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OIA-2024-5070

21 August 2024

[REDACTED]  
[REDACTED]

Dear [REDACTED]

I refer to your email of 5 July 2024 requesting, under the Official Information Act 1982 (OIA), information about the *JTP training program within the NZDF*. Your questions have been considered in relation to the New Zealand Defence Force (NZDF) Military Justice Training Programme (MJTP). Note, the practical exercise scenarios are fictional. Any coincidences between these scenarios and real-life events are unintentional.

- *Can you please supply me all JTP training materials*

MJTP training varies from year to year depending on the presenters involved. Enclosed are copies of: the training materials that will be used for the next Level 2 and Level 3 MJTP residential course and the Level 2 and Level 3 revalidation course; scenarios used in teaching; a Summary Trial Guide; and, learning materials associated with the broader MJTP for Levels 2 and 3. Where indicated, personal information is withheld to protect privacy in accordance with section 9(2)(a) of the OIA. The example documentation closely mirrors documents used in actual summary trials. Many of the example documents would be withheld under the OIA if requested in respect of a real summary trial. The practical exercise scenarios are fictional. Any coincidences between these scenarios and real-life events are unintentional.

- *Is the JTP program still running?*

Yes.

- *Is this the only training given to disciplinary officers? If not, please outline what other mandatory training is relevant to NZDF personnel conducting summary trials.*

The MJTP is the only training specific for officers performing roles in Summary Trials. MJTP Level 1 is mandatory and provided to all Service members.

- *What does the JTP program qualify officers to do specifically?*

A pass in MJTP Level 2 is required for an officer to obtain a Certificate of Competency as a Defending and Presenting Officer in Summary Trials. A pass in the Level 2 revalidation test under the MJTP, to the satisfaction of the issuing authority, allows for the revalidation of an expired Certificate of Competency. A pass in MJTP Level 3 is required for an officer to obtain a Certificate of Competency as a Disciplinary Officer in Summary Trials.

- *How long does the program take to complete?*

The MJTP Level 2 and Level 3 residential courses take place over two days. This training also has a preparatory component, with reading to be completed beforehand. The MJTP revalidation course occurs over a half day. Persons needing to revalidate can also attend the residential course.

- *Who is required to complete/be nominated for the JTP program?*

As stated above, completing the MJTP Level 2 and Level 3 is necessary to obtain Certificates of Competency as a Defending and Presenting Officer (Level 2) and a Certificate of Competency as a Disciplinary Officer (Level 3). Officers performing such roles are required to have these certificates and must complete the applicable MJTP level.

- *How many current NZDF personnel have completed the program?*

As at 9 July 2024, a total of 11,089 Level 2 or 3 Certificates of Competency have been issued.

You have the right, under section 28(3) of the OIA, to ask an Ombudsman to review this response to your request. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.

Please note that responses to official information requests are proactively released where possible. This response to your request will be published shortly on the NZDF website, with your personal information removed.

Yours sincerely

**AJ WOODS**

Air Commodore

Chief of Staff HQNZDF

**Enclosures:**

1. MJTP Residential Course – Levels 2 and 3
2. MJTP Levels 2 and 3 Revalidation
3. Summary Trial Guide for Presenting and defending Officers
4. Scenarios used in training
5. Other training documents

# MILITARY JUSTICE TRAINING PROGRAMME

Residential Course - Levels 2 and 3

14 August 2024



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1

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## Scope

1. Introduction
2. Preliminary Inquiry
3. Pre-Trial Matters
4. Summary Trial
5. Rules of Evidence
6. Finding
7. Punishment
8. Assessment Trials



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Important to note that this is people's lives that are affected: Careers, finance, and consequently their families are affected, and as such, the fairness and propriety of the system are critical.

Feedback is overwhelmingly positive. Reality check – we are not trying to qualify people as lawyers in a 2 day course.

What we're going to look at

1. Introduction
2. Preliminary Inquiry
3. Pre-Trial Matters
4. Summary Trial
5. Rules of Evidence
6. Finding
7. Punishment
8. Assessment Trials



# 1. Introduction



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## Introduction - Purpose

- Key reference materials: DM69 (2 ed) Volume 1 – Commanders Handbook on Military Law
- The purpose of this course is:  
*...to qualify PRESO, DEFO and DISCO in order to enable them to competently run a summary trial.*
- This will be conducted over 2 days:  
Day 1 – go through the various skills that you will need to perform your role as a defending or presenting officer  
Day 2 - will be applying those skills to actual scenarios.



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Purpose of the training is to primarily qualify you in the role of presenting and defending officers (and disciplinary officers) for the purposes of the Armed Forces Discipline Act.

But the purpose of the training is more than that. It also informs you of the standards that are expected within your services for the meting out of military justice.

Programme will be:

Day 1 – go through the various skills that you will need to perform your role as a defending or presenting officer

Day 2 - will be applying those skills to actual scenarios.

**Summary trials are designed to be a part of a military justice system that provides the vital elements of:**

-Maintaining discipline, consistency, portability, fairness, simplicity, efficiency.

DM 69. Designed to be read and understood by commanders, not lawyers. Much simpler and highly efficient. In particular, the DM 69 (2<sup>nd</sup> ed) Vol 1 is the Commanders Handbook on military law and is your best friend if involved in any summary trial.

**Similar to a Court.**

Similarities: (May look like a court but is not.)

-Advocates presenting and defending the charge, decision maker in control of proceedings, order of proceedings. However, it is still an inquisitorial process, the Disciplinary Officer wholly responsible for the interests of justice and the rights of the Accused.

-It is the responsibility of both the Presenting and Defending Officers to be thorough, accurate and fair.

## Introduction - Terminology

- DISCO: Disciplinary Officer (Judge)
- PRESO: Presenting Officer (Prosecutor)
- DEFO: Defending Officer (Defence)
- Accused: Person on trial (Defendant)
- Offender: Accused after being found guilty



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## Introduction - Summary Trial

- A common system of summary discipline that is appropriate to the military context. Why?

Maintenance of discipline

Consistency

Portability

Fairness

Simplicity

Efficiency

- And why do we use Summary Trials?



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Q1: We need it to maintain discipline, correct wrongdoing and ensure that there is a level of trust between members of the armed forces and a level of trust that the public and the government can have in the NZDF.

Q2: Summary Trials allow commanders to maintain discipline, not just lawyers.



## Introduction - The NZ Bill of Rights Act 1990

- Section 24(c): Everyone charged with an offence [has] the right to consult and instruct a lawyer
- Section 25(a): Everyone who is charged with an offence has, in relation to the determination of the charge, the right to a fair and public hearing by an independent and impartial court
- Waive rights or elect trial by the Court Martial



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We have our own justice system to allow compliance with the NZ Bill of Rights Act

**How do we adhere with Section 24(c):** We caution our accused and allow them to access a Armed Forces Defence Counsel in accordance with the Defence legal Aid Scheme. These are external lawyers.

**Does anyone know how the scheme works?** An accused can talk to the MPs or the LSO, ask to speak with a lawyer and choose on from a list of lawyers. From there they will have 3 hours of free legal advice – they can only use this to discuss their case and their options.

**How do we adhere with Section 25(a):** This is where our system is a little different... our system means that the DEFO and PRESO are likely colleagues and the accused could be a subordinate of both. The system is therefore designed to provide as much impartiality and independence as possible.

## 2. Preliminary Inquiry



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## Preliminary Inquiry - Purpose

- An inquiry conducted on behalf of a CO to collect evidence which will assist the CO to determine whether there is a well-founded allegation of offending

*DM 69 (2 ed), Vol 1, Chap 3*

- It is important that all evidence is gathered, not just the evidence that helps to prove guilt.



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**Well-founded allegation:** If the CO has determined that there is a well founded allegation it must proceed under AFDA ss 102 and 103 as either a charge under the AFDA or referred to the appropriate civilian authorities.

**Not Well Founded?:** Stay of proceedings if not in the interests of service discipline that the allegation be recorded in the form of a charge and no reasonable prospect of a finding of guilt on the charge. Consult your legal officer if you think you have an allegation that may fit this category.

**Minor Offences:** Also ability for minor offences to be dealt with by command eg. Presentations, time management skills training etc. That is not to say that offending should always be dealt with in house, this is a call for a CO to make. We call this minor and trivial and this can be used to deal with minor administrative or performance issues.

**Explain why we want both exculpatory and inculpatory evidence:** Remember that at this time, we are looking to determine whether there is a case to be heard. We aren't just looking for one sided evidence that will guarantee a conviction.



## Preliminary Inquiry - Caution

- A person must be cautioned when
  - They are questioned as a suspect;
  - The investigator has gathered enough evidence to be satisfied that they should recommend charges to the suspect's CO;
  - They are placed under close arrest; or
  - An allegation is recorded against them in the form of a charge
- The exact wording is important

*DM 69 (2 ed), Vol 1, Chap 3, Para 3.1.4*



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DM 69 3.1.15 states that when an allegation is recorded in the form of a charge, the charging officer/NCO is to:

- a. Inform the suspect promptly of the nature and cause of the charge
- b. Caution the suspect in accordance with 3.1.4 and ask whether the suspect wishes at that time to say anything in relation to that charge.

## Wording of the Caution

- “You have the right to refrain from making any statement and to remain silent. Do you understand this?”
- “You have the right to consult and instruct a lawyer without delay and in private before deciding to answer questions, unless operational circumstances do not permit that, and this right may be exercised without charge under the Armed Forces Legal Aid Scheme. Do you understand this? Do you wish to exercise this right?”
- “Anything you say will be recorded and may be given in evidence. Do you understand this?”



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**If you think you have not cautioned them correctly:** Stop what you are doing ie questioning a suspect, find the caution and go back to the suspect, give them the proper caution and ask them the questions again.

The purpose of this is if you fail to caution the accused correctly, the evidence that they give without a proper caution is not admissible in the summary trial.

**Method of Caution:** The caution should always be done in person ie not via email etc/ Any questions that the suspect answers while under caution should be recorded by writing, audio or video... Video with audio is preferred.

## Preliminary Inquiry - Legal Advice

- Legal aid for arrest and questioning, and once charged.
  - Same as civilian Police Detention Legal Assistance Scheme
- If suspect requests lawyer, provide list of Armed Forces Defence Counsel Panel ('Panel') – contact MPs
- If outside New Zealand, suspect may telephone member of Panel unless operational circumstances preclude it



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As mentioned, suspect has right to consult and instruct a lawyer in private before deciding to answer any questions. As a commander or an individual conducting an investigation, you must not attempt to discourage them from doing so.

Points to note:

- Phone call to panel lawyer is covered by NZDF, up to the value of 3 hours.
- Suspect may contact any lawyer they see fit, but they will need to pay if the lawyer is not from the panel.
- Seek advice if possibility that suspect may have to disclose sensitive information to lawyer to get advice.
- On ops, only if circumstance permit. If not, at first available chance (DOCUMENT REASONS FOR NOT COMPLIANCE WITH REQUIREMENT) **Operational Circumstances:** This is a fairly high threshold. Seek advice.
- Needs to be in private.
- Reasonable time to seek advice (not hours and hours)

**Why do we do this:** Gives us some more impartiality and independence. All of this is in search of natural justice rights. While this may seem like it is protecting the accused, it is really protecting us from any accusations against the NZDF of miscarriage of justice.

## Preliminary Inquiry - Interview

- Questioning the suspect
  - Must caution, question and record
  - Cannot order or ask them to write or email their statement
- Questioning the witnesses
  - More permissive rules



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**What if a witness becomes a suspect:** Stop interview, administer a caution to that witness and then question them as suspect. Everything they said before the caution is admissible.



## Preliminary Inquiry - Search and Seizure

- Search: Examination of a person or property
- Seizure: Taking of property discovered during a search
- Bill of Rights Act 1990: All searches to be lawful and reasonable
- **These are high-risk areas**



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DM 69, 3-18

**Recommend seeking advice from MPs or LSO when engaging in a search/seizure.**

**Why is it a high risk situation:** Our people have a reasonable expectation of privacy, even if they have done something wrong. There is a wide scope of expectation of privacy – ie a soldier living in private accommodation with her spouse will have a higher expectation of privacy than if she lived in service accommodation.

## Preliminary Inquiry – Customary Search

- CO's customary power of search
    - Routine inspections and customary searches are a normal function of command – no need for special authorisation
- AFDA s 97*
- Purpose: Related to fundamental order and discipline issues: Not focused on finding specific evidence of offending
  - A focus on what is visible
    - E.g. recruits standing by their bed spaces
    - Permits search of kit, equipment, lockers, drawers and bed spaces



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Routine inspections focus on what's visible. Opening drawers likely customary.

This is the situation where recruits are standing to their beds etc. Also extends to PXA.

## Preliminary Inquiry – Reasonable Grounds Search

- A CO can exercise power of search if they have “reasonable grounds to suspect” that a person has in their possession:

- Property which has been unlawfully obtained
- Property which is or may be evidence relating to the commission of an offence

*AFDA s 95*

- CO may:

- Detain and search the person
- Search any premises within their command occupied or used by the person
- Take possession of the property, article or thing



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### How does the transition from s 97 to s 95 search work:

If you are conducting a routine search under s 97 AFDA and you identify something that may indicate offending ie drug paraphernalia, you are not permitted to further engage in a search to find drugs under s 97. You need to get the CO to authorise a section 95 search – this should be done in writing if circumstances permit.

Throughout this time you can order the individual not to return to their room – such a command would be lawful as the service purpose for doing so is the maintenance of justice.

Specific rules in DM 69 for personal electronic devices – won't go into too much detail here, but authorisations for PEDs *must* be in writing and legal advice *must* be sought.

## Preliminary Inquiry - Search and Seizure - Disposal

- Property is to be returned if it is 'untainted property', i.e.:
  - The seized property is not required as evidence in proceedings
  - DISCO finds that the property was not used in the commission of an offence
- If property is used in the commission of the offence
  - Direct that the property is forfeited to the Crown
  - Make a restitution order requiring the property to be delivered to another person (e.g. stolen property)
- **Legal advice should be sought before making an order relating to seized property**



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DM 69 paras 3.3.42 – 3.3.45

### **Recommend that you seek legal advice before making an order relating to seized property**

We currently struggle to return people's 'untainted' property which is being searched... phones is a classic example. Sometimes the delay can be from 3 months to 2 years. This is because the phone is the best evidence we have to be used at ST or CM.



## Preliminary Inquiry - Suspension from Duty

- Service members suspended from duty or in service custody pre-trial retain pay



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### Why is this do you think?

The individual has not been convicted of any offence. So if we were to force them onto unpaid leave and they were found not guilty, then NZDF would be responsible not only for their pay but also for any lost potential if that decision was taken to the Human Rights Commission or a member of Parliament.

# 3. Pre-Trial Matters



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## Pre-Trial Matters - CO's Decision to Charge

- Should the accused be charged?
  - Duty to maintain discipline and report offences
  - If 'well-founded', allegation **must** proceed or be referred
  - No in-house dealings (e.g. "I'll take extras rather than the charge")
- An allegation is 'well-founded' if the facts logically support every element of the charge
  - But, a CO *may* determine that the allegation should not be recorded as a charge if minor or trivial *see DM 69 4.2.3B*



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If the CO has determined that there is a well founded allegation it must proceed under AFDA ss 102 and 103 as either a charge under the AFDA or referred to the appropriate civilian authorities.

**Can anyone remember an exception to this:** Minor and trivial.

Interesting issues are starting to arise out of this – CO needs to decide if an allegation is well founded and does this by viewing some of the evidence usually, but these days CO is also often the DISCO and should not have viewed any of the evidence prior to the summary trial.

**Why would this be a problem?** Independence.

**Solution:** How some units are getting around this is to provide the CO with just an outline of the alleged offending. No statements or exhibits, just a brief dot-point style brief as to what the incident was all about and what the Accused is alleged to have done, that way the CO can determine if there is a well founded allegation without compromising their neutrality.

After the four years we run a 4 hour refresher course with a written test at the end to ensure that you have retained all the key parts.

## Pre-Trial Matters - Assigning PRESO/DEFO/DISCO

- DISCO must not have a personal interest in the charge, e.g:
  - The charges allege an offence against the DISCO
  - The charge alleges an offence by/against the DISCO's family member
  - The DISCO is the sole witness
  - The DISCO otherwise has a personal interest that is likely to influence judgment



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Four types of categories of DISCO as set out in DM69 (2<sup>nd</sup> ed) Vol 1, Ch 7-4:

1. Superior Commander (eg CDF, VCDF, CA, CN, CAF etc)
2. Commanding Officer
3. Detachment Commander (Officer authorised by CO to commander of part of a unit that is stationed or employed a distance from it's HQ)
4. Subordinate Commander (A person delegated by the CO to act as a DISCO under s106 AFDA – usually an OC)

DISCO REQUIREMENTS:

**Personal interest** = Accused and DISCO need to be in same chain of command so may lead to paper postings. **Impartiality**: Sometimes hard not to have totally impartial approach, hence why CM offered for serious offending where military members are totally impartial.



# Pre-Trial Matters - Roles and Responsibilities

- Disciplinary Officer (DISCO)
- Presenting Officer (PRESO)
- Defending Officer (DEFO)
  - How can I defend someone who I think is guilty?
  - Should the accused give evidence?
  - Should the accused elect trial by the Court Martial?



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## Disciplinary officer DISCO

The disciplinary officer **must** remain impartial in order to receive the evidence and make a finding at the trial. The trial is conducted by the disciplinary officer, who controls the pace and execution of the proceedings. The disciplinary officer is responsible for ensuring that the trial is conducted in accordance with the statutory requirements – as provided for in the DM69.

**Where does X stand/What does the room look like etc:** DON'T CARE / DOESN'T MATTER! Idea is that the DISCO runs the Court how they wish, for example if they want witnesses standing at attention while giving their evidence or seated with their head dress removed (better option).

## Presenting officer PRESO

The presenting officer's role is to bring the case in support of the charge but not to pursue a conviction at all costs. For trial, the presenting officer must do the following:

- Check the charge report for errors. Be prepared to explain any delay between the offending and the case being heard. Unreasonable or unexplained delay will be a mitigating factor.
- Disclose all evidence in support of the charge to the accused and the defending officer – *this is a one way street*.
- Have prepared an outline of the case (if NG plea). This consists of a brief overview of the facts, and the elements of the charge if the disciplinary officer requires them. If G plea, then a summary of facts must be prepared for the disciplinary officer.
- Lead the evidence from the witnesses in support of the charge
- Cross examine the defence witnesses, if necessary
- Obtain the accused's MD602 and prepare a report of the accused's service record, conduct and circumstances -FORM MD601D.

## Defending officer

The defending officer's role is to represent the interests of the accused. For a trial, the defending officer must:

- Provide information to the accused on the trial process, particularly the implications of a G or NG plea.
- Prepare and construct any defence.
- Explain the CM election implications if required.

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•Prepare a plea in mitigation if required, and consider calling evidence in mitigation.

1. **How can I defend someone who I think is guilty?** Being a DEFO is a duty, and you must complete duties with diligence, efficiency and to the best of your ability, it doesn't matter what you believe, you do your job. You must present the Accused's case with reasonable competence, care and skill.
  
1. **Should the accused give evidence?** The accused can give evidence in their own defence. On the other side, just because the accused chooses silence, the factfinder may not infer guilt IAW Evidence Act s 32.
  
2. **Should the accused elect trial by the Court Martial?** Has lawyer representation and decision of a legally trained judge, rules of evidence are applied and court procedures followed, can be a fairer test. Cons – CM can punish more severely, can dismiss from the Service and sentence to civilian prison, longer periods at SCE etc. Also gives a permanent criminal record upon conviction.

## Pre-Trial Matters - Check the Charge

- PRESO: Record the charge on the MD 601
  - Seek legal advice
- DISCO and DEFO: Do not assume that the MD 601 has been drafted correctly
  - Is the accused accurately described in the charge report?
  - Is the charge accurately and correctly set out?
  - DISCO can amend during Summary Trial

DM 69 Vol 1 7.4



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### Amending the charge:

The power to amend a charge is often used for minor issues such as the accused being improperly described on the charge sheet. It can also be used, however, if the PRESO's evidence doesn't fit the charge but may satisfy some other charge. Here the DISCO may amend, substitute or even add a new charge (see DM69 Vol 1 Chp 7 para 7.4.3) – LSOs are able to advise on the intricacies of the charge ie the distinction between common assault, fighting and striking a superior etc.

### Common things we pick up:

Wording: The wording of charges is well set out in DM 69 (2<sup>nd</sup> Ed) Vol 1 – the specimen charges are useful.

Representative Charges: These are charges that reflect the commission of a number of offences over a period of time ie disobeying orders a number of times during one encounter.

Alternative Charges: These are charges that are based on the same events but have different elements in case we cannot make out the first charge – a good example is striking a superior and common assault: in the event that the accused was unaware of the rank of the person he struck, then you cannot make out striking a superior – but can still make out common assault. We will discuss this shortly.

Variations on Charges: Some charges are phrased in the DM 69 as 'threatening, insulting or provocative language' – when the charge is drafted you need to determine which is the most applicable: we don't charge people with action A OR action B, it must be one or the other.

Note that if the charge is amended, the amendment must be explained to the accused and if it is a major change, such as when the DISCO adds a new charge, the trial should be adjourned to let

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the accused structure his/her defence to this new charge. The DEFO should ask for this if the DISCO doesn't give it (see DM69 Vol 1 Chp 7 para 7.4.6).

AFDA s 113 requires that if the amended, substituted, or additional charge differs substantially from the original charge, the DISCO must

- Explain the amended, substituted, or additional charge to the accused;
- Advise the accused of his or her right to seek an adjournment to consider the charge; and
- If requested, adjourn the proceedings for that purpose.

Consider NZBORA s24(d) which provides the right to adequate time and facilities to prepare a defence.

## Pre-Trial Matters - Check the Charge

- Each charge consists of a **statement of offence** and a statement of particulars (containing **elements**)
- Example: Avoidance of Duty:

### **AVOIDANCE OF DUTY CONTRARY TO AFDA s 49(a)**

in that she, at Linton on **20 March 2018**, without reasonable excuse, **failed to attend** a Required Fitness Level testing, a **duty for which she was required to attend**.



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When checking the charge, make sure the statement of offence is correct. Make sure the statement of particulars contains all of the elements (blue) and is correct.

So in this example, the statement of offence is outlined in green (always in capital letters). And the elements are in blue. If we look at the elements on page 4-68 can see that they have all been met.

If you need to refer to another service member – if it is an insubordination charge as an example then you would refer to them as Service Number, Rank, Initial, Last Name, ie in that she at Linton on DATE, used threatening language towards s. 9(2)(a) [REDACTED]

## Example:

On 20 March 2018, PTE A. B. Smith was unable to find the Rabintex helmet that she had been issued, after she left it in the tussock during a night patrol at Waiouru. Subsequent searches have not been successful. The helmet is service property, valued at \$700.00.

**How will you record the charge? – Start with “In that she...”**

*Ref. DM 69 Vol 1 4.11.80*



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Give 60 seconds to record charge.



## Pre-Trial Matters - Check the Charge

- Example: Losing Service Property:

### LOSING SERVICE PROPERTY CONTRARY TO AFDA s 62(1)(a)

in that she, at Waiouru on 20 March 2018, lost one Rabintex helmet, valued at \$700.00, being Service property issued for her use.



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Lets make sure we have everything required; have a look at the specimen charge if you haven't already.

1. The charge itself with a AFDA reference (in capitals)
2. A location and a date
3. A brief layout of the particulars – just enough to explain what happened
4. The specified property
5. The value of the property
6. The fact that specified property was service property

**CHARGE REPORT<sup>1</sup>**

Service <sup>3</sup>	Arm <sup>3</sup>	Full Service Description <sup>4</sup>	Unit
<b>A</b>	<b>R</b>	<b>PTE A.B. SMITH A1234567 RNZIR</b>	<b>RNZIR</b>
Plea <sup>5</sup>	CHARGES <sup>6</sup>		Finding <sup>7</sup>
	<p><b>First Charge:</b>  <b>AVOIDANCE OF DUTY CONTRARY TO AFDA s 49(a)</b>  in that she at Linton, on 20 March 2018 without reasonable excuse, failed to attend for Required Fitness Level testing, a duty for which she was required to attend.</p> <p><b>Second Charge:</b>  <b>LOSING SERVICE PROPERTY CONTRARY TO AFDA s 62(1)(a)</b>  in that she, at Linton on 20 March 2018, lost one Rabintex helmet, valued at \$700.00, being Service property issued for her use.</p>		
<b>e</b>	WITNESSES AND EXHIBITS <sup>8</sup>	RECORD OF SUMMARY PROCEEDINGS <sup>11</sup>	
		Investigated by _____ on _____ Remanded to _____ on _____ Investigated by _____ on _____ (Name and Appt) Accused given the right to trial in the Court Martial _____ Referred to DMP and remanded to Court Martial on _____ Punished/Discharged by _____ on _____ Signature of disciplinary officer who punished accused or discharged accused without punishment _____ (Name) (Rank)	
	ACCUSED BASIC PAY <sup>10</sup> \$135.57 per day		
	PUNISHMENTS AND ORDERS	DETAILS OF APPROVAL, ORDERS ETC <sup>13</sup>	

This is what the MD601 will look like.

As you can see this charge sheet has two offences recorded on it.

1. One is an avoidance of duty charge
2. The other is the one we just worked through.

**Other elements of the MD 601**

- Reference: provided by HRSC – as PRESO, contact them to have this filled out.
- Location where the offence occurred.
- Service particulars Rank, Service Number, Initials, Name and Corps.
- Accused daily ROP: Check with HRSC and have this filled out.

**What doesn't need to be filled out**

- Witnesses and Exhibits: we often see this is already filled out when charges are laid before the CO. This is incorrect – the DISCO will fill this out during the ST as these appear as the full list of witnesses/exhibits will not be accurate until they are actually presented in the ST.

# Pre-Trial Matters - Analysing the Charge - Elements

## Avoidance of Duty – DM 69, volume 1, chapter 4, page 67

Elements of the offence:

1. Subject to the AFDA
2. Required to attend muster, parade or for other Service duty
3. Knew of muster, parade or Service duty
4. Did not attend
5. Date

*Defence – PRESO to disprove BRD – Reasonable excuse for not attending*



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All offences are made up of elements

Each element needs to be proved by the prosecution beyond reasonable doubt or a finding of not guilty MUST be entered by the DISCO.

Helpfully set out in DM69 (vol 1), may be useful for DISCO to have checklist handy during hearing. PRESO to provide but is DISCO discretion.

For example, lets look at Avoidance of Duty pg 4-67 and 4-68.

**Elements are:**

1. Subject to the AFDA
2. Required to attend muster, parade or for other Service duty
3. Knew of muster, parade or Service duty
4. Did not attend
5. Date

A defence is also listed that if the accused can show on Balance of Probabilities (more likely than not) that they had a reasonable excuse for not attending. This is a reversing of an onus: normally the onus is on the prosecution and the PRESO ie they must prove all elements of the charge beyond reasonable doubt. However in this situation, for a defence to be called upon it must be raised by the DEFO and proved on the balance of probabilities ie was it more likely than not that PTE X considered that he had a reasonable excuse for not attending.

# Pre-Trial Matters - Analysing the Charge - Elements

## Loss of Service Property – DM 69, volume 1, chapter 4, page 114

Elements of the offence:

1. Subject to the AFDA
2. Specified property was Service property
3. Specified property was issued to accused **OR** entrusted to accused's care in connection with his or her duties
4. Lost specified property
5. Date

*Defence – PRESO to disprove BRD – Reasonable steps for the care and preservation of the specified property*



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Or

For this one, when you record the charge, pick one ie it was either issued to the accused, OR entrusted to the accused's care... Look at the facts and determine which is the most applicable.

# Pre-Trial Matters - Analysing the Charge - Elements

Elements	Witnesses for Prosecution	Witnesses for Defence
Element 1	Who? What will they say? What exhibits can they produce?	Who? What will they say? What exhibits can they produce?
Element 2	Who? What will they say? What exhibits can they produce?	Who? What will they say? What exhibits can they produce?
Etc...	Etc...	Etc...



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When you are planning out your argument you need to determine what each witness knows and what they can prove and if necessary what documentation they have to back it up. This will help to lay out your summary of facts:

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What is the element: used insulting language.

Who is the witness: SGT X who sits right next to MAJ Y's office.

What will he say: That he was there at the time, and that he heard what was said between MAJ Y and CPL Z.

What exhibits are there to support this: A diagram of where he sits in relation to MAJ Y's office.

What does this prove: That he was close enough to hear what was said clearly.

## Pre-Trial Matters - Alternative Charges

- When there are two possible offences, an alternative may be drawn
- This allows the DISCO to expeditiously move to the alternative if he or she determines that the elements of the primary offence are not proven
- Charges are recorded in descending order of gravity
- **Can you think of any examples?**



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### Common example:

Wilful vs negligent damage: LCPL X may not have punched the wing-mirror, but was so intoxicated at the time that he stumbled into it while punching the air, negligently causing damage.

The wilful damage charge requires intent to cause that damage.

The negligent damage charge does not require intent.

In that way even if intent cannot be made out – then through negligence or lack of care, the accused can still be culpable.



# Pre-Trial Matters - Alternative Charges

## First Charge

### **STRIKING HIS SUPERIOR OFFICER CONTRARY TO AFDA s 35(1)(a)**

in that he, at Linton on 20 March 2018, struck s. 9(2)(a) his superior officer.

## Second Charge (Alternative to the First)

### **COMMITTING A CIVIL OFFENCE CONTRARY TO AFDA s 74(1) NAMELY COMMON ASSAULT CONTRARY TO SECTION 196 OF THE CRIMES ACT 1961**

in that he, at Linton on 20 March 2018, assaulted s. 9(2)(a)



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## Pre-Trial Matters - Specified Certificate

- Has a legal advisor provided DISCO with a specified certificate?
- If the DISCO might impose punishment of:
  - Detention
  - Reduction in rank
  - A fine that exceeds the offender's basic pay for a period of 7 days
  - A compensation order of an amount that exceeds the offender's basic pay for a period of 7 days

*DM69 Vol 1 7.3.1*



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Page 7-11

DISCO must consider beforehand if one of the punishments may be imposed if finding of guilt.

- Detention in SCE
- Reduction in rank
- A fine

For example, conduct worthy of a stint at SCE or a reparation order like we looked at in the theft example of \$700.

Must not continue with proceedings until a certificate has been obtained.

Spec cert to take form of minute or email from LO in which we will confirm that the charge discloses an offence against the AFDA, is drawn in accordance with the AFDA rules of procedure and is otherwise correct in law. Sometimes we might come back and say that no spec cert is required based on the sentencing guidelines.

It should be noted that if the accused is of the rank of SGT or above – in order for these punishments to be handed down, the ST must be heard by the CO.

## Pre-Trial Matters - Disclosure

- PRESO must disclose both inculpatory and exculpatory evidence to the DEFO, including
  - Copy of the MD 601 Charge Report
  - Statements of the accused and the witnesses
  - Relevant documentary evidence
  - Written statements from witnesses
  - Related Unit or Service Police file, or relevant portions of the file
- Generally, the DEFO does not have to disclose anything.



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Disclosure before arraignment stage.

Must be information both favourable and unfavourable for the prosecution.

**Remember why we do both:** We aren't just looking for one sided evidence that will guarantee a conviction.

Generally, the DEFO does not have to disclose anything, unless the accused has an alibi or an expert witness. Talk to an LO if you are unsure.

## Pre-Trial Matters - Disclosure

- MD 601B: Disclosure must be complete and made early enough to give the Accused sufficient time to prepare a defence
- **Full disclosure of a well investigated and prepared case maximises the likelihood of an accused pleading guilty which saves everyone time and effort**



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Disclosure includes all exhibits and witness statements – at this time the DEFO can determine whether they accept some written statements (with the permission of the accused) and can start shaping a defence.

This can seem like you are giving away your fight a bit – but remember as a PRESO you have to prove beyond reasonable doubt that the accused is responsible for the offence – you handing your documents over to the DEFO shouldn't make any difference to how you will convince the DISCO of the accused's guilt.

The DEFO does not need to hand over anything to the PRESO.

# 4. Summary Trial



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## Summary Trial - Procedure

- Follow the flowchart
  - DM 69, Vol 1, Chap 7, Annex A-D
  - Summary Trial Guide for PRESOs and DEFOs
- Best to follow the process, but minor errors are not necessarily fatal



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Summary trial flowchart 7-39 to 7-43 in DM69.

As you can see if there is a minor procedural issue, it will usually not be fatal unless there is a miscarriage of justice or abuse of natural justice rights.

## Summary Trial - Pleas

- Ch 7, Annex A: 7 – 39
- The DISCO will commence recording and follows the process laid out in the flowchart.
- The DISCO will:
  - Read the charge
  - Confirm Disclosure
- The DISCO will take the pleas.



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Summary trial flowchart 7-39 to 7-43 in DM69.

Arraignment flowchart is at 7-39. It is simply the DISCO:

- COMMENCE RECORDING
- Ensure Spec cert has been obtained if required
- 1. Informing the accused that they are going to hear the charge(s)
- 2. Ensure that the accused is correctly described in the MD601
- 3. Read the charge to the accused
- 4. Ensure the evidence in support of the charge has been disclosed
- 5. Ask the Defendant whether he or she pleads guilty or not guilty

Remember that the plea is for the accused, the DEFO is there to support that decision and advise, but the accused must make the decision.

## Summary Trial – Guilty Plea

- Ch 7, Annex B: 7 – 40
- The DISCO must ensure that the accused understands the nature of the charge and the consequences of doing so.
- The DISCO will ask the PRESO to read out the Summary of Facts.
- If certain punishment is considered, then a CO (if DISCO) must give the accused the right to trial by CM.



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Outline of case by PRESO only if DISCO consents.

A CO may also give the accused the right to trial by CM – we will talk about that shortly, but just bear in mind it is at this point in a guilty plea that that will occur.

If Guilty:

- No witnesses
- No evidence presented
- No examination of witnesses

The DEFO in this case will not be required to present their summary of facts. The next we hear from the DEFO will be the mitigation during the punishment phase.

## Summary Trial – Not Guilty Plea

- Ch 7, Annex C: 7 – 41 to 7 – 42
- The DISCO will hear the summary of facts having being satisfied that the accused has had reasonable time to prepare a defence.
- PRESO will present Summary of Facts on invitation of the DISCO.



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Accused enters plea of NG. May be necessary to adjourn to assemble witnesses.

The DISCO must be satisfied that the accused has had adequate time and facilities to prepare a defence.

PRESO will provide Summary Of Facts on invitation of the DISCO

# Summary Trial - Outline of the Case

- An executive summary
  1. What are the charges?
  2. What is your theory of the case?
  3. What are the elements of the charges?
  4. Who are the witnesses and what will they say? (refer to elements)



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In a not guilty plea, the job of the PRESO and DEFO is to present a logical, and clear case to the DISCO.

Need to consider:

How will you outline your case?

What evidence will you lead?

**May vs. Must** - Note that the opening by the PRESO is at the discretion of the DISCO, but at the opening of the DEFO's case the DISCO **must** ask for an opening. This is to ensure the accused obtains the full benefit of a defended hearing

Opening should be brief. Explain the case in a logical and chronological manner, and give brief spread of what your witnesses will say.

At this point of the trial the PRESO should not be stating of facts matters that will need to be determined from circumstantial evidence by the DISCO.

**What should not be included:** Matters relating to the veracity or weight to be attached to evidence should be dealt with in cross examination, not during the opening.

# Summary Trial - Outline of the Case - PRESO

## 1. The Charges

- Read out the charges on the MD 601

*“Sir, the accused faces one charge of losing service property contrary to s 62(1)(a) of the Armed Forces Discipline Act 1972.”*



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### Outline of Case for the Prosecution

#### The accused faces 1 charge of losing service property contrary to AFDA s 62(1)(a)

It is alleged that PTE A. B. Smith lost a Rabintex helmet, valued at \$700 in Waiouru on 20 March 2018. The helmet was service property issued for her use.

The elements of the charge are:

1. That the accused is subject to the AFDA
2. That the specified property was service property
3. That the specified service property was issued to the accused.
4. That the accused lost the specified property, and the
5. Date.

The likely defence to be raised by the accused is that she took reasonable steps for the care and preservation of the specified property.

There will be 2 witnesses called.

PTE B will say that he saw PTE Smith leave her helmet near some black rubbish bags when she returned her rifle.

SGT C will confirm that he issued the helmet to PTE Smith on 17 March 2018, and on 20 March 2018 even after two hours searching for the helmet at Maadi Lines, the helmet was not found.

→ [If there is a second charge, introduce the elements here].

I call my first witness, PTE B.

# Summary Trial - Outline of the Case - PRESO

## 2. The Theory of the Case

- Put your version of events to the DISCO

*“It is alleged that PTE Smith, in Waiouru, lost a Rabintex helmet, valued at \$700 on 20 March 2018. The helmet was service property issued for her use.”*



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### Outline of Case for the Prosecution

The accused faces 1 charge of losing service property contrary to AFDA s 62(1)(a)

**It is alleged that PTE A. B. Smith lost a Rabintex helmet, valued at \$700 in Waiouru on 20 March 2018. The helmet was service property issued for her use.**

The elements of the charge are:

1. That the accused is subject to the AFDA
2. That the specified property was service property
3. That the specified service property was issued to the accused.
4. That the accused lost the specified property, and the
5. Date.

The likely defence to be raised by the accused is that she took reasonable steps for the care and preservation of the specified property.

There will be 2 witnesses called.

PTE B will say that he saw PTE Smith leave her helmet near some black rubbish bags when she returned her rifle.

SGT C will confirm that he issued the helmet to PTE Smith on 17 March 2018, and on 20 March 2018 even after two hours searching for the helmet at Maadi Lines, the helmet was not found.

→ [If there is a second charge, introduce the elements here].

I call my first witness, PTE B.



# Summary Trial - Outline of the Case - PRESO

## 3. The Elements

- Run through all the elements and show how the evidence (witnesses and exhibits) will prove those elements

*“Elements of the charge of losing service property are...:”*

- Raise a possible defence that the accused may rely on, if necessary...:

*“The likely defence to be raised by the accused is that she took reasonable steps for the care and preservation of the specified property”*

- Identify witnesses appearing in support of the charge...:

*“There will be two witnesses appearing in support of the charge:*

*PTE B will...*

*SGT C will...*



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### Outline of Case for the Prosecution

The accused faces 1 charge of losing service property contrary to AFDA s 62(1)(a)

It is alleged that PTE A. B. Smith lost a Rabintex helmet, valued at \$700 in Waiouru on 20 March 2018. The helmet was service property issued for her use.

The elements of the charge are:

1. That the accused is subject to the AFDA
2. That the specified property was service property
3. That the specified service property was issued to the accused.
4. That the accused lost the specified property, and the
5. Date.

The likely defence to be raised by the accused is that she took reasonable steps for the care and preservation of the specified property. There will be 2 witnesses called.

PTE B will say that he saw PTE Smith leave her helmet near some black rubbish bags when she returned her rifle.

SGT C will confirm that he issued the helmet to PTE Smith on 17 March 2018, and on 20 March 2018 even after two hours searching for the helmet at Maadi Lines, the helmet was not found.

→ [If there is a second charge, introduce the elements here].

I call my first witness, PTE B.

## Summary Trial – Prima Facie Case?

- Ch 7, Annex C: 7 – 41
- The DISCO must determine whether there is a prima facie case – is the DEFO required to provide a defence?
- The DISCO must also determine whether they have sufficient powers of punishment – we will talk about this shortly.



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**Not Guilty Plea Continued:** Turn back to 7 – 41

The DISCO will consider whether the DEFO is required to lay out a the defence argument on behalf of the accused. This is the prima facie case consideration.

The DISCO must also be sufficiently empowered to make a decision.

If No for a CO: Refer to CM through Director of Military Prosecutions.

If No for an OC: Refer charge to CO and a new ST will be run.

It is at this time that a DEFO will present their summary of facts.

# Summary Trial - Outline of the Case - DEFO

## 1. The Theory of the Case

- Put your version of events to the DISCO

*“PTE Smith’s defence is that she took all reasonable steps to care for the specified property, and that the helmet was mistakenly thrown out with rubbish during PXA”.*



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### Outline of Case for the Defence

The defence to the charge(s) is that the accused took all reasonable steps to care for the specified property.

**“PTE Smith’s defence is that she took all reasonable steps to care for the specified property, and that the helmet was mistakenly thrown out with rubbish during PXA”.**

The contentious elements are:

4. That the accused lost the service property.

In support of this there will be 2 witnesses called.

The accused will say that she asked PTE Z to look after the helmet as she ran to the armoury, and that he nodded.

LCPL Y will say that he saw three ESS employees throwing all of the rubbish in the bin, without looking at what they were scooping up.

I call the accused as my first witness.

# Summary Trial - Outline of the Case - DEFO

## 2. The Elements

- Pick out the contentious elements...:

*“The contentious elements are: 4. That the accused lost the specified property.”*

- You then try to disprove this with evidence from witnesses and available defences...:

*“The accused took all reasonable steps to care for the specified property; the accused will give evidence that she asked PTE Z to look after the helmet, demonstrating the taking of reasonable steps to care for it.”*



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### Outline of Case for the Defence

The defence to the charge(s) is that the accused took all reasonable steps to care for the specified property.

“PTE Smith’s defence is that she took all reasonable steps to care for the specified property, and that the helmet was mistakenly thrown out with rubbish during PXA”.

### The contentious elements are:

4. That the accused lost the service property.

In support of the defence there will be 2 witnesses called.

The accused will say that she asked PTE Z to look after the helmet as she ran to the armoury, and that he nodded.

LCPL Y will say that he saw three ESS employees throwing all of the rubbish in the bin, without looking at what they were scooping up.

I call the accused as my first witness.

Can anyone remember the standard of proof for defences, and who that onus falls on?

It is to be proven on the balance of probabilities, so more likely than not – and the DEFO must raise it.

# Summary Trial - Questioning Witnesses - Order

## 1. PRESO gives outline, then their witnesses

### • PRESO Witness 1:

1. Evidence-in-Chief by the PRESO
2. Cross-Examination by the DEFO
3. Re-Examination by the PRESO

Repeat for all PRESO's witnesses

## 2. Then, DISCO determines whether there is a prima facie case

## 3. DEFO gives outline, then calls their Witnesses

### • DEFO Witness 1:

1. Evidence-in-Chief by the DEFO
2. Cross-Examination by the PRESO
3. Re-Examination by the DEFO

Repeat for all DEFO's witnesses



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### TURN TO 7-41

So what does this look like all together...

Pleas are made – it is a not guilty plea.

The PRESO will go through all of the prosecution witnesses, who will be cross examined by the DEFO as they are called.

Prima facie case determination by the DISCO.

Then the DEFO will go through their witnesses, who will be cross-examined by the PRESO

Important things to note

- Must start recording at beginning of arraignment, only need to check once that disclosure has been done.
- Must separate first question into: Does the accused understand the nature of the charge? Does the accused understand the consequences of their plea? Was their plea made voluntarily?

### TURN TO 7-42

- Right to elect trial by CM procedure: Inform accused of intent to give election, ask if the accused was to consult a lawyer (if practicable) and adjourn if required. Check that the defending officer has explained the implications of election, record election. If CM, adjourn for min 24hrs for accused to consider the election they have made.

Evidence in Chief (see DM69 Vol 1 Chp 6 para 6.4.15)

Open questions simply prompt the witness to tell their story. The focus here is on the witness.

While a witness can be given a copy of their statement, a witness may not read his or her evidence from a prior statement, unless both the Accused and the PRESO consent to the giving of evidence in this form. Also, a witness, with the prior leave of the DISCO, may consult a document made or adopted at a time when his or her memory of the events was fresh. Any document consulted by a witness must be shown to every other party in the proceeding (see Dm69 Vol 1 Chp 6 paras 6.4.29 – 6.4.31).

**Example:**

When asking about someone's day; open questions would be – "Tell me what happened on 20 March 2018..." let them talk a bit and then prompt them further "What happened then?"

**Exercise:**

- Ask a partner open questions about what they did over the weekend. (5min)

# Summary Trial - Questioning Witnesses - E-I-C

## Open (5WH) Questions

- **Who...?**
- **What...?**
- **Where...?**
- **When...?**
- **Why...?**
- **How...?**

## Open (TEDS) Questions

- **Tell...**
- **Explain...**
- **Describe...**
- **Show...**



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Pair activity – Ask neighbour about weekend using 5WH and TEDS questions (5 minutes)

If the answer requires a 'story-like' response where there is a narrative produced – then likely to be open questioning.



# Summary Trial - Questioning Witnesses - E-I-C

- **Headline Questions**
  - “I now want to talk about...”
  - “Turning to the day of the incident...”
- **Looping Questions**
  - Using a part of the witnesses testimony to begin the next question – “you’ve said earlier that...”



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Headline questions can help to bring a witness back on track – as well as turning their minds to a specific moment.

Cross Examination:

*DM69 Vol 1 6.4.16 – 6.4.21*

- Closed questions confirm elements of the story. The focus here should be on the PRESO's/DEFO's line of questioning – you give them the answer you want and get them to confirm it.
- If they can answer a question “yes” or “no”, it is likely to be leading or closed.

**Example:**

When asking about someone's day; closed questions would be “On that day you spent 2 hours drinking around the BBQ area, didn't you”... “and you consumed between 8 and 12 beers, didn't you”, “and then you decided that you needed a pie, and decided that driving there would be ok, isn't that correct” – You are shepharding them towards the answer you want – that the person was drinking, that they did consume alcohol, and that they drove.

You can even get them to admit certain things without actually saying it: “You wouldn't storm into an OC's office would you?” - “Because that would be disrespectful to someone with a higher rank than you, isn't that right” – “And SGT X holds a higher rank than you” – “And yet you stormed into his office, correct?”

→ You have got the witness to explain that they acted disrespectfully.

*Exercise:*

Pair activity – Ask neighbour about weekend using closed questions.

# Summary Trial - Questioning Witnesses - C-E

- Leading questions
  - Make a statement – tell, don't ask
    - “You did...”, not “did you...”
    - “You saw...”, not “did you see...”
  - Add a tag at the end
    - “...didn't you?”
    - “...wasn't it?”



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Format to follow for the exercise:

1. Statement → 2. Event → 3. Tag.

## Summary Trial - Questioning Witnesses -Re-exam

- Only re-examine when necessary
- Limited to matters arising in cross-examination
- Same rules as examination-in-chief: no leading questions



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Can't use this as an opportunity to elicit new or fresh evidence.

### Re-examination

Once cross examination is complete, the disciplinary officer has the discretion to offer the side that has produced the witness opportunity to re-examine. This is confined to matters that have arisen during cross examination, in order to clarify cross examination points if necessary.

# Summary Trial - Questioning Witnesses - Re-call

- When can a witness be re-called?

DM69 Vol 1 Chap 6

- DEFO to put defence case to PRESO witnesses



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**Recalling witness:** Usually comes up when a presenting officer realises that he or she has missed a critical piece of evidence and needs to “get it into the proceedings” It may also come up when a DISCO hears something later in evidence which can only be resolved by re-calling an earlier witness.

This process is covered in Ch 6 of the DM 69.

In general, the DISCO has the power to call additional witnesses or recall additional witnesses if he or she **considers it in the interests of justice to do so**. If this occurs then the DISCO is to give the PRESO and DEFO such opportunity to question the witness as he or she considers proper.

There are also specific rules governing when a PRESO can re-call a prosecution witness. In general this is when the Defence raised by the accused raises matters the PRESO could not properly have put before the DISCO in the presenting officers original case, or could not have reasonably foreseen.

DEFO to put defence case to prosecution witnesses to give them a chance to rebut the defence allegations.

# Summary Trial - Prior Inconsistent Statement

- When a statement made by a witness in questioning is different to a statement they made previously
  - Confirm: “You said in evidence...”
  - Commit: “Is that correct...”
  - Contrast: “Is it possible...”
  - Credit: “You made a statement...”
  - Confront: “I’d like to show you...”
  - Adopt: “So the colour of the car was red?”



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Red car in statement

Blue car in evidence in chief

**Confirm:** “you said in your evidence in chief that the colour of the car was blue”

**Commit:** “is that correct?”

**Contrast:** “is it possible that the car was another colour”

**Credit:** “you made a statement to the military police didn’t you?”

“And you told the truth when you made that statement?”

“And the statement you made was the day after the incident wasn’t it?”

**Confront:** “I’d like to show you the statement that you made. Do you recognise this statement. Is that your signature? Can you read out what it says about the colour of the car?”

**Adopt:** “so the colour of the car was actually red and not a blue car that belongs to the accused”

- DISCO upon offering the right to elect:
- If an accused elects trial by Court Martial the DISCO should adjourn to allow for the accused to consider the election and for the DEFO to provide advice on the election (see DM69 Vol 1 Chp 7 paras 7.5.21, 7.5.24-7.5.37.
- The record of the election is to be recorded in FORM MD601C.
- The SACNZ has ruled punishments imposed beyond column 3 where the right to elect was not offered are not sustainable on appeal.
- **For DEFOs:** if you are acting as a DEFO, and the accused is not given the right to elect, and the DISCO, following a guilty finding then strays into punishments reserved in column 2, what is your clear duty?
  - Advise the offender on rights of appeal
  - Discreetly point out the error to the DISCO?



7 years' or more imprisonment and automatic CM – a change that came through in 2021. Indecent assault falls under this but covers such a wide spectrum of behaviour; many of the CM waiver applications that go through to the Service Chiefs and ultimately, the DMP, involve charges of indecent assault.

DISCO may offer the right to elect:

- There is also the requirement to offer an accused the right to elect trial by Court Martial if the punishment powers in column 3 are insufficient (see DM69 Vol 1 Chp 8 Annex A). Remember punishment threshold which requires a specified certificate? 7 days fine or compensation order, detention, reduction in rank. The limits between column 2 and 3 are the same as required for a specified certificate. Consideration of this is not left to the punishment phase. The decision to offer the right to elect trial by Court Martial is made well in advance of a finding or punishment; for guilty pleas this occurs after the plea is recorded, whilst for a not guilty plea this occurs after a prima facie case is established.
- If the CO gives the right to elect trial by Court Martial this opens up the possible punishments under column 2.
- Offering the right to elect keeps options open and ensures the DISCO has the fullest available range of punishments open to him or her. On the other side the accused has the option to go to trial and be represented by qualified legal counsel, and for the matter to be heard by an independent and impartial court. The ability to impose truly punitive powers is inextricably linked to the accused's minimum rights of criminal procedure under the NZBORA 1990.
- If an accused elects trial by Court Martial the DISCO should adjourn to allow for the accused to consider the election and for the DEFO to provide advice on the election (see DM69 Vol 1 Chp 7 paras 7.5.21, 7.5.24-7.5.37. The record of the election is to be recorded in FORM MD601C.

- **For DEFOs:** if you are acting as a DEFO, and the accused is not given the right to elect, and the DISCO, following a guilty finding then strays into punishments reserved in column 2, what is your clear duty?
  - Advise the offender on rights of appeal
  - Discreetly point out the error to the DISCO

**Process of Election**

Summary Trial: DISCO records the election and ensures that the accused signs it.

CM: DISCO records the election and ensures that the accused signs it. The DISCO must then adjourn and allow the accused to reflect on the decision.

**Consequences of not offering election:** If the election is not offered, any punishment imposed that is beyond the limit will be quashed on appeal.

# 5. Rules of Evidence



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# Rules of Evidence - Overview

- Relevant
- Admissible
- Weight
- Onus of Proof
- Standard of Proof – Beyond Reasonable Doubt
- Previous Convictions/Character
- Opinion Evidence



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**Relevant** – Evidence must be relevant to the case - it must either prove elements of the charge (beyond reasonable doubt), raise reasonable doubt in relation to the elements of the charge, or prove the elements of the defence (on the balance of probs). Evidence that is irrelevant should be excluded, or disregarded.

E.g. WRT relevant evidence – Someone overhearing the A at the mess that night saying “oh man, I could do with a new projector to watch Netflix”.

**Admissible** – Evidence must be admissible if it is to be considered during the proceedings. Evidence should be admissible as a starting point, so What makes evidence inadmissible? Breach of Bill of Rights. Hearsay. Prejudice vs probative.

E.g. BORA Breach – Not cautioning the A prior to any interview where they are a suspect.

E.g. Probative vs. Prejudicial – Where the PRESO attempts to adduce evidence that the A is a “bad egg” by raising unrelated historical charges, the prejudicial value would outweigh the probative value and make the evidence inadmissible. This is a question for the DISCO to consider and step in. If the DISCO is unsure, the option of adjourning is always there.

**Weight** – It is up to the DISCO to determine what weight he gives to a witnesses evidence. This is a question of witness reliability. It is possible that the witness may be unreliable in some aspects but reliable in others. If their evidence conflicts with other evidence, the DISCO has to decide the weight they gives to what they are saying.

So this is really just a balancing act between who’s evidence you believe and why.

**Onus of Proof** – always on the prosecution (unless specified in the DM69 that the onus is on the defendant if they raise the defence). This goes back to the presumption of innocence.

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For example with theft of service property, it is a defence if the Accused believed that they had a right to the property. If they raise this defence, onus shifts and then they have to prove the claim of right on the balance of probabilities.

If this is made out, the onus then shifts back to the prosecution to disprove the claim of right beyond reasonable doubt.

**Standard of proof** – for PRESO to prove BRD. If not BRD then DISCO must acquit. Only exceptions are as outlined in DM69 when accused raises a defence then the standard is balance of probabilities

**Previous convictions / character** is not admissible evidence generally and bringing it up may lead to a successful appeal if found guilty. Like any inadmissible evidence, it is up to DISCO to stop that evidence quickly. If they can't, they need to state that they will not consider that evidence and why.

**Opinion Evidence:** Usually inadmissible. Why do you think that is? (because we are focussed on fact – what a witness heard, smelt, felt, saw, did etc - not opinion, or what someone thinks)

If you as a PRESO need someone to come give opinion evidence, contact legal office for advice on this – e.g. expert witnesses. Uncommon but does happen from time to time.

## Rules of Evidence - Hearsay

- Statement made by a person other than a witness which is offered in evidence to prove the truth of its content.
- Witnesses can give evidence about only those things of which they have direct knowledge
- Keep questions directed at what the witness did, saw or took part in
- Exceptions: death of witness or evidence about what the accused said to a witness, such as confessions



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Hearsay evidence is a statement made by someone else that a witness brings up as evidence to prove that the statement was true. Easiest way to think about it is as second hand evidence.

An example would be: At around 2030, I overheard PTE X tell LCPL Y that he's watched SGT D drink at least 8 beers before he drove to pick his kids up from school.

So who would we want to hear this evidence from:

PTE X said it, and had observed SGT D drinking the beers – So him.

Because LCPL Y was directly told by PTE X – He can produce it as well.



## Rules of Evidence - Exhibits

- All evidence, including exhibits, must come through witnesses
- Lay a foundation
  - Witness must be competent (have first hand knowledge of the exhibit)
  - Relevant
  - Authenticated
  - Can be produced by a witness or by consent



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**Producing an Exhibit:** Any documents or items that intend to be relied on in support of the charge/defence **must be produced** as an exhibit. The presenting/defending officer must give the exhibit to the witness and allow the witness to describe the exhibit, and any relevant points of reference regarding the exhibit. The witness then produces this as an exhibit for the disciplinary officer to mark (alphabetically) and enter as evidence.

**What does this mean:** Producing an exhibit means that it is introduced to the Summary Trial and can be used as evidence.

Exhibits must be relevant and not overly prejudicial to the accused (same as verbal evidence). An exhibit that would be overly prejudicial is the accused's service offence history – at this point it is inadmissible and a DISCO will prevent that from being introduced – but this becomes relevant for sentencing if guilt is established.

E.g. of relevant exhibit – 502 register of the service property with the S/N in it, so we can prove that it was the service property; CCTV footage etc

# Rules of Evidence - Exhibits

## Ask the witness

- Would you look at the document now shown to you?
  - Do you recognise it, and if so how?
  - What is it?
  - What is its relevance?
  - Do you produce it as an exhibit?
- > The DISCO will then number it, and introduce it on the record.



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### Example:

*I would ask the witness to look at the diagram now being shown to them and say "Do you recognise it, and if so what is it"*

*"It is a drawing that I made of the scene"*

*"What is its relevance"*

*"It is what I saw when I arrived, LCPL X standing there, and PTE Y lying on the ground"*

*"Do you now produce this as an exhibit"*

*"Yes please"*

The DISCO will then label it Exhibit A and tell the record that he is doing so.

