



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

made under the

*Defence Act 1903*

## **Compilation No. 3**

**Compilation date:** 12 February 2019

**Includes amendments up to:** F2019L00119

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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011* that shows the text of the law as amended and in force on 12 February 2019 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

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

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

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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*.

### 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 Regulation 2016*.

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:
  - (a) if the application relates to a defence award, 30 working days after the day the Secretary receives the application;
  - (b) if the application relates to a defence honour, 60 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.

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

**Division 2.1** Applications for review

Rule 10

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**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 may be public or private**

- (1) Subject to a direction of the Chair or the presiding Tribunal member under subrule (2), a hearing of a review of a reviewable decision must be conducted in public.
- (2) The Chair or the presiding Tribunal member 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 or the presiding Tribunal member 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 or the presiding Tribunal member may give directions as to who may be present at a hearing that is conducted wholly or partly in private.

### **12 Review may be conducted without a hearing**

- (1) The Chair may direct that a review of a reviewable decision may be conducted without a hearing.
- (2) The Chair must not make a direction under subrule (1) unless the applicant and the Secretary have agreed that the review may be conducted without a hearing.

### **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 the applicant that the applicant be represented at the hearing by another person.
- (2A) The reference to another person in subrule (2) includes a reference to a legal practitioner.
- (3) The reference to a legal practitioner in subrule (2A) includes a reference to a person who:

Rule 14

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- (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 lawyer, barrister, solicitor or legal practitioner 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.
- (2) Subrule (1) does not apply if the Tribunal's decision includes a recommendation in relation to the Victoria Cross for Australia or the Victoria Cross.
- (3) If the Tribunal's decision includes a recommendation in relation to the Victoria Cross for Australia or the Victoria Cross, the Tribunal must give the applicant and the Secretary a copy of the decision as soon as practicable after the outcome of the recommendation has been determined.

**15A Publication of Tribunal's decisions**

- (1) If the hearing of the review was conducted wholly in public:
  - (a) the Tribunal must publish the decision on its website; and
  - (b) the published version of the decision must not contain classified material.
- (2) If the hearing of the review was conducted wholly or partly in private:
  - (a) the Chair must decide whether to publish the decision on the Tribunal's website; and
  - (b) any published version of the decision must not contain classified material.
- (3) If the review was conducted without a hearing:
  - (a) the Chair must decide whether to publish the decision on the Tribunal's website; and
  - (b) any published version of the decision must not contain classified material.
- (4) The Chair may decide not to publish the name of a person to whom an honour or award relates or any other information that is likely to identify that person.
- (5) If a decision includes a recommendation in relation to the Victoria Cross for Australia or the Victoria Cross, the decision must not be published on the Tribunal's website before the outcome of the Tribunal's recommendation has been determined.

## **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:

- (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

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key 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 (or will amend) the compiled law. The information includes commencement details for amending laws and details of any 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 (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

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#### Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Defence Honours and Awards Appeals Tribunal Procedural Rules 2011	19 May 2011 (F2011L00816)	20 May 2011	
Defence Honours and Awards Appeals Tribunal Amendment Procedural Rule 2013 (No. 1)	4 Dec 2013 (F2013L02047)	5 Dec 2013	—
Defence Honours and Awards Appeals Tribunal Amendment Procedural Rule (No. 1) 2018	21 May 2018 (F2018L00637)	22 May 2018	—
Defence Honours and Awards Appeals Tribunal Amendment Procedural Rule (No. 1) 2019	11 Feb 2019 (F2019L00119)	12 Feb 2019	—

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**Endnote 4—Amendment history**

<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
r 2 .....	rep LIA s 48D
r 3 .....	am F2018L00637
<b>Part 2</b>	
<b>Division 2.1</b>	
r 7 .....	am F2018L00637
<b>Division 2.2</b>	
r 11 .....	am F2018L00637
r 12 .....	rs F2018L00637
r 13 .....	am F2018L00637
r 15 .....	rs No 1, 2013
	am F2018L00637; F2019L00119
r 15A.....	ad F2019L00119

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