2004-2005-2006

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Defence Legislation Amendment Bill
2006

No. , 2006

(Defence)

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

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Defence Legislation Amendment Act 2006.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table
    commences, or is taken to have commenced, in accordance with
column 2 of the table. Any other statement in column 2 has effect
according to its terms.
<table>
<thead>
<tr>
<th>Provision(s)</th>
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</thead>
<tbody>
<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day on which this Act receives the Royal Assent.</td>
<td></td>
</tr>
<tr>
<td>2. Schedule 1</td>
<td>A single day to be fixed by Proclamation.</td>
<td>However, if any of the provisions have not commenced before 1 October 2007, they commence on that day.</td>
</tr>
<tr>
<td>3. Schedules 2 and 3</td>
<td>The day on which this Act receives the Royal Assent.</td>
<td></td>
</tr>
</tbody>
</table>

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.

(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.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—The Australian Military Court

Part 1—Main amendments

Defence Force Discipline Act 1982

1 Subsection 3(1)
   Insert:
   
   *audio link* means facilities (for example, telephone facilities) that enable audio communication between persons in different places.

2 Subsection 3(1)
   Insert:
   
   *Australian Military Court* means the court created under section 114.

3 Subsection 3(1)
   Insert:
   
   *Australian Military Court Rules* means the rules made under section 149A.

4 Subsection 3(1)
   Insert:
   
   *Chief Military Judge* means the person appointed under section 188AC.

5 Subsection 3(1)
   Insert:
   
   *class 1 offence* means a service offence that is specified to be a class 1 offence in the table in Schedule 7.

6 Subsection 3(1)
   Insert:
   
   *class 2 offence* means a service offence that is:
Schedule 1  The Australian Military Court
Part 1  Main amendments

4  Defence Legislation Amendment Bill 2006  No.  , 2006

(a) specified to be a class 2 offence in the table in Schedule 7; or
(b) neither a class 1 offence nor a class 3 offence.

7  Subsection 3(1)
   Insert:
   
   class 3 offence means a service offence that:
   (a) is specified to be a class 3 offence in the table in Schedule 7;
   or
   (b) both:
       (i) has a maximum penalty of not greater than 5 years
           imprisonment; and
       (ii) is not specified to be a class 1 offence or a class 2
            offence in the table in Schedule 7.

8  Subsection 3(1)
   Insert:
   
   Military Judge means:
   (a) a person appointed under section 188AP or 188AQ; and
   (b) except in section 188AN and Division 2A of Part XI, the
       Chief Military Judge.

9  Subsection 3(1)
   Insert:
   
   military jury means a jury constituted in accordance with this Act
   (including the Australian Military Court Rules) for the trial of a
   charge of a service offence that is to be tried by a Military Judge
   and military jury.

10  Subsection 3(1)
    Insert:
    
    video link means facilities (for example, closed-circuit television
    facilities) that enable audio and visual communication between
    persons in different places.

11  Divisions 3, 4 and 5 of Part VII
    Repeal the Divisions, substitute:
Division 3—Australian Military Court

114 Creation of the Australian Military Court

(1) A court, to be known as the Australian Military Court, is created by this Act.

Note 1: The Australian Military Court is not a court for the purposes of Chapter III of the Constitution.

Note 2: The Australian Military Court is a service tribunal for the purposes of this Act: see the definition of service tribunal in subsection 3(1).

(2) The Australian Military Court consists of:

(a) the Chief Military Judge; and

(b) such other Military Judges as from time to time hold office in accordance with this Act.

115 Jurisdiction

(1) Subject to section 63, the Australian Military Court has jurisdiction to try any charge against any person.

(2) However, the Australian Military Court does not have jurisdiction to try a charge of a custodial offence.

(3) The Australian Military Court has jurisdiction to take action under Part IV in relation to a convicted person if the conviction had been referred to the Court under subsection 103(5) for that purpose.

(4) Before taking action under subsection (3), the Australian Military Court must hear evidence relevant to the determination of what action should be taken.

116 Exercise of jurisdiction

(1) For the purposes of the exercise of the jurisdiction of the Australian Military Court, the Court is to be constituted by a single Military Judge.

(2) The Australian Military Court constituted by a Military Judge may sit and exercise the jurisdiction of the Court even if the Court constituted by another Military Judge is at the same time sitting and exercising the jurisdiction of the Court.
117 Venue

(1) The Australian Military Court may sit at any place in or outside Australia.

(2) The Australian Military Court may, at any stage of proceedings in the Court, order that:
   (a) the proceedings; or
   (b) a part of the proceedings;
   be conducted or continued at a place specified in the order, subject to such conditions (if any) as the Court imposes.

118 Referral of cases to the Australian Military Court and nomination of Military Judges

Referral of charges

(1) The Registrar must refer a charge to the Australian Military Court if the Director of Military Prosecutions requests the Registrar to do so.

(2) The Chief Military Judge must nominate the Military Judge who is to try the charge.

Referral of convictions

(3) The Registrar must refer a conviction to the Australian Military Court to take action under Part IV in relation to a convicted person if the Director of Military Prosecutions requests the Registrar to do so.

(4) The Chief Military Judge must nominate the Military Judge who is to take action in relation to the person.

119 Seal of the Australian Military Court

(1) The Australian Military Court is to have a seal, and the design of the seal is to be determined in writing by the Minister.

(2) The seal of the Australian Military Court must be kept in such custody as the Chief Military Judge directs.
(3) The seal of the Australian Military Court must be affixed to
documents as provided by this or any other Act or by the
Australian Military Court Rules.

(4) A determination made under subsection (1) is not a legislative
instrument.

120 Stamp of the Australian Military Court

(1) There are to be one or more Australian Military Court stamps. For
this purpose, an Australian Military Court stamp is a stamp the
design of which is, as nearly as practicable, the same as the design
of the seal of the Australian Military Court.

(2) A document or a copy of a document marked with an Australian
Military Court stamp is as valid and effectual as if it had been
sealed with the seal of the Australian Military Court.

(3) An Australian Military Court stamp must be affixed to documents
as provided by this or any other Act or by the Australian Military
Court Rules.

121 Staff of the Australian Military Court

The staff necessary to assist the Australian Military Court are to be
the following:

(a) defence members made available for the purpose by the
appropriate service chief;

(b) persons engaged under the Public Service Act 1999 and made
available for the purpose by the Secretary of the Department.

Division 4—Military jury

122 Constitution of a military jury

(1) There are to be 6 members on a military jury.

(2) At least one member of the jury must hold a rank that is not lower
than the naval rank of commander or the rank of lieutenant-colonel
or wing commander.

(3) The requirements of subsection (2) apply only if, and to the extent
that, the exigencies of service permit.
123 Eligibility to be a member of a military jury

Eligibility where accused is an officer or a defence civilian

(1) Where the accused person is an officer or a defence civilian, a person is eligible to be a member, or a reserve member, of a military jury for the trial of the accused person if:
   (a) the person is an officer; and
   (b) the person has been an officer for a continuous period of not less than 3 years or for periods that total no less than 3 years; and
   (c) if the accused person is an officer—the person holds a rank that is not lower than the rank held by the accused person.

Eligibility where accused is not an officer or a defence civilian

(2) Where the accused person is not an officer or a defence civilian, a person is eligible to be a member, or a reserve member, of a military jury for the trial of the accused person if:
   (a) the person:
      (i) is an officer; or
      (ii) holds a rank not lower than the naval rank of warrant officer, the army rank of warrant officer class 1, or the air force rank of warrant officer; and
   (b) the person has been an officer, or held a rank not lower than warrant officer or warrant officer class 1, for a continuous period of not less than 3 years or for periods that total no less than 3 years.

(3) The requirements of this section apply only if, and to the extent that, the exigencies of service permit.

124 Determination of questions by a military jury

(1) In a trial of a charge of a service offence that is to be tried by Military Judge and military jury, the military jury is responsible for deciding the questions whether the accused person:
   (a) is guilty or not guilty of the offence; and
   (b) at the time of the act or omission the subject of the charge, was suffering from such unsoundness of mind as not to be responsible, in accordance with law, for that act or omission.
(2) A decision of a military jury on those questions is to be made by the agreement of at least a two-thirds majority of the jury members.

(3) The military jury must sit without any other person present when deciding those questions.

12 Division 2 of Part VIII (heading)

Repeal the heading, substitute:

Division 2—Trial by the Australian Military Court

13 Sections 132 to 135

Repeal the sections, substitute:

132A Trial of class 1, class 2 and class 3 offences

(1) A class 1 offence is to be tried by a Military Judge and military jury.

(2) A class 2 offence is to be tried by a Military Judge and military jury, unless the accused person elects to be tried by a Military Judge alone.

(3) A class 3 offence is to be tried by a Military Judge alone, unless the accused person elects to be tried by a Military Judge and military jury.

132B Trial by Military Judge and military jury

(1) Subject to section 132E, the trial of a charge of a service offence that is to be tried by a Military Judge and military jury is to be in accordance with the following subsections.

(2) Before evidence on the charge is heard, the Military Judge must ask the accused person whether he or she pleads guilty or not guilty to the charge.

(3) If the accused person pleads guilty and the Military Judge is satisfied that the person understands the effect of that plea, the Military Judge must convict the person.

(4) If:
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(a) the accused person pleads not guilty, refuses to plead or does not plead intelligibly; or
(b) the Military Judge is not satisfied that the accused person, in pleading guilty, understands the effect of that plea;
the Military Judge must record a plea of not guilty and the Military Judge and the military jury must proceed to hear the evidence on the charge.

(5) If the Military Judge, after hearing the evidence on the charge adduced by the prosecution, rules that that evidence is insufficient to support the charge, the Military Judge must dismiss the charge.

(6) If the Military Judge, after hearing the evidence on the charge adduced by the prosecution, rules that that evidence is sufficient to support the charge, the Military Judge and military jury must proceed with the trial.

(7) If the military jury finds the accused person not guilty, the Military Judge must acquit the person.

(8) If the military jury finds the accused person guilty, the Military Judge must convict the person.

132C  Powers of the Military Judge in trial by Military Judge and military jury

(1) In the trial of a charge of a service offence that is to be tried by a Military Judge and military jury, the Military Judge must give any ruling, and exercise any discretion, that, in accordance with the law in force in the Jervis Bay Territory, would be given or exercised by a judge in a trial by jury.

(2) If, in a trial by jury in the Jervis Bay Territory, the judge would, in accordance with the law in force in that Territory, sit in the absence of the jury for any purpose in connection with:
(a) the giving of a ruling; or
(b) the exercise of a discretion;
the Military Judge must, for any purpose in connection with the giving of such a ruling, or the exercise of such a discretion, sit without the members of the military jury.
(3) A ruling given by the Military Judge in accordance with subsection (1) and a decision made by the Military Judge under subsection 141(5) or (6) is binding on the military jury.

