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CHIEF JUDGE ADVOCATE

Australian Defence Force

BN10211151

PRACTICE NOTE 2 — FILING OF MATERIAL, TENDERING AND HANDING UP DOCUMENTS (VERSION 6)

1. **Purpose.** This Practice Note sets out the practice for counsel in superior service tribunal proceedings when filing material, tendering and handing up documents.
2. **Commencement.** This Practice Note commences forthwith.
3. **Definitions.** The following definitions apply for the purpose of the Practice Note:
 - a. **Document:** Limited to hard-copy documents (not electronic documents) and does not include bound books or other documents where it would be impractical to make a copy. It includes submissions, completed forms, maps, diagrams, drawings and printed photographs.
 - b. **Exhibit:** A document received into evidence.
 - c. **Marked for Identification (MFI):** A document that has potential evidentiary value but has not at the relevant time been admitted as an exhibit. Written submissions will also be entered as MFIs. Copies of cases and legislation are usually not entered as MFIs.

Filing and tendering of material

4. Parties are to proactively manage both the electronic production and filing of their documents via the Registry and tendering of hard copy exhibits and MFIs during trials.
 - a. **Pre-trial hearings (PTH).** Parties are to electronically file documents with the Registry in accordance with the practices and timelines outlined in Practice Note 5 – *Pre-trial hearings (extant version)*.
 - b. **Guilty pleas before a Defence Force magistrate**
 - (1) Both parties are to electronically file with the Registry and serve on the other party no less than **three working days** before the hearing:
 - (a) all written material to be relied upon at sentence, including the agreed schedule of facts, the *Pre-Sentence report*, the PD103 *Conduct Record*, if any, and any exhibits or aide memoires, This should only be done with the consent of the other party consistent with professional rules of conduct.
 - (b) any outline of submissions (to be supplemented orally if required),

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- (c) with a view to facilitating the conduct of the proceedings, the RMJ will provide the filed material to the DFM prior to the commencement of the hearing unless specifically requested by the filing party not to do so.

c. **Not guilty pleas before a Defence Force magistrate**

- (1) Both parties are to provide and tender their documents at the hearing.
- (2) Counsel are to provide two copies of an exhibit or MFI (the exhibit or MFI itself, plus a working copy for the DFM)

d. **Guilty pleas and not guilty pleas before a Court Martial**

- (1) Both parties are to provide and tender their documents at the hearing.
- (2) Counsel are to provide the tribunal with:
 - (a) two copies of an exhibit for the JA (the exhibit itself plus a working copy), plus one copy per panel member
 - (b) two copies of an MFI for the JA (the MFI itself plus a working copy). Counsel are to have sufficient copies on hand for each member of the panel should the MFI become an exhibit.

Sensitive material

5. Under NO circumstances is sensitive material to be electronically filed with the Registry. Any sensitive material will be tendered in court in hard copy and if appropriate ordered to be sealed by the JA/DFM.

6. **Sentencing.** Where the convicted person has a PD103 *Conduct Record*, the prosecution are to tender the relevant extracts from PD103 plus a single photocopy of the front and back of the cover.

Exhibits and MFIs

7. **Preparation.** Counsel are to proactively manage tendering documents and the provision of documents and exhibits to all witnesses, especially remote witnesses.

8. Counsel are to have made all necessary arrangements for the provision of documents and exhibits to witnesses, especially remote witnesses, prior to the tribunal commencing for the day, in order to avoid unnecessary adjournments and last minute arrangements.

9. Counsel are to ensure they have a clean, unmarked copy of all witness statements in the event those statements are to be provided to a witness.

10. **Digital, video and/or audio exhibits.** Counsel are responsible for their digital, video and/or audio exhibits. Where counsel intend to tender and use digital, video and/or audio exhibits they must ensure prior to the hearing that:

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- a. the digital, video and/or audio is in a playable format and compatible with the IT or audio visual system in the specific hearing room where the hearing is being conducted.
- b. prior arrangements have been made with the Registry for remote witness access to the digital, video and/or audio exhibit, and the exhibit can be played on the system where the remote witness is located.
- c. the digital, video and/or audio is properly cued and ready to be played.
- d. the digital, video and/or audio exhibit only contains that which is intended to be placed before the tribunal, and does not contain any additional extraneous or prejudicial material or information.

Cases, Legislation and Legal Texts

11. **Legislation.** Unless specifically requested by the JA or DFM, copies of the current compilation of the following legislation are not required to be provided:
 - a. **Commonwealth.** *Crimes Act 1914, Criminal Code 1995, Defence Act 1903, DFDA, Court Martial and Defence Force Magistrate Rules 2020, Defence Regulation 2016, Defence Force Discipline Regulations 2018*
 - b. **ACT.** *Crimes Act 1900 (ACT), Criminal Code 2002 (ACT), Evidence Act 2011 (ACT), Evidence (Miscellaneous Provisions) Act 1991 (ACT)*
 - c. any other legislation that formed the basis for a DFDA, section 61 offence.
12. In all other cases, a copy of the relevant provisions of the legislation is to be provided to the tribunal and opposing counsel.
13. **Cases.** Unless specifically requested by the JA or DFM, copies of leading cases referred to in passing as a statement of general principle are not required. As a guide, counsel are to consider whether the reference to the case is essentially by way of short hand or is a submission that will require the JA or DFM to actively engage with the case law.
14. In all other cases, copies of cases referred to by counsel are to be provided to the tribunal and opposing counsel.
15. **Legal texts.** Unless specifically requested by the JA or DFM, extracts are not required from the current editions of the various Defence Discipline Manuals and Guides; *Ross on Crime* and Odgers, *Uniform Evidence Law*. Counsel may bring the JA or DFM's attention to other legal texts, and should be prepared to provide a copy of the relevant pages on request.

Miscellaneous

16. **Originals.** Where counsel would like the original of an exhibit or MFI returned at the end of the proceedings, an additional copy to the numbers specified above is to be provided (for the tribunal file).

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17. **Real evidence.** Where real evidence is admitted into evidence, where feasible counsel should provide a photograph of the object to be retained on the tribunal file after the exhibit is returned at the conclusion of the proceedings.

M Cowen, AM, KC
Major General
Chief Judge Advocate

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