



# **Defence Honours and Awards Appeals Tribunal Procedural Rules 2011**

**as amended**

made under subsection 110XH(1) of the

*Defence Act 1903*

<b>Compilation start date:</b>	5 December 2013
<b>Includes amendments up to:</b>	Defence Honours and Awards Appeals Tribunal Amendment Procedural Rule 2013 (No. 1)

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## About this compilation

### **This compilation**

This is a compilation of the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011* as in force on 5 December 2013. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 18 June 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

### **Uncommenced amendments**

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

### **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### **Modifications**

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

### **Provisions ceasing to have effect**

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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## Part 1—Preliminary

### 1 Name of procedural rules

These procedural rules are the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011*.

### 2 Commencement

These procedural rules commence on the day after they are registered.

### 3 Definitions

In these procedural rules:

*Act* means the *Defence Act 1903*.

**approved form** means a form approved under rule 4.

**audio link** means a system of 2-way communication linking different places so that a person speaking at 1 of them can be heard at the other places.

**audiovisual link** means a system of 2-way communication linking different places so that a person at 1 of them can be seen and heard at the other places.

**Regulations** means the *Defence Force Regulations 1952*.

Note 1: Several other words and expressions used in these procedural rules have the meaning given by section 110T of the Act, for example:

- Chair
- defence award
- defence honour
- foreign award
- inquiry
- reviewable decision
- review of a reviewable decision
- Tribunal
- Tribunal member
- Tribunal proceeding.

Note 2: For the definition of **Secretary**, see subsection 4(1) of the Act.

### 4 Forms

- (1) The Chair may approve forms for these procedural rules.
- (2) Approved forms must be published on the Tribunal website.

## **Part 2—Review of reviewable decisions by Tribunal**

### **Division 2.1—Applications for review**

#### **5 Making applications**

An application for review of a reviewable decision must be in accordance with an approved form.

#### **6 What Tribunal may do with applications**

- (1) The Tribunal may use the application to conduct its own research into the reviewable decision.
- (2) The Tribunal's research may include giving the application for comment to:
  - (a) a person or organisation considered by the Tribunal to be appropriate; and
  - (b) a person or organisation the subject of adverse comment in the application.
- (3) For paragraph (2)(a), the grounds on which the Tribunal may decide that a person or organisation is appropriate include:
  - (a) that the person or organisation has the capacity to assist with the review of the reviewable decision; and
  - (b) that the person or organisation has an interest in the reviewable decision.

#### **7 Report by Secretary**

- (1) The Tribunal may give an application to the Secretary.
- (2) The Secretary may give the application for comment to:
  - (a) a person in the Department; and
  - (b) a person in the Defence Force.
- (3) If the Secretary is given an application under subrule (1), the Secretary must give the Tribunal a report on the reviewable decision to which the application relates within 30 working days after the day the Secretary receives the application.
- (4) The report must include the following:
  - (a) the findings on material questions of fact and the reasons for the decision;
  - (b) a reference to the evidence on which the findings were based;
  - (c) if the evidence mentioned in paragraph (b) is in an unclassified document—a copy of the evidence;
  - (d) each other unclassified document under the Department's control or in the Department's possession that is relevant to the reviewable decision.
- (5) The Secretary must:
  - (a) prepare a list of all classified documents under the Department's control or in the Department's possession that are relevant to the reviewable decision; and

- (b) give the list to a Tribunal member who holds a security clearance for accessing the documents within 30 working days after the day the Secretary receives the application; and
  - (c) if a Tribunal member who holds a security clearance for accessing a document on the list requests access to the document—give that Tribunal member a specified number of copies of the document within 10 working days after the day the Secretary receives the request.
- (6) The Tribunal may approve, in writing, a written request from the Secretary for more time to prepare the report or the list.
  - (7) The approval must state the additional time approved by the Tribunal.

### **8 Applicant may respond to report**

- (1) After receiving a report mentioned in subrule 7(3), the Tribunal must:
  - (a) give a copy of the report to the applicant within 10 working days; and
  - (b) tell the applicant that the applicant may give the Tribunal a written response to the report within 20 working days after the day the applicant receives the report.
- (2) The Tribunal may approve, in writing, a written request by the applicant for more time to prepare the response.
- (3) The approval must state the additional time approved by the Tribunal.

### **9 Other documents held by Department**

- (1) Subrule (2) applies if the Tribunal believes, on reasonable grounds, that not all of the documents under the Department's control or in the Department's possession have been:
  - (a) included in a report provided to the Tribunal under subrule 7(4); or
  - (b) listed for the Tribunal under paragraph 7(5)(a).
- (2) The Tribunal may direct the Secretary:
  - (a) to give the Tribunal a specified number of copies of a document identified by the Tribunal within a specified time; and
  - (b) to search for further documents; and
  - (c) to give the Tribunal a specified number of copies of the further documents within a specified time.