**Practise:** In threes, introduce the slide pack as an exhibit. One person is the witness, one the PRESO and the other the DISCO.

- 2 Mins.

# 6. Finding



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## Finding - Making a Finding

- After hearing both PRESO's and DEFO's witnesses, DISCO must be satisfied **beyond a reasonable doubt**
  - Each element of the alleged offence has been proved; and
  - It was the accused who committed the offence
- If the accused raises an affirmative defence, such as self-defence, the DISCO must be satisfied that it has been disproven  
BRD

DM69 Vol 1 5.7

**If the DISCO has any reasonable doubt, they must acquit**



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**Adjourn:** DISCO can take adjournment to collect their thoughts and get what they need to deliver findings, write it down and understand the terminology – if you mix up an important bit; then this can result in a loss at appeal.

Situations have happened where a DISCO will say 'On the balance of probabilities, on hearing the evidence I find the accused guilty', when the correct term was 'I find, having heard the evidence that the accused is guilty beyond reasonable doubt' – it's just a slip of the tongue but it can have a big effect – The SACNZ overturned the decision and the accused was acquitted.

**Role of the DEFO:** DEFO needs to switch on at this stage as this is where appeal points will come up due to wrong language used. All the DEFO should be seeking to do is introduce some doubt into one of the elements so that it raises a reasonable doubt in the mind of the DISCO. Each element must be proven beyond a reasonable doubt. If there is doubt, and that doubt is reasonable, the Accused is entitled to the benefit of that doubt and the DISCO should acquit

### Remember the Standard of Proof

Burden and standard of proof: All elements must be proved beyond reasonable doubt.

A spectrum may look like this: DRAW THIS on WHITEBOARD

No chance (0%) --- BOP (50%) --- v.Likely (75%) --- BRD (85%) --- absolute surety/not a shadow of a doubt (100%)

**Why is the standard important:** The reason for the high threshold to determine guilt is a recognition of the presumption of innocence (see NZBORA 1990 s25(c)). This relates to the sentiment that the justice system would rather see a hundred guilty people walk rather than one person be wrongly punished. For example, it would not have been enough to find the David Bain was very likely to have murdered his family, in order to convict him of such there must have been no reasonable doubt that he had murdered his family.

**Decision:** If a DISCO is not satisfied that one (or more) elements have been proved to that standard then:

Accused entitled to be acquitted on that charge BUT DISCO can consider amending / adding charge(s) based on what they have heard, but only before a finding is entered for the charge - for which there is evidence for all the elements. An example would be changing a charge from provocative language to threatening language based on a factual distinction between what was actually said based on the best evidence.

If you as a DISCO are going to do this, I recommend taking to an LSO, and remember you cannot make a finding before you change it – you cannot say "I find you not guilty of using provocative language – but I'm going to change it to threatening language as your choice of language better reflects that charge".

### Best Evidence Principle

The best evidence principle requires DEFOs and PRESOs to present the best evidence that is available to them, even in defence of the accused. Similarly, the DISCO must consider the best evidence available to them when making a finding.

Announcing the finding:

- This is also simply a matter of setting out the reasoning process used to reach the finding as already explained, once more being methodical and analytical – this can be very useful, especially if the decision is appealed to the SACNZ, a finding with supporting reasons makes it easy for the judge to track logic.
- Giving reasons is a requirement (see DM69 Vol 1 Chp 7 para 7.8.8. a).
- The language used should reflect the reasoning that has been employed, so it should avoid informality and terms indicative not of reasoning but of guess work or assumption.
- Try to spell out conclusions in clear, concise terms – “satisfied beyond reasonable doubt that ...”; “having listened carefully to all the evidence”; “There is a conflict of evidence between ... and ... , but I prefer the evidence of ..., and therefore am satisfied to the required standard that ...”.

#### **Alternative Charges**

If there are alternative charges and a DISCO enters a finding of guilty for the first (primary) charge, then a finding of NG must be entered for the others.

## Finding - Announcing the Finding

- Which is preferred?

- a. I think that the accused is guilty beyond reasonable doubt.
  - b. I am satisfied beyond reasonable doubt that the accused is guilty.
- 
- a. The PRESO's evidence has convinced me beyond reasonable doubt of the accused's guilt.
  - b. I reckon that the evidence from the PRESO was enough to convince me of the accused's guilt.



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Needs to be definite and not problematic.

## Finding - Exercise 1

- During the course of a summary trial the following facts were established beyond reasonable doubt:
  - PTE Perp struck PTE Vic with his fist
  - PTE Perp did not intend to strike PTE Vic
  - PTE Perp did intend to strike PTE Smart, but missed
- PTE Perp is charged with common assault against PTE Vic

*DM 69 Vol 1 Ch 4-34*

- **What would your decision be with reference to the elements of the charge?**



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Common Assault - DM69 (2 ed) Vol 1, Ch 4-34

**Process:** Work your way through the elements like a checklist.

### Guilty

- **Subject to AFDA (PTE in Army)**
- **Applied force to victim (struck PTE Vic with his fist)**
- **Intended to apply force to victim or some other person (intended to strike PTE Smart)**
- **Date (happened on 25/06/2016)**



## Finding - Exercise 2

- During the course of a summary trial the following facts were established beyond reasonable doubt:
  - PTE Perp took PTE Vic's iPhone from his barrack room
  - PTE Perp did not have permission to take the iPhone
  - PTE Perp intended to take the phone permanently
  - PTE Vic had stolen PTE Perp's iPhone, and PTE Perp took PTE Vic's identical phone, believing it to be his own.
- PTE Perp is charged with stealing the property of PTE Vic
  - **What would your decision be with reference to the elements of the charge?**



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Stealing from a Comrade - DM69 (2 ed) Vol 1, Ch 4-94

Not Guilty ('claim of right' defence)

- Subject to AFDA (PTE Perp in Army)
- Took specified property (PTE Perp took PTE Vic's iPhone)
- Did so dishonestly (PTE Perp did not have permission to take the iPhone)
- Did so with the intent to permanently deprive (PTE Perp intended to take the iPhone permanently)
- A specified person owns the specified property (The iPhone belongs to PTE Vic)
- The specified person is subject to service law (PTE Vic is a PTE in the Army)
- Date (phone was taken on 25 May 2016)

Defence: If PTE Perp believed that his action was lawful even if this belief was mistaken or based on ignorance (PTE Perp believe the identical iPhone belonging to PTE Vic was his own)



## Finding - Exercise 3

- During the course of a summary trial the following facts were established beyond reasonable doubt:
  - SGT Dinky said, "I wish you Recruits would just polish your boots like I've showed you. I had better see you do it tomorrow"
  - The next evening, REC Tubby had not polished his boots
  - REC Tubby knew he was supposed to polish his boots
  - SGT Dinky is REC Tubby's Platoon Sergeant
- REC Tubby is charged with disobeying a lawful command
  - **What would your decision be with reference to the elements of the charge?**



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Disobeying a lawful command- DM69 (2 ed) Vol 1, Ch 4-65

Not guilty (mandatory language)

- Subject to AFDA (Recruit Tubby assumedly has signed his life away at the start of his basic)
- Specified command in mandatory language (NO – guidance and communications expressing a wish that are not expressed in mandatory language are not lawful commands)
- Specified command communicated to accused (Accused hear SGT Dinky)
- Originator of command was accused's superior officer (SGT Dinky is accused's PL SGT)
- Accused did not obey command (didn't polish boots but practiced marking time)
- Intended to disobey (Recruit Tubby knew he was supposed to polish his boots)
- Command was not unlawful (not contrary to NZ law)
- Command within authority of NCO issuing it (PL SGT role)
- Within physical capability of person whom it is directed (Tubby able to polish boots)
- Connected with a service purpose (polished boots for upholding service discipline)
- Date (specified date)

## Finding - Exercise 3

- What if the command was, “Recruit Tubby, you are to have your boots polished like I have shown you, no later than 0830 h tomorrow morning.”?



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Use of 'is to' or 'are to' is customary use of mandatory language. In that case, elements of charge would be proven.

# 7. Punishment



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Turn to Ch 8-23

The available punishment range is also determinate on whether or not the offender was given the right to elect trial by CM.

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Determining the appropriate punishment when the finding has been guilty

- This is also simply a matter of reasoning through a process, again being methodical and analytical.
- The approach here is to be fair, methodical and analytical.

**What do these provide:**

**Conduct Sheets:** This is where prior offences can come into play – if offender is a repeat offender = higher punishment. This includes service offences and offences charged in the civil court.

**VIS:** If the offender has caused lasting harm ie through an assault or dishonesty. These are to be read out by the DEFO.

**Plea in Mitigation: What do you think potential mitigation could be?** Hear if offender is in financial hardship, has other commitments, is remorseful etc.

Punishments and jurisdictional circumstances			
Clause	Column 1: Rank of offender	Column 2: If offender was given right to elect trial by Court Martial	Column 3: If offender was not given right to elect trial by Court Martial
1	Officer or WO	Stay of seniority for a period not exceeding 12 months A fine, not exceeding 28 days' basic pay A reprimand	A fine, not exceeding 7 days' basic pay A reprimand
2	SNCO	Reduction in rank (this punishment may be imposed only on a petty officer or a sergeant who, at the time of the disposal of the charge, is on active service or sea service) Stay of seniority for a period not exceeding 12 months A fine, not exceeding 28 days' basic pay A reprimand Stoppage of leave, not exceeding 21 days	A fine, not exceeding 7 days' basic pay A reprimand Stoppage of leave, not exceeding 21 days
3	JNCO	Reduction in rank A fine, not exceeding 28 days' basic pay A reprimand Stoppage of leave, not exceeding 21 days Extra duty for a period not exceeding 21 days A caution	A fine, not exceeding 7 days' basic pay A reprimand Stoppage of leave, not exceeding 21 days Extra duty for a period not exceeding 21 days A caution
4	A rating of able rank, a private, or a leading aircraftman, or a rating, soldier, or airman of lower rank.	Detention for a period not exceeding 60 days (this punishment may be imposed only in respect of an offence committed on active service or sea service) Detention for a period not exceeding 28 days A fine, not exceeding 28 days' basic pay A reprimand Confinement to ship or barracks for a period not exceeding 21 days Extra work and drill for a period not exceeding 21 days Stoppage of leave, not exceeding 21 days Extra duty for a period not exceeding 21 days A caution	A fine, not exceeding 7 days' basic pay A reprimand Confinement to ship or barracks for a period not exceeding 21 days Extra work and drill for a period not exceeding 21 days Stoppage of leave, not exceeding 21 days Extra duty for a period not exceeding 21 days A caution

Turn to Ch 8-23

The available punishment range is also determinate on whether or not the offender was given the right to elect trial by CM.

You will see that the punishments that can be given out in column 3 are less severe. These are the punishments that a subordinate commander can give, as a subordinate commander cannot give the right to elect trial by CM.

This also affects whether Specified Certificates are required – A subordinate commander is not empowered to hand down punishments that require a spec cert.

# Punishment - Announcing the Punishment

- Sentencing Template at DM 69, Vol 2, Chap 1, Annex B

## 1. Introduction:

- State the person's name, rank and regimental details; and
- State the offences for which they are being sentenced, along with the maximum available sentence

## 2. Facts:

- State an outline of facts that have been proven or admitted, on which the sentence is based

## 3. Purposes and Principles of Sentencing:

- State the principles of sentence that are applicable to the particular case; and
- State the purposes of sentence that are applicable to the particular case



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1. Intro:
  - You need to list only the offences that the offender had been found guilty of – these are the only ones relevant to sentencing.
2. Facts
  - This is important as it may give a LSO or a Judge a picture of how serious you deem the offending to be and therefore can assist to justify your chosen punishment – ie if it goes to SACNZ.
3. Principles
  - You only need to consider the relevant ones:
    - a. Gravity and culpability of the offender – the worse the offence and the greater the involvement of the offender: the higher the sentence.
    - b. Consider the maximum penalty as this shows how serious this offence is viewed compared to others.
    - c. The maximum should be considered if the offending is at the higher end.
    - d. Consistency: this is something NZDF struggles with as each DISCO is different – but as much as possible persons should be sentenced similarly for similar offending.
    - e. Effects on the victim
    - f. Appropriateness: If there are two sentences available that would achieve the aim of dealing with the offender then the least restrictive should be employed.
    - g. Any inappropriate consequences should be avoided ie what would the effects of a fine be to someone already in financial distress.
    - h. Consider personal, cultural, community and family situation
    - i. Consider the potential of restorative justice if this has already occurred and what the effect of that will be.

# Punishment - Announcing the Punishment

## 4. Limits on Sentencing - DM 69, Vol 1, Chap 8, Annex A-B:

- State what punishments can be given from the table, and explain the limit based on whether you are a CO or a Sub Comd, whether an election was given, and what the rank of the offender is

## 5. Establishing a Starting Point:

- Consider what sentences other DISCOs have imposed in the past for the same offence
- Consider the Sentencing Guidelines as a helpful indicator - DM 69, Vol 2, Chap 1, Annex B, Appendix B
- Consider any particularly relevant principles and purposes of sentencing
- Consider aggravating and mitigating features of the offending

## 6. Announce the Starting Point:

- State the punishment you decided as the starting point based on the considerations at Step 5



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This is the sort of thing that is set out in DM 69 (2 ed), Vol. 2, Chapter 1, Annex B with the sentencing guidelines.

Reference the Column 2 – Column 3 distinction we talked about before. Remember that it depends on whether the offender was offered right to trial by CM.



# Punishment - Announcing the Punishment

## 7. Adjust the Starting Point:

- Consider aggravating and mitigating features of the offender
- State the increase or decrease in consideration of the features

## 8. Reduction for Guilty Plea

- State the reduction in consideration of the guilty plea, if applicable

## 9. NZDF-Specific Considerations

- Consider matters specific to the NZDF
- E.g. whether a reduction in rank is necessary in recognition of the importance of command and respect, and whether the offending is in breach of NZDF's core values of courage, commitment, comradeship and integrity



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### Aggravating Factors

- Actual or threatened violence + weapons
- Unlawful entry into a private space
- Loss, damage and harm to property
- Abuse of position of trust/Vulnerability of victim that was known by the offender
- Cruelty
- Hate crimes
- Terrorist activity
- Pre-meditation ie evidence that the offender had planned to assault someone.

### Military aggravating factors

- Abuse of rank
- Disrespect for authority
- Abusing trust of comrade ie theft
- Self-interest ie stealing from a UPF etc.
- Offences in uniform/on duty
- Offences against civilians

# Punishment - Announcing the Punishment

## 10. Other Matters

- Consider whether it is appropriate to impose a compensation order or a reparation order to the victim or forfeiture of property
- To give a compensation order:
  - MD 601 Charge Report must include in the particulars the value of the item to be compensated for and to whom it belongs
  - DISCO must have evidence as to the value and ownership – oral and exhibits. Value of the item(s) should be based on an invoice or receipt rather than a quote
  - If the compensation order is for more than 7 days' pay, a Specified Certificate is required – if more than 14 days, DISCO must offer the right to elect trial by the Court Martial

## 11. Final Sentence

- Announce the final sentence



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This is the sort of thing that is set out in DM 69 (2 ed), Vol. 2, Chapter 1, Annex B with the sentencing guidelines.

Difference between compensation order and fine:

- A compensation order is appropriate for the replacement of service property or for replacing the stolen property of a comrade

## Punishment - Other Points

- If the offender has been found guilty of multiple offences, there will still be a single sentence, but it should take all the offences into account
- If the offender is already serving a punishment, e.g. confinement, any additional punishments start the following morning after the last punishment finishes
- CO is only person who can refer matter to DMP for CM. If not CO, need to refer up to CO



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- All charges to be heard for sentence at same time and punishment to be concurrent. Can't do what Army used to do where offender marched in and out several times until his rank was a PTE and able to go to SCE
- Punishment for new charges to start the following morning after the last punishment finishes
- Awkward space RE electing CM and DMP as well as not charging due to minor matter etc.

# 8. Assessment Trials



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Turn to Ch 8-23

The available punishment range is also determinate on whether or not the offender was given the right to elect trial by CM.

# Assessment Trials

- A competent Presenting and Defending Officer will:
  - Outline the case in a coherent and logical manner;
  - Identify the relevant facts in the evidence package;
  - Ask only relevant questions of witnesses to draw out the relevant facts;
  - Not ask leading questions during evidence-in-chief;
  - Cross-examine in a manner (and to an extent) which obtains evidence favourable to their own case and unfavourable to the opponent's case;
  - Present at a pace and in a style which is appropriate to a summary trial; and
  - Have an appropriate understanding of and compliance with the summary trial procedure



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## A competent Presenting & Defending Officer will:

- Outline case in a coherent and logical manner.
- Present outline and evidence which is relevant to the charge.
- Detect errors in charge(s).
- Ask only relevant questions of witnesses.
- Not ask leading questions during evidence-in-chief, except when appropriate.
- Cross-examine in a manner (and to an extent) which obtains evidence favourable to own case and/or weakens opponent's case.
- Present at a pace and in a style which is appropriate to a summary trial.
- Have an appropriate understanding of and compliance with summary trial procedure.

# Assessment Trials

- A competent Disciplinary Officer will:
  - Actively control the conduct of a summary trial
  - Give good reasons for the decision of guilty or not guilty, with reference to the elements of the charge and the evidence presented
  - Give good reasons for the imposition of the punishment, with reference to a starting point and mitigating and aggravating features



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[This part is no more than 5 minutes]

## A competent Presenting & Defending Officer will:

- Outline case in a coherent and logical manner.
- Present outline and evidence which is relevant to the charge.
- Detect errors in charge(s).
- Ask only relevant questions of witnesses.
- Not ask leading questions during evidence-in-chief, except when appropriate.
- Cross-examine in a manner (and to an extent) which obtains evidence favourable to own case and/or weakens opponent's case.
- Present at a pace and in a style which is appropriate to a summary trial.
- Have an appropriate understanding of and compliance with summary trial procedure.



# Questions?



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Turn to Ch 8-23

The available punishment range is also determinate on whether or not the offender was given the right to elect trial by CM.

# Exercise Big Night Out - Assign Roles

## • PRESO:

1. Draft an outline of the case
2. Prepare a list of examination-in-chief questions for:
  - a. Presenting Officer's Witness 1
  - b. Presenting Officer's Witness 2
3. Prepare a list of cross-examination questions for:
  - a. Defending Officer's Witness 1
  - b. Defending Officer's Witness 2

## • DEFO:

1. Draft an outline of the case
2. Prepare a list of examination-in-chief questions for:
  - a. Defending Officer's Witness 1
  - b. Defending Officer's Witness 2
3. Prepare a list of cross-examination questions for:
  - a. Presenting Officer's Witness 1
  - b. Presenting Officer's Witness 2

Other roles: DISCO, PW 1 and 2, DW 1 and 2



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[This part is no more than 5 minutes]

### A competent Presenting & Defending Officer will:

- Outline case in a coherent and logical manner.
- Present outline and evidence which is relevant to the charge.
- Detect errors in charge(s).
- Ask only relevant questions of witnesses.
- Not ask leading questions during evidence-in-chief, except when appropriate.
- Cross-examine in a manner (and to an extent) which obtains evidence favourable to own case and/or weakens opponent's case.
- Present at a pace and in a style which is appropriate to a summary trial.
- Have an appropriate understanding of and compliance with summary trial procedure.



# MILITARY JUSTICE TRAINING PROGRAMME

Levels 2 and 3 Revalidation

s. 9(2)(a)

DLS



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## Scope

1. The purpose of revalidation
2. The Military Justice System - Overview
3. Common Pre-Trial Issues
4. Common Issues within the Summary Trial
5. Questions of me
6. Questions for you
7. Assessment



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## The Purpose of Revalidation

1. Certificates of competency
2. Skill fade
3. Known problems and issues
4. The law develops over time
5. The process and your roles



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**Certificates of Competency:** These expire after 4 years – which is why we revalidate you.

**Skill Fade:** Some units are very busy with STs and some of you will have had a lot of experience as DEFO/PRESO/DISCO – however some of you have likely had very few instances, but could be expected to apply yourself to those duties at any time.

**Known Problems and Issues:** This package focusses on the difficult aspects of the roles and adds more clarity to these.

**Developments in the Law:** We take guidance from the civilian jurisdiction, as well as from the Chief Judge of the Summary Appeals Court – key aspects where we tend to take a lot of guidance is in the areas of search, detention and due process – this is in keeping with the inalienable rights of privacy and basic human rights.

**The Process and Your Roles:** The best way to get good at these roles is by filling those roles – so this will provide an ability to share some stories and determine any common sticking points.

## Revalidation

- Has everyone conducted MJTP level 2 and/or 3 residential?
  - Today's course can only revalidate your certificate not qualify you.
- Presentation on known issues from 10 years of the system.
- Assessment
  - Based largely on your result of in the assessment;
  - Some consideration is given to your contribution and demonstration of your understanding during the presentation; and
  - Some "Socratic" questioning.
- Ultimately, the LEGAD must be satisfied of your competence.



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# Our System



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## Why?

- Compliance with the New Zealand Bill of Rights Act 1990.
- A common system of summary discipline that is appropriate to the military context.
  - Maintenance of discipline
  - Consistency
  - Portability
  - Fairness
  - Simplicity
  - Efficiency



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### How does this system allow us to:

**Maintain discipline:** Allows for minor disciplinary issues to be heard and dealt with as necessary within the units – utilising commanders and peers as DISCOs and PRESO/DEFO respectively.

**Consistency:** We have sentencing guidelines and process rules to ensure that the minimum natural justice rights are adhered to without creating a burden on the civil system or requiring a huge number of NZDF lawyers.

**Portability:** This system has extra-territorial application – this means that it applies to those in the armed forces when they are overseas. This includes application of the AFDA and also key elements of the civil law including the Misuse of Drugs Act and the Crimes Act – through s 74 of the AFDA.

**Fairness:** This system isn't like the old orderly room – we make decisions that can have impacts on people's careers, financial situation and lives – so the process must be fair and must be robust.

**Simplicity:** The system is fairly simple – it may not seem like it, but it is much more simple than the process in the District or High Court, the DM69 is a good example of this; it distils the elements of a range of offences and provides the level of period required, as well as potential defences that can be used. This has all come from fairly dense and complex legislation, but it has been developed in such a way that commanders at all levels are able to follow it through.

**Efficiency:** This is a fast process, that allows everyone to get back on with their day jobs ASAP, while ensuring that discipline is maintained.

## The New Zealand Bill of Rights Act 1990

- Section 24(c): Everyone charged with an offence [has] the right to consult and instruct a lawyer.
- Section 25(a): Everyone who is charged with an offence has, in relation to the determination of the charge, the right to a fair and public hearing by an independent and impartial court.
- Waiver of Rights or elect trial by the Court Martial.



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**How do we adhere to s 24(c):** Legal aid scheme (referenced in the caution: You have the right to consult a lawyer without delay and in private), we give them a DEFO (not a lawyer but for these purposes – sufficient)

### *Fair hearing*

**How do we adhere to s 25(a):** Summary trial process – right to a fair hearing, even when the DEFO is the accused's boss: they have a duty to defend the interests of the accused to the best of their ability... a lot of our duties can be unpleasant, but we have to do them, this is the same.

### *Independent and impartial court?*

**Do we adhere to this:** Not really, but we ensure that there is as much independence as possible – and any appeals or a decision to go to CM increase the level of independence to match the seriousness of the finding.

### *Public*

STs are public, anyone can attend. Usually there is very little media interest but in theory members of the public can attend.

Waiver of BOR rights and stay with summary process (independent, impartial Court? Not with CO) or elect trial by the Court Martial where BOR rights in place.

# Pre-trial Issues

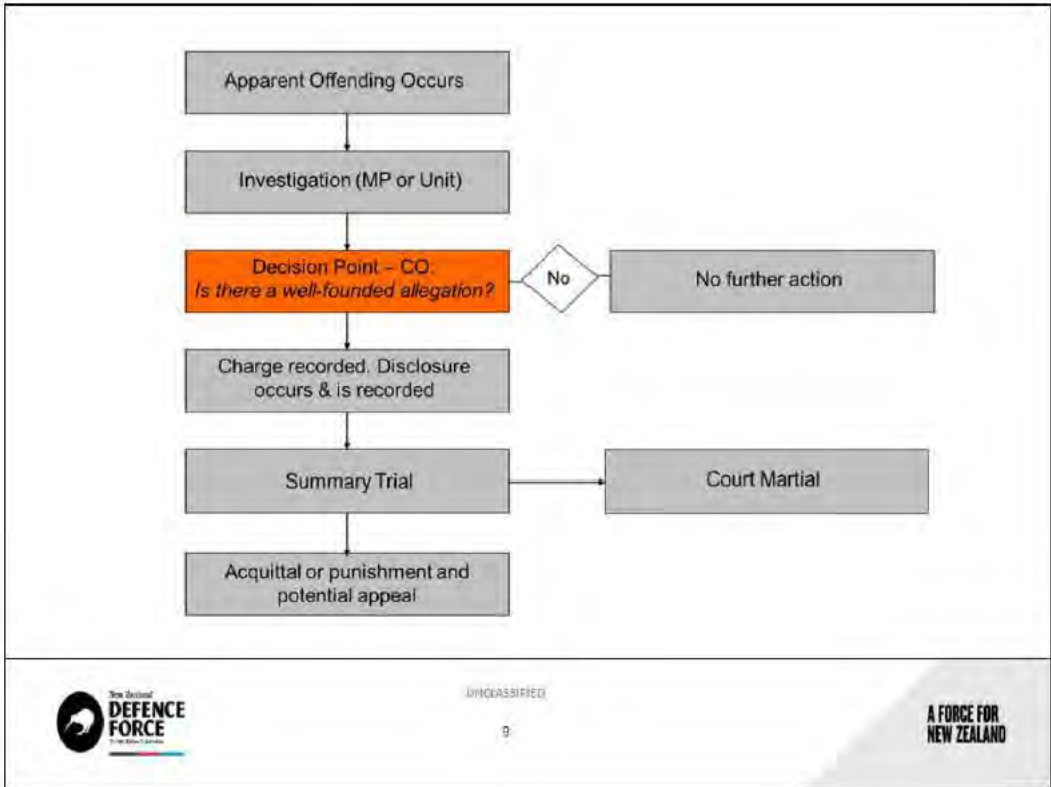


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## Preliminary Inquiries

- An inquiry conducted on or behalf of a CO to collect evidence which will assist the CO to determine that there is a well-founded allegation of offending
- (UPDATE) There are a number of offences that can only be investigated by NZDF MP due to their complexity.
- DM 69 Vol 1, Chap 3



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If the CO has determined that there is a well founded allegation it must proceed under AFDA ss 102 and 103 as either a charge under the AFDA or referred to the appropriate civilian authorities.

Stay of proceedings if not in the interests of service discipline that the allegation be recorded in the form of a charge and no reasonable prospect of a finding of guilt on the charge. Consult your legal officer if you think you have an allegation that may fit this category.

Also ability for minor offences to be dealt with by command eg. Presentations, time management skills training etc.

### NZDF MP Only Investigations

- Mostly for serious offending – if an allegation comes to you, check the list to see if the facts support one of the included offences.

Four types of categories of DISCO as set out in DM69 (2<sup>nd</sup> ed) Vol 1, Ch 7-4:

1. Superior Commander (eg CDF, VCDF, CA, CN, CAF etc)
2. Commanding Officer
3. Detachment Commander (Officer authorised by CO to commander of part of a unit that is stationed or employed a distance from it's HQ)
4. Subordinate Commander (A person delegated by the CO to act as a DISCO under s106 AFDA)

### DISCO REQUIREMENTS:

Personal interest = Accused and DISCO need to be in same chain of command so may lead to paper postings. Sometimes hard not to have totally impartial approach, hence why CM offered for serious offending where military members are totally impartial.

## Search and Seizure

- Search: Examination of a person or property
- Seizure: Taking of property discovered during a search
- Bill of Rights Act: All searches to be lawful and reasonable
- **These are high-risk areas.**



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If a search is deemed unlawful or unreasonable it can be considered inadmissible in court – which can be fatal to prosecution cases, as seized items are usually the best evidence available.

### **Why do people have BORA rights for search?**

Everyone is entitled to privacy, obviously if you have done something wrong the rights you have to that privacy can be degraded in the name of justice – but that only applies to what could reasonably be assessed as providing evidence.

**Why is it a high risk situation:** Our people have a reasonable expectation of privacy, even if they have done something wrong. There is a wide scope of expectation of privacy – ie a soldier living in private accommodation with her spouse will have a higher expectation of privacy than if she lived in service accommodation.

**Recommend seeking advice from MPs or LSO when engaging in a search/seizure.**

## Routine Inspections

- Normal function of command
- Do not need special authority
- Purpose: Related to fundamental order and discipline issues:  
“Not focused on finding specific evidence of offending”
- A focus on what is visible
  - eg: Recruits standing by bed spaces



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Routine inspections focus on what's visible. Opening drawers likely customary.

## Section 97 Search: Customary Search Power

- AFDA s 97 preserves a CO's customary power of search.
- Related to fundamental order and discipline issues.
- Not focused on finding specific evidence of offending.
- Permits search of kit, equipment, lockers, drawers and bed spaces.
- Power of the CO inherent in their customary powers of command.



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## Section 95 Search – Reasonable Grounds

- AFDA, s 95: A CO can exercise power of search if they have “reasonable grounds to suspect” that a person has in their possession:
  - Any property which has been unlawfully obtained;
  - Any article or thing which is or may be evidence relating to the commission of an offence.
- CO may:
  - Detain and search the person;
  - Search any premises within their command occupied or used by the person;
  - Take possession of the property, article or thing.
- **If undertaking a routine or customary search, and find evidence of offending, cease and seek permission to conduct a s 95 search**



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### How does the transition from s 97 to s 95 search work:

If you are conducting a routine search under s 97 AFDA and you identify something that may indicate offending ie drug paraphernalia, you are not permitted to further engage in a search to find drugs under s 97. You need to get the CO to authorise a section 95 search – this should be done in writing if circumstances permit.

Throughout this time you can order the individual not to return to their room – such a command would be lawful as the service purpose for doing so is the maintenance of justice.

### New Developments

New DM 69 states clearly that temporal limits are required – this sets a ‘from’ and ‘to’ date range within which a search of a personal electronic device can occur.

## Disposal of Seized Items

- Property is to be returned if:
  - The seized property is not required as evidence in proceedings; or
  - A DISCO finds that the property was not used in the commission of an offence.
- If property is used in the commission of the offence, the DISCO may:
  - Direct that the property is forfeited to the Crown; or
  - Make a restitution order requiring the property to be delivered to another person (eg: stolen property)
- **DISCOs should seek legal advice before making an order relating to seized property**



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This is a particularly risky area when you are considering that some personnel have handed their cell phones in for forensic exploitation 12 months ago and haven't had them returned.

## Command Investigation

- Commander may order a command investigation into any matter within their command
- Allows investigation into cause of “minor or untoward incidents” within their commands
- No set form, provided the investigation complies with NZ law



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DM 69 Chap 11, Sect 3

This allows for a broader fact-finding mission without immediately placing blame and questioning suspects.

There is no set form... but DM 69 Vol 1 Chapter 11 Section 3 sets out some key considerations in order to maintain compliance with NZ law.



## Command Investigation

- Command investigations should not be used for:
  - Matters of complex or serious issues of fact or law;
  - **Where disciplinary action is contemplated;**
  - Matters where there is a likelihood of administrative or employment consequence;
  - Serious or systemic issues.
- If it becomes apparent that any of these matters may arise, the investigation is to cease. Legal advice should be sought.



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**Serious issues of fact or law:** If an investigation focusses on a ERA event, or a HASNO event etc, then a COI could be considered instead of a commander trying to battle through complex areas of law. *What you can do:* ensure that the commander has a good grasp of what they are investigating and recommend seeking assistance if necessary.

**Adverse Findings:** Now adverse findings may be made in a command investigation. The DM 69 is yet to be updated to reflect this. However, if you determine that a person may have their reputation, character, or conduct called into question as part of this investigation or that the outcome might be an administrative or employment consequence for any person, you must:

a. Seek legal advice from Defence Legal Services; and

b. If that advice is that an affected person may be subjected to an adverse comment or an adverse consequence you are to inform the affected person of any draft adverse finding and the grounds for it.

An affected person is to be given an opportunity to comment on the draft adverse finding or recommended adverse consequence and any comment is to be considered by you before you finalise your investigation.

**Disciplinary Action:** If it becomes apparent that there may be contemplation of disciplinary action, then the CI should cease and there should be a disciplinary investigation ie gather evidence, caution, interview witnesses etc.

**Serious/Systematic Issue:** COI

## Caution

- A person must be cautioned when:
  - They are questioned as a suspect;
  - The investigator has gathered enough evidence to be satisfied that they should recommend charges to the suspect's CO;
  - They are placed under close arrest;
  - An allegation is recorded against them in the form of a charge.
- The exact wording is important: DM 69, Vol 1, Para 3.1.4.



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DM 69 3.1.15 states that when an allegation is recorded in the form of a charge, the charging officer/NCO is to:

- a. Inform the suspect promptly of the nature and cause of the charge
- b. Caution the suspect in accordance with 3.1.4 and ask whether the suspect wishes at that time to say anything in relation to that charge.

## Caution

- “You have the right to refrain from making any statement and to remain silent. Do you understand this?”
- “You have the right to consult and instruct a lawyer without delay and in private before deciding to answer questions, unless operational circumstances do not permit that, and this right may be exercised without charge under the Armed Forces Legal Aid Scheme. Do you understand this? Do you wish to exercise this right?”
- “Anything you say will be recorded and may be given in evidence. Do you understand this?”



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**If you think you have not cautioned them correctly:** Stop what you are doing ie questioning a suspect, find the caution and go back to the suspect, give them the proper caution and ask them the questions again.

The purpose of this is if you fail to caution the accused correctly, the evidence that they give without a proper caution is not admissible in the summary trial.

**Method of Caution:** The caution should always be done in person ie not via email etc/ Any questions that the suspect answers while under caution should be recorded by writing, audio or video... Video with audio is preferred.

## Legal Advice for Suspects

- Legal aid for arrest and questioning
  - Same as civilian Police Detention Legal Assistance Scheme
- If suspect requests lawyer, provide list of Armed Forces Defence Counsel Panel ('Panel'). Contact MPs.
- If outside New Zealand, suspect may telephone member of Panel unless operational circumstances preclude it.



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As mentioned, suspect has right to consult and instruct a lawyer in private before deciding to answer any questions. As a commander or an individual conducting an investigation, you must not attempt to discourage them from doing so.

### Points to note:

- Phone call to panel lawyer is covered by NZDF, suspect to pay themselves if they contact another lawyer off the panel.
- Seek advice if possibility that suspect may have to disclose personal information to lawyer to get advice.
- On ops, only if circumstance permit. If not, at first available chance (DOCUMENT REASONS FOR NOT COMPLIANCE WITH REQUIREMENT)
- Needs to be in private.
- Reasonable time to seek advice (not hours and hours)

**Why do we do this:** Gives us some more – impartiality and independence. All of this is in search of natural justice rights. While this may seem like it is protecting the accused, it is really protecting us from any accusations against the NZDF of miscarriage of justice.

## Suspension from Duty

- Service members suspended from duty or in service custody pre-trial retain pay.
- There need not be a well-founded allegation to support a decision to suspend someone from duty – a preliminary inquiry must have commenced though.



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### Why is this do you think?

The individual has not been convicted of any offence. So if we were to force them onto unpaid leave and they were found not guilty, then NZDF would be responsible not only for their pay but also for any lost potential if that decision was taken to the Human Rights Commission or a member of Parliament.

## Decision to Charge

- Should the accused be charged?
  - Duty to maintain discipline and report offences
  - If the CO has determined that there is a “well-founded” allegation it must proceed or be referred to a civil authority.
  - No ‘in house’ dealings (e.g. “I’ll take extras, rather than the charge”)
- An allegation is “well-founded” if the facts logically support every element that must be proved before the accused could be found guilty.
  - (UPDATE) CO may determine that minor or trivial allegations are not well-founded



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If the CO has determined that there is a well founded allegation it must proceed under AFDA ss 102 and 103 as either a charge under the AFDA or referred to the appropriate civilian authorities.

Stay of proceedings if not in the interests of service discipline that the allegation be recorded in the form of a charge and no reasonable prospect of a finding of guilt on the charge. Consult your legal officer if you think you have an allegation that may fit this category.

Also ability for minor offences to be dealt with by command eg. Presentations, time management skills training etc – this is known as minor and trivial. Now covered under DM69 Vol 1 Chap 4 Sect 2 as:

It will not be in the interests of service discipline to record the allegation in the form of a charge or to refer it to the appropriate civil authority if:

a. The allegation did not cause harm which the law is intended to prevent;

or

b. The allegation is:

(1) Of a minor or trivial nature, except where that allegation presents a challenge to Service discipline; and

(2) The allegation can be better dealt with through mechanisms such as additional training or duties, except where such mechanisms circumvent the disciplinary system.

### New Two Stage Test

The new test for a decision to charge is a two step process;

1. Well founded allegation – ie facts logically support every element – don't need to prove it, just support it
2. Determine whether offence is a specified offence – there is a list of specified offences but generally they are sexual offences, serious assault or offences which cause lasting harm having an impact on someone's safety or continued wellbeing.

→ AS PRESOs YOU SHOULD BE INDICATING WHETHER THERE IS AN ALLEGATION OF SPECIFIED OFFENDING

*If specified offence?*

Inform CO of victim and the Director of Military Prosecutions.

## Assigning PRESO/DEFO/DISCO

- Qualification:
  - Certificate of Competency (4 years)
- Rank restrictions:
  - DISCO Must be at least 2 ranks above the accused
  - SSGT(E) or above must be heard by the CO
  - No restriction on rank of PRESO/DEFO
- DISCO must not have a personal interest in the charge:
  - The charges allege an offence against the DISCO;
  - The charge alleges an offence by/against a family member;
  - The DISCO is the sole witness;
  - The DISCO otherwise has a personal interest that is likely to influence judgment



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Four types of categories of DISCO as set out in DM69 (2<sup>nd</sup> ed) Vol 1, Ch 7-4:

1. Superior Commander (eg CDF, VCDF, CA, CN, CAF etc)
2. Commanding Officer
3. Detachment Commander (Officer authorised by CO to commander of part of a unit that is stationed or employed a distance from it's HQ)
4. Subordinate Commander (A person delegated by the CO to act as a DISCO under s106 AFDA)

### CO for Disciplinary Purposes

You may be aware of some situations where a type 1 DISCO (Superior Commander) can nominate a COL(E) in writing to perform as a CO for disciplinary purposes. This is often done in situations where a CO role is filled by a civilian.

### DISCO REQUIREMENTS:

Personal interest = Accused and DISCO need to be in same chain of command so may lead to paper postings. Sometimes hard not to have totally impartial approach, hence why CM offered for serious offending where military members are totally impartial.

### The CO should:

- Consider the seriousness of the charge – if the matter should be referred to CM then the CO will need to hear it (a subordinate commander or detachment commander cannot offer the person that right. Obviously they can refer it to the CO however.)



## Roles and Responsibilities

- Disciplinary Officer (DISCO)
- Presenting Officer (PRESO)
- Defending Officer (DEFO)
  - How can I defend someone I think is guilty?
  - Should the accused give evidence?
  - Should the accused elect trial by the Court Martial?



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**[This part is no more than 10 minutes]**

### **Disciplinary officer DISCO**

The disciplinary officer **must** remain impartial in order to receive the evidence and make a finding at the trial. The trial is conducted by the disciplinary officer, who controls the pace and execution of the proceedings. The disciplinary officer is responsible for ensuring that the trial is conducted in accordance with the statutory requirements – as provided for in the DM69.

### **Presenting officer PRESO**

The presenting officer's role is to bring the case in support of the charge but not to pursue a conviction at all costs. For trial, the presenting officer must do the following:

Check the charge report for errors. One SACNZ appeal allowed, quashing a compensation order, when statement of particulars did not comply with RP 7, setting out sufficient matters that, if proved, would justify the making of the compensation order. Be prepared to explain any delay between the offending and the case being heard. Unreasonable or unexplained delay will be a mitigating factor.

Disclose all evidence in support of the charge to the accused and the defending officer.

Have prepared an outline of the case (if NG plea). This consists of a brief overview of the facts, and the elements of the charge if the disciplinary officer requires them. If G plea, then a summary of facts must be prepared for the disciplinary officer.

Lead the evidence from the witnesses in support of the charge

Cross examine the defence witnesses, if necessary

Obtain the accused's MD602 from HRS, and prepare a report of the accused's service record, conduct and circumstances FORM MD601D.

### **Defending officer**

The defending officer's role is to represent the interests of the accused. For a trial, the defending officer must:

Provide information to the accused on the trial process, particularly the implications of a G or NG plea.

Prepare and construct any defence.

Explain the CM election implications if required.

Prepare a plea in mitigation if required, and consider calling evidence in mitigation.

### **Formalities**

Where does the Court Orderly/CSM stand? DON'T CARE / DOESN'T MATTER! Idea is that the DISCO runs the Court how they wish, for example if they want witnesses standing at attention while giving their evidence or seated with their head dress removed (better option).

## Check the Charge

- Do not assume that the charge has been drafted correctly.
- Is the accused accurately described in the charge report?
- Is the charge accurately and correctly set out?
- Record the charge on an MD 601



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### Checking the charge:

Have a first stab at it but sometimes you may find that facts don't fit super well into the charge, specimen charges are useful – but be aware the some fact patterns cannot be shoehorned into others. If you get stuck, talk to an LSO.

Consider if you need a specified certificate from an LSO: If you are considering the following Column 2 punishments

- Detention
- Reduction in rank
- Fine of + 7 days
- Compensation order of + 7 days

An LSO will certify that the charge discloses an offence against the AFDA, that is it drawn in accordance with the Rules of Procedure and that it is otherwise correct in law. This often involves us redrafting some parts of the charges to ensure these criteria are met.

A lot of the time we will get pers asking for a spec cert to be drawn up for a charge being heard by the OC: **Does an OC need one?** No, as an OC cannot give out the specified punishments.

### DISCO

As a DISCO, listen carefully when the charge is read out at ST and then how the facts relate – you may identify that you need to amend that charge (we wil talk about that shortly).

## Delay

- The Military Justice System is designed to deal with matters speedily.
- It is understood that disciplinary investigations might take time but once the investigation is over the trial must proceed without delay.
- Delay without good reason – the finding and punishment can be overturned on appeal
- Delay of more than a few months is significant



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## Delay

**How long is too long:** The SACNZ has given an indication that 90 days delay is too long. It is, however, a case by case assessment. For something minor that could be dealt with really quickly, 90 days might be too long. For a more complicated matter, or where the accused was on exercise, or everyone was away over Christmas, 90 days might be acceptable. As long as there is some good reason that can be entered into the record then it should be OK.

**What does the delay mean:** If there is delay in dealing with the matter, this can be taken into consideration as a mitigating circumstance during sentencing.

- The time for consideration begins once the preliminary inquiry is complete and the alleged offender has been put on notice of the charge and cautioned. It is often the case that some preliminary inquiries can take a long time. The PTE Ross drowning and the ANZAC helicopter crash inquiries both took over 2 years. Nevertheless, once the inquiry is complete and evidence ascertained, the investigation and summary trial should happen ASAP.

**DISCOs:** recommended you make sure you allocate people to DEFO/PRESO/DISCO that can dedicate time to the task. Inconvenience is not a reasonable excuse for a miscarriage of justice. Have a good think about who should be filling each role – remember that a DEFO and PRESO cannot give evidence themselves, so if that person is a key witness, you will need to appoint another DEFO.

## Jurisdiction as to Delay

In regards to jurisdiction as to the time of offending, see DM69 Vol 1Chp 2 para 2.4.1 and

2.4.2. Generally the limitation period is 3 years. There are some exceptions for civil and particular military offences, such as that in the realm of treachery, spying, mutiny and desertion.

- AFDA s23(1) Aiding the enemy
- AFAD s24(1) Communication with the enemy
- AFDA s26 Spying in ships or establishments abroad
- AFDA s32 Mutiny
- AFDA Failure to suppress or report mutiny
- AFDA s47 Desertion

## Disclosure

- Disclosure is where the PRESO gives all evidence to the DEFO.
- Notably the DEFO does not have to disclose any of their evidence, or who they intend to call as witnesses, to the PRESO.
  - The exception is that the DEFO must disclose that the accused has an alibi and the particulars of that alibi if they have one.
- Must allow for reasonably sufficient time for the accused
- DISCO confirms during the summary trial that this has occurred.



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27

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Disclosure:

**Who discloses what:** Disclosure is where the PRESO gives all evidence to the DEFO. Notably the DEFO does not have to disclose any of their evidence, or who they intend to call as witnesses, to the PRESO. The exception is that the DEFO must disclose that the accused has an alibi and the particulars of that alibi if they have one.

**Process:** Go to page 7-12. Read DM69 Vol 1 Chp 7 paras 7.3.6 (The DISCO is responsible for checking disclosure has occurred) and 7.3.7. (what disclosure contains), as well as paras 7.3.11 – 7.3.12 (timing of disclosure).

Now turn to chapter 13 Section 2 (after pg 13-7) and find the MD601B. This is the record of what has been disclosed. You can see there that there are three columns, one for the item disclosed ie a witness statement, then the date which it was disclosed, and finally a space for the signature of the accused to show that they have seen the evidence

**Why disclose:** On a practical note, full and proper disclosure can save a lot of time and hassle. If there is a strong case and the DEFO and accused is presented with full disclosure of everything in a logical order a guilty is far more likely to occur. Saving a lot of time and effort. This also applies to disclosure of alibi evidence by the DEFO, which may result in the allegation not being well founded.

**What is the effect:** At some levels disclosure can be a pain but there are a number of good work arounds. As PRESO, you need to disclose all statements, even the ones you are hoping to have admitted if a witness cannot attend. The result of this is that a written statement with a silver bullet may not be admitted, as the accused can see it and then disallow it... how would you get around this – HAVE THE WITNESS THERE IN PERSON.

## Disclosure (cont)

- Disclosure includes any:
  - Statements by the accused;
  - Relevant documentary evidence;
  - Written statements from witnesses; and
  - Related Unit or Service Police file, or relevant portions of the file.



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28

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- To remove any doubt disclosure includes, but is not limited to:

Disclosure to the accused must be complete!

### What does it look like:

PRESO fills out the MD 601B and then gets the accused to sight, date and sign to ensure everything listed has been disclosed. If something else comes up, redraft the MD 601B and include the new evidence.

## Approaching a charge – Elements of the Offence

- Set out in DM69(2ed) Vol 1 Chap 4
- They are the analytical building blocks for:
  - Presenting the case in support of a charge – PRESO
  - Analysing how best to defend a charge – DEFO
  - Reaching a finding in respect of a charge - DISCO
- Remember – some elements may not be in dispute .
- Refer to the elements fully when opening cases / making findings. Display your understanding of what is required, this justifies your decision in case the decision is appealed



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29

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### What are the elements:

The elements of offences are essential analytical tools. Referring to them is necessary for:

- The PRESO in determining what evidence needs to be adduced; from which it can be worked out who will be able to give / produce that needed evidence;
- The DEFO in analysing what are the weakest points of the case in support of the charge; from which it can be worked out how the charge can best be defended ( or alternatively, if there are no weak points, that the best COA is an early guilty plea and a well thought-out plea in mitigation ); and
- The DISCO in reaching a logical finding in respect of each charge.

### Who brings up the elements:

It follows that each of the PRESO and DEFO should refer to them in opening their cases ( the PRESO to all of them , the DEFO to those that are in dispute ) and that the DISCO needs to address them all in the findings.

Some element are not usually in dispute ie the date, AFDA applicability. Other ones can be more difficult ie intent for common assault.

### DISCO's use of elements for Guilty Plea

The DISCO also needs to be fully aware of the elements of offences to enable him / her to fulfil the obligation to ensure that a guilty plea has been made properly understood

- the nature of the charge(s); and
- the consequences of the plea.

When making a finding a DISCO should outline the elements and confirm that each one has been proved/disproved to the correct standard WHICH IS?



The PRESO and DEFO in referring to the elements also ensures that they are brought to the forefront of the DISCO's thinking at the outset of the trial – and thus are unlikely to be overlooked in the reasoning leading to a finding.

# Issues within Summary Trials



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30

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## Procedure

- Following of the flowchart
- Chapter 7, Annexes A-D (also Summary Trial Guide version for PRESO/DEFOs)
- Always best to follow the process but minor errors are not necessarily fatal
- Miscarriages of justice



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31

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### Procedure:

Annex A to chapter 7 sets out a flowchart for the DISCO. Note that it is already as simple as it can be, it cannot be made any simpler!!

### Is the DISCO empowered to act?

One question that is often overlooked is whether the DISCO is empowered to act as a DISCO for this charge (see DM 69 Vol 1 Chp 7 Annex B after recording a plea of guilty, and Annex C after determining there is a prima facie case). The DISCO needs to consider whether:

- He or she holds a current certificate of competency;
- Is at least two ranks above the accused, or if the accused is SSGT (E) or above is the CO;
- His or her level of skill, competency, and knowledge of the law (particularly the law of evidence) sufficient to deal with any complexity the case may present;
- If there is a guilty finding, are the DISCOs powers of punishment sufficient?

→ If the answer is no to any of the above then the matter should be remanded for trial by the CO (if subordinate commander) or by Courts Martial.

### Guides for PRESO/DEFO

The summary trial guide offers a flowchart more orientated towards the role of DEFO/PRESO. Both are great guides for how the process should be followed. Especially the annotated version which literally tells you what to say as a DISCO.

**Key Issue: Accused not wishing to give evidence**

See DM69 Vol1 Chp 7 pg 7-42; the bottom left provides the procedure for the DISCO to ask whether the accused wishes to give evidence. Previous cases have struck problems where the accused has been called as a witness without asking whether he or she wishes to give evidence. This is fundamentally flawed as an accused has a right not to be compelled to be a witness or confess guilt (see NZBORA 1990 ns25(d)).

**What if I mess it up:**

Some minor breaches of procedure may not, however, create such headaches. For example, towards the end of the summary trial process, but before making a finding, a DISCO suddenly remembers she had not given the accused the right to elect trial by Court Martial (see DM69 Vol1 Chp 7 pg 7-42 for the required procedure). The DISCO decides to offer the accused the right to elect after hearing the case for the defence. On appeal the SACNZ held there was no miscarriage of justice and the appeal was denied – however the result may not be the same if there were different facts. This is why we have the flowchart.

The threshold for procedural deviations is whether a miscarriage of justice has resulted. It may not always be clear to a DISCO if this is the case, I recommend if a DISCO has any concern about a procedural deviation he or she should order an adjournment to seek legal advice.

## Amending a charge

- The DISCO may, after an accused has been brought before him or her on a charge, and before a decision is made
  - Amend that charge;
  - Substitute a different charge; and/or
  - Add a new charge;
- ....if the DISCO considers that to be in the best interest of justice.



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32

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### Amending the charge:

The power to amend a charge is often used for minor issues such as the accused being improperly described on the charge sheet. It can also be used, however, if the PRESO's evidence doesn't fit the charge but may satisfy some other charge. Here the DISCO may amend, substitute or even add a new charge (see DM69 Vol 1 Chp 7 para 7.4.3). A good example would be amending from insulting to provocative language.

Note that if the charge is amended, the amendment must be explained to the accused and if it is a major change, such as when the DISCO adds a new charge, the trial should be adjourned to let the accused structure his/her defence to this new charge. The DEFO should ask for this if the DISCO doesn't give it (see DM69 Vol 1 Chp 7 para 7.4.6).

Consider NZBORA s24(d) which provides the right to adequate time and facilities to prepare a defence.

**Legislative ability to amend:** AFDA s 113 requires that if the amended, substituted, or additional charge differs substantially from the original charge, the DISCO must

- Explain the amended, substituted, or additional charge to the accused;
- Advise the accused of his or her right to seek an adjournment to consider the charge; and
- If requested, adjourn the proceedings for that purpose.

## Paths to the Court Martial

- There are 3 ways to get to Court Martial:
  - Very serious offending goes straight to Court Martial (7 years + imprisonment)
  - The DISCO can remand a case to the **Court Martial if they are a CO**
  - The DISCO can give the option for the accused to elect trial by Court Martial **if they are a CO**
- Subordinate Commanders lacking the appropriate powers of punishment must refer the matter to the CO.



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33

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Three pathways to Court Martial:

1. Very serious offending; anything that has a maximum punishment of 7 years imprisonment. There are also some specific offences that are automatic referrals, these include as of recently indecent assault.
2. If you are a CO and deem that you do not have sufficient powers of punishment you can refer the matter to the Court Martial
3. Election – discussed on next slide.

Remand to court Martial: see DM69 Vol 1 Chp 7 Annex A (page 7-42).

If you are a subordinate commander and you don't have the punishments open to you, refer to CO (see DM69 Vol 1 Chp 7 para 7.5.14 – 7.5.16). A subordinate commander cannot give the right to elect trial by CM

If you are a CO, and you don't have the punishment options open to you, or you feel you don't have adequate experience to deal with a complex point of law, you can remand the case to the Court Martial (see DM69 Vol 1 Chp 7 para 7.5.19).

## Electing Trial by the Court Martial

- If punishment which COULD be appropriate for the offending is more than that which is available under the 3<sup>rd</sup> column Chp 8 Annex A OR the amount of compensation COULD be more than 14 days basic pay, then the DISCO MUST:
  - OFFER the accused the right to elect trial by CM;
  - ENSURE the DEFO explains the implications of electing trial by CM, and his or her right to seek an adjournment; and
  - If requested by the accused, ADJOURN for that purpose.



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34

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### Election:

There is also the requirement to offer an accused the right to elect trial by Court Martial if the punishment powers in column 3 are insufficient (see DM69 Vol 1 Chp 8 Annex A).

**Can anyone remember what else is triggered by considering some of these punishments?** 7 days fine or compensation order, detention, reduction in rank. The limits between column 2 and 3 are the same as required for a specified certificate. Consideration of this is not left to the punishment phase. The decision to offer the right to elect trial by Court Martial is made well in advance of a finding or punishment; for guilty pleas this occurs after the plea is recorded, whilst for a not guilty plea this occurs after a prima facie case is established.

If the CO gives the right to elect trial by Court Martial this opens up the possible punishments under column 2.

**Why do you think if it COULD go that way, you should offer the right to elect trial by CM:** Offering the right to elect keeps options open and ensures the DISCO has the fullest available range of punishments open to him or her. On the other side the accused has the option to go to trial and be represented by qualified legal counsel, and for the matter to be heard by an independent and impartial court. The ability to impose truly punitive powers is inextricably linked to the accused's minimum rights of criminal procedure under the NZBORA 1990.

If an accused elects trial by Court Martial the DISCO should adjourn to allow for the accused to consider the election and for the DEFO to provide advice on the election (see DM69 Vol 1 Chp 7 paras 7.5.21, 7.5.24-7.5.37. The record of the election is to be recorded in FORM

MD601C.



## Electing Trial by the Court Martial

- After offering the right to elect and adjourning as required:
- DISCO must record the election on form MD601C (Accused is to read before signing)
- If the Accused elects trial by Court Martial, the DISCO must adjourn proceedings for 24 hours to allow the accused to reflect on the election.
- If the option to elect is not given then any punishment imposed beyond the third column limits will be unsustainable on appeal



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**Why do we let them reflect:** Big decision that can be made in a pressure environment – can have far greater reaching consequences.

## Approach to Evidence – Calling Witnesses

- All evidence in a Summary Trial should be adduced through a witness.
- PRESOs and DEFOs cannot give evidence themselves.
- Generally, a witness will be required to attend the summary trial and give evidence by answering questions put to them by the PRESO, DEFO and/or DISCO.
- In some circumstances, a written statement can be read into evidence instead of the witness personally attending. This is at the discretion of the DISCO and, if done by the PRESO, may only be done with the consent of the accused.
- If physical or documentary evidence is required, it must be produced by a witness.



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36

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A DEFO/PRESO should not present evidence themselves – everything must be done through a witness.

**How does the written statement work and what are the reasons it can be used:** if the witness cannot attend a written statement can be introduced. This of course cannot be cross-examined and therefore DISCOs will admit this with caution. A DISCO must consider whether admitting that statement will be unfairly prejudicial to the accused – if that written statement contains all sorts of inadmissible evidence like opinion or hearsay – a DISCO can and will exclude that statement. This would be unfairly prejudicial to an accused.

**Can the information be redacted:** No point, but a DISCO should state for the record that the statement that the PRESO wishes to admit contains opinion evidence and therefore will not be admitted.

