence etc. in proceedings before a summary authority**

2 (1) This section applies to proceedings before a summary authority  
3 (including proceedings for the purpose referred to in subsection  
4 111A(1)).

5 (2) The summary authority:

6 (a) must comply with:

7 (i) the rules of natural justice; and

8 (ii) the Summary Authority Rules; and

9 (b) consistently with those rules:

10 (i) must act with as little legal formality or legal  
11 technicality as possible, while ensuring fairness; and

12 (ii) is, subject to this Act, not bound by the rules of  
13 evidence (whether statutory or common law), but must  
14 comply with the basic principles of those rules relating  
15 to relevance, reliability, weight and probative value; and

16 (iii) may admit any documents or call any witnesses that the  
17 summary authority considers to be of assistance and  
18 relevance; and

19 (iv) may give such weight as the summary authority  
20 considers appropriate to any evidence admitted under  
21 subparagraph (iii), having regard to the importance of  
22 the evidence in the proceedings and its probative value.

23 Note: The Summary Authority Rules may make provision in relation to the  
24 giving of testimony and other evidence: see paragraph 149(aa).

25 (3) Nothing in this section allows a person to be compelled to testify  
26 against himself or herself, or to give particular evidence, in  
27 proceedings before a summary authority, if doing so might tend to  
28 incriminate the person or expose the person to a penalty.

29 (4) This section does not affect the law relating to legal professional  
30 privilege.

31 **9 Section 147**

32 Repeal the section, substitute:

1 **147 Judicial notice of service matters**

- 2 (1) In addition to the matters of which judicial notice may be taken by  
3 a court under the rules of evidence referred to in section 146, the  
4 Australian Military Court must take judicial notice of all matters  
5 within the general service knowledge of:  
6 (a) the Court; and  
7 (b) if the proceedings are before a military jury—the jury.
- 8 (2) In proceedings before a summary authority, the summary authority  
9 must take judicial notice of all matters within the general service  
10 knowledge of the summary authority.

11 **10 Section 149**

12 Omit “Judge Advocate General”, substitute “Chief Military Judge”.

13 **11 Paragraph 149(a)**

14 After “attendance”, insert “and compellability”.

15 **12 After paragraph 149(a)**

16 Insert:

- 17 (aa) the giving of testimony and other evidence; and

1  
2 **Schedule 4—Review of summary proceedings**

3 **Part 1—Main amendments**

4 *Defence Force Discipline Act 1982*

5 **1 At the end of section 149**

6 Add:

- 7 ; and (i) the reopening of proceedings of a summary authority on  
8 request by a reviewing authority.

9 **2 After Part VIII**

10 Insert:

11 **Part VIIIA—Review of proceedings of summary**  
12 **authorities**

13 **Division 1—Interpretation and application**

14 **150 Meaning of *reviewing authority* and *competent reviewing***  
15 ***authority***

16 *Appointment of reviewing authorities*

- 17 (1) The Chief of the Defence Force or a service chief may, by  
18 instrument in writing, appoint an officer, or each officer included  
19 in a class of officers, to be a ***reviewing authority*** for the purposes  
20 of:  
21 (a) reviewing proceedings of summary authorities; and  
22 (b) exercising any other powers and functions that are conferred  
23 on reviewing authorities by this Act or the regulations.

24 *Competent reviewing authorities*

- 25 (2) A reviewing authority is a ***competent reviewing authority*** for the  
26 purposes of reviewing the proceedings of a summary authority  
27 only if the reviewing authority did not exercise any of the powers

1 or perform any of the functions of a superior authority in relation to  
2 the charge that is the subject of the proceedings.

3 **150A Application of Part**

4 This Part applies in relation to proceedings of a summary authority  
5 that have resulted in a conviction of a person of a service offence.

6 **Division 2—Automatic review by reviewing authority**

7 **151 Review of proceedings of subordinate summary authority**

8 *Powers and duties of commanding officer*

- 9 (1) As soon as practicable after a subordinate summary authority  
10 convicts a person of a service offence, the subordinate summary  
11 authority must give the record of the proceedings to the  
12 commanding officer of the subordinate summary authority.
- 13 (2) The commanding officer must review the proceedings in  
14 accordance with this Part and, for that purpose, the commanding  
15 officer is taken to be a reviewing authority.
- 16 (3) The commanding officer may, but is not required to, obtain legal  
17 advice on the proceedings from a legal officer.
- 18 (4) After completing the review of the proceedings, the commanding  
19 officer must give to a legal officer:  
20 (a) the record of the proceedings; and  
21 (b) a report setting out:  
22 (i) the results of the review; and  
23 (ii) if the proceedings were reopened by the subordinate  
24 summary authority under section 153—the action taken  
25 by the subordinate summary authority in dealing with  
26 the reopened proceedings; and  
27 (iii) the reasons for any delay in conducting the review.
- 28 (5) The commanding officer must complete the review of the  
29 proceedings and give the documents referred to in  
30 paragraphs (4)(a) and (b) to a legal officer:  
31 (a) within 30 days after the commanding officer receives the  
32 record referred to in subsection (1); or

- 1 (b) if this is not possible due to the exigencies of service—as  
2 soon as practicable after the end of that period.

3 *Powers and duties of legal officer*

- 4 (6) As soon as practicable after receiving the record of the proceedings  
5 and the report referred to in subsection (4), the legal officer:  
6 (a) must consider the record and report; and  
7 (b) may, if the legal officer considers it appropriate, give the  
8 record and report to a competent reviewing authority.

9 *Further review by competent reviewing authority*

- 10 (7) If the legal officer gives the record of the proceedings and the  
11 report to a competent reviewing authority under subsection (6), the  
12 reviewing authority:  
13 (a) must, as soon as practicable after receiving the record and  
14 report, review the proceedings in accordance with this Part;  
15 and  
16 (b) after reviewing the proceedings, must give written notice of  
17 the results of the review to:  
18 (i) the commanding officer; and  
19 (ii) the person who was convicted of the service offence.

20 Note: A reviewing authority may not, under paragraph (7)(a), request the  
21 subordinate summary authority to reopen the proceedings: see  
22 paragraph 153(1)(a).

23 *Notice of results of review*

- 24 (8) A commanding officer who receives a notice under  
25 paragraph (7)(b) must, as soon as practicable after receiving the  
26 notice, give written notice of the results of the review to the  
27 subordinate summary authority.
- 28 (9) If the legal officer does not give the record of the proceedings and  
29 the report of the results of the review to a competent reviewing  
30 authority under subsection (6):  
31 (a) the legal officer must notify the commanding officer of this  
32 fact; and  
33 (b) the commanding officer must give written notice of the  
34 results of the review to:  
35 (i) the subordinate summary authority; and
-



1 (ii) the person who was convicted of the service offence.

