



CHIEF MILITARY JUDGE

**AUSTRALIAN MILITARY
COURT**

*Report for the period
1 January to 31 December 2008*

Department of Defence

Australian Military Court

*Report for the period
1 January to 31 December 2008*

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ISSN 0817 9956

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Printed by CanPrint Communications Pty Limited, Canberra



AUSTRALIAN MILITARY COURT
DEPARTMENT OF DEFENCE
CANBERRA ACT 2600

CHIEF MILITARY JUDGE

The Hon. Warren Snowdon MP
Minister for Defence Science and Personnel
Parliament House
CANBERRA ACT 2600

Dear Minister,

As Chief Military Judge I submit the report herewith as required by section 196C of the *Defence Force Discipline Act 1982*, covering the period from 1 January to 31 December 2008.

Yours sincerely,

A handwritten signature in black ink, appearing to read "I. D. Westwood".

I.D. WESTWOOD AM
Brigadier
Chief Military Judge
Australian Military Court

20 April 2009

Enc.

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**CHIEF MILITARY JUDGE
AUSTRALIAN MILITARY COURT**

REPORT FOR THE PERIOD 1 JANUARY TO 31 DECEMBER 2008

PREAMBLE

1. Section 196C of the *Defence Force Discipline Act 1982* (DFDA) obliges the Chief Military Judge (CMJ), as soon as practicable after 31 December each year, to prepare and furnish to the Minister for Defence, for presentation to Parliament, a report relating to:

- a. The operations of the Australian Military Court (AMC); and
- b. The operations of the Australian Military Court Rules (AMCR).

during the year ending on that 31 December.

2. The AMC came into existence on 1 October 2007 pursuant to the amendments to the DFDA effected by the *Defence Legislation Amendment Act 2006* (DLAA 06). The office of CMJ is created by DFDA s.188AA.

CONSTITUTION OF THE AMC

3. In accordance with selection procedures detailed at DFDA s.188AE (for CMJ) and DFDA s.188AS (for the military judges) the following inaugural appointments were made by the Governor General in Council:

- a. Chief Military Judge:
 - (1) Brigadier Ian Denis Westwood AM.
- b. Military Judges:
 - (1) Colonel Peter John Morrison RFD; and
 - (2) Lieutenant Colonel Jennifer Ann Woodward.

In accordance with DFDA s.188AC(2) (for CMJ) and DFDA s.188AP(4) (for the military judges) these appointments were made for terms of ten years commencing on 1 October 2007.

4. The Act contemplates up to eight part-time military judges¹. No part-time appointments were made during the reporting period, but the Chief of the Defence Force (CDF) did establish a selection committee in accordance with DFDA s.188AS with a view to providing the Minister with the names of persons considered suitable for appointment as part-time military judges.

REGISTRAR OF THE AMC

5. The legislation² provides for a Registrar of the AMC to assist CMJ by providing administrative and management services in connection with proceedings before the AMC. In addition, the Registrar has such other functions as are conferred by legislation and regulation³.

6. The inaugural Registrar of the AMC is Colonel Geoff Cameron CSC. When the legislation creating the AMC came into force, Colonel Cameron held the appointment of Registrar of Military Justice under the legislation as it existed prior to the establishment of the AMC. In accordance with the legislation, his appointment transitioned to that of Registrar of the AMC. That initial appointment will expire on 9 July 2011.

7. During the reporting period Commander Fiona Sneath (deployed to the Middle East in August 2008) and Commander Bob Luxton RANR served as the Deputy Registrar.

8. I will comment in more detail subsequently on the Registrar's duties during the reporting period, but briefly, his principal responsibilities are in connection with the listing of matters for trial and the associated administration of the proceedings, and with the appointment of military jurors. These responsibilities arise primarily under the AMC Rules.

AMC STAFF

9. In addition to the statutory appointments and that of the Deputy Registrar to which I have already referred, the AMC had an approved Full Time Equivalent Allocation (FTE-A) for the following positions during the reporting period:

¹ DFDA s.188AP(3).

² DFDA s.188F.

³ DFDA s.188FA.

- a. Business Manager (EL1);
- b. Executive Assistant and Senior Paralegal to CMJ and the military judges (APS6);
- c. Trial Administrators (3 x APS5);
- d. Paralegal (APS4);
- e. Finance Officer (APS4);
- f. Assistant Trial Administrators (1 x APS3).

At the end of the reporting period 2xAPS4 and 1xAPS3 positions had not been filled. The establishment had been settled on the basis of the anticipated work load for the Court when it had a compliment of part-time military judges and had assumed responsibility for summary appeals. The positions are being filled progressively as the work load requires.

10. There is a further military position on the Court's staff being that of Staff Officer to CMJ and the JAG. This position is established at the rank of Major (Equivalent).

11. Administrative, personnel and facilities support for the conduct of AMC trial proceedings in the regions has been provided by the respective chains of command pursuant to CDF Directive 19/2007. In respect of trial proceedings the following appointments are made to support the administration of the trial in addition to the military judge, military jurors, prosecution and defence counsel:

- a. Administrative Officer,
- b. Clerk of the Court,
- c. Military Jury Court Officer (for military jury trials),
- d. Court Orderly, and
- e. Case Support Officer (to assist the accused).

12. I am grateful to all those working within the AMC for their help and support in this first full year of operations. I am also most grateful to the

chain of command in providing administrative, personnel and facilities support to AMC proceedings.

FUNDING

13. Funding for the AMC for the period of this report was provided by the Secretary/CDF Group of the Department of Defence. My Business Manager, Mr Cameron Landers, and I have been most grateful to them for their advice and assistance, particularly with the funding arrangements for the new Canberra premises to which I shall refer in more detail subsequently.

RELATIONSHIP WITH THE JUDGE ADVOCATE GENERAL (JAG)

14. In my Report for 2007⁴ I referred to my agreement, with the JAG Major General the Hon Justice R.R.S. Tracey RFD that the AMC would provide his office with administrative support pending a formal decision on the retention, and if retained, the role and function of the JAG. Those arrangements continued during the reporting period such that the AMC bid for and maintained an appropriate budget allocation for the functions of the JAG and provided staff support in connection with the JAG's responsibilities for legal reports as part of the (now superseded) internal review process for summary proceedings, and in connection with the JAG's annual report to Parliament.