### **10 Other documents held by other person or organisation**

A person or organisation other than the Department must comply with a request by the Tribunal to provide a specified number of copies of a document within a specified time.

## **Division 2.2—Conduct of reviews**

### **11 Review hearing of defence honour may be public or private**

- (1) Subject to a direction of the Chair under subrule (2), a hearing of a review of a reviewable decision in relation to a defence honour must be conducted in public.
- (2) The Chair may direct that the hearing be conducted:
  - (a) in private; or
  - (b) partly in public and partly in private.
- (3) For subrule (2), the grounds on which the Chair may decide that the hearing be conducted wholly or partly in private include the following:
  - (a) that the matter under review is sensitive;
  - (b) that privacy is required to ensure fairness to a person involved or mentioned in the review;
  - (c) that the review involves matters of national security.
- (4) The Chair may give directions as to who may be present at a hearing that is conducted wholly or partly in private.

### **12 Other review hearings to be in private**

A hearing of a review of a reviewable decision in relation to a defence award or a foreign award must be conducted in private.

### **13 Making oral submissions at review hearing**

- (1) The Tribunal:
  - (a) must agree to a written request by an applicant to make an oral submission at a hearing of the review of a reviewable decision; and
  - (b) may invite another person to make an oral submission at the hearing; and
  - (c) may direct that an oral submission be made in person or by audio link or audiovisual link.
- (2) The Tribunal may agree to a written request by a person making an oral submission that the person be represented at the hearing by a person who is not a legal practitioner.
- (3) The reference to a legal practitioner in subrule (2) includes a reference to a person who:
  - (a) holds a degree of Bachelor of Laws, Master of Laws, Doctor of Laws or Bachelor of Legal Studies; or
  - (b) is otherwise qualified for admission as a barrister or solicitor of the High Court or of the Supreme Court of a State or Territory.

### **14 Secretary must assist Tribunal**

The Secretary must use his or her best endeavours to assist the Tribunal in relation to the review.



## **15 Making Tribunal's decisions available**

- (1) The Tribunal must give the applicant and the Secretary a copy of its decision on the review of a reviewable decision as soon as practicable after it has made the decision.

### *Defence honour*

- (2) If the hearing of a review of a reviewable decision in relation to a defence honour was conducted wholly in public:
  - (a) the Tribunal must publish the decision on the review on its website; and
  - (b) the published version of the decision must not contain classified material.
- (3) If the hearing of a review of a reviewable decision in relation to a defence honour was conducted wholly or partly in private:
  - (a) the Chair must decide whether to publish the decision on the review on the Tribunal's website; and
  - (b) any published version of the decision must not contain classified material.

### *Defence award or foreign award*

- (4) For a decision on the review of a reviewable decision in relation to a defence award or a foreign award:
  - (a) the Tribunal must publish the decision on its website; and
  - (b) the Chair may decide not to publish the name of the person to whom the award relates or any other information that is likely to identify that person; and
  - (c) the published version of the decision must not contain classified material.

## **Part 3—Inquiries by Tribunal**

### **Division 3.1—Written submissions to inquiry**

#### **16 Public call for written submissions**

- (1) The Tribunal may call for written submissions to an inquiry.
- (2) Unless the Chair decides otherwise, the call for written submissions must be published:
  - (a) in a newspaper circulating nationally; and
  - (b) in any other manner the Chair decides is appropriate.
- (3) The closing date for written submissions must be at least 20 working days after the day of the first publication of the call for written submissions.
- (4) The Tribunal may accept a written submission after the closing date.

#### **17 Making written submissions to inquiry**

A written submission to an inquiry must be in accordance with an approved form.

#### **18 What Tribunal may do with written submissions**

The Tribunal's powers in relation to written submissions are the same as its powers in relation to an application mentioned in rule 6.

## **Division 3.2—Conduct of inquiries**

### **19 Inquiries to be public**

- (1) Subject to subrule (2), a hearing of an inquiry must be conducted in public.
- (2) The Chair may direct that the hearing be conducted:
  - (a) in private; or
  - (b) partly in public and partly in private.
- (3) For subrule (2), the grounds on which the Chair may decide that the hearing be conducted wholly or partly in private are those mentioned in subrule 11(3).
- (4) The Chair may give directions as to who may be present at a hearing that is conducted wholly or partly in private.

