



Defence Force Discipline Appeals Regulation 2016

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 15 September 2016

Peter Cosgrove
Governor-General

By His Excellency's Command

George Brandis QC
Attorney-General

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Part 1—Preliminary

1 Name

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

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	20 September 2016

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

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

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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:

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- (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.

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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.

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

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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*.

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 Schedule 2 to the *Public Works Committee Regulations 1969*.

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.

Schedule 1—Repeals

Defence Force Discipline Appeals Regulations 1957

1 The whole of the Regulations

Repeal the Regulations.