



# **DIRECTOR OF MILITARY PROSECUTIONS**

*Report for the period  
01 January to 31 December 2023*



# **Director of Military Prosecutions**

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01 January to 31 December 2023*

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Military Prosecutions**  
Department of Defence  
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**The Hon Richard Marles MP**  
Minister for Defence  
Parliament House  
CANBERRA ACT 2600

Dear Minister

As required by section 196B of the *Defence Force Discipline Act 1982*, I submit the annual report relating to the operations of the Director of Military Prosecutions for the period 01 January to 31 December 2023.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'IS Henderson'.

**IS Henderson**  
Air Commodore  
Director of Military Prosecutions  
Australian Defence Force

30 April 2024



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## **DIRECTOR OF MILITARY PROSECUTIONS**

### **REPORT FOR THE PERIOD 01 JANUARY TO 31 DECEMBER 2023**

#### **INTRODUCTION**

1. Section 196B of the *Defence Force Discipline Act 1982* (DFDA) obliges the Director of Military Prosecutions (DMP), as soon as practicable after 31 December each year, to prepare and give to the Minister for Defence, for presentation to the Parliament, a report relating to the operations of the DMP for that year. The report must:

- a. set out such statistical information as the DMP considers appropriate; and
- b. include a copy of each direction given or guideline provided under subsection 188GE(1) during the year to which the report relates, and a copy of each such direction or guideline as in force at the end of the year.

2. This report is for the period 01 January to 31 December 2023.

#### **OFFICE OF THE DMP**

##### **DMP**

3. The position of DMP was established by DFDA, s. 188G and commenced on 12 June 2006. The DMP has the following functions:

- a. to carry on prosecutions for service offences in proceedings before a court martial or a Defence Force magistrate, whether or not instituted by the Director of Military Prosecutions;
- b. to seek the consent of the Director of Public Prosecutions as required by DFDA, s. 63;

- c. to make statements or give information to particular persons or to the public relating to the exercise of powers or the performance of duties or functions under the DFDA;
  - d. to represent the service chiefs in proceedings before the Defence Force Discipline Appeal Tribunal (DFDAT);
  - e. to do anything incidental or conducive to the performance of any of the preceding functions; and
  - f. such other functions conferred on the DMP by or under the DFDA, any other law of the Commonwealth, or as are prescribed by the Defence Force Discipline Regulations.<sup>1</sup>
4. The officeholder must be a legal practitioner of not less than five years' experience, and be a member of the Permanent Navy, Regular Army or Air Force, or a member of the Reserves rendering full-time service, holding a rank not lower than commodore, brigadier or air commodore.<sup>2</sup>
5. Previous appointments to the position of DMP have been:
- a. Brigadier Lynette McDade (July 2006 – July 2013);
  - b. Brigadier Michael Griffin, AM (August 2013 – January 2015);
  - c. Group Captain John Harris, SC – Acting DMP – (January 2015 – June 2015); and
  - d. Brigadier Jennifer Woodward, CSC (July 2015 – June 2021).
6. I was appointed as the DMP by the Minister for Defence on 01 July 2021 for a period of five years.

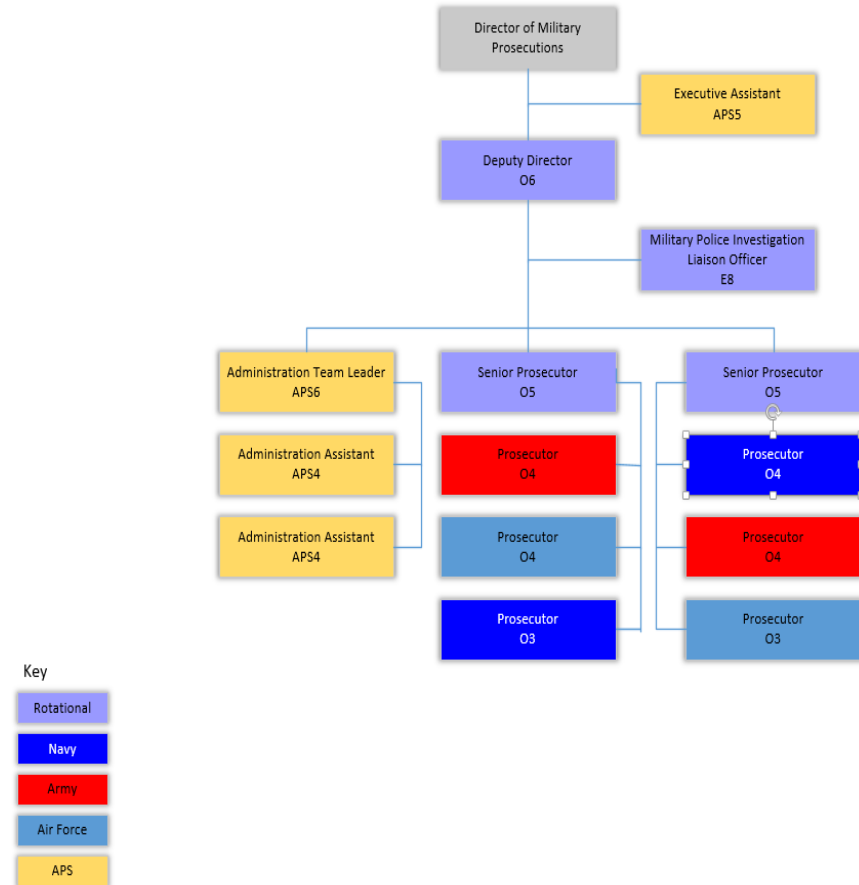
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<sup>1</sup> DFDA, s. 188GA.