(4) The powers conferred on the Military Judge by this section are in addition to any other powers conferred on the Military Judge by any other provision of this Act, the regulations or the Australian Military Court Rules.

132D Trial by Military Judge alone

(1) Subject to section 132E, the trial of a charge of a service offence that is to be tried by a Military Judge alone is to be in accordance with the following subsections.

(2) Before evidence on the charge is heard, the Military Judge must ask the accused person whether he or she pleads guilty or not guilty to the charge.

(3) If the accused person pleads guilty and the Military Judge is satisfied that the person understands the effect of that plea, the Military Judge must convict the person.

(4) If:

(a) the accused person pleads not guilty, refuses to plead or does not plead intelligibly; or
(b) the Military Judge is not satisfied that the accused person, in pleading guilty, understands the effect of that plea;
the Military Judge must record a plea of not guilty and proceed to hear the evidence on the charge.

(5) If the Military Judge, after hearing the evidence on the charge adduced by the prosecution, rules that that evidence is insufficient to support the charge, the Military Judge must dismiss the charge.

(6) If the Military Judge, after hearing the evidence on the charge adduced by the prosecution, rules that that evidence is sufficient to support the charge, the Military Judge must proceed with the trial.

(7) If the Military Judge finds the accused person not guilty, the Military Judge must acquit the person.

(8) If the Military Judge finds the accused person guilty, the Military Judge must convict the person.
132E  Additional matters about trials by Military Judge alone or with a military jury

(1) If, under subsection 132B(2) or 132D(2), an accused person pleads guilty to a service offence that is one (other than the first) of 2 or more charges stated in the charge sheet in the alternative, the Military Judge must:

(a) if the Director of Military Prosecutions notifies the Judge that he or she does not object to the acceptance of the plea—accept the plea and proceed in accordance with section 132B or 132D; or

(b) in any other case—record a plea of not guilty and proceed in accordance with section 132B or 132D.

(2) If an accused person who has pleaded not guilty withdraws his or her plea and pleads guilty, the Military Judge must, if the Judge is satisfied that the person understands the effect of that plea, substitute a plea of guilty for the plea of not guilty and proceed in accordance with section 132B or 132D.

(3) A Military Judge is not required to give a ruling of the kind referred to in subsection 132B(5) or 132D(5) unless:

(a) the accused person has submitted that the Judge should give the ruling; or

(b) the interests of justice require that the Judge should give the ruling.

(4) A Military Judge is not required to give a ruling of the kind referred to in subsection 132B(6) or 132D(6).

132F  Australian Military Court to take action against convicted persons

(1) If an accused person is convicted under section 132B or 132D, the Australian Military Court must take action under Part IV in relation to the convicted person.

(2) Before taking action, the Court must hear evidence relevant to determining what action should be taken.

14  After section 148

Insert:
Subdivision B—Use of video and audio links in the Australian Military Court

148A Testimony by video link or audio link

(1) The Australian Military Court may, for the purposes of proceedings before it, direct or allow testimony to be given by video link or audio link.

(2) The testimony must be given on oath or affirmation unless:
   (a) the person giving the testimony is in a foreign country; and
   (b) either:
      (i) the law in force in that country does not permit the person to give testimony on oath or affirmation for the purposes of the proceedings; or
      (ii) the law in force in that country would make it inconvenient for the person to give testimony on oath or affirmation for the purposes of the proceedings; and
   (c) the Court is satisfied that it is appropriate for the testimony to be given otherwise than on oath or affirmation.

(3) If the testimony is given otherwise than on oath or affirmation, the Court is to give the testimony such weight as the Court thinks fit in the circumstances.

(4) The power conferred on the Court by subsection (1) may be exercised:
   (a) on the application of the accused person or the Director of Military Prosecutions; or
   (b) on the Court’s own initiative.

(5) This section applies whether the person giving testimony is in or outside Australia, but does not apply if the person giving testimony is in New Zealand.

Note: See the Evidence and Procedure (New Zealand) Act 1994.

148B Appearance of persons or submissions made by video link or audio link

(1) The Australian Military Court may, for the purposes of proceedings before it, direct or allow a person:
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14 (a) to appear before the Court; or
(b) to make a submission to the Court;
by way of video link or audio link.

(2) The power conferred on the Court by subsection (1) may be
exercised:
(a) on the application of the accused person or the Director of
Military Prosecutions; or
(b) on the Court’s own initiative.

(3) This section applies whether the person appearing is in or outside
Australia, but does not apply if the person appearing is in New
Zealand.

Note:  See the Evidence and Procedure (New Zealand) Act 1994.

148C Conditions for use of video links and audio links

Video link

(1) The Australian Military Court must not exercise the power
conferred by subsection 148A(1) or 148B(1) in relation to a video
link unless the Court is satisfied that the following conditions are
met in relation to the video link:
(a) the courtroom or other place where the Court is sitting is
equipped with facilities (for example, television monitors)
that enable all eligible persons present in that courtroom or
place to see and hear the person (the remote person) who is:
(i) giving the testimony; or
(ii) appearing; or
(iii) making the submission;
by way of the video link;
(b) the place at which the remote person is located is equipped
with facilities (for example, television monitors) that enable
all eligible persons present in that place to see and hear each
eligible person who is present in the courtroom or other place
where the Court is sitting;
(c) such other conditions (if any) as are prescribed by the
Australian Military Court Rules in relation to the video link;
(d) such other conditions (if any) as are imposed by the Court.
(2) The conditions that may be prescribed by the Australian Military Court Rules in accordance with paragraph (1)(c) include conditions relating to:
   (a) the form of the video link; and
   (b) the equipment, or class of equipment, used to establish the link; and
   (c) the layout of cameras; and
   (d) the standard of transmission; and
   (e) the speed of transmission; and
   (f) the quality of communication.

Audio link

(3) The Court must not exercise the power conferred by subsection 148A(1) or 148B(1) in relation to an audio link unless the Court is satisfied that the following conditions are met in relation to the audio link:
   (a) the courtroom or other place where the Court is sitting is equipped with facilities (for example, loudspeakers) that enable all eligible persons present in that courtroom or place to hear the person (the remote person) who is:
      (i) giving the testimony; or
      (ii) appearing; or
      (iii) making the submission;
      by way of the audio link;
   (b) the place at which the remote person is located is equipped with facilities (for example, loudspeakers) that enable all eligible persons present in that place to hear each eligible person who is present in the courtroom or other place where the Court is sitting;
   (c) such other conditions (if any) as are prescribed by the Australian Military Court Rules in relation to the audio link;
   (d) such other conditions (if any) as are imposed by the Court.

(4) The conditions that may be prescribed by the Australian Military Court Rules in accordance with paragraph (3)(c) include conditions relating to:
   (a) the form of the audio link; and
   (b) the equipment, or class of equipment, used to establish the audio link; and
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(c) the standard of transmission; and
(d) the speed of transmission; and
(e) the quality of communication.

Eligible persons

(5) For the purposes of the application of this section to particular proceedings, eligible persons are such persons as the Australian Military Court considers should be treated as eligible persons for the purposes of the proceedings.

148D Putting documents to a person by video link or audio link

If, in the course of an examination or appearance of a person by video link or audio link in accordance with this Subdivision, it is necessary to put a document to the person, the Australian Military Court may direct or allow the document to be put to the person:

(a) if the document is physically present in the courtroom or other place where the Court is sitting:
   (i) by causing a copy of the document to be transmitted to the place where the person is located; and
   (ii) by causing the transmitted copy to be put to the person;
   or
(b) if the document is physically present in the place where the person is located:
   (i) by causing the document to be put to the person; and
   (ii) by causing a copy of the document to be transmitted to the courtroom or other place where the Court is sitting.

148E Administration of oaths and affirmations

An oath to be sworn, or an affirmation to be made, by a person (the remote person) who is to give testimony by video link or audio link in accordance with this Subdivision may be administered:

(a) by means of the video link or audio link, as the case may be, in a way that, as nearly as practicable, corresponds to the way in which the oath or affirmation would be administered if the remote person were to give testimony in the courtroom or other place where the Australian Military Court is sitting; or
(b) if the Australian Military Court allows another person who is present at the place where the remote person is located to administer the oath or affirmation—by that other person.

148F New Zealand proceedings

This Subdivision does not affect the operation of the Evidence and Procedure (New Zealand) Act 1994.

15 Before section 149

Insert:

Subdivision C—Rules of procedure for service tribunals

16 Section 149

Repeal the section, substitute:

149 The Summary Authority Rules

The Judge Advocate General may, by legislative instrument, make rules, to be known as the Summary Authority Rules, providing for the practice and procedure to be followed by summary authorities and, in particular, providing for:

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

149A The Australian Military Court Rules

The Chief Military Judge may, by legislative instrument, make rules, to be known as the Australian Military Court Rules, providing for:
(a) the practice and procedure to be followed by the Court and, in particular, providing for:

   (i) pre-trial hearings and directions; and
   (ii) the attendance of witnesses; and
   (iii) the manner and timing of elections in relation to trial by military jury; and
   (iv) the giving of testimony and other evidence; and
   (v) the production of documents; and
   (vi) the administration of oaths and affirmations; and
   (vii) the forms to be used in relation to proceedings before the Court; and
   (viii) the service of any process of the Court; and
   (ix) charge sheets in proceedings before the Court; and
   (x) the manner and form of charges brought before the Court; and
   (xi) the recording of proceedings of the Court; and
   (xii) the duties of the Registrar in respect of the practice and procedure of the Court; and
   (xiii) the maintenance of the customs and traditions of the Defence Force in proceedings before the Court; and

(b) matters concerning a military jury, including the summoning, attendance, empanelling of, the right of challenge, polling and the discharge of the jury; and

(c) any matter required or permitted by this Act to be prescribed by the Rules.

17 Division 2 of Part XI

Repeal the Division, substitute:

Division 2—Chief Military Judge

188AA Chief Military Judge

There is to be a Chief Military Judge of the Australian Military Court.

188AB Role of the Chief Military Judge

The Chief Military Judge is responsible for:
(a) ensuring the orderly and expeditious discharge of the business of the Australian Military Court; and
(b) managing the administrative affairs of the Australian Military Court; and
(c) matters conferred on the Chief Military Judge by or under this Act.

188AC Appointment of Chief Military Judge

(1) The Chief Military Judge is to be appointed by the Minister by written instrument.
(2) The Chief Military Judge holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
(3) The Chief Military Judge is not eligible for reappointment as the Chief Military Judge.
(4) The Chief Military Judge holds office on a full-time basis.

