



Australian Government

Defence Honours and Awards Appeals Tribunal

Foreign Affairs, Defence and Trade Committee

Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee members

I write attach a submission to the Committee from the Defence Honours and Awards Appeals Tribunal in relation to its inquiry into the *Defence Amendment (Defence Honours and Awards Appeals Tribunal) Bill 2025*.

The Tribunal would of course be happy to appear before the Committee or to provide any additional information its members may require.

Yours sincerely

Stephen Skehill
Chair

30 September 2025

DEFENCE HONOURS AND AWARDS APPEALS TRIBUNAL
SUBMISSION TO THE SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE
COMMITTEE
in relation to the
Defence Amendment (Defence Honours and Awards Appeals Tribunal) Bill 2025

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Introduction

1. This submission reflects the unanimous view of all appointed members of the Defence Honours and Awards Appeals Tribunal in relation to the *Defence Amendment (Defence Honours and Awards Appeals Tribunal) Bill 2025*, which is currently before the Committee for inquiry and report.

2. Collectively, the Tribunal members have an exceptional depth of knowledge and experience in the key areas of military service, military law, military history, administrative law and public administration. Brief details of each of the eleven members of the Tribunal are at **Attachment A**.

3. The Tribunal notes that, in his Second Reading Speech in the House of Representatives, the Minister for Defence Personnel stated that:

The tribunal was consulted throughout the development of the Bill, and, while not all of its specific recommendations have been adopted, its input has been invaluable in shaping the legislation, which seeks to largely achieve the same aims as the tribunal's recommendations.

4. The Tribunal does not agree with that statement, particularly the suggestion that the Bill *seeks to largely achieve the same aims as the tribunal's recommendations*. The Tribunal argued strongly against the key provisions of the Bill. The Tribunal stresses, however, that it is not opposed to all measures in the Bill (see paragraph 45 below), and would not oppose a number of alternative measures that are detailed later in this submission (at paragraphs 108-119).

5. The Tribunal cannot support the Bill in its present form because the main changes would:

- **Abolish the current right of ADF members, veterans and their supporters to seek independent Tribunal merits review of their eligibility for gallantry, distinguished and conspicuous service honours – review of adverse Defence decisions would only be able to be sought by a more senior person in the chain of command or an eye-witness;**
- **Altogether disallow the Tribunal from considering honours or campaign awards for ADF service in the Second World War, Korea, the Malayan Emergency, Confrontation, Vietnam, Cambodia, the Gulf War, Somalia, Rwanda, and (on the Tribunal's legal analysis) some but not other service in East Timor, Iraq and Afghanistan;**
- **Abolish the current right of some family members (such as cousins, nieces or nephews) to apply for review of a decision refusing a defence award for their relative;**
- **Abolish the current right of a veteran or supporter to apply for review of a decision to refuse to reissue a cancelled honour or award;**

- **Preclude large numbers of applications to the Tribunal where recipients of Defence decisions have been advised of their right of appeal but have not been advised of any time limit on appealing to the Tribunal;**
- **Allow further limitations on the current rights to Tribunal review, such as by excluding other periods of service, by Regulations rather than by amendment of the Act by the Parliament; and**
- **Allow other Regulations to be made to further limit the operation of the Tribunal.**

6. Needless to say, if the Bill were passed by the Parliament to amend the Act in ways that the Tribunal has not supported, the Tribunal would act in accordance with the legislation governing its operation as enacted by the Parliament.

7. In this submission, the Tribunal:

- gives some basic background information about the Tribunal (paragraphs 13-14, 32-41 and Attachments A and B;
- sets out the rights of Tribunal review of adverse Defence decisions to which ADF members and veterans, their families and others are currently entitled (paragraphs 15-17);
- emphasises that, if the Bill is passed, Defence will still be able to make those adverse decisions but the present accountability afforded by Tribunal review will be removed (paragraphs 18-19);
- details what changes the Bill would make to the current law (paragraphs 20-31) and the impact those changes could have (paragraphs 8-10);
- specifies those changes that the Tribunal cannot support because of the depth of the concerns they raise (paragraphs 42-44);
- lists those changes which the Tribunal does not oppose (paragraph 45);
- provides detailed analysis of the reasons why the Tribunal cannot support major provisions in the Bill (paragraphs 47-107); and
- suggests alternative changes that might be adopted if it was nevertheless perceived that there needed to be some variation to the current rights of review of ADF members and veterans, their families and others (paragraphs 108-119).

