

# **DEFENCE FORCE PROCEEDINGS RULES 2021**

## **EXPLANATORY MEMORANDUM**

The *Defence Force Proceedings Rules 2021* bring into one National Court List:

- proceedings under the **Code of Military Discipline**;
- prosecution of an **indictment** presented under Part IX (*service law and discipline*) or Part X (*offences*) of the *Defence Act* Chapter No 74;
- an **appeal** from a decision of a Defence Force Magistrate;
- **judicial review** of decisions regarding service of a member of the Defence Force or the Memorandum of Agreement between the Papua New Guinea Defence Force and the Ombudsman Commission on “PNG Ombudsman Oversight Function of PNG Defence Force Complaints” dated 3 April 2013.

The rules clarify that the procedure to be applied for all of these matters is either the *National Court Rules* and other rules of civil procedure or the *Criminal Practice Rules* and other rules of criminal practice and procedure.

Note that Rule 2 recognises the role of the Defence Force Judge appointed under the *Defence Act*, s 45, which states:

- (1) **There shall be a Defence Force Judge and such number of Deputy Defence Force Judges as the Head of State, acting on advice, determines.**
- (2) **The Defence Force Judge and the Deputy Defence Force Judges shall be appointed by the Head of State, acting on advice given after consultation with the Chief Justice.**
- (3) **The Defence Force Judge shall be a person who is a Judge of the Supreme Court or the National Court.**
- (4) **The Deputy Defence Force Judges shall be persons who are qualified to be the Judges of the Supreme Court or the National Court.**
- (5) **The powers, functions and duties of the Defence Force Judge and the Deputy Defence Force Judges are as provided in this Act.**
- (6) **The Defence Force Judge may, by instrument under his hand, delegate to Deputy Defence Force Judge all or any of his powers and functions under this Act.**
- (7) **A delegation under Subsection (6) is revocable, in writing, at will, but this subsection does not allow the Defence Force Judge to intervene in a proceeding before a Deputy Defence Force Judge.**
- (8) **The Defence Force Judge has and may exercise and perform, in any part of the world, the jurisdiction, powers and functions of the National Court or a Judge of the National Court in relation to persons subject to the Code of Military Discipline, and the National Court may be constituted in any place by the Defence Force Judge.**
- (9) **The jurisdiction of the Defence Force Judge under Subsection (8) may be exercised in relation to an offence against the law of Papua New Guinea notwithstanding that the offence is expressed to be triable summarily or that it is within the exclusive jurisdiction of a court other than the National Court.**

The *Defence Force Proceedings Rules 2021* come into force on 1 November 2021.

JUSTICE CANNINGS  
CHAIRMAN, RULES COMMITTEE

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