



**Australian Government**

# **DEFCM125A Conduct summary authority proceedings**

**Release: 2**

## DEFCM125A Conduct summary authority proceedings

### Modification History

| Release | TP Version | Comments                                |
|---------|------------|-----------------------------------------|
| 2       | DEF12V2    | Layout adjusted. No changes to content. |
| 1       | DEF12V1    | Primary release.                        |

### Unit Descriptor

This unit covers the competency required to conduct service summary trials under the Defence Force Discipline Act (DFDA).

### Application of the Unit

This unit only applies to Defence members who are summary authorities either as an automatic consequence of appointment (such as command) or by an instrument of appointment.

These proceedings may include subordinate summary, summary, superior summary.

### Licensing/Regulatory Information

Not applicable.

### Pre-Requisites

Not applicable.

### Employability Skills Information

This unit contains employability skills.

## Elements and Performance Criteria Pre-Content

Elements describe the essential outcomes of a Unit of Competency.

Performance Criteria describe the required performance needed to demonstrate achievement of the element. Where ***bold italicised*** text is used, further information is detailed in the Required Skills and Knowledge and/or the Range Statement. Assessment of performance is to be consistent with the Evidence Guide.

## Elements and Performance Criteria

| ELEMENT                                    | PERFORMANCE CRITERIA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|--------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. <i>Conduct summary trials</i>           | <p>1.1 <b>Organisational policies</b> are complied with when conducting summary trials.</p> <p>1.2 <b>Jurisdiction is determined.</b></p> <p>1.3 <b>Applications and objections</b> are heard and a determination is made.</p> <p>1.4 <b>Trial proceedings are conducted.</b></p> <p>1.5 <b>Evidence</b> is heard, <b>trial documentation</b> is examined and <b>clarification</b> is sought as required.</p> <p>1.6 Guilt or innocence is determined and a judgement is given.</p> <p>1.7 <b>Plea/s</b> are heard and a determination is made on their validity.</p> <p>1.8 Prosecutorial advice and mitigation are heard.</p> <p>1.9 Punishment/s are <b>imposed</b> and reasons are given.</p> |
| 2. <i>Complete post-trial requirements</i> | <p>2.1 <b>Post-trial procedures</b> are conducted in accordance with organisational policies.</p> <p>2.2 <b>Post-trial documentation</b> is completed, processed and stored in accordance with organisational policies.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

## Required Skills and Knowledge

This describes the essential skills and knowledge and their level, required for this unit.

### Required Skills

- communicate effectively in writing (eg: completing post-trial documentation)
- communicate effectively orally (question, conduct briefings, respond to questioning, listen, reflect)
- conduct interviews
- decide the admissibility of evidence
- decide the guilt of an accused (considering the evidence)
- display empathy and build rapport with colleagues and stakeholders
- follow procedures
- interpret body language
- interpret relevant Australian Defence Force (ADF) policies
- lead individuals and groups where required
- manage work effectively

- make sound judgements
- select a punishment for the convicted (considering the circumstances and law)
- undertake research

### **Required Knowledge**

- appointing
- charges and their proofs
- disqualification
- evidence (applying the Summary Authority Principles of Evidence, probative value, weighing the evidence; all proofs must be proven beyond reasonable doubt AND have no viable defence in order to find guilty and convict)
- facts in issue
- jurisdiction
- pleas in mitigation
- procedures
- punishments
- records as required
- relevant references for locating relevant information such as:
  - ADF publications
  - Defence Force Discipline (Consequences of Punishment) Rules
  - Defence Instructions
  - Discipline Law Manual
  - Summary Authority Rules
- reviews/petitions
- search warrants
- witnesses
- who can issue summonses (commanding officers can issue a summons after first approach is requested and then ordering attendance; subordinate summary authority (SUBSA) officers do not issue summonses)
- who can issue warrants (commanding officers can issue a warrant; SUBSAs do not issue warrants)

## Evidence Guide

The evidence guide provides advice on assessment and must be read in conjunction with the Performance Criteria, Required Skills and Knowledge, the Range Statement and the Assessment Guidelines for this Training Package.

### Critical aspects for assessment and evidence required to demonstrate competency in this unit

Assessment must confirm the ability to:

- provide advice that is relevant and appropriate to the circumstances

### Consistency in performance

Competency should be demonstrated in a range of situations that could be expected in the workplace.

### Context of and specific resources for assessment

#### Context of assessment

Competency should be assessed in the workplace or in a simulated workplace environment.

#### Specific resources for assessment

There are no specific resource requirements for this unit.

## Range Statement

The Range Statement relates to the Unit of Competency as a whole. It allows for different work environments and situations that may affect performance. ***Bold italicised*** wording in the Performance Criteria is detailed below.