188AD Qualifications for Chief Military Judge

A person must not be appointed as the Chief Military Judge unless:
(a) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years; and
(b) the person is a member of the Permanent Navy, the Regular Army or the Permanent Air Force, or is a member of the Reserves who is rendering continuous full-time service; and
(c) the person holds a rank not lower than the naval rank of commodore or the rank of brigadier or air commodore; and
(d) the person meets the person’s individual service deployment requirements.

188AE Selection of Chief Military Judge

(1) The Minister may, by notice in writing given to the Chief of the Defence Force, request the Chief of the Defence Force to establish an independent selection committee to give to the Minister, within the period specified in the notice:
(a) the name of a person, or the names of persons, the committee considers suitable for appointment as the Chief Military Judge; and
(b) all the applications made for the office; and
(c) any other thing specified by the Minister in the notice.

(2) If the Chief of the Defence Force receives such a notice, the Chief
of the Defence Force must establish the committee.

(3) The committee must invite all persons who satisfy, or who are
capable of satisfying, the qualification requirements in
section 188AD to apply for appointment as the Chief Military
Judge within the period specified in the notice under
subsection (1).

(4) The appointment of a person as the Chief Military Judge is not
invalid because:
(a) of a defect or irregularity in the process for selecting the
person for appointment; or
(b) the committee did not comply with subsection (3).

188AF  Oath or affirmation

(1) The Chief Military Judge must, before proceeding to discharge the
duties of his or her office, make and subscribe an oath or
affirmation in accordance with the form in Schedule 4.

(2) An oath or affirmation under this section is to be made before:
(a) in the case of the first Chief Military Judge—the Judge
Advocate General; or
(b) in any other case—a Military Judge.

188AG  Remuneration

(1) Subject to this section, the Chief Military Judge is to be paid the
remuneration that is determined by the Remuneration Tribunal. If
no determination of that remuneration by the Tribunal is in
operation, he or she is to be paid the remuneration that is
prescribed.

(2) The Chief Military Judge is to be paid the allowances that are
prescribed.

(3) Subsections (1) and (2) have effect subject to the Remuneration
188AH Leave of absence

(1) The Chief Military Judge has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant the Chief Military Judge leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

188AI No outside employment

The Chief Military Judge must not engage in employment outside the duties of his or her office.

188AJ No promotion

The Chief Military Judge is not eligible for a promotion in rank during the period he or she is the Chief Military Judge.

188AK Resignation

The Chief Military Judge may resign his or her appointment by giving the Minister a written resignation.

188AL Termination of appointment

(1) The Minister may terminate the appointment of the Chief Military Judge:
   (a) for misbehaviour; or
   (b) for physical or mental incapacity; or
   (c) if the Chief Military Judge no longer meets his or her individual service deployment requirements.

(2) The Chief Military Judge ceases to hold office if he or she:
   (a) ceases to be enrolled as a legal practitioner; or
   (b) is neither:
      (i) a member of the Permanent Navy, the Regular Army or the Permanent Air Force; nor
      (ii) a member of the Reserves who is rendering continuous full-time service; or
   (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with
his or her creditors or makes an assignment of his or her
remuneration for their benefit; or
(d) is absent from duty, except on leave of absence, for 14
consecutive days or for 28 days in any 12 months.

188AM  Retirement from Defence Force when cease to hold office
A person ceases to be a member of the Defence Force when the
person ceases to hold office as the Chief Military Judge.

188AN  Acting Chief Military Judge
(1) The Minister may appoint a full-time Military Judge to act as the
Chief Military Judge:
(a) during a vacancy in the office, whether or not an appointment
has previously been made to that office; or
(b) during any period, or during all periods, when the Chief
Military Judge is absent from duty, or is, for any other
reason, unable to perform the functions of his or her office.

(2) Anything done by or in relation to a person purporting to act under
this section is not invalid merely because:
(a) the occasion for the appointment had not arisen; or
(b) there was a defect or irregularity in connection with the
appointment; or
(c) the appointment had ceased to have effect; or
(d) the occasion to act had not arisen or had ceased.

Division 2A—Military Judges

188AO  Military Judges
There are to be Military Judges of the Australian Military Court.

188AP  Appointment of Military Judges
(1) A Military Judge is to be appointed by the Minister by written
instrument.
(2) A Military Judge must be appointed either as a full-time Military
Judge or as a part-time Military Judge.
(3) There are to be 2 full-time Military Judges and no more than 8 part-time Military Judges. (To avoid doubt, this subsection does not require there to be 8 part-time Military Judges at any one time.)

(4) A Military Judge holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

(5) A full-time Military Judge holds office on a full-time basis and a part-time Military Judge holds office on a part-time basis.

188AQ Exceptional circumstance for reappointment of a particular Military Judge

(1) A Military Judge is not eligible for reappointment as a Military Judge except in the following circumstances.

(2) The Minister may, by written instrument, reappoint a particular Military Judge if, in the Minister’s opinion, the level of experience on the Australian Military Court would be reduced to an extent that could be detrimental to the effective operation of the Court, in light of existing and possible future demands on the Court, if the Military Judge were not reappointed.

(3) However, the Minister must not reappoint the Military Judge unless the Minister:
   (a) has requested the Chief Military Judge to provide a report on the workload of, and level of experience on, the Court in light of existing or likely vacancies in the office of Military Judge; and
   (b) has received and considered the report; and
   (c) is satisfied that the Military Judge satisfies the qualification requirements in section 188AR.

(4) A Military Judge reappointed under this section holds office for the period specified in the instrument of reappointment. The period must not be less than 3 years and not exceed 5 years.

(5) A Military Judge reappointed under this section is not eligible for any further reappointment.
188AR  Qualifications for Military Judges

**Full-time Military Judges**

(1) A person must not be appointed as a full-time Military Judge unless:
   (a) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years; and
   (b) the person is a member of:
      (i) the Permanent Navy, the Regular Army or the Permanent Air Force; or
      (ii) is a member of the Reserves and is rendering continuous full-time service; and
   (c) the person holds a rank not lower than the naval rank of commander or the rank of lieutenant colonel or wing commander; and
   (d) the person meets the person’s individual service deployment requirements.

**Part-time Military Judges**

(2) A person must not be appointed as a part-time Military Judge unless:
   (a) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years; and
   (b) the person is a member of the Reserves and is not rendering continuous full-time service; and
   (c) the person holds a rank not lower than the naval rank of commander or the rank of lieutenant colonel or wing commander; and
   (d) the person meets the person’s individual service deployment requirements.

188AS  Selection of Military Judges

(1) The Minister may, by notice in writing given to the Chief of the Defence Force, request the Chief of the Defence Force to establish an independent selection committee to give to the Minister, within the period specified in the notice:
   (a) the name of a person, or the names of persons, the committee considers suitable for appointment as a Military Judge; and
(b) all the applications made for the office; and
(c) any other thing specified by the Minister in the notice.

(2) If the Chief of the Defence Force receives such a notice, the Chief of the Defence Force must establish the committee.

(3) The committee must invite all persons who satisfy, or who are capable of satisfying, the qualification requirements in section 188AR to apply for nomination for appointment as a Military Judge within the period specified in the notice under subsection (1).

(4) The appointment of a person as a Military Judge is not invalid because:
   (a) of a defect or irregularity in the process for selecting the person for appointment; or
   (b) the committee did not comply with subsection (3).

188AT Oath or affirmation

(1) A Military Judge must, before proceeding to discharge the duties of his or her office, make and subscribe an oath or affirmation in accordance with the form in Schedule 4.

(2) An oath or affirmation under this section is to be made before the Chief Military Judge or a Military Judge.

188AU Remuneration

(1) Subject to this section, a Military Judge is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, he or she is to be paid the remuneration that is prescribed.

(2) A Military Judge is to be paid the allowances that are prescribed.

(3) Subsections (1) and (2) have effect subject to the Remuneration Tribunal Act 1973.
188AV Leave of absence

(1) A Military Judge has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant a Military Judge leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

188AW Outside employment

Full-time Military Judges

(1) A full-time Military Judge must not engage in employment outside the duties of his or her office.

Part-time Military Judges

(2) A part-time Military Judge must not engage in employment outside the duties of his or her office as Military Judge if to do so would conflict with his or her duties as Military Judge.

188AX No promotion

A Military Judge is not eligible for a promotion in rank during the period he or she is a Military Judge, unless the promotion occurs to enable the person to be appointed as the Chief Military Judge.

188AY Resignation

A Military Judge may resign his or her appointment by giving the Minister a written resignation.

188AZ Termination of appointment

(1) The Minister may terminate the appointment of a Military Judge:

(a) for misbehaviour; or

(b) for physical or mental incapacity; or

(c) if the Military Judge no longer meets his or her individual service deployment requirements.

(2) A Military Judge ceases to hold office if:

(a) he or she ceases to be enrolled as a legal practitioner; or
(b) if he or she is a full-time Military Judge—he or she is neither:
   (i) a member of the Permanent Navy, the Regular Army or the Permanent Air Force; nor
   (ii) a member of the Reserves who is rendering continuous full-time service; or
(c) if he or she is a part-time Military Judge—he or she is not a member of the Reserves who is not rendering continuous full-time service; or
(d) he or she becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
(e) he or she is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months.

188BA  Retirement from Defence Force when cease to hold office

A person ceases to be a member of the Defence Force when the person ceases to hold office as a Military Judge unless, immediately after the person ceases to hold office, the person is appointed as the Chief Military Judge.

18  After section 196B

Insert:

196C  Annual report relating to the operations of the Australian Military Court

(1) The Chief Military Judge must, as soon as practicable after each 31 December, prepare and give to the Minister, for presentation to the Parliament, a report relating to:
   (a) the operations of the Australian Military Court; and
   (b) the operations of the Australian Military Court Rules; during the year ending on that 31 December.

(2) The report must set out such statistical information as the Chief Military Judge considers appropriate.
(3) The first report is to relate to the period beginning on the day on which this section commences and ending on the next 31 December.

19 At the end of the Act

Add:

Schedule 7—Class 1, class 2 and class 3 offences

Note: See subsection 3(1) for definitions of class 1 offence, class 2 offence and class 3 offence.

<table>
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<tr>
<th>Item</th>
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<th>is the following class of offence:</th>
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### Class 1, class 2 and class 3 offences

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### Schedule 1  The Australian Military Court

#### Part 1  Main amendments

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**Defence Force Discipline Appeals Act 1955**

20 **Subsection 4(1) (definition of appellant)**

   Repeal the definition.

21 **Subsection 4(1)**

   Insert:
Schedule 1 The Australian Military Court
Part 1 Main amendments

*court order* means:
(a) an order made by the Australian Military Court under
subsection 75(1) of the *Defence Force Discipline Act 1982*;
or
(b) an order made by the Australian Military Court under
section 83 of that Act; or
(c) an order made by the Australian Military Court under
section 84 of that Act.