2 **152 Review of proceedings of superior summary authority or**  
3 **commanding officer**

4 *Powers and duties of reviewing authority*

- 5 (1) As soon as practicable after a summary authority (other than a  
6 subordinate summary authority) convicts a person of a service  
7 offence, the summary authority must give the record of the  
8 proceedings to a competent reviewing authority.
- 9 (2) The reviewing authority must review the proceedings in  
10 accordance with this Part.
- 11 (3) Before reviewing the proceedings, the reviewing authority must  
12 obtain legal advice on the proceedings from a legal officer.
- 13 (4) The reviewing authority must complete the review:  
14 (a) within 30 days after receiving the record referred to in  
15 subsection (1); or  
16 (b) if this is not possible due to the exigencies of service—as  
17 soon as practicable after the end of that period.

18 *Notice of results of review*

- 19 (5) After reviewing the proceedings, the reviewing authority must give  
20 written notice of the results of the review to:  
21 (a) the summary authority; and  
22 (b) the person who was convicted of the service offence.

23 *Exception*

- 24 (6) This section does not apply to proceedings before a superior  
25 summary authority if the superior summary authority has no  
26 reviewing authority of a higher rank.

27 Note: In the case referred to in subsection (6), the convicted person could  
28 lodge an appeal to the Australian Military Court under Part IX.

29 **153 Reviewing authority must request summary authority to reopen**  
30 **proceedings to correct punishment error**

- 31 (1) This section applies to:
-

- 1 (a) a review, under section 151, by a commanding officer (the  
2 *reviewing authority*) of the proceedings of a subordinate  
3 summary authority; or  
4 (b) a review, under section 152, by a competent reviewing  
5 authority of the proceedings of a superior summary authority  
6 or a commanding officer.
- 7 (2) If the reviewing authority considers that the action taken by the  
8 summary authority under Part IV (whether the imposition of a  
9 punishment or the making of an order or both) in relation to the  
10 convicted person is beyond the power of the summary authority,  
11 the reviewing authority must request the summary authority, in  
12 writing, to reopen the proceedings.
- 13 (3) If the reviewing authority requests the summary authority to  
14 reopen the proceedings, the summary authority must reopen the  
15 proceedings.

### 16 **153A Procedures for dealing with reopened proceedings**

- 17 (1) This section applies if a summary authority reopens proceedings in  
18 response to a request by a reviewing authority under section 153.
- 19 (2) The summary authority must notify the convicted person that the  
20 proceedings are to be reopened.
- 21 (3) The summary authority must, as the case requires:  
22 (a) impose a less severe punishment on the convicted person; or  
23 (b) if the summary authority had made a reparation order (the  
24 *original reparation order*)—make a reparation order for an  
25 amount that is less than the amount of the original reparation  
26 order.
- 27 (4) As soon as practicable after the summary authority completes  
28 dealing with the proceedings under subsection (3), the summary  
29 authority must give the record of the proceedings to the reviewing  
30 authority that requested the summary authority to reopen the  
31 proceedings.
- 32 (5) Subject to subsection 161(4), this section does not affect the right  
33 of the convicted person to appeal to the Australian Military Court  
34 in relation to the proceedings.
- 35 Note: Part IX deals with appeals to the Australian Military Court.

1 **154 Effect on review of appeal to the Australian Military Court**

2 If:

- 3 (a) a person who is convicted of a service offence by a summary  
4 authority lodges an appeal to the Australian Military Court in  
5 relation to the proceedings; and  
6 (b) the appeal is lodged before a reviewing authority has  
7 completed reviewing the proceedings under this Part;  
8 the reviewing authority must not request the summary authority to  
9 reopen the proceedings.

10 Note: Part IX deals with appeals to the Australian Military Court.

11 **155 Reviewing authority may recommend that convicted person**  
12 **appeal to the Australian Military Court**

- 13 (1) This section applies to a review of the proceedings of a summary  
14 authority if the reviewing authority (including a commanding  
15 officer referred to in subsection 151(1)) considers:  
16 (a) that, having regard to the evidence, the conviction is  
17 unreasonable or cannot be supported; or  
18 (b) that, as a result of a wrong decision on a question of law, or  
19 of mixed law and fact, the conviction was wrong in law and  
20 that a substantial miscarriage of justice has occurred; or  
21 (c) that any action taken by the summary authority under Part IV  
22 (whether imposing a punishment or making an order or both)  
23 in relation to the convicted person is wrong in law or is  
24 excessive or otherwise unreasonable; or  
25 (d) that there was a material irregularity in the course of the  
26 proceedings and that a substantial miscarriage of justice has  
27 occurred; or  
28 (e) that, in all the circumstances of the case, the conviction is  
29 unsafe or unsatisfactory.
- 30 (2) The reviewing authority must give a notice in writing to the  
31 convicted person:  
32 (a) recommending that the person consider appealing to the  
33 Australian Military Court against the conviction, or any  
34 punishment imposed or order made under Part IV, as the case  
35 requires; and  
36 (b) setting out the reasons for the recommendation.

## Schedule 4 Review of summary proceedings

### Part 1 Main amendments

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1                   Note:       Part IX deals with appeals to the Australian Military Court. If the  
2 convicted person is given a notice under this subsection, the convicted  
3 person has 14 days, beginning on the day on which the notice is given,  
4 to lodge an appeal to the Australian Military Court against the  
5 conviction or any punishment imposed or order made under Part IV:  
6 see subsection 161(5).

7                   (3) If the reviewing authority gives a notice to the convicted person  
8 under subsection (2), the reviewing authority must give a copy of  
9 the notice to the person's commanding officer.

10                  (4) The convicted person must be given an opportunity to obtain legal  
11 advice in relation to an appeal if a legal officer is reasonably  
12 available to give such advice.

### 13                   **Division 3—Review of certain punishments and orders that** 14                   **are subject to approval by reviewing authority**

#### 15                   **156 Application of Division**

16                   This Division applies to a review of the proceedings of a summary  
17 authority if the summary authority:

- 18                   (a) has imposed a punishment referred to in subsection 172(2);  
19                   or  
20                   (b) has made a restitution order or a reparation order.

#### 21                   **157 Reviewing authority must approve or not approve punishment** 22                   **or order**

23                   The reviewing authority must approve or not approve the  
24 punishment or order.

#### 25                   **158 Approved punishment or order to take effect as determined**

26                   If the reviewing authority approves the punishment or order, the  
27 reviewing authority must determine when the punishment or order  
28 is to take effect.

#### 29                   **159 Punishments or orders not approved to be quashed or revoked**

30                   (1) If the reviewing authority does not approve the punishment or  
31 order, the reviewing authority must quash the punishment or  
32 revoke the order, as the case may be.