**Witness cannot attend:** First IA is to reschedule the ST. Second IA is to get AVL or some sort of skype link, technology now allows us to communicate clearly even when on ops, so this excuse is fading... if none of these methods are possible then a written statement complete with an excuse as to why that witness cannot present in person can be admitted.

**Who must consent:** DISCO and DEFO/Accused – so even if the PRESO has a written statement with an absolute silver bullet, the accused can exclude it. What can you do in this situation – reschedule, AVL etc. Most DISCO's are pretty understanding provided you get onto this early enough.

## Approach to Evidence – Questioning Witnesses

### • Examination in Chief

- Questions asked by the PRESO/DEFO of their own witnesses.
- Focus is on the witness' evidence.
- Open questions are generally best, though designed to keep control of the witness.
- Leading questions are prohibited

### • Cross-examination

- Questions asked by the PRESO/DEFO of witnesses called by the other 'side'.
- Focus is on the questions asked of the witness.
- Leading questions are allowed and encouraged.

### • Practice



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37

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Evidence:

- Evidence in Chief (see DM69 Vol 1 Chp 6 para 6.4.15)
- Cross Examination (see DM69 Vol 1 Chp 6 paras 6.4.16 – 6.4.21)

### EIC

- You want to hear the witness' story - prompt them along as you hear it. You can bring them on track ie tell me about what happened after 2030 that evening – this is not leading, it just narrows the search parameters in the witness' mind.
- Leading – try to avoid it, and DISCO will get on your case if you do.
- *How can you get them to confirm stuff:* Ask them once, "how did that make you feel" ... then loop back around to it "I just want you to confirm, how did that make you feel".
- *Coaching vs Witness Prep:* We do not coach witnesses, the answer has to be their own, but you can discuss what they are going to say beforehand – this can assist in how you shape your line of questioning and also prepares you for any evidence that they give that can make your case appear weaker.

### Cross-Examination

- You want to discredit the witness – the only way they will do this is if you get them to tell the story that you want them to tell.
- It is here that leading questions are allowed – you are trying to get them to confirm your theory of the case
- Techniques include: SET – statement, event, tag... for example "You did not see (statement) LCPL A punch PTE B that night (event), did you (tag)?"

*Exercise:*

- Ask a partner open questions about what they did over the weekend. Now, knowing what they did, ask leading questions for them to confirm what they did over the weekend.
  
- Open questions simply prompt the witness to tell their story. The focus here is on the witness.
  
- Closed questions confirm elements of the story. The focus here should be on the PRESO's/DEFO's line of questioning.
  
- A witness may not read his or her evidence from a prior statement, unless both the Accused and the PRESO consent to the giving of evidence in this form. Also, a witness, with the prior leave of the DISCO, may consult a document made or adopted at a time when his or her memory of the events was fresh. Any document consulted by a witness must be shown to every other party in the proceeding (see Dm69 Vol 1 Chp 6 paras 6.4.29 – 6.4.31).
  
- A witness may also be given a copy of his or her statement prior to the summary trial.

## Approach to Evidence – The Standard of Proof

- The standard of proof in summary trials is 'Beyond Reasonable Doubt'.
- This means that the DISCO, in order to make a finding of guilty must be satisfied that:
  - Each element of the offence has been proven; and
  - That the accused committed the alleged offence.
- It is for the PRESO to call evidence in order to demonstrate that the elements have been proven.
- The Accused is entitled to the benefit of any doubt.



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38

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Burden and standard of proof:

- All elements must be proved beyond reasonable doubt.
- A spectrum may look like this:

**DRAW:** No chance (0%) --- BOP (50%) --- v.Likely (75%) --- BRD (85%) --- absolute surety/not a shadow of a doubt (100%)

All the DEFO should be seeking to do is introduce some doubt into one of the elements so that it raises a reasonable doubt in the mind of the DISCO. Each element must be proven beyond a reasonable doubt. If there is doubt, and that doubt is reasonable, the Accused is entitled to the benefit of that doubt and the DISCO should acquit.

If a DISCO is not satisfied that one (or more) elements have been proved to that standard then:

- Accused entitled to be acquitted on that charge
- BUT DISCO can consider amending / adding charge(s), but only before a finding is entered for the charge - for which there is evidence for all the elements

**Why is the threshold so high?** The reason for the high threshold to determine guilt is a recognition of the presumption of innocence (see NZBORA 1990 s25(c)). This relates to the sentiment that the justice system would rather see a hundred guilty people walk rather than one person be wrongly punished. For example, it would not have been enough to find the

David Bain was very likely to have murdered his family, in order to convict him of such there must have been no reasonable doubt that he had murdered his family.

The SACNZ has overturned a case on appeal because the DISCO in making the finding used the phrase 'on the balance I find you guilty'. It is important to remember that appeals to the SACNZ are on the papers, so a judge can only rely on the transcript of the proceedings, and the written submissions. So the choice of words used by the DISCO is critical. In this case, despite that it seemed like the DISCO had intended to say 'beyond reasonable doubt', the judge found the DISCO had decided the case on the wrong threshold and overturned the finding.

**Balance of Probabilities:** Some defences can be raised on the BOP. For example see the charge of drunkenness (DM69 Vol1 Chp 4 para 4.8.41 – 4.8.44). Note the defence at the bottom of the elements table on page 4-77, which provides if you can prove on the balance of probabilities that the unfitness was caused by prescribed drugs then it is a defence to the charge. The best evidence principle guides PRESOs & DEFOs to present, and DISCOs not to be satisfied with anything less than, the best available evidence in respect of each fact in contention. A DISCO should therefore seek the best evidence available to prove every element of the alleged offending.

**Why is the standard lower:** Remember that the role of the DEFO is just to raise reasonable doubt, and 51% applicability of a defence is reasonable doubt that the offence occurred.

Also see DM69 Vol1 pages 5-7 to 5-8 for guidance on the standard and burden of proof.

## Approach to Evidence – Exhibits

- Exhibits must be produced by a witness that has knowledge of them, for example
  - Photograph – the person that took it.
  - Sketch – the person that drew it.
  - Weapon – MP's who seized it.
  - Standing orders/DFO – MP's or person investigating the charge
- The PRESO and DEFO cannot produce items as exhibits.



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39

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Exhibits:

**Who can produce:** Remember that the PRESO and DEFO's roles are to facilitate evidence being brought to the DISCO. They can't produce evidence or exhibits themselves. They are to 'present' their cases. DFOs, Orders and similar documents cannot just appear by slight of hand, they must be produced as an exhibit by a witness.

**Copies:** Exhibits must be produced as evidence by a witness that has knowledge of the item, and must be authenticated if copies are produced – signed and initialled.

- See checklist for submitting exhibits on page 20 of the Summary Trial Guide. In producing an exhibit, an example of questions to put to a witness might be:
  - Would you look at the document I now show you ?
  - Do you recognise it, and if so how ?
  - What is it ?
  - What does it show ?
  - Do you produce it as an exhibit ?



## Approach to Evidence – Written Statements

- Written statements can only be admitted with the permission of the Accused and the DISCO.
- DEFO and DISCO should be very wary of consenting to the admission of written statements if there is any matter in them which is contentious. There is no ability to cross examine the maker of, or challenge the contents of, a written statement.
- Written statements are NOT an easy substitute for personal evidence. Other options should be considered.
  - VTC, phone conversation, delay the summary trial.



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40

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Written statements:

**Scales of Evidence:** The best evidence is oral testimony from a witness. Written statements are not a substitute for evidence being given in person. The only exception is if the evidence is not controversial, does not require cross examination, and the witness is not available. 'Not available' does not simply mean it isn't easy to appear as a witness, or it is inconvenient – usually DISCOs will want to know why someone cannot attend. Ops is a good reason though these days with VTC etc a good connection can be achieved.

**Ordering witnesses to attend:** Also note that NZDF service members can be ordered to attend the trial and civilians can be summoned to attend. The form for summoning civilians is in FORM MD606. See also DM69 Vol 1 Chp 6 paras 6.4.5 – 6.4.7.

**Written Statements:** Written statements may only be submitted as evidence with the permission of the Accused and the DISCO (see DM69 Vol1 Chp 6 paras 6.4.2 – 6.4.3).

Why is it that documentary evidence, or written statements require approval? See NZBORA 1990 s25(f) which provides the right to cross examine. A DEFO and DISCO should be very wary of consenting to the admission of written statements if there is any matter in them which is contentious, as there is no ability to cross-examine the maker of, or to challenge the contents of, a written statement.



## Approach to Evidence – Opinion on Drunkenness

- AFDA s.51: **Drunkenness:** unfit to be entrusted with duty, or any duty may be required to perform, owing to the influence of alcohol or a drug (not being prescribed drug)
- Medical evidence / breath test not necessary
- Witness **MUST** have sufficient degree of experience of effects of intoxication
- Witness **MUST** give evidence as to:
  - their experience of effects of intoxication
  - what observations led them to conclude that accused was drunk / drugged



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41

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### **Drunkenness:**

See the charge of drunkenness (DM69 Vol1 Chp 4 para 4.8.41 – 4.8.44).

**Key Element is Duty:** What is interesting about the element that you must be unfit to perform your duty? Whether an individual is drunk so as being unfit to perform a duty entails a degree of subjectivity. It also depends on the nature of the duty the individual is expected to perform. For example a helicopter pilot or a driver may be deemed to be unfit at a lower threshold than someone in a different trade, such as a member of the NZ Army Band.

It is essential that there was a duty the individual was required to perform or may have been required to perform. The SACNZ has given guidance that where there 'may' have been a duty, there must be a reasonable likelihood of that duty arising. It is not the case an individual can be charged with being drunk on leave for example, or even whilst of duty on the weekend.

→ Old version was just if you were openly drunk.. Which was a bit restrictive.

### **Opinion Evidence**

Notably medical evidence/a breath test is not required, and where an individual has been ordered to provide such a sample the sample is generally not admissible as evidence. A case against an individual accused of drunkenness is a circumstantial case. However, the SACNZ has said that a witness with sufficient experience with intoxication or the effects of intoxication, can offer compelling evidence that a person was 'drunk'. We're talking slurring words, smelling of alcohol, etc. What the SACNZ is saying is essentially, for those of us with experience of intoxication, we are all subject matter experts on drunkenness, and our expert opinion holds weight in a summary trial. (Note: the witnesses' experience with intoxication should also be established during the giving of evidence).

## Making a finding

- DISCO is required to determine a finding after hearing all evidence
- Work through the elements of each offence, one by one
- For each one, is it proved beyond reasonable doubt?
  - What logically follows from facts that have been proved?
  - Resolve conflicting evidence – which is to be preferred?
  - Does that get you beyond reasonable doubt?
- If element proved, move to the next element
- If an element is not proved beyond reasonable doubt, then finding has to be “ Not Guilty ”



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**Adjourn:** DISCO can take adjournment to collect their thoughts and get what they need to deliver findings, write it down and understand the terminology – if you mix up an important bit, then this can result in a loss at appeal.

### Elements

**Role of the DEFO:** DEFO needs to switch on at this stage as this is where appeal points will come up due to wrong language used. All the DEFO should be seeking to do is introduce some doubt into one of the elements so that it raises a reasonable doubt in the mind of the DISCO. Each element must be proven beyond a reasonable doubt. If there is doubt, and that doubt is reasonable, the Accused is entitled to the benefit of that doubt and the DISCO should acquit

### Remember the Standard of Proof

Burden and standard of proof: All elements must be proved beyond reasonable doubt.

A spectrum may look like this: DRAW THIS on WHITEBOARD

No chance (0%) --- BOP (50%) --- v.Likely (75%) --- BRD (85%) --- absolute surety/not a shadow of a doubt (100%)

**Why is the standard important:** The reason for the high threshold to determine guilt is a recognition of the presumption of innocence (see NZBORA 1990 s25(c)). This relates to the sentiment that the justice system would rather see a hundred guilty people walk rather than one person be wrongly punished. For example, it would not have been enough to find the David Bain was very likely to have murdered his family, in order to convict him of such there must have been no reasonable doubt that he had murdered his family.

**Decision:** If a DISCO is not satisfied that one (or more) elements have been proved to that standard then:

Accused entitled to be acquitted on that charge BUT DISCO can consider amending / adding charge(s) based on what they have heard, but only before a finding is entered for the charge - for which there is evidence for all the elements. An example would be changing a charge from provocative language to threatening language based on a factual distinction between what was actually said based on the best evidence.

If you as a DISCO are going to do this, I recommend talking to an LSO, and remember you cannot make a finding before you change it – you cannot say “I find you not guilty of using provocative language – but I’m going to change it to threatening language as your choice of language better reflects that charge”.

### **Best Evidence Principle**

The best evidence principle requires DEFOs and PRESOs to present the best evidence that is available to them, even in defence of the accused. Similarly, the DISCO must consider the best evidence available to them when making a finding.

## Announcing a finding

- DISCO is required to announce the finding and to give reasons
- Suggested Structure:
  - Name of Accused
  - The Charge(s) & background
  - The Elements
  - Elements / facts not in dispute
  - Disputed facts and findings
  - Decision
- Use language indicating sound reasoning – not “assume”, “guess”, “believe”, “pretty much”, “on balance”. Display your understanding of the charges and what is required
- Templates are available, but beware.



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43

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### Announcing the finding:

- This is also simply a matter of setting out the reasoning process used to reach the finding as already explained, once more being methodical and analytical.
- Giving reasons is a requirement (see DM69 Vol 1 Chp 7 para 7.8.8. a).
- The language used should reflect the reasoning that has been employed, so it should avoid informality and terms indicative not of reasoning but of guess work or assumption. Try to spell out conclusions in clear, concise terms “having listened carefully to all the evidence”;
  - “ There is a conflict of evidence between ... and ... , but I prefer the evidence of ..., and therefore am satisfied to the required standard that ... ” .

### Alternative Charges

If there are alternative charges and a DISCO enters a finding of guilty for the first (primary) charge, then a finding of NF must be entered for the others.

- Ensure that you make clear that you understand the burden of proof: “ satisfied beyond reasonable doubt that ... ”;

## Punishment Phase Process

- DISCO MUST, before imposing punishment:
  - Examine Conduct Sheets (MD 602)
  - Read aloud any Victim Impact Statement
  - Hear any plea in mitigation – from DEFO
  - Allow Accused to call evidence in explanation / mitigation
  - Receive PRESO Report ( MD 601D ) and details of any pre-trial custody



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44

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### What do these provide:

**Conduct Sheets:** This is where prior offences can come into play – if offender is a repeat offender = higher punishment. This includes service offences and offences charged in the civil court.

**VIS:** If the offender has caused lasting harm ie through an assault or dishonesty. These are to be read out by the DEFO.

**Plea in Mitigation: What do you think potential mitigation could be?** Hear if offender is in financial hardship, has other commitments, is remorseful etc.

## Deciding on a Punishment

- DM69 Vol 1 Chap 8 Annexes set the 'left & right of arc' depending on:
  - Whether right to elect CM was offered ( 2nd column );
  - Appt of DISCO (Annex A CO, Det Comd, subordinate comd; Annex B Superior comd); and
  - Rank of accused (Offr/WO; SNCO; JNCO; rating/OR )
- Sentencing Guidelines (DM 69 (2 ed), Vol. 2, Chapter 1, Annex B) indicate the 'centre of mass' to aim for.
  - May be inappropriate in unusual cases
  - Doesn't account for multiple offences



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45

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- DM 69 Chap 8 Annexes provide for maximum punishments in the various circumstances they cover.
- Sentencing Guidelines focus on where the start range for determining appropriate punishments generally is.

## Deciding on a Punishment

- The Guidelines provide you with a starting range for 'normal' offending of that particular type, taking into account the conduct of the offence itself including any impact on a victim
- Consider the principles and factors in Chap 8
- Then consider:
  - Service record;
  - Mitigation;
  - Aggravating factors relating to the offender;
  - Any pre-trial custody (factor it into any punishment); and
  - Any guilty plea (worth up to 25% off, but can be lower)
- Do those add or subtract from the starting range?



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46

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Sentencing Guidelines are in Vol 2 Appendix A of Chapter 1 – would be good for DEFO to consider these as well.

### Principles

- You only need to consider the relevant ones:
  - a. Gravity and culpability of the offender – the worse the offence and the greater the involvement of the offender: the higher the sentence.
  - b. Consider the maximum penalty as this shows how serious this offence is viewed compared to others.
  - c. The maximum should be considered if the offending is at the higher end.
  - d. Consistency: this is something NZDF struggles with as each DISCO is different – but as much as possible pers should be sentenced similarly for similar offending.
  - e. Effects on the victim
  - f. Appropriateness: If there are two sentences available that would achieve the aim of dealing with the offender then the least restrictive should be employed.
  - g. Any inappropriate consequences should be avoided ie what would the effects of a fine be to someone already in financial distress.
  - h. Consider personal, cultural, community and family situation
  - i. Consider the potential of restorative justice if this has already occurred and what the effect of that will be.
- All the factors to be considered either add to or reduce from your original start point



# Punishment - Announcing the Punishment

- Sentencing Template at DM 69, Vol 2, Chap 1, Annex B

## 1. Introduction:

- State the person's name, rank and regimental details; and
- State the offences for which they are being sentenced, along with the maximum available sentence

## 2. Facts:

- State an outline of facts that have been proven or admitted, on which the sentence is based

## 3. Purposes and Principles of Sentencing:

- State the principles of sentence that are applicable to the particular case; and
- State the purposes of sentence that are applicable to the particular case



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### 1. Intro:

- You need to list only the offences that the offender had been found guilty of – these are the only ones relevant to sentencing.

### 2. Facts

- This is important as it may give a LSO or a Judge a picture of how serious you deem the offending to be and therefore can assist to justify your chosen punishment– ie if it goes to SACNZ.

### 3. Principles

- You only need to consider the relevant ones:
  - a. Gravity and culpability of the offender – the worse the offence and the greater the involvement of the offender: the higher the sentence.
  - b. Consider the maximum penalty as this shows how serious this offence is viewed compared to others.
  - c. The maximum should be considered if the offending is at the higher end.
  - d. Consistency: this is something NZDF struggles with as each DISCO is different – but as much as possible pers should be sentenced similarly for similar offending.
  - e. Effects on the victim
  - f. Appropriateness: If there are two sentences available that would achieve the aim of dealing with the offender then the least restrictive should be employed.
  - g. Any inappropriate consequences should be avoided ie what would the effects of a fine be to someone already in financial distress.
  - h. Consider personal, cultural, community and family situation



- i. Consider the potential of restorative justice if this has already occurred and what the effect of that will be.

## Punishment - Announcing the Punishment

### 4. Limits on Sentencing - DM 69, Vol 1, Chap 8, Annex A-B:

- State what punishments can be given from the table, and explain the limit based on whether you are a CO or a Sub Comd, whether an election was given, and what the rank of the offender is

### 5. Establishing a Starting Point:

- Consider what sentences other DISCOs have imposed in the past for the same offence
- Consider the Sentencing Guidelines as a helpful indicator - DM 69, Vol 2, Chap 1, Annex B, Appendix B
- Consider any particularly relevant principles and purposes of sentencing
- Consider aggravating and mitigating features of the offending

### 6. Announce the Starting Point:

- State the punishment you decided as the starting point based on the considerations at Step 5



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48

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This is the sort of thing that is set out in DM 69 (2 ed), Vol. 2, Chapter 1, Annex A with the sentencing guidelines.

**Reference the Column 2 – Column 3 distinction we talked about before. Remember that it depends on whether the offender was offered right to trial by CM.**

## Punishment - Announcing the Punishment

### 7. Adjust the Starting Point:

- Consider aggravating and mitigating features of the offender
- State the increase or decrease in consideration of the features

### 8. Reduction for Guilty Plea

- State the reduction in consideration of the guilty plea, if applicable

### 9. NZDF-Specific Considerations

- Consider matters specific to the NZDF
- E.g. whether a reduction in rank is necessary in recognition of the importance of command and respect, and whether the offending is in breach of NZDF's core values of courage, commitment, comradeship and integrity



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89

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### Aggravating Factors

- Actual or threatened violence + weapons
- Unlawful entry into a private space
- Loss, damage and harm to property
- Abuse of position of trust/Vulnerability of victim that was known by the offender
- Cruelty
- Hate crimes
- Terrorist activity
- Pre-meditation ie evidence that the offender had planned to assault someone.

### Military aggravating factors

- Abuse of rank
- Disrespect for authority
- Abusing trust of comrade ie theft
- Self-interest ie stealing from a UPF etc.
- Offences in uniform/on duty
- Offences against civilians

## Compensation Orders

- There are essential prerequisites before compensation orders can be made:
  - MD601 Charge Report MUST include in the particulars the value of the item(s) to be compensated.
  - DISCO MUST have evidence as to the ownership and value of the item(s) to be compensated for – oral & where appropriate exhibits. Value of the item(s) should be based on an invoice or receipt rather than a quote.
  - If the compensation order is for more than 7 days pay, a LEGAD Specified Certificate is required – more than 14 days requires offering the right to elect Court Martial



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**Why is this important:** These are issues which have been the subject of decisions by the SACNZ.

Armed Forces Discipline Rules of Procedure Rule 7(1)(g) requires that the 601 includes sufficient matters which if proved would justify the making of the order.

### Preliminary Procedure

If the DISCO intends to order compensation, for example for some damaged property, the amount must appear in the particulars. For example if the offender broke a vehicle door the amount it may cost \$500.00. This amount should appear in the charge, and the quote for the damage should be produced as evidence for that cost during the trial. See DM69 Vol1 Chp4 para 4.2.11.

Having the amount detailed in the drafting of the charge also puts the accused on notice. See the charge of AWOL (DM69 Vol1 Chp4 pg4-14), where the amount of \$600 is in the specimen charge so that the accused has an idea what he is facing.

## Compensation/Restitution/Fines

- **Compensation:** This is to recover the loss caused by the offence to the victim
- **Restitution:** This is to remove the gain of the offender to the position they were in before the offence, rather than what loss the victim has been caused (so this can be a different amount )
- These differ from a **fine**. Fines are paid to the NZDF as a punishment whilst compensation / restitution are paid to the victim (or can be paid to the NZDF as well if service property was involved)



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51

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Compensation and Restitution Orders:

These differ in who the payment is going to.

- Fines are paid to the NZDF directly.
- Compensation/Restitution go to the victim.

## Adjournments

- If you are unsure of a legal issue, you are able to adjourn the proceeding to clarify the matter with a LEGAD.
- Adjournments should be given to accused when considering election of trial by Court Martial, or if new evidence is available in order for sufficient time and facilities to prepare a defence.
- Use at any time to take advice, consider evidence or review the process.



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52

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Just note it onto the record – ie I will now take an adjournment at TIME. Then stop recording and adjourn. When you sit back down to continue – restart recording and state that you are reconvening at TIME.

## Attendance of the Accused

- Accused must be present throughout the Summary Trial
- The Accused has a right to be present throughout the summary trial.
- This means that the DISCO must not meet with the PRESO in the absence of the DEFO and the Accused



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53

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## **Command to obligation in respect of accused personnel:**

- All members of the Armed Forces have the right to be presumed innocent until proven guilty.
- Where a member of the Armed Forces is alleged to have committed an offence, his or her CO continues to have a command responsibility for supporting that member's welfare and wellbeing.
- The requirements of this will vary in each individual circumstance, but may include, for example, provision of access to welfare and support services in accordance with NZDF and single Service policies and orders.



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## Publication of Summary Trial Outcomes

- The result of Summary Trials is required to be published, and the responsibility for this is held by single Services.
- When a member of the Armed Forces faces charges at summary trial, the member's CO is to ensure that the following information on the outcome is reported to the Office of the deputy Chief of the members Service at the end of the calendar month:

MD 601 Serial No:	Unit	Rank	Offence(s) <sup>248</sup>	Finding	End point punishment <sup>249</sup>
----------------------	------	------	---------------------------	---------	--

- Single Services are to publish the following information on the outcomes of Summary Trials of members of that Service in single Service magazines, at least once a quarter:

Rank	Offence(s)	Finding	End point punishment
------	------------	---------	----------------------



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Ref: Chap 7, Sect 8A

**Responsibility** for publishing is held by single services.

- The charged members CO is to ensure that information of the outcome is reported to the office of the Deputy Chief of that members service at the end of the calendar month:
- MD601 Serial Number, Unit, Rank, Offence(s), finding, End Point punishment (which is the the punishment start point before mitigation, etc.)
- Single Services are to publish the following information on the outcomes of summary trials of members of the Service in Service Magazines at least once of quarter:
- Rank, Offence(s), Finding, End point punishment.

Publication of ST outcomes aids transparency for offences committed in the NZDF and of the punishments imposed. It reinforces the standards of behaviour expected, and acts as a deterrent.

Publication also assists the NZDF achieve the objectives of OP Respect and OP Stand.

## Publication of Summary Trial Outcomes

- Single Services may also publish outcomes via other communications channels at the direction of the Deputy Chief of Service.
- Single Services are to report summary trial outcomes to CoS OCDF for the six-month period ending 31 May and 30 November for each calendar year for tabling at the next meeting of the Armed Forces Discipline Committee.



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56

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Ref: Chap 7, Sect 8A

### **An example of communications via other means: Air Force has published ST results in Base Routine Orders.**

Publication of ST outcomes aids transparency for offences committed in the NZDF and of the punishments imposed. It reinforces the standards of behaviour expected, and acts as a deterrent.

Publication also assists the NZDF achieve the objectives of OP Respect and OP Stand.

# Questions of me?



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# Questions for you



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58

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## Questions:

- How often must you revalidate?
  - **Ideally within 4 years.**
- Who can refer a charge to a court martial?
  - **CO**
- When do you need a specified certificate?
  - **Punishment of fine of more than 7 days basic pay, detention or reduction in rank (Compensation of more than 7 days)**
- What punishments are available if you are CO and give right to elect?
  - **Punishments set out in DM69 Vol1 Chp8 Annex A Column 2**
- Written statements?
  - **Only admissible if DISCO and Accused permit**
- How many ranks above the accused must DISCO be?
  - **2**
- Disclosure? And who checks this?

- **Made by PRESO, comprises all evidence for or against the charge. Checked by DISCO**
  
- Who produces exhibits?
  - **Witnesses**
  
- For any problems with procedure where will you look?
  - **Flowcharts – DM69 VOL1 CHp7 Annex A, or the summary trial guide.**

# Assessment



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59

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## Questions:

- How often must you revalidate?
  - **Ideally within 4 years.**
- Who can refer a charge to a court martial?
  - **CO**
- When do you need a specified certificate?
  - **Punishment of fine of more than 7 days basic pay, detention or reduction in rank (Compensation of more than 7 days)**
- What punishments are available if you are CO and give right to elect?
  - **Punishments set out in DM69 Vol1 Chp8 Annex A Column 2**
- Written statements?
  - **Only admissible if DISCO and Accused permit.**

- How many ranks above the accused must DISCO be?
  - **2**
  
- Disclosure? And who checks this?
  - **Made by PRESO, comprises all evidence for or against the charge. Checked by DISCO**
  
- Who produces exhibits?
  - **Witnesses**
  
- For any problems with procedure where will you look?
  - **Flowcharts – DM69 VOL1 CHp7 Annex A, or the summary trial guide.**

## Preliminary procedure

1	Who is responsible for ensuring that disclosure to the accused has taken place? A.	1
2	What information is required to be disclosed to an accused? A. a. b. c.	3
3	In what circumstances must a Specified Certificate be obtained from a legal officer? A: If a. b. c. d.	4
4	By who, and when, can amendments to the charge(s), including adding any charges, be made? a. By the disciplinary officer, at any time with the consent of the accused b. By the presenting officer, before arraignment c. By the disciplinary officer, at any time until the finding is announced. d. By the disciplinary officer, but only before he or she decides that there is a <i>prima facie</i> case.	1
5	The disciplinary officer for an accused witnessed the offending. The accused through his defending officer raises this with the disciplinary officer. What action is the disciplinary officer required to take? A.	1



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60

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## Conduct of summary trial following plea

6.	In the event of an accused entering a plea of guilty, who is required to read out the summary of facts?	1
a.	The disciplinary officer.	
b.	The presenting officer.	
c.	The defending officer.	
d.	Whoever is acting as the Clerk of the Court.	
7.	Who decides if the evidence in a summary trial is to be given on oath or affirmation?	1
a.	The disciplinary officer, but the accused can so request	
b.	The accused	
c.	The disciplinary officer, with the agreement of the presenting and defending officers.	
d.	In the interests of the truth being disclosed, the disciplinary officer on the request of either the presenting or the defending officer.	
8.	As presenting or defending officer you have called a witness to give evidence. What type of question are you allowed to ask such witnesses?	1
A.		
9.	As the trial is being recorded, what must be done when part of the evidence is by way of a gesture, or demonstration?	1
A.		



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## Conduct of summary trial following plea

10	If a charge involves disobedience of an order, how is the order brought into evidence?	1
	a. The disciplinary officer gets a copy of it, and ensures that a copy is disclosed to the accused, before the trial starts	
	b. The presenting officer gets a copy of it, discloses it to the accused through the defending officer, and hands it to the disciplinary officer when the case in support of the charge is opened.	
	c. The presenting officer calls a witness to produce a copy of it as an exhibit.	
11:	As the presenting officer, to deal with all situations, including where the identity of the accused might be in issue, what is the best way to have the accused identified?	1
	a. His or her acknowledging his or her Service description when arraigned is what is needed	
	b. The disciplinary officer should confirm the identity of the accused.	
	c. All witnesses should be asked to indicate if the person they saw or heard at the time and place of the offending is present in the trial	
	d. One of the very first questions witnesses in support of the charge should be asked is to indicate who the accused is in the trial room	
12.	What type of question is permissible in cross-examination which is not generally allowable in examination-in-chief?	1
	A.	
13.	Who is required to agree to evidence being admitted in the form of written statements?	2
	A. a.	
	b.	



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## Conduct of summary trial following plea

14.	In a summary trial, different personnel use elements of offences. List what the following use the elements of offences for:	3
a.	Disciplinary officer: A:	
b.	Presenting officer: A:	
c.	Defending officer: A:	
15.	If, in a trial, the accused states that he or she does not want to give evidence him or her self, in what circumstances can the disciplinary officer ask questions of the accused?	1
a.	After the disciplinary officer has found that there is a <i>prima facie</i> case.	
b.	If the presenting officer formally applies to the disciplinary officer to do so.	
c.	In these circumstances the disciplinary officer is never empowered to question an accused.	
d.	At any time if the disciplinary officer considers it is in the best interests of justice.	
16.	What is the standard of proof required in a summary trial?	1
A:		
17.	Who is required to prove the facts to that standard of proof?	1
A:		



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## Punishment phase

18.	Following a finding of guilty, what information must be considered by the disciplinary officer before imposing punishment?	4
	A. a.	
	b.	
	c.	
	d.	
19.	What other information should be presented by the presenting officer to the disciplinary officer?	2
	A. a.	
	b.	
20.	Who is entitled to have a statement setting out the effects of the offending on them read out before the disciplinary officer decides on any punishment?	1
	A:	
21.	What must a convicted offender be advised of before he or she is marched out of the summary trial?	2
	A. a.	
	b.	



DISCIPLINARY PHASE

64

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# SUMMARY TRIAL GUIDE

**Guide for Presenting and  
Defending Officers**

**Contents**

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Introduction	2
References	2
Preparation Checklist: Presenting Officer	3
Preparation Checklist: Defending Officer	4
Summary Trial Procedure: Not-Guilty Plea	5
Summary Trial Procedure: Guilty Plea	7
Practice Guidance	8
Frequently Asked Questions	14
Quick Reference Sheet	20

**Introduction**

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This guidebook is a quick reference guide for service personnel preparing for, and conducting, the duties of a presenting officer or defending officer at a summary trial.

This guide is also intended to assist service personnel undertaking the level two residential phase of military justice training.

Presenting and defending officers are encouraged to refer to the Manual of Armed Forces Law, DM 69 (2 ed), Volume 1 for authoritative guidance on summary trials, and to seek legal advice from a legal staff officer when further guidance is required. If this guidebook conflicts with the DM 69 the latter always takes precedence.

For the purposes of brevity the following abbreviations are used throughout: disciplinary officer: DISCO; presenting officer: PRESO; defending officer: DEFO; legal staff officer: LSO.

**References**

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Armed Forces Discipline Act 1971.

The Manual of Armed Forces Law, DM 69 (2 ed), Volume 1.

Hon Justice J. Bruce Robertson (ed) *Introduction to Advocacy*, Wellington, Douglas Wilson Advocacy Scholarship Trust, 2008.

**Version**

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This version is 08/11.

**Pre-Trial**

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- Prepare the MD601 if it has not been formulated, promptly inform the suspect of the nature and cause of the charge (in detail), and ensure accused is properly cautioned (see *DM69 (2 ed), Vol 1, para 3.1.15*).
- Ensure you understand the elements of the charge(s) and what you are required to prove.
- Consider meeting with the preliminary investigator to discuss the issues of the case, as necessary.
- Ensure that the following has been disclosed to the DEFO or accused:
  - A copy of the MD601 (ensure that the accused is correctly described and charge is correct),
  - Statement by accused,
  - Relevant documentary evidence,
  - Written statement(s) of witness(es), and
  - Unit or service police file (or portions of the file) that relate to the charge.
- Take statements from witnesses if required.
- Discuss with DEFO the plea or pleas that the accused intends to enter.
- Keep the victim informed of the progress of the case.
- Check that DISCO has jurisdiction to hear the case. If there is doubt, notify an LSO.
- Ensure that DISCO has a recording device to record summary trial proceedings.

**Not-Guilty Plea**

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- Determine your theory of the case.
- Identify potential defences the DEFO will raise, and consider how you will counter those.
- Prepare outline of the case, examination-in-chief, cross-examination and re-examination.
- Identify witnesses. Brief witnesses that you are calling, if required.
- Prepare exhibits if you have them, and decide who will produce them.
- Prepare the written statements of witnesses unavailable to attend summary trial that you will submit to the DISCO. Ensure DEFO consents to your submission of the statements.

**Guilty Plea**

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- Prepare summary of facts. Check that the DEFO agrees with the facts.

**Punishment**

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- Confirm whether the victim wishes to have a victim impact statement read. If so, include details of any:
  - Physical and emotional harm suffered,
  - Loss of, or damage to, property suffered, and
  - Any other effects of the offence on the victim.
- Prepare a report on the accused's record and general conduct in the service (MD 601D).
- Determine whether the accused has been in custody awaiting trial. If so, obtain details of custody.
- Be prepared to obtain a specified certificate from an LSO for the DISCO.

**Appeal**

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- Be prepared to arrange transcribing of the audio recording of proceedings on behalf of the DISCO.

**Pre-Trial**

- Ensure you understand the elements of the charge(s) from MD601, and what you are required to disprove or show an absence of. Explain elements to the accused.
- Consider whether there are any defences available to the accused.
- Determine whether accused was properly cautioned, and whether evidence properly obtained.
- Check with PRESO or preliminary investigator that evidence in support of the charge has been disclosed prior to the summary trial:
  - A copy of the MD601 (check that accused is correctly described and charge is correct),
  - Statement by accused,
  - Relevant documentary evidence,
  - Written statement(s) of witness(es), and
  - Unit or service police file (or portions of the file) that relate to the charge.
- Take statements from witnesses if required.
- Determine what plea(s) accused wishes to enter and advise on implications of the plea(s).
- Examine evidence against accused and ask accused to comment on allegations. Ask whether there are witnesses that can give evidence.
- Consider whether you have enough time and adequate facilities to prepare the defence.
- Discuss with the accused whether he or she will want evidence to be given under oath.

**Not-Guilty Plea**

- Determine your theory of the case.
- Prepare outline of the case, examination-in-chief, cross-examination, and re-examination.
- Identify witnesses. Brief witnesses that you are calling, if required.
- Prepare exhibits if you have them, and decide who will produce them.
- Prepare the written statements of witnesses unavailable to attend summary trial that you will submit to the DISCO.
- Brief the accused on the consequences of entering a not-guilty plea (i.e., procedure and penalties DISCO could award).
- Brief accused on implications of being given right to elect trial by Court Martial and exercising that right (especially punishments available to DISCO and Court Martial).

**Guilty Plea**

- Ensure that the accused agrees with the summary of facts that the PRESO prepared.
- Brief accused on implications of exercising the right to elect trial by Court Martial.

**Punishment**

- Advise the accused the range of punishments available to DISCO.
- Prepare pleas in mitigation. Establish mitigating circumstances, check records and discuss with accused his or her situation.
- Consider if there are witnesses to support specific pleas in mitigation, brief and call them if appropriate.

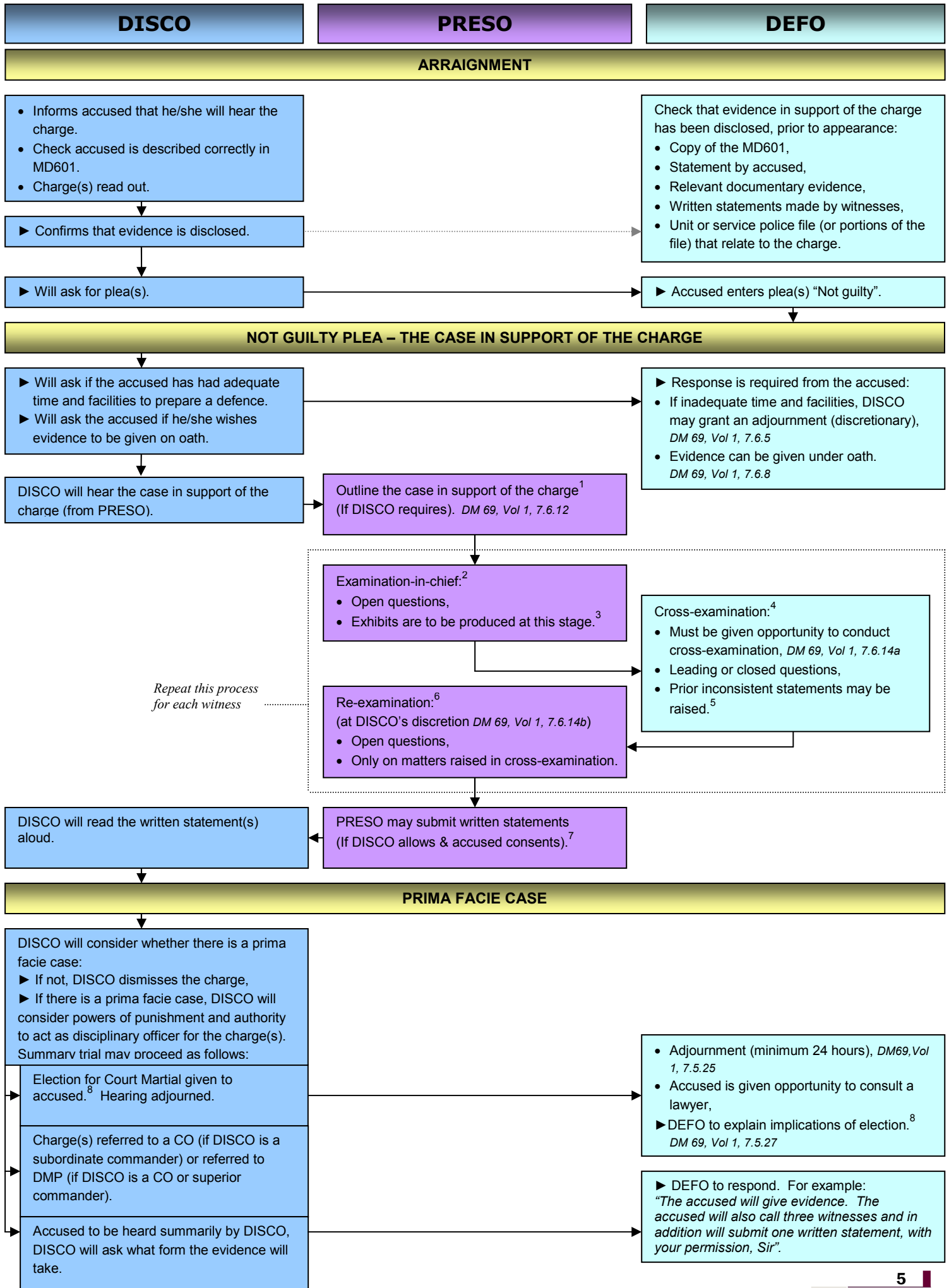
**Appeal**

- Determine whether offender wishes to appeal to Summary Appeal Court of NZ. If required, assist accused with information - brief on grounds for appeal and availability of legal aid.
- Organise lodging of appeal (MD 607) to Registrar within 21 days of the finding (35 days if outside NZ).

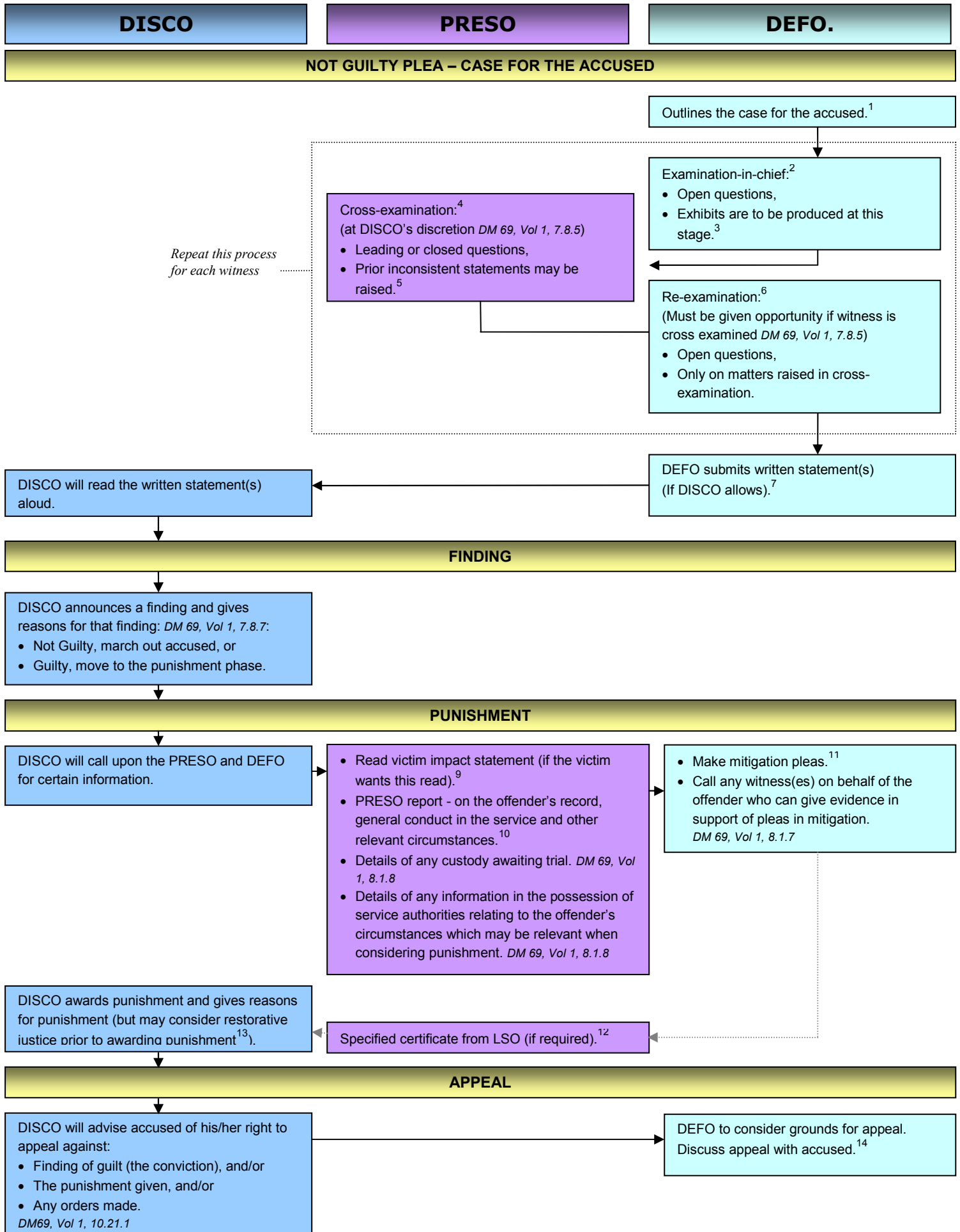


# SUMMARY TRIAL PROCEDURE: NOT GUILTY PLEA

Note: The footnotes on this page correspond with the notes at pages 8-13

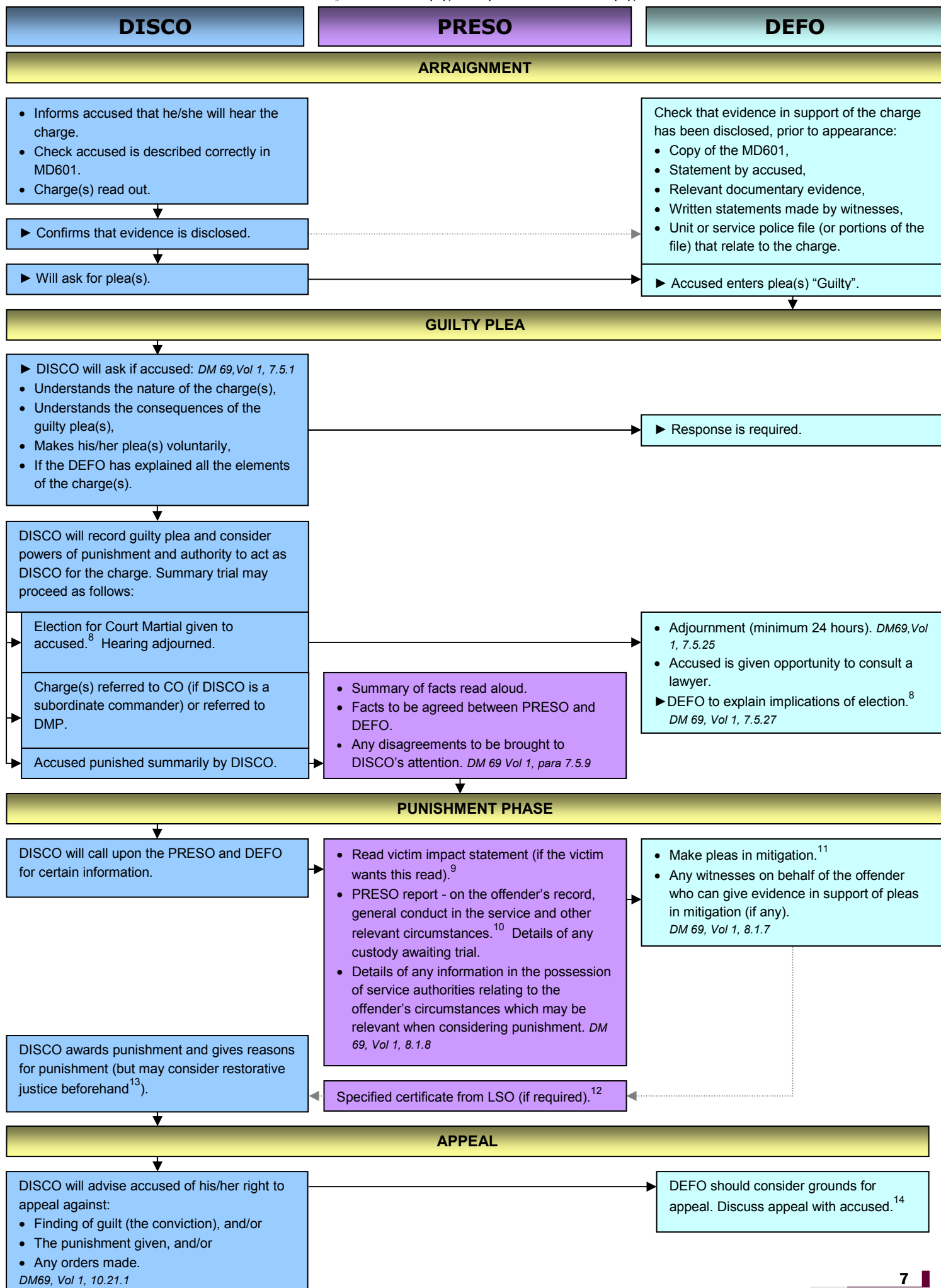


Note: The footnotes on this page correspond with the notes at pages 8-13



# SUMMARY TRIAL PROCEDURE: GUILTY PLEA

Note: The footnotes on this page correspond with the notes at pages 8-13



## CONDUCT OF THE CASE

### 1 OUTLINE OF THE CASE

#### PRESO'S OUTLINE CHECKLIST

*Note: this occurs shortly after arraignment phase.*

Describe what allegedly happened, and the parties involved.

Outline the charge(s).

Outline the elements of the charge(s).  
*Ref DM 69 (2 ed) Vol 1, Chap 4*

Provide a factual summary.

Identify the witnesses that will be called.

Identify any written witness statements that you wish to produce.

#### DEFO'S OUTLINE CHECKLIST

*Note: This occurs after the DISCO has determined there is a prima facie case.*

Outline the defence.

Provide a factual summary.

Identify the witnesses that will be called.

Identify any written witness statements that you wish to produce.

#### TIPS & POINTERS

- ✦ If the DISCO doesn't prompt you, ask if he or she wishes to hear an outline.
- ✦ Make a good impression; this is the first opportunity to introduce your case.
- ✦ Be persuasive, but don't overstate your case.
- ✦ Emphasise the contentious elements of the charge.
- ✦ Refer to the *DM 69 (2 ed) Vol 1 Chap 4* for elements of the offence.

### 2 EXAMINATION-IN-CHIEF

Asking questions of your own witness is called examination-in-chief. The examination-in-chief of a witness should produce a coherent account by the witness in his or her own words of the facts about which he or she can give evidence. As a general rule leading questions may not be put to a witness during the examination-in-chief; unless the question relates to introductory or uncontested matters, or the DISCO allows the question.

#### QUESTIONING TECHNIQUES

**Headline:** Focuses the witness onto a particular time and space.  
*Turning to the evening of 1 January 2010...*

**Wide open:** Allows the witness expansive scope to answer your question, and it often attaches to a headline.  
*Please describe... Tell us about... Explain what you saw...*

**Open:** Extracts more detailed information on topic.  
*Who, what, when, where, why, how?*

**Coupling:** This is where a fragment of the witnesses' previous answer is used in the next question.  
*"I saw a man with a hoody." What colour was the hoody?*

#### TIPS & POINTERS

- ✦ Use plain language.
- ✦ Ask short, succinct questions and limit each question to a single issue.

### 3 PRODUCTION OF EXHIBITS

An exhibit is a tangible item that the witness refers to in his or her examination-in-chief. Exhibits can enhance the impact of examination-in-chief, and support your ‘chain of proof’. Exhibits should be correctly produced in examination-in-chief, using the exhibit checklist. Remember that, as with all evidence, exhibits must be relevant and admissible.

Once an exhibit is produced, the DISCO will identify it as exhibit A, B, C, etc for the PRESO and 1, 2, 3, etc for the DEFO. Once the exhibit is formally in evidence, you needn’t produce it again – simply refer to it as, for example, Exhibit ‘A’.

#### EXHIBIT CHECKLIST

- |                                      |   |
|--------------------------------------|---|
| 1. Show the item to the witness:     | <i>I have just handed you an item....</i>     |
| 2. Ask the witness to identify it:   | <i>Can you please tell us what this is?</i>   |
| 3. Ask the witness to confirm it:    | <i>How do you know that this is the item?</i> |
| 4. Have the witness describe it:     | <i>Can you please describe the item?</i>      |
| 5. Ask questions to elicit evidence. |   |
| 6. Produce it:                       | <i>Do you now produce this as an exhibit?</i> |

#### TIPS & POINTERS

- ✦ Consider which witness is best suited to produce an exhibit.
- ✦ Produce the exhibit at a logical point of the examination-in-chief.
- ✦ If possible, have copies of the exhibit for the DISCO and PRESO/DEFO.

### 4 CROSS-EXAMINATION

Cross examination is the questioning of a witness by the opposing party. The object of cross-examination is to draw the DISCO’s attention to unfavourable facts of the opposing side’s case, and to uncover favourable facts to your case – in other words, to be destructive to the opposing side’s case. Leading and closed questions are the questioning techniques to achieve this.

#### QUESTIONING TECHNIQUES

A leading question is one which is framed in such a way as to suggest the answer required or which contains a statement of some fact material to the issue. A closed question elicits a “Yes” or “No” answer, or suggests which of those answers he or she should give.

Closed: *“Did you see the person who attacked you?”*

Closed: *“Were you drinking?”*

Leading: *“You didn’t see the face of the person who attacked you?”*

Leading: *“You were intoxicated at the time of the attack, weren’t you?”*

#### TIPS & POINTERS

- ✦ Tell the witness, don’t ask.
- ✦ Keep your questions short – include in each question one proposition.
- ✦ Put facts to the witness, not conclusions.
- ✦ Know the answer before you ask the question.

### 5 PRIOR INCONSISTENT STATEMENTS

This method is used during cross-examination if the witness’ testimony at summary trial is inconsistent with a previous written or oral statement.

### **PRIOR INCONSISTENT STATEMENT CHECKLIST**

Confirm – build up the fact asserted previously that you intend to challenge.

*You say you were right next to the alleged assault when it happened?*

Commit – get the witness to affirm or say that that was the correct version.

*You have no doubt about that?*

Contrast – put, in general terms, the inconsistent statement for the witness to deny.

*You were much further away from the alleged assault weren't you?*

Credit – put the detail of the inconsistent statement and build the importance of the statement by referring to the circumstances in which it was made.

*You spoke to Military Police about 30 minutes after the incident didn't you?... You know the importance of telling the truth to the investigator?*

Confront – put to the witness, in detail, the prior inconsistent statement. Read the words of the statement verbatim if the statement is written.

*You told the investigator that you were about 100 metres from the incident didn't you?*

### **TIPS & POINTERS**

✦ Mere inconsistency is sufficient; you do not need to show that the former statement directly contradicts the present testimony.

## **6 RE-EXAMINATION**

Re-examination occurs after the opposing party has cross-examined the witness. The purpose of re-examination is to give the witness an opportunity to explain any seeming inconsistency in his or her cross-examination answers, and to state the whole truth as to any matter touched on, but not fully dealt with, in cross-examination.

The DISCO has discretion to allow the PRESO to re-examine the witness. However, the DEFO must be given the opportunity to re-examine the witness if that witness was cross-examined.

### **TIPS & POINTERS**

- ✦ Keep it short.
- ✦ Re-examine on matters arising out of the cross-examination only.
- ✦ The same questioning rules in examination-in-chief apply to re-examination, i.e. open, non-leading questions.
- ✦ Listen carefully to the cross-examination to identify points to re-examine.

## **7 WRITTEN STATEMENTS**

A written statement of a person's evidence may be admitted if that person is unable to provide oral evidence.

When a PRESO admits a written statement, the accused must consent, and the DISCO reserves the discretion to allow the admission.

A DEFO does not have to obtain the PRESO's consent to admit a written statement, but the DISCO again reserves the discretion to allow the admission.

When the PRESO or DEFO seeks to admit a written statement, the opposing party must be given a copy of the statement and a copy of every exhibit (if any) referred to in the statement, or information sufficient to enable the opposing party to inspect the exhibit (or copy of).

#### TIPS & POINTERS

- ✦ Be prepared to explain why the author cannot attend the summary trial to give oral evidence.
- ✦ Written statements are admitted after all witnesses attending the summary trial give oral evidence.
- ✦ With the consent of the DISCO, a witness who took a statement from the accused may read it out during examination-in-chief.

## 8 IMPLICATIONS OF THE RIGHT OF ELECTION

If the accused is given the right to elect trial by Court Martial, the implications of the right of election must be explained to the accused. The DISCO will ensure the implications of election are explained to the accused by the DEFO.

An exhaustive list of the implications that must be explained to the accused is contained in the *DM 69 (2 ed), Vol 1, para 7.5.27*.

If the accused is given the right to election, 24 hours adjournment must be given to allow the accused time to consider the accused's election.

At any time within 24 hours of electing to trial by Court Martial, the accused may withdraw that election.

Once 24 hours from the time of making the election has elapsed, the accused may still withdraw the election to be tried by Court Martial with the consent of the DISCO provided the charge has not been referred to the DMP. Once the charge is referred to the DMP, the election may only be withdrawn with the consent of the DMP.

Ref: *DM69 (2 ed) Volume 1, Chapter 7, paras 7.6.31 – 7.6.42*

## PUNISHMENT PHASE

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### 9 VICTIM IMPACT STATEMENT

The PRESO is to discuss with the victim whether he or she wants a victim impact statement (VIS) read aloud. The PRESO is to disclose the statement to the DEFO before reading it aloud to the DISCO.

