



Defence Force Discipline Appeals Regulation 2016

made under section 60 of the

Defence Force Discipline Appeals Act 1955

Compilation No. 1

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About this compilation

This compilation

This is a compilation of the *Defence Force Discipline Appeals Regulation 2016* that shows the text of the law as amended and in force on 23 March 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). 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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

This is the *Defence Force Discipline Appeals Regulation 2016*.

3 Authority

This instrument is made under the *Defence Force Discipline Appeals Act 1955*.

5 Definitions

In this instrument:

Act means the *Defence Force Discipline Appeals Act 1955*.

Deputy Registrar means a Deputy Registrar appointed under subsection 19(2) of the Act.

detention centre has the same meaning as in the *Defence Force Discipline Act 1982*.

legal practitioner has the same meaning as in section 39 of the Act.

naval vessel means:

- (a) a warship or other vessel that:
 - (i) is operated for naval or military purposes by Australia; and
 - (ii) is under the command of the Defence Force; and
 - (iii) bears external marks of nationality; and
 - (iv) is manned by seafarers under armed forces discipline (however described); or
- (b) a Government vessel that is used only on government non-commercial service as a naval auxiliary.

Registrar means the Registrar of the Tribunal but does not include a Deputy Registrar.

Registrar of Military Justice means the Registrar of Military Justice appointed under section 188FB of the *Defence Force Discipline Act 1982*.

Part 2—Appeals to the Tribunal

6 Period for appeal from a decision of a single member of the Tribunal

For the purposes of subsection 17(2) of the Act, the period within which a person affected by a decision referred to in that subsection may appeal to the Tribunal from the decision is the period of 10 days from the day on which the person is notified of the decision.

7 Lodgement of appeals etc.

- (1) For the purposes of paragraph 21(1)(b) of the Act, the following persons are prescribed:
 - (a) a Deputy Registrar;
 - (b) the Registrar of Military Justice;
 - (c) if the appellant is in custody on board a ship (other than a naval vessel) on board which is a body, contingent or detachment of the Defence Force—the officer commanding the body, contingent or detachment;
 - (d) if the appellant is confined in a detention centre—the officer in charge of the detention centre;
 - (e) if the appellant is confined in a civil prison in Australia—the Governor of the prison;
 - (f) if none of paragraphs (c), (d) and (e) applies to the appellant—the officer commanding any unit of the Defence Force.
- (2) If an appeal or an application for leave to appeal is lodged with a person referred to in subsection (1), the person must forward the appeal or application to the Registrar.

8 Giving records of court martial proceedings etc. to the Tribunal

- (1) If an appeal, or an application for leave to appeal, against a conviction, or a prescribed acquittal, by a court martial or Defence Force magistrate is lodged under the Act, the Registrar of Military Justice must, on request by the Registrar, give the following to the Tribunal for the purposes of the appeal or application:
 - (a) a record of the proceedings of the court martial or Defence Force magistrate;
 - (b) a record of any review with respect to the proceedings of the court martial or Defence Force magistrate;
 - (c) copies of documents that were before the court martial, Defence Force magistrate or reviewing authority in connection with the proceedings, or the review of the proceedings, as the case may be.
- (2) If a record or document given to the Tribunal under subsection (1) in relation to an appeal or application is no longer required for the purposes of the appeal or

application, the Registrar must return the record or document to the Registrar of Military Justice.

9 Legal aid

- (1) An appellant may apply to the Tribunal for the approval of the Tribunal to the granting of legal aid to the appellant under this section.
- (2) The application must be made within 14 days, or such longer period as the Tribunal allows, after the day on which the appellant's appeal or application for leave to appeal was lodged.
- (3) The application must be accompanied by a statutory declaration, made by the appellant, setting out such information as is necessary to enable the Tribunal to determine whether the appellant's means are insufficient to enable him or her to prosecute the appeal or application for leave to appeal.
- (4) If, on application under subsection (1), the Tribunal is satisfied that:
 - (a) the appellant has insufficient means to enable him or her to prosecute the appeal or application for leave to appeal; and
 - (b) it appears desirable in the interests of justice that legal aid should be granted to the appellant under this section;the Tribunal may, by order, approve the granting to the appellant of legal aid under this section.
- (5) If the Tribunal approves the granting to an appellant of legal aid under this section, the Attorney-General may arrange for one or more legal practitioners to represent the appellant at the hearing of the appeal or application for leave to appeal, or of a matter preliminary or incidental to the appeal.
- (6) If the Attorney-General arranges, under subsection (5), for a legal practitioner to represent an appellant, the Commonwealth must pay the legal practitioner an amount, determined by the Attorney-General, for fees and disbursements.

10 Discontinuance of appeals etc.

An appellant may, by notice in writing to the Registrar:

- (a) withdraw an application for leave to appeal; or
- (b) discontinue an appeal;

at any time before the hearing of the application or appeal commences.

11 Manner of enforcing order for payment of costs

An order under subsection 37(3) of the Act for the payment of an amount of costs by an appellant may be enforced in either or both of the following ways:

- (a) by the amount, or a part of the amount, being recovered as a debt due to the Commonwealth by action in a court of competent jurisdiction;
- (b) by deducting the amount, or a part of the amount, from any pay and allowances earned by the appellant as a member of the Defence Force.