- 1 (2) If the reviewing authority quashes a punishment or revokes an  
2 order under subsection (1) in relation to a convicted person, the  
3 reviewing authority may take such action in relation to the  
4 convicted person as could have been taken under Part IV by the  
5 summary authority that convicted the person.
- 6 (3) However, the reviewing authority must not do any of the following  
7 under subsection (2):
- 8 (a) impose a punishment that is more severe than the punishment  
9 that was imposed by the summary authority;
  - 10 (b) if the punishment imposed by the summary authority was a  
11 custodial punishment—impose a punishment other than a  
12 custodial punishment;
  - 13 (c) if the punishment imposed by the summary authority was not  
14 a custodial punishment—impose a custodial punishment;
  - 15 (d) if the summary authority made a reparation order—make a  
16 reparation order for an amount that exceeds the amount of the  
17 reparation order that was made by the summary authority.

1

2 **Part 2—Consequential amendments**

3 *Defence Force Discipline Act 1982*

4 **3 Subsection 3(1) (definition of *competent reviewing***  
5 ***authority*)**

6 Omit “section 150A”, substitute “subsection 150(2)”.

7 **4 Subsection 3(1) (definition of *convicted person*)**

8 Omit “, a reviewing authority”.

9 **5 Subsection 3(1) (definition of *review*)**

10 Repeal the definition, substitute:

11 *review* means a review by a commanding officer or a reviewing  
12 authority, in accordance with Part VIIIA, of the proceedings of a  
13 summary authority.

14 **6 Subsection 3(1) (definition of *reviewing authority*)**

15 Omit “section 150”, substitute “subsection 150(1)”.

16 **7 Paragraph 74(4A)(a)**

17 Omit “service tribunal”, substitute “summary authority”.

18 **8 Subparagraph 74(4A)(a)(i)**

19 Before “reviewing authority” (first occurring), insert “competent”.

20 **9 Paragraph 74(4B)(a)**

21 Omit “service tribunal”, substitute “summary authority”.

22 **10 Subparagraph 74(4B)(a)(i)**

23 Before “reviewing authority” (first occurring), insert “competent”.

24 **11 Subsection 74(5)**

25 Omit “or a reviewing authority that has revoked a suspension of a  
26 punishment on the recommendation of a service tribunal”.

1 **12 After subsection 74(5)**

2 Insert:

3 (5A) A reviewing authority that has revoked the suspension of the whole  
4 or a part of a punishment under subsection 80(4), on the  
5 recommendation of a summary authority, must not order that  
6 prescribed punishments are to be cumulative if the effect of the  
7 order would be that the person convicted would be subject to  
8 punishment for a total period that exceeds the period of operation  
9 of the most severe punishment (being a punishment of the same  
10 kind as the first-mentioned punishments) that the summary  
11 authority could impose on the person for the service offence, or  
12 any one of the service offences, of which the person has been  
13 convicted by the summary authority.

14 **13 Subsection 80(2)**

15 Omit “service tribunal shall”, substitute “summary authority must”.

16 **14 Subsection 80(2)**

17 Omit “the tribunal”, substitute “the authority”.

18 **15 Subsection 80(3)**

19 Omit “service tribunal”, substitute “summary authority”.

20 **16 Subsection 80(3)**

21 Omit “the tribunal may recommend to a reviewing authority”, substitute  
22 “the summary authority may recommend to a competent reviewing  
23 authority”.

24 **17 Subsection 80(4)**

25 Omit “a service tribunal recommends to a reviewing authority”,  
26 substitute “a summary authority recommends to a competent reviewing  
27 authority”.

28 **18 Subsection 81(2)**

29 Omit “or 162(8)”.

30 **19 Subsection 99(1)**

31 Omit “service tribunal” (wherever occurring), substitute “summary  
32 authority”.

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1 **20 Paragraph 100(5)(b)**

2 Omit “service tribunal”, substitute “summary authority”.

3 **21 Subsection 103(2)**

4 Repeal the subsection, substitute:

5 (2) If, under the *Defence Force Discipline Appeals Act 1955*, the  
6 Defence Force Discipline Appeal Tribunal or the Federal Court of  
7 Australia orders a new trial of a person, the Director of Military  
8 Prosecutions may request the Registrar to refer the charge to the  
9 Australian Military Court for trial.



1  
2 **Schedule 5—Offences and punishments**

3 **Part 1—Amendments of offences**

4 *Defence Force Discipline Act 1982*

5 **1 Paragraph 59(1)(b)**

6 Omit “narcotic goods”, substitute “a prohibited drug”.

7 Note 1: The heading to section 59 is altered by omitting “**narcotic goods**” and substituting  
8 “**prohibited drugs**”.

9 Note 2: The following heading to subsection 59(1) is inserted “*Selling, dealing or trafficking in*  
10 *a prohibited drug—defence member or defence civilian outside Australia*”.

11 **2 Paragraph 59(1)(c)**

12 Omit “goods”, substitute “drug”.

13 **3 Paragraph 59(3)(b)**

14 Omit “narcotic goods”, substitute “a prohibited drug”.

15 Note: The following heading to subsection 59(3) is inserted “*Possessing a prohibited drug—*  
16 *defence member or defence civilian outside Australia*”.

17 **4 Paragraph 59(3)(c)**

18 Omit “those goods and knows their”, substitute “that drug and knows  
19 its”.

20 **5 Subsection 59(3) (penalty)**

21 Repeal the penalty, substitute:

22 Maximum punishment:

23 (d) if the offence is committed in relation to:

24 (i) a prohibited drug other than cannabis; or

25 (ii) a quantity of cannabis exceeding the prescribed quantity  
26 of that drug;

27 imprisonment for 2 years; or

28 (e) if the offence is committed in relation to a quantity of  
29 cannabis not exceeding the prescribed quantity of that drug  
30 and the convicted person is a defence member:

- 1 (i) for a first offence—a fine of the amount of the  
2 member’s pay for 14 days; or  
3 (ii) for a second or later offence—dismissal from the  
4 Defence Force; or  
5 (f) if the offence is committed in relation to a quantity of  
6 cannabis not exceeding the prescribed quantity of that drug  
7 and the convicted person is a defence civilian—a fine of  
8 \$100.

9 **6 Subsection 59(4)**

10 Omit “narcotic goods”, substitute “prohibited drug”.

11 **7 Paragraph 59(5)(b)**

12 Repeal the paragraph, substitute:

- 13 (b) administers, or causes or permits to be administered, to  
14 himself or herself, a prohibited drug.

15 Note: The following heading to subsection 59(5) is inserted “*Administering a prohibited*  
16 *drug—defence member or defence civilian outside Australia*”.

17 **8 Subsection 59(5) (penalty)**

18 Repeal the penalty, substitute:

19 Maximum punishment:

- 20 (c) if the offence is committed in relation to a prohibited drug  
21 other than cannabis—imprisonment for 2 years; or  
22 (d) if the offence is committed in relation to cannabis and the  
23 convicted person is a defence member:  
24 (i) for a first offence—a fine of the amount of the  
25 member’s pay for 14 days; or  
26 (ii) for a second or later offence—dismissal from the  
27 Defence Force; or  
28 (e) if the offence is committed in relation to cannabis and the  
29 convicted person is a defence civilian—a fine of \$100.