The VIS is not to embark on alleging further facts pertaining to the offending. If the scope of the VIS is exceeded by the PRESO the DEFO may seek leave by the DISCO to respond to the VIS.

#### VIS CHECKLIST

The statement should contain details of (and not exceed the scope of):

- Any physical injury and/or emotional harm to the victim,
- Any loss or damage to property suffered, and
- Any other effect of the offence on the victim.



## 10 PRESENTING OFFICER'S REPORT

The PRESO will be called upon by the DISCO to present the *MD 601D* – the Presenting Officer's Report.

The report should include anything the DISCO needs to know to award an appropriate punishment. For example, anything that the DISCO needs to know to avoid awarding a punishment that is not in the interests of justice, or the maintenance of service discipline, or anything that is unworkable or has no regard for the victim.

## 11 MITIGATION PLEA

The DEFO should raise any factors a DISCO needs to be aware of so that the punishment awarded has its intended effect on the offender. Without knowledge of these factors, a DISCO may inadvertently award a punishment on the offender that, because of the offender's unique situation, has an effect on the offender that the DISCO did not intend.

The circumstances that a DISCO should be made aware of are:

- The offender's circumstances, e.g., a change in the offender's financial situation, family circumstances, or the level of remorse;
- The circumstances of the offence, e.g., the assault was provoked, the offender was under enormous financial stress at the time of the dishonesty offence;
- The effects of the offence on the offender before summary trial, e.g., the offender has already lost privileges, suffered shame or humiliation.

### TIPS & POINTERS

- ✦ State the obvious – don't assume the DISCO has turned his or her mind to a specific factor when considering an appropriate punishment to award.
- ✦ Always discuss the mitigation pleas with the offender.

## 12 SPECIFIED CERTIFICATE

A specified certificate must be obtained if a DISCO considers he or she might impose the following as a result of a guilty plea or finding of guilt:

- Detention,
- Reduction in rank,
- A fine of an amount that exceeds the offender's basic pay for a period of 7 days, or
- A compensation order of an amount that exceeds the offender's basic pay for a period of 7 days.

### SPECIFIED CERTIFICATE CHECKLIST

1. Determine whether DISCO requires specified certificate.
2. Prepare a copy of the MD 601 Charge Report (electronic or hardcopy) and, where possible, a summary of the alleged facts.
2. Forward the documentation to the regional LSO requesting a specified certificate.
3. The specified certificate will be provided in minute or email format, and will need to be given to the DISCO.

## 13 RESTORATIVE JUSTICE

If the DISCO considers that the offence arose out of an unresolved conflict between the offender and the victim(s), the DISCO may propose a restorative conference, which is a meeting between the parties to resolve issues relating to the offence, prior to deciding what punishment to impose.



The DISCO will consider a number of factors when deciding whether to order a restorative conference. Two important considerations are that the victim and offender agree to the conference, and that the offender has explicitly admitted that he or she committed the offence.

The DISCO may defer imposing a punishment until the restorative conference (and any actions that follow directly from that conference) are completed. The DISCO may take the outcome of the conference into account in deciding on the offender's punishment.

Ref: *DM69 (2 ed) Volume 1, Chapter 8, paras 8.1.9 – 8.1.13.*

## POST SUMMARY TRIAL

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### 14 ACCUSED APPEAL TO SUMMARY APPEAL COURT OF NEW ZEALAND

Any person found guilty of an offence by a DISCO may appeal to the Summary Appeal Court of New Zealand against one or more of the following:

- The finding of guilty,
- The punishment or combination of punishments imposed,
- A compensation or restitution order (or both) made,
- An order to come up for punishment if called on.

A person who wishes to appeal is entitled to be represented by a lawyer and legal aid is available under the Armed Forces Legal Aid scheme to facilitate this.

The DISCO advises an offender of his or her right to appeal once a finding of guilty is made. It is the DEFO's responsibility to ensure the offender understands these rights and is aware of the availability of legal aid. If the offender wishes to appeal, the DEFO must assist with lodging a notice of appeal within the specified time period.

Ref: *DM 69 (2 ed) Volume 1, Chapter 10* or contact an LSO for further information.

#### NOTICE OF APPEAL CHECKLIST

1. Prepare the notice of appeal (MD607), which must specify:
  - The finding, punishment, combination, or order that is appealed,
  - The grounds of appeal in enough detail to inform the Appeal Court of the issues, and
  - Any other matters the form requires.
2. Lodge the notice of appeal with the Registrar within 21 days commencing on the day a finding is recorded or 35 days if heard outside NZ.
3. Send the notice of appeal to:  
Registrar of the Summary Appeal Court  
C/- HQNZDF Wellington

## Preliminary Matters

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### **I'm not sure if the individual should be charged. What is the guidance on this?**

Often the decision to lay a charge will be made by the service police or a superior officer of the suspect. If the decision to charge falls to you, the test is whether there is a 'well-founded' allegation. An allegation is 'well-founded' if the alleged facts logically support every element that must be proved before the accused could be found guilty. It is the CO's decision whether a well-founded allegation exists, but ordinarily the process is staffed up the chain of command.

DM 69 (2 ed) vol 1, para 4.2.1 to 4.2.2

### **I've been tasked to draft the charge, where do I start?**

Chapter 4 of the DM 69 (2 ed) Volume 1 is your starting point. In that chapter look for the elements that are prescribed for the offence and match them with the alleged facts. If the elements are not made out then another offence might be appropriate (or no offence has occurred at all). Take a close look at the specimen charges in the DM 69. The charge that you draft should look similar to the specimen charge.

DM 69 (2 ed) vol 1, chap 4

### **What are alternative charges?**

Sometimes the alleged facts support more than one offence and it can be difficult to ascertain what offence is the most appropriate to proceed with to summary trial. When there are two possible offences, an alternative may be drawn. This allows the DISCO to expeditiously move to the alternative if he or she determines that the elements of the primary offence are not proven.

DM 69 (2 ed) vol 1, para 4.2.19

### **I don't think this should go to summary trial, better to deal with this in-house...**

When the CO has determined that there is a well-founded allegation, it must proceed. Any 'in-house' dealings with conduct that may constitute an offence undermine the military justice system and are potentially invalid and unlawful. If you still have reservations, contact an LSO.

### **What are the elements of the charge?**

Every offence can be broken down into elements, and each element must be proved beyond reasonable doubt before a finding of guilt can be made by the DISCO. In a not-guilty plea it is the PRESO's duty to raise all the evidence in support of each element of the offence. The DEFO's duty is to attempt to provide reasonable doubt that one or more of the elements are not satisfied.

If the elements of an offence are not found in the DM 69, seek advice from an LSO.

DM 69 (2ed) vol 1, chap 4

### **Who assigns the PRESO and DEFO?**

The DISCO must ensure that a PRESO and DEFO are assigned.

AFDA s 114 & 115

### **What if the accused doesn't want a DEFO?**

The accused will need to write to the DISCO stating that the assistance of a DEFO is not required.

AFDA s 114(2)

### **The accused wants someone else to act as the DEFO, can the DEFO be changed?**

Yes. The DEFO may be changed by the DISCO at any time if the accused requests.

DM 69 (2 ed) vol 1, para 7.3.15

## **Preparing the Case**

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### **I've looked at the alleged facts and I think the charge should be changed, what should I do?**

The preliminary investigators, command, and an LSO may have assisted to draft the charge. Nevertheless, if you think that the charge is not appropriate before the summary trial commences, contact the preliminary investigator or an LSO.

### **What is the 'theory of the case', and why is it important?**

In a not-guilty plea, the job of the PRESO and DEFO is to present a persuasive case to the DISCO. The story presented should be clear, logical, and compelling. The theory of the case is that story.

The theory of the case is important because it will determine how you will outline your case, the evidence you lead, what your cross-examination will be and the content of your re-examination. Without an understanding of the theory of the case, the evidence could come across to the DISCO in a confusing manner.

To develop your theory of the case, you need to look at the facts that are favourable to your case, and look for ways of overcoming facts and arguments that are not favourable to your case. You need to analyse all the facts and know how to use them to support your case. Once you have developed your theory, you should be able to reduce it to a concise, short statement.

### **What should be disclosed to the accused pre-trial?**

A copy of the Charge Report (MD601), any information that may be relied on as evidence against the accused, and any information that tends to show that the accused did not commit the offence charged.

This could include any statement by the accused, relevant documentary evidence, written statements made by witnesses and the service police file relating to the charge (or portions of the file).

Information must be disclosed in a reasonably sufficient time to permit the accused to consider it properly in preparing his or her case before arraignment.

DM 69 (2 ed) vol 1, paras 7.3.6 to 7.3.11

### **Does the PRESO have to disclose to the DEFO the identity of the witnesses the PRESO will call?**

Yes.

### **Does the DEFO have to disclose to the PRESO the identity of the witnesses the DEFO will call?**

There is no obligation on the DEFO to do this.

### **I need some pointers on constructing a defence...**

Start with the elements of the charge. Look at the details of the case and identify facts, or an absence of facts, which demonstrates that one or more elements of the charge are not satisfied. Also refer to the DM 69 (2 ed), Volume 1, Chapter 5 which explains certain aspects of criminal responsibility which may be relevant to the accused's defence.

### **How is the decision made as to who calls a witness?**

The PRESO and DEFO both need to determine who they will respectively call. Sometimes a witness will be helpful to both sides (and/or harmful to both sides) so the decision to call that witness is a judgement call for the PRESO and DEFO to make among themselves.

### **How do I know if the evidence I have is admissible?**

The only evidentiary rule in summary trials is that the DISCO must exclude evidence if the probative value of it is outweighed by the risk that it will have an unfairly prejudicial effect on the proceedings or needlessly prolong the proceedings.

AFDA s 117ZK

### **I have an issue with an officer acting as DISCO for this case...**

As long as the officer is one of the four categories of DISCO identified in the DM 69, is at least two rank grades above the accused and holds a certificate of competency, he or she will be qualified to act as a DISCO.

The exception is if the officer considers that it is necessary for the maintenance of discipline, or in the interests of justice that the charge be referred to another officer. The same applies if the officer considers that he or she is personally interested in the charge.

These exceptions are a question of judgement for the DISCO. However, during the proceedings the accused may raise an objection that the DISCO is personally interested in the charge. The DISCO must then ensure that the objection is recorded in the record of proceedings and must consider whether he or she is personally interested in the charge. If the officer considers that there is a personal interest, he or she must not continue to act as the DISCO and a replacement DISCO will be appointed.

DM 69(2 ed) vol 1 paras 7.1.1 to 7.2.3., DM 69 (2 ed) vol 1 paras 7.2.10 to 7.2.13

### **What can I do when briefing a witness that I'm calling?**

Before a summary trial it can be useful to brief the witness you are calling on the following points:

- that the witness will be called before a DISCO, who may ask questions of that witness,
- that the witness might be cross-examined,
- the witness should take time to think before answering,
- to tell the truth,
- if the witness can't answer a question, to simply say so, and
- if the witness is unsure of the question to ask that it be repeated or rephrased.

Never tell a witness what the answer should be; such advice is called 'coaching' the witness and is unacceptable.

## **Summary Trial Procedures**

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### **What happens if there is more than one charge?**

The accused may plead guilty to all charges, not guilty to all charges or alternatively make a mixed plea (guilty to one or more, not guilty to the remainder).

In a mixed plea the DISCO follows the guilty plea procedure but will stop short of awarding a punishment to the accused in respect of that charge. The DISCO will then turn to the charge to which the accused made the not-guilty plea. The DISCO will follow the procedure following a not-guilty plea for that charge through to delivering a finding. Only after the DISCO has reached a finding on the charge to which the accused made a not-guilty plea will consideration of punishment commence for the charge the accused made a guilty plea.

DM 69 (2 ed) vol 1, paras 7.7.1 to 7.7.3 & AFDA s 117G

### **Can the charge be altered after the summary trial has commenced?**

Yes. The DISCO may alter the charge at any stage leading up to the finding. The charge may be amended, substituted for a different charge or a new charge added if the DISCO considers that it is in the interests of justice to do so.

If the new charge is substantially different, the accused may seek an adjournment to consider the charge.

DM 69 (2 ed) vol 1, paras 7.4.3 to 7.4.6 & AFDA s 113

### **What are the formalities? Do I sit or stand throughout the summary trial? Headdress on or off?**

That is the DISCO's decision and it often depends on service or unit custom. If you need to take notes and refer to materials throughout the summary trial, you may wish to discuss with the DISCO beforehand whether certain formalities can be relaxed to facilitate this.

## **Presenting the Case in Support of the Charge and Defending the Accused**

### **A witness that I have called is being extremely harmful to my case – examination-in-chief with this person is impossible – is there anything I can do?**

The individual conducting examination-in-chief can request that the DISCO consider whether the witness is a hostile witness, and if such a determination is made, the questioner can cross-examine the witness.

### **What are the constraints on cross-examination?**

Summary trials should be conducted fairly and properly. Witnesses should not be hurried into answering questions without having time to consider their answers.

As a cross-examiner, you have a duty not to ask unacceptable questions. The DISCO has the power to disallow a question, or direct that the witness refrain from answering any question which the DISCO considers improper, unfair, misleading, needlessly repetitive or expressed in language too complicated for the witness to understand. Refrain from asking questions of this nature. Remember to act fairly.

DM 69 (2 ed) vol 1, para 6.4.22

### **Can I object during examination-in-chief, cross-examination or re-examination?**

Yes. You can object if there is a matter about which you can legitimately protest and the DISCO has not intervened. Some examples may include, but are not limited to, when the opposing party:

- asks leading questions about disputed evidence during examination-in-chief,
- asks questions that requires the witness to speculate or hypothesise, or
- asks questions whereby the answer would have no relevance to any matter before the DISCO.

An example of an appropriate way to object is to say *“Excuse me Ma’am – the presenting officer is asking the witness leading questions”*.

### **What exhibits should I produce?**

Every exhibit that is admissible and relevant. If you don't produce an exhibit during examination-in-chief, the opportunity to have the exhibit produced in evidence may be lost. If you are unsure whether it's relevant, think about your theory of the case and whether the exhibit supports that theory.

### **Can the PRESO call a witness after the case for the accused is complete?**

Yes, after evidence is put forward on behalf of the accused, the PRESO can (with leave of the DISCO) call or recall any witness to give evidence on any matter raised by the accused or DEFO if the PRESO could not have properly addressed the matter prior to the accused's defence was disclosed; or if the PRESO could not reasonably have foreseen it.

DM 69 (2 ed) vol 1, paras 6.4.25 to 6.4.27

### **What involvement do the witnesses have throughout the proceeding?**

The accused is present for the entire duration of the summary trial. Every other witness is excluded from the room until they are called to give evidence individually. Each witness is called, gives evidence, and is then excused – exiting the room before the next witness is called.

**Can the DISCO also ask the witness questions?**

Yes. This occurs once questioning from the PRESO and DEFO is complete.

**Can the DISCO recall a witness?**

Yes. The DISCO has the power to call additional witnesses or recall witnesses who have already given evidence if he or she considers that it is in the interests of justice to do so.

DM 69 (2 ed) vol 1, para 6.4.28

**Does the accused have to give evidence?**

No, the accused is not a compellable witness for the PRESO or DEFO. The accused can give evidence at his or her own summary trial if he or she wants to.

DM 69(2 ed) vol 1, para 6.4.7

**The accused wishes to give evidence, does the accused have to be my first witness?**

Yes. If the accused wishes to give evidence then the DEFO must call him or her to give oral evidence first before the remaining witnesses for the DEFO's case are called.

DM 69 (2 ed) vol 1, para 7.8.2

**After the Summary Trial**

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**Can the PRESO appeal the DISCO's finding that the accused is not guilty?**

No. Only the accused can appeal if he or she is found guilty.

**Can the offender appeal?**

Yes. The offender can appeal against the finding of guilty, the punishment, a compensation order, a restitution order, and/or an order to come up for punishment if called on.

DM 69 (2 ed) vol 1, chap 10

**The Victim**

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**What considerations need to be given to the victim of an offence?**

The PRESO needs to keep the victim informed and updated on the progress of the investigation of the offence, such as the charges that are being laid; the victim's role as a witness in the presentation of the charge; and the outcomes of the summary trial (such as dismissal of the charge, a finding of guilty or not guilty, and the punishment imposed). The PRESO may also be required to prepare a victim impact statement (see page 11).

Victims' Rights Act 2002, s 12

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## SUMMARY TRIAL PROCESS (NOT GUILTY PLEA)

**Arraignment** DISCO

**Case in support of the charge** PRESO

- |                        |   |   |
|------------------------|---|---|
| 1. Outline of the case |   |   |
| 2. Call witnesses:     | Examination-in-chief<br>Cross-examination by DEFO<br>Re-examination | Open questions<br>Leading questions<br>Open questions |
| 3. Written statements  |   |   |

**Prima facie case** DISCO

**Case in support of the accused** DEFO

- |                        |  |   |
|------------------------|--|---|
| 1. Outline of the case |  |   |
| 2. Call witnesses:     | Examination-in-chief<br>Cross-examination by PRESO<br>Re-examination | Open questions<br>Leading questions<br>Open questions |
| 3. Written statements  |  |   |

**Finding** DISCO

**Punishment**

PRESO	Offender's conduct sheets, victim impact statement and presenting officer's report
DEFO	Pleas in mitigation & calls mitigation witnesses
DISCO	Awards punishment

## EXAMINATION-IN-CHIEF

Non leading questions, the focus is on the witness

- Headline** "Turning to the evening of 1 January 2010..."
- Wide Open** Tell me... Describe... Explain...
- Open** Who, what, when, where, how, why
- Looping** "I saw the red car"  
"After you saw the red car, what did you do?"
- Focused** Did you? Could you? Were you?

## CROSS-EXAMINATION

Closed and leading questions, the focus is on the questioner

- "It was dark at that time, wasn't it?"
- "You were facing the road, weren't you?"
- "You had been drinking, hadn't you?"
- "The accused did not have a weapon?"

## EXHIBITS

- Show the item to the witness
- Ask the witness what it is
- Ask the witness to confirm it
- Ask the witness to describe it
- Relevant questions
- "Do you now produce this as an exhibit?"

## PRIOR INCONSISTENT STATEMENTS

- Confirm
- Commit
- Contrast
- Credit
- Confront

## RE-EXAMINATION

1. Limited to matters that arose in cross-examination
2. Open question techniques

## TIPS &amp; POINTERS

- ✦ Remember your theory of the case
- ✦ Take your time
- ✦ Ensure your questioning technique is correct for the phase of the summary trial being conducted



**REASONS FOR MAKING A FINDING**

**MJTP LEVEL 3 E-LEARNING CONTENT:**

- Having heard all the evidence, you must make a finding on each charge. You are to determine whether the accused is guilty or not guilty on the charge, record the finding of G or NG in the charge report, and announce the finding to the accused.
- You should state your reasons for making the finding(s), which will include why you have found each element of the charge proven or not proven to the required standard, as the case may be. The reasons are to be recorded in the audio recording of the proceedings or, where that is not reasonably practicable, in the written summary of the proceedings.

**COMPETENCY ASSESSMENT CRITERIA:**

- \* Gives reasons for finding which are logical and consistent with the evidence and the elements of the charge.
- \* Correctly applies the burden and standard of proof.

**DECISION STRUCTURE**

**Name of Accused:**

[Accused's service particulars]

**The Charge & Background :**

You are charged with..... Following your pleas of not guilty this summary trial proceeded on a defended basis. I have heard evidence from three witnesses for the prosecution, two in person and one by way of a written statement. At the conclusion of the prosecution evidence, I found there was case to answer in respect of both charges. You were offered the right to elect trial by the Court Martial. You decided to continue with the summary trial, gave evidence yourself, called another witness and presented evidence from a third witness by written statement.

**The Elements:**

The elements for the first charge are listed in DM 69 (2 ed) Volume 1, at page ....., and for the second charge at page .....

Before I can make a finding of guilty, I must be satisfied that the prosecution has proved each element to the high standard of proof beyond reasonable doubt. You need not prove anything.

**Facts not in dispute:**

The following elements are not disputed, and I find these to be proven:

1. That you are subject to military law
2. The date and place of the offending
3. ....
4. ....

**Disputed facts and findings:**

The disputed elements and issues are:

1. ...
2. ....

I find in respect of....., this element/issue has/has not been proven because..... I heard from ..... (brief summary of each witness's respective evidence)

**Decision:**

My finding on the first charge is not/guilty and on the second charge not/guilty.

## TEMPLATE – CASE OUTLINE

### Presenting Officer:

- The accused faces [#] charges. The first charge is [...]. The second charge is [...].
- It is alleged that [summary of your version of events].
- The elements of the first charge are [...]. The elements of the second charge are [...].
- There will be [#] witnesses called.
- The first witness, [name], will say [...].
- The second witness, [name], will say [...].
- I call my first witness.

### Presenting Officer – Example:

Sir/ Ma'am, the accused faces two charges. The first charge is that he, in Burnham on 25 February 2019, failed to comply with written orders contrary to the Armed Forces Discipline Act 1971 section 39(b). The second charge is that [...].

In relation to the first charge, it is alleged that he wore civilian boots with his uniform, which was contrary to the written order specified in the charge report. In relation to the second charge, [...].

In relation to the first charge, the elements that need to be proved are:

1. Accused is subject to AFDA.
2. The order is in mandatory language.
3. The order was duly promulgated.
4. Accused knew of order, or could, with reasonable diligence, have had knowledge of it.
5. Accused did not comply with the order.
6. Non-compliance was intentional.
7. Order was not unlawful.
8. Order was within authority of issuing authority.
9. Accused was physically capable of obeying order.
10. Order was connected with a Service purpose.
11. Date.

In relation to the second charge, the elements that need to be proved are:

1. [...].

There will be two witnesses appearing in support of the charges.

The first witness, F/SGT BEDFORD, will give evidence that on 25 February 2019, the accused attended a parade wearing civilian boots with his uniform.

The second witness, PTE LAM, will give evidence that prior to the parade, he spoke to the accused about the civilian boots, but the accused was unconcerned

Also, the accused has consented to the evidence of SSGT STORES being produced in written form. Admitting the SSGT's statement is at your discretion sir/ma'am, but his evidence is relevant because it shows that the accused had other military issue boots that he could have worn to parade.

**Defending Officer:**

- The accused's defence to the first charge is [...]. The defence to the second charge is [...].
- There will be [#] witnesses called.
- The first witness, [name], will say [...].
- The second witness, [name], will say [...].
- I call my first witness.

**Defending Officer – Example:**

The accused's defence to the first charge is that he had a limited duties slip that authorised him to wear the civilian boots when necessary for shin splints. The accused's defence to the second charge is that [...].

There will be two witnesses appearing in defence to the charges.

The first witness, the accused, will give evidence that, prior to the parade, he went for a short run to test his shin splints. Unfortunately, the run aggravated the shin splints even more, and his military boots were taken by someone while he was running.

The accused will say that with the parade due to start, he returned to barracks for a new pair of boots. He selected the civilian boots due to them being now necessary for his shin splints, in accordance with the limited duties slip.

The second witness, PTE ING, will give evidence that on 25 February 2019, the accused spent considerable time trying to locate his missing boots.

Also, there is a written statement from SGT ACHILLES. Admitting the SGT's statement is at your discretion sir/ma'am, but his evidence is relevant because [...].

## TEMPLATE – PRODUCTION OF EXHIBITS

### **Overview:**

All exhibits must be produced through a witness.

Exhibits may be 'real' – objects or documents which were involved in the incident, such as a knife used in a homicide. Or, exhibits may be 'demonstrative' – documents which illustrate the point you are making, such as a flow chart or a map of the place of the incident.

For an exhibit to be admissible, it must be relevant, fair, and not overtly prejudicial to the accused. The exhibit must also be recognisable and identifiable by the witness.

### **A witness must lay a foundation for the production of the exhibit in evidence, and satisfy three requirements:**

1. The witness must have first hand knowledge of it, having seen it or knowing its background.
2. The exhibit must be relevant. This may be established by reference to issues involved in the case.
3. The exhibit must be authenticated, establishing that it is in fact what it purports to be.

### **Example:**

- Would you look at the document now shown to you?
- Do you recognise it, and if so how?
- What is it?
- What is its relevance?
- Do you produce it as an exhibit?

## TEMPLATE – REASONS FOR MAKING A FINDING

### Introduction:

[Accused's Service particulars].

### Charge and Background:

You are charged with two offences. The first charge is failing to comply with written orders contrary to the Armed Forces Discipline Act 1971 section 39(b). The second charge is drunkenness contrary to the Armed Forces Discipline Act 1971 section 51(1)(b).

Following your pleas of not guilty to both charges, this summary trial proceeded on a defended basis. I have heard evidence from three witnesses for the prosecution, two in person and one by way of a written statement. At the conclusion of the prosecution evidence, I found there was a case to answer in respect of both charges. You were offered the right to elect trial by the Court Martial. You decided to continue with the summary trial, gave evidence yourself, called another witness and presented evidence from a third witness by way of a written statement.

### Elements:

The elements for the first charge are listed in DM 69 (2ed), volume 1, page 4-67 and for the second charge at page 4-77.

Before I can make a finding of guilty, I must be satisfied that the presenting officer has proved each element to the high standard of proof beyond reasonable doubt. You need not prove anything.

### First Charge – Undisputed Elements:

For the first charge, the following elements are not disputed, and I find these to be proven beyond reasonable doubt:

[CROSS OUT DISPUTED ELEMENTS]

1. Subject to the AFDA
2. Specified order in mandatory language
3. Specified order was duly promulgated
4. Knew of order or could, with reasonable diligence, have had knowledge of it
5. Accused did not comply with the order
6. Act or omission which constituted non-compliance was intentional
7. Order was not unlawful
8. Order was within authority of issuing authority
9. Accused physically capable of obeying order
10. Order connected with a Service purpose
11. Date

### First Charge – Disputed Elements:

Continuing with the first charge, the following elements are disputed:

[IDENTIFY DISPUTED ELEMENTS FROM ABOVE]

**First Charge – Finding:**

I find in respect of the first disputed element, namely [FIRST DISPUTED ELEMENT], this element [HAS/HAS NOT] been proven beyond reasonable doubt. [GIVE REASONS].

I find in respect of the second disputed element, namely [SECOND DISPUTED ELEMENT], this element [HAS/HAS NOT] been proven beyond reasonable doubt. [GIVE REASONS].

**Second Charge – Undisputed Elements:**

For the second charge, the following elements are not disputed, and I find these to be proven beyond reasonable doubt:

[CROSS OUT DISPUTED ELEMENTS]

1. Subject to the AFDA
2. Unfit to perform his or her duty or a duty he or she may be required to perform
3. Reason for fitness (whether or not combined with other circumstances) is the voluntary consumption of alcohol
4. Date

**Second Charge – Disputed Elements:**

Continuing with the second charge, the following elements are disputed:

[IDENTIFY DISPUTED ELEMENTS FROM ABOVE]

**Second Charge – Finding:**

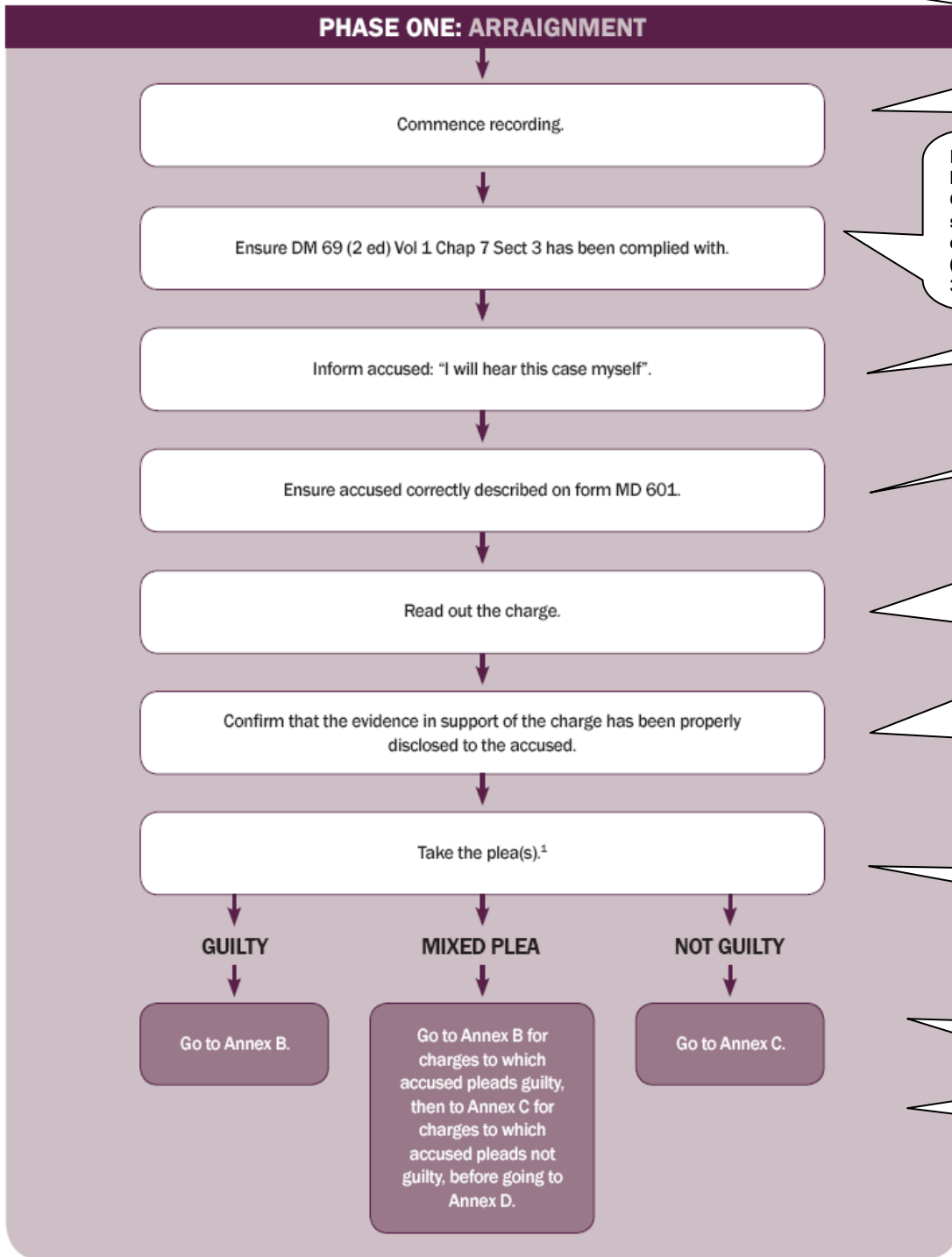
I find in respect of the first disputed element, namely [FIRST DISPUTED ELEMENT], this element [HAS/HAS NOT] been proven beyond reasonable doubt. [GIVE REASONS].

I find in respect of the second disputed element, namely [SECOND DISPUTED ELEMENT], this element [HAS/HAS NOT] been proven beyond reasonable doubt. [GIVE REASONS].

**Decision:**

Therefore, my finding on the first charge is [GUILTY/NOT GUILTY] and on the second charge is [GUILTY/NOT GUILTY].

**ANNEX A: DISCIPLINARY OFFICER PROCEDURE**



D: "March in the Accused"

D: "STAC start the recording".  
S: "Summary Trial in relation to ??/??"

D: Check requirements have been complied with. Once satisfied: "I am satisfied that I have complied with DM 69 (2ed) Vol 1 Chap 7 Sect 3".

D: "I will hear this case myself"

D: "Are you ... (rank/name)..(s/n)?"

D: "You have been charged with ..." (DISCO reads out charges). "Do you understand the charge(s)?"

D: "Has the evidence in support of the charge been disclosed to you?" (DISCO signs MD601B).

D: "How do you plead?"

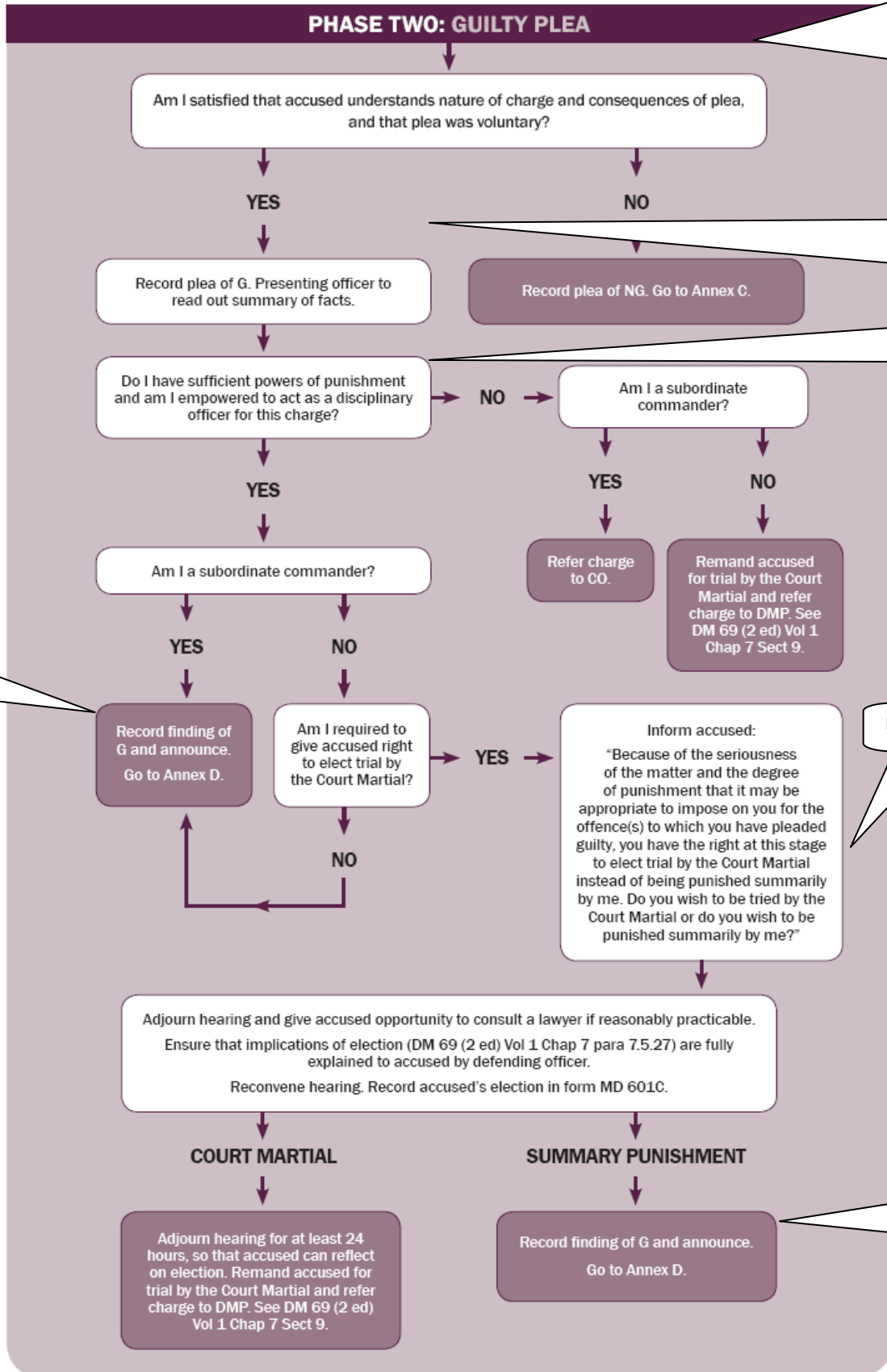
D: "STAC stand Accused at ease"

STAC: "stand at ease"

<sup>1</sup> Pleas to alternative charges. See DM 69 (2 ed) Vol 1 Chapter 7 paragraphs 7.5.4 to 7.5.7.

**ANNEX B: DISCIPLINARY OFFICER PROCEDURE**

**PHASE TWO: GUILTY PLEA**



D: "Do you understand the nature of the charge/s?"  
"Do you understand the consequences of the plea?"  
"Is your plea voluntary?"

D: "Plea of Guilty recorded. Presenting officer read out the Summary of Facts please"

D: "I have sufficient powers of punishment as CO/SC".

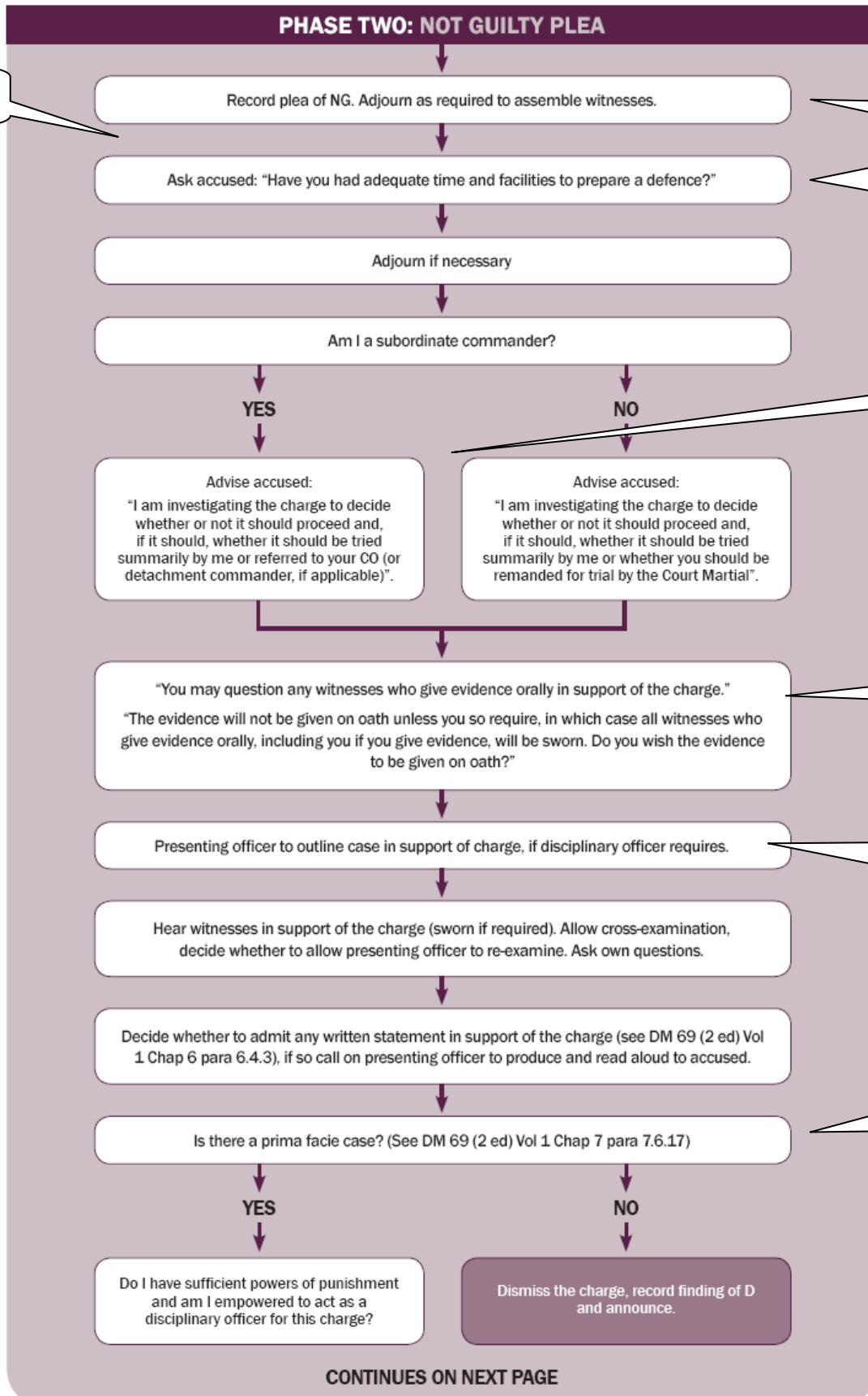
D: Announce finding

D: Read

D: Announce finding



**ANNEX C: DISCIPLINARY OFFICER PROCEDURE**



D: If seated trial "Be seated"

D: "Not Guilty Plea recorded"

D: "Have you had adequate time and facilities to prepare a defence?"

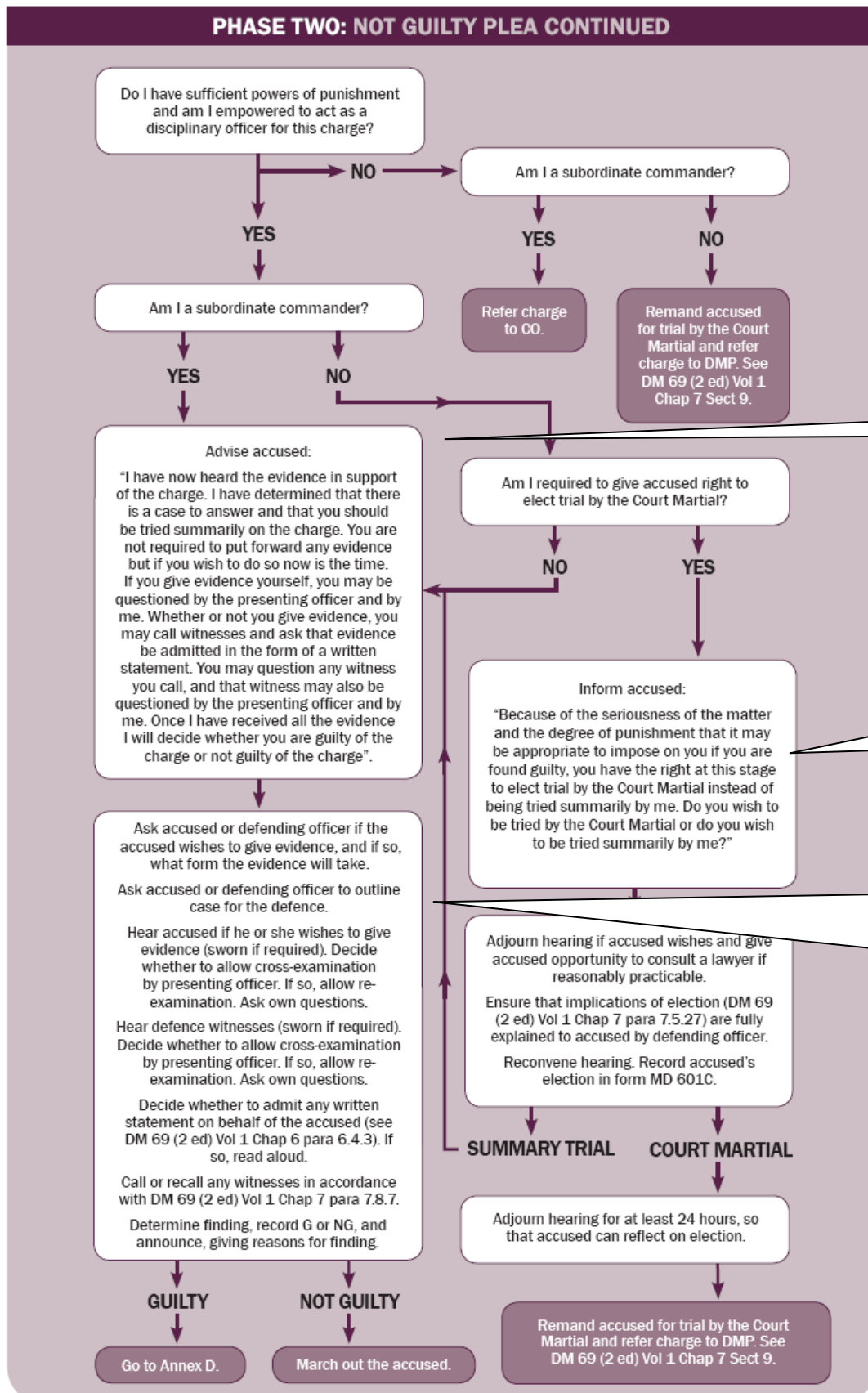
D: Read either

D: Read

D: Presenting Officer do you have an outline of your case?"

D: Announce if Prima Facie case

ANNEX C: DISCIPLINARY OFFICER PROCEDURE Continued

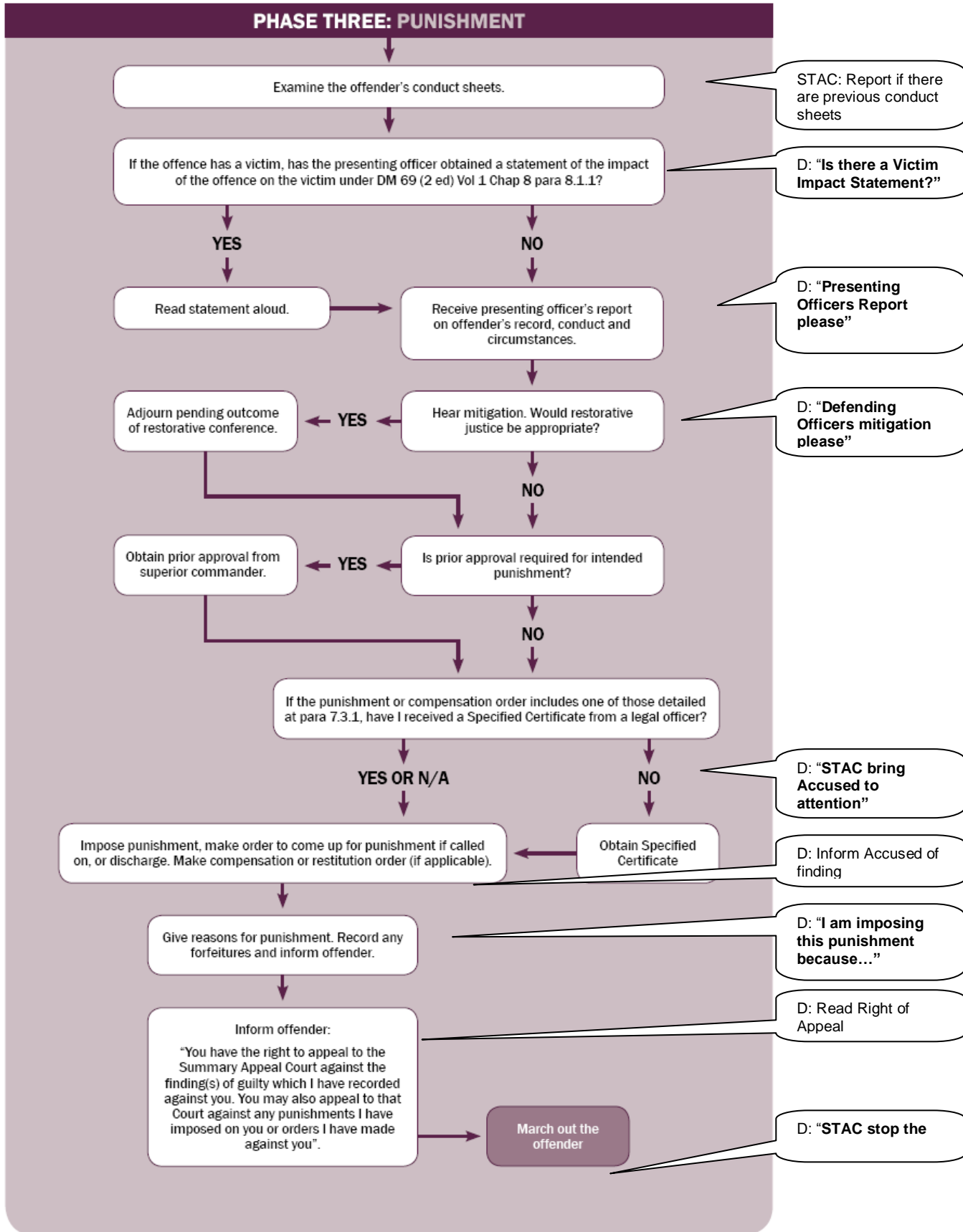


D: Read

D: Read

D: To Accused "Do you wish to give evidence?"  
To Defending Officer: "Please outline the case for the Defence"

**ANNEX D: DISCIPLINARY OFFICER PROCEDURE**







## NZDF MILITARY JUSTICE TRAINING PROGRAMME LEVEL TWO & THREE

### PERFORM THE DUTIES OF THE DISCIPLINARY PRESENTING AND DEFENDING OFFICERS

### Ex BOOT BACK Practical Assessment Scenario Tri-Service version

#### Actors:

1. Disciplinary Officer
2. Presenting Officer
3. Prosecution Witness 1
4. Prosecution Witness 2
5. Defending Officer
6. Accused & Defence Witness 1
7. Defence Witness 2
8. Observer

#### Documents:

- A. MD 601 & MD 601A Charge Report
- B. MD 601B
- C. MD 601C
- D. Specified Certificate
- E. Prosecution evidence statements (3)
- F. Defence evidence statements (3)
- G. X-Ray: CPL U. DEE,
- H. MD602: F297288, CPL G.P. BOOT, RNZAF

## EX BOOT BACK – Exercise Brief

### Exercise Brief

The assessment for 'Perform the Duties of Presenting, Defending and Disciplinary Officers' will be conducted in a practical test utilising a syndicate of six students as actors for Level 2, and seven students as actors for Level 3, who will be assigned role plays in a summary trial for the following appointments:

1. Disciplinary Officer (Legal Officer Directing Staff for Level 2)
2. Presenting Officer
3. Prosecution Witness No 1
4. Prosecution Witness No 2
5. Defending Officer
6. Accused & Defence Witness No 1
7. Defence Witness No 2

The Legal Officer DS will conduct assessment of the presenting, defending and disciplinary officers using the assessment sheets, found in the Students' Work Book. Students are to demonstrate their competence in performing the assigned duties in a summary trial.

Students are permitted access to reference material including DM 69 (2 ed) Volume 1 during the assessment.

Witnesses should give their evidence in accordance with their statements but, if necessary, may make up reasonable supporting evidence that would apply to the situation.

In the event that there is any disparity between the initial statement of a witness and what they tell the presenting or defending officer – the evidence presented during the summary trial by the witness will be that which is advised to the presenting or defending officer, not that which is in the earlier statement.

The exercises proceed on the basis of pleas of not guilty, including the punishment phase.

There is to be finding of a prima facie case, that there are sufficient powers of punishment, the disciplinary officer is empowered to act, the accused is offered the right to elect trial by the Court Martial, and s/he does not elect trial.

Presenting and defending officers must call all of their witnesses, and produce in evidence all written statements where the witness is not present. For the purposes of the trial assessments the accused will give evidence.

Presenting and defending officers must cross examine the witnesses called for the opposite party. Re-examination need only occur by necessity if required.

In the event of a finding of guilty the defending officer must be prepared to offer basic mitigation.



**Scenario**

CPL BOOT, RNZAF, is a gentle soul, with a sharp wit, and carefully groomed hair. He is a student at Joint Services Health School.

CPL DEE, RNZIR is a good soldier and a bad drinker. When drinking, he enjoys a good wind up unless it's directed at him. He is a section commander at 2/1 RNZIR.

During a JSHS Mid-Course function at the bar CPL DEE has teased CPL BOOT about his liberal use of hair gel, and was dismayed to be out-quipped by his Air Force Comrade, walking away with the laughter of his own friends still ringing in his ears.

At closing time that night, there was an incident which left CPL DEE with cuts to his face and cracked ribs. CPL BOOT claims in his statement that he did not touch CPL DEE, and that the injuries are from a fall.

Dr PRATT was in the bar at the JSHS mid course function, and observed the events, including the alleged assault. He examined CPL DEE after the incident. LMED LEE is a friend of CPL DEE, and was also in the bar that night. LMED SICK, another student at JSHS, was in the bar that night, and observed the verbal exchange between the two CPLs, and the incident.

As a result the charges on the MD601 have been raised and this summary trial is being held.

Statements were taken by SGT TAIN, RNZMP from CPL BOOT, CPL DEE, LMED LEE, LCPL TOTAL and Dr PRATT. There is one exhibit in support of the charge, being an x-ray of the injuries to CPL DEE, taken by Dr PRATT.

For Instructional Purposes Only

**EX BOOT BACK – Elements and Notes**

Fill in the Blanks

**AFDA s 74(1) and Crimes Act  
s. 196 Common Assault (1 year)**

**Elements of the  
charge (from  
DM69 Vol 1 (2ed)  
page \_\_\_\_\_)**

1. Subject to the \_\_\_\_\_
2. Applied \_\_\_\_\_ to the victim
3. \_\_\_\_\_ to apply \_\_\_\_\_ to the victim or some other person
4. Date

**AFDA s. 43(b) Threatening  
Insulting or Provocative Language  
(3 months)**

**Elements of the  
charge (from  
DM69 Vol 1 (2ed)  
page \_\_\_\_\_)**

1. Subject to the \_\_\_\_\_
2. \_\_\_\_\_ the words alleged to the \_\_\_\_\_
3. \_\_\_\_\_ to do so
4. The words were \_\_\_\_\_, \_\_\_\_\_, or \_\_\_\_\_
5. Date

**MD 602**

There is a MD 601 relating to previous conduct which may need to be taken into consideration.

**Rank**

The Subordinate Commander is investigating the charge.



**Evidence**

1. Three witnesses for the presenting officer, one witness's statement to be entered by consent.
2. The accused plus two witnesses for the defending officer, one witness's statement to be with Disco approval.
3. Chest X-ray

For Instructional Purposes Only

## EX BOOT BACK - Disciplinary Officer

### Scenario

You are Chief Instructor, Joint Services Health School. A Subordinate Commander.

It is alleged that CPL BOOT assaulted CPL DEE by punching him and kicking him in the ribs. CPL BOOT denies this.

After the CO received the Caption Summary from the MPs and determined that there was a well-founded allegation, the charges of common assault and using threatening language have been raised against CPL BOOT.

You hold an MD 603, the certificate of competency for a disciplinary officer, and are to be the disciplinary officer for this summary trial.

You directed that the evidence be disclosed to the accused, and you assigned a defending and presenting officer.

### Task

You are to "Perform the Duties of Disciplinary Officer" in the Summary Trial of CPL G.P. BOOT, in accordance with the DM 69 (2 ed) Volume 1.

