

DEFENCE FORCE PROCEEDINGS RULES 2021

EXPLANATORY NOTES

The *Defence Force Proceedings Rules* came into force on 1 November 2021. There were no previous equivalent rules of court.

The *Defence Force Proceedings Rules* 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*) of the *Defence Act* Chapter No 74;
- judicial review of decisions regarding service of a member of the Defence Force.

JUSTICE CANNINGS
CHAIR, RULES COMMITTEE
17 May 2024

DEFENCE FORCE PROCEEDINGS RULES 2021

I, Chief Sir Gibuma Gibbs Salika GCL KBE CSM, Chief Justice of Papua New Guinea, certify that, pursuant to Section 184 of the *Constitution* and Section 8 (*rules of court of the National Court*) of the *National Court Act* (Chapter No 38) and all other powers enabling, the following Rules, described as “*Defence Force Proceedings Rules 2021*”, prescribing the practice and procedure of the National Court of Justice relating to the conduct of Defence Force Proceedings and related matters, have been made by the Judges at a meeting of the Judges on 17 December 2020 and shall come into force on a date to be determined by the Chief Justice by notice published in the *National Gazette*.

Dated this 8th day of February 2021

Chief Sir Gibuma Gibbs Salika GCL KBE CSM, Chief Justice of Papua New Guinea

* Editorial note: The date on which the *Defence Force Proceedings Rules 2021* shall come into force is 1 November 2021 (as determined by the Chief Justice and published in *National Gazette* No G380 of 10 June 2021).

DEFENCE FORCE PROCEEDINGS RULES 2021

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DEFENCE FORCE PROCEEDINGS RULES 2021

1. Purpose

The purpose of these Rules is to facilitate the quick and orderly hearing of proceedings arising out of, under or pursuant to the *Defence Act* Chapter No 74 (“the Act”), the *Code of Military Discipline* (the “Code”) 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 (“MOA”) in respect of persons subject to them.

2. Administration

- (1) There shall be a Defence Force Proceedings List maintained by the Registrar.
- (2) Subject to any directions of the Chief Justice, the Defence Force Judge appointed under Section 45(1) of the *Defence Act* is the Judge Administrator of the Defence Force Proceedings Track.
- (3) The Chief Justice may from time to time appoint any Judge to deal with matters on the Defence Force Proceedings Track.
- (4) The Registrar shall appoint an officer to be the senior officer in charge of registry matters concerning the Defence Force Proceedings List and shall appoint such other staff as are necessary to ensure the efficient and orderly running of the Defence Force Proceedings List.

3. Interpretation

In these Rules, unless the contrary intention appears:

“Act” means the *Defence Act* Chapter No 74;

“Court” means the National Court of Justice;

“Defence Force Proceedings” means proceedings that are:

- (a) appeals or reviews from decisions made under the Code of Military Discipline;
- (b) prosecution of an indictment presented under Part IX (*service law and discipline*) or Part X (*offences*) of the Act;
- (c) an appeal from a decision of a Defence Force Magistrate;
- (d) a judicial review from a grievance relating to service of a member of the Defence Force;
or
- (e) a judicial review from a decision made under the MOA; or

- (f) any proceeding of any nature concerning a Board of Inquiry established under the *Defence Act*;
- (g) any other proceeding that in the opinion of the Judge Administrator of the Defence Force Proceedings List or the Registrar are proceedings arising out of, under or pursuant to the *Defence Act 1974* (“the Act”), the Code of Military Discipline or the MOA, which can conveniently be administered on that List.

“MOA” means 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.

4. Description of proceedings

Proceedings filed in the Defence Force Proceedings track will be commenced in accordance with the *National Court Rules* or the *Criminal Practice Rules*, as appropriate, and shall be described as follows:

- (a) appeal from a decision made under the Code of Military Discipline or a decision of a Defence Force Magistrate or any other statutory appeal: “App (DF)”;
- (b) proceedings commenced by originating summons, including judicial reviews from decisions made under the Code or a grievance relating to service of a member of the Defence Force: “OS (JR-DF)”;
- (c) proceedings commenced by writ of summons: “WS (DF)”
- (d) prosecution of an indictment presented under Parts IX or X of the Act: “CR (DF)”.

5. Filing Fees

Filing fees for civil proceedings filed in the Defence Force Proceedings Track shall be the same as for equivalent proceedings filed in other civil tracks of the Court.

6. Practice and procedure

- (1) The *National Court Rules* and other rules of civil practice and procedure shall apply to civil proceedings filed in the Defence Force Proceedings track.
- (2) The *Criminal Practice Rules* and other rules of criminal practice and procedure shall apply to criminal proceedings filed in the Defence Force Proceedings track.

7. Transitional

The Registrar shall within 60 days after these Rules commence operation, transfer any Defence Force proceedings that are on other Court track lists on to the Defence Force Proceedings List.