30 **9 Subsections 59(6) and (7)**

31 Repeal the subsections, substitute:

- 32 (5A) It is a defence to a charge under subsection (5) if the person proves  
33 that he or she had lawful authority for the conduct mentioned in  
34 paragraph (5)(b).

1                    *Administering a prohibited drug—defence member or defence*  
2                    *civilian in Australia*

- 3                    (6) A person who is a defence member or a defence civilian is guilty  
4                    of an offence if the person:  
5                    (a) is in Australia; and  
6                    (b) administers, or causes or permits to be administered, to  
7                    himself or herself a prohibited drug.

8                    **Maximum punishment:**

- 9                    (c) if the offence is committed in relation to a prohibited drug  
10                    other than cannabis and the convicted person is a defence  
11                    member—imprisonment for 2 years; or  
12                    (d) if the offence is committed in relation to cannabis and the  
13                    convicted person is a defence member:  
14                    (i) for a first offence—a fine of the amount of the  
15                    member’s pay for 14 days; or  
16                    (ii) for a second or later offence—dismissal from the  
17                    Defence Force; or  
18                    (e) if the convicted person is a defence civilian—a fine of \$100.  
19                    (6A) It is a defence to a charge under subsection (6) if the person proves  
20                    that he or she had lawful authority for the conduct mentioned in  
21                    paragraph (6)(b).

22                    *Possessing non-trafficable quantity of a prohibited drug—defence*  
23                    *member in Australia*

- 24                    (7) A defence member is guilty of an offence if the member:  
25                    (a) is in Australia; and  
26                    (b) is in possession of a quantity of a prohibited drug not  
27                    exceeding the prescribed quantity of that drug; and  
28                    (c) knows that he or she possesses that drug and knows its  
29                    nature.

30                    **Maximum punishment:**

- 31                    (d) if the offence is committed in relation to a prohibited drug  
32                    other than cannabis—imprisonment for 2 years; or  
33                    (e) if the offence is committed in relation to cannabis:  
34                    (i) for a first offence—a fine of the amount of the  
35                    member’s pay for 14 days; or

- 1 (ii) for a second or later offence—dismissal from the  
2 Defence Force.

3 **10 Subsection 59(8)**

4 Omit “cannabis”, substitute “prohibited drug”.

5 **11 Subsection 59(9)**

6 Repeal the subsection, substitute:

7 *Definitions*

8 (9) In this section:

9 *cannabis* means:

- 10 (a) a living cannabis plant; or  
11 (b) cannabis resin; or  
12 (c) any other form of cannabis (including flowering or fruiting  
13 tops, leaves, seeds or stalks, but not including cannabis fibre).

14 *controlled drug* has the same meaning as in Part 9.1 of the  
15 *Criminal Code*.

16 *controlled plant* has the same meaning as in Part 9.1 of the  
17 *Criminal Code*.

18 *prescribed quantity*, in relation to a prohibited drug, means:

- 19 (a) for a narcotic substance that is a controlled drug or a  
20 controlled plant in relation to which there is a trafficable  
21 quantity specified under the *Criminal Code*—the trafficable  
22 quantity so specified for that substance; or  
23 (b) for any other prohibited drug—50 grams.

24 *prohibited drug* means:

- 25 (a) a narcotic substance (as defined by subsection 4(1) of the  
26 *Customs Act 1901*); or  
27 (b) an anabolic steroid (within the meaning of Part 5 of the  
28 *Poisons and Drugs Act 1978* of the Australian Capital  
29 Territory).

30 **12 Subsection 60(1)**

31 Omit “engages in conduct”, substitute “does an act”.

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1 **13 After subsection 60(1)**

2 Insert:

3 (1A) A defence member is guilty of an offence if:

4 (a) the member omits to perform an act; and

5 (b) the omission is likely to prejudice the discipline of, or bring  
6 discredit on, the Defence Force.

7 Maximum punishment: Imprisonment for 3 months.

8 **14 Subsection 60(2)**

9 Omit “under this section”, substitute “against subsection (1) or (1A)”.

10 **15 Subsection 60(3)**

11 After “defence”, insert “to a charge under subsection (1)”.

12 **16 Subsection 60(3)**

13 Omit “conduct”, substitute “act”.

14 **17 At the end of section 60**

15 Add:

16 (4) It is a defence to a charge under subsection (1A) if the member  
17 proves that he or she had a reasonable excuse for omitting to  
18 perform the relevant act.

19 Note: The defendant bears a legal burden in relation to the matter in  
20 subsection (4). See section 13.4 of the *Criminal Code*.

21 **18 Schedule 6 (after table item 20)**

22 Insert:

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20A	Offence against section 36A	Offence against section 36B
20B	Offence against section 36B	Offence against section 36A

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1

2 **Part 2—Amendments of punishments**

3 *Defence Force Discipline Act 1982*

4 **19 Paragraph 74(2)(b)**

5 Before “suspended”, insert “wholly”.

6 **20 Paragraph 74(2)(c)**

7 After “suspended”, insert “in whole or in part”.

8 **21 Paragraph 74(4)(b)**

9 Before “suspended”, insert “wholly”.

10 **22 Paragraph 74(4)(c)**

11 After “is suspended”, insert “in whole or in part”.

12 **23 Paragraph 74(4A)(a)**

13 After “suspended”, insert “in whole or in part”.

14 **24 Paragraph 74(4B)(a)**

15 After “suspended”, insert “in whole or in part”.

16 **25 Subsection 78(1)**

17 After “suspending”, insert “the whole or a part of”.

18 **26 Subsection 78(2)**

19 After “suspending” (wherever occurring), insert “the whole or a part  
20 of”.

21 **27 Subsection 78(3)**

22 After “suspending”, insert “the whole or a part of”.

23 **28 Subsection 78(3)**

24 After “the punishment”, insert “, or such part of the punishment as is  
25 suspended,”.

26 **29 Subsection 80(1)**

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1 After “is suspended”, insert “(whether in whole or in part)”.

2 **30 Subsection 80(1)**

3 After “the punishment”, insert “, or such part of the punishment,”.

4 **31 Subsection 80(2)**

5 After “suspension of”, insert “the whole or a part of”.

6 **32 Subsection 80(4)**

7 After “suspension of”, insert “the whole or a part of”.

8 **33 Subsection 80(4)**

9 After “the punishment”, insert “, or such part of the punishment,”.

10 **34 Paragraph 81(1)(a)**

11 After “suspended”, insert “in whole or in part”.

12 **35 Subsection 81(2)**

13 After “suspended”, insert “in whole or in part”.

14 **36 Subsection 81(2)**

15 After “that punishment” (first occurring), insert “, or such part of that  
16 punishment as has been suspended,”.

17 **37 Subsection 81(2)**

18 After “that punishment” (second occurring), insert “or that part of that  
19 punishment”.

20 **38 Section 82**

21 After “that punishment” (first occurring), insert “, or a part of that  
22 punishment,”.

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## Schedule 6—Minor disciplinary infringements

### *Defence Force Discipline Act 1982*

#### **1 Section 169A**

Insert:

*discipline officer* means a discipline officer appointed under section 169B.