MODE OF TRIAL AND APPEAL BEFORE THE AMC

15. Schedule 7 to the DFDA divides offences coming before the AMC into three classes. In general terms, Class 1 are the most serious, Class 2 less serious and Class 3 the least serious. The Act provides for Class 1 offences to be tried before a military judge and a military jury of 12.⁵ Class 2 offences are to be tried before a military judge and a military jury of 6 unless the accused person elects to have the charge tried before a military judge sitting alone.⁶ In connection with Class 3 offences, the relevant provisions were amended by Defence Legislation Amendment Act 2008

⁴ Paragraph 18 et seq.

⁵ Section 132A and s.122.

⁶ Section 132AA and s.122.

(DLAA 08) during the reporting period⁷. However, as originally enacted, the DFDA provided for Class 3 offences to be tried before a military judge alone unless the accused elected trial before a military judge and military jury. If that election was made, then the military jury would comprise a panel of 6.⁸ The amendments introduced by DLAA 08 had the effect of permitting the Director of Military Prosecutions (DMP) to refer a Class 3 offence for trial by military judge alone, thereby removing any right of election on the part of the accused where the DMP decides that the matter is to be tried by military judge alone.⁹ In such a case, the maximum punishment for the offence was capped at imprisonment for a period of six months.¹⁰ Those amendments took effect on 20 March 2008.

16. DLAA 08 also vested the AMC with jurisdiction to hear all appeals from convictions before summary authorities. These amendments took effect on 20 September 2008. Provision for these appeals is made at DFDA Part IX – Appeals to the Australian Military Court. Appeals may be brought against conviction and/or punishment.

17. The AMC is the final arbiter of appeals from summary authorities. Unlike trials conducted before the AMC, there is no appeal to the Defence Force Discipline Appeal Tribunal (DFDAT) from decisions of the AMC in connection with summary appeals.¹¹

18. Summary appeals may be dealt with either by a military judge either by holding a hearing, or by considering, without holding a hearing, the documents or other material provided to the court in relation to the appeal.¹²

⁷ The effect of that legislation was summarised by the JAG in his report for 2007 at Paragraph 27 et seq.

⁸ Section 122.

⁹ Section 103A(2) and 132AB.

¹⁰ Clause 2 of Schedule 2.

¹¹ *Defence Force Discipline Appeals Act 1955* s.20 and the definition of 'conviction' at s.4.

¹² Section 168A.

REGISTRY OF THE AMC

19. The administration of AMC proceedings is centralised within the AMC Registry. AMC proceedings are commenced with a referral of charge(s) by the DMP to the Registrar under the DFDA. The Registrar then formally refers the charge sheet to the CMJ with a request for the CMJ to formally nominate a military judge to try the matter. Concurrently, trial documentation is dispatched by the Registrar's office to the accused who (unless DMP has decided in the case of a Class 3 offence that the matter is to be tried by military judge alone) is given 30 days to elect trial by military judge alone or trial by military judge and military jury depending on the class of the offence.

20. Case management processes are applied in order to assist trial management and administration and to provide certainty to the greatest extent possible for trial listing dates. The Registrar liaises with the chain of command regarding a suitable venue for regional matters, together with the allocation of personnel and administrative support for the efficient functioning of the AMC trial proceeding.

21. Where a military jury is required the Registrar undertakes the necessary administration for military juror appointments to be made. Military juror appointments are made by the Registrar independent from command influence, the accused, defence and prosecution counsel. The Registrar's functions regarding military juries are detailed in the AMC Rules and aided by CDF Directive 18/2007.

CASELOAD

22. Detailed statistics for the year appear at Annexes C-F. In summary, 114 matters were referred for trial and 92 trials were conducted. These comprised 28 contested trials and 64 pleas of guilty. Of these matters, 15 were jury trials (two of which were 12 person juries and 13 of which were six person juries). There were 20 matters withdrawn by the DMP prior to trial. Military jury trials were conducted at Defence establishments in Darwin, Townsville, Sydney, Canberra, Melbourne, Adelaide and Perth. No AMC proceedings were conducted outside of Australia during the reporting period. Trials by military judge alone were conducted at most major Defence establishments around Australia.

23. Four summary appeals were lodged. None of these was finalised during the reporting period. The summary appeals are an issue to which I shall refer subsequently.

24. Both the total number of matters dealt with by the Court, and the proportion of those proceeding to trial with a military jury are considerably greater than would have been expected on the basis of the matters proceeding to trial under the old arrangements before court martial and Defence Force magistrate. I included some of these historical details in my Report for 2007¹³ but for ease of comparison, I set them out again here. In 2004 there were 42 matters of which 2 were tried by court martial (the equivalent of a trial with a military jury). In 2005 there were 62 matters, of which 6 proceeded before court martial. In 2006 there were 54 matters, of which 1 proceeded before a court martial. I have not referred to the figures for 2007 because of the transition to the AMC in October of that year. However, full statistical details are available from my Report and that of the JAG for 2007.

25. I shall refer subsequently to particular issues concerning the military juries, and in particular, the steps taken to address the issues that I raised in last year's report¹⁴. For the moment, I note that the jury trials are much more administratively complex to arrange than trial by judge alone. The Registrar estimates that 78 hours are required for the preparation and pre-trial administration of a military jury trial. On average 74 personnel are screened by the Registrar's staff for each military jury trial. This can be contrasted with the average of 14 hours for the preparation and pre-trial administration of a trial by military judge alone. Case management conferences were undertaken by the Registrar in respect of the more complex matters in order to list the matter as "ready for trial". In respect of most military jury trials pre-trial directions hearings were conducted with the military judge presiding.

26. The listing arrangements did not operate as effectively as I would have desired at the start of the reporting period. This was compounded by the ongoing problems in panelling the military juries (to which I referred in last year's report¹⁵). However, these difficulties were addressed by about the end of March, and I am pleased with the number of matters which were

¹³ Paragraph 21.

¹⁴ Paragraph 45 et seq.

¹⁵ Paragraph 45 et seq.

heard during the reporting period. I think that the number of matters heard, when compared with the long term average of matters proceeding before the superior military tribunals, speaks for itself.

27. By way of broad comparison of the case load handled by the AMC during the reporting period, I note from the report of the Canadian JAG for the period 1 April 2006 to 31 March 2007 that the total number of trials before the Canadian equivalent of the AMC was 67 of which six were jury trials. The Canadian equivalent of the AMC had four full time judges.