Viewing the Bill in perspective

8. The Second Reading Speech for the Bill suggests that its purpose is to *ensure that the tribunal remains fit for purpose*. However, the measures contained in the Bill go far beyond technical changes of a “tidying up” nature or the addition of machinery provisions to allow the more efficient conduct of business of the Tribunal. Instead, they would effectively deprive ADF members and veterans and their families of their current and very important rights to hold Defence to account, and would preclude the nation’s recognition of some of its greatest heroes.

9. Had the amendments proposed in the Bill been in effect at the time, the Tribunal’s analysis is that a very substantial majority of the applications for review decided by the Tribunal since it was created by statute in 2011 would have been invalidated.

10. In very practical terms and by way of example, if the measures proposed in the Bill had been in force at the time:

- There would have been no Victoria Cross for Australia awarded to the late Ordinary Seaman Edward “Teddy” Sheean for his valorous actions in HMAS *Armidale* during a Japanese aerial attack in the Timor Sea on 1 December 1942, both because those actions occurred more than 20 years previously and because the application for Tribunal review was not lodged by a person in Sheean’s chain of command or an eye-witness to those events;¹
- There would have been no Victoria Cross for Australia awarded to the late Private Richard Norden DCM for his valorous service during the Battle of Fire Support Base Coral in Vietnam on 14 May 1968, both because those actions occurred more than 20 years previously and because the application for Tribunal review was not lodged by a person in Norden’s chain of command or an eye-witness to those events;²
- There would have been no Medal of Gallantry for the otherwise totally unrecognised actions of the late Warrant Officer Class Two Kevin Wheatley VC in Vietnam on 28 May and 18 August 1965, both because those actions occurred more than 20 years previously and because the application for Tribunal review was not lodged by a person in Wheatley’s chain of command or an eye-witness to those events;³
- There would have been no Medal of Gallantry for the otherwise totally unrecognised actions of the late Warrant Officer Class Two Ronald James Swanton in Vietnam on 13 November 1965 when he was fatally wounded while trying to save the life of a wounded comrade in circumstances bearing much similarity to those for which Warrant Officer Class Two Kevin Wheatley was awarded the Victoria Cross for Australia to recognise that he was in turn killed while trying to save the fatally wounded Swanton, both because those actions occurred more than 20 years previously and

¹ Barnett and the Department of Defence re: Sheean [2019] DHAAT 9

² Hulse and the Department of Defence re: Norden [2022] DHAAT 11

³ Hartley and the Department of Defence re: Wheatley [2023] DHAAT 20

because the application for Tribunal review was not lodged by a person in Swanton's chain of command or an eye-witness to those events;⁴

- The longstanding and highly publicised issue of individual medallic recognition for the Battle of Long Tan in August 1966, when Delta Company of the 6th Battalion of the Royal Australian Regiment came under attack from a numerically superior enemy force would have remained unresolved, both because those actions occurred more than 20 years previously and because the application for Tribunal review was, in a number of cases, not lodged by a person in the chain of command⁵ or an-eye witness to those events;⁶
- There would have been no Commendation for Gallantry for the late Private Richard Murray who was executed while a prisoner of war of the Japanese in 1945 when he stepped forward to take sole responsibility for the theft of food by he and a number of his starving fellow prisoners, both because those actions occurred more than 20 years previously and because the application for Tribunal review was not lodged by a person in Murray's chain of command or an eye-witness to those events;⁷
- The citation to the Commendation for Distinguished service awarded to Mr Rohan Conlon would have recognised only some but not all of his distinguished service in Afghanistan in 2009, because the application for review was not lodged by a person in his chain of command or an eye-witness to the events which were in fact captured on a body-worn camera;⁸
- 23 of the cases in which a defence honour was awarded as a result of a Tribunal review would have been invalidated because the application for Tribunal review was lodged by a person who would be unable to seek Tribunal review under the changes proposed in the Bill; and
- The Republic of Vietnam Cross of Gallantry with Palm Unit Citation would not have been awarded to the extremely large number of ADF personnel who served in Vietnam in Australian units that were subordinate to the US Military Assistance Command Vietnam, because the application for Tribunal review related to events more than 20 years prior and because of the Bill's proposed limitation on the present power of the Tribunal to make recommendations to the Minister on matters arising out of or related to