#### **2 Section 169A**

Insert:

*junior officer* means:

- (a) in the Navy—an officer who holds a rank of or below the rank of lieutenant (other than a person who holds the rank of midshipman); or
- (b) in the Army—an officer who holds a rank of or below the rank of captain; or
- (c) in the Air Force—an officer who holds a rank of or below the rank of flight lieutenant.

#### **3 Section 169A**

Insert:

*prescribed defence member* means:

- (a) in the Navy—a member of the Defence Force who holds a rank of or below the rank of lieutenant; or
  - (b) in the Army—a member of the Defence Force who holds a rank of or below the rank of captain; or
  - (c) in the Air Force—a member of the Defence Force who holds a rank of or below the rank of flight lieutenant;
- but does not include a warrant officer covered by a determination in force under section 169BA.

#### **4 Section 169A**

Insert:

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1                    *relevant discipline officer*, in relation to a prescribed defence  
 2                    member, has the meaning given by section 169BB.

3                    **5 After section 169B**

4                    Insert:

5                    **169BA Service chief may exempt certain warrant officers**

6                    (1) A service chief may determine, in writing, that a specified warrant  
 7                    officer, or a warrant officer included in a specified class of warrant  
 8                    officers, is not a *prescribed defence member* for the purposes of  
 9                    this Part.

10                  (2) A determination under subsection (1) is not a legislative  
 11                  instrument.

12                  **169BB Relevant discipline officers**

13                  The following table sets out who is a *relevant discipline officer* in  
 14                  relation to a prescribed defence member.

15

<b>Item</b>	<b>Prescribed defence member</b>	<b>Relevant discipline officer</b>
1	Junior officer	Discipline officer who is at least one rank senior to the prescribed defence member
2	Officer cadet	Any discipline officer
3	Warrant officer Non-commissioned officer	Discipline officer who holds a rank not lower than lieutenant commander, major or squadron leader
4	Member below non-commissioned rank	Any discipline officer

16                  **6 Section 169C**

17                  Omit “A discipline officer has jurisdiction to deal with a defence  
 18                  member who is an officer cadet or holds a rank below  
 19                  non-commissioned rank”, substitute “A relevant discipline officer, in  
 20                  relation to a prescribed defence member, has jurisdiction to deal with  
 21                  that member”.

22                  **7 Paragraph 169C(a)**

1 Omit “defence”.

2 **8 Subsection 169D(1)**

3 Omit “defence member who is an officer cadet or holds a rank below  
4 non-commissioned rank”, substitute “prescribed defence member”.

5 **9 Subsections 169D(4) and (5)**

6 Before “defence member”, insert “prescribed”.

7 **10 Subsections 169E(1) and (2)**

8 Before “defence member”, insert “prescribed”.

9 **11 Paragraph 169E(4)(a)**

10 Before “defence member”, insert “prescribed”.

11 **12 Subsection 169E(5)**

12 Before “defence member”, insert “prescribed”.

13 **13 Subsection 169F(1)**

14 Repeal the subsection, substitute:

15 *Punishments that may be imposed in respect of disciplinary*  
16 *infringements*

17 (1) A relevant discipline officer, in relation to a prescribed defence  
18 member referred to in column 1 of an item of the following table,  
19 may impose on the prescribed defence member, in respect of a  
20 disciplinary infringement, a punishment set out in column 2 of that  
21 item.

22

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**Punishments that may be imposed in respect of disciplinary infringements**

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<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>Prescribed defence member</b>	<b>Punishment</b>
1	Junior officer Warrant officer Non-commissioned officer	Fine not exceeding the amount of the defence member’s pay for one day Reprimand
2	Officer cadet Member below non-commissioned	Fine not exceeding the amount of the defence member’s pay for one

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**Punishments that may be imposed in respect of disciplinary infringements**

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<b>Item</b>	<b>Column 1 Prescribed defence member</b>	<b>Column 2 Punishment</b>
	rank	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

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1 Note: The following heading to subsection 169F(2) is inserted “*Other powers*”.

2 **14 After section 169FA**

3 Insert:

4 **169FB Consequences of punishments**

- 5 (1) The Chief of the Defence Force or a service chief may, by  
 6 legislative instrument, make rules with respect to the  
 7 consequences, in relation to a prescribed defence member, that are  
 8 to flow from the imposition by a discipline officer on that member  
 9 of any of the following punishments:  
 10 (a) restriction of privileges;  
 11 (b) stoppage of leave;  
 12 (c) extra duties;  
 13 (d) extra drill.
- 14 (2) The commanding officer of a prescribed defence member who is  
 15 subject to a punishment referred to in paragraph (1)(a) or (c) may  
 16 moderate the consequences of that punishment in relation to the  
 17 member in such manner as the commanding officer considers  
 18 appropriate, having regard to the particular circumstances of the  
 19 case and to any directions, in writing, of the Chief of the Defence  
 20 Force or a service chief.

1 (3) A direction made under subsection (2) is not a legislative  
2 instrument.

3 (4) Even if a prescribed defence member is subject to a punishment of  
4 stoppage of leave, the commanding officer of the member may, if  
5 he or she is satisfied that it is appropriate to do so, grant leave of  
6 absence to the member.

### 7 **15 Subsections 169G(2) and (3)**

8 Before “defence member”, insert “prescribed”.

### 9 **16 After section 169G**

10 Insert:

#### 11 **169GA Report by discipline officer**

12 (1) As soon as practicable after the end of each month, a discipline  
13 officer must give a report in accordance with subsection (2) to the  
14 discipline officer’s commanding officer.

15 (2) The report must be in writing and must contain the following  
16 information:

17 (a) the name of each prescribed defence member dealt with, in  
18 relation to a disciplinary infringement, by the discipline  
19 officer in the month to which the report relates;

20 (b) the nature of the disciplinary infringement in relation to  
21 which each prescribed defence member referred to in  
22 paragraph (a) was dealt with;

23 (c) the punishment (if any) that was imposed in respect of each  
24 of those disciplinary infringements.