28. Going forward, it is my intention, in consultation with the Inspector General—Australian Defence Force (IG-ADF) to develop timelines and performance indicators for the AMC. To be useful, such measures require considerable sophistication, and time has not permitted this during the reporting period. I believe that they also need to be developed across the military discipline system as a whole. For example, so far as timeliness is concerned, a bare statement of the time taken between a referral from DMP to the AMC and the date of the trial might have some utility in a broad sense, but it is meaningless in terms of identifying the cause of delay and whether such delay was unreasonable, or in measuring "performance" of any particular military justice entity. If the AMC were to promulgate a timeliness standard for setting a matter down for trial, and if that standard were not attained, the only valid conclusions that could be drawn would be that:

- a. The standard was unreasonable. This would beg the further question of whether reasonableness should be judged having regard to the volume of work or on the basis of some "ideal" standard; or
- b. The system as a whole had failed to attain the standard. The reason for the failure could be many and varied, ranging from the deployment and unavailability of witnesses, to the lack of availability of a judge or venue to an inability by Director Defence Counsel Services (DDCS) or DMP to provide counsel.

29. My preliminary view is that it would be desirable to try to establish measures and standards which were both broadly systemically based, but also specifically targeted to individual military justice entities in so far as matters fall within their control.

30. I am particularly grateful to the DMP and to the DDCS for their willing co-operation and assistance in streamlining the listing arrangements. It is

also appropriate that I acknowledge the very significant effort brought to bear by the Registrar and his staff.

MILITARY JURIES

31. In my Report for 2007, I referred to a challenge to the array of the military jury panelled for the first of the military jury trials proceeding before the AMC¹⁶. That challenge was upheld, and I referred to the fact that the Registrar had, during the last reporting period, written to the Service Chiefs seeking their support for the panelling of military juries on a tri-Service basis. The issue was not resolved during 2007, however, by 10 March 2008, each of the Service Chiefs had agreed to this approach as an interim measure pending appropriate legislation. Once those responses were received, I issued drafting instructions to Parliamentary counsel on amending the AMC Rules to provide for the revised jury arrangements. New Rules, to cover the revised arrangements commenced on 6 June 2008 and have operated successfully since that time. As I have already noted, a total of 15 jury trials were conducted during the reporting period.

32. As I indicated in the 2007 Report, I do not consider it appropriate that CMJ, through the Court's Rules, determine significant ADF policy particularly if there is no agreed position amongst the Services. In the event, the Services agreed the new jury arrangements, at least on an interim basis. I am pleased to report that there is currently policy approval to make legislative provision for the juries. It is proposed that this legislation will address panelling and constitution of military juries, and the issues of juror protection and the creation of appropriate offences concerning interference with jurors or misconduct by military jurors in the discharge of their duties that I noted in the 2007 Report as requiring action¹⁷. During the reporting period the jury arrangements were governed by the revised AMC Rules.

33. Specific comment on the AMC Rules, including the provisions made in connection with the military juries, appears below.

¹⁶ Paragraph 47.

¹⁷ Paragraph 46.

LEGISLATIVE CHANGES IMPACTING THE OPERATION OF THE AMC

34. The operation of the AMC was impacted by the amendments effected by DLAA 08. The full effect of that legislation was summarised by the JAG in his report for 2007 at paragraph 27 et seq. So far as its impact on the operation of the AMC is concerned, I have already referred to the provisions empowering the DMP to decide that Class 3 offences are to be tried by military judge alone, and those vesting the AMC with an appellate jurisdiction in connection with summary proceedings. Significantly, DLAA 08 also required CMJ to make Summary Authority Rules (SAR) in accordance with DFDA s.149. These rules replaced the Defence Force Discipline Rules which had previously been issued by the JAG pursuant to DFDA s.149 as it had stood before the DLAA 08 amendments. Specific comment on the SAR is made below.

AMC RULES

35. DFDA s.149A provides for the CMJ to make rules providing for the practice and procedure to be followed by the AMC, and goes on to list some specific matters about which such rules may be made.

36. The AMC commenced operations in 2007 with what was a slightly modified version of the pre-existing rules – that is the Defence Force Discipline Rules. The modifications were largely to accommodate the role of the Registrar and the listing process and the new scheme for trial by military jury.

37. There have been three main sets of amendments to the AMC Rules in the reporting period. An ad-hoc rules consultative group was formed to consider rule changes. That group included representatives of Defence Legal, DMP, DDCS and IG-ADF. It has been a useful group providing valuable input.

38. The first set of amendments came about largely as a result of the need to address concerns about the selection of military jurors, following the decision of CMJ in the matter of *Tannock*.

39. Following that decision, a proposal was put to the Service chiefs for a scheme for the selection of military jurors from across all three Services on a random basis. The Service chiefs conditionally agreed to that proposal, and the AMC Rules were amended to implement the scheme.

40. The military juror scheme provides for the following:

- a. Broadbased liability to serve as a military juror, subject to eligibility, disqualification and exemptions provisions (AMCR 33B, 33D and 33E);
- b. Some “special circumstances” arrangements for appointment of military jurors, if for example a trial is to be held outside Australia or a very senior officer is to be tried (AMCR 33C);
- c. A preliminary screening process whereby the Registrar confirms that appointment requirements are met and screens prospective military jurors for bias before they are appointed (AMCR 33I);
- d. A process for dealing with excusal from military jury service (AMCR 33K);
- e. A process for the formal appointment of the military jurors and reserve military jurors by summons (AMCR 35);
- f. Processes for objections by the accused to military jurors before they are assembled for trial (dealt with by the Registrar) and after they are assembled for trial (dealt with by the military judge) (AMCR 37 and 46);
- g. A process for the questioning of military jurors about exposure to prejudicial material or improper enquiries (AMCR 58B); and
- h. Power for the military judge to permit the military jurors to separate after retiring to consider their verdict (AMCR 58(5A)).

41. The provisions of the jury legislation in New South Wales, Victoria and Queensland were used as a basis for the drafting instructions given to the Office of Legislative Drafting for these changes to the AMC Rules. It appears that only in South Australia are there rules of court dealing with substantial jury matters – in other jurisdictions special jury-specific legislation exists.

42. As was identified in my report for 2007, there are some potential disadvantages in having military jury related matters dealt with in the Rules as opposed to being dealt with in legislation. It is understood that during the 2009 calendar year steps will be taken to have many of the requirements for military juries transferred from the AMC Rules to the DFDA.

43. The AMC Rule changes referred to above took effect in June 2008. The first AMC jury trial commenced on 23 June 2008.

44. The second set of changes to the AMC Rules gave effect to some minor housekeeping matters and also made the consequential changes needed because of the DFDA amendments permitting the DMP to decide that a trial of a Class 3 offence take place by way of a military judge sitting alone.

45. The third set of change to the AMC Rules was required as a result of the DFDA amendments providing for appeals from summary authorities to the AMC. In addition to changes to the AMC Rules dealing with the process for initiating and determining appeals to the AMC, a major rewrite of the SAR took place, as reported below.