22 Subsection 4(1)
Insert:

*Director of Military Prosecutions* means the Director of Military
Prosecutions established under section 188G of the *Defence Force
Discipline Act 1982*.

23 Subsection 4(1)
Insert:

*offender appellant* means a convicted person or a prescribed
acquitted person who:
(a) is a party to an appeal; or
(b) makes an application for leave to appeal;
under this Act to the Tribunal.

24 Subsection 4(1)
Insert:

*punishment* means a punishment imposed by the Australian
Military Court under the *Defence Force Discipline Act 1982*.

25 At the end of section 20
Add:

(3) A convicted person may appeal to the Tribunal against a
punishment imposed, or a court order made, in respect of his or her
conviction.

(4) The Director of Military Prosecutions may appeal to the Tribunal
against a punishment imposed, or a court order made, in respect of
a conviction.
26 Subsection 21(2)

Repeal the subsection, substitute:

(2) In subsection (1), appropriate period, in relation to proceedings before the Australian Military Court that have resulted in a conviction, a prescribed acquittal, the imposition of a punishment or the making of a court order, means:

(a) if the appeal or application to appeal is against a conviction—the period of 60 days starting on the day of the conviction; or
(b) if the appeal or application to appeal is against a prescribed acquittal—the period of 60 days starting on the day of the prescribed acquittal; or
(c) if the appeal is against a punishment or a court order—the period of 60 days starting on the day the punishment is imposed or the court order is made.

27 Section 22

Repeal the section, substitute:

22 Frivolous or vexatious appeals by an offender appellant

If:

(a) an offender appellant lodges an appeal against a conviction, a punishment or a court order, or an application for leave to appeal against a conviction; and

(b) the Tribunal dismisses the appeal or application; and

(c) it appears to the Tribunal that the appeal or application was frivolous or vexatious;

the Tribunal may order that any punishment of imprisonment or detention imposed on the offender appellant in the proceedings in relation to which the appeal or application was brought must be taken to commence on the day on which the Tribunal dismisses the appeal or application.

28 At the end of Division 2 of Part III

Add:
27 Varying etc. punishments and orders

(1) In an appeal against a punishment or a court order, the Tribunal, in its discretion, may:
   (a) confirm, quash or vary the punishment or order; and
   (b) impose a different punishment or order; and
   (c) in the case of a punishment—make a court order; and
   (d) in the case of a court order—impose a punishment.

(2) Any punishment or court order varied or imposed by the Tribunal under this section has the same effect, and is to be enforced in the same manner, as if it had been imposed by the Australian Military Court under the Defence Force Discipline Act 1982.

(3) However, Part IV of the Defence Force Discipline Act 1982 applies to the Tribunal for the purposes of this section in the same way that it applies to the Australian Military Court for the purposes of that Act.

29 After subsection 37(1)

Insert:

(1A) If the Tribunal dismisses an appeal by the Director of Military Prosecutions, it may, if it thinks fit, order the Commonwealth to pay to the offender appellant the whole or any part of the costs of the appeal that were incurred by the offender appellant.

30 Subsection 51(1)

Omit “the appellant or the Chief of the Defence Force or a service chief”, substitute “the offender appellant or the Director of Military Prosecutions”.

31 Subsection 52(1)

Omit “appellant or the Chief of the Defence Force or a service chief”, substitute “offender appellant or the Director of Military Prosecutions”.

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34 Defence Legislation Amendment Bill 2006 No. , 2006
Part 2—Consequential amendments

Defence Act 1903

32 Paragraph 89(1)(a)
Omit “a court martial, a judge advocate, a Defence Force magistrate”, substitute “a military jury, a Military Judge”.

33 Paragraph 89(1)(a)
Omit “judge advocate, magistrate”, substitute “Judge”.

34 Subsection 89(2)
Repeal the subsection, substitute:

(2) In this section, military jury, Military Judge and summary authority have the same respective meanings as they have in the Defence Force Discipline Act 1982.

35 Subsection 116C(2)
Repeal the subsection, substitute:

(2) If a part of the Defence Force and a part of the forces of another country to which this subsection applies are acting in combination (either within or beyond the territorial limits of Australia), the Governor-General may, by order in writing, appoint an officer of the forces of that other country to command the combined force, or any part of the combined force.

(2A) An officer appointed under subsection (2) has, subject to such restrictions and limitations as are specified by the Chief of the Defence Force by order in writing, over members of the Defence Force serving in that combined force or part of that force, the same powers of command and discipline (including the power to impose punishments) as if he or she were an officer of the Defence Force holding:

(a) that appointment; and

(b) the rank in the Defence Force that corresponds to the rank that he or she holds in the force to which he or she belongs.
Defence Force Discipline Act 1982

36 Subsection 3(1) (paragraphs (a) and (b) of the definition of appropriate authority)
Repeal the paragraphs, substitute:
(a) in relation to proceedings before the Australian Military Court, means the Australian Military Court.

37 Subsection 3(1) (definition of Chief Judge Advocate)
Repeal the definition.

38 Subsection 3(1) (definition of Defence Force magistrate)
Repeal the definition.

39 Subsection 3(1) (definition of judge advocate)
Repeal the definition.

40 Subsection 3(1) (definition of judge advocates’ panel)
Repeal the definition.

41 Subsection 3(1) (definition of prescribed acquittal)
Omit “a court martial or a Defence Force magistrate”, substitute “the Australian Military Court”.

42 Subsection 3(1) (definition of President)
Repeal the definition.

43 Subsection 3(1)
Insert:
Registrar means the Registrar of the Australian Military Court appointed under section 188FB.

44 Subsection 3(1) (definition of Registrar of Military Justice)
Repeal the definition.

45 Subsection 3(1) (definition of rules of procedure)
Omit “rules of procedure in force under section 149”, substitute “the Australian Military Court Rules and the Summary Authority Rules”.

36 Defence Legislation Amendment Bill 2006 No. 1, 2006
46 Subsection 3(1) (definition of service tribunal)
Omit “a court martial, a Defence Force magistrate”, substitute “the Australian Military Court”.

47 Subsection 3(1)
Insert:

Summary Authority Rules means the rules made under section 149.

48 Paragraph 5A(a)
Omit “a Defence Force magistrate or a court martial”, substitute “the Australian Military Court”.

49 Paragraph 53(4)(a)
Repeal the paragraph, substitute:
(a) insults a member of a military jury, a Military Judge or a summary authority in, or in relation to, the exercise of his or her powers or functions as such a member, Judge or authority; or

50 Subsection 53(5)
Omit “a service tribunal that is a court martial or a Defence Force magistrate, during proceedings before the tribunal, the tribunal”, substitute “the Australian Military Court during proceedings before the Court, the Court”.

51 Subsection 53(6)
Omit “a service tribunal”, substitute “the Australian Military Court”.

52 Subsection 67(1)
Omit “A court martial or a Defence Force magistrate shall”, substitute “The Australian Military Court must”.

53 Subsection 77(1)
Omit “a court martial or a Defence Force magistrate”, substitute “the Australian Military Court”.

54 Paragraph 77(1)(b)
Omit “tribunal”, substitute “Court”.

55 Subsection 77(1)

Omit “the court martial or the Defence Force magistrate”, substitute “the Court”.

56 Subsection 77(2)

Omit “A court martial or a Defence Force magistrate shall”, substitute “The Australian Military Court must”.

57 Subsection 77(3)

Repeal the subsection, substitute:

(3) If the Australian Military Court does not take a service offence into consideration under subsection (1) because:
(a) the prosecution did not give its consent; or
(b) the Court rejected the convicted person’s request;
an admission for the purposes of paragraph (1)(c) in relation to that service offence is not admissible as evidence in:
(c) any other proceeding before a service tribunal in respect of that service offence; or
(d) any proceeding in a civil court in respect of a civil court offence that is substantially the same offence as that service offence.

58 Subsections 80(1) and (4)

Omit “subsections 172(1) and (2)”, substitute “subsection 172(2)”.

59 Subparagraphs 87(1)(c)(ii) and (iii)

Repeal the subparagraphs, substitute:

(ii) request the Registrar to refer the charge to the Australian Military Court for trial;

60 Subsection 87(1) (note)

Repeal the note.

61 Subsection 88(1)

Omit “of Military Justice”.

Defence Legislation Amendment Bill 2006 No. , 2006
62 Subsection 88(1A)
Repeal the subsection, substitute:

(1A) The Registrar may carry out an action under subsection (1) only if the Australian Military Court directs the Registrar to carry out the action.

63 Subsection 101F(5)
Omit “172(3A), (4) or (5)”, substitute “172(5)”.  

64 Subsection 101J(1)
Omit “, or, in the case of a court martial, the judge advocate of the court martial,”.  

65 Subsections 101JA(3) and (4)
Omit “, or, in the case of a court martial, the judge advocate of the court martial,”. 

66 Subsection 101JA(5)
Repeal the subsection, substitute:

(5) If proceedings are before a military jury and the Military Judge permits evidence to be given under subsection (3) or (4), the Judge must:

(a) inform the members of the military jury of:

(i) the non-compliance with the requirements of this section; or

(ii) the absence of sufficient evidence of compliance with the requirements of this section; and

(b) give the members such warning about the evidence as he or she thinks appropriate in the circumstances.

67 Subsections 101K(8) and (9)
Omit “, or, in the case of a court martial, the judge advocate of the court martial,”.

68 Subsection 101K(9)
Schedule 1  The Australian Military Court
Part 2  Consequential amendments

Omit “but this subsection does not prevent a judge advocate from
directing the members of a court martial with respect to”, substitute
“but, in proceedings before a military jury, this subsection does not
prevent the Military Judge from giving directions to the members of the
jury about”.

69 Subsection 101K(10)
Omit “, or, in the case of a court martial, the judge advocate of the court
martial,.”.

70 Subsection 101K(10)
Omit “or the judge advocate, as the case may be,.”.

71 Subsection 101K(11)
Repeal the subsection, substitute:
(11) If proceedings are before a military jury and the Military Judge
permits evidence to be given under subsection (10), the Judge
must:
(a) inform the members of the jury of:
   (i) the non-compliance with the requirements of this
   section; or
   (ii) the absence of sufficient evidence of compliance with
       the requirements of this section; and
(b) give the members such warning about the evidence as he or
   she thinks appropriate in the circumstances.

72 Paragraph 101Q(13)(b)
Omit “, or, in the case of a court martial, the judge advocate of the court
martial,.”.

73 Subsection 101ZB(1)
Omit “, or, in the case of a court martial, the judge advocate of the court
martial,.”.

74 Subsection 101ZB(1)
Omit “or judge advocate, as the case may be, shall not admit the
evidence unless the service tribunal or judge advocate, as the case may
be,”, substitute “must not admit the evidence unless the service
tribunal”.