Footnote numbers refer to the notes on reverse of this form)

REVISED 2009  
MD 601

PAGE 1 OF 2

Serial No: \_\_\_\_\_

Base/Ship/Camp: BURNHAM

**CHARGE REPORT<sup>1</sup>**

Service <sup>3</sup> F	Arm <sup>3</sup> R	Full Service Description <sup>4</sup> F297288, CPL G.P. BOOT, MEDIC				Unit JSHS	
Plea <sup>5</sup>	CHARGES <sup>6</sup>  <u>FIRST CHARGE</u>  <b>COMMITTING A CIVIL OFFENCE CONTRARY TO AFDA s. 74(1) NAMELY COMMON ASSAULT CONTRARY TO s. 196 OF THE CRIMES ACT 1961</b> In that he at Burnham Military Camp, on the 23 July 15, assaulted T89729 CPL Ulysses DEE, RNZIR					Finding <sup>7</sup>	
<sup>8</sup>	WITNESSES AND EXHIBITS <sup>9</sup>  T89720 CPL U. DEE, RNZIR G1027288 DR I.M PRATT P1016688 LMED R.D. LEE, RNZN  Exhibit: X-RAY of CPL DEE			RECORD OF SUMMARY PROCEEDINGS <sup>11</sup>  Investigated by _____  Remanded to _____ on _____  Investigated by _____ (Name and Appt)  Accused given the right to trial in the Court Martial _____  Referred to DMP and remanded to Court Martial on _____  Punished/Discharged by _____ on _____  Signature of disciplinary officer who punished accused or discharged accused without punishment  _____ (Name) (Rank)			
ACCUSED BASIC PAY <sup>10</sup> \$ _____ per day							
PUNISHMENTS AND ORDERS				DETAILS OF APPROVAL, ORDERS ETC <sup>13</sup>			
Detention		Days		Examined by Commanding Officer <sup>14</sup>  _____ Signature _____ Rank _____ Date  Recordable / Non-recordable <sup>18</sup>			
Reduction in Rank <sup>12</sup>		Rank	Seniority Date				
Stay of Seniority (Insert Period)							
Fine		\$					
Reprimand (Yes if applicable)							
Confinement to Ship or Barracks		Days					
Extra Work and Drill		Days					
Stoppage of Leave		Days					
Extra Duty		Days					
Caution (Yes if applicable)							
Order to Come Up for Punishment if Called On (Yes if applicable) <sup>15</sup>							
Compensation Order		\$					
Restitution Order (Yes if applicable)							
Fine Paid in Cash							
MD 1005 Serial No: _____		Date: _____					
Atlas TPR Raised No: _____		Date: _____					
Amending Atlas TPR Raised <sup>17</sup> No: _____		Date: _____					
For Use Following Reduction in Rank							
Rank	Trade	Sector	Tier	Level	New TFR	TPR Number	Date

## NOTES AND INSTRUCTIONS ON THE USE OF FORMS MD 601 AND MD 601A

- 1 Where there is insufficient space on the front page to record all the information, the additional information is to be recorded in form MD 601A Continuation Charge Sheet, numbered and attached. The MD 601A is to have the same serial number as the MD 601 together with the Service, arm, full Service description, unit and base, ship or camp of the accused entered. Additional copies of the MD 601 or MD 601A may be made as required for lawful purposes.
- 2 Forms are to be numbered in sequence in each unit from 1 January each year.
- 3 For spaces Service and Arm see ATLAS Systems tables, General Service and Entry Arm respectively.
- 4 Full Service description, i.e. rank, first names, surname (in capitals), Service number, trade/branch or corps.
- 5 Enter G for Guilty and NG for not guilty. See DM 69 (2 ed) Volume 1 paragraph 7.5.6 for entering no plea (NP) to alternative charges which follow an alternative in respect of which the disciplinary officer has accepted a plea of guilty.
- 6 Charges are to be drawn in accordance with DM 69 (2 ed) Volume 1 Chapter 4 Section 2.
- 7 Enter D for dismissed, G for guilty, NG for not guilty. Unless the charge has been dismissed, a finding is to be recorded on each charge other than an alternative charge. If the charge is an alternative to another charge which precedes it in the charge report, and G is recorded for that preceding charge, enter NF for no finding.
- 8 Enter A if the witness is called by the accused. Enter S if the witness's evidence is given in the form of a written statement in accordance with AFDA s 117ZM (see DM 69 (2 ed) Volume 1 paragraph 6.4.3). Attach any written statement to the original copy of the MD 601.
- 9 Describe each witness by Service description if a Service member, or initials and surname if a civilian. In the case of documentary exhibits insert the letter or number of the exhibit and a brief description of the exhibit.
- 10 Where the accused is found guilty and punished, his or her basic pay applicable at the day before that on which he or she was punished is to be entered here. Basic pay, as defined in AFDA s 2(1), is the applicable daily rate of pay prescribed by CDF under the MRS.
- 11 Insert the appointment of the disciplinary officer, i.e. SUBCDR, DETCDR, CO, SUPCDR; and the date. If the accused was given the right to elect trial in the Court Martial, enter Yes where appropriate (if Yes is entered, the form MD 601 must be accompanied by a completed form MD 601C Record of Election and Waiver). Where the offender is punished or discharged without punishment the inapplicable option is to be deleted. The officer who punished the offender or discharged the offender without punishment is to sign and insert his or her name and rank in the appropriate place.
- 12 Where the punishment of reduction in rank is imposed AFDA s 84(2) requires the period of seniority to be credited to the offender to be specified. The new seniority date is to be inserted in the appropriate space. A new TFR is to be set based on Step 7 of the appropriate sector and tier for the trade of the offender.
- 13 This space is to record all the necessary additional information which is required to be recorded in respect of summary proceedings under the AFDA. Matters which are to be entered here include:
  - a Details of any approval to try a charge or impose a punishment under DM 69 (2 ed) Volume 1 paragraphs 2.2.3 or 8.1.14.
  - b Any orders made by the disciplinary officer which are prescribed in DM 69 (2 ed) Volume 1.
  - c Any direction under DM 69 (2 ed) Volume 1 paragraph 8.5.6 that a fine or compensation be paid by instalments.
  - d Any matters required to be noted in respect of compensation or restitution orders in accordance with DM 69 (2 ed) Volume 1 Chapter 8 Section 4.
  - e Any reduction of punishment ordered in accordance with DM 69 (2 ed) Volume 1 paragraph 8.1.25.
  - f Any undue delay in the disposal of the charge. In particular, where more than 30 days elapse between the commission of the offence and the commencement of the proceedings before the disciplinary officer, the reasons for the delay are to be inserted.
- 14 This panel must be completed if the disciplinary officer is a detachment commander or a subordinate commander. See DM 69 (2 ed) Volume 1 paragraph 8.1.25.
- 15 If the disciplinary officer makes an order to come up for punishment if called on, he or she must record and attach to the MD 601 a statement of his or her findings of fact in relation to the charge. See DM 69 (2 ed) Volume 1 paragraph 8.3.26.
- 16 Following input to ATLAS the TPR Register/No is to be clearly annotated on the MD 601/MD 601A (e.g. SYSADMB 1006).
- 17 If an amending ATLAS action is taken following a successful appeal to the Summary Appeal Court (or following examination by the CO), when punishments are varied or quashed, see Note 15.
- 18 See DM 69 (2 ed) Volume 1 Chapter 13 Section 1.
- 19 Distribution of MD 601/MD 601A, refer to single Service orders, e.g. DFO(N), (A) and (F). Copy 1 is to be forwarded to DLS through appropriate chain of command, whatever finding is entered.

REVISED 2009  
MD 601A

PAGE 2 OF 2

Serial No: \_\_\_\_\_<sup>2</sup>

Base/Ship/Camp: BURNHAM

CONTINUATION CHARGE REPORT<sup>1</sup>

Service <sup>3</sup> F	Arm <sup>3</sup> R	Full Service Description <sup>4</sup> F297288, CPL G.P. BOOT, MEDIC	Unit JSHS
Plea <sup>5</sup>	CHARGES <sup>6</sup>		Finding <sup>7</sup>
<sup>8</sup>	WITNESSES AND EXHIBITS <sup>9</sup>		

SECOND CHARGE

**USING THREATENING INSULTING OR PROVOCATIVE LANGUAGE CONTRARY TO AFDA s. 43(b)**

In that he at Burnham Military Camp, on the 23 July 2015, said to T89720 CPL Ulysses DEE, RNZIR, "if you get up, I'll knock your head off" or words to that effect.

For Instructional Purposes Only

NOTES AND INSTRUCTIONS ON THE USE OF FORMS MD 601 AND MD 601A

- 1 Where there is insufficient space on the front page to record all the information, the additional information is to be recorded in form MD 601A Continuation Charge Sheet, numbered and attached. The MD 601A is to have the same serial number as the MD 601 together with the Service, arm, full Service description, unit and base, ship or camp of the accused entered. Additional copies of the MD 601 or MD 601A may be made as required for lawful purposes.
- 2 Forms are to be numbered in sequence in each unit from 1 January each year.
- 3 For spaces Service and Arm see ATLAS Systems tables, General Service and Entry Arm respectively.
- 4 Full Service description, i.e. rank, first names, surname (in capitals), Service number, trade/branch or corps.
- 5 Enter G for Guilty and NG for not guilty. See DM 69 (2 ed) Volume 1 paragraph 7.5.6 for entering no plea (NP) to alternative charges which follow an alternative in respect of which the disciplinary officer has accepted a plea of guilty.
- 6 Charges are to be drawn in accordance with DM 69 (2 ed) Volume 1 Chapter 4 Section 2.
- 7 Enter D for dismissed, G for guilty, NG for not guilty. Unless the charge has been dismissed, a finding is to be recorded on each charge other than an alternative charge. If the charge is an alternative to another charge which precedes it in the charge report, and G is recorded for that preceding charge, enter NF for no finding.
- 8 Enter A if the witness is called by the accused. Enter S if the witness's evidence is given in the form of a written statement in accordance with AFDA s 117ZM (see DM 69 (2 ed) Volume 1 paragraph 6.4.3). Attach any written statement to the original copy of the MD 601.
- 9 Describe each witness by Service description if a Service member, or initials and surname if a civilian. In the case of documentary exhibits insert the letter or number of the exhibit and a brief description of the exhibit.
- 10 Where the accused is found guilty and punished, his or her basic pay applicable at the day before that on which he or she was punished is to be entered here. Basic pay, as defined in AFDA s 2(1), is the applicable daily rate of pay prescribed by CDF under the MRS.
- 11 Insert the appointment of the disciplinary officer, i.e. SUBCDR, DETCDR, CO, SUPCDR; and the date. If the accused was given the right to elect trial in the Court Martial, enter Yes where appropriate (if Yes is entered, the form MD 601 must be accompanied by a completed form MD 601C Record of Election and Waiver). Where the offender is punished or discharged without punishment the inapplicable option is to be deleted. The officer who punished the offender or discharged the offender without punishment is to sign and insert his or her name and rank in the appropriate place.
- 12 Where the punishment of reduction in rank is imposed AFDA s 84(2) requires the period of seniority to be credited to the offender to be specified. The new seniority date is to be inserted in the appropriate space. A new TFR is to be set based on Step 7 of the appropriate sector and tier for the trade of the offender.
- 13 This space is to record all the necessary additional information which is required to be recorded in respect of summary proceedings under the AFDA. Matters which are to be entered here include:
  - a Details of any approval to try a charge or impose a punishment under DM 69 (2 ed) Volume 1 paragraphs 2.2.3 or 8.1.14.
  - b Any orders made by the disciplinary officer which are prescribed in DM 69 (2 ed) Volume 1.
  - c Any direction under DM 69 (2 ed) Volume 1 paragraph 8.5.6 that a fine or compensation be paid by instalments.
  - d Any matters required to be noted in respect of compensation or restitution orders in accordance with DM 69 (2 ed) Volume 1 Chapter 8 Section 4.
  - e Any reduction of punishment ordered in accordance with DM 69 (2 ed) Volume 1 paragraph 8.1.25.
  - f Any undue delay in the disposal of the charge. In particular, where more than 30 days elapse between the commission of the offence and the commencement of the proceedings before the disciplinary officer, the reasons for the delay are to be inserted.
- 14 This panel must be completed if the disciplinary officer is a detachment commander or a subordinate commander. See DM 69 (2 ed) Volume 1 paragraph 8.1.25.
- 15 If the disciplinary officer makes an order to come up for punishment if called on, he or she must record and attach to the MD 601 a statement of his or her findings of fact in relation to the charge. See DM 69 (2 ed) Volume 1 paragraph 8.3.26.
- 16 Following input to ATLAS the TPR Register/No is to be clearly annotated on the MD 601/MD 601A (e.g. SYSADMB 1006).
- 17 If an amending ATLAS action is taken following a successful appeal to the Summary Appeal Court (or following examination by the CO), when punishments are varied or quashed, see Note 15.
- 18 See DM 69 (2 ed) Volume 1 Chapter 13 Section 1.
- 19 Distribution of MD 601/MD 601A, refer to single Service orders, e.g. DFO(N), (A) and (F). Copy 1 is to be forwarded to DLS through appropriate chain of command, whatever finding is entered.



(Footnote numbers refer to the notes on reverse of this form)

REVISED 2009  
MD 601B

PAGE 1 OF 1

Serial No: \_\_\_\_\_<sup>1</sup>

RECORD OF DISCLOSURE<sup>2</sup>

Service Description		
F297288, CPL G.P. BOOT, MEDIC		
The following information has been disclosed in accordance with rule 9 of the Armed Forces Discipline Rules of Procedure 2008		
Information/Evidence Disclosed <sup>3</sup>	Date Disclosed <sup>4</sup>	Signature of Accused <sup>5</sup>
MD 601/ <u>3 LFG 1123/15</u> <sup>2</sup>	11 August 2015	<i>Greg Boot</i>
MD601A/ <u>3 LFG 1123/15</u> <sup>2</sup>	11 August 2015	<i>Greg Boot</i>
Statement of T89720 CPL U. DEE, RNZIR dated 31 July 2015	11 August 2015	<i>Greg Boot</i>
Statement of G1027288 DR I.M PRATT dated 4 August 2015	11 August 2015	<i>Greg Boot</i>
Statement of P1016688 LMED R.D LEE dated 4 August 2015	11 August 2015	<i>Greg Boot</i>
Statement of accused F297288, CPL G.P BOOT, RNZAF dated 6 Aug 2015	11 August 2015	<i>Greg Boot</i>
Statement of Y98765 LCPL T. TOTAL dated 7 Aug 2015	11 August 2015	<i>Greg Boot</i>
Signature and Service description of disciplinary officer <sup>7</sup>		

To be attached to original copy of MD 601

NOTES AND INSTRUCTIONS ON THE USE OF FORM MD 601B

- 1 Enter the serial number of the MD 601 that the disclosure of information relates to.
- 2 MD 601B is the form used to record disclosure of information in compliance with DM 69 (2 ed) Volume 1 Chapter 7 Section 3 and must be attached to the original of each MD 601 in accordance with paragraph 7.3.12 of that Section.
- 3 DM 69 (2 ed) Volume 1 paragraph 7.3.6 requires the disciplinary officer to ensure that the accused is provided with a copy of the form MD 601 Charge Report and is given access to any information which:
  - a. May be relied upon as evidence against the accused; or
  - b. Tends to show that the accused did not commit the offence charged.

This information includes, but is not limited to, any:

- a. Statement made by the accused;
- b. Relevant documentary evidence;
- c. Written statement made by a witness; and
- d. Unit or Service Police file which relates to the charge or, if applicable, the relevant portions of the file.

See paragraphs 7.3.8 to 7.3.10 for information about the form of disclosure, particularly for physical evidence and for information about disclosure of information that might prejudice protected interests such as the security or defence of New Zealand, defence relationships, or the maintenance of the law.

- 4 Enter the date that each piece of information/evidence was disclosed to the accused. Information/evidence is required to be disclosed in reasonably sufficient time to allow the accused to consider it in properly preparing his or her case prior to being arraigned by the disciplinary officer (see paragraph 7.4.2).
- 5 The accused is to sign to acknowledge the receipt of each disclosure.
- 6 Enter the serial number of the form MD 601 that records the charges against the accused. This must be disclosed to the accused in accordance with DM 69 (2 ed) Volume 1 paragraph 7.3.6. If the form MD 601 is amended prior to the arraignment of the accused, the accused must be provided with a copy of the amended MD 601 before he or she is arraigned.
- 7 The disciplinary officer is to sign to certify that DM 69 (2 ed) Volume 1 Chapter 7 Section 3 has been complied with.



RECORD OF ELECTION AND WAIVER<sup>2</sup>

Service Description
<b>F297288, CPL G.P. BOOT, MEDIC</b>
I, the above named person subject to the Armed Forces Discipline Act 1971, having been offered the right to elect trial in the Court Martial or summary trial by a disciplinary officer, certify as follows:
I have been advised and I understand that:
<ul style="list-style-type: none"> <li>a. A summary trial by a disciplinary officer is not a trial by an independent court.</li> <li>b. If I elect summary trial, I irrevocably waive my right under section 25(a) of the New Zealand Bill of Rights Act 1990 to be tried by an independent court.</li> <li>c. If I am tried by a disciplinary officer I cannot be represented by a lawyer at that trial.</li> <li>d. If I elect summary trial, I irrevocably waive my right under section 24(c) of the New Zealand Bill of Rights Act 1990 to legal representation.</li> <li>e. If I elect trial by the Court Martial, I will be entitled to legal aid under the Armed Forces Legal Aid Scheme.</li> <li>f. If I am found guilty by a disciplinary officer, the punishments that may be imposed are limited to those provided for in Annex A (or, as the case may be, Annex B) of DM 69 (2 ed) Volume 1 Chapter 8.</li> <li>g. If I am found guilty by the Court Martial, the Court Martial may impose any lawful sentence up to the maximum sentence for the offence.</li> <li>h. The Court Martial is presided over by a Judge and applies the ordinary rules of evidence that are used in criminal courts.</li> <li>i. Summary trials are conducted by disciplinary officers who are not Judges or lawyers and who do not apply the ordinary rules of evidence.</li> <li>j. A summary trial can be commenced and completed more expeditiously than a trial by the Court Martial.</li> </ul>
I HEREBY ELECT: <sup>3</sup>
<ul style="list-style-type: none"> <li>a. Trial by the Court Martial of New Zealand</li> <li>b. Summary trial by a disciplinary officer, and I waive my rights to trial by an independent court and to be represented by a lawyer.</li> </ul>
Signature of accused: <sup>4</sup>

<sup>1</sup> Enter the serial number of the MD 601 that the election relates to.<sup>2</sup> MD 601C is the form used to record the election of an accused to be tried in the Court Martial or summarily by a disciplinary officer in accordance with DM 69 (2 ed) Volume 1 paragraph 7.5.33 or paragraph 7.6.38, as the case may be, and must be attached to the original of each MD 601 where the right to elect is afforded to the accused.<sup>3</sup> Delete whichever option the accused does not elect.<sup>4</sup> The accused is to sign to confirm his or her election.

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For Instructional Purposes Only



NEW ZEALAND DEFENCE FORCE  
**Conviction Category Details**

MD601E

Ver 1 – Dec 14

Service No: <input type="text"/>	Surname/Init: <input type="text"/>	Rank: <input type="text"/>
Select Category(s)	Select Sub-Category	Charge Number
<input type="checkbox"/> Violence to a Superior	<input type="checkbox"/> Strikes – AFDA s35 (1)(a) <input type="checkbox"/> Uses Violence – AFDA s35 (1)(b) <input type="checkbox"/> Offers Violence – AFDA s35 (1)(c)	
<input type="checkbox"/> Ill Treatment of Subordinates	<input type="checkbox"/> Strikes – AFDA s41 (a) <input type="checkbox"/> Ill Treats – AFDA s41 (b)	
<input type="checkbox"/> Assault	<input type="checkbox"/> Assault – AFDA s74 or Crimes Act 1961/Summary Offences Act 1981 <input type="checkbox"/> Aggravated Assault – AFDA s74 or Crimes Act 1961 <input type="checkbox"/> Male Assaults Female – AFDA s74 or Crimes Act 1961	
<input type="checkbox"/> Sexual Offences	<input type="checkbox"/> Sexual Violation – AFDA s74 or Crimes Act 1961, Crimes Amendment Act 2005 <input type="checkbox"/> Behaves in a Disgraceful/Indecent Manner – AFDA S42 (b)	
<input type="checkbox"/> Controlled Drug Offences (AFDA s74 or Misuse of Drugs Act 1975)	<input type="checkbox"/> Class A: (Supply, Sell, Administer, Offer, Deal, Procure, Possess, Conspire) <input type="checkbox"/> Class B: (Supply, Sell, Administer, Offer, Deal, Procure, Possess, Conspire) <input type="checkbox"/> Class C: (Supply, Sell, Administer, Offer, Deal, Procure, Possess, Conspire) <input type="checkbox"/> Consuming, Smoking, Using Controlled Drugs <input type="checkbox"/> Cultivating Prohibited Plants	
<input type="checkbox"/> Alcohol	<input type="checkbox"/> Drunkenness – AFDA s51 <input type="checkbox"/> Possession of Alcohol – AFDA s52 <input type="checkbox"/> Driving Under the Influence of Alcohol – AFDA s67 or Civilian Conviction <input type="checkbox"/> Driving Under the Influence of a Drug – AFDA s67 or Civilian Conviction	
<input type="checkbox"/> Contributing Factors (Tick the sub-category that contributes significantly to the offence when the categories above have not been selected)	<input type="checkbox"/> Drugs <input type="checkbox"/> Alcohol <input type="checkbox"/> Psycho-Active – (See Psycho-active Substances Act 2013, s9)	
<input type="checkbox"/> Other (To be used when above categories are not applicable)	<input type="checkbox"/> Not Applicable <input type="checkbox"/> Not Applicable <input type="checkbox"/> Not Applicable	

The Disciplinary Officer/Commanding Officer is to certify that the above Category selections are correct:

\_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
 (Service No, Rank and Name)

\_\_\_\_\_  
 (Date)





NEW ZEALAND DEFENCE FORCE  
**Conviction Category Details - Reverse**

**MD601E**  
Ver 1 – Dec 14

### Overview

This form is specifically designed to enhance the purposes of reporting out of SAP HCM, to meet the NZDF's reporting and analytical data requirements. The Categories and Sub Categories that have been selected in specific areas are to further define and break down the areas of punishments to meet further reporting needs of the NZDF. All other offences in the AFDA are reported on using the AFDA section as the identifying factor. This form therefore needs to be completed accurately at all times to maintain the integrity of data reporting.

### Guidance

The Disciplinary Officer/Commanding Officer is responsible for:

- selecting the correct category the charge relates to
- selecting the sub-category
- annotating the relevant number for the order of the charge, example First charge
- certifying that the details on the MD601E are correct, and
- forwarding the MD601E attached to either a copy of the MD601 or Civilian Conviction to the HRSC for action.

If at any stage there is any doubt about how to complete the form, Legal (Camp/Base level), or the local Human Resource Advisor will be available to provide advice.

### Selecting a Category

If any of the offences are listed in the Sub Category column, then that Category is to be selected when there is a Guilty verdict. This is applicable for Violence to a Superior, Ill Treatment of Subordinates, Assault, Sexual Offences, Controlled Drug Offences and Alcohol Categories.

If the member was found Not Guilty or their convictions have been Dismissed or Quashed then the Other Category is to be selected with the Not Applicable Sub Category.

If the member was charged and found Guilty but was not charged under Violence to a Superior, Ill Treatment of Subordinates, Assault, Sexual Offences, Controlled Drug Offences and Alcohol Categories but it was determined that Drugs, Alcohol or Psycho-Active factors were a Contributing Factor then this Category is to be used. If the member was found Not Guilty or the convictions have been Dismissed or Quashed then the Other Category is to be selected.

If the member was found Guilty, Not Guilty, Dismissed or Quashed of any other offence not mentioned above then the Other Category is to be selected.

### Note

You can only assign one Category and Sub Category for each of the offences that are recorded on the MD601 or Certificate of Conviction due to the restrictions of SAP HCM. If the contributing factors were also attributable this can be recorded on the MD601 and remarks in SAP HCM, but only the primary offence will be used for the offences listed on the MD601E. This is to ensure offences are not reported on in a duplicate manner.

### Selecting a Sub-Category

Once the Category has been selected then the appropriate Sub Category that the member has been found Guilty of must be selected.

### Charge Number

In the Charge Number column if there is more than one offence, then the number to be used is the order of offences. This is to ensure that the right Category and Sub Category are applied to the correct offence in SAP HCM.

### Note

The MD601E is required to be completed after all Summary Trials, Civilian Convictions and Court Martials where there was an appearance at a trial and an offence was assigned an outcome (ie Guilty, Not Guilty, Dismissed).

## EX BOOT BACK – Presenting Officer

### Scenario

CI JSHS, the disciplinary officer, has appointed you as the presenting officer in the summary trial in respect of charges against CPL BOOT, RNZAF.

You received the full file from SGT TAIN, RNZMP at the direction of the disciplinary officer you disclose a copy of the file to CPL BOOT's defending officer. You received the signed MD 601B.

You discuss the case separately with each of the prosecution witnesses.

CPL DEE confirms his statement is true and correct. He states that he was drunk at the time, and the only reason he got knocked down by an Air Force guy was because his reactions were slowed by his intoxication.

Dr. PRATT confirms his statement is true and has nothing further to add.

You discuss the case with the defending officer and advise that you have two witnesses that you will be calling. You also wish to introduce a statement from LMED LEE (who is currently on leave overseas), and discuss this with the defending officer. **[What is required for this to occur?]**

You notice in the investigation report that there is a statement from LCPL TOTAL who deployed to Afghanistan the day after giving a statement. When this is raised by the defending officer you say that you have no objection to his statement being entered as evidence.

You note that in looking through CPL BOOT's MD 602 there is a previous charge and that you will need to determine if this previous MD 601 needs to be presented to the disciplinary officer if CPL BOOT is found guilty.

### Task

You are to prepare and present the case in support of the charges at the Summary Trial in accordance with DM 69 (2 ed) Volume 1. The STAC is unavailable so you have been directed to prepare the following documents for the disciplinary officer.

MD601 and MD 601A (if there are too many charges to fit on the MD 601)

MD601 B

MD601 C (if the offer of trial in the Court Martial is given)

MD601 D (if the accused is found guilty)

MD 602 (again, if the accused is found guilty)



**EX BOOT BACK – Prosecution Witness 1**



T89720, CPL U. DEE, RNZIR states:

I am making this statement to SGT D. TAIN, RNZMP in relation to an assault that I suffered last Thursday 23 July at the Burnham Camp CPL's Club.

I was leaving the bar just after closing time, which was probably about 2230. I'd been at the bar with other course members and instructors after work on pay night. We were hosting instructors from JSHS as part of a mid course function. When I was leaving this guy who had been winding me up all night attacked me. I was leaving the bar and stumbled on the step, as I'd probably had 6-8 beers so was a bit unsteady but I don't think I was drunk as I still remember everything. I fell forward on the step and went down to my right, and as I fell I brushed against the guy, whom I know now to be CPL BOOT. He must have hit me on the way down as I felt something to the face and ended up with a couple of cuts. I fell to the ground, and while I was still down, CPT BOOT kicked me once hard in the ribs, cracking two of them.

I'm sure that he wanted to get me back after I teased him for wearing enough grease in his hair to lubricate 4 LAV wheels. That's typical of Air Force guys, they can't take a joke. I thought the matter was settled at the time, as I ripped him and he made some remark back which others laughed at but which I didn't catch, and I left it at that and that should have been the end of it.

After he attacked me, he said 'If you get up I'm going to knock your head off'. Because I didn't want to turn it into a big deal and start a brawl, ruin everyone's night, and cause trouble for my unit, I just waited until he left, then went back inside to grab a napkin or something for the bleeding. When I got inside Dr Pratt was there having attended the function, and he took me to the MTC.

This statement is true and correct and I have nothing further to add. I have made this statement in the knowledge that it may be used in disciplinary proceedings and that I may be liable to disciplinary proceedings in respect of any false statement that I may have made.

Dated at Burnham 31 JUL 15

A handwritten signature in blue ink that reads "Ulysses Dee". The signature is written in a cursive, slightly slanted style.

**Ulysses Dee**

## EX BOOT BACK – Prosecution Witness 2



G1027288 DR I.M. PRATT states:

I am making this statement to SGT D. TAIN, RNZMP in relation to last Thursday 23 July at the Burnham Camp Cpl's Club.

I am the Medical Officer at the Burnham Medical Treatment Centre, and as part of that role I instruct at the JSHS. I was attending a mid course function with JSHS students at the Cpl's Club last pay Thursday. I arrived quite late due to other commitments, and thus out of politeness to the students remained later than the other instructors.

Shortly after I arrived, I noticed CPL DEE, talking to an Air Force Cpl. I wasn't right there to hear the conversation, but was able to catch CPL DEE call the guy a limp something. The Air Force Cpl directed a comment back at CPL DEE and everybody within earshot laughed.

Shortly after closing time, I was about to leave and visited the men's loos before leaving. I was maybe 10 m or so away from the door when CPL DEE was going down the steps. As he was going down the steps he lurched forward and down the steps. The person in front of him, whom I couldn't see immediately, snapped around quickly towards CPL DEE. The person in front had his right arm up at shoulder level as he turned, and turned back and swung round to face CPL DEE. At that point I saw his face and recognised him as the Air Force Cpl who CPL DEE had exchanged words with earlier. CPL DEE was out of sight at this point having fallen down the steps. He must have been on the ground to be out of sight – as you go out the Cpl's club there are some quite high steps to go down, and the street is maybe 3ft or so below the bottom of the door. As I was standing inside, I could only see the Air Force Cpl and not CPL DEE. While CPL DEE was still out of sight, I saw this Air Force Cpl deliver what looked like a kick. I was only able to see the Air Force Cpl from above approximately the mid point between his hip and knee. The kick wasn't gentle either- he kicked hard, and then said something to him, which I couldn't hear. Although I couldn't hear it, I could see his face clearly at the time he spoke, and he said it viciously - he looked really angry and aggressive.

After the altercation, CPL DEE got up and came back inside. We got him some ice for the cut on his face, and he was walking gingerly holding his chest where he'd been kicked. I took him to the MTC and examined him.

During the examination, I identified cuts on his face consistent with a blunt impact of a hard surface. The fact that there were cuts but not bruising indicates that it is likely that they were caused by connection with an object or the ground,



- 20 -

rather than a fist. I also x-rayed his ribs and identified that the third and fourth rib on the right side of the chest, beneath the pectoral muscle and slightly distal, had hairline fractures as is faintly shown on the x-ray, which I produce as an exhibit. The bruising, fractures and general size of the wound indicated that it was consistent with a blunt impact of significant force, and that the impacting object was no more than 3 – 4 inches across and in height. This injury could not have been caused by falling on to a flat surface, rather it was consistent with an impact from a blunt object such as a boot or a fist.

This statement is true and correct and I have nothing further to add. I have made this statement in the knowledge that it may be used in disciplinary proceedings.

Dated at Burnham 4 Aug 15



**Ian M. Pratt, MD**

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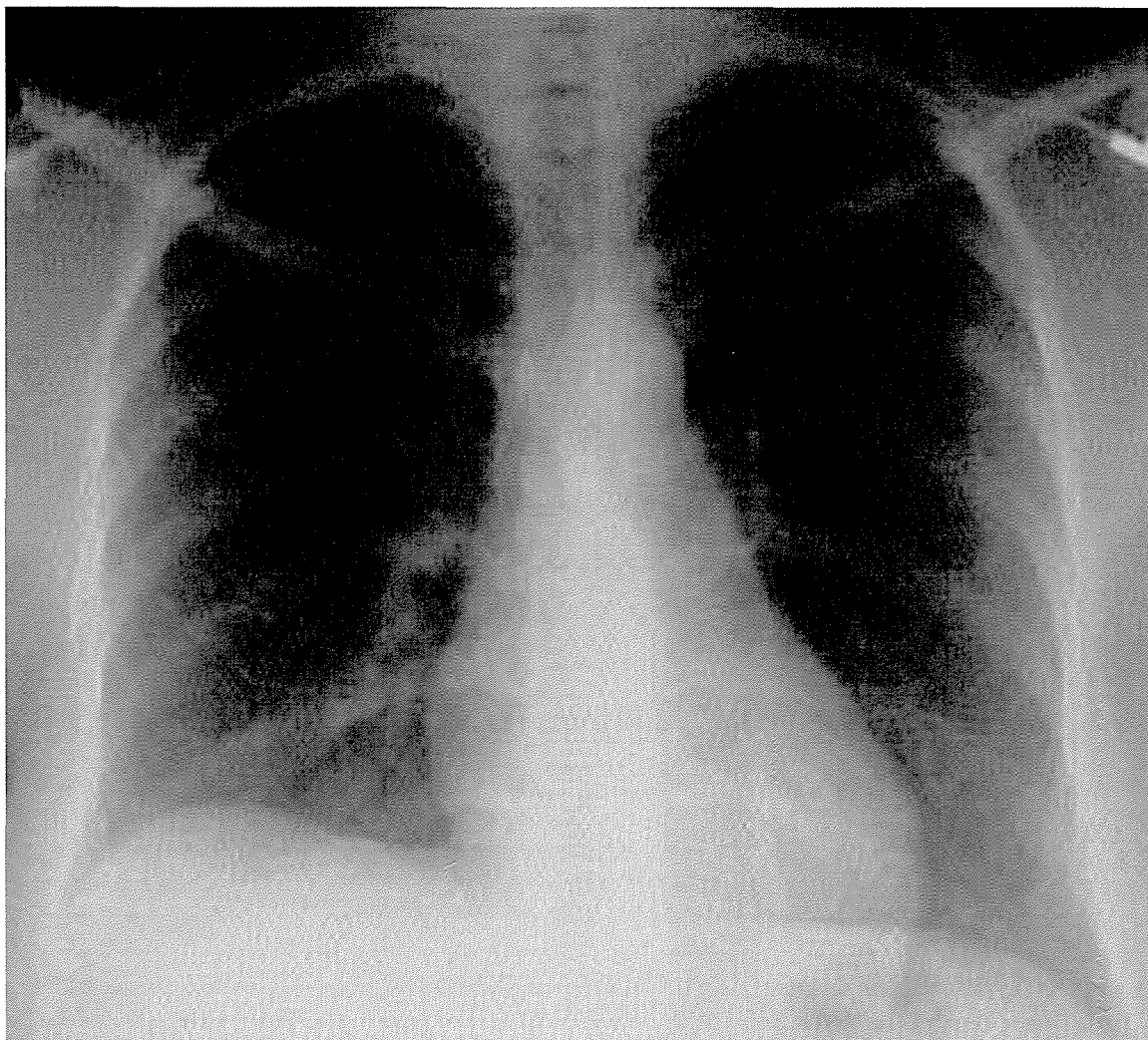


- 21 -

X-RAY OF CPL ULYSSES DEE

TAKEN ON 23 JULY 2015

BY DR I.M. PRATT



For

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For Instructional Purposes Only

## EX BOOT BACK – Prosecution Witness 3



### WRITTEN STATEMENT

P1016688 LMED R.D. LEE, RNZN states:

I am making this statement to SGT D. TAIN, RNZMP in relation to an incident that occurred last pay Thursday 23 July at the Burnham Camp Cpl's Club.

I am a student at the Joint Services Health School. I was attending the JSHS mid course function, which was essentially an informal bring a boss night, only we were bringing instructors rather than bosses. I went along with CPL DEE after work and spent the majority of the night talking and drinking with him. I'm told there was a verbal exchange between CPL DEE and another Cpl, whom I know as CPL BOOT, as I've met him before a couple of times at the bar.

I'm not sure how long we had been at the bar. We didn't go straight there after work but it would have been just after dinner finished in the Mess. We weren't drinking heavily or anything – CPL DEE and I were going rounds, and I know from the EFTPOS receipts that I bought four rounds, so he must have bought four too, or at least three if the bar closed on his round or something.

Although I spent most of the night with CPL DEE, I also went over and said hello to CPL BOOT while CPL DEE was at the bar and chatting to some other people. While I was chatting to CPL BOOT, he nodded towards CPL DEE and said 'your mate's a bit of a mouthy prick – he needs to learn to keep quiet'. I thought this was odd as CPL BOOT is generally pretty placid and easy going, and I'd never known him to dislike anyone, let alone say anything menacing about someone.

As soon as the bar closed, I finished up my drink and went home. I was a little drunk, but not so as to lose possession of any of my faculties. I was among the first to leave after the bar closed, and was in my room by 2235, as it's only a short walk.

This statement is true and correct and I have nothing further to add. I have made this statement in the knowledge that it may be used in disciplinary proceedings and that I may be liable to disciplinary proceedings in respect of any false statement that I may have made.

Dated at Burnham 4 Aug 15

A handwritten signature in black ink, appearing to read "Ryan Lee".

Ryan Lee



## EX BOOT BACK – Defending Officer

### Scenario

CI JSHS, the disciplinary officer, has appointed you as the defending officer in the summary trial in respect of charges against F297288, CPL G.P. BOOT, RNZAF.

You received the full file from the presenting officer, which is made up of the report of SGT D. TAIN, RNZMP.

You discuss the case separately with the accused and the defence witnesses.

You discuss the case with the presenting officer who advises that there are three witnesses in support of the charge. You mention that there is a statement from LCPL T. TOTAL who deployed to Afghanistan the day after giving a statement. The presenting officer says that there will be no objection to this statement being entered as evidence. In kind you agree to the statement of LMED R.D. LEE (who is currently on leave overseas) being entered as evidence for the prosecution.

You note that in looking through CPL BOOT's MD 602 there is a previous charge on his record.

You know CPL BOOT is a good JNCO, and is well suited to the instructing. The allegations appear out of character from your previous knowledge of him.

After talking through the file with CPL BOOT you discuss the case with him. He confirms that the statement he gave on 6 Aug 15 is accurate and that he also wants to give evidence. CPL BOOT also mentions that LMED SICK saw the whole thing, and that LCPL TOTAL's statement seems right.

You discuss the case with LMED SICK and ask for an email outlining the details.

You discuss the case with the presenting officer and advise that CPL BOOT is intending to defend the charges and will be giving evidence.

In the event of a finding of guilty you must be prepared to offer mitigation.

### Task

You are to assist the accused in the preparation and presentation of his case and act on his behalf in the summary trial in accordance with the DM 69 (2 ed) Volume 1. You will need to be prepared to offer mitigation in the event that the accused is found guilty.

**EX BOOT BACK – Accused & Defence Witness 1**



F297288, CPL G.P. BOOT, RNZAF states:

I have been cautioned that I do not have to make a statement, and I am advised under the NZ Bill of Rights Act that I may take legal advice, in private, without delay, and at no cost to me. I am happy to make a statement.

This whole thing is a fabrication. I know why CPL DEE has made this up, too. I made him look like a dick. He was winding me up about the way I have my hair, so I said to him – 'You're paying awfully close attention to my appearance, princess – maybe you've been without a lady too long'. Everyone laughed at that, even his own mates, and he walked away looking like such a loser that I felt a bit sorry for him.

I didn't see him again during the night. I was just hanging out with my own group of friends, and those guys were drinking on the other side of the bar getting quite rowdy. I wasn't drinking that night. I don't normally drink much, but was detoxing at the time and completely dry as alcohol doesn't help my skin. It wasn't until the end of the night that I saw CPL DEE again when he was so drunk he fell down the steps of the bar and almost took me with him. I felt someone knock into me from behind. I was startled and didn't know what was happening and I turned around looking over my right shoulder to see what was going on. When I looked round I saw CPL DEE fall to the ground. It must have hurt because he fell really heavily and hit the corner of the wooden steps as he fell, and then ended up face first on the concrete.

I was still surprised at what had happened, but said, 'watch where you're going, genius' or words to that effect, and then turned around and went home. I'm told that I'm accused of assaulting him, but I never laid a finger on him, he was just drunk and took a bad fall.

This statement is true and correct and I have nothing further to add. I have made this statement in the knowledge that it may be used in disciplinary proceedings and that I may be liable to disciplinary proceedings in respect of any false statement that I may have made.

Dated at Burnham 6 Aug 15

A handwritten signature in blue ink that reads "Greg Boot". The signature is written in a cursive, slightly slanted style.

**Greg Boot**

## EX BOOT BACK – Defence Witness 2

### SICK CARLOS, LMED

**From:** SICK CARLOS, LMED  
**Sent:** Tuesday, 11 August 2015 14:31  
**To:** OFFICER DEFENDING, LT;  
**Subject:** Thursday 23 July – Cpl's Club Incident

Sir, as requested, this is what I saw Thursday 23 July:

I was at the bar with CPL BOOT and a couple of our mates. We were not doing anything special, just hanging out at the bar. I had the day off the next day as I had stand down, but the CPL BOOT had to work the next day. I got to the bar after work when it opened and had intended to leave to get dinner and then go home, but people kept coming up so I stuck around, but it didn't matter as I had the next day off.

CPL BOOT didn't assault anyone. That guy just fell over, which was justice as he was being a jerk earlier and winding CLP BOOT up. We laughed at him earlier in the night over something when he looked a total fool, but I can't recall what it was, just that it was funny. Anyway, as we were leaving, I was just in front of CPL BOOT talking to him as we walked out. We had just got to the bottom of the steps and I was half turned around telling him something when I saw that guy just fall right over for no reason. He knocked into the back of CPL BOOT's right shoulder as he fell, and CPL BOOT whipped round to see what was going on. I just turned away laughing and kept walking, and was saying something to one of the other guys and I half heard CPL BOOT say to the guy 'careful when you get up – you'll take your head off' or something like that. The guy must have had his head under those wooden steps or something after he fell or something, or maybe close to the wall or something. Something, anyway, because it didn't make much sense at the time, but I wasn't really paying attention.

That's all I recall.

Kind regards

**Leading Medic Carlos Sick**  
Joint Services Health School  
**ROYAL NEW ZEALAND NAVY**  
M +64 123 345 6789  
[www.nzdf.mil.nz](http://www.nzdf.mil.nz)



**EX BOOT BACK – Defence Witness 3**



**Y98765 , LCPL T. TOTAL, states:**

The following is my record of what I in relation to an allegation of assault by CPL BOOT on 23 July 15.

I was in the bar on that night, and spent a short time having a drink with CPL DEE, near the end of the night. He seemed quite drunk, although he wasn't slurring or anything, but he was really unsteady. When I moved away from the leaner we were talking at, it shifted slightly because he was leaning on it, and he nearly toppled over.

I know that CPL BOOT is a really placid guy, and am sure he wouldn't hit anyone. He's never been in a fight before and just isn't the type.

I request that this statement be admitted in written form as I am in Afghanistan and will not be in NZ for the trial.

This statement is true and correct and I have nothing further to add. I have made this statement in the knowledge that it may be used in disciplinary proceedings and that I may be liable to disciplinary proceedings in respect of any false statement that I may have made.

Dated at Burnham 7 Aug 15

A handwritten signature in blue ink that reads "Thomas Total". The signature is written in a cursive style.

**Thomas Total**



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COVER FOR CONDUCT SHEETS

CPL Greg P. BOOT, F297288  
(Service Description)

Air Force  
(Service)

Subsequent promotions:

Issued by: ..... Date: .....  
(Signature of Commanding Officer)

INDEX OF RECORDABLE MD 601s

Unit	Serial Number	Date of Conviction	Unit	Serial Number	Date of Conviction

INSTRUCTIONS

1. See DM69(2ed) Vol 1, Chap 13 as to the issue and maintenance of this MD 602.
2. This MD 602 when issued is to be kept under lock and key when not in use.

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**CHARGE REPORT (1)**

Service (3) <b>F</b>	Arm (3) <b>R</b>	Full Service Description (4) <b>F297288, CPL G.P. BOOT, RNZAF</b>	Unit <b>485Wing</b>
Plea (5) <b>N/A</b>	CHARGES (6) <b>FAILING TO COMPLY WITH WRITTEN ORDERS CONTRARY TO AFDA s 39(b)</b> <b>in that he, at RNZAF Base Whenuapai, on 15 January 2013, failed to carry out a rostered key orderly duty as per the promulgated Unit Routine Order.</b>		Finding (7) <b>G</b>
(8)	WITNESSES AND EXHIBITS (9) <b>FSGT B.C. SHORT T89720 RNZAF</b> <u>Documentary Exhibit</u> <b>485 Wing Unit Routine Orders dated 04 January 2007</b>		Person Assisting Accused (11) <u>N/A</u> <b>RECORD OF SUMMARY DISPOSAL</b> Investigated by <u>FLTLT R. Rupert</u> on <u>12JAN13</u> Remanded to <u>Commanding Officer</u> on <u>12JAN13</u>  Investigated by <u>WGCDR OLIVER</u> on <u>15JAN07</u> (Name and Appt) Accused given the right to trial by court-martial <u>NO</u> Remanded for court-martial on <u>NO</u> Tried/Dealt with summarily on <u>15JAN13</u> Punished/Discharged by <u>WGCDR OLIVER</u> on <u>15JAN13</u> Signature of officer who punished accused or discharged accused without punishment <u>Charles Oliver</u> <u>WGCDR</u> (Name) (Rank) (12)
ACCUSED'S BASIC PAY (10) \$ <u>96.99</u> per day		DETAILS OF APPROVAL, ORDERS ETC (14) <i>Fine to be paid over 2 pays</i>  Examined by Commanding Officer:  Date Signature Rank	
PUNISHMENTS AND ORDERS		Reviewable/Non-reviewable (17) Recordable/Non-recordable (17)	
Detention	Days		
Reduction in Rank (13)	Rank Seniority Date		
Stay of Seniority (Insert Period)			
Fine	\$300		
Reprimand ('Yes' if applicable)	YES		
Confinement to Ship or Barracks	Days		
Extra Work and Drill	Days		
Stoppage of Leave	Days		
Extra Duty	2 Days		
Caution ('Yes' if applicable)			
Compensation Order	\$		
Restitution Order ('Yes' if applicable)			
Fine Paid in Cash			
MD1005 Serial No.:	Date:		
ATLAS TPR Raised No.:	Date:		
Amending ATLAS TPR Raised (16) No.:	Date:		

Distribution (18) Copy 1 For Dispatch to DLS  
Copy 2 For Filing in Service Member's MD602

Copy 3 For Unit File

## NOTES AND INSTRUCTIONS ON THE USE OF FORMS MD601 AND MD601A

- (1) Form MD601 is supplied in electronic form or in a single printed page. Where there is insufficient space on the front page to record all the information, the additional information is to be recorded on a Continuation Charge Sheet MD601A, numbered and attached. The MD601A is to have the same serial number as the MD601 together with the Service, Arm, Full Service Description, Unit and Base/Ship/Camp of the accused entered thereon. In some cases the unit may need to produce additional copies of the MD601/MD601A, eg, to include in a summary.
- (2) Forms are to be numbered in sequence in each unit from 1 January each year.
- (3) For spaces Service and Arm see ATLAS Systems tables, General Service and Entry Arm respectively.
- (4) Full Service Description i.e. Rank, Christian names, surname (in capitals), Service number, trade/branch/ corps.
- (5) Applicable to Naval personnel only. Enter 'G' for Guilty and 'NG' for not guilty.
- (6) Charges are to be drawn in accordance with RP6 and, if there is more than one charge, numbered in sequence eg, "First Charge", "Second Charge".
- (7) Enter 'D' for dismissed, 'G' for guilty, 'NG' for not guilty. Unless the charge has been dismissed, a finding is to be recorded on each charge other than an alternative charge. In the case of alternative charges the procedures in AFDA s. 136 (b) is to be followed.
- (8) Enter 'A' if the witness is called by the accused. Enter 'S' if the witness's evidence is given in the form of a written statement in accordance with RP11. Attach any written statement to the original copy (copy 1) of the MD601.
- (9) Describe each witness by Service description if a Service member, or initials and surname if a civilian. In the case of documentary exhibits, insert the letter or number of the exhibit and a brief description of the exhibit.
- (10) Where the accused is found guilty and punished, his or her basic pay applicable at the day before that on which he or she was punished is to be entered here. "Basic pay", as defined in AFDA s. 2, is the applicable daily rate of pay prescribed in the relevant AF Det.
- (11) Navy only: see RP14.
- (12) Insert the disciplinary appointment and name of the officer, e.g. OOD, XO, Sub Cdr, Det Cdr, CO Supr Cdr, and the date. If the accused was given the right to elect trial by court martial enter 'Yes' where appropriate. Where the offender is punished or discharged without punishment the inapplicable option is to be deleted. The officer who punished the offender or discharged the offender without punishment is to sign and insert his name and rank in the appropriate place.
- (13) Where the punishment of Reduction in Rank is imposed, AFDA s. 84 (2) and s. 111 require the period of seniority to be credited to the Service member to be specified. The new seniority date is to be inserted in the appropriate space.
- (14) This space is to record all the necessary additional information which is required to be recorded on the summary disposal of a charge. Matters which are to be entered here include:-
  - a. Details of any approval to try/deal with a charge or impose a punishment under DFO(D) 11 or DFO(D) 12
  - b. Any orders made by the officer which are prescribed in App. III to the RPs.
  - c. Any direction under DFO(D) 14 that a fine or compensation be paid by instalments.
  - d. Any matters required to be noted by the RPs, eg, RP8(4) or which may be noted, eg, RP161(2), RP162(2), RP163(1).
  - e. Any reduction of the punishment under AFDA s. 116 or action taken on review under AFDA s. 117, s. 182 (1), s. 183 (4), (5) See AppVI Part 1 to the RPs.
  - f. Any undue delay in the disposal of the charge. In particular, where more than 7 days elapse between the commission of the offence and the investigation of the offence, the reasons for the delay are to be inserted.
  - g. Army and Air Force only: where a summary or an abstract is taken make a note accordingly and, if the accused is dealt with summarily, attach a copy to the original MD601.
- (15) Following input to ATLAS the TPR Register/No. is to be clearly annotated on the MD601/MD601A (eg, SYSADMB 1006).
- (16) If amending ATLAS action is taken after the review, when punishments are varied or quashed, see Note (15).
- (17) Delete as appropriate (see DFO(D) 15 and DFO(D) 13).
- (18) Distribution of MD601/MD601A, refer to single Service orders, eg, DFO's (N), (A) and (F). Copy 1 is to be forwarded to DLS through appropriate chain of command.



## NZDF MILITARY JUSTICE TRAINING PROGRAMME

### LEVELS TWO & THREE

# PERFORM THE DUTIES OF THE DISCIPLINARY, PRESENTING AND DEFENDING OFFICERS

## EX LAUDER Practical Assessment Scenario Army Version

### Actors:

1. Disciplinary Officer
2. Presenting Officer
3. Prosecution Witness 1
4. Prosecution Witness 2
5. Defending Officer
6. Accused & Defence Witness 1
7. Defence Witness 2
8. Observer

### Documents:

- B. MD 601 Charge Report
- C. MD 601B
- D. MD 601C
- E. Prosecution Evidence Statements
- F. Defence Evidence Statements
- G. MD 602
- H. WAC Duty Roster
- I. Shady Night Panel beaters Quote
- J. Victim Impact Statement



## EX LAUDER – Exercise Brief

### Exercise Brief

The assessment for 'Perform the Duties of Presenting, Defending and Disciplinary Officers' will be conducted by way of practical assessment summary trials. Students will be assigned roles as actors when not in an assessment role. The following roles will be assigned to students:

1. Disciplinary Officer (Level 3 assessment, filled by Legal Officer DS when there are no Level 3 students to be assessed)
2. Presenting Officer (Level 2 assessment)
3. Prosecution Witness No 1
4. Prosecution Witness No 2
5. Defending Officer (Level 2 assessment)
6. Accused & Defence Witness No 1
7. Defence Witness No 2

The Legal Officer DS will conduct assessment of the presenting, defending and disciplinary officers using the assessment sheets, found in the Students' Work Book. Students are to demonstrate their competence in performing the assigned duties in a summary trial and are permitted access to reference material including DM 69 (2 ed) Volume 1 during the assessment.

Witnesses should give their evidence in accordance with their statements but, if necessary, may make up reasonable supporting evidence that would apply to the situation.

In the event that there is any disparity between the initial statement of a witness and what they tell the presenting or defending officer – the evidence presented during the summary trial by the witness will be that which is advised to the presenting or defending officer, not that which is in the earlier statement.

The exercises proceed on the basis of pleas of not guilty including the punishment phase.

There is to be finding of a prima facie case, that there are sufficient powers of punishment, the disciplinary officer is empowered to act.

Presenting and defending officers must call all of their witnesses, and produce in evidence all written statements where the witness is not present. For the purposes of the trial assessments the accused will give evidence.

Presenting and defending officers must cross examine the witnesses called for the opposite party. Re-examination need only occur if it is required.

In the event of a finding of guilty the defending officer must be prepared to offer basic mitigation.



**Scenario**

PTE Lauder was the Waiouru Admin Centre Duty NCO over the weekend 27-28 June 2015. He was involved in a vehicle accident in the duty vehicle on the Saturday afternoon when travelling from the Junior Ranks Club to the barracks and he was placed into close arrest and charged with offences in relation to driving of vehicles.

For Instructional Purposes Only

**EX LAUDER – Elements and Notes**

Fill in the blanks

**AFDA s. 67(1)(b) Driving a Vehicle While Under the Influence of Alcohol (2 years)**

Elements of the charge (From DM 69 (2ed) Vol 1 page \_\_\_\_\_)

1. Subject to the \_\_\_\_\_
2. Was the \_\_\_\_\_ of the vehicle
3. Drove the vehicle under the \_\_\_\_\_ of alcohol or a drug (specified substance must be proved)
4. Did so \_\_\_\_\_
5. Influence of alcohol or drug caused accused to be \_\_\_\_\_ of the vehicle
6. Date
7. **Defence (accused to prove on balance of probabilities)**  
Driving impairment caused by a drug administered by or taken in accordance with the directions of a person lawfully authorised to administer that drug

**AFDA s. 67(2)(a) Driving a Vehicle Carelessly (3 months)**

Elements of the charge (From DM 69 (2ed) Vol 1 page \_\_\_\_\_)

1. Subject to the \_\_\_\_\_
2. Was the \_\_\_\_\_ of the vehicle
3. Drove the vehicle \_\_\_\_\_
4. Did not observe the standard of care of the \_\_\_\_\_
5. Date

**MD 602**

There are MD601's relating to previous conduct which may need to be taken into consideration.

**Disciplinary officer**

The Subordinate Commander has investigated and remanded this summary trial to you as the commanding officer due to serious nature of the charge.

**Evidence**

1. Three witnesses for the presenting officer, one witness's statement to be entered by consent.
2. The accused plus two witnesses for the defending officer.
3. Sketch of crash scene (Moss).
4. Sketch of crash scene (Lauder).
5. Waiouru Admin Centre Duty Call Out Roster.
6. Invoice from Shady Night Panelbeaters.

For Instructional Purposes Only

## EX LAUDER – Disciplinary Officer

### Scenario

You are Chief of Staff TRADOC, and the WAC is one of your sub-units. You have received a Caption Summary alleging offending by M1019392, PTE N. LAUDER, RNZALR, one of your administrative staff. The Caption Summary summarised the following information:

- On 27 June 2015, PTE LAUDER was rostered as the WAC Duty Call-out at WAIOURU CAMP. Apparently, PTE LAUDER spent the afternoon in the Junior Ranks Club and in uniform. He was seen 'boat racing' with some other soldiers. At 1500 hours, he drove a service vehicle, a Nissan Bluebird, registration number ZL 3435, from the Club to the Barracks. On the way he struck a marker post opposite the Fire Station. An invoice in the amount of \$115.00 has been obtained in respect of the necessary repairs to the left rear tail-light assembly.
- D132243 CPL J. STEPHENS, RNZIR, who is an Instructor at TAD and lives in the Barracks went to offer assistance when he saw PTE LAUDER attempting to repair the vehicle in the Barracks car park. Whilst there he smelled alcohol on PTE LAUDER, who appeared to be unsteady on his feet, so he detained him and contacted the Camp Orderly SGT who arrived on the scene.
- The Camp Orderly SGT, SGT MOSS, consequently charged PTE LAUDER and placed him in close arrest for Drunkenness.

You determined that the allegations were well founded and directed that they be recorded as charges in Form MD 601. This charge was initially heard by the OC WAC however was remanded to you due to the seriousness of the charge. You have requested a Specified Certificate from a Legal Officer IAW DM 69 (2ed) Vol 1 Chap 7 para 7.3.4. The Defending Officer tells you that PTE LAUDER will be calling a defence witness.

### Task

You are to perform the duties of Disciplinary Officer in the Summary Trial of PTE LAUDER, in accordance with the DM 69 (2 ed) Volume 1.