46. The changes made to the AMC Rules as a result of the legislative changes were by way of the following:

- a. Establishing a process for initiating an appeal;
- b. Receiving new evidence if necessary;
- c. Determining how the appeal is to be heard;
- d. Appointing the military judge to hear the appeal and providing a listing process;
- e. Obtaining relevant material from the summary authority;
- f. Discontinuance of an appeal and dealing with failure to prosecute an appeal;
- g. The publication of reasons;
- h. Dealing with a retrial by the AMC if that is the outcome; and
- i. Provisions for communication and delivery of material electronically.

47. It was also necessary to set up a process for dealing with applications to extend time to appeal. The DFDA provides that lodgement of an appeal automatically triggers a process for suspension of the punishment imposed at summary level. It was decided to require an applicant for an extension of

time to also file his or her notice of appeal with the extension application, and to provide for publication of the decision on the extension application, if it is successful, as the trigger for the suspension of punishment.

48. Whilst the changes to the AMC Rules were not insignificant in themselves, the changes required to the SAR were more significant. They are dealt with below.

49. At the time of this Report, there are further amendments to the AMC Rules under consideration. They are changes in connection with the processes for dealing with a summons to produce documents to the Court. DDCS has, on behalf of defending officers, expressed a particular interest in having efficient, rules-based procedures for the production of documents by summons.

50. Consideration of these Rule changes is only at a very early stage. The areas under consideration are processes for:

- a. The issue of a summons to produce;
- b. A person served with a summons to object to production, and for dealing with that objection;
- c. Dealing with non-compliance with a summons;
- d. Production to the Court before trial and without requiring the attendance of a person;
- e. The making of an application for access to the documents by the parties before trial;
- f. Determining whether any third party needs to be given notice of that application and should be permitted to object and be heard on the application; and
- g. Having documents so produced tendered as evidence.

SUMMARY AUTHORITY RULES (SAR)

51. While the SAR were made under my authority as CMJ in accordance with DFDA s.149, Defence Legal Division took policy responsibility for the development of the Rules through the Directorate of Military Discipline Law. In this regard, I am particularly grateful to the Director concerned, Group

Captain Paul Cronan AM and to Wing Commander Peter Bourke of the Victorian Bar. Wing Commander Bourke is a former member of the Judge Advocate and Defence Force Magistrates panels, and developed the draft on which the Rules were ultimately based.

52. During the reporting period, two areas of the SAR required very close and careful consideration. The first was the changes needed to give effect to the DFDA amendments which did away with the application of the formal rules of evidence to summary authority proceedings. Those amendments require a summary authority to comply with the rules of natural justice, and the SAR to "... act with as little legal formality or legal technicality as possible, while ensuring fairness" and to "... comply with the basic principles of (the rules of evidence) relating to relevance, reliability, weight and probative value"¹⁸.

53. The consideration of this area by the ad-hoc rules consultative group was assisted by the interest taken in the subject by the Law Council of Australia.

54. The approach ultimately taken in the SAR in this area was to:

- a. Apply a threshold test of relevance to admissibility;
- b. Otherwise allow in all evidence unless it is excluded by one of a limited number of exclusionary provisions; and
- c. Allow summary authorities to determine for themselves what weight to attach to all of the evidence.

55. In the end result the new "rules" of evidence are brought together in 25 sections which form Part 9 of the new SAR.

56. Those new rules:

- a. Give an accused a right to silence;
- b. Deal with competence and compellability, and self incrimination;
- c. Set out a list of confidential communications which cannot be disclosed in evidence;

¹⁸ DFDA s.146A

- d. Allow evidence by phone or video link;
- e. Require evidence to be sworn;
- f. Set up a process for tender of witness statements, subject to certain conditions dealing with availability of the witness, requiring notice to the other party, allowing that other party to give notice requiring the attendance of the witness, and requiring the summary authority to consider the risk of injustice;
- g. Define relevance and permit evidence as to credibility;
- h. Give a summary authority guidance on assessing credibility;
- i. Define concepts of primary and secondary (hearsay) evidence and give guidance on the weight to be attached to secondary evidence;
- j. Allow for the admission of documentary evidence on certain conditions;
- k. Deal with the admission of opinion evidence;
- l. Deal with the admission of character and related misconduct evidence; and
- m. Provide a general discretion to exclude unfair evidence; and give guidance to the summary authority about the assessment of evidence.

57. A draft of the proposed Rules was provided to the Law Council for comment. Comments were received and considered as part of the process of settling on the final form of the SAR in this area.

58. The second area which required very careful consideration in the SAR was that of the re-opening of summary authority proceedings. The power to do so formed part of the DFDA amendments allowing appeals from summary authority proceedings to the AMC¹⁹.

¹⁹ DFDA Part IX – Appeals to the Australian Military Court

59. DFDA s.153 limits the power of a reviewing authority to require a summary authority to re-open proceedings to cases where the punishment or order is beyond the power of the summary authority.

60. Some difficult questions of interpretation needed to be considered because of the combined effect of, on the one hand, the DFDA provisions suspending punishment and preventing an appeal to the AMC when summary authority proceedings are re-opened, and on the other hand, those setting time limits for any appeal to the AMC.

61. A question which arose was whether, the concept of "re-opening" proceedings was to be interpreted as meaning only the beyond power punishment imposed, or all punishments imposed in respect of the relevant conviction, or indeed all punishments imposed in respect of every conviction, if more than one charge was dealt with at the summary authority proceedings. The matter was complicated by the following:

- a. The re-opening of proceedings may be in relation to either a punishment or a reparation or restitution order;
- b. The need to consider the principles of totality and parity in the sentencing process; and
- c. The lawful limits of the rule making power.

62. In the end result the SAR were amended to provide that on the re-opening of summary authority proceedings when a punishment is beyond power:

- a. The proceedings are re-opened in relation to all punishments awarded (but not any reparation order made) in respect of the underlying conviction; and
- b. The right of appeal to the AMC is unaffected insofar as any reparation order (in respect of the underlying conviction) is concerned or the punishment in relation to any other conviction is concerned.

63. Following the amendments referred to above, the SAR now make provision for the following matters:

- a. Part 1 – Preliminary.

- b. Part 2 – Charging and summoning accused person.
- c. Part 3 – Representation of accused person.
- d. Part 4 – Disclosure of prosecution case.
- e. Part 5 – Summary authority proceedings – general provisions.
- f. Part 6 – Summary authority proceedings – dealing with a charge.
- g. Part 7 – Summary authority proceedings – trying a charge.
- h. Part 8 – Imposition of punishments and making of orders.
- i. Part 9 – Rules of evidence.
- j. Part 10 – Witnesses.
- k. Part 11 – Exhibits.
- l. Part 12 – Procedure for imposing punishment or making an order in case of breach of undertaking to be of good behaviour.
- m. Part 13 – Record of summary authority proceedings.
- n. Part 14 – Reopening of summary authority proceedings.