40 Defence Legislation Amendment Bill 2006 No. , 2006
75 Subsection 101ZB(2)  
Omit “or judge advocate, as the case may be,”.

76 Subsection 101ZB(3)  
Omit “, or, in the case of a court martial, the judge advocate of the court 
martial,”.

77 Subsection 101ZB(4)  
Omit “or judge advocate”.

78 Subsection 103(1)  
Omit “129A(3),”.

79 Paragraphs 103(1)(c) and (d)  
Repeal the paragraphs, substitute:  
(c) request the Registrar to refer the charge to the Australian 
Military Court for trial.

80 Subsection 103(1) (note 1)  
Omit “Note 1”, substitute “Note”.

81 Subsection 103(1) (note 2)  
Repeal the note.

82 Paragraph 103(2)(a)  
Omit “or 166”.

83 Paragraph 103(2)(c)  
Omit “(other than a charge to which an order under section 166 
relates)”.

84 Paragraphs 103(2)(d) and (e)  
Repeal the paragraphs, substitute:  
(d) request the Registrar to refer the charge to the Australian 
Military Court for trial.

85 Subsection 103(2) (note)  
Repeal the note.
86 Paragraph 103(4)(a)
Omit “a Defence Force magistrate”, substitute “the Australian Military Court”.

87 Paragraphs 103(4)(d) and (e)
Repeal the paragraphs, substitute:
(d) request the Registrar to refer the charge to the Australian Military Court for trial.

88 Subsection 103(4) (note)
Repeal the note.

89 Subsections 103(5), (6) and (7)
Repeal the subsections, substitute:
(5) If, under section 131:
(a) a convicted person elects to be punished by the Australian Military Court; and
(b) the summary authority refers the conviction to the Director of Military Prosecutions;
the Director of Military Prosecutions must request the Registrar to refer the conviction to the Court to take action under Part IV in relation to the convicted person.

90 Subsection 130A(1)
Omit “rules of procedure”, substitute “Summary Authority Rules”.

91 Subsection 131(1)
Omit “a court martial or by a Defence Force magistrate”, substitute “the Australian Military Court”.

92 Paragraphs 131(2)(a) and (b)
Omit “a court martial or by a Defence Force magistrate”, substitute “the Australian Military Court”.

93 Subsection 131(2A)
Omit “a court martial or by a Defence Force magistrate”, substitute “the Australian Military Court”.

42 Defence Legislation Amendment Bill 2006 No. 3, 2006
94 Paragraph 131(2B)(a)
Omit “a court martial or by a Defence Force magistrate”, substitute “the Australian Military Court”.

95 Paragraph 131(2B)(b)
Repeal the paragraph, substitute:
(b) a person convicted of an offence by a summary authority elects under subsection (2A) to be punished by the Australian Military Court for the offence but the summary authority considers that the exigencies of service do not permit the reference of the conviction to the Court;

96 Subsection 131(3)
Omit “a court martial or by a Defence Force magistrate”, substitute “the Australian Military Court”.

97 Subsection 131(5)
Repeal the subsection, substitute:
(5) A person who has elected to be tried or punished by the Australian Military Court may, by notice to the Registrar, withdraw his or her election at any time before a date is fixed for hearing by the Court.

98 Subsection 131(6)
Omit “a court martial or by a Defence Force magistrate”, substitute “the Australian Military Court”.

99 Paragraph 131(7)(b)
Omit “a court martial or by a Defence Force magistrate”, substitute “the Australian Military Court”.

100 Paragraph 131(7)(ba)
Repeal the paragraph, substitute:
(ba) a person convicted of an offence by a summary authority elects under subsection (2A) to be punished by the Australian Military Court for the offence but the summary authority considers that the exigencies of service do not permit the reference of the conviction to the Court; or

101 Paragraph 131(7)(c)
Schedule 1  The Australian Military Court
Part 2  Consequential amendments

Omit “a court martial or by a Defence Force magistrate”, substitute “the Australian Military Court”.

102 Section 136
Omit “a court martial or a Defence Force magistrate”, substitute “the Australian Military Court”.
Note: The heading to section 136 is altered by omitting “court martial or Defence Force magistrate” and substituting “Australian Military Court”.

103 Subsection 137(1)
Omit “a court martial or by a Defence Force magistrate”, substitute “the Australian Military Court”.
Note: The heading to section 137 is altered by adding at the end “before Australian Military Court”.

104 Before section 138
Insert:

Subdivision A—General

105 Subsection 138(4)
Omit “or, if the service tribunal is a court martial, the President of the court martial”.

106 Subsections 139(2) and (3)
Repeal the subsections, substitute:

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

107 Section 140
Repeal the section, substitute:

140 Public hearings by the Australian Military Court
(1) The hearing of proceedings before the Australian Military Court must be in public.
(2) However, the Court may, if it considers it necessary in the interests of the security or defence of Australia, the proper administration of justice or public morals:

(a) order that some or all of the members of the public are to be excluded during the whole or a specified part of the proceedings; or

(b) order that no report of, or relating to, the whole or a specified part of the proceedings is to be published.

(3) If proceedings before the Court are held in a secure place, then, subject to an order (if any) in force under subsection (2), the appropriate service chief must cause such steps to be taken as will permit the public to have reasonable access to the proceedings.

(4) In subsection (3):

secure place means a place the entry to which is controlled by guards who are constables or members of the Defence Force.

108 Subsection 141(2)

Omit “court martial” (wherever occurring), substitute “military jury”.

109 Subsection 141(3)

Repeal the subsection.

110 Subsection 141(4)

Omit “other than a court martial”.

111 Paragraph 141(5)(b)

Omit “in the case of a court martial, the judge advocate, or in any other case,”.

112 Subsection 141(5)

Omit “or the judge advocate, as the case may be, shall”, substitute “must”.

113 Paragraph 141(6)(a)

Omit “(2), (3)”, substitute “(2)”.

114 Paragraph 141(6)(b)
Schedule 1  The Australian Military Court
Part 2  Consequential amendments

1 Omit “in the case of a court martial, the judge advocate, or in any other case,”.

115 Subsection 141(6)
Omit “or the judge advocate, as the case may be, shall”, substitute “must”.

116 Subsections 141(7) and (8)
Repeal the subsections, substitute:

(7) If an application or objection under subsection (1) or (2) is made and the trial is by a Military Judge and military jury, the Military Judge must sit without the members of the military jury for a hearing of that application or objection.

(8) If the Australian Military Court grants an application or allows an objection under this section, the Court may refer the charge against the accused person to the Director of Military Prosecutions.

117 Paragraphs 141A(1)(c) and (d)
Repeal the paragraphs, substitute:

(c) the Australian Military Court, before trying a charge or at any stage of trying a charge;

118 Subsection 141A(1)
Omit “, judge advocate or Defence Force magistrate, as the case may be, shall make such amendment of the charge as he or she”, substitute “or Court must make such amendment of the charge as he, she or it”.

119 Subsection 144(2)
Omit “a court martial or a Defence Force magistrate”, substitute “the Australian Military Court”.

120 Paragraph 144(4)(a)
Omit “132 or 135”, substitute “132B or 132D”.

121 Subsection 145(2)
Omit “a court martial or a Defence Force magistrate”, substitute “the Australian Military Court”.

46  Defence Legislation Amendment Bill 2006  No.  , 2006
122 Subsection 145(2)
Omit “the court martial or the Defence Force magistrate”, substitute “the Court”.

123 Subsection 145(4)
Omit “by a court martial or a Defence Force magistrate, the court martial or the Defence Force magistrate”, substitute “of a service offence that is to be tried by Military Judge and military jury, the jury”.

124 Subsection 145(4)
Omit “court martial or the Defence Force magistrate”, substitute “jury”.

125 Subsection 145(4)
After “mental impairment and”, insert “the Judge”.

126 Subsection 145(5)
Omit “a court martial or a Defence Force magistrate”, substitute “the Australian Military Court”.

127 Subsection 145(5)
Omit “the court martial or the Defence Force magistrate”, substitute “the Court”.

128 Subsections 145A(1) and (2)
Repeal the subsections, substitute:

(1) If the Registrar refers a charge to the Australian Military Court for trial, the Registrar must:
   (a) inform the accused person of the requirements of subsections (2), (3) and (5); and
   (b) give a copy of this section to the accused person.

(2) In a trial of a charge by the Australian Military Court, the accused person must not, without the leave of the Court:
   (a) adduce evidence in support of an alibi; or
   (b) assert in any statement made by him or her otherwise than on oath or affirmation that he or she has an alibi;
   unless, before the end of the period of 14 days commencing on the day the charge is referred to the Court, he or she gives notice of particulars of the alibi.
Schedule 1  The Australian Military Court  
Part 2  Consequential amendments

129 Subsection 145A(3)  
Omit “a court martial or Defence Force magistrate, the accused person shall not, without the leave of the judge advocate of the court martial or the Defence Force magistrate, as the case requires,”, substitute “the Australian Military Court, the accused person must not, without the leave of the Court,”.

130 Paragraph 145A(3)(b)  
Omit “judge advocate of the court martial or the Defence Force magistrate, as the case may be,”, substitute “Court”.

131 Subsection 145A(4)  
Omit “judge advocate of a court martial or a Defence Force magistrate”, substitute “Court”.

132 Subsection 145A(5)  
Omit “of Military Justice”.

133 Section 147  
Repeal the section, substitute:

147 Judicial notice of service matters  
In addition to the matters of which judicial notice may be taken by a court under the rules of evidence referred to in section 146, a service tribunal must take judicial notice of all matters within the general service knowledge of:

(a) the tribunal; or
(b) if the proceedings are before a military jury—the jury.

134 Part IX (heading)  
Repeal the heading, substitute:

Part IX—Review of proceedings of summary authorities

135 Section 150  
Omit “service tribunals (whether all service tribunals or service tribunals of a specified kind)”, substitute “summary authorities”.

48   Defence Legislation Amendment Bill 2006   No.      , 2006
136 **Section 150A**

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

137 **Subsection 152(1)**

Repeal the subsection, substitute:

(1) As soon as practicable after a summary authority (other than a subordinate summary authority) convicts a person of a service offence, the summary authority must transmit the record of the proceedings to a competent reviewing authority.

138 **Subsection 152(3)**

Omit “, or who was the person in relation to whom a direction under subsection 145(2) or (5) was given,.”.

139 **Subsection 153(1)**

Repeal the subsection, substitute:

(1) If a summary authority convicts a person of a service offence, the person may lodge with a competent reviewing authority a petition for review of the proceedings concerned.

140 **Paragraph 153(1A)(a)**

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

141 **Subsection 153(2)**

Repeal the subsection.

142 **Subsections 153(3) and (4)**

Omit “or (2)”.

143 **Subsection 153(5)**

Repeal the subsection.