25 Note: A report under this section is a *relevant record* for the purposes of  
26 section 169H.

### 27 **17 Paragraph 169H(2)(a)**

28 Before “defence member”, insert “prescribed”.

### 29 **18 Section 169J**

30 Before “defence member”, insert “prescribed”.

1  
2 **Schedule 7—Other amendments**

3 **Part 1—Powers of the Director of Military**  
4 **Prosecutions**

5 *Defence Force Discipline Act 1982*

6 **1 Subsection 87(1A)**

7 Repeal the subsection, substitute:

- 8 (1A) To avoid doubt, the Director of Military Prosecutions:
- 9 (a) may exercise any or all of the powers referred to in  
10 paragraphs (1)(a), (b) and (c); and
- 11 (b) may exercise the power referred to in paragraph (1)(c) in  
12 addition to, or instead of, the powers referred to in  
13 paragraphs (1)(a) and (b).

14 **2 At the end of Division 1 of Part VII**

15 Add:

16 **103A Director of Military Prosecutions may decide that trial of class**  
17 **3 offence is to be by Military Judge alone**

- 18 (1) This section applies in relation to a charge of a class 3 offence that  
19 is to be tried by the Australian Military Court.
- 20 (2) The Director of Military Prosecutions may, if he or she considers it  
21 appropriate in the circumstances, decide that the trial is to be by a  
22 Military Judge alone.

23 Note: The maximum punishment that may be imposed on a person who is  
24 convicted of a class 3 offence that is tried by a Military Judge alone,  
25 because of a decision by the Director of Military Prosecutions under  
26 subsection (2), is imprisonment for a period of 6 months: see clause 2  
27 of Schedule 2.

- 28 (3) If the Director of Military Prosecutions decides that the trial of a  
29 class 3 offence is to be by a Military Judge alone, the Director of  
30 Military Prosecutions must inform the Registrar of this decision.

31 **3 Subsection 132A(3)**

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1 Repeal the subsection, substitute:

2 (3) A class 3 offence is to be tried as follows:

3 (a) if the Director of Military Prosecutions decides, under  
4 subsection 103A(2), that the offence is to be tried by a  
5 Military Judge alone—the offence is to be tried by a Military  
6 Judge alone; and

7 Note: The maximum punishment that may be imposed on a person who  
8 is convicted of a class 3 offence that is tried by a Military Judge  
9 alone, because of a decision by the Director of Military  
10 Prosecutions under subsection 103A(2), is imprisonment for a  
11 period of 6 months: see clause 2 of Schedule 2.

12 (c) in any other case—the offence is to be tried by a Military  
13 Judge alone, unless the accused person elects to be tried by a  
14 Military Judge and military jury.

#### 15 **4 After clause 1 of Schedule 2**

16 Insert:

17 2. The Australian Military Court must not impose any of the  
18 following punishments on a person convicted of a class 3 offence if  
19 the offence was tried by a Military Judge alone in accordance with  
20 paragraph 132A(3)(a):

- 21 (a) imprisonment for life;  
22 (b) imprisonment for a period exceeding 6 months;  
23 (c) detention for a period exceeding 6 months.

### 24 ***Defence Force Discipline Appeals Act 1955***

#### 25 **5 Subsection 15(2)**

26 Repeal the subsection, substitute:

27 (2) If:

28 (a) a question of law referred to the Tribunal under section 19A  
29 is to be heard in a place outside Australia; or

30 (b) an appeal, or a matter preliminary or incidental to an appeal,  
31 is to be heard in a place outside Australia;

32 the President may, if he or she thinks fit, direct that  
33 paragraph (1)(b) does not apply in relation to the reference, appeal  
34 or matter.

1     **6 Section 16**

2             Repeal the section, substitute:

3     **16 Member ceasing to sit on a hearing of a matter**

4             (1) This section applies if:

- 5                 (a) the hearing of a matter has been commenced before the  
6                     Tribunal but, before the matter has been finally determined, a  
7                     member sitting on the hearing has ceased to be a member or,  
8                     for any reason, has ceased to sit on the hearing; and  
9                 (b) the number of remaining members sitting on the hearing is  
10                     not less than 3; and  
11                 (c) except in the case of a matter in relation to which the  
12                     President has given a direction under subsection 15(2), the  
13                     remaining members include the President, the Deputy  
14                     President or a member who is qualified to be appointed as  
15                     President.

16             (2) The Tribunal constituted by the remaining members may, if the  
17             hearing has not been completed:

- 18                 (a) complete the hearing; and  
19                 (b) if a majority of those members concur in the decision, but not  
20                     otherwise, determine the matter.

21             (3) If, for any reason, the Tribunal constituted by the remaining  
22             members does not complete the hearing or determine the matter:

- 23                 (a) the Tribunal constituted in accordance with section 15 must,  
24                     subject to section 17, hear and determine the matter; and  
25                 (b) for that purpose, the Tribunal may have regard to the  
26                     evidence given, the arguments adduced and the reasons for  
27                     any decision given during the previous hearing.

28             (4) In this section:

29                 *matter* means:

- 30                 (a) a question of law referred to the Tribunal under section 19A;  
31                     or  
32                 (b) an appeal; or  
33                 (c) a matter preliminary or incidental to an appeal.

34     **7 Part III (heading)**

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1 Repeal the heading, substitute:

2 **Part III—References and appeals to the Tribunal**

3 **8 Before Division 1 of Part III**

4 Insert:

5 **Division 1A—References of questions of law**

6 **19A Director of Military Prosecutions may refer question of law to**  
7 **the Tribunal**

8 (1) After the completion of a trial by the Australian Military Court  
9 under the *Defence Force Discipline Act 1982*, the Director of  
10 Military Prosecutions may refer a question of law that arose in the  
11 trial to the Tribunal for decision.

12 (2) A reference under subsection (1) must be lodged with the  
13 Registrar, or with such other person as is prescribed, within 60  
14 days after the completion of the trial by the Australian Military  
15 Court.

16 (3) The Tribunal has jurisdiction to hear and determine a question of  
17 law referred to it under subsection (1).

18 **9 Paragraph 31(1)(e)**

19 Before “an appeal”, insert “a question of law referred to the Tribunal  
20 under section 19A or”.

21 **10 Section 36**

22 Omit “an appeal under this Act”, substitute “a question of law referred  
23 to the Tribunal under section 19A, or an appeal”.

24 Note: The heading to section 36 is altered by inserting “**references or**” before “**appeals**”.

25 **11 Section 36**

26 After “heard the case”, insert “to which the reference or appeal relates”.

27 **12 Section 36**

28 Before “the appeal”, insert “the question of law or”.



1 **13 At the end of paragraphs 60(a) to (f)**

2 Add “and”.

3 **14 After paragraph 60(g)**

4 Insert:

5 (ga) for making provision for or in relation to the furnishing to the  
6 Tribunal, for the purposes of a question of law referred to the  
7 Tribunal under section 19A, of:

- 8 (i) a record of the proceedings of the Australian Military  
9 Court to which the reference relates; and  
10 (ii) documents that were before the Australian Military  
11 Court in connection with those proceedings; and

1

2 **Part 2—Powers of the Provost Marshal Australian**  
3 **Defence Force**

4 *Defence Force Discipline Act 1982*

5 **15 Subsection 3(1)**

6 Insert:

7 *Provost Marshal Australian Defence Force* means the person  
8 holding the position of Provost Marshal Australian Defence Force,  
9 and includes any person acting in that position.