Footnote numbers refer to the notes on reverse of this form)

REVISED 2009  
MD 601

PAGE  1  OF  2

Serial No: WAC 13/15

Base/Ship/Camp: WAIOURU








CHARGE REPORT<sup>1</sup>

Service <sup>3</sup> A	Arm <sup>3</sup> R	Full Service Description <sup>4</sup> M1019392, PTE NIGEL LAUDER, RNZALR				Unit WAC	
Plea <sup>5</sup>	CHARGES <sup>6</sup>					Finding <sup>7</sup>	
<p><b>FIRST CHARGE</b> DRIVING A VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL CONTRARY TO AFDA s 67(1)(b) in that he, at WAIOURU, on the 27 June 15 drove a Nissan Bluebird motor vehicle, registered number ZL 3435, while under the influence of alcohol to such an extent as to be incapable of having proper control of the vehicle.</p> <p><b>SECOND CHARGE</b> DRIVING A VEHICLE CARELESSLY CONTRARY TO AFDA s 67(2)(a) in that he, at WAIOURU, on the 27 June 15 drove a service vehicle, namely a Nissan Bluebird motor vehicle, registered number ZL 3435, carelessly, causing damage in the amount of \$115.00</p>							
8 S A A AS	WITNESSES AND EXHIBITS <sup>9</sup>				RECORD OF SUMMARY PROCEEDINGS <sup>11</sup>		
	<p>X991223, SGT P.C. Moss, RNZALR D132243, CPL J. Stephens, RNZIR S132243, WO2 M. Stanley, RNZIR M1019392, PTE N. Lauder, RNZALR U445326, GNR D. Rankin, RNZA M. Chris Glass</p> <p><u>Documentary Exhibits</u></p> <p>NL/01 Waiouru Admin Centre Duty Call Out Roster NL/02 Invoice from Shady Night Panelbeaters Moss Diagram Lauder Diagram</p>				<p>Investigated by <u>OC WAC</u> on 29 JUL 15</p> <p>Remanded to <u>CO</u> on 29 Jul 15</p> <p>Investigated by _____ on _____ (Name and Appt)</p> <p>Accused given the right to trial in the Court Martial _____</p> <p>Referred to DMP and remanded to Court Martial on _____</p> <p>Punished/Discharged by _____ on _____</p> <p>Signature of disciplinary officer who punished accused or discharged accused without punishment _____</p>		
ACCUSED BASIC PAY <sup>10</sup> \$ 108.49 per day							
PUNISHMENTS AND ORDERS				DETAILS OF APPROVAL, ORDERS ETC <sup>13</sup>			
Detention		Days		<p>Examined by Commanding Officer<sup>14</sup></p> <p>Signature _____ Rank _____ Date _____</p> <p>Recordable / Non-recordable<sup>18</sup></p>			
Reduction in Rank <sup>12</sup>		Rank	Seniority Date				
Stay of Seniority (Insert Period)							
Fine		\$					
Reprimand (Yes if applicable)							
Confinement to Ship or Barracks		Days					
Extra Work and Drill		Days					
Stoppage of Leave		Days					
Extra Duty		Days					
Caution (Yes if applicable)							
Order to Come Up for Punishment if Called On (Yes if applicable) <sup>15</sup>							
Compensation Order		\$					
Restitution Order (Yes if applicable)							
Fine Paid in Cash							
MD 1005 Serial No: _____		Date: _____					
Atlas TPR Raised No: _____ <sup>1</sup>		Date: _____					
Amending Atlas TPR Raised <sup>17</sup>							
No: _____		Date: _____					
For Use Following Reduction in Rank							
Rank	Trade	Sector	Tier	Level	New TFR	TPR Number	Date

NOTES AND INSTRUCTIONS ON THE USE OF FORMS MD 601 AND MD 601A

- 1 Where there is insufficient space on the front page to record all the information, the additional information is to be recorded in form MD 601A Continuation Charge Sheet, numbered and attached. The MD 601A is to have the same serial number as the MD 601 together with the Service, arm, full Service description, unit and base, ship or camp of the accused entered. Additional copies of the MD 601 or MD 601A may be made as required for lawful purposes.
- 2 Forms are to be numbered in sequence in each unit from 1 January each year.
- 3 For spaces Service and Arm see ATLAS Systems tables, General Service and Entry Arm respectively.
- 4 Full Service description, i.e. rank, first names, surname (in capitals), Service number, trade/branch or corps.
- 5 Enter G for Guilty and NG for not guilty. See DM 69 (2 ed) Volume 1 paragraph 7.5.6 for entering no plea (NP) to alternative charges which follow an alternative in respect of which the disciplinary officer has accepted a plea of guilty.
- 6 Charges are to be drawn in accordance with DM 69 (2 ed) Volume 1 Chapter 4 Section 2.
- 7 Enter D for dismissed, G for guilty, NG for not guilty. Unless the charge has been dismissed, a finding is to be recorded on each charge other than an alternative charge. If the charge is an alternative to another charge which precedes it in the charge report, and G is recorded for that preceding charge, enter NF for no finding.
- 8 Enter A if the witness is called by the accused. Enter S if the witness's evidence is given in the form of a written statement in accordance with AFDA s 117ZM (see DM 69 (2 ed) Volume 1 paragraph 6.4.3). Attach any written statement to the original copy of the MD 601.
- 9 Describe each witness by Service description if a Service member, or initials and surname if a civilian. In the case of documentary exhibits insert the letter or number of the exhibit and a brief description of the exhibit.
- 10 Where the accused is found guilty and punished, his or her basic pay applicable at the day before that on which he or she was punished is to be entered here. Basic pay, as defined in AFDA s 2(1), is the applicable daily rate of pay prescribed by CDF under the MRS.
- 11 Insert the appointment of the disciplinary officer, i.e. SUBCDR, DETCDR, CO, SUPCDR; and the date. If the accused was given the right to elect trial in the Court Martial, enter Yes where appropriate (if Yes is entered, the form MD 601 must be accompanied by a completed form MD 601C Record of Election and Waiver). Where the offender is punished or discharged without punishment the inapplicable option is to be deleted. The officer who punished the offender or discharged the offender without punishment is to sign and insert his or her name and rank in the appropriate place.
- 12 Where the punishment of reduction in rank is imposed AFDA s 84(2) requires the period of seniority to be credited to the offender to be specified. The new seniority date is to be inserted in the appropriate space. A new TFR is to be set based on Step 7 of the appropriate sector and tier for the trade of the offender.
- 13 This space is to record all the necessary additional information which is required to be recorded in respect of summary proceedings under the AFDA. Matters which are to be entered here include:
  - a Details of any approval to try a charge or impose a punishment under DM 69 (2 ed) Volume 1 paragraphs 2.2.3 or 8.1.14.
  - b Any orders made by the disciplinary officer which are prescribed in DM 69 (2 ed) Volume 1.
  - c Any direction under DM 69 (2 ed) Volume 1 paragraph 8.5.6 that a fine or compensation be paid by instalments.
  - d Any matters required to be noted in respect of compensation or restitution orders in accordance with DM 69 (2 ed) Volume 1 Chapter 8 Section 4.
  - e Any reduction of punishment ordered in accordance with DM 69 (2 ed) Volume 1 paragraph 8.1.25.
  - f Any undue delay in the disposal of the charge. In particular, where more than 30 days elapse between the commission of the offence and the commencement of the proceedings before the disciplinary officer, the reasons for the delay are to be inserted.
- 14 This panel must be completed if the disciplinary officer is a detachment commander or a subordinate commander. See DM 69 (2 ed) Volume 1 paragraph 8.1.25.
- 15 If the disciplinary officer makes an order to come up for punishment if called on, he or she must record and attach to the MD 601 a statement of his or her findings of fact in relation to the charge. See DM 69 (2 ed) Volume 1 paragraph 8.3.26.
- 16 Following input to ATLAS the TPR Register/No is to be clearly annotated on the MD 601/MD 601A (e.g. SYSADMB 1006).
- 17 If an amending ATLAS action is taken following a successful appeal to the Summary Appeal Court (or following examination by the CO), when punishments are varied or quashed, see Note 15.
- 18 See DM 69 (2 ed) Volume 1 Chapter 13 Section 1.
- 19 Distribution of MD 601/MD 601A, refer to single Service orders, e.g. DFO(N), (A) and (F). Copy 1 is to be forwarded to DLS through appropriate chain of command, whatever finding is entered.

## RECORD OF DISCLOSURE (2)

Service Description		
M1019392, PTE NIGEL LAUDER, RNZALR		
The following Information has been disclosed in accordance with DFO(D) Section 27		
Information/Evidence Disclosed (3)	Date Disclosed (4)	Signature of Accused (5)
MD601/WAC13/15 (6)	01 JUL 15	
NL/01 Waiouru Administration Centre Duty Call Out Roster	01 JUL 15	
NL/02 Invoice from Shady Night Panelbeaters dated 30 Jun 15	01 JUL 15	
OSGT Diary – entries 28 June 15	01 JUL 15	
Email CPL Stephens – Presenting Officer dated 30 Jun 15	01 JUL 15	
Moss Diagram	01 JUL 15	
Statement of S132243 WO2 M. STANLEY dated 1 July 2015	01 JUL 15	
Signature and Service Details of Officer Investigating the Charge (7)		

To be attached to original copy of MD601 (8)



**NOTES AND INSTRUCTIONS ON THE USE OF FORM MD601B**

- (1) Enter the serial number of the MD601 that the disclosure of information relates to.
- (2) MD601B is the form used to record disclosure of information in compliance with DFO(D) Section 27 and must be attached to the original of each MD601 in accordance with DFO(D) 2705.
- (3) DFO(D) Section 27 requires the officer investigating the charge to ensure that the accused is provided with a copy of the charge and is given access to any information which:
  - a. may be relied upon as evidence against the accused; or
  - b. tends to show that the accused did not commit the offence charged.

This information includes, but is not limited to:

- a. any statement made by the accused; and
- b. any documentary evidence; and
- c. any written statement made by a witness; and
- d. the record of any interview with a witness; and
- e. any unit or Service Police file which relates to the charge or, where applicable, the relevant portions of the file.

See DFO(D) 2702 for information about the form of disclosure, particularly for physical evidence and for information about disclosure of information that might prejudice protected interests such as the security or defence of New Zealand, defence relationships, or the maintenance of the law.

- (4) Enter the date that each piece of information/evidence was disclosed to the accused. Information/evidence is required to be disclosed in reasonably sufficient time to allow the accused to consider it in properly preparing his or her case prior to the investigation.
- (5) The accused is to sign to acknowledge the receipt of each disclosure.
- (6) Enter the number of the MD601 that records the charges against the accused. This must be disclosed to the accused in accordance with DFO(D) 2701.1. If the MD601 is amended prior to the investigation of the charge the accused must be provided with a copy of the amended MD601 before the investigation of the charge commences.
- (7) The officer investigating the charge is to sign to certify that DFO(D) Section 27 has been complied with.
- (8) This form is to be attached to the original copy of the MD601, is to remain with that MD601 through the review process and is to be filed with that MD601.

RECORD OF ELECTION AND WAIVER<sup>2</sup>

Service Description
<b>M1019392 PTE NIGEL LAUDER, RNZALR</b>
I, the above named person subject to the Armed Forces Discipline Act 1971, having been offered the right to elect trial in the Court Martial or summary trial by a disciplinary officer, certify as follows:
I have been advised and I understand that:
<ul style="list-style-type: none"> <li>a. A summary trial by a disciplinary officer is not a trial by an independent court.</li> <li>b. If I elect summary trial, I irrevocably waive my right under section 25(a) of the New Zealand Bill of Rights Act 1990 to be tried by an independent court.</li> <li>c. If I am tried by a disciplinary officer I cannot be represented by a lawyer at that trial.</li> <li>d. If I elect summary trial, I irrevocably waive my right under section 24(c) of the New Zealand Bill of Rights Act 1990 to legal representation.</li> <li>e. If I elect trial by the Court Martial, I will be entitled to legal aid under the Armed Forces Legal Aid Scheme.</li> <li>f. If I am found guilty by a disciplinary officer, the punishments that may be imposed are limited to those provided for in Annex A (or, as the case may be, Annex B) of DM 69 (2 ed) Volume 1 Chapter 8.</li> <li>g. If I am found guilty by the Court Martial, the Court Martial may impose any lawful sentence up to the maximum sentence for the offence.</li> <li>h. The Court Martial is presided over by a Judge and applies the ordinary rules of evidence that are used in criminal courts.</li> <li>i. Summary trials are conducted by disciplinary officers who are not Judges or lawyers and who do not apply the ordinary rules of evidence.</li> <li>j. A summary trial can be commenced and completed more expeditiously than a trial by the Court Martial.</li> </ul>
I HEREBY ELECT: <sup>3</sup>
<ul style="list-style-type: none"> <li>a. Trial by the Court Martial of New Zealand</li> <li>b. Summary trial by a disciplinary officer, and I waive my rights to trial by an independent court and to be represented by a lawyer.</li> </ul>
Signature of accused: <sup>4</sup>

<sup>1</sup> Enter the serial number of the MD 601 that the election relates to.

<sup>2</sup> MD 601C is the form used to record the election of an accused to be tried in the Court Martial or summarily by a disciplinary officer in accordance with DM 69 (2 ed) Volume 1 paragraph 7.5.33 or paragraph 7.6.38, as the case may be, and must be attached to the original of each MD 601 where the right to elect is afforded to the accused.

<sup>3</sup> Delete whichever option the accused does not elect.

<sup>4</sup> The accused is to sign to confirm his or her election.

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For Instructional Purposes Only

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HEADQUARTERS NEW ZEALAND DEFENCE FORCE  
Directorate of Legal Services  
**MINUTE**

DLS 1243-0001

03 Aug 15

CoS TRADOC

**SPECIFIED CERTIFICATE: M1019392 PTE NIGEL LAUDER, RNZALR**

**References:**

- A. MD601 M1019392 PTE NIGEL LAUDER, RNZALR
- B. DM 69 (2 ed) Volume 1 Chapter 7 paragraphs 7.3.1 – 7.3.5

First Charge

**DRIVING A VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL  
CONTRARY TO AFDA s 67(1)(b)**

in that he, at WAIOURU, on the 27 June 15 drove a Nissan Bluebird motor vehicle, registered number ZL 3435, while under the influence of alcohol to such an extent as to be incapable of having proper control of the vehicle.

Second Charge

**DRIVING A VEHICLE CARELESSLY CONTRARY TO AFDA s 67(2)(a)**

in that he, at WAIOURU, on the 27 June 15 drove a service vehicle, namely a Nissan Bluebird motor vehicle, registered number ZL 3435, carelessly, causing damage in the amount of \$115.00

1. I have examined Ref A, and certify in accordance with DM 69 (2ed) Vol 1 Chapter 7, para 7.3.4, that in my opinion the charges:
  - a. disclose offences against the AFDA;
  - b. are drawn in accordance with RP 7; and
  - c. are otherwise correct in law.
2. If the punishment awarded is detention, reduction in rank, a fine exceeding 7 days basic pay or a compensation order of an amount that exceeds 7 days basic pay, please attach this specified certificate to the MD601.



**K.G. GUY**  
CAPT, NZALS  
LO Central

DTelN: 367-0001

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For Instructional Purposes Only



NEW ZEALAND DEFENCE FORCE  
**Conviction Category Details**

**MD601E**  
 Ver 1 – Dec 14

Service No: <input type="text"/>	Surname/Init: <input type="text"/>	Rank: <input type="text"/>
----------------------------------	------------------------------------	----------------------------

Select Category(s)	Select Sub-Category	Charge Number
<input type="checkbox"/> Violence to a Superior	<input type="checkbox"/> Strikes – AFDA s35 (1)(a) <input type="checkbox"/> Uses Violence – AFDA s35 (1)(b) <input type="checkbox"/> Offers Violence – AFDA s35 (1)(c)	
<input type="checkbox"/> Ill Treatment of Subordinates	<input type="checkbox"/> Strikes – AFDA s41 (a) <input type="checkbox"/> Ill Treats – AFDA s41 (b)	
<input type="checkbox"/> Assault	<input type="checkbox"/> Assault – AFDA s74 or Crimes Act 1961/Summary Offences Act 1981 <input type="checkbox"/> Aggravated Assault – AFDA s74 or Crimes Act 1961 <input type="checkbox"/> Male Assaults Female – AFDA s74 or Crimes Act 1961	
<input type="checkbox"/> Sexual Offences	<input type="checkbox"/> Sexual Violation – AFDA s74 or Crimes Act 1961, Crimes Amendment Act 2005 <input type="checkbox"/> Behaves in a Disgraceful/Indecent Manner – AFDA S42 (b)	
<input type="checkbox"/> Controlled Drug Offences (AFDA s74 or Misuse of Drugs Act 1975)	<input type="checkbox"/> Class A: (Supply, Sell, Administer, Offer, Deal, Procure, Possess, Conspire) <input type="checkbox"/> Class B: (Supply, Sell, Administer, Offer, Deal, Procure, Possess, Conspire) <input type="checkbox"/> Class C: (Supply, Sell, Administer, Offer, Deal, Procure, Possess, Conspire) <input type="checkbox"/> Consuming, Smoking, Using Controlled Drugs <input type="checkbox"/> Cultivating Prohibited Plants	
<input type="checkbox"/> Alcohol	<input type="checkbox"/> Drunkenness – AFDA s51 <input type="checkbox"/> Possession of Alcohol – AFDA s52 <input type="checkbox"/> Driving Under the Influence of Alcohol – AFDA s67 or Civilian Conviction <input type="checkbox"/> Driving Under the Influence of a Drug – AFDA s67 or Civilian Conviction	
<input type="checkbox"/> Contributing Factors (Tick the sub-category that contributes significantly to the offence when the categories above have not been selected)	<input type="checkbox"/> Drugs <input type="checkbox"/> Alcohol <input type="checkbox"/> Psycho-Active – (See Psycho-active Substances Act 2013, s9)	
<input type="checkbox"/> Other (To be used when above categories are not applicable)	<input type="checkbox"/> Not Applicable <input type="checkbox"/> Not Applicable <input type="checkbox"/> Not Applicable	

The Disciplinary Officer/Commanding Officer is to certify that the above Category selections are correct:

\_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
 (Service No, Rank and Name)

\_\_\_\_\_  
 (Date)





NEW ZEALAND DEFENCE FORCE  
**Conviction Category Details - Reverse**

**MD601E**

Ver 1 – Dec 14

**Overview**

This form is specifically designed to enhance the purposes of reporting out of SAP HCM, to meet the NZDF's reporting and analytical data requirements. The Categories and Sub Categories that have been selected in specific areas are to further define and break down the areas of punishments to meet further reporting needs of the NZDF. All other offences in the AFDA are reported on using the AFDA section as the identifying factor. This form therefore needs to be completed accurately at all times to maintain the integrity of data reporting.

**Guidance**

The Disciplinary Officer/Commanding Officer is responsible for:

- selecting the correct category the charge relates to
- selecting the sub-category
- annotating the relevant number for the order of the charge. example First charge
- certifying that the details on the MD601E are correct, and
- forwarding the MD601E attached to either a copy of the MD601 or Civilian Conviction to the HRSC for action.

If at any stage there is any doubt about how to complete the form, Legal (Camp/Base level), or the local Human Resource Advisor will be available to provide advice.

**Selecting a Category**

If any of the offences are listed in the Sub Category column, then that Category is to be selected when there is a Guilty verdict. This is applicable for Violence to a Superior, Ill Treatment of Subordinates, Assault, Sexual Offences, Controlled Drug Offences and Alcohol Categories.

If the member was found Not Guilty or their convictions have been Dismissed or Quashed then the Other Category is to be selected with the Not Applicable Sub Category.

If the member was charged and found Guilty but was not charged under Violence to a Superior, Ill Treatment of Subordinates, Assault, Sexual Offences, Controlled Drug Offences and Alcohol Categories but it was determined that Drugs, Alcohol or Psycho-Active factors were a Contributing Factor then this Category is to be used. If the member was found Not Guilty or the convictions have been Dismissed or Quashed then the Other Category is to be selected.

If the member was found Guilty, Not Guilty, Dismissed or Quashed of any other offence not mentioned above then the Other Category is to be selected.

**Note**

You can only assign one Category and Sub Category for each of the offences that are recorded on the MD601 or Certificate of Conviction due to the restrictions of SAP HCM. If the contributing factors were also attributable this can be recorded on the MD601 and remarks in SAP HCM, but only the primary offence will be used for the offences listed on the MD601E. This is to ensure offences are not reported on in a duplicate manner.

**Selecting a Sub-Category**

Once the Category has been selected then the appropriate Sub Category that the member has been found Guilty of must be selected.

**Charge Number**

In the Charge Number column if there is more than one offence, then the number to be used is the order of offences. This is to ensure that the right Category and Sub Category are applied to the correct offence in SAP HCM.

**Note**

The MD601E is required to be completed after all Summary Trials, Civilian Convictions and Court Martials where there was an appearance at a trial and an offence was assigned an outcome (ie Guilty, Not Guilty, Dismissed).



## EX LAUDER – Presenting Officer

### Scenario

The OC Waiouru Administration Centre (WAC) has appointed you as the Presenting Officer the summary trial to be conducted against M1019392, PTE N. LAUDER, who is one of the WAC admin staff.

On 27 June 2015, PTE LAUDER was rostered as the WAC Duty Call-out at WAIOURU CAMP. Apparently, PTE LAUDER spent the afternoon (how long, you do not know) in the Junior Ranks Club and in uniform. He was seen 'boat racing' with some other soldiers. At 1500 hours, he drove a service vehicle, a Nissan Bluebird, registration number ZL 3435, from the Club to the Barracks. On the way he struck a marker post opposite the Fire Station. An invoice for \$115.00 has been obtained for the necessary repairs to the left rear taillight assembly. There is no information at hand that may throw light on how the accident occurred, other than what you see on the Charge Report and statements.

On arrival, the O/SGT, SGT MOSS talked to both CPL STEPHENS and PTE LAUDER, and consequently charged PTE LAUDER and placed him in close arrest for Drunkenness. SGT MOSS and CPL STEPHENS escorted PTE LAUDER to the Guard hut after which CPL STEPHENS departed and PTE LAUDER was placed into custody.

SGT MOSS obtained an invoice for the repairs in the amount of \$115.00.

SGT MOSS tells you that he took all of the detailed notes and made the diagrams as he was charged for an Road Traffic Accident once (and found not guilty), and so knows the process.

You request Cpl STEPHENS to email you an outline of his evidence, and then speak to him in person. During your discussion, Cpl STEPHENS informs you that Pte LAUDER had beer stains on his uniform and looked dishevelled.

You also obtain evidence from WO2 M. STANLEY who provides you with a written statement before deploying with 5 Sqn on Exercise Slipper. He is not available to attend the Summary Trial.

### Task

You are to prepare and present the case in support of the charges at the Summary Trial in accordance with DM 69 (2 ed) Volume 1. Addition you are to prepare the relevant documents that may be required by the Disciplinary Officer. This includes:

MD601 and MD 601A (if there are too many charges to fit on the MD 601)

MD601 B

MD601 C (if the offer of trial in the Court Martial is given)

MD601 D (if the accused is found guilty)

MD 602 (again, if the accused is found guilty)

**EX LAUDER – Prosecution Witness 1**

**D132243, CPL J. STEPHENS, RNZIR**

**STEPHENS JOSIAH, CPL**

**From:** STEPHENS JOSIAH, CPL  
**Sent:** Monday, 29 June 2015 14:31  
**To:** OFFICER PRESENTING, LT;  
**Subject:** 27 June – RTA

Sir,

I am an instructor at Recruit Coy TAD.

I ended up being the escort for PTE Lauder, because I believed that PTE Lauder showed signs of being drunk, he smelled of alcohol and seemed unsteady on his feet and called the Ord SGT who said to detain PTE Lauder at the barracks until he arrived (which he did at approx 1515hrs). I briefed the Ord SGT of what had transpired and he spoke to PTE Lauder. The Ord SGT then advised PTE Lauder that he was under arrest and I accompanied them both to the Guard Hut as an escort for PTE Lauder.

I know of PTE Lauder and can be sure that he was drunk as I've been told by plenty of the demo squad soldiers at TAD that he's always drunk, even when he's not supposed to be.

He must have done something badly wrong to crash the car he was driving, as the Nissan Bluebird holds to the road really well, and is really safe to drive. This was on Sat 27 Jun 15 I was returning to barracks from work. When I got there I found PTE Lauder putting some tape over the left rear tail light assembly of a military CL vehicle. The vehicle was a Nissan Bluebird registration number ZL 3435. The taillight was smashed, but I could not see any other damage to the vehicle.

Later on I was telling guys about it, and they said that they knew he would go drinking that day, as he'd said he really needed a beer cos he was sick of working weekends.

I went over to offer assistance with the repairs he was doing, that was when I noticed that PTE Lauder smelled strongly of alcohol and that he was unsteady on his feet. He was vague with his explanations. He indicated that he was the WAC Duty Callout and that he had hit a post on his way back to the barracks from the JRs Bar in the WAC duty vehicle. I think he thought he could act as if he wasn't drunk, but was at barracks to clean his teeth and stuff so he could fake being sober.

Kind regards

**Corporal Josiah STEPHENS**

Recruit Company, TAD

**NEW ZEALAND ARMY**

M +64 123 345 6789

[www.nzdf.mil.nz](http://www.nzdf.mil.nz)

## EX LAUDER – Prosecution Witness 2

X991223 SGT P.C. MOSS, RNZALR

LTDG Camp Ord SGT Notebook entries: Sat 27 Jun 15.

1200 Supervise lunch JR's Mess

1230hrs Defaulters' Parade. All present.

1330hrs Check Soldiers Club bar. Only one group present – loud and boat racing. Spoke to briefly, good spirits, polite, co-operative. No problem.

1400hrs Check barracks. No issue.

1430hrs Visit Rugby Clubrooms bar.

1500hrs on Sat 27 Jun 15 notified by CPL J. Stephens that he was with PTE N. LAUDER at Korea Barracks. Suspected PTE L been driving a service vehicle under the influence. Proceeded there from Guard hut, arriving about 1515 hours.

Found CPL J. Stephens present and with him PTE LAUDER. Recognise PTE L. as one of group boat racing at Soldiers' Bar earlier.

CPL Stephens advised that, on arriving at the Barracks from TAD, did assist PTE Lauder to repair some damage to a vehicle which had been involved in an accident. CPL Stephens told by PTE Lauder that vehicle was the WAC duty vehicle and that he had hit a post when returning to the barracks from the JRs Bar. CPL Stephens suspected that Pte Lauder had been drink driving in a military (CL) vehicle as he smelled strongly of alcohol and appeared unsteady on his feet, so he had called the Guard Hut.

Interviewed PTE Lauder, -smelled strongly of alcohol and was unsteady on his feet. Appearance dishevelled, beer stains on his uniform.

PTE Lauder vague with his explanations. Confirmed he was the WAC Duty call out and that he had hit a post in the duty vehicle on his way back to the barracks from the JRs Bars, where he had been with his mates all afternoon.

Inspected WAC duty vehicle: Nissan Bluebird #ZL 3435; tape over the left rear tail light assembly. Tail-light smashed, no other damage visible.

1525 Placed PTE Lauder under close arrest. CPL Stephens escort - PTE L to Cells for committal. Recorded CPL Stephens' contact details and advised him that he would be called as a witness. Allowed CPL Stephens to return to his barracks.

Informed PTE Lauder of the reason for his arrest; that he was accused of Drunkenness contrary to the Armed Forces Discipline Act 1971 section 51, IOT comply with section 100 of the Armed Forces Discipline Act that requires that person arrested is told asap, and no later than twenty four hours after the arrest, of the offence. PTE Lauder replied he understood, but he wasn't drunk.

Cautioned PTE Lauder to effect that he had the right to refrain from making any statement and to remain silent. Asked PTE L if he understood the this, and he said that he did. Advised PTE Lauder that he had the right to consult and instruct a lawyer without delay and in private before deciding to answer questions, unless operational circumstances did not permit that, and this right may be exercised without charge under the Armed Forces Legal Aid Scheme. Asked PTE L if he understood the this and he said that he did. Asked PTE L is he wished to exercise this right and he replied: "No, I don't have one and I don't need one," or words to that effect. I then told PTE L that anything he said will be recorded and may be given in evidence. And asked PTE L if he understood this and he replied yes.

1530 Processed PTE L. (Searched, removed articles such as his belt, shoes, beret and wallet and contents. Recorded same in Prisoner's Property Register, PTE L signed.)

Advised PTE Lauder's Officer Commanding and CSM that PTE L in close arrest and of the general circumstances. The OC WAC directed PTE L remain in custody until CSM arranged for a Guard Commander and escorts.

Once in cells, inspected and made sketch of crash site. Marks on post, patch of ice on side of road adjacent to Fire Station Barracks.

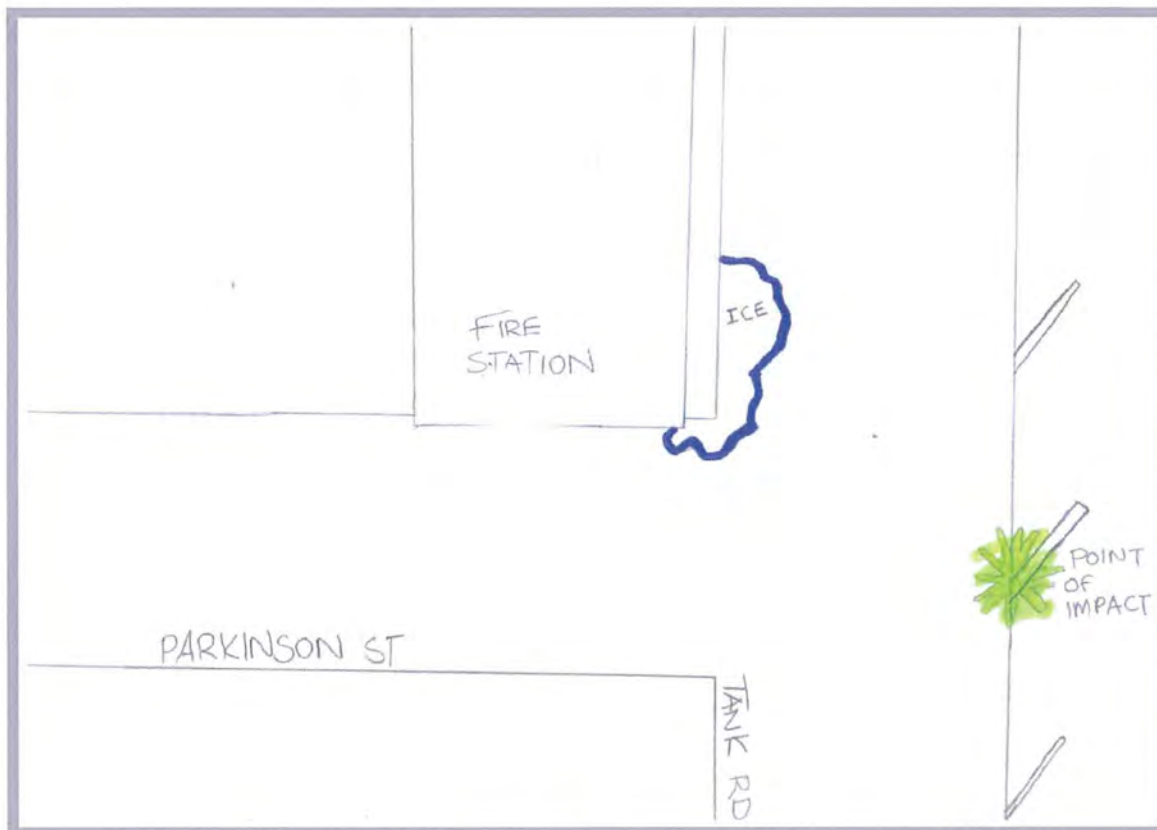
1615hrs GC arrived approximately.

No medical officer available over the weekend, therefore elected not to have PTE L medically examined. Ask PTE L if he wished to see a doctor, he replied that he didn't.

1630 hours, handed prisoner over to GC and escorts.

For Instructional Purposes Only





For Instructional

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**EX LAUDER – Prosecution Witness 3**



S132243 WO2 MIKE STANLEY states:

I am the Admin Warrant Officer at the Waiouru Admin Centre.

All soldiers serving at the WAC are required to be the Duty Call Out Per. I produce a roster and promulgate it to all the members of the Unit by posting it on the notice board and including it in Unit Routine Orders.

Pte Lauder was rostered as duty driver for the period 27-28 June 15.

During duty when not tasked, the Duty Call Out per is required to be in Camp, be in possession of the Duty cellphone, and not consume alcohol during the duty call out period.

This statement is true and correct, and I have nothing further to add. I have made this statement in the knowledge that it may be used in disciplinary proceedings and that I may be liable to disciplinary proceedings in respect of any false statement that I may have made.

Dated at Waiouru 1 July 2015

A handwritten signature in blue ink, appearing to read 'M. Stanley'.

**M. STANLEY  
WO2**



**WAIOURU ADMINISTRATION CENTRE  
DUTY CALL OUT ROSTER**

**PERIOD** 20 – 28 JUNE 15

The personnel listed below are to perform WAC Duty Call Out duties in accordance with WAC Unit Standing Orders

Day	Rank	Initials	Name	Service No	Remarks
Sat 20	LCPL	G.	BROWN	F90567	
Sun 21	PTE	R.	SMYTHE	H101010	
Mon 22	CPL	E.	THOMPSON	B93780	SATS
Tue 23	PTE	W.	VAN DER HUMM	W92887	Courier
Wed 24	CPL	J.	CELERATOR	M986126	
Thu 25	LCPL	P.	PEDERSON	F997999	
Fri 26	PTE	A.	WEST	M992537	SATS
Sat 27	PTE	N.	LAUDER	M1019392	
Sun 28	PTE	N.	LAUDER	M1019392	

1. Duties are for the period 0800 – 0800hrs each day.
2. Personnel are not to swap duties without consulting the WAC AWO.
3. Personnel are reminded to read WAC Routine Orders to check for late taskings, etc.



**M. STANLEY**  
WO 2  
AWO



## EX LAUDER – Defending Officer

### Scenario

You are OIC of the Travel/Claims Sect at the Waiouru Administration Centre (WAC), and you have been appointed by the OC WAC to act as Defending Officer for PTE N. LAUDER in a Summary Trial. M1019392, PTE N. LAUDER, RNZALR is one of your Claims Sect staff.

Last Saturday, PTE LAUDER was rostered as the WAC Duty Call-out at WAIOURU CAMP. Apparently, PTE LAUDER spent the afternoon (how long, you do not know) in the Junior Ranks Club and in uniform. He was seen 'boat racing' with some other soldiers. At 1500 hours, he drove a service vehicle, a Nissan Bluebird, registration number ZL 3435, from the Club to the Barracks. On the way he struck a marker post opposite the Fire Station. There is no information at hand that may throw light on how the accident occurred, other than what you see on the Charge Report. On arrival SGT MOSS interviewed both CPL STEPHENS and PTE LAUDER, and consequently charged PTE LAUDER and placed him in close arrest for Drunkenness. SGT MOSS and CPL STEPHENS escorted him to the Guardhut after which CPL STEPHENS departed and PTE LAUDER was placed into custody.

On speaking to PTE LAUDER, he tells you that the guys he was with were getting tanked up and one of his mates, PTE Darren RANKIN, spilt beer all over him, hence the smell (of alcohol emanating from him) and his appearance (untidy with beer-stained shirt and trousers). He was on his way back to barracks after being at the bar with his mates. PTE LAUDER is upset at his treatment, and tells you that he heard about another vehicle accident that day where the driver didn't get charged.

He also states that he was a bit shaken when he got back to the barracks, as it all happened so suddenly and that was his first ever accident. This is perhaps why he seemed unsteady and not quite with it. At the barracks he attempted to make some temporary repairs to the taillight with insulation tape. CPL STEPHENS from TAD came to assist with repairing the car at the barracks and then (for no apparent reason) called the Ord SGT. When the Ord SGT (SGT MOSS) arrived he either did not or would not listen to any explanation, hence the reason why he placed him under close arrest and into the cells. SGT MOSS seemed cross to be called out at the time, and PTE LAUDER thinks that he's just making a big deal of it now so that he doesn't look stupid for overreacting at the time.

He also tells you that SGT MOSS is really down on vehicle accidents and is out to get drivers who make mistakes, as he got charged once for a RTA and has never forgotten it. It is common knowledge amongst the baggies bar that SGT MOSS was really uptight about being called a bad driver that time, and goes out of his way to make everyone else's driving look worse.

When asked how fast he was going, PTE LAUDER estimates 10-15 km/h

You also obtain a statement from the bar person, Chris GLASS, who has now moved to Australia, who did not see PTE LAUDER consume any alcohol.

In the event of a finding of guilty you must be prepared to offer basic mitigation.

Task

You are to perform the duties of the Defending Officer in a Summary Trial in accordance with the DM 69 (2 ed) Volume 1.

For Instructional Purposes Only



## EX LAUDER – Accused and Defence Witness 1

M1019392, PTE N. LAUDER, RNZALR



## NZDF VEHICLE INCIDENT FORM AT THE SCENE DETAILS

MD1301  
Page 1

This form is to be completed at the Incident scene. For reporting procedures guidance refer to DFO 36.

## Instructions

- Ensure that there is no risk of fire, explosion and that other dangers are minimised.
- Take steps to warn other traffic.
- Where any person is injured:
  - Administer first aid
  - Arrange for medical aid to be summoned.
  - Notify the Military and Civilian Police.
- The driver of a motor vehicle:
  - involved in an incident causing human death or injury is to report in person to the Police within 24 hours, unless he/she is incapable of doing so due to injuries;
  - which causes damage to another vehicle or to property, is to report the damage and advise his/her name and address within 48 hours, unless prevented by injury from doing so, to the Police, the driver of the vehicle(s) involved or the property owner, and
  - is to advise, his / hers Section Commander or nearest Headquarters, requesting that the Military Police be informed within 24 hours of the incident occurring.
- DO NOT move the vehicle before the arrival of the Military or NZ Police unless traffic will be unduly held up or poses a safety or health issue. This is particularly important in the case of personal injury. If the vehicles must be moved arrange with the other party and mark plainly and indelibly the positions of the vehicles, skid marks etc., at the time of the incident, providing it is safe to do so.
- DO NOT admit liability or express an opinion that may be interpreted as an admission of blame on the part of the Service or Service driver, but give Military and NZ Police such facts and information as they may require.
- DO NOT become aggressive, try to keep calm and be polite.
- Complete the MD 1301 form in full before leaving the scene of the incident, including the sketch map, obtain names and addresses of witnesses and, if possible, signed statements. Take digital photographs if you are able to of: vehicles prior to recovery, damage vehicles have sustained, incident/incident scene.

1. Personnel / Driver / Operator Details					
Drivers Service No:	M1019392	Unit Title:	WAC	Rank:	PTE
First Name:	NIGEL	Surname:	LAUDER	Injured:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2. NZDF Vehicle Details					
Vehicle Type:	NISSAN BLUEBIRD		Registration /NZ No:	ZL 3435	
Description of Damage to NZDF Vehicle			NZDF Vehicle Point of Impact		
REAR TAIL-LIGHT ASSEMBLY DAMAGED.			 Indicate by arrow		
3. Details of Police / Service Police Attendance					
Police Officer in attendance:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Officers Name:	N/A	Badge / Service No:	N/A
4. Incident Details					
Date:	27 JUN 5	Time:	1450	Location / Grid Reference:	
Description of Incident					
AS I WAS TURNING RIGHT AT THE FIRE STATION I HIT AN ICY PATCH ON THE ROAD AND SKIDDED THROUGH 120° AND CAUGHT THE MARKER POST WITH THE LEFT REAR TAIL LIGHT WHICH BROKE. THERE WAS NO OTHER DAMAGE TO THE VEHICLE.					
Scene Type	<input type="checkbox"/>	Period of Day	<input type="checkbox"/>	Road Surface	Weather Conditions
One Way road	<input type="checkbox"/>	Dawn	<input type="checkbox"/>	Sealed	<input checked="" type="checkbox"/> Rain
Dual Carriageway	<input type="checkbox"/>	Daylight	<input checked="" type="checkbox"/>	Metal	<input type="checkbox"/> Overcast
Highway	<input type="checkbox"/>	Dusk	<input type="checkbox"/>	Wet	<input type="checkbox"/> Fog
Cross Country	<input type="checkbox"/>	Night	<input type="checkbox"/>	Dry	<input type="checkbox"/> Snow
Training Area	<input type="checkbox"/>			Ice	<input checked="" type="checkbox"/> Bright Sun
Camp	<input checked="" type="checkbox"/>	Traffic Flow			<input type="checkbox"/> Clear Night
Airfield	<input type="checkbox"/>	None	<input type="checkbox"/>	Street Lights	<input checked="" type="checkbox"/> Other
Dockyard	<input type="checkbox"/>	Light	<input type="checkbox"/>	None	<input type="checkbox"/>
Parking Area	<input type="checkbox"/>	Medium	<input type="checkbox"/>	Dim	<input type="checkbox"/>
Motorway	<input type="checkbox"/>	Dense	<input type="checkbox"/>	Fair	<input type="checkbox"/>
Urban Street	<input type="checkbox"/>			Bright	<input type="checkbox"/>
Speed Limit:	30 Kph	Drivers' Speed if Known	15 Kph		

5. Sketch of the incident when impact occurred (Consider the following when drawing the sketch plan):			
Road layout, road markings and studs	Position of vehicles before impact	Position of vehicles before Islands, obstructions, etc	Position and length of skid marks
Position of vehicles after impact	Position of vehicles on impact		Traffic lights, signs, Pedestrian crossings
6. Other Driver / Vehicle Details			
First Name:	N/A	Address:	Injured:
Surname:			Yes <input type="checkbox"/> No <input type="checkbox"/>
Phone N°:		Other Vehicle Point of Impact	
Insurer:	Insurance Branch:		
Registration No:	Vehicle Make/Model:	Indicate by arrow	
7. Additional Injuries			
Name:	N/A	Phone N°:	NZDF <input type="checkbox"/> Other <input type="checkbox"/>
Address:			
Name:		Phone N°:	NZDF <input type="checkbox"/> Other <input type="checkbox"/>
Address:			
8. Additional Damage to Property			
Name:	N/A	Address:	
Telephone N°:			
Damage description:			
9. Witnesses			
Name:	N/A	Telephone N°:	
Address:			
Name:		Telephone N°:	
Address:			
6. Other Driver / Vehicle Details (If more than one third party involved)			
First Name:	N/A	Address:	Injured:
Surname:			Yes <input type="checkbox"/> No <input type="checkbox"/>
Phone N°:		Other Vehicle Point of Impact	
Insurer:	Insurance Branch:		
Registration No:	Vehicle Make/Model:	Indicate by arrow	

## EX LAUDER – Defence Witness 2

U445326 GNR D. RANKIN, RNZA

### Notes Made from conversation with GNR Rankin

Informed RANKIN, PTE Nigel LAUDER, is being charged for being drunk, a driving offence and damaging service property, namely the WAC duty vehicle he was using whilst being the WAC Duty Call Out. The incident allegedly occurred 27 June 2015.

PTE LAUDER spent about two hours in the early afternoon with GNR Rankin in the Junior Ranks Club. They were boat racing. PTE LAUDER decided to join in, but he insisted on drinking lemonade or ginger ale. GNR RANKIN thinks he is recovering from some sort of medical problem.

GNR RANKIN accidentally spilt the contents of his mostly full jug over PTE LAUDER during the drinking games. PTE LAUDER left shortly after to get changed.

GNR RANKIN not see PTE LAUDER drink any alcohol at any time during the day.

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**EX LAUDER – Defence Witness 3**

**CHRIS GLASS – Duty Bar Person (Civilian)**



**Written Statement**

Mr Christopher Glass states:

I was the barman on duty on Saturday 27 June 15.

During that day a person whom I have met on several occasions and know as Nigel Lauder was present in the bar for several hours.

He only bought one drink, when he first arrived, which was a ginger ale. From then on he joined a group at a table who were doing boat races. I was unable to see what he was drinking from where I was at the bar. The group he was with were buying rounds, and most of the rounds included lemonade or ginger ale. On one occasion I sold them a jug of ginger ale which I assumed was for the boat races they were doing.

The group got quite rowdy later in the day, but when I went over to ask them to keep it tidy, Nigel had already left. This was around 3.

I make this report knowing that it will be used in the investigation of the accident, and confirm that the contents are true, knowing that any false statement is an offence.

A handwritten signature in blue ink, appearing to read "Chris Glass".

Mr Christopher Glass  
30 Jun 15

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- 35 -


(Numbers in brackets refer to the notes on reverse of this form)

MD601

(2006 Rev)

PAGE ONE OF ONE  
18/07 (2)Serial No.: ABW  
Base Ship Camp: Waiouru

## CHARGE REPORT (1)

Service (3) <b>A</b>	Arm (3) <b>R</b>	Full Service Description (4) M1019392, PTE NIGEL LAUDER, RNZALR		Unit <b>LOTG</b>
Plea (5) N/A	CHARGES (6) <b>AVOIDANCE OF DUTY CONTRARY TO AFDA s. 49(a)</b> in that he, at Waiouru, on <b>15 Aug 2012</b> , failed to attend the 0800 lecture, a parade it was his duty to attend.			Finding (7)  G
(8)	WITNESSES AND EXHIBITS (9) P45678 SSGT M. ROBERTS, RNZE		Person Assisting Accused <u>N/A</u> (11) RECORD OF SUMMARY DISPOSAL Investigated by Maj S Yates, OC on 21 Aug 12 Remanded N/A on 21 Aug 12 Investigated by on 22 Aug 12 (Name and Appt) Accused given the right to trial by court-martial <b>NO</b> Remanded for court-martial <b>NO</b> Tried/Dealt with summarily on 22 Aug 12 Punished by Maj S Yates, OC on 22 Aug 12 Signature of officer who punished accused or discharged accused without punishment   <b>MAJ</b> (Name) (Rank) (12)	
ACCUSED'S BASIC PAY (10) \$ <u>76.00</u> per day				
PUNISHMENTS AND ORDERS		DETAILS OF APPROVAL, ORDERS ETC (14)		
Detention		Days		
Reduction in Rank (13)		Rank Seniority Date		
Stay of Seniority (Insert Period)				
Fine		<b>\$250.00</b>		
Reprimand ('Yes' if applicable)		<b>Yes</b>		
Confinement to Ship or Barracks		Days		
Extra Work and Drill		Days		
Stoppage of Leave		Days		
Extra Duty		Days		
Caution ('Yes' if applicable)				
Compensation Order		\$		
Restitution Order ('Yes' if applicable)				
Fine Paid in Cash				
MD1005 Serial No.:		Date:		
ATLAS TPR Raised No.:		Date: _____		
Amending ATLAS TPR Raised (16)		Date: _____		
No.:		Date: _____		
		Examined by Commanding Officer:  Date Signature Rank		
		Reviewable (17) Recordable (17)		

Distribution (18) Copy 1 For Dispatch to DLS  
Copy 2 For Filing in Service Member's MD602  
Copy 3 For Unit File

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### VICTIM IMPACT STATEMENT

1. The following information is being sought for the consideration of the officer exercising summary powers, if a guilty finding is entered, in deciding an appropriate punishment for the offender. You do not have to give a statement if you do not wish to do so.
2. As the victim, you must ensure that any information you give is true. It is an offence contrary to AFDA s 55(1) to knowingly make a false statement in a Victim Impact Statement.
3. The information recorded on this form must be signed by you, if it is to be considered by the officer exercising summary powers.
4. The offender will not be entitled to receive a copy of this statement, however, if requested, s/he may read it.
5. As the victim, you may request that the officer exercising summary powers make an order restricting the disclosure of the Victim Impact Statement in accordance with the Victims' Rights Act 2002.

**Please detail any emotional or physical harm that you suffered through, or by means of, the offence:**

*Nil.*

**Please detail any loss of, or damage to, property that you suffered through, or by means of, the offence:**

*The vehicle in question was out of service, pending repairs. This required an alternative vehicle to be used to ensure that the required taskings of the Unit are still carried out. As an alternative CL vehicle is not presently available, soldiers of the Unit have been required to carry out taskings on foot where possible, or use the NMV instead. As the NMV is designated for other tasks, drivers have had to share the NMV, or double up in duties to ensure that everything gets done. This has resulted in soldiers, including myself, having to work longer than usual working days, and often starting early or skipping PT or breaks in order to achieve all the required outputs with only the NMV to use.*

**Please detail any other effects of the offence that you suffered through, or by means of, the offence:**

*The Unit sporting activity had to be cancelled due to the lack of the vehicle as a support vehicle and the additional timing pressures that arise out of having only one vehicle.*



I understand that I am required to ensure that any information I give in this statement is true and I confirm that the information is true to the best of my knowledge and belief.



M. STANLEY

9 July 2015

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Dated

Witnessed by:



J10204 CPL SJ Simon RNZALR

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## NZDF MILITARY JUSTICE TRAINING PROGRAMME

### LEVELS TWO & THREE

# PERFORM THE DUTIES OF PRESENTING, DEFENDING AND DISCIPLINARY OFFICERS

## EX X-RAY Practical Assessment Scenario Navy Version

### Actors:

1. Disciplinary Officer
2. Presenting Officer
3. Prosecution Witness 1
4. Prosecution Witness 2
5. Defending Officer
6. Accused & Defence Witness 1
7. Defence Witness 2
8. Observer

### Documents:

- A. Exercise Briefs
- B. MD 601 Charge Report & MD 601A
- C. MD 601B
- D. MD 601C
- E. Specified Certificate
- F. Prosecution evidence statements
- G. Defence evidence statements
- H. X-Ray exhibits
- I. MD 602 (Previous MD 601 Charge Report)
- J. Victim Impact Statement

## EX X-RAY – Exercise Brief

### Exercise Brief

The assessment for 'Perform the Duties of Presenting, Defending and Disciplinary Officers' will be conducted in a practical test utilising a syndicate of six trainees as actors for Level 2, and seven trainees as actors for Level 3, who will be assigned role plays in a Summary Trial for the following appointments:

1. Disciplinary Officer (Legal Officer Directing Staff for Level 2)
2. Presenting Officer
3. Prosecution Witness No 1
4. Prosecution Witness No 2
5. Defending Officer
6. Accused & Defence Witness No 1
7. Defence Witness No 2
8. Observer

The Legal Officer DS will conduct assessment of the Presenting, Defending and Disciplinary Officers using the assessment sheets, found in the Trainees' Work Book. Trainees are to demonstrate their competence in performing the assigned duties in a Summary Trial and are permitted access to reference material including DM 69 (2 ed) Volume 1 during the assessment.

Witnesses should give their evidence in accordance with their statements but, if necessary, may make up reasonable supporting evidence that would apply to the situation.

In the event that there is any disparity between the initial statement of a witness and what they tell the Presenting or Defending Officer – the evidence presented during the summary trial by the witness will be that which is advised to the Presenting or Defending Officer, not that which is in the earlier statement.

The exercises proceed on the basis of pleas of not guilty including the punishment phase.

Presenting and defending officers must call all of their witnesses, and produce in evidence all written statements where the witness is not present. For the purposes of the trial assessments the accused will give evidence.

Presenting and defending officers must cross examine the witnesses called for the opposite party. Re-examination need only occur by necessity if required.

In the event of a finding of guilty the defending officer must be prepared to offer basic mitigation.

## Scenario – Overview

LSCS S. DODGE L43940, currently posted to HMNZS PHILOMEL, does not like his work. He has developed a phobia about loud noises. Consequently he avoids places such as the parade ground and the range.

On Monday 6 July 2015, DODGE did not report for work at 0800 and by 0830 on his trade's WO, WOSCS B. NIVEN C38271, HMZNS PHILOMEL telephoned him at home. DODGE claimed that his foot was broken and that a doctor at Naval Health Unit (NHU), DR DE' ATH X678965, had seen him that morning and given him the day off.

The NIVEN rang NHU to clarify the story. DE' ATH had seen DODGE, but discovered nothing physically wrong. DODGE was told by DE' ATH that he should go back to work. DE' ATH has offered to appear before any disciplinary proceedings.

DODGE claims to have injured his foot, and to some extent this is supported by his friend and neighbour ASCS BRADFORD.

It is alleged DODGE assaulted DE' ATH at the NHU, by pushing him to the ground, but DODGE claims it was accidental.

Between the dates 7-21 July 2015 Statements were taken by CPOMAA SCRIBE, Military Police from WOSCS NIVEN, DR DE' ATH, LSCS DODGE, ASCS BRADFORD, POMED GEEK. There are three exhibits – two official x-rays and a copy of an x-ray modified by the accused.

For Instructional Purposes Only

**EX X-RAY – Elements and Notes**

Fill in the Blanks

**AFDA s. 50(1)(a) and 2(b) Malingering  
(2 years)**

**Elements of the  
charge (from DM  
69 (2ed) Vol1 page  
\_\_\_\_\_)**

1. Subject to the \_\_\_\_\_
2. Represented that he or she was suffering from a  
\_\_\_\_\_
3. Representation was \_\_\_\_\_
4. \_\_\_\_\_ that representation was false
5. Intended to \_\_\_\_\_ service or duty
6. Date

**AFDA s. 74(1) and Crimes Act s.196  
Assault (1 year)**

**Elements of the  
charge (from DM  
69 (2ed) Vol 1  
page \_\_\_\_\_)**

1. Subject to the \_\_\_\_\_
2. Applied \_\_\_\_\_ to the victim
3. \_\_\_\_\_ to apply \_\_\_\_\_ to the victim or some other  
person
4. Date

**MD 602**

There are MD601's relating to previous conduct which may need to be taken into consideration.

**Rank**

The Subordinate Commander has investigated then remanded the matter to the CO due to serious nature of the charge.

**Evidence**

1. Three witnesses for the presenting officer, one witness's statement to be entered by consent.
2. The accused plus two witnesses for the defending officer, one witness's statement to be with Disco approval.
3. Head x-ray
4. Foot x-ray.
5. Head and foot x-ray (marked).

For Instructional Purposes Only



## EX X-RAY – Disciplinary Officer

### Background

You are the Commanding Officer of HMNZS PHILOMEL.

A Service member within your command, LSCS DODGE is suspected by his Warrant Officer, WOSCS NIVEN of being idle and a malingerer. The suspicion came to a head on Monday 06 JUL 15, the morning of which was scheduled for range activities.

It is alleged that LSCS DODGE has tried to avoid the range, by attending NHS claiming to have injured his foot. It is also alleged that at NHU, he assaulted an NHU medical doctor, DR DE' ATH, by pushing him to the floor.

You have been handed the Caption Summary and you decided that the allegations are well founded, in accordance with AFDA s 102 (DM 69 (2 ed) Volume 1 paragraph 4.2.2 refers). You then had the allegations recorded in the Charge Reports.

The subordinate commander, your XO, has heard the charges however has remanded the accused to be heard by you due to the belief that she did not have sufficient powers of punishment. You hold the required certificate of competency.

The evidence was disclosed prior to the summary trial before the XO on 28 July 2015. The previously assigned defending and presenting officer will be reprising their roles. As you considered that punishment options include detention, reduction in rank or a fine, you have obtained a specified certificate from a Northern Region Legal Officer.

### Task

You are to perform the duties of Disciplinary Officer in the summary trial of LSCS S.A DODGE, in accordance with the DM 69 (2 ed) Volume 1.