<sup>2</sup> DFDA, s. 188GG.

## Office Structure

7. The structure of the permanent staff in the Office of the DMP (ODMP) during the reporting period was:



8. When compared with 2022, the 2023 structure reflects that I agreed to the transfer of two prosecutor positions (an O4 and an O3) from ODMP to Defence Counsel Services.

9. During the reporting period, the Deputy Director was appointed by the Minister for Defence to act as the DMP:

a. during a vacancy in the Office of the DMP; or

- b. during any period, or during all periods, when the DMP was absent from duty or from Australia, or was, for another reason, unable to perform the duties of the office.

### **Reserve Force**

10. During the reporting period, 13 reserve legal officers were on the 'ODMP Reserve Legal Officer panel'. As well as providing direct support to ODMP, on various occasions these reserve legal officers were made available for discrete tasks or temporary duty at the request of other parts of Defence.

11. One on occasion a reserve legal officer from outside of the ODMP Reserve Legal Officer panel was made available to my office to conduct a prosecution. While providing valuable support to my office, the principal reason for going outside of the ODMP reserve legal officer panel was to provide that officer with further experience as part of his professional and career progression.

### **PROSECUTION POLICY**

12. The DMP Prosecution Policy signed on 23 December 2021 remained in force during the reporting period. A copy of the prosecution policy is available online at Annex A to the DMP 2021 annual report:

<https://www.defence.gov.au/sites/default/files/2022-11/2021-DMP-Annual-Report.pdf>.

### **UNDERTAKINGS, DIRECTIONS AND GUIDELINES**

13. During the reporting period, no undertakings were given to any person pursuant to DFDA, s. 188GD (relating to the power to grant immunity from prosecution); nor were any directions or guidelines given in relation to the prosecution of Service offences to investigating officers or prosecutors pursuant to DFDA, s. 188GE.

## **TRAINING**

14. The nature of the work at ODMP can present challenges for maintaining good psychosocial health. Over a number of weeks in 2023, ODMP participated in in-house 'Health Headspace' training.

15. This training started as an initiative of the Air Force Headquarters Physical Training Instructors section and the Personnel Branch - Air Force. While ODMP sits outside of Air Force Group, two Air Force physical training instructors adapted and delivered the training in the ODMP offices.

## **EXTERNAL ENGAGEMENT**

### **Commonwealth Director of Public Prosecutions**

16. Section 63 of the DFDA requires the DMP to obtain the consent of the (Commonwealth) Director of Public Prosecutions (CDPP) prior to proceeding with a prosecution for certain serious offences. This is supported by a Memorandum of Understanding between the Australian Directors of Public Prosecutions and Director of Military Prosecutions of 22 May 2007 (MOU).

17. There was one jurisdictional request made under DFDA, s. 63 in the reporting period. In that matter, consent for prosecution under the DFDA was not given.

18. The MOU contemplates that representatives from the CDPP and ODMP conduct regular liaison meetings, not less frequently than once a year. On 23 October 2023, I met, via MS Teams, with Ms Rebecca Gabriel, Acting Assistant Director Fraud and Specialist Agencies, along with one of her prosecution team leaders and a prosecutor.

### **Australian Capital Territory Director of Public Prosecutions**

19. Due to DFDA, ss. 61 and 146, along with Court Martial and Defence Force Magistrate Rules 2020, r. 5, there is a clear benefit

to ODMP in having a working relationship with the Australian Capital Territory Director of Public Prosecutions.

20. In the reporting period I maintained contact with senior staff from this office, as did my own prosecutors at various training opportunities.

### **Visits by the DMP**

21. Over the period 05–07 June 2023, and accompanied by the Military Police Investigation Liaison officer, I travelled to the UK and visited the Service Prosecution Authority (the UK's ODMP equivalent) and the Defence Serious Crimes Unit (similar to the investigation capability of the Australian Joint Military Police Unit).

### **Visits to the DMP**

22. On 01 November 2023, ODMP received a delegation from the Singapore Ministry of Defence Legal Services.

23. On 07 November 2023, ODMP received the Judge Advocate General from the Japan Ground Self-Defense Force Defence Legal Services.