10 **16 After Division 6 of Part VI**

11 Insert:

12 **Division 6A—Referral of serious service offences**

13 **101ZAA Provost Marshal may refer serious service offence to**  
14 **Director of Military Prosecutions**

15 If a person is charged with a serious service offence, the Provost  
16 Marshal Australian Defence Force may, at the completion of the  
17 investigation of the offence and if he or she considers it appropriate  
18 to do so, refer the charge of the offence to the Director of Military  
19 Prosecutions.

20 **17 Subsection 103(1)**

21 Before “subsection 105A(2)”, insert “section 101ZAA,”.

1

2 **Part 3—Jurisdiction of summary authorities**

3 *Defence Force Discipline Act 1982*

4 **18 Paragraph 106(a)**

5 Omit “the rank of lieutenant-commander, major or squadron-leader;”,  
6 substitute “the rank of rear admiral, major-general or air vice-marshal;  
7 or”.

8 **19 At the end of section 106**

9 Add:

10 Note: A superior summary authority may be disqualified from trying a  
11 charge against a person because of subsection 108A(1).

12 **20 At the end of section 107**

13 Add:

14 Note: A commanding officer may be disqualified from trying a charge  
15 against a person because of subsection 108A(1).

16 **21 At the end of subsections 108(2) and (3)**

17 Add:

18 Note: A subordinate summary authority may be disqualified from trying a  
19 charge against a person because of subsection 108A(1).

20 **22 After section 108**

21 Insert:

22 **108A Disqualification of summary authority from trying a charge**

23 (1) A summary authority must not try a charge of a service offence  
24 against a person if the summary authority was involved in:

- 25 (a) the investigation of the offence; or  
26 (b) the issuing of a warrant for the arrest of the person; or  
27 (c) charging the person with the offence.

28 (2) If a summary authority is not permitted to try a charge of a service  
29 offence against a person because of subsection (1), the summary

1 authority must refer the charge to another summary authority,  
2 being a summary authority who:  
3 (a) has jurisdiction to try the charge; and  
4 (b) is not prevented from trying the charge because of  
5 subsection (1).

6 **23 At the end of paragraph 141(1)(b)**

7 Add:  
8 ; (vi) in the case of a trial by a summary authority—that the  
9 summary authority is not permitted to try the charge  
10 because of subsection 108A(1).

1

2 **Part 4—Trials by summary authorities**

3 *Defence Force Discipline Act 1982*

4 **24 Subsection 103(1)**

5 Before “130(5)”, insert “129(2) or”.

6 **25 Before section 130**

7 Insert:

8 **129 Time within which trial must be commenced**

9 (1) The trial of a charge of a service offence that is to be tried by a  
10 summary authority:

11 (a) must be commenced:

12 (i) as soon as practicable within the period of 3 months  
13 after the accused person is charged with the service  
14 offence; or

15 (ii) if the exigencies of service or other circumstances do  
16 not permit the trial to be commenced within this  
17 period—within a longer period as allowed by a superior  
18 authority; and

19 (b) must be completed as soon as practicable.

20 (2) If a summary authority that is to try a charge does not commence  
21 the trial within the period allowed under paragraph (1)(a), the  
22 summary authority must refer the charge to the Director of Military  
23 Prosecutions.

24 **26 Paragraph 130(1)(a)**

25 Repeal the paragraph, substitute:

26 (a) if the accused person is present at the hearing:

27 (i) the authority, before hearing any evidence on the  
28 charge, must ask the accused person whether he or she  
29 pleads guilty or not guilty to the charge; and

30 (ii) if the accused person pleads guilty and the authority is  
31 satisfied that the accused person understands the effect

- 1 of that plea—the authority must, subject to subsection  
2 131(3), convict the accused person;
- 3 (aa) if:
- 4 (i) the accused person has pleaded guilty to the charge in  
5 writing; and
- 6 (ii) the authority has made an order under subsection 139(4)  
7 (permitting the accused person not to be present at the  
8 hearing);
- 9 the authority must convict the accused person;

## 10 **27 Section 130A**

11 Repeal the section.

## 12 **28 At the end of Division 1 of Part VIII**

13 Add:

### 14 **131B Conviction by summary authority to have effect for service** 15 **purposes only**

- 16 (1) If a person has been convicted by a summary authority of a service  
17 offence:
- 18 (a) the conviction has effect for service purposes only; and
- 19 (b) the person is not required to disclose to any person, for any  
20 purpose (other than a service purpose), the fact that the  
21 person was convicted of the offence.
- 22 (2) This section applies to a conviction by a summary authority  
23 whether the conviction occurs before or after the commencement  
24 of this section.

## 25 **29 Subsection 139(1)**

26 Omit “subsection (2)”, substitute “subsections (2) and (5)”.

27 Note: The following heading to subsection 139(1) is inserted “*General rule*”.

## 28 **30 At the end of section 139**

29 Add:

30 *Exception—trial by summary authority*

- 31 (3) If:
-

- 1 (a) a charge is to be tried by a summary authority; and  
2 (b) because of exceptional circumstances, the accused person is  
3 unable to attend the hearing of the charge; and  
4 (c) the accused person pleads guilty to the charge in writing  
5 before the hearing;  
6 the accused person may apply in writing to the summary authority  
7 for an order permitting the accused person not to be present at the  
8 hearing.
- 9 (4) The summary authority may make an order permitting the accused  
10 person not to be present at the hearing if the authority:  
11 (a) is satisfied that the accused person understands the effect of  
12 the plea; and  
13 (b) considers that exceptional circumstances exist.
- 14 (5) If the summary authority makes an order under subsection (4), the  
15 summary authority must proceed with the trial of the charge by  
16 considering, without holding a hearing, the documents or other  
17 material provided to the summary authority in relation to the  
18 charge.

1

2 **Part 5—Amendments relating to the Registrar of the**  
3 **Australian Military Court**

4 *Defence Force Discipline Act 1982*

5 **31 Subsection 3(1) (paragraph (a) of the definition of**  
6 ***appropriate authority*)**

7 Repeal the paragraph, substitute:

8 (a) in relation to proceedings before the Australian Military  
9 Court, means:

- 10 (i) the Chief Military Judge or a Military Judge; or  
11 (ii) the Registrar; or

12 **32 At the end of subsection 141(8)**

13 Add “or the Registrar”.

14 **33 Subsection 175(1)**

15 Omit “An”, substitute “The Registrar, an”.

16 **34 Subsection 175(2)**

17 After “signed by”, insert “the Registrar,”.



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**Part 6—Miscellaneous amendments relating to the  
Australian Military Court**

*Defence Force Discipline Act 1982*

**35 Subparagraph 149A(a)(iii)**

Omit “in relation to trial by military jury”, substitute “by an accused person under subsection 132A(2) or paragraph 132A(3)(c)”.