⁴ Hartley and the Department of Defence re: Swanton [2023] DHAAT 21

⁵ Smith and the Department of Defence re: Sharp [2016] DHAAT 27, Smith and the Department of Defence re: Roche [2016] DHAAT 26, Smith and the Department of Defence re: Peters [2016] DHAAT 24, Smith and the Department of Defence re: Magnussen [2016] DHAAT 21, Smith and the Department of Defence re: Grimes [2016] DHAAT 19, Smith and the Department of Defence re: Campbell [2016] DHAAT 18, Smith and the Department of Defence re: Bextrum [2016] DHAAT 16

⁶ Smith and the Department of Defence re: Roberts [2016] DHAAT 25, Smith and the Department of Defence re: Brett [2016] DHAAT 17, Smith and the Department of Defence re: Alcorta [2016] DHAAT 15

⁷ Silver and the Department of Defence re: Murray [2022] DHAAT 14

⁸ Conlon and the Department of Defence [2024] DHAAT 1

a Tribunal review.⁹

11. The Tribunal considers that, in the form set out in the Bill and for the reasons detailed below in this submission, the scope of the fundamental changes:

- is not supported by any convincing statement of justification and, more importantly, they are in its view largely incapable of justification;
- reflects a counter-intuitive approach to defence honours and awards decision-making; and
- would represent poor public policy in the absence of clear support from the serving and ex-service community, informed by open and substantive consultation.

12. This is not to say that the Tribunal would oppose any change to the current law in relation to the independent merits review of Defence decisions refusing to recommend a defence honour, defence award or foreign award for ADF service. Changes that are not opposed, and other alternative changes that would not be opposed by the Tribunal, are discussed later in this submission (at paragraphs 45 and 108-119).

The Tribunal

13. Part VIIIC of the *Defence Act 1903* established the Defence Honours and Awards Appeals Tribunal as an independent statutory body in 2011 and conferred on it two functions:

- to conduct merits review of decisions by Defence refusing to recommend an ADF member or veteran for a defence honour or award; and
- when directed to do so by the Minister, to inquire into and report to the Minister on matters related to defence honours and awards.

14. The Bill proposes no changes to the Tribunal's inquiry function, but does propose very major changes to its review function. This submission therefore discusses only matters relevant to the review function.

The current scope of Tribunal review

15. Under the present law, any person may apply to Defence for the issue of a defence honour, a defence award or a relevant foreign award for any ADF service rendered at any time, and Defence may either recommend that issue or refuse to recommend it.

⁹ Ball and the Department of Defence [2022] DHAAT 7

16. Where Defence refuses to recommend issue, the person who applied to Defence may, at any time thereafter, apply to the Tribunal for review of that decision where the ADF service in question was rendered at any time on or after the commencement of the Second World War.

17. On completion of a review:

- where the review relates to a defence honour, the Tribunal may “make any recommendation to the Minister that the Tribunal considers appropriate” – that is, the Tribunal may recommend that the Defence decision be affirmed because it was found to be correct; it may recommend that the defence honour that was sought should be recommended by the Minister for issue by the Governor-General; or it may make some other alternative recommendation (for example, that a different defence honour should be issued); or
- where the review relates to a defence award or a foreign award, the Tribunal may affirm the Defence decision, or it may set aside the Defence decision and substitute a decision recommending that the defence award or foreign award be issued.¹⁰ Again, it may also make any recommendations to the Minister that it considers appropriate and that “arise out of, or relate to, the Tribunal’s review”.

What the Bill would not do:

18. The Bill would not in any way change the present capacity of Defence to make adverse decisions refusing to recommend the issue of a defence honour, a defence award or a foreign award for ADF service rendered at any time.

19. Because the Bill only relates to the abolition or limitation of current rights to seek review by the Tribunal, the present accountability of Defence for the decisions it takes would therefore be removed to the extent of that abolition or limitation. In other words, the Bill would create a whole new category of Defence decisions immune from the independent external merits review to which they are currently subject.

What the Bill would do:

20. The Bill makes different provisions in relation to each of:

- defence honours – which recognise valour, gallantry, distinguished service and conspicuous service;
- those defence awards that are operational service awards – these are to be specified in Regulations to be made after the Act is amended but which may be those which

¹⁰ At present the Act would also allow the Tribunal to refer a specified matter to another person for reconsideration in accordance with any direction of the Tribunal – in practice, this power of referral has never been formally exercised by the Tribunal and the Tribunal raises no objection to its removal as proposed by the Bill.

currently recognise ADF service in particular theatres of conflict such as the Second World War, Korea, the Malayan Emergency, Confrontation, Vietnam, Cambodia, the Gulf War, Somalia, Rwanda, East Timor, Iraq and Afghanistan;

- those defence awards that are length of service awards – these are to be specified in Regulations to be made after the Act is amended but which would be expected to include at least the Australian Defence Medal and the Defence Long Service Medal; and
- foreign awards.