64. Comprehensive guidance on the application of these provisions is contained in the discipline Law Manuals.

CANBERRA ACCOMMODATION

65. During the reporting period the fit out for the AMC's Canberra premises at Level 1, 5 Tennant Street, Fyshwick was completed. The accommodation includes appropriate office space for the military judges and the Registry, together with a purpose built court room capable of holding complex jury trials. It is a first class facility. Evidence can be received by video and audio link, and the court room can be secured for the purpose of conducting classified trials in camera.

66. This was a major project for the AMC and its limited staff. My Business Manager and I would like to acknowledge the significant assistance, advice and support provided by:

- a. Executive Corporate Management, within Secretary/CDF Group in connection with finance issues;
- b. Defence Support Group in connection with project management; and
- c. Chief Information Officer in connection with information, communications and technology; and
- d. Defence Security Authority in connection with security issues generally, but particularly with regard to the necessity for the facility to be capable of being used for matters involving classified material.

All involved went out of their way to ensure that the project was a success.

67. While the Canberra facility will be used for more complicated trials, including those involving classified material, the AMC will continue to sit at regional facilities and, if necessary, in operational theatres. The volume of work is such that it is not possible for all matters to be heard in the Canberra facility, and, in any event, I consider sittings in regional centres to be important to expose the AMC to the scrutiny of members of the Defence Force. This cannot be achieved if all matters are brought to Canberra.

68. Depending upon the location of witnesses, and the numbers involved, there will also often be considerable efficiencies in terms of travel costs and the minimisation of the time that people are taken from their other duties if the court sits regionally.

PUBLICATION

69. In my report for 2007²⁰ I referred to the publication policy that had been agreed in connection with the following information:

- a. List of upcoming matters;

²⁰ Paragraph 28 et seq.

- b. Trial outcomes;
- c. List of decisions; and
- d. General information.

During the reporting period the AMC website was established on the Defence intranet and publication of this material is proceeding.

70. As I observed in the 2007 Report, I consider this publication important so far as the Court's accountability and transparency is concerned and in subjecting the Court's processes to appropriate scrutiny.

PROFESSIONAL ASSOCIATIONS

71. In the 2007 Report, I referred to The National Judicial College of Australia (NJCA) accepting the military judges into its membership.²¹ During the reporting period the three military judges attended the NJCA's Sentencing 2007 Conference in Canberra and Colonel Morrison and I attended the NJCA's Phoenix Judges Program in May 2008.

72. The Registrar is a member of the Australasian Institute of Judicial Administration.

VISITS AND ACTIVITIES

73. I was involved in the following visits and activities:

- a. meeting with CDF and the Service Chiefs to brief them as to progress with the establishment of the AMC;
- b. attending Chief of Army's Exercise;
- c. Sitting as a member of the judicial panel assessing the international humanitarian law moot court competition;
- d. Meeting with the Executive of the Law Council of Australia and briefing the Executive on the role and functions of the AMC;

²¹ Paragraph 40 refers.

- e. Presenting to the ACT Women Lawyers Association on the AMC;
- f. speaking on the role and function of the AMC at the opening of Silk Chambers in Canberra;
- g. Briefing the Defence Legal Heads of Reserve Panel on progress to establish the AMC; and
- h. Presenting to the Army Pre-Command Course.

I continued to be involved with the work of the Asia Pacific Centre for Military Law.

74. LTCOL Woodward acted as a judge in the assessment of the Legal Training Module 2 Advocacy course and represented the AMC at a careers evening run by the Australian National University College of Law.

75. On 20 June 2008 the Registrar gave evidence to the Senate Standing Committee on Foreign Affairs, Defence and Trade inquiry into reforms to Australia's military justice system.

DEFENCE FOREIGN AFFAIRS AND TRADE REFERENCES COMMITTEE – INQUIRY INTO THE EFFECTIVENESS OF AUSTRALIA'S MILITARY JUSTICE SYSTEM

Fourth Progress Report on Military Justice

76. During the reporting period, the Defence Foreign Affairs and Trade References Committee published its Fourth Progress Report on reforms to Australia's Military Justice System.²² Two of the Committee's recommendations particularly concerned the AMC. These were as follows:

- a. Recommendation 8 – The Committee recommends that the Government amend the DFDA to require the AMC to publish material such as court lists, transcripts of proceedings and judgements in a readily and easily accessible form.
- b. Recommendation 9 – The Committee recommends that the CMJ appear before the Committee to give evidence on the

²² On 24 September 2008.

operation of the AMC and matters raised in the CMJ's Annual Report when invited by the Committee to do so.

77. I have been consulted in connection with the response to be recommended to Government concerning these issues. That response was not tabled during the reporting period.

Street/Fisher Review

78. The then Government response tabled on 5 October 2005 to the Committee's report of 16 June 2005, agreed to the commission of regular independent reviews of the health of the military justice system. On 14 April 2008, Sir Laurence Street, AC, KCMG, QC and Air Marshal Les Fisher, AO, FRAes, map (Ret'd) commenced the first of these independent reviews. In the course of their review, Sir Laurence and Air Marshal Fisher consulted with the Military Judges, Registrar, and me concerning the operation of the AMC. Their report was not released during the reporting period.

HIGH COURT CHALLENGE

79. During the reporting period a former member of the Royal Australian Navy charged with certain offences before the AMC initiated proceedings in the High Court to challenge, inter alia, the constitutional validity of the legislation creating the AMC.²³ That appeal has not yet been heard.

APPEALS TO THE DEFENCE FORCE DISCIPLINE APPEALS TRIBUNAL (DFDAT)

80. During the reporting period, the following matters were taken on appeal to the DFDAT:

- a. Z,
- b. *SGT Vitter*,
- c. *CPL Pook*, and
- d. *CPL Stapleton*.

²³ *Lane v Morrison and the Commonwealth*

81. The appeal against sentence in *Z v Chief of Navy* was upheld. Otherwise the appeals were dismissed.

PRACTICAL DIFFICULTIES

Military Juries

82. I have referred to the issues concerning the military juries earlier and to the fact that there is policy approval for relevant legislation. In the interim, the relevant provisions in the AMC Rules have operated satisfactorily.

