



Defence Honours and Awards Appeals Tribunal Procedural Rules 2021

I, Stephen Skehill, Chair of the Defence Honours and Awards Appeals Tribunal, make the following procedural rules.

Dated 21 September 2021

Stephen Skehill
Chair

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Part 1—Preliminary

1 Name

This instrument is the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2021*.

2 Commencement

This instrument commences on the day after it is registered.

3 Authority

This instrument is made under section 110XH of the *Defence Act 1903*.

4 Definitions

Note 1: A number of expressions used in this instrument are defined in section 110T of the Act, including the following:

- (a) Chair;
- (b) defence award
- (c) defence honour
- (d) foreign award
- (e) inquiry
- (f) reviewable decision
- (g) review of a reviewable decision
- (h) Tribunal
- (i) Tribunal member
- (j) Tribunal proceeding.

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

In this instrument:

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*.

5 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Rule 6

6 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

7 Making applications

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

8 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.

9 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.

Rule 10

- (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.

10 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.

11 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.

12 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

13 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.

14 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.

15 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:

- (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.

16 Secretary must assist Tribunal

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

17 Making Tribunal's decisions available

- (1) Where a decision includes a recommendation to a Minister, the Tribunal must give that Minister and the Secretary and the applicant a copy of its decision on the review of a reviewable decision within a reasonable period after it has made the decision.
- (2) Where a decision does not include a recommendation to a Minister, the Tribunal must give the Secretary and the applicant a copy of its decision on the review of a reviewable decision within a reasonable period after it has made the decision.

18 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.

Part 3—Inquiries by Tribunal

Division 3.1—Written submissions to inquiry

19 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.

20 Making written submissions to inquiry

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

21 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 8.

Division 3.2—Conduct of inquiries

22 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 13(3).
- (4) The Chair may give directions as to who may be present at a hearing that is conducted wholly or partly in private.

23 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 15(3)(a) or (b).

Division 3.3—Tribunal report on inquiry

24 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

25 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.

26 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.

27 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.

28 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.

29 Adjournment of proceedings

The Tribunal may adjourn a Tribunal proceeding at any time.

Rule 30

30 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.

Schedule 1—Repeals

Defence Honours and Awards Appeals Tribunal Procedural Rules 2011

1 The whole of the instrument

Repeal the instrument