21. For defence honours, the Bill would:

- abolish the current right of ADF members, veterans and their supporters to seek independent merits review by the Tribunal of their eligibility for valour, gallantry, distinguished and conspicuous service honours – review of adverse Defence decisions would only be able to be sought by a more senior person in the chain of command or an eye-witness; and
- by its “20-year rule”, disallow ADF members, veterans and their supporters seeking Tribunal review of Defence refusals of honours for ADF service in the Second World War, Korea, the Malayan Emergency, Confrontation, Vietnam, Cambodia, the Gulf War, Somalia, Rwanda, and (on the Tribunal’s legal analysis) some but not other service in East Timor, Iraq and Afghanistan.

22. For operational service awards, the Bill would:

- by its “20-year rule”, disallow ADF members, veterans and their supporters seeking Tribunal review of Defence refusals of awards for ADF service in the Second World War, Korea, the Malayan Emergency, Confrontation, Vietnam, Cambodia, the Gulf War, Somalia, Rwanda, and (on the Tribunal’s legal analysis) some but not other service in East Timor, Iraq and Afghanistan; and
- limit those who may apply for review to ADF members and veterans and very closely-defined family members.

23. For length of service awards, the Bill would:

- limit those who may apply for review to ADF members and veterans and very closely-defined family members; and
- require that applications for review be lodged no later than what is or would have been the 100th birthday of the ADF member.

24. For foreign awards, the Bill would:

- limit those who may apply for review to ADF members and veterans and very closely-defined family members;
- by its “20-year rule”, disallow ADF members, veterans and their supporters seeking Tribunal review of Defence refusals of foreign awards for ADF service in the Second World War, Korea, the Malayan Emergency, Confrontation, Vietnam, Cambodia, the Gulf War, Somalia, Rwanda, and (on the Tribunal’s legal analysis) some but not other service in East Timor, Iraq and Afghanistan; and
- limit applications to only those foreign awards that are specified in Regulations that might be made under the Act as amended by the Bill.

25. The Bill would require that any application for review must be lodged with the Tribunal within six months after the date of a reviewable decision, unless the Tribunal allows a longer period in exceptional circumstances.

26. The Bill would prevent an application for review to the Tribunal for review of a decision to refuse to recommend reissue of a previously cancelled defence honour, defence award or foreign award.

27. The Bill would constrain the Tribunal by limiting its present power to make any recommendations that it considers appropriate that arise out of or relate to a Tribunal review – such as a recommendation for the issue of an honour alternative to that sought by the applicant.

28. The Bill would allow the making of Regulations that would reduce the 20-year period (so that even more ADF service fell outside the scope of Tribunal review), that would specify the evidence to which the Tribunal might have regard, or that would otherwise limit the operation of the Tribunal or its conduct of reviews.

29. The Bill would require the Tribunal to prepare an annual report to be tabled in the Parliament by the Minister. [The Tribunal already voluntarily provides such a report to the Minister and publishes it on its website, but it is not tabled in the Parliament.]

30. The Bill includes transitional provisions that mean that the changes would not apply:

- where a valid application for review was made to the Tribunal before the date of commencement; or
- where the application to Defence seeking the honour or award was made before the date of commencement and a Defence decision was not made by that date - but, when a Defence decision is eventually made, any application for review would have to be

lodged within six months of the date of the Defence decision (unless the Tribunal extends that period in exceptional circumstances).

31. However, where a Defence decision was made before the date of commencement and the applicant had not exercised their right to apply to the Tribunal before the commencement date, that right would be abolished if an application could not be made within six months of the date of the Defence decision - unless the Tribunal extended that period in exceptional circumstances.

The Tribunal in perspective

32. Since its creation as an administrative body in 2008 and as a statutory authority in 2011, 508 applications for review have been finalised following their lodgement in the Tribunal, or an average of 30 per year. Statistics in relation to these are set out at **Attachment B**.