Section 12

12 Appellant in custody

- (1) If an appellant in custody is entitled to be present at the hearing of his or her appeal or application for leave to appeal, or of a matter preliminary or incidental to the appeal, the Registrar must give the person who has the custody of the appellant a certificate signed by the Registrar:
 - (a) stating that the appellant is so entitled; and
 - (b) specifying details of the place where, and the times at which, the hearing will be held.
- (2) If a person who has the custody of an appellant is given a certificate under subsection (1) in relation to a hearing, the person must ensure that:
 - (a) the appellant is taken to the place specified in the certificate at the specified times; and
 - (b) the appellant will continue to be present at that place throughout the hearing.
- (3) If an appellant in custody is to be taken to a place at which the appellant is entitled to be present for the purposes of the Act, the person who has the custody of the appellant must ensure that the appellant is under guard:
 - (a) during the time the appellant is travelling to, and returning from, the place; and
 - (b) unless the Tribunal otherwise orders—during the time the appellant is present at the place.

Part 3—Administration of the Tribunal

13 Registry

- (1) There is to be a Registry of the Tribunal.
- (2) The Registry is to be at such place as the President directs.
- (3) The Registrar is to have custody of:
 - (a) any records of the Tribunal kept in the Registry; and
 - (b) documents lodged or filed with the Registrar or a Deputy Registrar.
- (4) The Registrar must keep proper records of:
 - (a) proceedings before the Tribunal; and
 - (b) documents in the custody of the Registrar.

14 Notification of hearing

As soon as practicable after a time, date and place for a hearing before the Tribunal is fixed, the Registrar must give written notice of the time, date and place to:

- (a) the appellant or the legal practitioner (if any) who is to represent the appellant at the hearing; and
- (b) the Chief of the Defence Force, or service chief, whose duty it is to undertake the defence of the appeal, application or matter the subject of the hearing; and
- (c) the Registrar of Military Justice.

15 Acting Registrar

- (1) The assistant Registrar is to act as the Registrar:
 - (a) during a vacancy in the office of Registrar (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Registrar:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
- (2) For the purposes of this section, the assistant Registrar is:
 - (a) if there is only one Deputy Registrar—the Deputy Registrar; or
 - (b) if there is more than one Deputy Registrar—the Deputy Registrar nominated by the President to be the assistant Registrar.

Note: For rules that apply to persons acting as the Registrar, see section 33A of the *Acts Interpretation Act 1901*.

Section 16

16 Fees to witnesses

The allowances payable under subsection 34(1) of the Act to a witness (other than a member of the Defence Force rendering service) are such fees and travelling expenses as the Registrar thinks fit to allow in accordance with the scale in Part 4 of the *Public Works Committee Regulation 2016*.

17 Fees for supplying copies

The fee for the supply by the Registrar to an appellant of a copy of a document relating to the appeal is:

- (a) if the document is not more than 50 pages—\$12; or
- (b) if the document is more than 50 pages—\$12 plus 10 cents for each page in excess of 50.

18 Procedure following decision of Tribunal

- (1) As soon as practicable after making a decision on a question of law, an appeal, an application or a matter, the Tribunal must prepare a written statement that sets out the decision of the Tribunal on the question of law, appeal, application or matter.
- (2) As soon as practicable after preparing a written statement under subsection (1), the Tribunal must provide a copy of the statement to the Registrar.
- (3) As soon as practicable after receiving a written statement under subsection (2), the Registrar must give the Registrar of Military Justice:
 - (a) a copy of the statement; and
 - (b) a copy of the orders of the Tribunal to which the decision relates.

Part 4—Application, savings and transitional provisions

19 Definitions

In this Part:

commencement day means the day this instrument commences.

old law means the *Defence Force Discipline Appeals Regulations 1957*, as in force immediately before the commencement day.

20 Transitional—appeals to the Tribunal made, but not determined, before commencement

- (1) This section applies if:
 - (a) an appeal or application (the *old appeal or application*) was made to the Tribunal under the Act before the commencement day; and
 - (b) before the commencement day, the old appeal or application had not been determined under the Act.
- (2) Despite the repeal of the old law by Schedule 1 to this instrument, the old law continues to apply in relation to the old appeal or application as if the repeal had not happened.

21 Transitional—Registry

If a document was kept in the Registry under regulation 17 of the old law immediately before the commencement day, that document is taken to be kept in the Registry under section 13 of this instrument on and after that day.

22 Transitional—things done under the old law

- (1) Subject to sections 20 and 21, if:
 - (a) a thing was done for a particular purpose under the old law; and
 - (b) the thing could be done for that purpose under this instrument;the thing has effect for the purposes of this instrument as if it had been done under this instrument.
- (2) Without limiting subsection (1), a reference in that subsection to a thing being done includes a reference to a notice, application or other instrument being given or made.

Endnotes

Endnote 1—About the endnotes

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

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Defence Force Discipline Appeals Regulation 2016	19 Sept 2016 (F2016L01452)	20 Sept 2016 (s 2(1) item 1)	
Public Works Committee Legislation Amendment (2019 Measures No. 1) Regulations 2019	22 Mar 2019 (F2019L00340)	Sch 1 (item 1): 23 Mar 2019 (s 2(1) item 1)	—

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 2.....	rep LA s 48D
s 4.....	rep LA s 48C
Part 3	
s 16.....	am F2019L00340
Schedule 1.....	rep LA s 48C