Summary Appeals

83. As indicated earlier, there were four summary appeals lodged during the reporting period. It is difficult to handle these expeditiously. The legislation provides that the appeal must be lodged with the Registrar or with such other person as is prescribed.²⁴ If the appeal is lodged with the Registrar, the following steps are then necessary before the appeal can be determined:

- a. The record of the proceedings and the appellant's conduct record must be obtained from his or her unit;
- b. Copies of these materials must then be made available to the appellant's defending officer and to DMP;
- c. The appellant is given an opportunity to be further heard once his or her defending officer has seen this material;
- d. DMP then responds; and
- e. The appellant has the right of reply.

84. Once this is done, the military judge will determine whether the appeal should be heard on the papers or by holding a hearing.²⁵

85. The experience to date, which has included the block leave period at the end of the reporting period, is that some weeks are required for the

²⁴ Section 161(2).

²⁵ Section 168A.

completion of these processes before a military judge is in a position to determine the appeal. If the only means of challenging the conviction and/or punishment before a summary authority is a formal appeal to the AMC, I do not believe that it is possible to significantly reduce or eliminate a substantial degree of delay while these processes to which I have already referred are completed.

86. I raise for consideration whether it would be preferable to reinstate the automatic review which had existed under the legislation as it stood prior to the DLAA 08 amendments with the possible variation of replacing the final petition to a Service Chief under the (now repealed) procedures of s.155, and replacing that limited form of the previously existing petition process with an appeal to the AMC. It occurs to me that this would offer the following advantages:

- a. The chain of command would be able to quash convictions and punishments on the basis of legal advice, thereby achieving both efficiency, and a proper involvement of the chain of command in the supervision of the disciplinary process at summary level.
- b. A convicted person dissatisfied with the review/petition process would nonetheless have a right to appeal to the AMC, thereby safeguarding the rights of those persons, but the fact that dissatisfaction could be addressed by the chain of command would mean that comparatively few matters ultimately came to the AMC.
- c. If a new trial were ordered through the internal process, it would be a trial at summary level. Under the arrangements now in place, if the AMC quashes a conviction and orders a new trial, that new trial must be a full trial in the AMC itself.²⁶ This means that, on conviction before the AMC, the accused person sustains a Commonwealth criminal conviction whereas such would not be the case if it were a conviction by a summary authority.

²⁶

Section 165.

Stays

87. Where, following a conviction by the AMC, there is an appeal to the DFDAT, DFDA s.176(2) empowers the AMC to order a stay in whole or in part of the punishment pending the determination of the appeal. The legislation does not establish a test for the exercise of the discretion. It is generally accepted that a relevant consideration to the grant of a stay will be the prospects of the appeals success. The military judges and I believe it would be preferable for the power to grant a stay pending an appeal to the DFDAT to be vested in the DFDAT rather than the AMC. Possibly, an application for a stay could be determined by a single judge of the Tribunal.

Delay

88. In the early part of the reporting period, matters were not being listed for trial as expeditiously as I would have hoped. The volume of work and the problems with the military juries were contributing factors. However, from about March, the listing arrangements had bedded down, and while the jury issues were not formally resolved until the making of the amended AMC Rules in June, nonetheless, matters were being listed for jury trial in anticipation of the Rules from about March.

CONCLUSION

89. While there continued to be some practical difficulty in listing matters for trial during the early part of the reporting period, I am very happy with what was achieved during the reporting period as a whole. As I have indicated in the body of this Report, I suspect that the summary appeals will take longer to resolve than would be ideal. This is a matter that the Court will monitor and I shall be able to address in more detail in the Report for 2009.

TABLE OF ABBREVIATIONS USED IN REPORT

Abbreviation	Description
AMC	Australian Military Court
AMCR	Australian Military Court Rules
CDF	Chief of the Defence Force
CMJ	Chief Military Judge
DDCS	Director Defence Counsel Services
DFDA	<i>Defence Force Discipline Act 1982</i>
DFDAT	Defence Force Discipline Appeal Tribunal
DLAA 06	<i>Defence Legislation Amendment Act 2006</i>
DLAA 08	<i>Defence Legislation Amendment Act 2008</i>
DMP	Director of Military Prosecutions
FTE-A	Full Time Equivalent Allocation
IG-ADF	Inspector General-Australian Defence Force
JAG	Judge Advocate General
MJI	Military Justice Inquiry
NJCA	National Judicial College of Australia
RANR	Royal Australian Navy Reserve
RFD	Reserve Forces Decoration
SAR	Summary Authority Rules

COMPLIANCE INDEX OF REQUIRED INFORMATION FOR STATUTORY AUTHORITIES

(Senate Hansard, 11 November 1982, pp. 2261 – 2262)

Enabling Legislation	<i>Defence Force Discipline Act 1982</i>
Responsible Minister	Minister for Defence Science and Personnel
Powers, functions & objectives	Paragraphs: 1-3, 5-8, 34-63
Membership and Staff	Paragraph: 3-10
Information Officer	Jennifer Mackenzie Paralegal to Chief Military Judge Department of Defence F-TS-AMC CANBERRA ACT 2600 Telephone: 02 6127 4344 Facsimile: 02 6127 4399
Financial Statement	Paragraphs: 13-14
Activities and Reports	Paragraphs: 69-70, 73-75
Operational Problems	Paragraphs: 82-88
Subsidiaries	Not Applicable

NATURE AND JURISDICTION OF THE AUSTRALIAN MILITARY COURT

Generally

1. The AMC is a Service tribunal created for the purpose of trying a defence member or a defence civilian on a specific charge or charges, usually of a more serious nature. In certain circumstances, a military judge of the court may sit solely for the purpose of determining punishment in respect of a person who has been convicted by a summary authority.
2. The AMC replaces, with effect the 1st of October 2007, the previous superior military tribunals consisting of general and restricted courts martial and trial by Defence Force magistrate.

Trial by Military Judge Alone or by Military Judge and Military Jury

3. Schedule 7 to the DFDA divides offences coming before the AMC into three classes. In general terms, Class 1 are the most serious, Class 2 less serious and Class 3 the least serious. The Act provides for Class 1 offences to be tried before a military judge and a military jury of 12.¹ Class 2 offences are to be tried before a military judge and a military jury of 6 unless the accused person elects to have the charge tried before a military judge sitting alone.² In connection with Class 3 offences, the relevant provisions were amended by Defence Legislation Amendment Act 2008 (DLAA 08) during the reporting period³. However, as originally enacted, the DFDA provided for Class 3 offences to be tried before a military judge alone unless the accused elected trial before a military judge and military jury. If that election was made, then the military jury would comprise a panel of 6.⁴ The amendments introduced by DLAA 08 had the effect of permitting the Director of Military Prosecutions (DMP) to refer a Class 3 offence for trial by military judge alone, thereby removing any right of election on the part of the accused where the DMP decides that the matter is to be tried by military judge alone.⁵ In such a case, the maximum punishment for the offence was capped at imprisonment for a period of six months.⁶ Those amendments took effect on 20 March 2008.
4. Regardless of whether the trial is before a military judge alone or a military judge sitting with a military jury, in the event of a conviction, the military judge will impose sentence.

