

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 22

Issued by the authority of the Parliamentary Secretary for Defence

Defence Act 1903

Defence Force Amendment Regulations 2011 (No. 1)

Section 124 of the *Defence Act 1903* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for securing the good government of the Defence Force, or for carrying out or giving effect to the Act.

Section 110Z, which was added to the Act in July 2010, provides that the Governor-General may make regulations that, without limiting the generality of section 124, may make provision for or in relation to any of the following:

- (a) any fees that are to be paid in relation to applications to the Defence Honours and Awards Appeals Tribunal (the Tribunal);
- (b) prohibiting the disclosure of information obtained by the Tribunal, a member of the Tribunal or a person assisting the Tribunal;
- (c) proof of decisions or orders of the Tribunal.

The Regulations amend the *Defence Force Regulations 1952* (the Principal Regulations) to insert a new Part 15A Defence Honours and Awards Appeals Tribunal to establish the:

- (a) definitions;
- (b) meaning of defence honour;
- (c) meaning of defence award;
- (d) disclosure of information;
- (e) remuneration; and
- (f) travel allowances.

The Regulations also insert a new Schedule into the Principal Regulations that provides a list of the Defence honours and awards that can be reviewed by the Tribunal.

The Regulations are part of the implementation of Schedule 1 to the *Defence Legislation Amendment Act (No. 1) 2010* which inserted a new Part VIIIIC into the Act in July 2010 to establish an independent Defence Honours and Awards Appeals Tribunal in legislation.

In 2007, the Government undertook to create a permanent, independent tribunal to consider issues arising in the area of Defence honours and awards. The Tribunal was established administratively in 2008 so that inquiries identified by Government could commence. As an administrative body, the Tribunal could only inquire into and make recommendations relating to issues referred to it by Government. The Tribunal had

no authority to make separate decisions or to independently review Defence decisions concerning eligibility for Defence honours and awards.

The establishment of the Tribunal as a statutory body under the *Defence Act 1903* allows the Tribunal to review applications from individuals and organisations for Defence honours and awards which have been previously considered by the Commonwealth (the Australian Defence Force or Department of Defence, collectively referred to as Defence). The Tribunal is able to review a decision concerning an application for a Defence award and may affirm a decision, revoke a decision, substitute a new decision or vary a decision in accordance with extant Royal Warrants, Regulations and Determinations, policy and practice.

In respect of Defence honours, the Tribunal is able to review a decision concerning a nomination for a Defence honour (other than an honour in the Military Division of the Order of Australia) and may affirm a decision or recommend to Government the revocation of a decision, substitution of a new decision or variation of a decision in accordance with extant Royal Warrants, Regulations, Declarations and Determinations, policy and practice.

The Act also enables the Tribunal to inquire into and make recommendations in respect of matters that have been referred to the Tribunal by the Minister for Defence. Further, the Tribunal will be the final avenue of appeal on the merits concerning applications for Defence honours and awards. However, questions of law may continue to be taken to the courts and complaints may be made to the Commonwealth Ombudsman.

Details of the Regulations are set out in the [Attachment](#)

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Chair of the Defence Honours and Awards Tribunal was consulted during the preparation of the Regulations.

The Regulations commence on the day after which they are registered on the Federal Register of Legislative Instruments.

Authority: Sections 110T, 110YE, 110Z and 124 of the *Defence Act 1903*

ATTACHMENT

Details of the *Defence Force Amendment Regulations 2011 (No. 1)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Defence Force Amendment Regulations 2011 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence the day following registration.

Regulation 3 – Amendment of *Defence Force Regulations 1952*

This Regulation provides that Schedule 1 amends the *Defence Force Regulations 1952* (the Principal Regulations).

Schedule 1 – Amendments

Item [1] inserts a new Part 15A (including new regulations 93A to 93F) into the Principal Regulations for the purpose of the **Defence Honours and Awards Appeals Tribunal**.

Regulation 93A – Definitions

This regulation sets out definitions of key terms used in the Regulations, including the following:

defence award is defined in the Regulations for the purpose of listing the awards that the Defence Honours and Awards Appeals Tribunal can review.

defence honour is defined in the Regulations for the purpose of listing the honours that the Defence Honours and Awards Appeals Tribunal can review.

The Note lists other words and expressions used in the Regulations which have the same meaning as given by section 110T of the Act. A number of examples are given including:

- Chair
- Foreign award
- Procedural rules
- Review of a reviewable decision
- Tribunal member

Regulation 93B – Meaning of *defence honour*

This regulation links the meaning of *defence honour* in Part 1 of Schedule 3 to the Regulations to the definition of *defence honour* in section 110T of the Act.

Regulation 93C – Meaning of *defence award*

This regulation links the meaning of *defence award* in Part 1 of Schedule 3 to the Regulations to the definition of *defence award* in section 110T of the Act.

Regulation 93D – Disclosure of information

This regulation makes it an offence for a Tribunal member or a person assisting the Tribunal to disclose without authority information that is part of, or relates to, an application for review.

Regulation 93E – Remuneration

This regulation sets out the daily fee to be paid the Chair of the Tribunal and the Tribunal members until such time as a specific determination has been made by the Remuneration Tribunal.

Regulation 93F – Travel allowance

This regulation provides that the rate of travel allowance for the Chair of the Tribunal and the Tribunal members will be in accordance with the Tier 2 rate under Remuneration Tribunal Determination 2004/03.

Item [2] inserts a new Schedule 3 into the Principal Regulations

Schedule 3 – Defence honours and awards

Part 1

Part 1 of Schedule 3 lists the Defence honours which can be reviewed by the Tribunal.

Part 2

Part 2 of Schedule 3 lists the Defence awards which can be reviewed by the Tribunal.