## **SIGNIFICANT ISSUES**

### **Legislative Reforms**

24. As the Judge Advocate General (JAG) reports on the operation of the DFDA and associated legislation in the JAG's annual report,<sup>3</sup> I limit myself to noting matters that directly relate to the prosecution function. There were no such legislative reforms in 2023.

### **Appeals and other superior court proceedings**

25. As the JAG reports on appeals and other superior court proceedings in the JAG's annual report that affect the operation of

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<sup>3</sup> DFDA, s. 196A.

the DFDA and associated legislation, I limit myself to noting matters that directly relate to the prosecution function. There were no such appellate or superior court decisions in 2023.

### **MILITARY JUSTICE PROCEEDINGS**

26. In addition to 42 matters carried over from 2022, in 2023 ODMP received:

- a. 93 briefs of evidence referred by the Joint Military Police Unit;
- b. 5 referrals by a summary authority; and
- c. 1 election by an accused from the summary level.

27. The 141 matters with ODMP in 2023 were dealt with as follows:

- a. 78 were subject of a direction that there be no prosecution under the DFDA;
- b. 3 were referred for trial by a summary authority;
- c. 23 were referred for trial by Defence Force magistrate;
- d. 5 were referred for trial by restricted court martial;
- e. 3 was referred for trial by general court martial; and
- f. 29 were carried over into 2024.

28. Annex A shows the number of offences by class and Service that were received by ODMP during the reporting period.<sup>4</sup>

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<sup>4</sup> The classes of offences is largely based on the structure and principles of the Australian and New Zealand Standard Offence Classification produced by the Australian Bureau of Statistics, slightly modified to suit the military discipline environment of the ADF.

29. There was one appeal to the DFDAT in 2023.<sup>5</sup>

## **FINANCE**

30. ODMP was adequately financed during the reporting period. Funding was provided by the Associate Secretary group of the Department of Defence and was principally allocated towards prosecutorial training, library subscriptions and membership of professional bodies (including practising certificates with the ACT Law Society).

31. ODMP has complied with the *Public Governance, Performance and Accountability Act 2013* and all relevant financial management policies of the ADF.

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<sup>5</sup> *Poulton v Chief of Navy* [2023] ADFDAT 1.



**TABLE OF ABBREVIATIONS**

<b>Abbreviation</b>	<b>Description</b>
ADF	Australian Defence Force
APS	Australian Public Service
CDPP	Commonwealth Director of Public Prosecutions
DFDA	<i>Defence Force Discipline Act 1982</i>
DFDAT	Defence Force Discipline Appeal Tribunal
DMP	Director of Military Prosecutions
JAG	Judge Advocate General
MOU	Memorandum of Understanding
ODMP	Office of the Director of Military Prosecutions

**ANNEX A TO  
DMP REPORT  
01 JAN TO 31 DEC 23**

**CLASS OF OFFENCE BY SERVICE RECEIVED BY ODMP – 2023**

<b>Class of Offence</b>	<b>NAVY</b>	<b>ARMY</b>	<b>RAAF</b>	<b>CIVILIAN</b>	<b>TOTAL</b>
01 – HOMICIDE AND RELATED OFFENCES					
02 – ACTS INTENDED TO CAUSE INJURY	3	6			9
03 – SEXUAL ASSAULT AND RELATED OFFENCES	13	13	8		34
04 – DANGEROUS OR NEGLIGENT ACTS ENDANGERING PERSONS		1			1
05 – ABDUCTION, HARASSMENT AND OTHER OFFENCES AGAINST THE PERSON	1	4	2		7
06 – ROBBERY, EXTORTION AND RELATED OFFENCES					
07 – UNLAWFUL ENTRY WITH INTENT/BURGLARY, BREAK AND ENTER			1		1
08 – THEFT AND RELATED OFFENCES			1		1
09 – FRAUD, DECEPTION AND RELATED OFFENCES	8	12	6		26
10 – ILLICIT DRUG OFFENCES			1		1
11 – PROHIBITED AND REGULATED WEAPONS AND EXPLOSIVES OFFENCES		1			1
12 – PROPERTY DAMAGE AND ENVIRONMENTAL POLLUTION					
13 – PUBLIC ORDER OFFENCES					
14 – TRAFFIC AND VEHICLE REGULATORY OFFENCES					
15 – OFFENCES AGAINST JUSTICE PROCEDURES, GOVERNMENT SECURITY AND GOVERNMENT OPERATIONS	1	2			3
16 – MISCELLANEOUS CIVILIAN OFFENCES	3	1	1		5
17 – SPECIFIC MILITARY DISCIPLINE OFFENCES		3	1		4
<b>Grand Total</b>	<b>29</b>	<b>43</b>	<b>21</b>		<b>93</b>