33. It is important to note that, in addition to those cases in which the Tribunal has successfully made a recommendation for the issue of a defence honour, a defence award or a foreign award, ADF members and veterans have also benefited from decisions that have been reversed by Defence following the lodgement of an application for Tribunal review and the Tribunal requiring Defence to provide a merit assessment of its disputed decision and, in some cases, other information of relevance. This has occurred in 94 cases to 30 September 2025, and the Tribunal has recently noted an increasing rate of initially adverse Defence decisions being reversed without the need for a Tribunal hearing. And yet further benefit has accrued to ADF members and veterans from the normative and systemic effect of previous Tribunal decisions that have led to positive initial decisions by Defence, thus avoiding the need for any application to the Tribunal.

34. In 2024-25 35 reviews were finalised following application to the Tribunal.

35. In contrast, figures provided by Defence show that it receives an average of 18,000 applications for operational, length of service and foreign awards each year, in response to which it issues an average of 32,300 medals, insignia and accumulated service devices. Of that average of 18,000 applications, only around 16 per year (or around 0.09%) lead to an application for Tribunal review of an adverse decision.

36. However, on average around 24% of all applications to Defence for defence honours lead to an application for Tribunal review of an adverse decision, indicating a vastly greater lack of applicant satisfaction with Defence's decision-making in that regard.

Are there problems with the current operation of the Tribunal?

37. It is clear from these figures that the existence of merits review by the Tribunal has not "opened the floodgates" and subjected an inordinate number of Defence decisions to external scrutiny by the Tribunal.

38. It is also clear that the Tribunal is not a “wayward” body that is misconstruing the law, exceeding its authority or taking unreasonable decisions:

- Over the entire life of the Tribunal, only two Tribunal recommendations for the issue of a defence honour or award have been rejected by the Minister:
 - in one case, the applicant objected to the Minister accepting the Tribunal recommendation that he be issued with a defence honour because he was offended by certain comments of the Tribunal which he considered reflected badly on his platoon commander who had supported his application. Because of those objections, the Minister rejected the Tribunal recommendation. However, the same matter came back to the Tribunal after a subsequent application for the same honour was again refused by Defence. On this second occasion the Tribunal again recommended the issue of the same honour but in terms that caused no offence to the applicant, and the Minister accepted the Tribunal’s recommendation.¹¹
 - the second case is of course the now well-known matter of Ordinary Seaman Edward “Teddy” Sheean. The Tribunal had recommended that he should be posthumously recognised by the Victoria Cross for Australia for his actions in HMAS *Armidale* during a Japanese aerial attack in the Timor Sea on 1 December 1942. In an advice that contained errors of fact and law, Defence recommended to the then Minister that the Tribunal recommendation should be rejected and the Minister agreed. Supporters of Teddy Sheean lobbied long and hard against the Minister’s decision, even after it was endorsed by the then Prime Minister. Eventually the Government, in response to that persistent pressure, decided to appoint an independent ad hoc panel to reconsider the matter afresh. The panel, having considered all the evidence (including some corroborative but far from compelling new evidence), came to the same conclusion as the Tribunal and “Teddy” Sheean was then very belatedly awarded his richly deserved Victoria Cross.¹²
- The then Chief of the Defence Force and the Tribunal Chair subsequently agreed that, before it briefed the Minister against a Tribunal recommendation, Defence would consult the Chair in an endeavour to ensure that any such brief contained no error of fact or law. That agreement was subsequently recorded in a formally documented protocol. Since that time, Defence has consulted the Chair as required by the protocol on only one occasion, leading to a presumption that it has not briefed the Minister against the Tribunal review recommendation in any other case.
- The overwhelming majority of Tribunal recommendations on incidental matters arising in the course of a Tribunal review have been accepted by the responsible Minister.

¹¹ See Hawkins and the Department of Defence [2016] DHAAT 39 and Hawkins and the Department of Defence [2017] DHAAT 20

¹² Report: *Historic Victoria Cross, Report of the Expert Panel*, Department of the Prime Minister and Cabinet, 2020.

- Decisions of the Tribunal are reviewable in the Federal Court of Australia on a question of law, but in only three cases has a court review been sought. In two cases in 2016 the Court dismissed applications for orders under the *Administrative Decisions (Judicial Review) Act 1976*. While the Court in each case made some comments critical of the Tribunal's approach in the particular reviews, it found that the Tribunal's decisions were made in accordance with the law.¹³ A further application for judicial review was lodged in 2020 but was discontinued by the applicant before it was heard by the Court.