144 **Subsections 154(1), (1A) and (1B)**

Repeal the subsections, substitute:

(1) A reviewing authority must not commence a review without first obtaining a report on the proceedings from a legal officer.
Schedule 1  The Australian Military Court
Part 2  Consequential amendments

145  Section 156
Repeal the section.

146  Section 157
Omit “service tribunal”, substitute “summary authority”.

147  Subsection 158(4)
Repeal the subsection.

148  Subsection 158(5)
Omit “or (4)”.

149  Paragraph 161(1)(a)
Omit “service tribunal”, substitute “summary authority”.

150  Subparagraph 161(1)(a)(ii)
Omit “service tribunal”, substitute “summary authority”.

151  Paragraph 161(1)(b)
Omit “service tribunal” (wherever occurring), substitute “summary authority”.

152  Subsection 161(2)
Omit “service tribunal” (wherever occurring), substitute “summary authority”.

153  Subsection 162(1)
Omit “service tribunal”, substitute “summary authority”.

154  Subsection 162(2)
Repeal the subsection.

155  Paragraph 162(4)(a)
Omit “a court martial or by a Defence Force magistrate”, substitute “the Australian Military Court”.

156  Subsection 162(4A)
Omit “convening of a court martial or the reference of the conviction to a Defence Force magistrate”, substitute “reference of the conviction to the Australian Military Court”.

157 Subsection 162(5)
Omit “service tribunal” (wherever occurring), substitute “summary authority”.

158 Subsections 162(6) and (7)
Repeal the subsections.

159 Subsection 162(8)
Omit “service tribunal”, substitute “summary authority”.

160 Division 4 of Part IX
Repeal the Division.

161 Subsection 169(2)
Omit “service tribunal” (wherever occurring), substitute “summary authority”.

162 Subsection 172(1)
Repeal the subsection.

163 At the end of subsection 172(2)
Add:
; (e) segregated confinement for a period exceeding 3 days;
(f) confinement to cell for a period exceeding 3 days;
(g) extra drill for a period exceeding 3 days;
(h) restriction of custodial privileges for a period exceeding 7 days.

164 Subsection 172(3)
Omit “service tribunal”, substitute “summary authority”.

165 Subsections 172(3A) and (4)
Repeal the subsections.

166 Subsection 173(1)
Schedule 1 The Australian Military Court
Part 2 Consequential amendments

Omit “Subject to subsection (2), the operation of a restitution order or a reparation order, being a restitution order or a reparation order made by a court martial or a Defence Force magistrate,”, substitute “The operation of a restitution order or a reparation order made by the Australian Military Court”.

167 Subsection 173(2)

Omit “a reviewing authority”, substitute “the Court”.

168 Subsection 173(2)

Omit “the reviewing authority”, substitute “the Court”.

169 Section 176

Repeal the section, substitute:

(1) If:
(a) a summary authority has imposed a punishment on a convicted person; and
(b) the convicted person lodges a petition under section 153 with respect to the conviction or punishment;
the reviewing authority may order that the execution of the punishment is to be stayed in whole or in part pending the determination of the petition.

(2) If:
(a) the Australian Military Court has imposed a punishment on a convicted person; and
(b) the convicted person or the Director or Military Prosecutions notifies the Court that he or she has appealed, or applied for leave to appeal, under the Defence Force Discipline Appeals Act 1955 against the conviction or punishment;
the Court may order that the execution of the punishment is to be stayed in whole or in part pending the determination of the appeal.

170 Part XI (heading)

Repeal the heading, substitute:
Part XI—Judge Advocate General, Deputy Judge Advocates General, Chief Military Judge, Military Judges and Registrar

171 Division 3 of Part XI (heading)
Repeal the heading, substitute:

Division 3—The Registrar of the Australian Military Court

172 Section 188F
Omit “Military Justice”, substitute “the Australian Military Court”.

Note: The heading to section 188F is altered by omitting “Military Justice” and substituting “the Australian Military Court”.

173 Subsection 188FA(1)
Repeal the subsection, substitute:

(1) The function of the Registrar is to assist the Chief Military Judge by providing administrative and management services in connection with proceedings before the Australian Military Court under this Act.

Note: The heading to section 188FA is altered by omitting “of Military Justice”.

174 Subsection 188FA(2)
Omit “of Military Justice” (wherever occurring).

175 Section 188FB
Omit “of Military Justice” (wherever occurring).

Note: The heading to section 188FB is altered by omitting “of Military Justice”.

176 Section 188FC
Omit “of Military Justice”.

177 Section 188FD
Omit “of Military Justice” (wherever occurring).

178 Section 188FE
Omit “of Military Justice”.
179 Subsection 188FF(1)
   Omit “of Military Justice”.

180 Subsection 188FF(2)
   Repeal the subsection, substitute:
   (2) An oath or affirmation under this section is to be made before a
   Military Judge.

181 Sections 188FG and 188FH
   Omit “of Military Justice” (wherever occurring).

182 Section 188FI
   Omit “of Military Justice”.

183 Sections 188FJ and 188FK
   Omit “of Military Justice” (wherever occurring).

184 Subsection 188FL(1)
   Omit “of Military Justice” (wherever occurring).

185 Subsection 188FL(3)
   Omit “of Military Justice”.

186 Section 188FM
   Omit “of Military Justice”.

187 Paragraph 188GA(1)(a)
   Omit “a Defence Force magistrate or a court martial”, substitute “the
   Australian Military Court”.

188 Section 188GB
   Omit “a court martial or a Defence Force magistrate”, substitute “the
   Australian Military Court”.

189 Subsection 188GJ(2)
   Repeal the subsection, substitute:
(2) An oath or affirmation under this section is to be made before a Military Judge.

190 Paragraph 191(1)(b)
Omit “132 or 135”, substitute “132B or 132D”.

191 Subsection 193(1)
Repeal the subsection, substitute:

(1) A member of a military jury, a Military Judge, a summary authority or a reviewing authority has, in the performance of his or her duties as such a member, Judge or authority, the same protection and immunity as a Justice of the High Court.

Note: The heading to section 193 is altered by omitting “courts martial” and substituting “military juries”.

192 Paragraph 193(4)(b)
Omit “of Military Justice” (wherever occurring).

193 Subsection 194(1)
Omit “, 158 or 164”, substitute “or 158”.

194 Subsections 195(1) and (2)
Omit “a court martial or a Defence Force magistrate”, substitute “the Australian Military Court”.

195 Section 196
Repeal the section.

196 Paragraph 196A(1)(a)
Repeal the paragraph, substitute:

(a) the operation of this Act, the regulations, the Procedural Rules and the Summary Authority Rules; and

197 At the end of section 196A
Add:

(5) In this section:
Schedule 1  The Australian Military Court
Part 2  Consequential amendments

Procendural Rules means the rules made under section 149 of this Act as that section was in force immediately before the commencement of Schedule 1 to the Defence Legislation Amendment Act 2006.

198 Schedule 2 (heading)
Repeal the heading (not including the note), substitute:

Schedule 2—Punishments that may be imposed by the Australian Military Court

199 Clause 1 of Schedule 2
Omit “a court martial or a Defence Force magistrate”, substitute “the Australian Military Court”.

200 Clause 2 of Schedule 2
Repeal the clause.

201 Schedule 4 (note to heading)
Omit “Sections 128, 184, 188FF and 188GJ”, substitute “Sections 184, 188AF, 188AT, 188FF and 188GJ”.

202 Schedule 5
Repeal the Schedule.

Defence Force Discipline Appeals Act 1955

203 Title
Omit “courts martial and Defence Force magistrates”, substitute “the Australian Military Court”.

204 Subsection 4(1)
Omit “(1)”.

205 Subsection 4(1)
Insert:
The Australian Military Court  Schedule 1
Consequential amendments  Part 2

Australian Military Court means the Australian Military Court created under the Defence Force Discipline Act 1982.

206 Subsection 4(1) (definition of convicted person)
Omit “a court martial or a Defence Force magistrate”, substitute “the Australian Military Court”.

207 Subsection 4(1) (definition of conviction)
Omit “a court martial or a Defence Force magistrate”, substitute “the Australian Military Court”.

208 Subsection 4(1) (definition of court martial)
Repeal the definition.

209 Subsection 4(1) (definition of Defence Force magistrate)
Repeal the definition.

210 Subsection 4(1)
Insert:

Military Judge has the same meaning as it has in the Defence Force Discipline Act 1982.

211 Subsection 4(1) (definition of prescribed acquittal)
Omit “a court martial or a Defence Force magistrate”, substitute “the Australian Military Court”.

212 Subsection 4(1) (definition of prescribed acquitted person)
Omit “a court martial or a Defence Force magistrate”, substitute “the Australian Military Court”.

213 Subsection 4(1) (definition of review)
Repeal the definition.

214 Subsection 4(1) (definition of reviewing authority)
Repeal the definition.

215 Subsection 4(2)
Repeal the subsection.

216 Paragraphs 17(1)(c), (d) and (f)
Before “appellant”, insert “offender”.

217 Paragraph 17(1)(f)
After “(3)”, insert “or (3A)”.  

218 Subsection 20(2)
Omit “the court martial or the Defence Force magistrate”, substitute “the Australian Military Court”.

219 Subsection 23(1)
After “an appeal”, insert “against a conviction or prescribed acquittal”.

220 Paragraph 23(1)(c)
Omit “the court martial or the Defence Force magistrate”, substitute “the Australian Military Court”.

221 Subsection 23(2)
After “an appeal”, insert “against a conviction or prescribed acquittal”.

222 Paragraphs 23(2)(a) and (c)
Omit “the court martial or the Defence Force magistrate”, substitute “the Australian Military Court”.

223 Subsection 23(3)
Before “appellant”, insert “offender”.

224 Subsection 23(4)
After “an appeal”, insert “against a conviction or prescribed acquittal”.

225 Subsection 23(4)
Omit “the court martial or the Defence Force magistrate”, substitute “the Australian Military Court”.

226 Subsection 23(4)
Before “appellant” (wherever occurring), insert “offender”.

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58 Defence Legislation Amendment Bill 2006 No. , 2006
227 Paragraph 26(1)(a)
Omit “the court martial or the Defence Force magistrate”, substitute “the Military Judge or the military jury”.

228 Subparagraph 26(1)(a)(ii)
Omit “the court martial or the Defence Force magistrate”, substitute “the Australian Military Court”.

229 Paragraph 26(1)(b)
Omit “the court martial or the Defence Force magistrate, by reason of its or his”, substitute “the Military Judge or the military jury, by reason of its, his or her”.

230 Subsection 26(2)
Omit “court martial or the Defence Force magistrate that convicted the convicted person of the original offence if the court martial or Defence Force magistrate had convicted him”, substitute “the Australian Military Court if the Court had convicted the person”.