¹ Section 132A and s.122.

² Section 132AA and s.122.

³ The effect of that legislation was summarised by the JAG in his report for 2007 at Paragraph 27 et seq.

⁴ Section 122.

⁵ Section 103A(2) and 132AB.

⁶ Clause 2 of Schedule 2.

DEFENCE FORCE DISCIPLINE ACT

LIST OF SECTIONS USED IN STATISTICS

Section Number	Class of Offence	Description
23	3	Absence from duty
24	3	Absence without leave
25	3	Assaulting a superior officer
26	3	Insubordinate conduct
27	3	Disobeying a lawful command
28	3	Failing to comply with a direction in relation to a ship, aircraft or vehicle
29	3	Failing to comply with a general order
30	3	Assaulting a guard
31	3	Obstructing or refusing to assist a police member
32	3	Offences while on guard or watch
33(a)	3	Assault on another person
33(b)	3	Creating a disturbance
33(c)	3	Obscene conduct
33(d)	3	Insulting or provocative words to another person
34	3	Assaulting a subordinate
35	3	Negligent performance of duty
36(1)	2	Dangerous conduct
36(2&3)	3	Dangerous conduct
36A	3	Unauthorised discharge of weapon
36B	3	Negligent discharge of weapon
37	3	Intoxicated while on duty etc
38	3	Malingering
39	3	Causing loss, stranding or hazarding of a service ship
40	3	Driving while intoxicated
40A	3	Dangerous driving
40C	3	Driving a service vehicle for unauthorised purpose
40D	3	Driving without due care or attention etc
41	3	Flying a service aircraft below the minimum height
42	3	Giving inaccurate certification
43	3	Destroying or damaging service property
44	3	Losing service property
45	3	Unlawful possession of service property
46	3	Possession of property suspected of having been unlawfully obtained

Section Number		Description
47C	3	Theft
47P	3	Receiving
48	3	Looting
49	3	Refusing to submit to arrest
49A	3	Assault against arresting person
50	3	Delaying or denying justice
51	3	Escape from custody
52	3	Giving false evidence
53	3	Contempt of service tribunal
54	3	Unlawful release etc of person in custody
55	3	Falsifying service documents
56	3	False statement in relation to application for a benefit
57	3	False statement in relation to appointment or enlistment
58	3	Unauthorised disclosure of information
59(1)	1	Dealing in or possession of narcotic goods
59(5, 6 or 7)	2	Dealing in or possession of narcotic goods
60	3	Prejudicial conduct
61	1, 2 or 3	Offences based on territory offences

NAVY

JANUARY-DECEMBER 2008

STATISTICS FOR TRIALS AND OUTCOMES FOR THE AUSTRALIAN MILITARY COURT

	JUDGE AND JURY (12)				JUDGE AND JURY (6)				JUDGE ALONE						
	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD
		GUILTY	N.G.				GUILTY	N.G.				GUILTY	N.G.		
January											1	128			
February															
March											2	5			
April															
May											1	8			
June											5	21			
July											1	1			
August											2	21			
September	1		2								4	56			2
October											1	1			
November						1	1	1			1		1		
December						2	12	4			2	3			
TOTAL	1	0	2	0	0	3	13	5	0	0	20	244	1	0	2

** There were 2 matters withdrawn by the DMP prior to trial

**CONVICTIONS FOR OFFENCES COMMITTED BY RANK FOR MEMBERS OF THE NAVY
FOR AUSTRALIAN MILITARY COURT TRIALS**

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Sect 23									1	
24										
25										
26										
27										
28										
29										
30										
31										
32										
33(a)									1	
33(b)										
33(c)										
33(d)										
34							1			
35										
36										
36A										
37										
38										
39										
40										
40A										
40C										
40D										
41										
42										
43										
44										
45										
46										
47C										
47P										
48										
49										
50										
51										
53										
54										
54A										
55									1	
56									1	
57										
58										
59										
60	2			2			3		1	
61	4			2			38		192	8
TOTAL	6	0	0	4	0	0	42	0	197	8

**PUNISHMENTS IMPOSED BY RANK ON MEMBERS OF THE NAVY
FOR AUSTRALIAN MILITARY COURT TRIALS**

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Reprimand									4	
Conditional conviction without punishment										
Unconditional conviction without punishment	1			2						
Severe reprimand	1			2			3		55	
Suspended fine										
Fine Less than 14 Days Pay	4			2			5		24	
Fine More than 14 Days Pay									4	
Forfeiture of service for purposes of promotion										
Forfeiture of seniority	4						4		22	
Reduction in rank							35			
Suspended detention										
Committed detention							35		24	8
Dismissal									122	
Imprisonment									70	
TOTAL	10	0	0	6	0	0	82	0	325	8

**CONVICTIONS BY CLASS OF OFFENCE FOR MEMBERS OF THE NAVY
FOR AUSTRALIAN MILITARY COURT TRIALS**

	CLASS 1	CLASS 2	CLASS 3
January		128	
February			
March		4	1
April			
May		8	
June		19	2
July			1
August		19	2
September		50	6
October		1	
November			1
December		14	1
TOTAL	0	243	14

ARMY

JANUARY-DECEMBER 2008

STATISTICS FOR TRIALS AND OUTCOMES FOR THE AUSTRALIAN MILITARY COURT

	JUDGE AND JURY (12)				JUDGE AND JURY (6)				JUDGE ALONE						
	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD
		GUILTY	N.G.				GUILTY	N.G.				GUILTY	N.G.		
January											2	13			19
February											3	21	1		
March															
April					1		1				4	9			4
May											8	73			
June					1			3			1	17			1
July					1	1				1	4	7			6
August	1				2	5	2				5	51	1		1
September					1	1					6	6	1		6
October											5	24			
November					1	1	1				4	2	5		2
December											3	10	2		
TOTAL	1	0	0	0	0	7	8	7	0	1	45	233	10	0	39

