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ATTORNEY-GENERAL
HON ROBERT McCLELLAND MP
AND
MINISTER FOR DEFENCE
SENATOR JOHN FAULKNER

JOINT MEDIA RELEASE

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ESTABLISHMENT OF THE MILITARY COURT OF AUSTRALIA

Attorney-General, Robert McClelland and Minister for Defence, Senator John Faulkner, today announced the Government's decision to establish a new federal court, the Military Court of Australia, under Chapter III of the Australian Constitution.

The new court will replace the interim measures put in place following the High Court's decision in *Lane v Morrison*, which last year invalidated the Australian Military Court established by the previous Government.

"Judicial officers appointed to the new Military Court of Australia will have the same independence and constitutional protections that apply in other federal courts," Mr McClelland said.

To ensure that the new court has the necessary understanding of the requirements and critical nature of military discipline, all judicial officers appointed to the court must have either past military experience or a familiarity with the services. They may not, however, be serving ADF members, nor members of the Reserves.

"This new specialist court will deliver a system of military justice for ADF members that combines the necessary independence and constitutional protections for the judiciary, with an understanding of the vital importance of military discipline in the operation of our armed forces," Senator Faulkner said.

"Timely and fair trials in the new court will enhance military justice and promote discipline in the ADF, which in turn will contribute to improved morale and operational effectiveness," Senator Faulkner said.

"After last year's High Court ruling that the Australian Military Court (AMC) established by the former government was unconstitutional, I announced that the Government would move quickly to put interim arrangements in place to ensure continuation of the military justice system, and that we would move to a Chapter III resolution for the military justice system," Senator Faulkner said.

"The new Military Court of Australia will form part of a restructured federal court system in which the Federal Magistrates Court will continue to hear general federal law matters," Mr McClelland said.

Existing Judges of the Federal Court and Federal Magistrates Courts with the requisite background may be offered dual commissions to the new military court.

“Under the new arrangements, a lower tier of the Family Court will be established and commissions offered to Federal Magistrates who undertake mainly family law work,” Mr McClelland said.

“This new structure will achieve a more integrated and efficient system in order to effectively deliver legal and justice services to both the civilian and defence community.”

The Government will continue its consultations with the courts and the Law Council of Australia in finalising the restructure process.

It is anticipated that legislation to establish the new Military Court will be introduced this year, with a view to the new court commencing operation in late 2011.

Further information on the future shape of the federal courts is attached.

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FUTURE SHAPE OF THE FEDERAL COURTS: FACT SHEET

Military Court

- The Military Court of Australia will be established as a separate Court in accordance with Chapter III of the Constitution, which gives the Commonwealth Parliament power to create federal courts and set out the extent of their jurisdiction.
- The new Court will have jurisdiction to try serious service offences.
 - Less serious offences, which comprise the vast majority of service offences, will continue to be heard by summary authorities at unit level.
- Any Australian Defence Force member who is charged with a service offence, even at summary level, may elect to have the matter heard in the Military Court of Australia.
- It will hear most matters in Australia (regardless of where they are committed) and will also be capable of deploying where necessary.
 - Where the Military Court of Australia determines that it would be inappropriate or impossible for the Court to deploy, Defence will arrange for the matter to be tried overseas by a court martial or Defence Force magistrate.
- The Military Court of Australia will be administered by the Federal Court and will consist of separate upper and lower Divisions, comprising judicial officers at the level of Federal Court judge and Federal Magistrate respectively.
 - The upper Division of the Military Court of Australia will try very serious service offences (which will be defined in the Military Court of Australia Regulations), and hear appeals from decisions of the Military Court of Australia in the first instance and appeals from a decision of a Defence Force magistrate or court martial deployed overseas.
 - The lower Division of the Military Court of Australia will try serious service offences (as opposed to “very serious service offences”) and matters where an accused has made an up-front election or which have been referred by a summary authority.
- Service offences will be tried by the Military Court of Australia other than on indictment, and therefore without a jury.
- Judicial officers of the Court will be required to have service experience or familiarity with the services, in addition to the usual criteria for appointment to a federal court.
 - They will be independent of the military chain of command.
 - They cannot be ADF permanent or reserve members.
- Judicial officers of the Court may hold dual commissions with the Federal Court or Federal Magistrates Court, or be appointed only to the Military Court.

Federal Magistrates Court

- The Federal Magistrates Court will be retained to hear general federal law matters and will continue to exercise general federal law jurisdiction.

- The Court will provide an appropriate pool of judicial officers (with the requisite military background or familiarity) who may be offered dual commissions to the lower Division of the new military court.
- The Federal Court will be responsible for the administration of the Federal Magistrates Court.

Family Court

- The Family Court will be the single court dealing with all family law matters
- The restructured Court will have two divisions:
 - The Appellate and Superior Division will hear complex first instance family law and child support cases, as well as appeals. It will comprise existing Family Court judges.
 - The General Division will hear all but the most complex family law cases (as the Federal Magistrates Court does now). It will comprise those Federal Magistrates who undertake mainly family law work and accept commissions.
- Matters will be able to be transferred between the two Divisions where appropriate.

Federal Court

- The Federal Court will continue to exercise its current jurisdiction in its current form.
- Judges of the Federal Court with the requisite military background or familiarity may be offered dual commissions to the upper Division of the new military court.