**36 After subsection 171(1A)**

Insert:

- (1B) If the Australian Military Court imposes the punishment of dismissal from the Defence Force on a member of the Defence Force who has been convicted of a service offence, the Court may order that the dismissal is to take effect on a day specified in the order, being a day no later than 30 days after the day on which the punishment is imposed.
- (1C) A person on whom a punishment of dismissal from the Defence Force is imposed may be kept in custody until the dismissal takes effect.

1

2 **Part 7—Rights and duties of legal officers**

3 *Defence Act 1903*

4 **37 After section 122A**

5 Insert:

6 **122B Exercise of rights and discharge of duties and obligations by**  
7 **legal officers**

8 (1) A legal officer acting in that capacity is entitled to exercise his or  
9 her professional rights, and discharge his or her professional duties  
10 and obligations, in accordance with the generally accepted rights,  
11 duties and obligations applying to legal practitioners.

12 (2) In this section:

13 *legal officer* has the same meaning as in the *Defence Force*  
14 *Discipline Act 1982*.

15 *legal practitioner* has the same meaning as in the *Defence Force*  
16 *Discipline Act 1982*.

1

2 **Part 8—Technical amendments**

3 *Defence Act 1903*

4 **38 Subsection 124(2C)**

5 After “the board of inquiry,”, insert “the Chief of the Defence Force  
6 commission of inquiry,”.

7 *Defence Force Discipline Act 1982*

8 **39 Subparagraph 87(1)(c)(ii)**

9 Omit “trial;”, substitute “trial.”.

10 **40 Schedule 6 (cell at table item 23, column 2)**

11 Omit “(a) Offence against subsection 40B(1)”.

12 **41 Schedule 6 (cell at table item 23, column 2)**

13 Omit “(b)”.

14 **42 Schedule 6 (cell at table item 24, column 2)**

15 Omit “(a) Offence against subsection 40B(2)”.

16 **43 Schedule 6 (cell at table item 24, column 2)**

17 Omit “(b)”.

18 **44 Schedule 6 (table items 25 and 26)**

19 Repeal the items.

20 *Defence Force Discipline Appeals Act 1955*

21 **45 Subsection 26(2)**

22 Omit “the the”, substitute “the”.

1  
2 **Schedule 8—Application, saving and**  
3 **transitional provisions**  
4

5 **1 Definitions**

6 In this Schedule:

7 *commencement day* means the day on which Schedules 1 to 6 to this  
8 Act commence.

9 *main amendments made by this Act* means the amendments and repeals  
10 made by the following provisions of this Act:

- 11 (a) Schedule 1;  
12 (b) Schedule 2;  
13 (c) Schedule 3;  
14 (d) Schedule 4;  
15 (e) Part 2 of Schedule 5;  
16 (f) Part 3 of Schedule 7;  
17 (g) items 24 to 26, 29 and 30 of Schedule 7.

18 *old DFDA* means the *Defence Force Discipline Act 1982* as in force  
19 immediately before the commencement day.

20 *old law* means the *Defence Force Discipline Act 1982* and the *Defence*  
21 *Force Discipline Appeals Act 1955* as in force immediately before the  
22 commencement day.

23 **2 Application of main amendments made by this Act**

- 24 (1) The main amendments made by this Act apply in relation to a service  
25 offence committed by a person on or after the commencement day.
- 26 (2) The main amendments made by this Act also apply in relation to a  
27 service offence committed by a person before the commencement day  
28 if, before the commencement day:
- 29 (a) the person had not been charged with the offence under the  
30 old DFDA; or  
31 (b) the person had been charged with the offence under the old  
32 DFDA but no action to deal with the charge had been taken  
33 under the old DFDA.

1 **3 Application of amendments of offences and disciplinary**  
2 **infringements**

- 3 (1) The amendments made by the following provisions of this Act apply in  
4 relation to acts and omissions that take place on or after the  
5 commencement day:  
6 (a) Part 1 of Schedule 5;  
7 (b) Schedule 6.
- 8 (2) For the purposes of this item, if an act or omission is alleged to have  
9 taken place between 2 dates, one before and one on or after the  
10 commencement day, the act or omission is alleged to have taken place  
11 before the commencement day.

12 **4 Continued application of old law to proceedings in**  
13 **progress before commencement day**

- 14 (1) This item applies if, before the commencement day:  
15 (a) a person had been charged with a service offence under the  
16 old DFDA; and  
17 (b) proceedings dealing with the charge of the offence had been  
18 commenced under the old DFDA; and  
19 (c) those proceedings (including any appeal to the Defence Force  
20 Discipline Appeal Tribunal) had not been finally determined  
21 under the old law.
- 22 (2) Despite the main amendments made by this Act, and subject to  
23 subitem (3), the old law continues to apply after the commencement day  
24 in relation to the proceedings, including any review under Part IX of the  
25 old DFDA, as if those amendments had not been made.
- 26 (3) A review of the proceedings must not be commenced under section 155  
27 of the old DFDA after the end of 31 December 2008.

28 **5 Summary Authority Rules**

29 Rules made by the Judge Advocate General under section 149 of the old  
30 DFDA that were in force immediately before the commencement day  
31 continue in force on and after that day as if they had been made by the  
32 Chief Military Judge under section 149 of the *Defence Force Discipline*  
33 *Act 1982* as amended by item 10 of Schedule 3 to this Act.

34 **6 Proceedings before examining officers**

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- 1 (1) If, before the repeal of section 130A of the *Defence Force Discipline*  
2 *Act 1982* by item 27 of Schedule 7 to this Act:  
3 (a) a legal officer had started to hear evidence in relation to a  
4 charge under that section; but  
5 (b) the officer had not completed hearing the evidence;  
6 the officer must complete hearing the evidence in relation to the charge  
7 as if the repeal had not happened.
- 8 (2) If, before the repeal of section 130A of the *Defence Force Discipline*  
9 *Act 1982* by item 27 of Schedule 7 to this Act:  
10 (a) a commanding officer had, under that section, given a legal  
11 officer a direction to hear evidence in relation to a charge; but  
12 (b) the legal officer had not started to hear the evidence;  
13 the direction is taken not to have been made.

## 14 **7 Appointments of reviewing authorities**

15 An appointment made under section 150 of the old DFDA that was in  
16 force immediately before the commencement day continues in force on  
17 and after that day as if the appointment had been made under subsection  
18 150(1) of the *Defence Force Discipline Act 1982* as inserted by item 2  
19 of Schedule 4 to this Act.

## 20 **8 Regulations may deal with transitional, saving or** 21 **application matters**

22 The Governor-General may make regulations dealing with matters of a  
23 transitional, saving or application nature relating to amendments and  
24 repeals made by this Act.