231 At the end of section 26
Add:
(4) In this section, military jury has the same meaning as it has in the Defence Force Discipline Act 1982.

232 Paragraph 31(1)(b)
Omit “the court martial or the Defence Force magistrate”, substitute “the Australian Military Court”.

233 Paragraph 31(1)(c)
Before “appellant” (wherever occurring), insert “offender”.

234 Subsection 35(1)
Before “appellant”, insert “offender”.

235 Section 36
Omit “against a conviction or prescribed acquittal by a court martial or a Defence Force magistrate”.

236 Section 36
Omit “the person who was the judge advocate of the court martial or from the Defence Force magistrate”, substitute “the Military Judge of the Australian Military Court who heard the case”.

237 Subsection 37(1)
After “an appeal”, insert “by an offender appellant”.

238 Subsections 37(1) and (2)
Before “appellant” (wherever occurring), insert “offender”.

239 Subsection 37(2)
Omit “the last preceding subsection”, substitute “subsection (1) or (1A)”.

240 Subsection 37(3)
Omit “an appeal or an application for leave to appeal, it may, if it thinks fit, order the appellant”, substitute “an appeal by an offender appellant or an application for leave to appeal by an offender appellant, it may, if it thinks fit, order the offender appellant”.

241 Subsection 39(1)
Before “appellant”, insert “offender”.
Note: The heading to section 39 is altered by inserting “offender” before “appellants”.

242 Subsection 39(1)
Omit “his appeal before the Tribunal”, substitute “an appeal before the Tribunal to which he or she is a party”.

243 Subsections 39(2) and (3)
Before “appellant”, insert “offender”.

244 Subsection 39(3)
Omit “his appeal”, substitute “an appeal to which he or she is a party”.

245 Subsection 40(3)
Before “appellant”, insert “offender”.

246 Section 42
After “an appeal”, insert “by an offender appellant”.

60 Defence Legislation Amendment Bill 2006 No. 1, 2006
Note: The heading to section 42 is altered by adding at the end “by offender appellants”.

247 Paragraph 52(5)(c)
Omit “a court martial or a Defence Force magistrate”, substitute “the Australian Military Court”.

248 Paragraph 60(d)
Before “appellants”, insert “offender”.

249 At the end of paragraph 60(d)
Add “(other than the Director of Military Prosecutions)”.

250 Paragraph 60(f)
Before “appellant”, insert “offender”.

251 Paragraph 60(g)
Omit “or a prescribed acquittal by a court martial or a Defence Force magistrate”, substitute “, a prescribed acquittal, a punishment imposed or a court order made by the Australian Military Court”.

252 Subparagraphs 60(g)(i), (ii) and (iii)
Repeal the subparagraphs, substitute:

(i) a record of the proceedings of the Australian Military Court; and

(ii) documents that were before the Australian Military Court in connection with the proceedings; and

253 Subsection 500A(14) (definition of court)
Repeal the definition, substitute:

court includes:

(a) the Australian Military Court; and

(b) a court martial or similar military tribunal of another country.

254 Subsection 501(12) (definition of court)
Repeal the definition, substitute:
Schedule 1 The Australian Military Court
Part 2 Consequential amendments

court includes:
(a) the Australian Military Court; and
(b) a court martial or similar military tribunal of another country.
Part 3—Application and transitional provisions

Division 1—Definitions

255 Definitions

In this Part:

commencement day means the day on which this Schedule commences.

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


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

Division 2—Application of amendments

256 Application of amendments

(1) The amendments made by this Schedule apply in relation to a service offence committed by a person on or after the commencement day.

(2) The amendments made by this Schedule also apply in relation to a service offence committed by a person before the commencement day if, before the commencement day, the person had not been charged with the offence under the old DFDA.

Division 3—Transitional provisions

257 Before commencement day, Director of Military Prosecutions requested trial by court martial or Defence Force magistrate

Trial by court martial

(1) Subitem (2) applies if, before the commencement day:

(a) the Director of Military Prosecutions requested the Registrar of Military Justice to convene a court martial to try a charge of a service offence that was committed by a person before the commencement day; and
(b) the Registrar of Military Justice either:
   (i) had not convened the court martial; or
   (ii) had convened the court martial, but the person had not
        been asked to plead at the trial.

(2) If this subitem applies, then:
   (a) if a court martial had been convened before the
       commencement day—on the commencement day, the court
       martial is taken to have been dissolved; and
   (b) on the commencement day, the Director of Military
       Prosecutions:
       (i) is taken to have withdrawn the request; and
       (ii) is taken to have requested the Registrar of the
            Australian Military Court to refer the charge to the
            Australian Military Court for trial; and
   (c) on and after the commencement day, the new law applies in
       relation to the service offence as if the offence had been
       committed after the commencement day.

Trial by Defence Force magistrate

(3) Subitem (4) applies if, before the commencement day:
   (a) the Director of Military Prosecutions requested the Registrar
       of Military Justice to refer a charge of a service offence that
       was committed by a person before the commencement day to
       a Defence Force magistrate for trial; and
   (b) the Registrar of Military Justice:
       (i) had not referred the charge; or
       (ii) had referred the charge, but the person had not been
            asked to plead at the trial.

(4) If this subitem applies, then:
   (a) if the charge had been referred to a Defence Force magistrate
       before the commencement day—on the commencement day,
       the reference is taken to have been terminated; and
   (b) on the commencement day, the Director of Military
       Prosecutions:
       (i) is taken to have withdrawn the request; and
(ii) is taken to have requested the Registrar of the Australian Military Court to refer the charge to the Australian Military Court for trial; and

(c) on and after the commencement day, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

Elections for trial by court martial or Defence Force magistrate

(5) If:

(a) before the commencement day, a person made an election under subsection 131(1) of the old DFDA to have a charge against him or her tried by a court martial or Defence Force magistrate; and

(b) because of subitem (2) or (4), the Director of Military Prosecutions is taken to have requested the Registrar of the Australian Military Court to refer the charge to the Australian Military Court for trial;

the person may withdraw the election by written notice to the Registrar of the Australian Military Court at any time before a date is fixed for hearing by the Court.

258 Before commencement day, trial by court martial or Defence Force magistrate discontinued

Trial by court martial

(1) Subitem (2) applies if, before the commencement day:

(a) a court martial convicted a person of a service offence committed before the commencement day, but the court martial had not taken action under Part IV of the old DFDA; and

(b) the court martial was dissolved under section 125 of the old DFDA before the court martial had taken such action; and

(c) under subsection 125(6) of the old DFDA, the Registrar of Military Justice:

(i) had not convened a new court martial for the purpose of taking such action; or

(ii) had convened a new court martial for the purpose of taking such action, but the new court martial had not
begun to hear evidence relevant to determining what
action should be taken.

(2) If this subitem applies, then:

(a) if a new court martial was convened before the
commencement day—on the commencement day, the new
court martial is taken to have been dissolved; and
(b) on the commencement day, the Director of Military
Prosecutions is taken to have requested the Registrar of the
Australian Military Court to refer the conviction to the
Australian Military Court to take action under Part IV of the
new DFDA in relation to the person; and
(c) on and after the commencement day, the new law applies in
relation to the service offence as if the offence had been
committed after the commencement day.

Trial by Defence Force magistrate

(3) Subitem (4) applies if, before the commencement day:

(a) a charge of, or conviction for, a service offence that was
committed by a person before the commencement day was
referred to a Defence Force magistrate; and
(b) a Defence Force magistrate:
   (i) in relation to a charge—had convicted the person of the
offence, but had not taken action under Part IV of the
old DFDA; or
   (ii) in relation to a conviction—had not taken action under
Part IV of the old DFDA; and
(c) the reference was terminated under section 129A of the old
DFDA before action had been taken under Part IV; and
(d) under subsection 129A(4) of the old DFDA, the Registrar of
Military Justice either:
   (i) referred the conviction to another Defence Force
magistrate to take action under Part IV of the old
DFDA; or
   (ii) convened a court martial to take action under Part IV of
the old DFDA; and
(e) the new Defence Force magistrate or court martial had not
begun to hear evidence relevant to determining what action
should be taken.
(4) If this subitem applies, then:

(a) if the conviction was referred to another Defence Force magistrate before the commencement day—on the commencement day, the reference is taken to have been terminated; and

(b) if a court martial was convened before the commencement day—on the commencement day, the court martial is taken to have been dissolved; and

(c) on the commencement day, the Director of Military Prosecutions is taken to have requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action under Part IV of the new DFDA in relation to the person; and

(d) on and after the commencement day, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

259 Before commencement day, Director of Military Prosecutions requested imposition of punishment by court martial or Defence Force magistrate

Punishment imposed by court martial

(1) Subitem (2) applies if, before the commencement day:

(a) the Director of Military Prosecutions requested the Registrar of Military Justice to convene a court martial to take action under Part IV of the old DFDA in relation to a conviction for a service offence that was committed by a person before the commencement day; and

(b) the Registrar of Military Justice:

(i) had not convened the court martial; or

(ii) had convened the court martial, but the court martial had not begun to hear evidence relevant to determining what action should be taken.

(2) If this subitem applies, then:

(a) if a court martial had been convened before the commencement day—on the commencement day, the court martial is taken to have been dissolved; and

(b) on the commencement day, the Director of Military Prosecutions is taken to have:
(i) withdrawn the request; and
(ii) requested the Registrar of the Australian Military Court
to refer the conviction to the Australian Military Court
to take action under Part IV of the new DFDA in
relation to the person; and

(c) on and after the commencement day, the new law applies in
relation to the service offence as if the offence had been
committed after the commencement day.

Punishment imposed by Defence Force magistrate

(3) Subitem (4) applies if, before the commencement day:
(a) the Director of Military Prosecutions requested the Registrar
   of Military Justice to refer a conviction for a service offence
   that was committed by a person before the commencement
day to a Defence Force magistrate to take action under
   Part IV of the old DFDA; and
(b) the Registrar of Military Justice:
   (i) had not referred the conviction; or
   (ii) had referred the conviction, but the Defence Force
       magistrate had not begun to hear evidence relevant to
determining what action should be taken.

(4) If this subitem applies, then:
(a) if the conviction had been referred to a Defence Force
    magistrate before the commencement day—on the
    commencement day, the reference is taken to have been
    terminated; and
(b) on the commencement day, the Director of Military
    Prosecutions is taken to have:
   (i) withdrawn the request; and
   (ii) requested the Registrar of the Australian Military Court
        to refer the conviction to the Australian Military Court
        to take action under Part IV of the new DFDA in
        relation to the person; and
   (c) on and after the commencement day, the new law applies in
       relation to the service offence as if the offence had been
       committed after the commencement day.
Elections to be punished by court martial or Defence Force magistrate

(5) If:

(a) before the commencement day, a person made an election under subsection 131(2A) or (3) of the old DFDA to be punished by a court martial or Defence Force magistrate in relation to his or her conviction; and

(b) because of subitem (2) or (4), the Director of Military Prosecutions is taken to have requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action;

the person may withdraw the election by written notice to the Registrar of the Australian Military Court at any time before a date is fixed for hearing by the Court.

