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CHIEF JUDGE ADVOCATE

Australian Defence Force

BN6951695

PRACTICE NOTE 4 — SUSPENSION FROM DUTY AFTER CONVICTION ORDERS (VERSION 2)

1. **Purpose.** This Practice Note sets out the practice concerning orders under section 99(1) of the DFDA suspending a member from duty after conviction by a superior service tribunal where the member is sentenced to a punishment that does not take effect until reviewed by a reviewing authority (ie, imprisonment and dismissal).
2. **Commencement.** This Practice Note commences forthwith.
3. **Which punishments.** While the power to make an order under section 99(1) of the DFDA will arise for both sentences of imprisonment and dismissal, counsel can expect that the power will be considered only for sentences of dismissal.¹
4. **Appropriate authority.** Section 99(1) of the DFDA provides that either a service tribunal or a reviewing authority may make an order under that subsection. For a court martial, the JA will ordinarily exercise the power.
5. **Timing.** Counsel should be prepared to make submissions after the tribunal announces the sentence. Among other things, it is expected that the prosecution will be ready to represent the interests of command.
6. **Remuneration.** Counsel should not expect the JA or DFM to make an order under section 100(3) of the DFDA concerning whole or part remuneration. Any such application should be to the reviewing authority (section 100(5)(b) of the DFDA), or another authorised officer or delegate for payments.
7. **Template.** The Office of the Judge Advocate General will provide the JA or DFM with the necessary template.

M Cowen, QC
Brigadier
Chief Judge Advocate

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¹ For sentences of imprisonment, counsel should expect that a superior service tribunal would make a post-trial custody order under section 172(3A) of the DFDA, which would be incompatible with an order suspending a member from duty.

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