Footnote numbers refer to the notes on reverse of this form)

REVISED 2009  
MD 601

PAGE 1 OF 2

Serial No: \_\_\_\_\_

Base/Ship/Camp: HMNZS PHILOMEL

CHARGE REPORT<sup>1</sup>

Service <sup>3</sup> N	Arm <sup>3</sup> R	Full Service Description <sup>4</sup> LSCS SIMON ANDREW DODGE L43940				Unit BOU
Plea <sup>5</sup>	CHARGES <sup>6</sup>					Finding <sup>7</sup>
<p><u>FIRST CHARGE</u></p> <p><b>MALINGERING CONTRARY TO AFDA ss 50(1)(a) and (2)(b)</b></p> <p>in that he, at HMNZS PHILOMEL, on 06 July 2015, with intent to avoid service or duty, falsely represented to DR D. DE' ATH X678965 that he was suffering from a broken foot.</p>						
8	WITNESSES AND EXHIBITS <sup>9</sup>				RECORD OF SUMMARY PROCEEDINGS <sup>11</sup>	
	<p>WOSCS B. NIVEN C38271, HMNZS PHILOMEL</p> <p>DR D. DE' ATH X678965 CIV</p> <p>POMAA J. SCRIBE, HMNZS PHILOMEL</p> <p>LSCS S.A. DODGE L43940, HMNZS PHILOMEL</p> <p>ASCS N. BRADFORD, HMNZS CANTERBURY</p> <p>POMED A. GEEK, HMNZS PHILOMEL</p> <p><u>Documentary Exhibits</u></p> <p>Foot x-ray of LSCS S.A. DODGE L43940</p> <p>Head x-ray of LSCS S.A. DODGE L43940</p> <p>Marked x-ray of LSCS S.A. DODGE's foot</p>				<p>Investigated by <u>XO</u> on <u>28 July 2015</u></p> <p>Remanded to <u>CO</u> on <u>28 July 2015</u></p> <p>Investigated by _____ on _____</p> <p>(Name and Appt)</p> <p>Accused given the right to trial in the Court Martial _____</p> <p>Referred to DMP and remanded to Court Martial on _____</p> <p>Punished/Discharged by _____ on _____</p> <p>Signature of disciplinary officer who punished accused or discharged accused without punishment</p> <p>_____ (Name) (Rank)</p>	
ACCUSED BASIC PAY <sup>10</sup> \$ 121.64 per day						
PUNISHMENTS AND ORDERS				DETAILS OF APPROVAL, ORDERS ETC <sup>13</sup>		
Detention				Days		
Reduction in Rank <sup>12</sup>		Rank	Seniority Date			
Stay of Seniority (Insert Period)						
Fine		\$				
Reprimand (Yes if applicable)						
Confinement to Ship or Barracks				Days		
Extra Work and Drill				Days		
Stoppage of Leave				Days		
Extra Duty				Days		
Caution (Yes if applicable)						
Order to Come Up for Punishment if Called On (Yes if applicable) <sup>15</sup>						
Compensation Order		\$				
Restitution Order (Yes if applicable)						
Fine Paid in Cash						
MD 1005 Serial No: _____		Date: _____		Examined by Commanding Officer <sup>14</sup>		
Atlas TPR Raised No: _____ <sup>16</sup>		Date: _____		Signature _____ Rank _____ Date _____		
Amending Atlas TPR Raised <sup>17</sup>		Date: _____		Recordable / Non-recordable <sup>18</sup>		
No: _____						
For Use Following Reduction in Rank						
Rank	Trade	Sector	Tier	Level	New TFR	TPR Number
						Date

Distribution<sup>19</sup> Copy 1 Dispatch to DLS Copy 2 File in Service member's MD 602 Copy 3 Unit File

## NOTES AND INSTRUCTIONS ON THE USE OF FORMS MD 601 AND MD 601A

- 1 Where there is insufficient space on the front page to record all the information, the additional information is to be recorded in form MD 601A Continuation Charge Sheet, numbered and attached. The MD 601A is to have the same serial number as the MD 601 together with the Service, arm, full Service description, unit and base, ship or camp of the accused entered. Additional copies of the MD 601 or MD 601A may be made as required for lawful purposes.
- 2 Forms are to be numbered in sequence in each unit from 1 January each year.
- 3 For spaces Service and Arm see ATLAS Systems tables, General Service and Entry Arm respectively.
- 4 Full Service description, i.e. rank, first names, surname (in capitals), Service number, trade/branch or corps.
- 5 Enter G for Guilty and NG for not guilty. See DM 69 (2 ed) Volume 1 paragraph 7.5.6 for entering no plea (NP) to alternative charges which follow an alternative in respect of which the disciplinary officer has accepted a plea of guilty.
- 6 Charges are to be drawn in accordance with DM 69 (2 ed) Volume 1 Chapter 4 Section 2.
- 7 Enter D for dismissed, G for guilty, NG for not guilty. Unless the charge has been dismissed, a finding is to be recorded on each charge other than an alternative charge. If the charge is an alternative to another charge which precedes it in the charge report, and G is recorded for that preceding charge, enter NF for no finding.
- 8 Enter A if the witness is called by the accused. Enter S if the witness's evidence is given in the form of a written statement in accordance with AFDA s 117ZM (see DM 69 (2 ed) Volume 1 paragraph 6.4.3). Attach any written statement to the original copy of the MD 601.
- 9 Describe each witness by Service description if a Service member, or initials and surname if a civilian. In the case of documentary exhibits insert the letter or number of the exhibit and a brief description of the exhibit.
- 10 Where the accused is found guilty and punished, his or her basic pay applicable at the day before that on which he or she was punished is to be entered here. Basic pay, as defined in AFDA s 2(1), is the applicable daily rate of pay prescribed by CDF under the MRS.
- 11 Insert the appointment of the disciplinary officer, i.e. SUBCDR, DETCDR, CO, SUPCDR; and the date. If the accused was given the right to elect trial in the Court Martial, enter Yes where appropriate (if Yes is entered, the form MD 601 must be accompanied by a completed form MD 601C Record of Election and Waiver). Where the offender is punished or discharged without punishment the inapplicable option is to be deleted. The officer who punished the offender or discharged the offender without punishment is to sign and insert his or her name and rank in the appropriate place.
- 12 Where the punishment of reduction in rank is imposed AFDA s 84(2) requires the period of seniority to be credited to the offender to be specified. The new seniority date is to be inserted in the appropriate space. A new TFR is to be set based on Step 7 of the appropriate sector and tier for the trade of the offender.
- 13 This space is to record all the necessary additional information which is required to be recorded in respect of summary proceedings under the AFDA. Matters which are to be entered here include:
  - a Details of any approval to try a charge or impose a punishment under DM 69 (2 ed) Volume 1 paragraphs 2.2.3 or 8.1.14.
  - b Any orders made by the disciplinary officer which are prescribed in DM 69 (2 ed) Volume 1.
  - c Any direction under DM 69 (2 ed) Volume 1 paragraph 8.5.6 that a fine or compensation be paid by instalments.
  - d Any matters required to be noted in respect of compensation or restitution orders in accordance with DM 69 (2 ed) Volume 1 Chapter 8 Section 4.
  - e Any reduction of punishment ordered in accordance with DM 69 (2 ed) Volume 1 paragraph 8.1.25.
  - f Any undue delay in the disposal of the charge. In particular, where more than 30 days elapse between the commission of the offence and the commencement of the proceedings before the disciplinary officer, the reasons for the delay are to be inserted.
- 14 This panel must be completed if the disciplinary officer is a detachment commander or a subordinate commander. See DM 69 (2 ed) Volume 1 paragraph 8.1.25.
- 15 If the disciplinary officer makes an order to come up for punishment if called on, he or she must record and attach to the MD 601 a statement of his or her findings of fact in relation to the charge. See DM 69 (2 ed) Volume 1 paragraph 8.3.26.
- 16 Following input to ATLAS the TPR Register/No is to be clearly annotated on the MD 601/MD 601A (e.g. SYSADB 1006).
- 17 If an amending ATLAS action is taken following a successful appeal to the Summary Appeal Court (or following examination by the CO), when punishments are varied or quashed, see Note 15.
- 18 See DM 69 (2 ed) Volume 1 Chapter 13 Section 1.
- 19 Distribution of MD 601/MD 601A, refer to single Service orders, e.g. DFO(N), (A) and (F). Copy 1 is to be forwarded to DLS through appropriate chain of command, whatever finding is entered.

CONTINUATION CHARGE REPORT<sup>1</sup>

Service <sup>3</sup> N	Arm <sup>3</sup> R	Full Service Description <sup>4</sup> LSCS SIMON ANDREW DODGE L43940	Unit BOU
Plea <sup>5</sup>	CHARGES <sup>6</sup>  <u>SECOND CHARGE</u>  <b>COMMITTING A CIVIL OFFENCE CONTRARY TO AFDA s 74(1) NAMELY COMMON ASSAULT CONTRARY TO SECTION 196 OF THE CRIMES ACT 1961</b>  in that he, at HMNZS PHILOMEL on 06 July 2015, assaulted DR D. DE' ATH X678965.		Finding <sup>7</sup>
8	WITNESSES AND EXHIBITS <sup>9</sup>		

NOTES AND INSTRUCTIONS ON THE USE OF FORMS MD 601 AND MD 601A

- 1 Where there is insufficient space on the front page to record all the information, the additional information is to be recorded in form MD 601A Continuation Charge Sheet, numbered and attached. The MD 601A is to have the same serial number as the MD 601 together with the Service, arm, full Service description, unit and base, ship or camp of the accused entered. Additional copies of the MD 601 or MD 601A may be made as required for lawful purposes.
- 2 Forms are to be numbered in sequence in each unit from 1 January each year.
- 3 For spaces Service and Arm see ATLAS Systems tables, General Service and Entry Arm respectively.
- 4 Full Service description, i.e. rank, first names, surname (in capitals), Service number, trade/branch or corps.
- 5 Enter G for Guilty and NG for not guilty. See DM 69 (2 ed) Volume 1 paragraph 7.5.6 for entering no plea (NP) to alternative charges which follow an alternative in respect of which the disciplinary officer has accepted a plea of guilty.
- 6 Charges are to be drawn in accordance with DM 69 (2 ed) Volume 1 Chapter 4 Section 2.
- 7 Enter D for dismissed, G for guilty, NG for not guilty. Unless the charge has been dismissed, a finding is to be recorded on each charge other than an alternative charge. If the charge is an alternative to another charge which precedes it in the charge report, and G is recorded for that preceding charge, enter NF for no finding.
- 8 Enter A if the witness is called by the accused. Enter S if the witness's evidence is given in the form of a written statement in accordance with AFDA s 117ZM (see DM 69 (2 ed) Volume 1 paragraph 6.4.3). Attach any written statement to the original copy of the MD 601.
- 9 Describe each witness by Service description if a Service member, or initials and surname if a civilian. In the case of documentary exhibits insert the letter or number of the exhibit and a brief description of the exhibit.
- 10 Where the accused is found guilty and punished, his or her basic pay applicable at the day before that on which he or she was punished is to be entered here. Basic pay, as defined in AFDA s 2(1), is the applicable daily rate of pay prescribed by CDF under the MRS.
- 11 Insert the appointment of the disciplinary officer, i.e. SUBCDR, DETCDR, CO, SUPCDR; and the date. If the accused was given the right to elect trial in the Court Martial, enter Yes where appropriate (if Yes is entered, the form MD 601 must be accompanied by a completed form MD 601C Record of Election and Waiver). Where the offender is punished or discharged without punishment the inapplicable option is to be deleted. The officer who punished the offender or discharged the offender without punishment is to sign and insert his or her name and rank in the appropriate place.
- 12 Where the punishment of reduction in rank is imposed AFDA s 84(2) requires the period of seniority to be credited to the offender to be specified. The new seniority date is to be inserted in the appropriate space. A new TFR is to be set based on Step 7 of the appropriate sector and tier for the trade of the offender.
- 13 This space is to record all the necessary additional information which is required to be recorded in respect of summary proceedings under the AFDA. Matters which are to be entered here include:
  - a Details of any approval to try a charge or impose a punishment under DM 69 (2 ed) Volume 1 paragraphs 2.2.3 or 8.1.14.
  - b Any orders made by the disciplinary officer which are prescribed in DM 69 (2 ed) Volume 1.
  - c Any direction under DM 69 (2 ed) Volume 1 paragraph 8.5.6 that a fine or compensation be paid by instalments.
  - d Any matters required to be noted in respect of compensation or restitution orders in accordance with DM 69 (2 ed) Volume 1 Chapter 8 Section 4.
  - e Any reduction of punishment ordered in accordance with DM 69 (2 ed) Volume 1 paragraph 8.1.25.
  - f Any undue delay in the disposal of the charge. In particular, where more than 30 days elapse between the commission of the offence and the commencement of the proceedings before the disciplinary officer, the reasons for the delay are to be inserted.
- 14 This panel must be completed if the disciplinary officer is a detachment commander or a subordinate commander. See DM 69 (2 ed) Volume 1 paragraph 8.1.25.
- 15 If the disciplinary officer makes an order to come up for punishment if called on, he or she must record and attach to the MD 601 a statement of his or her findings of fact in relation to the charge. See DM 69 (2 ed) Volume 1 paragraph 8.3.26.
- 16 Following input to ATLAS the TPR Register/No is to be clearly annotated on the MD 601/MD 601A (e.g. SYSADMB 1006).
- 17 If an amending ATLAS action is taken following a successful appeal to the Summary Appeal Court (or following examination by the CO), when punishments are varied or quashed, see Note 15.
- 18 See DM 69 (2 ed) Volume 1 Chapter 13 Section 1.
- 19 Distribution of MD 601/MD 601A, refer to single Service orders, e.g. DFO(N), (A) and (F). Copy 1 is to be forwarded to DLS through appropriate chain of command, whatever finding is entered.

(Footnote numbers refer to the notes on reverse of this form)

REVISED 2009

MD 601B

PAGE 1 OF 1Serial No: PHL 18/08<sup>1</sup>RECORD OF DISCLOSURE<sup>2</sup>

Service Description		
LSCS SIMON ANDREW DODGE L43940		
The following information has been disclosed in accordance with rule 9 of the Armed Forces Discipline Rules of Procedure 2008		
Information/Evidence Disclosed <sup>3</sup>	Date Disclosed <sup>4</sup>	Signature of Accused <sup>5</sup>
MD601 & MD601A	23 JUL 15	
Statement of WOSCS B.NIVEN dated 7 July 2015	23 JUL 15	
Statement of DR D. DE' ATH dated 8 July 2015	23 JUL 15	
Statement of POMAA J. SCRIBE dated 18 July 2015	23 JUL 15	
Statement of accused LSCS DODGE dated 15 July 2015	23 JUL 15	
Statement of accused ASCS N. BRADFORD dated 13 July 2015	23 JUL 15	
Statement of accused POMED A. GEEK dated 16 July 2015	23 JUL 15	
Head x-ray of LSCS S.A. DODGE L43940	23 JUL 15	
Foot x-ray of LSCS S.A. DODGE L43940	23 JUL 15	
Signature and Service description of disciplinary officer <sup>7</sup>		

To be attached to original copy of MD 601



NOTES AND INSTRUCTIONS ON THE USE OF FORM MD 601B

- 1 Enter the serial number of the MD 601 that the disclosure of information relates to.
- 2 MD 601B is the form used to record disclosure of information in compliance with DM 69 (2 ed) Volume 1 Chapter 7 Section 3 and must be attached to the original of each MD 601 in accordance with paragraph 7.3.12 of that Section.
- 3 DM 69 (2 ed) Volume 1 paragraph 7.3.6 requires the disciplinary officer to ensure that the accused is provided with a copy of the form MD 601 Charge Report and is given access to any information which:
  - a. May be relied upon as evidence against the accused; or
  - b. Tends to show that the accused did not commit the offence charged.This information includes, but is not limited to, any:
  - a. Statement made by the accused;
  - b. Relevant documentary evidence;
  - c. Written statement made by a witness; and
  - d. Unit or Service Police file which relates to the charge or, if applicable, the relevant portions of the file.See paragraphs 7.3.8 to 7.3.10 for information about the form of disclosure, particularly for physical evidence and for information about disclosure of information that might prejudice protected interests such as the security or defence of New Zealand, defence relationships, or the maintenance of the law.
- 4 Enter the date that each piece of information/evidence was disclosed to the accused. Information/evidence is required to be disclosed in reasonably sufficient time to allow the accused to consider it in properly preparing his or her case prior to being arraigned by the disciplinary officer (see paragraph 7.4.2).
- 5 The accused is to sign to acknowledge the receipt of each disclosure.
- 6 Enter the serial number of the form MD 601 that records the charges against the accused. This must be disclosed to the accused in accordance with DM 69 (2 ed) Volume 1 paragraph 7.3.6. If the form MD 601 is amended prior to the arraignment of the accused, the accused must be provided with a copy of the amended MD 601 before he or she is arraigned.
- 7 The disciplinary officer is to sign to certify that DM 69 (2 ed) Volume 1 Chapter 7 Section 3 has been complied with.

For Instructional Purposes Only

RECORD OF ELECTION AND WAIVER<sup>2</sup>

Service Description

**LSCS SIMON ANDREW DODGE L43940**

I, the above named person subject to the Armed Forces Discipline Act 1971, having been offered the right to elect trial in the Court Martial or summary trial by a disciplinary officer, certify as follows:

I have been advised and I understand that:

- a. A summary trial by a disciplinary officer is not a trial by an independent court.
- b. If I elect summary trial, I irrevocably waive my right under section 25(a) of the New Zealand Bill of Rights Act 1990 to be tried by an independent court.
- c. If I am tried by a disciplinary officer I cannot be represented by a lawyer at that trial.
- d. If I elect summary trial, I irrevocably waive my right under section 24(c) of the New Zealand Bill of Rights Act 1990 to legal representation.
- e. If I elect trial by the Court Martial, I will be entitled to legal aid under the Armed Forces Legal Aid Scheme.
- f. If I am found guilty by a disciplinary officer, the punishments that may be imposed are limited to those provided for in Annex A (or, as the case may be, Annex B) of DM 69 (2 ed) Volume 1 Chapter 8.
- g. If I am found guilty by the Court Martial, the Court Martial may impose any lawful sentence up to the maximum sentence for the offence.
- h. The Court Martial is presided over by a Judge and applies the ordinary rules of evidence that are used in criminal courts.
- i. Summary trials are conducted by disciplinary officers who are not Judges or lawyers and who do not apply the ordinary rules of evidence.
- j. A summary trial can be commenced and completed more expeditiously than a trial by the Court Martial.

I HEREBY ELECT:<sup>3</sup>

- a. Trial by the Court Martial of New Zealand
- b. Summary trial by a disciplinary officer, and I waive my rights to trial by an independent court and to be represented by a lawyer.

Signature of accused:<sup>4</sup>

<sup>1</sup> Enter the serial number of the MD 601 that the election relates to.

<sup>2</sup> MD 601C is the form used to record the election of an accused to be tried in the Court Martial or summarily by a disciplinary officer in accordance with DM 69 (2 ed) Volume 1 paragraph 7.5.33 or paragraph 7.6.38, as the case may be, and must be attached to the original of each MD 601 where the right to elect is afforded to the accused.

<sup>3</sup> Delete whichever option the accused does not elect.

<sup>4</sup> The accused is to sign to confirm his or her election.



**STAFF IN CONFIDENCE**

**HEADQUARTERS NEW ZEALAND DEFENCE FORCE**  
Directorate of Legal Services  
**MINUTE**

30 JUL 15

CO PHL

**SPECIFIED CERTIFICATE: LSCS S. DODGE L43940**

**References:**

- A. MD601 L43940 LSCS S. DODGE
- B. MD601A L43940 LSCS S. DODGE

**The Charges**

FIRST CHARGE

**MALINGERING CONTRARY TO AFDA ss 50(1)(a) and (2)(b)**

in that he, at HMNZS PHILOMEL, on 06 July 2015, with intent to avoid service or duty, falsely represented to DR D. DE' ATH X678965 that he was suffering from a broken foot.

SECOND CHARGE

**COMMITTING A CIVIL OFFENCE CONTRARY TO AFDA s 74(1) NAMELY COMMON ASSAULT CONTRARY TO SECTION 196 OF THE CRIMES ACT 1961**

in that he, at HMNZS PHILOMEL on 06 July 2015, assaulted DR D. DE' ATH X678965.

**Certification**

1. I have examined the refs, and certify in accordance with DM 69 (2ed) Vol 1 Chapter 7, para 7.3.4, that in my opinion the charges:

- a. disclose offences against the AFDA;
- b. are drawn in accordance with RP 7; and
- c. are otherwise correct in law.

2. If the punishment awarded is detention, reduction in rank, a fine exceeding 7 days basic pay or a compensation order of an amount that exceeds 7 days basic pay, please attach this specified certificate to the MD601.



**K.G. GUY**  
CAPT, NZALS  
A/ADLS(N)

DTelN: 397-7013



NEW ZEALAND DEFENCE FORCE  
**Conviction Category Details**

MD601E

Ver 1 – Dec 14

Service No: <input type="text"/>	Surname/Init: <input type="text"/>	Rank: <input type="text"/>
----------------------------------	------------------------------------	----------------------------

Select Category(s)	Select Sub-Category	Charge Number
<input type="checkbox"/> Violence to a Superior	<input type="checkbox"/> Strikes – AFDA s35 (1)(a) <input type="checkbox"/> Uses Violence – AFDA s35 (1)(b) <input type="checkbox"/> Offers Violence – AFDA s35 (1)(c)	
<input type="checkbox"/> Ill Treatment of Subordinates	<input type="checkbox"/> Strikes – AFDA s41 (a) <input type="checkbox"/> Ill Treats – AFDA s41 (b)	
<input type="checkbox"/> Assault	<input type="checkbox"/> Assault – AFDA s74 or Crimes Act 1961/Summary Offences Act 1981 <input type="checkbox"/> Aggravated Assault – AFDA s74 or Crimes Act 1961 <input type="checkbox"/> Male Assaults Female – AFDA s74 or Crimes Act 1961	
<input type="checkbox"/> Sexual Offences	<input type="checkbox"/> Sexual Violation – AFDA s74 or Crimes Act 1961, Crimes Amendment Act 2005 <input type="checkbox"/> Behaves in a Disgraceful/Indecent Manner – AFDA S42 (b)	
<input type="checkbox"/> Controlled Drug Offences (AFDA s74 or Misuse of Drugs Act 1975)	<input type="checkbox"/> Class A: (Supply, Sell, Administer, Offer, Deal, Procure, Possess, Conspire) <input type="checkbox"/> Class B: (Supply, Sell, Administer, Offer, Deal, Procure, Possess, Conspire) <input type="checkbox"/> Class C: (Supply, Sell, Administer, Offer, Deal, Procure, Possess, Conspire) <input type="checkbox"/> Consuming, Smoking, Using Controlled Drugs <input type="checkbox"/> Cultivating Prohibited Plants	
<input type="checkbox"/> Alcohol	<input type="checkbox"/> Drunkenness – AFDA s51 <input type="checkbox"/> Possession of Alcohol – AFDA s52 <input type="checkbox"/> Driving Under the Influence of Alcohol – AFDA s67 or Civilian Conviction <input type="checkbox"/> Driving Under the Influence of a Drug – AFDA s67 or Civilian Conviction	
<input type="checkbox"/> Contributing Factors (Tick the sub-category that contributes significantly to the offence when the categories above have not been selected)	<input type="checkbox"/> Drugs <input type="checkbox"/> Alcohol <input type="checkbox"/> Psycho-Active – (See Psycho-active Substances Act 2013, s9)	
<input type="checkbox"/> Other (To be used when above categories are not applicable)	<input type="checkbox"/> Not Applicable <input type="checkbox"/> Not Applicable <input type="checkbox"/> Not Applicable	

The Disciplinary Officer/Commanding Officer is to certify that the above Category selections are correct:

\_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
 (Service No, Rank and Name)

\_\_\_\_\_  
 (Date)

See guidance for completing the MD601E to the MD601/Civil Certificate of Conviction on the reverse side.





NEW ZEALAND DEFENCE FORCE  
**Conviction Category Details - Reverse**

**MD601E**  
 Ver 1 – Dec 14

### Overview

This form is specifically designed to enhance the purposes of reporting out of SAP HCM, to meet the NZDF's reporting and analytical data requirements. The Categories and Sub Categories that have been selected in specific areas are to further define and break down the areas of punishments to meet further reporting needs of the NZDF. All other offences in the AFDA are reported on using the AFDA section as the identifying factor. This form therefore needs to be completed accurately at all times to maintain the integrity of data reporting.

### Guidance

The Disciplinary Officer/Commanding Officer is responsible for:

- selecting the correct category the charge relates to
- selecting the sub-category
- annotating the relevant number for the order of the charge, example First charge
- certifying that the details on the MD601E are correct, and
- forwarding the MD601E attached to either a copy of the MD601 or Civilian Conviction to the HRSC for action.

If at any stage there is any doubt about how to complete the form, Legal (Camp/Base level), or the local Human Resource Advisor will be available to provide advice.

### Selecting a Category

If any of the offences are listed in the Sub Category column, then that Category is to be selected when there is a Guilty verdict. This is applicable for Violence to a Superior, Ill Treatment of Subordinates, Assault, Sexual Offences, Controlled Drug Offences and Alcohol Categories.

If the member was found Not Guilty or their convictions have been Dismissed or Quashed then the Other Category is to be selected with the Not Applicable Sub Category.

If the member was charged and found Guilty but was not charged under Violence to a Superior, Ill Treatment of Subordinates, Assault, Sexual Offences, Controlled Drug Offences and Alcohol Categories but it was determined that Drugs, Alcohol or Psycho-Active factors were a Contributing Factor then this Category is to be used. If the member was found Not Guilty or the convictions have been Dismissed or Quashed then the Other Category is to be selected.

If the member was found Guilty, Not Guilty, Dismissed or Quashed of any other offence not mentioned above then the Other Category is to be selected.

### Note

You can only assign one Category and Sub Category for each of the offences that are recorded on the MD601 or Certificate of Conviction due to the restrictions of SAP HCM. If the contributing factors were also attributable this can be recorded on the MD601 and remarks in SAP HCM, but only the primary offence will be used for the offences listed on the MD601E. This is to ensure offences are not reported on in a duplicate manner.

### Selecting a Sub-Category

Once the Category has been selected then the appropriate Sub Category that the member has been found Guilty of must be selected.

### Charge Number

In the Charge Number column if there is more than one offence, then the number to be used is the order of offences. This is to ensure that the right Category and Sub Category are applied to the correct offence in SAP HCM.

### Note

The MD601E is required to be completed after all Summary Trials, Civilian Convictions and Court Martials where there was an appearance at a trial and an offence was assigned an outcome (ie Guilty, Not Guilty, Dismissed).

## EX X-RAY – Presenting Officer

### Background

You have been appointed as the Presenting Officer by CO PHL in the summary trial to be conducted against LSCS S. DODGE L43940.

You do not know LSCS DODGE at all, having recently been posted to HMNZS PHILOMEL.

You have received the complete file from CPOMAA SCRIBE, NZDF Military Police on 23 JUL 15, and at the direction of the CO, and have disclosed a copy of the file to LSCS DODGE's defending officer. You receive the MD 601B, which you hand to the CO.

WOSCS NIVEN confirms his statement of 07 JUL 15 is correct but adds that he has heard that DODGE has pushed people over previously, as if it was an accident, that the police have warned him about this, and he may have got diversion for it before he joined the Navy.

Dr DE' ATH confirms his statement of 08 JUL 15 is correct. You obtain a Victim Impact Statement from him. You discuss the possibility of a Restorative Justice Conference with him, and he thinks that would be beneficial to him and the accused.

CPOMAA SCRIBE advises he cannot give evidence in person, and he asks that his evidence be entered in written form.

You discuss the case with the defending officer on 10 JUL 15, to be told that LSCS DODGE is intending to defend the charges and is insisting on giving evidence. You are told that DODGE's defence will be that he genuinely thought he had broken his foot, and that knocking the doctor over was accidental. You also request of the defending officer that POMAA SCRIBE's evidence is to be in written form and not in person.

You note that DODGE was found guilty of malingering on 22 AUG 12, and you are aware that if found guilty, the disciplinary officer may require a report on DODGE's record and general conduct in the RNZN.

**Task**

You are to prepare and present the case in support of the charges at the Summary Trial in accordance with DM 69 (2 ed) Volume 1. The STAC is unavailable so you have been directed to prepare the following documents for the disciplinary officer.

MD601 and MD 601A (if there are too many charges to fit on the MD 601)

MD601 B

MD601 C (if the offer of trial in the Court Martial is given)

MD601 D (if the accused is found guilty)

MD 602 (again, if the accused is found guilty)

For Instructional Purposes Only



**EX X-RAY – Prosecution Witness 1**



**STATEMENT FORM**

WOSCS B. NIVEN C38271, HMNZS PHILOMEL states:

I am making this statement to POMAA SCRIBE, HMNZS PHILOMEL in relation to allegations of malingering and assault by LSCS DODGE.

LWTR DODGE is a wimp and a real malingerer, and has a previous conviction for malingering back in 2013. I do not like this guy or his attitude. He owns a boy racer car, and one weekend I saw him wearing an ear ring.

On the morning of Mon 06 Jul 2015 there was a session planned at the range at 1000, and I know that DODGE hates the range. DODGE failed to turn up for work by 0830. I phoned him at home at 0900 hours Monday morning and spoke to him and he told me that his foot was broken and that a doctor at NHS had seen him and given him the day off.

I was immediately suspicious so, at about 0915 hours, I rang NHS to get their end of the story. A medical doctor at NHS told me that DODGE had called in feigning a broken foot, but was okay so he sent him back to work.

DODGE finally turned up at work at 0930 hours, that same day, limping. He said he had been to NHS as he had a broken foot and the doctor had taken an x-ray of his foot and head. He said he was not happy when the doctor took an x-ray of his head, as this suggested he was a nut case.

DODGE said he has put the doctor in his place. I asked him what he meant by that and he said with a smile "I grounded him". I then gave DODGE a burst and told him that he was going to be charged. It's time he lost his rank as it was long overdue.

This statement is true and correct, and I have nothing further to add. I have made this statement in the knowledge that it may be used in disciplinary proceedings and that I may be liable to disciplinary proceedings in respect of any false statement that I may have made.

Dated at HMNZS PHILOMEL 7 July 2015

A handwritten signature in blue ink, appearing to read "B. Niven".

**WOSCS B. NIVEN**

## EX X-RAY – Prosecution Witness 2



### STATEMENT FORM

DR D. DE' ATH X678965 CIV states:

I am a civilian registered medical practitioner, and work at NHS. I have known the accused for the past three years, as he has been a regular patient calling to see me about every six weeks. I identify the accused LSCS DODGE who is present at this trial seated beside his defending officer.

LSCS DODGE reported to NHS sick parade on Monday, at 0800 hours, complaining of a broken foot. I examined the foot and found nothing wrong. I took an x-ray, just in case, which shows no breaks. Due to some suspicions of possible head injury (as it was a result of a fall), I also x-rayed his head however there was no sign of recent injury there either. I will produce the x-ray as evidence.

When I x-rayed his head, DODGE was not happy, and said words to the effect that "You think I'm a nutter, don't you?" I replied "Yes, it's a pity they closed Lake Alice. Don't come back here again wasting my time, you horrible little man".

During your examination, DODGE admitted to me that, "I just hate work, the range is noisy and don't want to go". I told him to stop malingering and wasting everybody else's time, and to get back to work.

As DODGE was leaving the surgery, he fell heavily against me. I was standing, and he knocked me over. I landed on my backside and seated on the floor. DODGE only said "Enjoy the rest of your day", and left without assisting me in any way.

DODGE's body collided with mine, the force of which knocked me over, and I broke my watch strap. He did not push me with his hands or arms. I think he did so intentionally, because I had upset him. Had it been an accident, I think he would have said so, and helped me to my feet. No one else was present in the surgery.

I x-rayed my back side and self examined it in a long mirror. I found my cheeks were bruised. I was unable to sit comfortably was about three days, and I have been unable to ride my horse to work of late. I broke my watch.

I heard that DODGE has done this sort of thing before – pushing people over as if it was an accident. I heard the police warned him about this, and he may have got diversion for it before he joined the Navy.

Later that morning, about 0915 hours, WOSCS B. NIVEN rang me about DODGE's whereabouts. I told the WO that I had examined DODGE, that there was nothing wrong with him and I had told him to get back to work.



DODGE is a regular attendee at medical parades, claiming differing illnesses each time, all of which are always unfounded. He is, in my specialist medical opinion, physically sound, and is simply lazy and malingering. I do not really suspect any mental illness.

This statement is true and correct, and I have nothing further to add. I have made this statement in the knowledge that it may be used in disciplinary proceedings and that I may be liable to disciplinary proceedings in respect of any false statement that I may have made.

Dated at HMNZS PHILOMEL 08 July 2015



**David DE' ATH**

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For Instructional Purposes Only

XRAY RIGHT FOOT OF  
LSCS S.A. DODGE L43940,  
HMNZS PHILOMEL  
TAKEN BY DR DE'ATH  
X67824, NHU on 6 July 2015



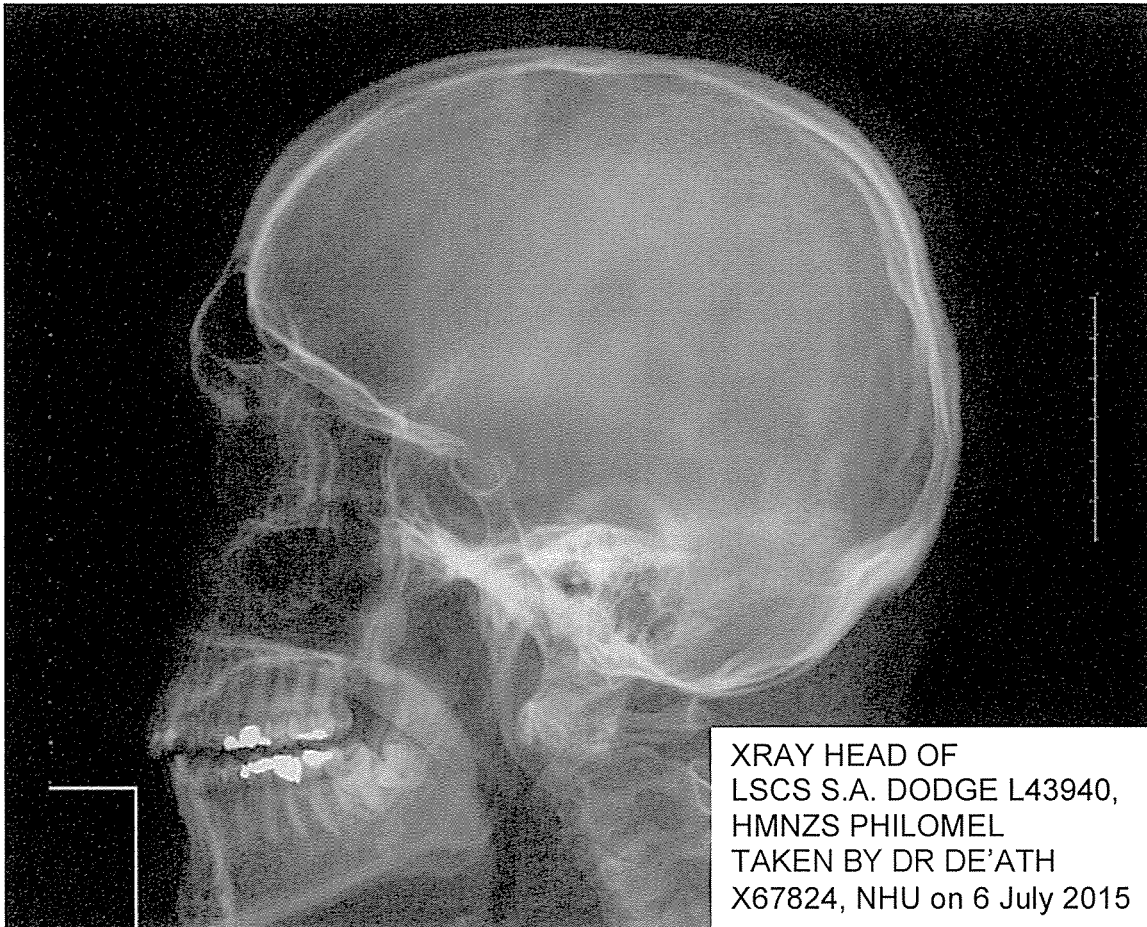
1/1/15

1/1/15

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For Instructional Purposes Only





XRAY HEAD OF  
LSCS S.A. DODGE L43940,  
HMNZS PHILOMEL  
TAKEN BY DR DE'ATH  
X67824, NHU on 6 July 2015

For Instructions

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For Instructional Purposes Only



**EX X-RAY – Prosecution Witness 3**



**STATEMENT FORM**

CPOMAA J. SCRIBE, HMNZ PHILOMEL states:

I am posted to the Military Police at HMNZS PHILOMEL.

As a result of information received I took statements from DR D. DE' ATH, WOSCS NIVEN, POMED A. GEEK, ASCS BRADFORD, and the accused.

Before I took the statement from the accused I advised him of his right to refrain from making any statement and to remain silent, that he had the right to consult and instruct a lawyer without delay and in private before deciding to answer questions, and this right may be exercised without charge under the Armed Forces Legal Aid Scheme. He was also advised that anything he said would be recorded and may be given in evidence.

I request that this statement be admitted in evidence in any disciplinary proceedings against LSCS DODGE in accordance with DM 69 (2 ed) Volume 1 paragraph 6.4.3

Dated at HMNZS PHILOMEL 18 July 2015

**John Scribe**

For Instructional Purposes Only

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## EX X-RAY – Defending Officer

### Background

You have been appointed as the defending officer in the summary trial to be conducted against LSCS S. DODGE L4394, HMNZS PHILOMEL. You are his Divisional Officer. You have received the complete prosecution file on 23 JUL 15, and in turn provide the accused with a copy. You have LSCS DODGE sign the MD601B, which you have returned to the Presenting Officer.

You have discussed the case with the accused who confirms his statement is correct. He wants to give evidence, but asks that he does so after his friend ASCS BRADFORD does so, as it will be fairer to him to clear up any errors ASCS BRADFORD may make. DODGE has no objection to DR DE' ATH giving evidence, and thus issues of medical confidentiality do not arise. [Question: Would this have been an issue if DODGE had objected?]

You discuss the case with ASCS Nicholas BRADFORD and he cannot add much to his statement. POMED GEEK advises he cannot give evidence in person, and he asks that his statement be admitted in written form. [Question: what needs to occur for this statement to be entered in this form?]

You discuss the case with the presenting officer, and advise him that LSCS DODGE is intending to defend the charges and is insisting on giving evidence. You advise that DODGE's defence will be that he genuinely thought he had broken his foot, and that knocking the doctor over was accidental.

You are also advised that a prosecution witness, CPOMAA SCRIBE who took statements from the witnesses, will be away on day of the trial and the presenting officer wants to produce the statement in written form. [Question: what is required for this statement to be entered by the presenting officer in this form?]

You note that DODGE was found guilty of malingering on 22 AUG 12, and you are aware that if found guilty, the disciplinary officer may require a report on DODGE's record and general conduct in the RNZN. DODGE advises that charge should never have been brought nor should he have been found guilty.

In the event of a finding of guilty you must be prepared to offer mitigation. You discuss what could be said in mitigation if he was found guilty of one or both of the charges. DODGE advises it would be very difficult to pay a fine, as he has heavy financial commitments, and that a reduction in rank would be a financial disaster to him.

### Task

You are to assist the accused in the preparation and presentation of his case, and act on his behalf in accordance with DM 69 (2 ed) Volume 1.

## EX X-RAY – Accused & Defence Witness 1



### STATEMENT FORM

LSCS SIMON ANDREW DODGE L43940, HMNZS PHILOMEL states:

I have been cautioned that I do not have to make a statement, and I am advised under the NZ Bill of Rights Act that I may take legal advice, in private, without delay, and at no cost to me. I am happy to make a statement and do not want to talk to a lawyer.

I have been protesting to DR DE' ATH at NHS for several years now about how loud noises, such as gunshots, really hurt my ears. He does not seem to want to listen, and I feel that he does not like me.

On the morning of Monday morning 06 July 15, before work, I climbed a tree in my back yard to rescue my cat. I fell and as I hit the ground, I heard a cracking sound and felt pain in my right foot. My neighbour must have seen me fall from the tree, as he spoke to me just after I fell.

The tree needs to be trimmed, as it blocks sunlight from my kitchen. I have been to accommodation six times now to ask them to trim the tree, but nothing gets done.

I was sure my foot was broken, so I got my wife to drive me from our Navy house to NHS, where I saw DR DE' ATH.

DE' ATH x-rayed my foot and head, although I am not sure why he did my head. When the doctor x-rayed my head, I was not happy, and I said "You think I'm a nutter, don't you?". He replied, "Yes, it's a pity they closed Lake Alice. They used to keep loonies like you there. Don't come back here again wasting my time, you horrible little man". He said my head and foot were okay and there was nothing wrong with me. He gave me a copy of the x-ray. Later that day I coloured the x-ray copy, showing where my foot was sore, which I will produce as an exhibit.

I have my doubts about the x-ray machine at the hospital. Someone told me it was left over from the Vietnam War, and it's all a bit hit and miss. In my opinion it should be dumped.

As I was leaving the surgery, I fell against the doctor. He was standing, and I knocked him over. He landed on his backside, seated on the floor. I grinned as I thought he got what he deserved for insulting me, so I said "Enjoy the rest of your day." I did not tell him it was an accident, because it was obvious that it was. I did not push him with my hands or arms. I think I lost my balance because of the pain in my foot. I then walked home.

WOSCS B. NIVEN, a real nasty character and who hates me, rang me at about 0900 hours. I told him that I thought I had a broken foot or, at least, something was badly wrong with it. I also told the WO that DR DE' ATH had said that I could go back to work, but I thought I should have the day off due to the pain; that I would not be of much use on the range.

I decided to go to work in any event, and got there at about 0930. The WO was obnoxious and obviously irate. He gave me a real dressing down, finally saying that I was going to be



charged. I also told the WO that I had put the doctor in his place and that I had grounded him, but didn't explain any more because the WO wasn't listening.

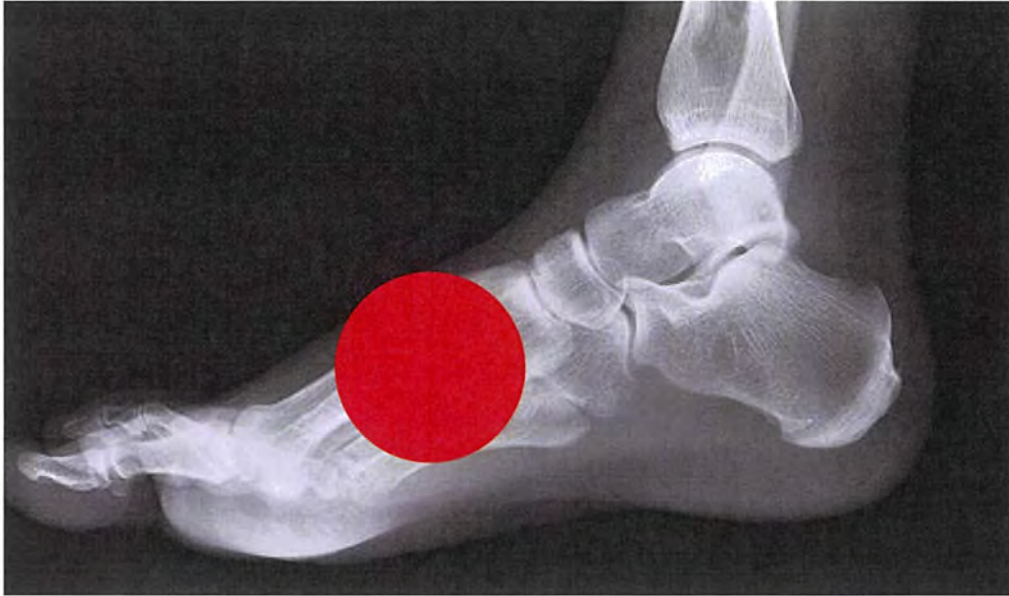
This statement is true and correct, and I have nothing further to add. I have made this statement in the knowledge that it may be used in disciplinary proceedings and that I may be liable to disciplinary proceedings in respect of any false statement that I may have made.

Dated at HMNZS PHILOMEL 15 July 2015



**Simon DODGE**

For Instructional Purposes Only



MARKED COPY OF XRAY OF  
RIGHT FOOT OF LSCS S.A. DODGE L43940, HMNZS PHILOMEL

For Instructional Purposes

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For Instructional Purposes Only



## EX X-RAY – Defence Witness 2



### STATEMENT FORM

ASCS Nicholas BRADFORD, HMNZS CANTERBURY states:

I am a friend of the accused, and I live next door to him. I talk to him nearly every day. I have known him since we both joined the Navy six years ago.

On the day in question, at about 0700, I saw from my kitchen window, the accused LSCS DODGE climbing the big oak tree in his back yard. I watched him, as at the time I thought it was a strange thing to do, and he is a bit strange. He was bare footed, and wearing pyjamas. I then saw his cat in the top branches, but before LSCS DODGE got to his cat, he fell from the tree from a height of about three metres. I saw him land and went to the fence to see if he was hurt. He was sitting on the ground swearing and rubbing his bare left foot. He said he would be all right, got up and limped back into his house.

I spoke to the accused after work that day. He said he had been to NHS, and that the x-ray confirmed he had broken a bone.

He said he had trouble with the doctor, and had knocked him over by accident, but they were now saying it was an intentional assault. I told him not to worry as everyone knows you are clumsy and are always walking into things and people by mistake. He has crashed into me about three times that I can recall, and each time it has been an accident. In my opinion he is accident prone. He is usually a happy person and I have never heard of him assaulting anyone.

This statement is true and correct, and I have nothing further to add. I have made this statement in the knowledge that it may be used in disciplinary proceedings and that I may be liable to disciplinary proceedings in respect of any false statement that I may have made.

Dated at HMNZS PHILOMEL 13 July 2015

A handwritten signature in blue ink, appearing to read "NB", written over a faint watermark.

Nicholas BRADFORD

**EX X-RAY – Defence Witness 3**



STATEMENT FORM

POMED Albert GEEK, HMNZS PHILOMEL states:

I am a medic. My duties include examining medical equipment used by the RNZN. One month before the day the x-ray was taken of the accused's foot and head, I examined the Base x-ray machine and found it to not be in order and not functioning correctly. I x-rayed my own foot and found the x-ray showed a broken bone, which was inconsistent with the good health of my foot on that day. I don't trust it.

Someone said the x-ray machine was surplus from the Vietnam War and needs to be replaced.

This statement is true and correct, and I have nothing further to add. I have made this statement in the knowledge that it may be used in disciplinary proceedings and that I may be liable to disciplinary proceedings in respect of any false statement that I may have made.

Dated at PHL 16 July 2015

A handwritten signature in blue ink, appearing to read "A. Geek".

Albert Geek



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Numbers in brackets refer to the notes on reverse of this form)

**MD601**  
(2009 Rev)

PAGE ONE OF ONE

Serial No.: ABW 18/07 (2)  
Base/Ship/Camp: TEM

**CHARGE REPORT (1)**

Service (3) <b>F</b>	Arm (3) <b>R</b>	Full Service Description (4) LSCS SIMON ANDREW DODGE L43940, HMNZS TE MANA	Unit <b>GTW</b>
Plea (5) N/A	CHARGES (6) <b>MALINGERING CONTRARY TO AFDA s. 50(1)(a)</b> in that he, at HMNZS TE MANA, on <b>15 Jun 2012</b> , with intent to avoid service or duty, falsely represented to CPOMED. FIXIT P45678 that he was suffering from a sprained knee.		Finding (7) G
(8)	WITNESSES AND EXHIBITS (9) CPOMED M. FIXIT P45678 OCO A. COMM X678968	Person Assisting Accused (11) N/A RECORD OF SUMMARY DISPOSAL Investigated by LT AB Jones on 21 Aug 12 Remanded to Commanding Officer on 21 Aug 12 Investigated by CDR DC HARSH CO on 22 Aug 12 (Name and Appt) Accused given the right to trial by court-martial <b>NO</b> Remanded for court-martial <b>NO</b> Tried/Dealt with summarily on 22 Aug 12 Punished by CDR DC HARSH on 22 Aug 12 Signature of officer who punished accused or discharged accused without punishment  <i>DH</i>	
ACCUSED'S BASIC PAY (10) \$ <u>76.00</u> per day		DC HARSH.....CDR (Name) (Rank) (12)	
PUNISHMENTS AND ORDERS		DETAILS OF APPROVAL, ORDERS ETC (14)	
Detention	Days	<p><i>Paid over two pays</i></p> <p>Examined by Commanding Officer:</p> <p><u>22 Aug 12</u> <i>DH</i> CDR</p> <p>_____ Date Signature Rank</p>	
Reduction in Rank (13)	Rank Seniority Date		
Stay of Seniority (Insert Period)			
Fine	\$250.00		
Reprimand ('Yes' if applicable)	Yes		
Confinement to Ship or Barracks	Days		
Extra Work and Drill	Days		
Stoppage of Leave	Days		
Extra Duty	Days		
Caution ('Yes' if applicable)			
Compensation Order	\$		
Restitution Order ('Yes' if applicable)			
Fine Paid in Cash			
MD1005 Serial No.:	Date:		
ATLAS TPR Raised No.:	Date:		
Amending ATLAS TPR Raised (16) No.:	Date:		
Reviewable (17)		Recordable (17)	

## NOTES AND INSTRUCTIONS ON THE USE OF FORMS MD601 AND MD601A

- (1) Form MD601 is supplied in electronic form or in a single printed page. Where there is insufficient space on the front page to record all the information, the additional information is to be recorded on a Continuation Charge Sheet MD601A, numbered and attached. The MD601A is to have the same serial number as the MD601 together with the Service, Arm, Full Service Description, Unit and Base/Ship/Camp of the accused entered thereon. In some cases the unit may need to produce additional copies of the MD601/MD601A, eg, to include in a summary.
- (2) Forms are to be numbered in sequence in each unit from 1 January each year.
- (3) For spaces Service and Arm see ATLAS Systems tables, General Service and Entry Arm respectively.
- (4) Full Service Description i.e. Rank, Christian names, surname (in capitals), Service number, trade/branch/ corps.
- (5) Applicable to Naval personnel only. Enter 'G' for Guilty and 'NG' for not guilty.
- (6) Charges are to be drawn in accordance with RP6 and, if there is more than one charge, numbered in sequence eg, "First Charge", "Second Charge".
- (7) Enter 'D' for dismissed, 'G' for guilty, 'NG' for not guilty. Unless the charge has been dismissed, a finding is to be recorded on each charge other than an alternative charge. In the case of alternative charges the procedures in AFDA s. 136 (b) is to be followed.
- (8) Enter 'A' if the witness is called by the accused. Enter 'S' if the witness's evidence is given in the form of a written statement in accordance with RP11. Attach any written statement to the original copy (copy 1) of the MD601.
- (9) Describe each witness by Service description if a Service member, or initials and surname if a civilian. In the case of documentary exhibits, insert the letter or number of the exhibit and a brief description of the exhibit.
- (10) Where the accused is found guilty and punished, his or her basic pay applicable at the day before that on which he or she was punished is to be entered here. "Basic pay", as defined in AFDA s. 2, is the applicable daily rate of pay prescribed in the relevant AF Det.
- (11) Navy only: see RP14.
- (12) Insert the disciplinary appointment and name of the officer, e.g. OOD, XO, Sub Cdr, Det Cdr, CO Supr Cdr, and the date. If the accused was given the right to elect trial by court martial enter 'Yes' where appropriate. Where the offender is punished or discharged without punishment the inapplicable option is to be deleted. The officer who punished the offender or discharged the offender without punishment is to sign and insert his name and rank in the appropriate place.
- (13) Where the punishment of Reduction in Rank is imposed, AFDA s. 84 (2) and s. 111 require the period of seniority to be credited to the Service member to be specified. The new seniority date is to be inserted in the appropriate space.
- (14) This space is to record all the necessary additional information which is required to be recorded on the summary disposal of a charge. Matters which are to be entered here include:-
  - a. Details of any approval to try/deal with a charge or impose a punishment under DFO(D) 11 or DFO(D) 12
  - b. Any orders made by the officer which are prescribed in App. III to the RPs.
  - c. Any direction under DFO(D) 14 that a fine or compensation be paid by instalments.
  - d. Any matters required to be noted by the RPs, eg, RP8(4) or which may be noted, eg, RP161(2), RP162(2), RP163(1).
  - e. Any reduction of the punishment under AFDA s. 116 or action taken on review under AFDA s. 117, s. 182 (1), s. 183 (4), (5) See AppVI Part 1 to the RPs.
  - f. Any undue delay in the disposal of the charge. In particular, where more than 7 days elapse between the commission of the offence and the investigation of the offence, the reasons for the delay are to be inserted.
  - g. Army and Air Force only: where a summary or an abstract is taken make a note accordingly and, if the accused is dealt with summarily, attach a copy to the original MD601.
- (15) Following input to ATLAS the TPR Register/No. is to be clearly annotated on the MD601/MD601A (eg, SYSADMB 1006).
- (16) If amending ATLAS action is taken after the review, when punishments are varied or quashed, see Note (15).
- (17) Delete as appropriate (see DFO(D) 15 and DFO(D) 13).
- (18) Distribution of MD601/MD601A, refer to single Service orders, eg, DFO's (N), (A) and (F). Copy 1 is to be forwarded to DLS through appropriate chain of command.



**VICTIM IMPACT STATEMENT**

1. The following information is being sought for the consideration of the officer exercising summary powers, if a guilty finding is entered, in deciding an appropriate punishment for the offender. You do not have to give a statement if you do not wish to do so.
2. As the victim, you must ensure that any information you give is true. It is an offence contrary to AFDA s 55(1) to knowingly make a false statement in a Victim Impact Statement.
3. The information recorded on this form must be signed by you, if it is to be considered by the officer exercising summary powers.
4. The offender will not be entitled to receive a copy of this statement, however, if requested, s/he may read it.
5. As the victim, you may request that the officer exercising summary powers make an order restricting the disclosure of the Victim Impact Statement in accordance with the Victims' Rights Act 2002.

**Please detail any emotional or physical harm that you suffered through, or by means of, the offence:**

*I was very upset by this assault – this is the first time I have been assaulted or insulted during the twenty years I have been a doctor and during the three years I have been the Base Medical Officer.*

*I did not take any sick leave after the assault as I was able to continue to work, albeit in some pain. I became very tired having to remain on my feet all day, and did not sleep well, as I had to sleep face down for three nights.*

**Please detail any loss of, or damage to, property that you suffered through, or by means of, the offence:**

*I did not lose any salary as a result of my injury and I did not make a claim with ACC. My watch strap was broken and it cost me \$20 to buy a new one. I have lost the receipt for payment.*

**Please detail any other effects of the offence that you suffered through, or by means of, the offence:**

*I find it difficult to go out socially now for fear that people may make a joke of me falling on my backside.*

I understand that I am required to ensure that any information I give in this statement is true and I confirm that the information is true to the best of my knowledge and belief.



David De'Ath

9 July 2015

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Dated

**Witnessed by:**



AMED SJ Simon J10204



## NZDF MILITARY JUSTICE TRAINING PROGRAMME

### LEVELS TWO & THREE

## PERFORM THE DUTIES OF THE PRESENTING, DEFENDING & DISCIPLINARY OFFICERS

### EX BIG NIGHT OUT Practical Assessment Scenario Air Force Version

#### Actors:

1. Disciplinary Officer
2. Presenting Officer
3. Prosecution Witness 1
4. Prosecution Witness 2
5. Defending Officer
6. Accused & Defence Witness 1
7. Defence Witness 2
8. Observer/MAA/CSM/WO

#### Documents:

MD 601 Charge Report & MD 601A  
MD 601B  
Specified Certificate  
Prosecution Evidence Statement  
Defence Evidence Statement  
Standing Orders  
Plan  
Sketch Plan

## EX BIG NIGHT OUT – Exercise Brief

### Exercise Brief

The assessment for 'Perform the Duties of Presenting, Defending and Disciplinary Officers' will be conducted in a practical test utilising a syndicate of eight students for Level 3, and seven students for Level 2, who will be assigned role plays in a Summary Trial for the following appointments:

1. Disciplinary Officer (Legal Officer Directing Staff for Level 2)
2. Presenting Officer
3. Prosecution Witness 1
4. Prosecution Witness 2
5. Defending Officer
6. Accused & Defence Witness 1
7. Defence Witness 2
8. Observer.

The Legal Officer DS will conduct assessment of the presenting, defending and disciplinary officers using the assessment sheets, found in the Students' Work Book. Students are to demonstrate their competence in performing the assigned duties in a summary trial.

Students are permitted access to reference material including DM 69 (2 ed) Volume 1 during the assessment.

Witnesses should give their evidence in accordance with their statements but, if necessary, may make up reasonable supporting evidence that would apply to the situation.

In the event that there is any disparity between the initial statement of a witness and what they tell the presenting or defending officer – the evidence presented during the summary trial by the witness will be that which is advised to the presenting or defending officer, not that which is in the earlier statement.

The exercises proceed on the basis of pleas of not guilty, including the punishment phase.

There is to be finding of a prima facie case, that there are sufficient powers of punishment, the disciplinary officer is empowered to act, the accused is offered the right to elect trial by the Court Martial, and s/he does not elect trial.

Presenting and defending officers must call all of their witnesses, and produce in evidence all written statements where the witness is not present. For the purposes of the trial assessments the accused will give evidence.

Presenting and defending officers must cross examine the witnesses called for the opposite party. Re-examination need only occur by necessity if required.

In the event of a finding of guilty the defending officer must be prepared to offer basic mitigation.



**Scenario**

The scenario is that a trainee mechanic, AC SPANNER, had too much to drink at a pay night function in the Junior Rank's Club and was subsequently found asleep in the toilets of a female barracks, GRANT Barracks.

The airwoman who found AC SPANNER called the Camp Orderlies who picked the accused up off the floor and took him to the hospital.

AC SPANNER was a happy drunk who displayed the symptoms described by the witnesses when found.

The medical officer examined SPANNER on the Orderly Officer's request. SPANNER stayed the night in the hospital for observation.

He was not placed under close or open arrest as he was not a danger to himself or anyone else.

For Instructional Purposes Only

## EX BIG NIGHT OUT – Elements and Notes

Fill in the blanks

### AFDA s. 39 (b) Failing to Comply with Written Orders (2 years)

Elements of the Charge (from DM 69 (2 ed) Vol 1 page \_\_\_\_\_):

1. Subject to the \_\_\_\_\_
2. Specified order in mandatory language
3. Specified order was \_\_\_\_\_
4. Knew of order or could, with reasonable diligence, have had knowledge of it
5. Accused \_\_\_\_\_ with the order
6. Act or omission which constituted non-compliance was intentional
7. Order was \_\_\_\_\_ unlawful
8. Order was within authority of issuing authority
9. Accused physically capable of obeying order
10. Order connected with a \_\_\_\_\_ purpose
11. Date

### AFDA s. 51 (1) (b) Drunkenness (1 year)

Elements of the Charge (from DM 69 (2 ed) Vol 1 page \_\_\_\_\_):

1. Subject to the \_\_\_\_\_
2. Unfit to \_\_\_\_\_ or a duty he or she may be required to perform
3. Reason for unfitness (whether or not combined with other circumstances) is alcohol **OR** Drugs **OR** alcohol + drugs
4. Date

### MD 602

There are MD601's relating to previous conduct which may need to be taken into consideration.

**Disciplinary officer**

The Subordinate Commander is unable to hear this charge (No Level 3 competency certificate) it has come to you as the Commanding Officer.

**Evidence**

1. Three witnesses for the presenting officer, one witness's statement to be entered by consent.
2. The accused plus two witnesses for the defending officer.
3. Extract from Camp Standing Orders.
4. Plan of Barracks
5. Sketch Plan (Defence)

For Instructional Purposes Only



## EX BIG NIGHT OUT – Disciplinary Officer

### Scenario

You are the CO (WGCDR) of Ground Training Wing (GTW) RNZAF Base Woodbourne. The Wing Warrant Officer comes into your office with a disciplinary problem concerning a subordinate.