260 On or after the commencement day, Director of Military Prosecutions requests trial by court martial or Defence Force magistrate

Trial by court martial

(1) Subitem (2) applies if, on or after the commencement day, the Director of Military Prosecutions requests the Registrar of Military Justice to convene a court martial to try a charge of a service offence that was committed by a person before the commencement day.

(2) If this subitem applies, then:

(a) immediately after the request is made, the Director of Military Prosecutions:

(i) is taken to have withdrawn the request; and

(ii) is taken to have requested the Registrar of the Australian Military Court to refer the charge to the Australian Military Court for trial; and

(b) after the request is made, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

Trial by Defence Force magistrate

(3) Subitem (2) applies if, on or after the commencement day, the Director of Military Prosecutions requests the Registrar of Military Justice to
refer a charge of a service offence that was committed by a person before the commencement day to a Defence Force magistrate for trial.

If this item applies, then:

(a) immediately after the request is made, the Director of Military Prosecutions:
   (i) is taken to have withdrawn the request; and
   (ii) is taken to have requested the Registrar of the Australian Military Court to refer the charge to the Australian Military Court for trial; and

(b) after the request is made, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

Elections made for trial by court martial or Defence Force magistrate

If:

(a) after the commencement day, a person makes an election under subsection 131(1) of the old DFDA to have a charge against him or her tried by a court martial or Defence Force magistrate; and

(b) because of subitem (2) or (4), the Director of Military Prosecutions is taken to have requested the Registrar of the Australian Military Court to refer the charge to the Australian Military Court for trial;

the person may withdraw the election by written notice to the Registrar of the Australian Military Court at any time before a date is fixed for hearing by the Court.

On or after commencement day, trial by court martial or Defence Force magistrate discontinued

Trial by court martial

Subitem (2) applies if, on or after the commencement day:

(a) the Registrar of Military Justice dissolves a court martial under section 125 of the old DFDA; and

(b) the dissolution happens:
(i) after the court martial has convicted a person of a service offence committed before the commencement day; and
(ii) before the court martial has taken action under Part IV of the old DFDA in relation to the person.

(2) If this subitem applies, then:

(a) immediately after the court martial is dissolved, the Director of Military Prosecutions is taken to have requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action under Part IV of the new DFDA in relation to the person; and

(b) after the court martial is dissolved, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

**Trial by Defence Force magistrate**

(3) Subitem (4) applies if, on or after the commencement day:

(a) the Registrar of Military Justice terminates a reference to a Defence Force magistrate under section 129A of the old DFDA in relation to a charge of, or conviction for, a service offence that was committed by a person before the commencement day; and

(b) the termination happens:

(i) in relation to a charge—after the person has been convicted but before the Defence Force magistrate has taken action under Part IV of the old DFDA in relation to the person; and

(ii) in relation to a conviction—before the Defence Force magistrate has taken action under Part IV of the old DFDA in relation to the person.

(4) If this subitem applies, then:

(a) immediately after the reference is terminated, the Director of Military Prosecutions is taken to have requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action under Part IV of the new DFDA in relation to the person; and
(b) after the reference is terminated, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

262 On or after the commencement day, Director of Military Prosecutions requests imposition of punishment by court martial or Defence Force magistrate

Punishment imposed by court martial

(1) Subitem (2) applies if, on or after the commencement day, the Director of Military Prosecutions requests the Registrar of Military Justice to convene a court martial to take action under Part IV of the old DFDA in relation to a conviction for a service offence that was committed before the commencement day.

(2) If this subitem applies, then:
   (a) immediately after the request is made, the Director of Military Prosecutions:
      (i) is taken to have withdrawn the request; and
      (ii) is taken to have requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action under Part IV of the new DFDA; and
   (b) after the request is made, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

Punishment imposed by Defence Force magistrate

(3) Subitem (4) applies if, on or after the commencement day, the Director of Military Prosecutions requests the Registrar of Military Justice to refer a conviction for a service offence that was committed by a person before the commencement day to a Defence Force magistrate to take action under Part IV of the old DFDA in relation to the person.

(4) If this subitem applies, then:
   (a) immediately after the request is made, the Director of Military Prosecutions:
      (i) is taken to have withdrawn the request; and
      (ii) is taken to have requested the Registrar of the Australian Military Court to refer the conviction to the
Australian Military Court to take action under Part IV of the new DFDA; and

(b) after the request is made, the new law applies in relation to the service offence as if the offence had been committed after the commencement day.

**Elections made for punishment by court martial or Defence Force magistrate**

(5) If:

(a) after the commencement day, a person makes an election under subsection 131(2A) or (3) of the old DFDA to be punished by a court martial or Defence Force magistrate in relation to his or her conviction; and

(b) because of subitem (2) or (4), the Director of Military Prosecutions is taken to have requested the Registrar of the Australian Military Court to refer the conviction to the Australian Military Court to take action;

the person may withdraw the election by written notice to the Registrar of the Australian Military Court at any time before a date is fixed for hearing by the Court.

**263 Registrar of Military Justice and Director of Military Prosecutions**

(1) If:

(a) a person has been appointed as the Registrar of Military Justice before the commencement day; and

(b) the appointment is in force immediately before the commencement day;

then, on the commencement day:

(c) the appointment is taken to have included the appointment of the person as the Registrar of the Australian Military Court under section 188FB of the new DFDA; and

(d) the person is taken to have made and subscribed an oath or affirmation as the Registrar of the Australian Military Court before a Military Judge under section 188FF of the new DFDA.

(2) If:
Schedule 1  The Australian Military Court
Part 3  Application and transitional provisions

(a) a person is appointed as the Registrar of the Australian Military Court under section 188FB of the new DFDA after the commencement day; and
(b) immediately before the appointment, there was a service offence that:
   (i) was committed before the commencement day; and
   (ii) had not been finally dealt with;

then:
(c) the appointment is taken to include the appointment of the person as the Registrar of Military Justice under section 188FB of the old DFDA; and
(d) when the person makes and subscribes an oath or affirmation as the Registrar of the Australian Military Court before a Military Judge under section 188FF of the new DFDA, the person is taken also to have made and subscribed an oath or affirmation as the Registrar of Military Justice before the Judge Advocate General under section 188FF of the old DFDA.

(3) The person who is the Director of Military Prosecutions immediately before the commencement day is taken, on the commencement day, to have made and subscribed an oath or affirmation before a Military Judge under section 188GJ of the new DFDA.

(4) If:
   (a) a person is appointed as the Director of Military Prosecutions after the commencement day; and
   (b) immediately before the appointment, there was a service offence that:
      (i) was committed before the commencement day; and
      (ii) had not been finally dealt with;

then, when the person makes and subscribes an oath or affirmation before a Military Judge under section 188GJ of the new DFDA, the person is taken also to have made and subscribed an oath or affirmation before the Judge Advocate General under section 188GJ of the old DFDA.

264 Regulations prescribing transitional matters

The Governor-General may make regulations in relation to transitional matters arising out of the amendments made by this Schedule.
Schedule 2—Other amendments

Part 1—Defence Counsel Services

Defence Force Discipline Act 1982

1 Subsection 101F(2)
Omit “Judge Advocate General” (wherever occurring), substitute “Chief of the Defence Force”.

2 Transitional provision
Despite the amendment of subsection 101F(2) of the Defence Force Discipline Act 1982 made by item 1 of this Schedule, a list that:
(a) was made under that subsection before the commencement of this item; and
(b) that is in force immediately before the commencement;
continues in force, and may be dealt with, after the commencement as if it had been made under that subsection as amended.

3 After subsection 101F(2)
Insert:

(2A) The Chief of the Defence Force may delegate his or her powers under subsection (2) to a member of the Defence Force who holds a rank that is not lower than the naval rank of captain, or the rank of colonel or group captain.

4 Subsection 137(1)
Omit “A superior authority shall”, substitute “The Chief of the Defence Force must”.

5 At the end of section 137
Add:

(4) The Chief of the Defence Force may delegate his or her powers under subsection (1) to a member of the Defence Force who holds a rank that is not lower than the naval rank of captain, or the rank of colonel or group captain.
Part 2—Chief of the Defence Force Commission of Inquiry

**Defence Act 1903**

6 Paragraph 124(1)(gc)

After “boards of inquiry,”, insert “Chief of the Defence Force commissions of inquiry,”.

7 Subsections 124(2A) and (2C)

After “a board of inquiry,”, insert “a Chief of the Defence Force commission of inquiry,”.
Schedule 3—Amendments to remove gender-specific language

Defence Force Discipline Appeals Act 1955

1 Subsection 7(3A)
   Omit “he”, substitute “the person”.

2 Subsection 8(1)
   Omit “he”, substitute “the person”.

3 Paragraphs 8(2)(a) and (b)
   Omit “he”, substitute “the person”.

4 Subsections 8(3) and (4)
   After “he”, insert “or she”.

5 Subsection 8A(1)
   After “his” (wherever occurring), insert “or her”.

6 Section 9
   After “his”, insert “or her”.

7 Subsection 12(2)
   After “his” (wherever occurring), insert “or her”.

8 Subsections 14(2) and 15(2)
   After “he”, insert “or she”.

9 Subsection 15A(2)
   After “his”, insert “or her”.

10 Subsection 18(2)
   After “he”, insert “or she”.

11 Subsection 20(1)
Schedule 3 Amendments to remove gender-specific language

After “his” (wherever occurring), substitute “or her”.

12 Subsection 23(4)
   After “him”, insert “or her”.

13 Paragraph 31(1)(b)
   Omit “his custody or control which he”, substitute “the person’s custody or control which the person”.

14 Subsection 32(2)
   After “his” (wherever occurring), insert “or her”.

15 Subsection 32(2)
   After “he”, insert “or she”.

16 Subsection 32(4)
   After “him” (wherever occurring), insert “or her”.

17 Subsection 32(4)
   After “his”, insert “or her”.

18 Section 36
   After “his”, insert “or her”.

19 Subsection 37(1)
   After “him”, insert “or her”.

20 Subsection 37(1)
   After “his” (wherever occurring), insert “or her”.

21 Paragraph 43(1)(b)
   Omit “his custody or control which he”, substitute “the person’s custody or control which the person”.

22 Paragraph 45(1)(b)
   Omit “he”, substitute “the person”.

23 Paragraph 60(f)
   After “he”, insert “or she”.

24 Paragraph 60(f)

After “him”, insert “or her”.