

AUSTRALIA

Last updated: 10 November 2016

RULES/GENERAL LAWS

Defence Force Discipline Act, 1982 (DFD Act).

<https://www.legislation.gov.au/Details/C2012C00181>

General

Australia takes the general position that where Australian military personnel are deployed outside of Australia, such as on a United Nation operation, those personnel are deemed to be on duty at all times, even if particular acts or omissions of or by those personnel were not committed in the course of their duties. More importantly, Australian military personnel remain subject to Australian federal criminal law that applies extra-territorially regardless of their duty status. Further, Australian military personnel remain subject to the Defence Force Discipline Act when deployed outside of Australia regardless of their duty status. Australian military personnel include, outside of Australia, those persons who are authorised to accompany Australian military personnel.

See Section 61 of the Defence Force Discipline Act 1982 and

Section 63 of the Defence Force Discipline Act 1982.

SEA: military offence?

Australia incorporates a body of criminal law through section 61 of the Defence Force Discipline Act 1982 and applies it to Australian military personnel as though it were military offences. This body of criminal law includes sexual offences commonly known to Australian law. Section 63 of the Defence Force Discipline Act limits the ability to prosecute some of these offences for constitutional reasons, where the offence is alleged to have been committed in Australia. However, section 63 does not limit the ability of Australian military commanders to have allegations of such military offences investigated and prosecuted where those offences are alleged to have been committed outside of Australia.

Powers of the Commanding Officer (CO)

See Section 107, DFD Act (Jurisdiction of commanding officers).

See also Section 5, DFD Act (Commanding Officers for disciplinary purposes).

Section 113 DFD Act (Powers of officers in command of detachment).

Australian military standing instructions generally prohibit fraternisation among Australian military personnel and others, and allow Australian military commanders to prohibit Australian military personnel from entering or being present in declared places. In addition, Australian military commanders have the inherent command power to issue orders to Australian military personnel that are lawful and serve a military purpose. This includes issuing orders regarding fraternisation, confinement to camps, alcohol consumption, prohibited places etc. to Australian military personnel when deployed.

INVESTIGATION

Who can investigate?

In accordance with **Section, 101 DFD Act**, Australian military police members, and other Australian military officers, warrant officers and non-commissioned officers, may investigate an alleged military offence.

National Investigation Officer (NIO)

Australia applies a layered approach to the investigation of military offences. Australian military commanders can appoint an Australian military police member or an Australian military officer, warrant officer, or non-commissioned officer to investigate an alleged military offence. Where an Australian military contingent (however described) is sufficiently large, specialist Australian military investigators will be deployed with the contingent to investigate alleged serious, sensitive, or complex military offences. Where necessary, these Australian military investigators can be supplemented by other Australian military investigators and/or Australian specialist personnel, to support or takeover the investigation. In certain situations, specially appointed Australian military inquiry officers, Australian Federal Police, or other Australian investigators or inquiry officers may conduct the investigation or inquiry into the alleged incident. The reporting arrangements depend upon who has appointed whom and for what purpose. Where an Australian military commander has appointed an investigating officer, the investigating officer will ordinarily report to that Australian military commander. Where the investigating officer is an Australian military police member, the military police member will ordinarily report to their military police chain of command. Other Australian investigating or inquiry personnel will ordinarily report to whoever appointed them, who will normally be a senior Australian military commander, a senior Australian Federal Police commander, or an independent Australian Government authority, such as the Inspector-General of the Australian Defence Force.

PROSECUTION

Referral

In accordance with **Section 87, DFD Act**, the Director of Military Prosecutions, commanding officers, and Australian military personnel authorised by commanding officers, may refer a charge of a military offence to an Australian military tribunal for prosecution.

Who can charge?

In accordance with **Section 110 DFD Act**, The Commanding Officer may deal with a charge.

JUSTICE

Military justice

Yes, See **Section 103 DFD Act** - Competence of the Directory of Military Prosecutions

Deployable Court Martial?

Australian military tribunals (including superior tribunals, such as court martial, which try serious, sensitive, and complex military offences) may sit as required outside of Australia, subject, where applicable, to the consent of the state on whose territory the tribunal is to sit.

See **Division 3 (Part VI) DFD Act**.

DISCLAIMER

While the information contained in the Member State (MS) fact sheet is periodically updated, the United Nations does not guarantee that the information provided is correct, complete or up to date. The fact sheet reproduces content received from the Member State, and therefore, the United Nations is not responsible for the content nor can it guarantee its accuracy.