**The Judge and Jury (12) trial held in August had no verdict.

**There were 13 matters withdrawn by the DMP prior to trial

**CONVICTIONS FOR OFFENCES COMMITTED BY RANK FOR MEMBERS OF THE ARMY
FOR AUSTRALIAN MILITARY COURT TRIALS**

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Sect 23										
24										
25								1		
26								1		
27										
28										
29	3					4				
30										
31										
32										
33(a)										5
33(b)										
33(c)										
33(d)										
34							1	1		
35	1									
36	3									
36A						1				
37										
38										
39										
40										
40A										
40C										
40D										
41										
42										
43										
44										
45										
46										
47C										
47P										
48										
49										
50										
51										
53										
54										
54A										
55							1			1
56							1			
57										
58										
59										
60	1					4	1	1		4
61	6		7			8	108			77
TOTAL	14	0	7	0	0	17	112	4	0	87

**PUNISHMENTS IMPOSED BY RANK ON MEMBERS OF THE ARMY
FOR AUSTRALIAN MILITARY COURT TRIALS**

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Reprimand										
Conditional conviction without punishment										
Unconditional conviction without punishment										
Severe reprimand	8					2	12	1		9
Suspended fine										
Fine Less than 14 Days Pay	4					9	12	3		20
Fine More than 14 Days Pay	1					2				5
Forfeiture of service for purposes of promotion						6				
Forfeiture of seniority	4					5	4	2		
Reduction in rank	3						97			
Suspended detention										6
Committed detention							67			51
Dismissal	2		7			4	3			6
Imprisonment										
TOTAL	22	0	7	0	0	28	195	6	0	97

**CONVICTIONS BY CLASS OF OFFENCE FOR MEMBERS OF THE ARMY
FOR AUSTRALIAN MILITARY COURT TRIALS**

	CLASS 1	CLASS 2	CLASS 3
January		12	1
February		16	5
March			
April			9
May		62	11
June		3	14
July		2	6
August		34	22
September		2	5
October		22	2
November			3
December		7	3
TOTAL	0	160	81

AIR FORCE
JANUARY-DECEMBER 2008

STATISTICS FOR TRIALS AND OUTCOMES FOR THE AUSTRALIAN MILITARY COURT

	JUDGE AND JURY (12)				JUDGE AND JURY (6)				JUDGE ALONE						
	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD
		GUILTY	N.G.				GUILTY	N.G.				GUILTY	N.G.		
January											1				1
February															
March															
April															
May															
June											1	2			5
July											3	61	15		3
August						1		1			2	1	1		1
September						1		2							
October											3	5	1		3
November						1		2			2	5			3
December															
TOTAL	0	0	0	0	0	3	0	5	0	0	12	74	17	0	16

**There were 5 matters withdrawn by the DMP prior to trial

**CONVICTIONS FOR OFFENCES COMMITTED BY RANK FOR MEMBERS OF THE AIR FORCE
FOR AUSTRALIAN MILITARY COURT TRIALS**

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Sect 23										
24										
25										
26										
27										
28										
29							1		2	
30										
31										
32										
33(a)										2
33(b)										
33(c)										
33(d)										
34										
35										
36										
36A										
37										
38										
39										
40										
40A										
40C									1	
40D										
41										
42										
43										
44										
45										
46										
47C										
47P										
48										
49										
50										
51										
53										
54										
54A										
55									3	
56									2	
57										
58										
59										
60							1		2	
61							2		57	1
TOTAL	0	0	0	0	0	0	4	0	67	3

**PUNISHMENTS IMPOSED BY RANK ON MEMBERS OF THE AIR FORCE
FOR AUSTRALIAN MILITARY COURT TRIALS**

	Officer	Officer Cadet	WO1 WO WOFF	WO2 CPO FSGT	SSGT	SGT PO	CPL LS	LCPL	AB LAC	PTE SMN AC
Reprimand										
Conditional conviction without punishment										
Unconditional conviction without punishment										
Severe reprimand							3		8	3
Suspended fine										
Fine Less than 14 Days Pay							2		5	3
Fine More than 14 Days Pay							1		1	1
Forfeiture of service for purposes of promotion										
Forfeiture of seniority							2			
Reduction in rank										
Suspended detention										
Committed detention									57	
Dismissal from ADF										
Imprisonment										
TOTAL	0	0	0	0	0	0	8	0	71	7

**CONVICTIONS BY CLASS OF OFFENCE FOR MEMBERS OF THE AIR FORCE
FOR AUSTRALIAN MILITARY COURT TRIALS**

	CLASS 1	CLASS 2	CLASS 3
January			
February			
March			
April			
May			
June			2
July		56	5
August			1
September			
October			5
November			5
December			
TOTAL	0	56	18

COMBINED JANUARY - DECEMBER 2008

STATISTICS FOR TRIALS AND OUTCOMES FOR THE AUSTRALIAN MILITARY COURT

	JUDGE AND JURY (12)					JUDGE AND JURY (6)					JUDGE ALONE				
	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD	NUMBER OF TRIALS HELD	CHARGES TRIED		QUASHED	WD
		GUILTY	N.G.				GUILTY	N.G.				GUILTY	N.G.		
January	0	0	0	0	0	0	0	0	0	0	4	141	0	0	20
February	0	0	0	0	0	0	0	0	0	0	3	21	1	0	0
March	0	0	0	0	0	0	0	0	0	0	2	5	0	0	0
April	0	0	0	0	0	1	0	1	0	0	4	9	0	0	0
May	0	0	0	0	0	0	0	0	0	0	9	81	0	0	4
June	0	0	0	0	0	1	0	3	0	0	7	40	0	0	6
July	0	0	0	0	0	1	1	0	0	1	8	69	15	0	9
August	1	0	0	0	0	3	5	3	0	0	9	73	2	0	2
September	1	0	2	0	0	2	1	2	0	0	10	62	1	0	8
October	0	0	0	0	0	0	0	0	0	0	9	30	1	0	3
November	0	0	0	0	0	3	2	4	0	0	7	7	6	0	5
December	0	0	0	0	0	2	12	4	0	0	5	13	2	0	0
TOTAL	2	0	2	0	0	13	21	17	0	1	77	551	28	0	57

**CONVICTIONS BY CLASS OF OFFENCE FOR MEMBERS OF THE ADF
FOR AUSTRALIAN MILITARY COURT TRIALS**

	CLASS 1	CLASS 2	CLASS 3
January	0	140	1
February	0	16	5
March	0	4	1
April	0	0	9
May	0	70	11
June	0	22	18
July	0	58	12
August	0	53	25
September	0	52	11
October	0	23	7
November	0	0	9
December	0	21	4
TOTAL	0	459	113

חברת הנדסה ופיתוח תוכנה

Report for the period 1 January to 31 December 2008