



Guide to Reviews

Introduction

The Defence Honours and Awards Appeals Tribunal (the Tribunal) is an independent statutory body established under the *Defence Act 1903* to consider Defence honours and awards matters.

The establishment of the Tribunal has created avenues for:

- individuals to seek **review** of their eligibility for a defence honour, a defence award, or a foreign award, after an application has been refused by Defence; and
- the Government to refer general eligibility issues relating to Defence honours and awards for **inquiry** and recommendation.

This information contained in this document focuses on the Tribunal's **review** function and covers the below topics:

- What decisions can be reviewed by the Tribunal?
- What is the review process and how long does a review take?
- What can I expect at a hearing, and how can I prepare?
- How do I make an application for review?
- What decision making powers does the Tribunal have?
- What if I'm not satisfied with the Tribunal's decision?
- How can I contact the Tribunal?

What decisions can be reviewed by the Tribunal?

The Tribunal can review a decision of Defence to not recommend a person, or a group of persons, for a defence honour (such as a gallantry or conspicuous service award), a defence award (such as a campaign or long service award) or a foreign award.

The service that is the subject of the reviewable decision needs to have been with or, at the direction of, the Australian Defence Force and rendered after 3 September 1939 (the beginning of the Second World War).

It is important to note that the Tribunal can only review Defence decisions, meaning an initial application needs to be made to Defence, and refused, before seeking review in the Tribunal. It is also important to note that the person seeking review in the Tribunal needs to be either:

- the person who made the original application to Defence;
- someone acting for that person, with that person's consent; or
- in the case of a deceased applicant, the executor of that person's estate.

The Tribunal cannot review:

- applications to amend the eligibility criteria for defence honours, defence awards, or foreign awards;
- applications for Australian awards that are not defined as defence honours or defence awards under the *Defence Regulation 2016* (such as unit citations or badges);
- applications to create a new honour or award; or
- eligibility for repatriation benefits.



I'd like to have my application reviewed in the Tribunal. What is the process and how long does a review take?

On receipt of a completed application for review, the Tribunal will write to you to confirm receipt of your application and will undertake an initial check to ensure it has jurisdiction to conduct the review (including by checking that your application meets the requirements set out above).

Once jurisdiction is confirmed, the Tribunal will write to you again formally accepting your application. At this time the Tribunal will provide a copy of your application to Defence, and will seek a report from Defence addressing the reasons for its initial decision. If you are seeking a defence award, Defence will have 30 business days to provide its report. If you are seeking a defence honour, Defence will have 60 business days to provide its report.

When the Defence report is received, you will be provided with a copy and invited to provide any comments you may wish to make on it.

The Tribunal will then consider all of this material, and any additional research it chooses to make, before setting down a date for a hearing. Hearings are generally held in public, and may be conducted in person, via telephone, or audiovisual link.

After the hearing, the Tribunal moves to its deliberative phase, and produces a written decision, which is provided to you and to Defence. 20 working days after this occurs, the report is then published on the Tribunal's website.

This process usually takes between three and six months to complete, but may take longer depending on the complexity of the review and any research that may be required.

What can I expect at the hearing, and how can I prepare?

The hearing is an opportunity to personally discuss your application with the Tribunal, and for the Tribunal to ask you any questions it may have after having read through your application and other documents.

Prior to the hearing, you will be provided with a package of documents to refer to during the hearing. This pack will be paginated for ease of use, and in the interests of procedural fairness, will include all of the relevant material that the Tribunal intends to rely on in making its decision. Any other relevant material that is discovered after the hearing will also be provided to you for comment.

At the start of the hearing, the Presiding Member will outline the role of the Tribunal, its functions, and how it will address your application for review. After this happens, you will be invited to make an opening statement. If you choose to make a statement, we ask that you keep this brief (usually around 5–10 minutes) noting that the Tribunal will already be very familiar with the package of documents, including the evidence you have submitted, and your comments on the Defence report.

If you are giving evidence at the hearing, the Tribunal will ask you to take an oath or make an affirmation concerning the evidence that you give. If you are giving evidence via telephone, you will be asked to make an affirmation. The same will apply for any witnesses that are appearing on your behalf.

A representative, or representatives, from Defence may also appear at the hearing. The Tribunal will generally ask questions of Defence, and may invite you to ask any questions you have for the Defence representative(s), through the Tribunal.

Unlike some other jurisdictions, the Tribunal's hearing environment is not an adversarial one, where each party 'argues' against the claims of another. Rather, the Tribunal is an inquisitorial body, which uses the hearing as an opportunity to gather as much information as it can from each of the parties, and any witnesses, to assist it in coming to an informed and correct decision.

At the conclusion of the hearing, you will be given the opportunity to make a closing statement.

What decision making powers does the Tribunal have?

If you are seeking a defence award (such as a campaign or long service award) the Tribunal has the power to affirm Defence's decision, or to set it aside and replace it with a new decision. If the Tribunal's decision is that you should be recommended for the award you are seeking, Defence will then proceed to implement the decision.

If you are seeking a defence honour (such as a gallantry or distinguished service award), the Tribunal will make a recommendation to the Minister for Defence Personnel regarding your review. This could be to affirm Defence's decision, or to set it aside and replace it with a new decision, which might include recommending you for a defence honour. It is then up to the Minister to decide whether or not to accept the Tribunal's decision.

What if I'm not satisfied with the Tribunal's decision?

The Tribunal is intended to be the final body of review of decisions relating to Defence honours and awards. However, if you think the Tribunal has made an error of law in reaching its decision, you may choose to apply to the Federal Court to have the Tribunal's decision set aside.

It is important to note that the Federal Court cannot decide the merits of your case, and has no power to recommend you for, or award you a medal. If the Federal Court were to find that the Tribunal had erred in law in reaching its decision, it may remit the matter back to the Tribunal for fresh consideration.

How do I make an application for review in the Tribunal?

Applications for a review can be lodged online at: <https://defence-honours-tribunal.gov.au/apply-for-a-review/>.

Alternatively, you can lodge an application by email to dha.tribunal@defence.gov.au, or in hard copy through the mail. This might be a good option if your application is lengthy, or contains many attachments.

At the minimum, your application should contain:

- a completed copy of the '**Application for a Review of Decision**' form;
- a copy of Defence's written decision refusing the honour or award; and
- a statement of reasons in support of your claim.

Before proceeding, please ensure your application contains all of the above documents.

To strengthen your case, it may be helpful to include any documented evidence you may have to support your application. This might include copies of documents verifying your service, or witness statements. We request that you do not send original documents.

If you are acting on behalf of another person, you will need their written permission. The appropriate form is available on the Tribunal's website or on request from the Secretariat.

While most of applicants before the Tribunal are unrepresented, you may elect to be represented by an advocate or legal representative if you wish.

How do I contact the Tribunal?

Post: Defence Honours and Awards Appeals Tribunal
Floor 1, 105 Tennant Street Fyshwick
Locked Bag 7765
Canberra BC ACT 2610

Phone: (02) 6266 1019

E-mail: DHA.Tribunal@defence.gov.au



Need further information or assistance?

Along with assisting the Tribunal, the Tribunal Secretariat is established to assist applicants, advocates and other interested persons with any questions they may have on the Tribunal's jurisdiction and processes. Please feel free to contact the Secretariat using the above details with any questions.

If you experience difficulties with your mental health and wellbeing associated with your application, or your service in general, we encourage you to call Open Arms on **1800 011 046** for confidential counselling and access to other programs. This service is free to current and ex-serving ADF personnel and their families.