### **20 Tribunal may invite person to make oral submission**

- (1) The Tribunal may:
  - (a) invite a person to make an oral submission at the hearing; and
  - (b) direct that the person make the oral submission in person or by audio link or audiovisual 34; and
  - (c) agree to a written request by the person that the person be represented at the hearing by a person who is not a legal practitioner.
- (2) The reference to a legal practitioner in paragraph (1)(c) includes a reference to a person mentioned in paragraph 13(3)(a) or (b).

**Division 3.3—Tribunal report on inquiry**

**21 Publication of report on inquiry**

- (1) The Tribunal must publish its report on the Tribunal website within 20 working days after the day it gives the report to the Minister under paragraph 110W(2)(b) of the Act.
- (2) The published report must not contain classified material.

## **Part 4—General provisions relating to operation of Tribunal**

### **22 Procedure of Tribunal**

- (1) Subject to the Act and the Regulations, the procedure of the Tribunal is at the discretion of the Tribunal.
- (2) The Tribunal must conduct its proceedings with as little formality and technicality, and with as much expedition, as the requirements of the Act and the Regulations and a proper consideration of the matters before the Tribunal permit.
- (3) The Tribunal is not bound by the rules of evidence but may inform itself on any matter in any way it considers appropriate.

### **23 Summons**

- (1) For paragraph 110XH(2)(h) of the Act, a summons must be in accordance with an approved form.
- (2) Service of the summons on a person must be made by:
  - (a) giving a copy of the summons to the person; and
  - (b) at the same time as the copy is given to the person, showing the person the original of the summons.

### **24 Oath or affirmation for witnesses**

Except in special circumstances, the Tribunal must require a person who gives evidence before the Tribunal to take an oath or make an affirmation.

### **25 Recording of Tribunal proceedings**

- (1) The Tribunal may:
  - (a) record a Tribunal proceeding; and
  - (b) make a transcript of the recording for its own purposes.
- (2) If the Tribunal records a Tribunal proceeding, the Tribunal must:
  - (a) tell persons attending the proceeding that their evidence will be recorded; and
  - (b) give a person who gives evidence at the proceeding an electronic copy of the person's evidence on request.

### **26 Adjournment of proceedings**

The Tribunal may adjourn a Tribunal proceeding at any time.

### **27 Tribunal powers in relation to documents**

The Tribunal may:

**Part 4** General provisions relating to operation of Tribunal

**Rule 27**

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- (a) retain a document given to the Tribunal under a provision of these procedural rules or under subsection 110XC(1) of the Act for as long as the Tribunal considers necessary; and
- (b) make copies of or take extracts from the document.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

- Endnote 1—About the endnotes
- Endnote 2—Abbreviation key
- Endnote 3—Legislation history
- Endnote 4—Amendment history
- Endnote 5—Uncommenced amendments
- Endnote 6—Modifications
- Endnote 7—Misdescribed amendments
- Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

### Abbreviation key—Endnote 2

The abbreviation key in this endnote sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended the compiled law. The information includes commencement information for amending laws and details of application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

### Uncommenced amendments—Endnote 5

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in endnote 5.

### Modifications—Endnote 6

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

### Misdescribed amendments—Endnote 7

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

### Miscellaneous—Endnote 8

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	pres = present
am = amended	prev = previous
c = clause(s)	(prev) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	Reg = Regulation/Regulations
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expired or ceased to have effect	rep = repealed
hdg = heading(s)	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
mod = modified/modification	Sdiv = Subdivision(s)
No = Number(s)	SLI = Select Legislative Instrument
o = order(s)	SR = Statutory Rules
Ord = Ordinance	Sub-Ch = Sub-Chapter(s)
orig = original	SubPt = Subpart(s)
par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)	



## Endnote 3—Legislation history

## Endnote 3—Legislation history

Name	FRLI registration or gazettal	Commencement	Application, saving and transitional provisions
Defence Honours and Awards Appeals Tribunal Procedural Rules 2011	19 May 2011 ( <i>see</i> F2011L00816)	20 May 2011	
Defence Honours and Awards Appeals Tribunal Amendment Procedural Rule 2013 (No. 1)	4 Dec 2013 ( <i>see</i> F2013L02047)	5 Dec 2013	—

## Endnotes

Endnote 4—Amendment history

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
Pt 2	
Div 2.2	
r 15 .....	rs No 1, 2013

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Endnote 5—Uncommenced amendments [none]

**Endnote 5—Uncommenced amendments [none]**

**Endnote 6—Modifications [none]**

**Endnote 7—Misdescribed amendments [none]**

**Endnote 8—Miscellaneous [none]**