The story goes that one of the trainee mechanics had far too much to drink at a pay night function in the Junior Rank's Club and was subsequently found asleep in the toilets of Grant Barracks (female barracks). The airwoman who found AC SPANNER called the DNCO and the OO who scraped the individual up off the floor and took him to the Base Med Flight.

AC SPANNER is/was a happy drunk who displayed all the classic symptoms when found. The medical officer examined SPANNER on the O/O's request. SPANNER stayed the night in the Hospital for observation. He was not arrested as he was not a danger to himself or anyone else.

You have been provided the Caption Summary from the Military Police and you decided that the allegations are well founded, pursuant to s102 of the Armed Forces Discipline Act 1971 (DM 69 (2 ed) Volume 1 paragraph 4.2.2). You then had the allegations recorded in the Charge Reports (MD 601).

You hold the required certificate of competency, and as the accused's subordinate commander has yet to qualify, you are to be the disciplinary officer. You remind yourself to chase this up, and to check that all the FLTLTs and SQNLDRs have done the course.

You directed that the evidence be disclosed to the accused, and you assigned a defending and presenting officer. As you considered that punishment options include detention, or a fine, you have obtained a specified certificate from a legal officer.

You advise the Warrant Officer to get the ball rolling and then you pick up your DM 69. You see two charges drafted in front of you.

### Task

You are to "Perform the Duties of Disciplinary Officer" in the Summary Trial of AC M C SPANNER, in accordance with the DM 69 (2 ed) Volume 1.

Footnote numbers refer to the notes on reverse of this form)

REVISED 2009  
MD 601

PAGE 1 OF 3

Serial No: WB 0153/09

Base/Ship/Camp: RNZAF BASE WOODBOURNE

CHARGE REPORT<sup>1</sup>

Service <sup>3</sup> Air	Arm <sup>3</sup> R	Full Service Description <sup>4</sup> <b>AC M.C. SPANNER F297288 ACMECHUT</b>				Unit Ground Training Wing	
Plea <sup>5</sup>	CHARGES <sup>6</sup>					Finding <sup>7</sup>	
	<p><u>FIRST CHARGE</u></p> <p>FAILING TO COMPLY WITH WRITTEN ORDERS CONTRARY TO AFDA s 39 (b)</p> <p>In that he at RNZAF Base Woodbourne, on the 24 January 2015, at about 2345hrs, entered Grant Barracks, being female quarters, without authorisation, contrary to RNZAF Base Woodbourne Standing Orders paragraph 104, which states in part: *104. <u>Female Barracks</u></p> <p>a. Male personnel are not to enter the female barracks unless it is part of their duty to do so. In this case they are to be escorted by the NCO IC Barracks or her deputy. Male personnel may enter the lounge only, on invitation by a female occupant*.</p>						
8	PLTOFF J G HOLDFAST, T49494, ENGR AC J. TURNBULL A1009090 ADMSPEC FLTLT J. KILDARE, T89720, MED  A AC G.G. HORSE Y76767 ACMECHUT				RECORD OF SUMMARY PROCEEDINGS <sup>11</sup>  Investigated by _____ on _____ Remanded to _____ on _____  Investigated by _____ on _____ (Name and Appt) Accused given the right to trial in the Court Martial _____ Referred to DMP and remanded to Court Martial on _____ Punished/Discharged by _____ on _____  Signature of disciplinary officer who punished accused or discharged accused without punishment  _____ (Name) _____ (Rank)		
ACCUSED BASIC PAY <sup>10</sup> \$ _____ per day							
PUNISHMENTS AND ORDERS				DETAILS OF APPROVAL, ORDERS ETC <sup>13</sup>			
Detention				Days			
Reduction in Rank <sup>12</sup>		Rank	Seniority Date				
Stay of Seniority (Insert Period)							
Fine		\$					
Reprimand (Yes if applicable)							
Confinement to Ship or Barracks				Days			
Extra Work and Drill				Days			
Stoppage of Leave				Days			
Extra Duty				Days			
Caution (Yes if applicable)							
Order to Come Up for Punishment if Called On (Yes if applicable) <sup>15</sup>							
Compensation Order		\$					
Restitution Order (Yes if applicable)							
Fine Paid in Cash				Examined by Commanding Officer <sup>14</sup>			
MD 1005 Serial No: _____		Date: _____					
Atlas TPR Raised No: _____		Date: _____		Signature		Rank Date	
Amending Atlas TPR Raised <sup>17</sup>		Date: _____		Recordable / Non-recordable <sup>18</sup>			
No: _____							
For Use Following Reduction in Rank							
Rank	Trade	Sector	Tier	Level	New TFR	TPR Number	Date
				7			

- 1 Where there is insufficient space on the front page to record all the information, the additional information is to be recorded in form MD 601A Continuation Charge Sheet, numbered and attached. The MD 601A is to have the same serial number as the MD 601 together with the Service, arm, full Service description, unit and base, ship or camp of the accused entered. Additional copies of the MD 601 or MD 601A may be made as required for lawful purposes.
- 2 Forms are to be numbered in sequence in each unit from 1 January each year.
- 3 For spaces Service and Arm see ATLAS Systems tables, General Service and Entry Arm respectively.
- 4 Full Service description, i.e. rank, first names, surname (in capitals), Service number, trade/branch or corps.
- 5 Enter G for Guilty and NG for not guilty. See DM 69 (2 ed) Volume 1 paragraph 7.5.6 for entering no plea (NP) to alternative charges which follow an alternative in respect of which the disciplinary officer has accepted a plea of guilty.
- 6 Charges are to be drawn in accordance with DM 69 (2 ed) Volume 1 Chapter 4 Section 2.
- 7 Enter D for dismissed, G for guilty, NG for not guilty. Unless the charge has been dismissed, a finding is to be recorded on each charge other than an alternative charge. If the charge is an alternative to another charge which precedes it in the charge report, and G is recorded for that preceding charge, enter NF for no finding.
- 8 Enter A if the witness is called by the accused. Enter S if the witness's evidence is given in the form of a written statement in accordance with AFDA s 117ZM (see DM 69 (2 ed) Volume 1 paragraph 6.4.3). Attach any written statement to the original copy of the MD 601.
- 9 Describe each witness by Service description if a Service member, or initials and surname if a civilian. In the case of documentary exhibits insert the letter or number of the exhibit and a brief description of the exhibit.
- 10 Where the accused is found guilty and punished, his or her basic pay applicable at the day before that on which he or she was punished is to be entered here. Basic pay, as defined in AFDA s 2(1), is the applicable daily rate of pay prescribed by CDF under the MRS.
- 11 Insert the appointment of the disciplinary officer, i.e. SUBCDR, DETCDR, CO, SUPCDR; and the date. If the accused was given the right to elect trial in the Court Martial, enter Yes where appropriate (if Yes is entered, the form MD 601 must be accompanied by a completed form MD 601C Record of Election and Waiver). Where the offender is punished or discharged without punishment the inapplicable option is to be deleted. The officer who punished the offender or discharged the offender without punishment is to sign and insert his or her name and rank in the appropriate place.
- 12 Where the punishment of reduction in rank is imposed AFDA s 84(2) requires the period of seniority to be credited to the offender to be specified. The new seniority date is to be inserted in the appropriate space. A new TFR is to be set based on Step 7 of the appropriate sector and tier for the trade of the offender.
- 13 This space is to record all the necessary additional information which is required to be recorded in respect of summary proceedings under the AFDA. Matters which are to be entered here include:
  - a Details of any approval to try a charge or impose a punishment under DM 69 (2 ed) Volume 1 paragraphs 2.2.3 or 8.1.14.
  - b Any orders made by the disciplinary officer which are prescribed in DM 69 (2 ed) Volume 1.
  - c Any direction under DM 69 (2 ed) Volume 1 paragraph 8.5.6 that a fine or compensation be paid by instalments.
  - d Any matters required to be noted in respect of compensation or restitution orders in accordance with DM 69 (2 ed) Volume 1 Chapter 8 Section 4.
  - e Any reduction of punishment ordered in accordance with DM 69 (2 ed) Volume 1 paragraph 8.1.25.
  - f Any undue delay in the disposal of the charge. In particular, where more than 30 days elapse between the commission of the offence and the commencement of the proceedings before the disciplinary officer, the reasons for the delay are to be inserted.
- 14 This panel must be completed if the disciplinary officer is a detachment commander or a subordinate commander. See DM 69 (2 ed) Volume 1 paragraph 8.1.25.
- 15 If the disciplinary officer makes an order to come up for punishment if called on, he or she must record and attach to the MD 601 a statement of his or her findings of fact in relation to the charge. See DM 69 (2 ed) Volume 1 paragraph 8.3.26.
- 16 Following input to ATLAS the TPR Register/No is to be clearly annotated on the MD 601/MD 601A (e.g. SYSADMB 1006).
- 17 If an amending ATLAS action is taken following a successful appeal to the Summary Appeal Court (or following examination by the CO), when punishments are varied or quashed, see Note 15.
- 18 See DM 69 (2 ed) Volume 1 Chapter 13 Section 1.
- 19 Distribution of MD 601/MD 601A, refer to single Service orders, e.g. DFO(N), (A) and (F). Copy 1 is to be forwarded to DLS through appropriate chain of command, whatever finding is entered.

REVISED 2009  
MD 601A

PAGE 2 OF 3

Serial No: WB 0153/09

Base/Ship/Camp: RNZAF Base Woodbourne

CONTINUATION CHARGE REPORT<sup>1</sup>

Service <sup>3</sup> Air	Arm <sup>3</sup> R	Full Service Description <sup>4</sup> <b>AC M.C. SPANNER F297288 ACMECHUT</b>	Unit Ground Training Wing
Plea <sup>5</sup>	CHARGES <sup>6</sup>  <u>SECOND CHARGE</u>  DRUNKENNESS CONTRARY TO AFDA s 51(1) (b)  In that he at RNZAF Base Woodbourne, on 24 January 2015, was drunk.		Finding <sup>7</sup>
8	WITNESSES AND EXHIBITS <sup>9</sup>		

- 1 Where there is insufficient space on the front page to record all the information, the additional information is to be recorded in form MD 601A Continuation Charge Sheet, numbered and attached. The MD 601A is to have the same serial number as the MD 601 together with the Service, arm, full Service description, unit and base, ship or camp of the accused entered. Additional copies of the MD 601 or MD 601A may be made as required for lawful purposes.
- 2 Forms are to be numbered in sequence in each unit from 1 January each year.
- 3 For spaces Service and Arm see ATLAS Systems tables, General Service and Entry Arm respectively.
- 4 Full Service description, i.e. rank, first names, surname (in capitals), Service number, trade/branch or corps.
- 5 Enter G for Guilty and NG for not guilty. See DM 69 (2 ed) Volume 1 paragraph 7.5.6 for entering no plea (NP) to alternative charges which follow an alternative in respect of which the disciplinary officer has accepted a plea of guilty.
- 6 Charges are to be drawn in accordance with DM 69 (2 ed) Volume 1 Chapter 4 Section 2.
- 7 Enter D for dismissed, G for guilty, NG for not guilty. Unless the charge has been dismissed, a finding is to be recorded on each charge other than an alternative charge. If the charge is an alternative to another charge which precedes it in the charge report, and G is recorded for that preceding charge, enter NF for no finding.
- 8 Enter A if the witness is called by the accused. Enter S if the witness's evidence is given in the form of a written statement in accordance with AFDA s 117ZM (see DM 69 (2 ed) Volume 1 paragraph 6.4.3). Attach any written statement to the original copy of the MD 601.
- 9 Describe each witness by Service description if a Service member, or initials and surname if a civilian. In the case of documentary exhibits insert the letter or number of the exhibit and a brief description of the exhibit.
- 10 Where the accused is found guilty and punished, his or her basic pay applicable at the day before that on which he or she was punished is to be entered here. Basic pay, as defined in AFDA s 2(1), is the applicable daily rate of pay prescribed by CDF under the MRS.
- 11 Insert the appointment of the disciplinary officer, i.e. SUBCDR, DETCDR, CO, SUPCDR; and the date. If the accused was given the right to elect trial in the Court Martial, enter Yes where appropriate (if Yes is entered, the form MD 601 must be accompanied by a completed form MD 601C Record of Election and Waiver). Where the offender is punished or discharged without punishment the inapplicable option is to be deleted. The officer who punished the offender or discharged the offender without punishment is to sign and insert his or her name and rank in the appropriate place.
- 12 Where the punishment of reduction in rank is imposed AFDA s 84(2) requires the period of seniority to be credited to the offender to be specified. The new seniority date is to be inserted in the appropriate space. A new TFR is to be set based on Step 7 of the appropriate sector and tier for the trade of the offender.
- 13 This space is to record all the necessary additional information which is required to be recorded in respect of summary proceedings under the AFDA. Matters which are to be entered here include:
  - a Details of any approval to try a charge or impose a punishment under DM 69 (2 ed) Volume 1 paragraphs 2.2.3 or 8.1.14.
  - b Any orders made by the disciplinary officer which are prescribed in DM 69 (2 ed) Volume 1.
  - c Any direction under DM 69 (2 ed) Volume 1 paragraph 8.5.6 that a fine or compensation be paid by instalments.
  - d Any matters required to be noted in respect of compensation or restitution orders in accordance with DM 69 (2 ed) Volume 1 Chapter 8 Section 4.
  - e Any reduction of punishment ordered in accordance with DM 69 (2 ed) Volume 1 paragraph 8.1.25.
  - f Any undue delay in the disposal of the charge. In particular, where more than 30 days elapse between the commission of the offence and the commencement of the proceedings before the disciplinary officer, the reasons for the delay are to be inserted.
- 14 This panel must be completed if the disciplinary officer is a detachment commander or a subordinate commander. See DM 69 (2 ed) Volume 1 paragraph 8.1.25.
- 15 If the disciplinary officer makes an order to come up for punishment if called on, he or she must record and attach to the MD 601 a statement of his or her findings of fact in relation to the charge. See DM 69 (2 ed) Volume 1 paragraph 8.3.26.
- 16 Following input to ATLAS the TPR Register/No is to be clearly annotated on the MD 601/MD 601A (e.g. SYSADMB 1006).
- 17 If an amending ATLAS action is taken following a successful appeal to the Summary Appeal Court (or following examination by the CO), when punishments are varied or quashed, see Note 15.
- 18 See DM 69 (2 ed) Volume 1 Chapter 13 Section 1.
- 19 Distribution of MD 601/MD 601A, refer to single Service orders, e.g. DFO(N), (A) and (F). Copy 1 is to be forwarded to DLS through appropriate chain of command, whatever finding is entered.













(Footnote numbers refer to the notes on reverse of this form)

REVISED 2009  
MD 601B

PAGE 1 OF 1

Serial No: WB 0153/09

RECORD OF DISCLOSURE<sup>2</sup>

Service Description		
AC Michael Colin SPANNER F297288 ACMECHUT		
The following information has been disclosed in accordance with rule 9 of the Armed Forces Discipline Rules of Procedure 2008		
Information/Evidence Disclosed <sup>3</sup>	Date Disclosed <sup>4</sup>	Signature of Accused <sup>5</sup>
MD 601/ WB 0153/09	10 Feb 15	
MD 601a/WB 0153/09	10 Feb 15	
Extract from RNZAF Base Woodbourne Standing Orders, paragraph 104	10 Feb 15	
Plan of Grant Barracks	10 Feb 15	
Statement of PLTOFF Holdfast dates 30 Jan 15	10 Feb 15	
Statement of AC Turnbull dated 25 Jan 15	10 Feb 15	
Statement of FLTLT Kildare dated 30 Jan 15	10 Feb 15	
Statement of AC Spanner date 30 Jan 15	10 Feb 15	
Statement of GG Horse dated 30 Jan 15	10 Feb 15	
Statement of LCPL Batten dated 2 Feb 15	10 Feb 15	
Signature and Service description of disciplinary officer <sup>7</sup>		

To be attached to original copy of MD 601



- 1 Enter the serial number of the MD 601 that the disclosure of information relates to.
- 2 MD 601B is the form used to record disclosure of information in compliance with DM 69 (2 ed) Volume 1 Chapter 7 Section 3 and must be attached to the original of each MD 601 in accordance with paragraph 7.3.12 of that Section.
- 3 DM 69 (2 ed) Volume 1 paragraph 7.3.6 requires the disciplinary officer to ensure that the accused is provided with a copy of the form MD 601 Charge Report and is given access to any information which:
  - a. May be relied upon as evidence against the accused; or
  - b. Tends to show that the accused did not commit the offence charged.

This information includes, but is not limited to, any:

- a. Statement made by the accused;
- b. Relevant documentary evidence;
- c. Written statement made by a witness; and
- d. Unit or Service Police file which relates to the charge or, if applicable, the relevant portions of the file.

See paragraphs 7.3.8 to 7.3.10 for information about the form of disclosure, particularly for physical evidence and for information about disclosure of information that might prejudice protected interests such as the security or defence of New Zealand, defence relationships, or the maintenance of the law.

- 4 Enter the date that each piece of information/evidence was disclosed to the accused. Information/evidence is required to be disclosed in reasonably sufficient time to allow the accused to consider it in properly preparing his or her case prior to being arraigned by the disciplinary officer (see paragraph 7.4.2).
- 5 The accused is to sign to acknowledge the receipt of each disclosure.
- 6 Enter the serial number of the form MD 601 that records the charges against the accused. This must be disclosed to the accused in accordance with DM 69 (2 ed) Volume 1 paragraph 7.3.6. If the form MD 601 is amended prior to the arraignment of the accused, the accused must be provided with a copy of the amended MD 601 before he or she is arraigned.
- 7 The disciplinary officer is to sign to certify that DM 69 (2 ed) Volume 1 Chapter 7 Section 3 has been complied with.

For Instructional Purposes Only

RECORD OF ELECTION AND WAIVER<sup>2</sup>

Service Description
<b>AC Michael Colin SPANNER F297288 ACMECHUT</b>
I, the above named person subject to the Armed Forces Discipline Act 1971, having been offered the right to elect trial in the Court Martial or summary trial by a disciplinary officer, certify as follows:
I have been advised and I understand that:
<ul style="list-style-type: none"> <li>a. A summary trial by a disciplinary officer is not a trial by an independent court.</li> <li>b. If I elect summary trial, I irrevocably waive my right under section 25(a) of the New Zealand Bill of Rights Act 1990 to be tried by an independent court.</li> <li>c. If I am tried by a disciplinary officer I cannot be represented by a lawyer at that trial.</li> <li>d. If I elect summary trial, I irrevocably waive my right under section 24(c) of the New Zealand Bill of Rights Act 1990 to legal representation.</li> <li>e. If I elect trial by the Court Martial, I will be entitled to legal aid under the Armed Forces Legal Aid Scheme.</li> <li>f. If I am found guilty by a disciplinary officer, the punishments that may be imposed are limited to those provided for in Annex A (or, as the case may be, Annex B) of DM 69 (2 ed) Volume 1 Chapter 8.</li> <li>g. If I am found guilty by the Court Martial, the Court Martial may impose any lawful sentence up to the maximum sentence for the offence.</li> <li>h. The Court Martial is presided over by a Judge and applies the ordinary rules of evidence that are used in criminal courts.</li> <li>i. Summary trials are conducted by disciplinary officers who are not Judges or lawyers and who do not apply the ordinary rules of evidence.</li> <li>j. A summary trial can be commenced and completed more expeditiously than a trial by the Court Martial.</li> </ul>
<b>I HEREBY ELECT:</b> <sup>3</sup>
<ul style="list-style-type: none"> <li>a. <b>Trial by the Court Martial of New Zealand</b></li> <li>b. <b>Summary trial by a disciplinary officer, and I waive my rights to trial by an independent court and to be represented by a lawyer.</b></li> </ul>
<b>Signature of accused:</b> <sup>4</sup>

<sup>1</sup> Enter the serial number of the MD 601 that the election relates to.

<sup>2</sup> MD 601C is the form used to record the election of an accused to be tried in the Court Martial or summarily by a disciplinary officer in accordance with DM 69 (2 ed) Volume 1 paragraph 7.5.33 or paragraph 7.6.38, as the case may be, and must be attached to the original of each MD 601 where the right to elect is afforded to the accused.

<sup>3</sup> Delete whichever option the accused does not elect.

<sup>4</sup> The accused is to sign to confirm his or her election.

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For Instructional Purposes Only

**STAFF IN CONFIDENCE**

**HEADQUARTERS NEW ZEALAND DEFENCE FORCE  
Directorate of Legal Services  
MINUTE**

DLS 99/15

31 Jan 15

**CO GTW**

**SPECIFIED CERTIFICATE: AC M.C. SPANNER F297288 ACMECHUT**

**References:**

- A. MD 601 AC M.C. SPANNER F297288 ACMECHUT
- B. MD 601A AC M.C. SPANNER F297288 ACMECHUT
- C. DM 69 (2 ed) Volume 1 Chapter 7 paragraphs 7.3.1 – 7.3.5

**The Charges**

First Charge

**FAILING TO COMPLY WITH WRITTEN ORDERS CONTRARY TO AFDA s 39 (b)**

In that he at RNZAF Base Woodbourne, on 24 January 2015, at about 2345hrs, entered Grant Barracks, being female quarters, without authorisation, contrary to RNZAF Base Woodbourne Standing Orders paragraph 104, which states in part: Male personnel are not to enter the female barracks unless it is part of their duty to do so. In this case they are to be escorted by the NCO IC Barracks or her deputy. Male personnel may enter the lounge only, on invitation by a female occupant”.

Second Charge

**DRUNKENNESS CONTRARY TO AFDA s 51(1) (b)**

In that he at RNZAF Base Woodbourne, on 24 January 2015, was drunk.

**Specified Certificate**

1. I have examined Ref A, and certify in accordance with DM 69 (2ed) Vol 1 Chapter 7, para 7.3.4, that in my opinion the charges:
  - a. disclose offences against the AFDA;
  - b. are drawn in accordance with RP 7; and
  - c. are otherwise correct in law.

- 16 -

2. If the punishment awarded is detention, reduction in rank, a fine exceeding 7 days basic pay or a compensation order of an amount that exceeds 7 days basic pay, please attach this specified certificate to the MD601.

Regards,

A handwritten signature in blue ink, appearing to read 'H Rumpole', with a horizontal line underneath.

H RUMPOLE  
CAPT, NZALS  
Legal Officer

DtelN: 349 7167

For Instructional Purposes Only



NEW ZEALAND DEFENCE FORCE  
**Conviction Category Details**

**MD601E**  
 Ver 1 – Dec 14

Service No: <input type="text"/>	Surname/Init: <input type="text"/>	Rank: <input type="text"/>
----------------------------------	------------------------------------	----------------------------

Select Category(s)	Select Sub-Category	Charge Number
<input type="checkbox"/> Violence to a Superior	<input type="checkbox"/> Strikes – AFDA s35 (1)(a) <input type="checkbox"/> Uses Violence – AFDA s35 (1)(b) <input type="checkbox"/> Offers Violence – AFDA s35 (1)(c)	
<input type="checkbox"/> Ill Treatment of Subordinates	<input type="checkbox"/> Strikes – AFDA s41 (a) <input type="checkbox"/> Ill Treats – AFDA s41 (b)	
<input type="checkbox"/> Assault	<input type="checkbox"/> Assault – AFDA s74 or Crimes Act 1961/Summary Offences Act 1981 <input type="checkbox"/> Aggravated Assault – AFDA s74 or Crimes Act 1961 <input type="checkbox"/> Male Assaults Female – AFDA s74 or Crimes Act 1961	
<input type="checkbox"/> Sexual Offences	<input type="checkbox"/> Sexual Violation – AFDA s74 or Crimes Act 1961, Crimes Amendment Act 2005 <input type="checkbox"/> Behaves in a Disgraceful/Indecent Manner – AFDA S42 (b)	
<input type="checkbox"/> Controlled Drug Offences (AFDA s74 or Misuse of Drugs Act 1975)	<input type="checkbox"/> Class A: (Supply, Sell, Administer, Offer, Deal, Procure, Possess, Conspire) <input type="checkbox"/> Class B: (Supply, Sell, Administer, Offer, Deal, Procure, Possess, Conspire) <input type="checkbox"/> Class C: (Supply, Sell, Administer, Offer, Deal, Procure, Possess, Conspire) <input type="checkbox"/> Consuming, Smoking, Using Controlled Drugs <input type="checkbox"/> Cultivating Prohibited Plants	
<input type="checkbox"/> Alcohol	<input type="checkbox"/> Drunkenness – AFDA s51 <input type="checkbox"/> Possession of Alcohol – AFDA s52 <input type="checkbox"/> Driving Under the Influence of Alcohol – AFDA s67 or Civilian Conviction <input type="checkbox"/> Driving Under the Influence of a Drug – AFDA s67 or Civilian Conviction	
<input type="checkbox"/> Contributing Factors (Tick the sub-category that contributes significantly to the offence when the categories above have not been selected)	<input type="checkbox"/> Drugs <input type="checkbox"/> Alcohol <input type="checkbox"/> Psycho-Active – (See Psycho-active Substances Act 2013, s9)	
<input type="checkbox"/> Other (To be used when above categories are not applicable)	<input type="checkbox"/> Not Applicable <input type="checkbox"/> Not Applicable <input type="checkbox"/> Not Applicable	

The Disciplinary Officer/Commanding Officer is to certify that the above Category selections are correct:

\_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
 (Service No, Rank and Name)

\_\_\_\_\_  
 (Date)

See guidance for completing the MD601E to the MD601/Civil Certificate of Conviction on the reverse side.





- 18 -  
NEW ZEALAND DEFENCE FORCE  
**Conviction Category Details - Reverse**

**MD601E**  
Ver 1 – Dec 14

### Overview

This form is specifically designed to enhance the purposes of reporting out of SAP HCM, to meet the NZDF's reporting and analytical data requirements. The Categories and Sub Categories that have been selected in specific areas are to further define and break down the areas of punishments to meet further reporting needs of the NZDF. All other offences in the AFDA are reported on using the AFDA section as the identifying factor. This form therefore needs to be completed accurately at all times to maintain the integrity of data reporting.

### Guidance

The Disciplinary Officer/Commanding Officer is responsible for:

- selecting the correct category the charge relates to
- selecting the sub-category
- annotating the relevant number for the order of the charge, example First charge
- certifying that the details on the MD601E are correct, and
- forwarding the MD601E attached to either a copy of the MD601 or Civilian Conviction to the HRSC for action.

If at any stage there is any doubt about how to complete the form, Legal (Camp/Base level), or the local Human Resource Advisor will be available to provide advice.

### Selecting a Category

If any of the offences are listed in the Sub Category column, then that Category is to be selected when there is a Guilty verdict. This is applicable for Violence to a Superior, Ill Treatment of Subordinates, Assault, Sexual Offences, Controlled Drug Offences and Alcohol Categories.

If the member was found Not Guilty or their convictions have been Dismissed or Quashed then the Other Category is to be selected with the Not Applicable Sub Category.

If the member was charged and found Guilty but was not charged under Violence to a Superior, Ill Treatment of Subordinates, Assault, Sexual Offences, Controlled Drug Offences and Alcohol Categories but it was determined that Drugs, Alcohol or Psycho-Active factors were a Contributing Factor then this Category is to be used. If the member was found Not Guilty or the convictions have been Dismissed or Quashed then the Other Category is to be selected.

If the member was found Guilty, Not Guilty, Dismissed or Quashed of any other offence not mentioned above then the Other Category is to be selected.

### Note

You can only assign one Category and Sub Category for each of the offences that are recorded on the MD601 or Certificate of Conviction due to the restrictions of SAP HCM. If the contributing factors were also attributable this can be recorded on the MD601 and remarks in SAP HCM, but only the primary offence will be used for the offences listed on the MD601E. This is to ensure offences are not reported on in a duplicate manner.

### Selecting a Sub-Category

Once the Category has been selected then the appropriate Sub Category that the member has been found Guilty of must be selected.

### Charge Number

In the Charge Number column if there is more than one offence, then the number to be used is the order of offences. This is to ensure that the right Category and Sub Category are applied to the correct offence in SAP HCM.

### Note

The MD601E is required to be completed after all Summary Trials, Civilian Convictions and Court Martials where there was an appearance at a trial and an offence was assigned an outcome (ie Guilty, Not Guilty, Dismissed).

## EX BIG NIGHT OUT – Presenting Officer

### Scenario

You are the Flight Commander Aircraft Training Flight (FLTLT) and the CO GTW has appointed you as the Presenting Officer in the summary trial to be conducted against AC M.C. SPANNER F297288 ACMECHUT, an aircraft mechanic under training.

AC SPANNER is a new airman having just marched off recruit course some 3 months ago. He is still adjusting to service life, but is generally performing to an acceptable level.

AC SPANNER was found asleep in a toilet cubicle of the female barracks, after spending a night drinking with his fellow airmen in the Junior Ranks Club. It was a pay Thursday, which also happened to be his 19<sup>th</sup> birthday.

It transpires that at some point during the night AC SPANNER was hungry and went to the females' barracks for some toast, after being informed by one of his drinking buddies that they would look after him.

However, some time after entering the barracks AC SPANNER went to use a toilet, where he subsequently fell asleep hugging the toilet bowl. After being discovered by a female occupant, she contacted the DNCO and the OO who removed AC SPANNER from the barracks.

AC SPANNER was examined by the Medical Officer at the Base Med Flight. After being found to be extremely intoxicated, AC SPANNER was kept in overnight for observation.

The Orderly Officer used his judgement and did not place AC SPANNER under close or open arrest as he was not posing a threat to neither himself nor others.

You have spoken to the Orderly Officer, PLTOFF HOLDFAST, and he has made a statement. PLTOFF HOLDFAST has told you he will get the Military Police statements and email them to you later in the day.

### Task

You are to prepare and present the case in support of the charges at the Summary Trial in accordance with DM 69 (2 ed) Volume 1. In addition you are to prepare the relevant documents that may be required by the Disciplinary Officer. This includes:

MD601 and MD 601A (if there are too many charges to fit on the MD 601)

MD601 B

MD601 C (if the offer of trial in the Court Martial is given)

MD601 D (if the accused is found guilty)

MD 602 (again, if the accused is found guilty)

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## EX BIG NIGHT OUT – Prosecution Witness 1



PLTOFF J G. HOLDFAST, T 49494, ENGR states:

On 24 January 2015, I was Orderly Officer and at 2345 hrs I was called to the female barracks to investigate a report of a drunken soldier in the toilets. I was met at the entrance to the lounge at the end of the barracks by AC J. TURNBULL.

AC TURNBULL was annoyed and complained about the length of time it had taken to respond to her call.

She said that someone had come banging on the door to the lounge at the end of the barracks shortly before 2300. She could hear one of the other girls get up, and go down to the lounge. She heard the door open, and sounds of talking, but could not hear what was said. She thought it was an Army girl from the room next door, who was in camp on a course.

She said that people often came down to the lounge after the bars closed, as they had a jug, toaster, and sandwich maker in the lounge. The lounge was a bit of a drop in centre, and she was getting sick of it, because her room was next to the lounge, and she could not get to sleep. She pointed out her room to me when we went down to the toilets. She said that the other girls didn't seem to mind, and some of them were happy to have visitors.

After about 15 minutes she heard footsteps in the corridor, and the door of the next room to hers opened and closed.

A little while later she got up to go to the toilet. When she went into the toilet block she could see feet sticking out from underneath one of the stalls. When she opened the door she recognised AC SPANNER. She said he was trying to sing "Happy Birthday" and asked her for a birthday kiss.

She said that was the last straw, so she called Air Security and the DNCO.

By this time the CPL RATANA had arrived. She introduced herself to me and said she was the Barrack NCO. AC TURNBULL showed me down the corridor to the toilet block, and I went down there with the DNCO, and CPL RATANA.

In the far toilet cubicle, lying curled around the toilet was the accused, AC SPANNER. He was trying to get to his feet and was trying to sing. The accused was in uniform but totally dishevelled: his shirt was hanging out of his trousers, his fly was partly undone and one shoe was missing. He could not respond to questions in a manner that made sense; he was muttering something about wanting toast. His speech was slurred, his eyes glazed and unfocussed, his breath reeked of alcohol and vomit.

- 22 -

I eventually assisted him to his feet, put him in my van and drove him to Base Hospital.

The duty Medical Officer happened to be there and I asked FLTLT KILDARE if he would examine the accused. AC SPANNER was fairly docile and offered no resistance.

I felt he did not need restraining so much as observation. I have had no contact with the accused since the hospital.

I will produce the appropriate extract from Base Standing Orders in evidence.

I have tried to find out who it was who answered the knocking on the door but I have not been able to do so. There were a number of people in camp over the last few days attending a course, but they have now returned to their own camps.

AC TURNBULL gave a statement to MPs later in the day, and also sent an email with some further details. I have the statement and the email in my office.

FLTLT KILDARE left for Afghanistan last Saturday. He is deployed there for 6 months. Before he left I got Air Security to take a statement from him, and I have that in my office.

I have been to the Base Headquarters and got a plan showing the layout of the female barracks and the Transit Barracks.

This statement is true and correct, and I have nothing further to add. I have made this statement in the knowledge that it may be used in disciplinary proceedings and that I may be liable to disciplinary proceedings in respect of any false statement that I may have made.

Dated at Woodbourne 30 Jan 15



**J.G. HOLDFAST**  
PLTOFF

**Extract from Base Standing Orders**

104. Female Barracks

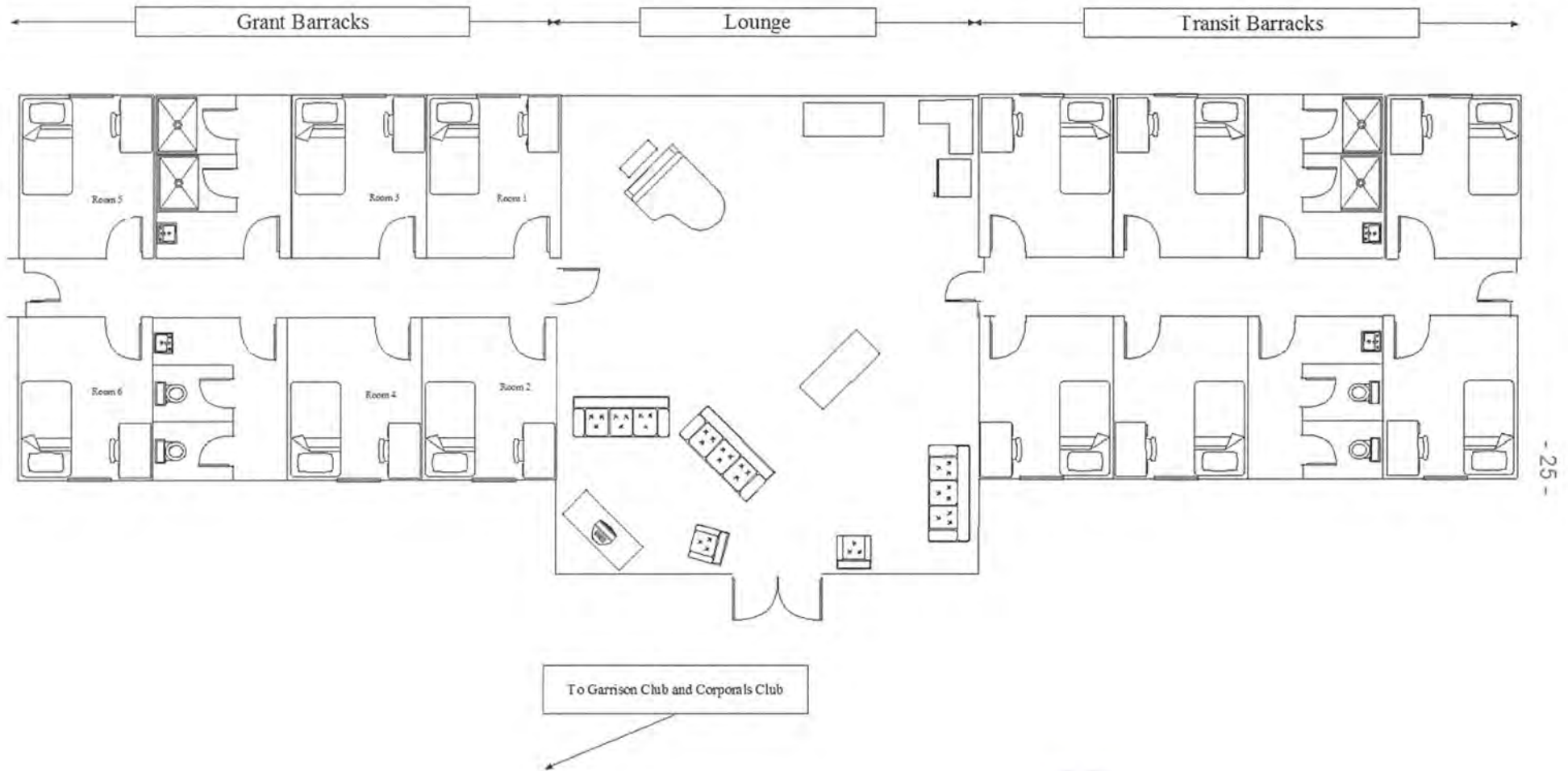
- a. Male personnel are not to enter the female barracks unless it is part of their duty to do so. In this case they are to be escorted by the NCO IC Barracks or her deputy. Male personnel may enter the lounge only, on invitation by a female occupant.
- b. Visiting hours for male personnel are between the hours 0900 – 2130hrs Monday to Thursday inclusive and 1000 – 2300hrs Friday – Sunday.

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## EX BIG NIGHT OUT – Prosecution Witness 2



AC Julia TURNBULL A1009090 ARMMECUT states:

I am making this statement about an incident last night at Grant Barracks, RNZAF Base Woodbourne.

I am an armourer at RNZAF Base Woodbourne. I live in room 2 Grant Barracks. I have been living in barracks for about 6 months.

Last night someone started banging on the doors of the lounge. I had a look at my cell phone and it was just after 2230. I had been half asleep, and the banging woke me up.

This happens three or four times a week, but most often on pay night. I am getting sick and tired of it. The guys from the other barracks treat our barracks as a drop-in centre on the way home from the JR's Club. We have got a jug and a toastie maker in the lounge, and they seem to think they can just come and get a feed when they are chucked out of the bar.

I did not get up, and just hoped whoever it was would go away.

Whoever it was kept banging for 10 or 15 minutes and I heard one of the girls from down the corridor get up and go into the lounge. It sounded like it was the Army girl who was in camp on a course. She was in the room next to mine. I don't know her name, but I think she had been in the JR's Club earlier on. She left the barracks earlier today. I think her course must have finished, because she had her black roll bag with her.

I heard her go through the door into the lounge, and then I could hear them talking in the lounge. I couldn't really hear what they were saying.

I must have dozed off because the next thing I heard was the door to the lounge open and close again, and then footsteps going down the corridor to the room next door.

Some time later I got up to go to the toilet. There were no lights on in the corridor, but there was a bit of a glow from the lounge. I'm pretty sure the door to the lounge was closed, but there is a window in the top of the door, and light comes through from the lounge into the corridor.

There is a sign on the door from the lounge. It says that these are female barracks, and no one is supposed to come in without permission. Normally the guys stay in the lounge, but sometimes they leave out the door at the end of the corridor, or use the

- 28 -

toilets.

I opened the door into the toilets and I could see a pair of feet sticking out from underneath the far toilet cubicle. I pushed the door open and I could see it was Mike. He is a trainee mech. He was wasted, and wrapped around the toilet bowl.

He was trying to sing "happy birthday", and he said it was his birthday and I should give him a kiss.

That was the last straw. I called the Duty NCO and the OO from the phone in the lounge and waited for them to arrive. When they eventually arrived I took them down the hallway with the Corporal who lives at the other end of the hallway. I don't know her name.

Mike was still where I had left him, but he had thrown up in the meantime. It was really disgusting.

This statement is true and correct, and I have nothing further to add. I have made this statement in the knowledge that it may be used in disciplinary proceedings and that I may be liable to disciplinary proceedings in respect of any false statement that I may have made.

Dated at Woodbourne 25 January 2015



**J. TURNBULL**  
AC ARMMECUT

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- 29 -

**TURNBULL JULIA, AC**

**From:** TURNBULL JULIA, AC  
**Sent:** Friday, 25 JANUARY 2015 14:31  
**To:** MILITARY POLICE WOODBOURNE;  
**Subject:** Thursday 24 Jan – Grant Barracks Incident

Hi,

I have had a think about last night.

When the Army girl went to answer the door, I could hear Mike talking to her. I could hear his voice through my wall, and I recognised the voice. He said something about "sneaking in" and how the barracks was out of bounds, but no-one would know if they kept really quiet.


I spoke to Mike when he was doing some repair work on the barracks a couple of weeks ago, which is how I recognised his voice.

The jug and the toastie maker are in the corner of the lounge, opposite the TV.

I'm tired of guys coming into the barracks at night. They all think the rules about female quarters being out of bounds are just a big joke.

Kind regards

**Aircraftsman Julia TURNBULL**  
RNZAF Base Woodbourne Armoury  
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**EX BIG NIGHT OUT – Prosecution Witness 3**



**WRITTEN STATEMENT**

FLTLT J. KILDARE, T89720, MED states:

I am Flight Lieutenant James Kildare, the Medical Officer for Base and I was in the Base hospital last Thursday night attending to one of our patients when the OO and DNCO came in carrying an airman.

I assisted in putting the person in our examination room. I got the person's details as part of the admission procedure. I cannot remember the details now, but the admission form records the person as AC Michael Colin SPANNER, F297288. As I recall I was able to get the details from the patient's ID card, and he confirmed the details when I asked him for them.

I then assessed the condition of the patient.

Initial impressions were that he had been consuming alcohol. His breath smelt of alcohol and he had difficulty supporting himself. His speech was affected and he was slow to respond to stimuli. He was unable to perform some basic psycho/motor tests. His pulse was rapid and his eyes dilated.

I have checked AC SPANNER's medical records. He was not at the time under any treatment or medical condition, nor does he suffer from any condition which produces symptoms like drunkenness. It is my opinion that his condition at this time was solely due to excessive alcohol consumption.

He was unfit to perform any duty and would have been for some 12 hours later. His stomach was pumped to aid recovery and he was kept in the Base Hospital for observation.

He was released at 0800hrs the next day, being last Friday 25 January 2015.

This statement is true and correct, and I have nothing further to add. I have made this statement in the knowledge that it may be used in disciplinary proceedings and that I may be liable to disciplinary proceedings in respect of any false statement that I may have made.

Dated at Woodbourne 30 Jan 15

**J. KILDARE  
FLTLT**

## EX BIG NIGHT OUT – Defending Officer

### Scenario

You are the WO, Aeronautical Training Squadron (ATS) and the CO GTW has appointed you as the Defending Officer in the summary trial to be conducted against AC M.C. SPANNER F297288 ACMECHUT, an aircraft mechanic under training.

AC SPANNER is a new airman having just marched off recruit course some 3 months ago. He is still adjusting to service life, but is generally performing to an acceptable level.

AC SPANNER was found asleep in a toilet cubicle of the female barracks, after spending a night drinking with his fellow soldiers in the Junior Ranks' Club. It was a pay Thursday, which also happened to be his 19<sup>th</sup> birthday.

He is not sure how much he had to drink but says it at least two cans of beer, and then went onto ginger beer soft drink after that and drank a lot of it.

It transpires that at some point during the night AC SPANNER was hungry and went to the females' barracks for some toast, after being informed by one of his drinking buddies that he would be looked after.

However, after entering the barracks AC SPANNER went to use a toilet, where he subsequently fell asleep hugging the toilet bowl. After being discovered by a female occupant, she contacted the DNCO and OO who removed AC SPANNER from the barracks.

AC SPANNER was then checked over by the Medical Officer at the Base Med Flight. After only being found to be extremely intoxicated, AC SPANNER was kept in hospital overnight for observation.

The Orderly Officer used his judgement and did not place AC SPANNER under close or open arrest as he was not posing a threat to himself or others.

SPANNER made a statement to Air Security. He has also sent you an email with some extra information. He has said he thinks he can contact the female who let him in, and will get her to email you. You get her to prepare a formal written statement as she is about to deploy to Afghanistan. You are to consider if a plea of guilty to the charge of drunkenness is appropriate and take instructions from AC SPANNER.

You have also had a quick chat to AC Horse.

In the event of a finding of guilty you must be prepared to offer basic mitigation.

### Task

You are to "Perform the Duties of the Defending Officer in a Summary Trial in accordance with the DM 69 (2 ed) Volume 1.

**EX BIG NIGHT OUT – Accused – Defence Witness 1**



**STATEMENT FORM**

AC M.C. SPANNER F297288 ACMECHUT states:

I have been cautioned that I do not have to make a statement, and I am advised under the NZ Bill of Rights Act that I may take legal advice, in private, without delay, and at no cost to me. I am happy to make a statement and do not want to talk to a lawyer as I want to tell the truth.

Last Thursday was my birthday and it coincided with a pay night happy hour. Some of my mates insisted on playing drinking games which I'm not very good at. I am not sure how much I had to drink but I know it at least two cans of beer. I don't drink much and usually only have two beers. I went onto ginger beer soft drink after that and drank a lot of it. We went "around the world", twice that I remember. I recall buying a bottle of Port at some stage, but I didn't drink any of it.

I know I was getting hungry at one stage and wanted to go and get some toast and coffee. I thought one of the girls in Grant Barracks might cook me a feed. One of my mates, not sure which one exactly, said that they don't mind doing that. I probably knew it was out of bounds but I didn't really think about it at the time.

I've been to Grant Barracks before. I was tasked with helping out with some repairs that needed to be done. That was about three weeks ago.

There is a lounge at the end of Grant Barracks. I remember seeing a fridge, and toastie maker when I was there. Lots of the guys drop in to other barracks on the way home after the bar shuts. I am in the new barracks over the road from the Grant Barracks. It is pretty much on the way home from the JRs' Club.

I don't know how I got to Grant Barracks, but I can vaguely remember some Army girl letting me in and turning the jug on. I don't know who she was but she might have been at the JRs' Club earlier that night.

I can't remember what happened next but I remember getting into a van and ending up at the Hospital.

I think I must have been drunk but can't explain why that happened.



This statement is true and correct, and I have nothing further to add. I have made this statement in the knowledge that it may be used in disciplinary proceedings and that I may be liable to disciplinary proceedings in respect of any false statement that I may have made.

Dated at Woodbourne 30 Jan 15



**M C SPANNER**

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- 34 -

**SPANNER MICHAEL , AC**

**From:** SPANNER MICHAEL, AC  
**Sent:** Friday, 25 JANUARY 2015 14:31  
**To:** DEFENDING OFFICER, FLTLT;  
**Subject:** Thursday 24 Jan – Grant Barracks Incident

Hi Sir,

Thanks for looking after me. I know I've been a bit stupid, but I didn't mean any harm last night.

It was my shout because it was my birthday, and I shouted "around the world" for the other guys. I'm pretty sure I only had two cans of beer and then went on to ginger beer. I don't like spirits because it really screws me up.

I know some of the guys were drinking premix, and some guys were drinking shooters, but so far as I know I was sticking to beers. I'm pretty sure I bought a bottle of Engineer Port at some stage, but I don't remember drinking any. That was at about closing time I think. AC Horse has told me someone was spiking my drinks. A couple of the other guys said they saw it as well, but they don't want to get involved.

When I went to Grant Barracks the front door was closed. I knocked on the door for a while and a lass came and let me in. I recognised her from the bar earlier that night, I think, but I don't know her name. I think she was here on a course.

I'm pretty sure I can remember her letting me in and starting to make me a brew. She said something about having to be quiet. I can remember feeling queasy and wanting to throw up. The nearest toilets were down the corridor so I headed off down there. That's about all I can remember.

I've been to Grant Barracks once before. The lounge is in the middle, between the Grant Barracks and the transit barracks at the other end. I guess the female barracks are out of bounds, but I didn't think there was any trouble with going into the lounge.

I don't like feeling as out of control as I was and I've been off to see the padre. Hopefully I can get on a course or something. Can you tell the boss I really want to sort myself out. I really like being at the School, and I want to deploy with the Fighting 3rd Squadron when they go to Iraq later in the year.

I'm pretty sure I can find out who let me in. She knew one of the other guys in the bar. I will try and get her to email you.

Kind regards

**Aircraftsman Mike SPANNER**

RNZAF Base Woodbourne

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**EX BIG NIGHT OUT – Defence Witness # 2**



STATEMENT FORM

AC G.G. HORSE Y76767 ACMECHUT states:

Last Thursday I was at the JRs' Club with a number of others from the mechanics course I am on and it was also AC SPANNER's 19th birthday.

I was the designated driver for the night, I did not drink and I am able to recall all events during the course of the night.

During the night those present, except AC SPANNER, consumed a reasonable amount of alcohol, which included two around the world sessions. This involved a round of drinks comprising shots of all the various types of spirits available, about 10 in total. I think he had two beers and then went on to ginger beer.

There were a lot of people in the JRs' Club that night as it was a pay night, and there were a couple of courses in base as well. There were some Army girls there, and a couple of them were in our group for a while.

Also during the night I think I observed AC SPANNER's beer being "spiked" with different spirits, which AC SPANNER was not aware of. I spoke to the guys who were doing it and told them to knock it off, but I was told to stop being a plonker or words to that effect. I forget who they were as I had a lot to drink.

AC SPANNER is not much of a drinker, but normally sticks to two or three beers. Because it was his birthday, he shouted the first around the world. He went downhill after that.

About 2300hrs I noticed that AC SPANNER was no longer present at the bar. I asked around and one of the others stated that he had gone to get a feed of toast. I remember mentioning to AC SPANNER that it is common practice after the bar to go to the female barracks for a feed, as Hotshots is closed. SPANNER is pretty new here.

There is a lounge in the middle of the barracks, which is separate from the sleeping accommodation. I have done a rough sketch of the barracks. I am pretty sure the toilets are just inside the door from the lounge. I've always thought the lounge was OK, but everyone knows the female barracks are out of bounds.

AC SPANNER lives in barracks with me, in the barracks over the road from Grant Barracks.

About 2315hrs I left the bar with several others and went into town. I did not know where AC SPANNER went to or see him until the next day when he showed up late

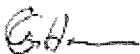


for work and told me what had happened

SPANNER is OK and is a good worker. The last I saw of him that night was about 2230. He was well away at that stage. He was starting to sing, and was bumping in to things.

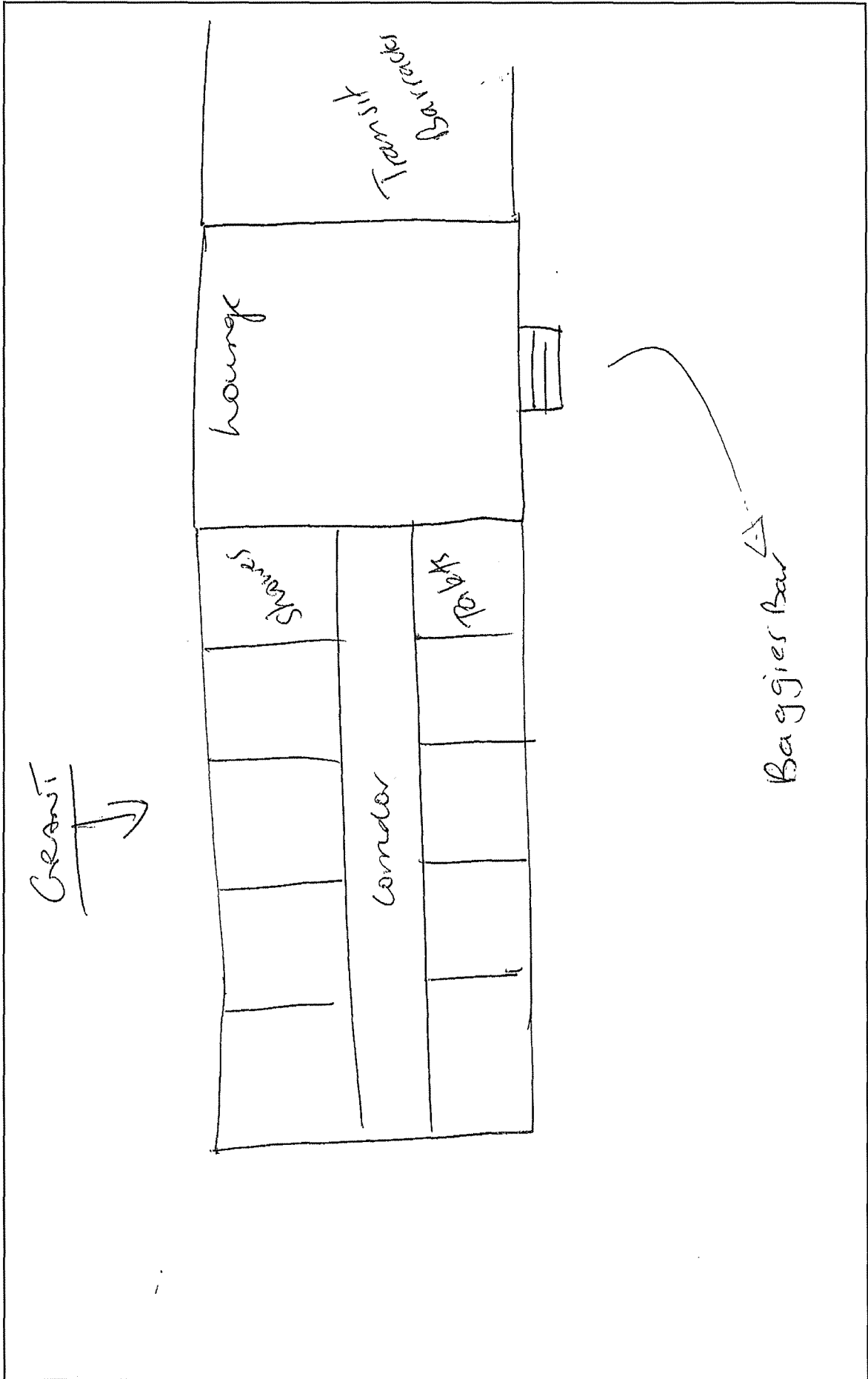
This statement is true and correct, and I have nothing further to add. I have made this statement in the knowledge that it may be used in disciplinary proceedings and that I may be liable to disciplinary proceedings in respect of any false statement that I may have made.

Dated at Woodbourne 30 Jan 15



**G.G. HORSE**  
ACMECHUT

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**EX BIG NIGHT OUT – Defence Witness # 3**



**WRITTEN STATEMENT**

K1009898 LCPL JEAN BATTEN states:

I am based in Linton but I was in Woodbourne for a week on a first aid course as part of PDT. I have been asked by the Defending Officer to provide a statement of my recollection of events on the night of the 24<sup>th</sup> of January 2015.

While I was there I was in the female barracks, I think they are Grant Barracks. I was in the second room from the lounge, on the same side as the toilets, and on the opposite side to the showers.

On the 24<sup>th</sup> of January, I went to the Junior Ranks bar after dinner with some of the others from the course. There was a group of guys next to us who were playing up. I was told that one of them was having a birthday.

He told me his name was Mike, and he asked for a birthday kiss. He seemed pretty harmless so I gave him a kiss on the cheek.

I could see he was getting pretty wasted, but I didn't have much to do with him at the club. I talked to one of his mates for a while.

At about 2200 I decided to call it a night and went off to my room in the barracks. I sat on my bed and read my notes for a while.

About half an hour later I heard knocking on the door to the lounge. Eventually I got up to see who it was.

When I got to the door I could see it was Mike. He asked if he could come in and get a feed. He was being quite noisy and I said he could come in if he kept the noise down. I'm not exactly sure what time it was, but it was probably just before 2300 at that stage.

I turned the jug on and put some toast in the toaster. We chatted for a few minutes and then I left him to it.

He had obviously been drinking, but he was pretty happy, not unpleasant.

When I went back to my room I closed the door to the lounge behind me. I assumed the accommodation block was out of bounds because it was female quarters, but I didn't think there was any problem with the lounge, or I would have told him to leave.

I am deploying to Afghanistan tomorrow for 6 months. I do not want to have to come back for this.

This statement is true and correct, and I have nothing further to add. I have made this statement in the knowledge that it may be used in disciplinary proceedings and that I may be liable to disciplinary proceedings in respect of any false statement that I may have made.

Dated at Whenuapai 02 Feb 15.



**J. BATTEN**  
**LCPL**

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