***Organisational policies*** may include:

- ADF publications
- Defence Force Discipline Rules (consequences of punishment)
- Defence Instructions
- Summary Authority Rules

***Jurisdiction is determined*** may include:

- deciding to try the charge
- hearing commencing within three months of charging
- hearing within the three month limit
- location of offence
- not proceeding with a charge/s due to lack of evidence
- preferring the charge within time limits
- rank of accused and rank difference being within limits of jurisdiction
- referring the charge to a higher authority, such as the

|                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                            | <p>Director of Military Prosecutions (DMP) due to:</p> <ul style="list-style-type: none"> <li>• complexity</li> <li>• severity</li> <li>• it being a prescribed offence</li> <li>• it being outside of jurisdiction</li> <li>• punishment sought is greater than available to the summary authority</li> <li>• referring the charge to another summary authority, bias, familiarity with case, conflict of interest, etc.</li> <li>• summary authority not being disqualified due to being involved in issuing warrants, the investigation or charging the accused, or otherwise indicating a desire to charge the member</li> <li>• type of offence</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b><i>Applications and objections</i></b> may include:     | <ul style="list-style-type: none"> <li>• accused or prosecuting officer requesting an adjournment</li> <li>• witness before a summary authority giving evidence by audiovisual link or audio link</li> <li>• application for an adjournment, before pleading, on the ground that the accused has not had an adequate opportunity to prepare his/her defence</li> <li>• objection to the recorder or summary authority due to bias</li> <li>• application before pleading by co-accused to be dealt with or tried in separate proceedings</li> <li>• application before pleading by accused to have multiple charges heard in separate proceedings</li> <li>• objection to a charge before pleading by accused on any ground, such as: <ul style="list-style-type: none"> <li>• accused has been previously convicted or acquitted of the charge or a service tribunal has already taken it into consideration in sentencing</li> <li>• time limits for charging and/or trying accused have been contravened</li> <li>• charge does not disclose a service offence or is otherwise wrong in law</li> <li>• summary authority does not have jurisdiction to try the charge or is disqualified by involvement in the investigation or charging of the offence</li> </ul> </li> </ul> |
| <b><i>Trial proceedings are conducted</i></b> may include: | <ul style="list-style-type: none"> <li>• adjournment of proceedings</li> <li>• handling applications and objections</li> <li>• hearing pleas</li> <li>• implementing appropriate procedures (A/B/C/D)</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

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|-------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                           | <ul style="list-style-type: none"> <li>managing trial personnel</li> <li>offering election by trial by CM/DFM for Schedule 1A offences, because of the seriousness of the offence (if proven)</li> <li>offering upfront election by trial by court martial (CM) /Defence Force Magistrate (DFM)</li> <li>substituting a plea of not guilty for a plea of guilty when it appears that the accused does not understand the effect of the guilty plea</li> </ul> |
| <b>Evidence requirements</b> may include: | <ul style="list-style-type: none"> <li>applying principles of evidence (such as relevance, reliability, weight, probative value)</li> <li>determining the admissibility of evidence</li> <li>managing examination, cross-examination and re-examination</li> </ul>                                                                                                                                                                                            |
| <b>Trial documentation</b> may include:   | <ul style="list-style-type: none"> <li>Charge Sheet and Action Report Form</li> <li>investigating officer's reports</li> <li>medical and other specialist reports</li> <li>pre-sentence report</li> <li>statutory declarations</li> <li>witness statements</li> </ul>                                                                                                                                                                                         |
| <b>Clarification</b> may include:         | <ul style="list-style-type: none"> <li>advice from a legal officer: <ul style="list-style-type: none"> <li>during the proceedings</li> <li>by conference call</li> <li>during a pause</li> </ul> </li> <li>advice from consulting manuals, instructions and other references</li> <li>asking questions of accused</li> <li>asking questions of witnesses</li> </ul>                                                                                           |
| <b>Plea/s</b> may include:                | <ul style="list-style-type: none"> <li>guilty</li> <li>not guilty</li> <li>silence by the accused (defaults to not guilty)</li> </ul>                                                                                                                                                                                                                                                                                                                         |
| <b>Determination includes</b>             | <ul style="list-style-type: none"> <li>summary authority using personal judgement to determine that accused understands the ramifications of the plea</li> </ul>                                                                                                                                                                                                                                                                                              |
| <b>Imposing a punishment</b> may include: | <ul style="list-style-type: none"> <li>considering the D5 of the convicted</li> <li>considering the effect upon unit discipline</li> <li>considering the scale of punishments</li> <li>hearing pleas in mitigation</li> <li>reviewing the conduct record of the convicted</li> </ul>                                                                                                                                                                          |
| <b>Post-trial procedures</b> may include: | <ul style="list-style-type: none"> <li>grounds for review</li> <li>informing the convicted member of the outcomes of the review</li> </ul>                                                                                                                                                                                                                                                                                                                    |

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|-----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                     | <ul style="list-style-type: none"><li>• petitions to the chain of command concerning conviction, punishment or an order imposed by a summary authority</li><li>• suspending execution of punishment by reviewing authority (RA) when convicted member petitions (at the RA's discretion)</li><li>• and must be lodged in writing within timeframes (thirty days from notice)</li></ul> |
| <b><i>Post-trial documentation</i></b> may include: | <ul style="list-style-type: none"><li>• trial transcript</li><li>• updating organisational databases</li></ul>                                                                                                                                                                                                                                                                         |

## Unit Sector(s)

Not applicable.