39. The importance of the Tribunal in maintaining the integrity of the defence honours and awards system was recognised in the report of the previous Committee inquiry, tabled on 19 June 2025, in which the Committee stated that:

*The committee acknowledges the importance of DHAAT's role in providing ADF members, veterans and others the opportunity to seek independent reviews of unsuccessful honours and awards nominations. The committee considers the independent nature of DHAAT to be a key factor in preserving confidence in the Defence honours and awards system.*¹⁴

and

*When the system operates as intended, Defence honours and awards are a valuable tool to provide recognition of service, sacrifice and extraordinary achievement. However, when the system does not function well, it can erode morale and lead to dissatisfaction and distrust within Defence communities.*¹⁵

40. It is also clear that from that report that the Tribunal has earned the support of the ex-service community. In this regard, the Committee recorded that:

*Evidence to the inquiry showed support for and confidence in the work of the Defence Honours and Awards Appeals Tribunal (DHAAT). Overwhelmingly, inquiry participants valued the independent nature of the tribunal, its impartiality and its considered approach when handling review applications.*¹⁶

and:

Australia's Defence honours and awards system is unique in its opportunity for individuals to seek independent merits-based review of unsuccessful nominations for a Defence honour and award. According to Defence, DHAAT is the only tribunal of its kind of the 56 Commonwealth member countries. The committee acknowledges the work of

¹³ McLeod-Dryden v. Defence Honours and Awards Appeals Tribunal [2016] FCA 1138 and McCauley v. Defence Honours and Awards Appeals Tribunal [2016] FCA 719

¹⁴ Report: *Defence Honours and Awards System*, Foreign Affairs, Defence and Trade References Committee, June 2025, p. 52

¹⁵ Ibid, p.1

¹⁶ Ibid, p. 41

*DHAAT and considers this independence an integral aspect in maintaining accountability and trust within the Defence honours and awards system.*¹⁷

41. All of the above suggests that there is no pressing need for any major change to the law governing the operation of the Tribunal.

Which changes does the Tribunal not support?

42. The Tribunal does not oppose all the changes proposed in the Bill, and it does not oppose each of those to which it objects with the same vigour.

43. The fundamental changes that the Tribunal most clearly cannot support because of the depth of the concerns they raise are:

- the “20-year” rule, limiting the service to which an application for a defence honour, an operational service award or a foreign award must relate;
- the proposal to allow even further reduction in the service to which an application may relate by Regulation rather than by amendment of the Act;
- the abolition of the right of ADF members and veterans, their families and other supporters to appeal against a refusal to recommend a defence honour;
- the proposal to allow Regulations that would reduce the 20-year period so that even more ADF service fell outside the scope for Tribunal review, that would specify the evidence to which the Tribunal might have regard, or that would otherwise limit the operation of the Tribunal or its conduct of reviews; and
- the abolition of the right to apply for review of a previous Defence decision refusing to recommend a defence honour, a defence award or a foreign award where the applicant has been advised that they have a right to apply to the Tribunal but has not been informed by Defence of the time limit within which a Tribunal application must be made.

44. The Tribunal does not support, but does not see as quite so fundamental:

- the limitation on the categories of family members who may apply for reviews of a decision refusing a defence or foreign award;
- the removal of the right to seek review of a decision refusing to issue a previously cancelled defence honour or award;

¹⁷ Ibid, pp. 51-2.

- the restriction on the Tribunal’s capacity to make any recommendations that it considers appropriate on matters that arise out of or relate to a Tribunal review; and
- the breadth of the other proposed new Regulation-making powers.

Which changes does the Tribunal not oppose?

45. The Tribunal does not oppose:

- the 100th birthday limitation on applications for a length of service award (which it perceives would have no material effect in practice);
- the imposition of a six month time limit on making a Tribunal application after the making of a future Defence decision (provided that the affected person is advised by Defence of that time limit and that time runs from the date of advice) and the capacity for the Tribunal to extend that period in exceptional circumstances;
- the limitation on foreign awards to those, to be specified in Regulations under the Act as amended, where the Australian Government has a power of decision-making;
- the removal of the present power of the Tribunal to refer a matter concerning a defence award or foreign award to another person for reconsideration;
- the requirement that Procedural Rules made by the Chair must not be inconsistent with the Regulations; and
- the requirement for the Tribunal to prepare an annual report (which it already does voluntarily).

46. The Tribunal’s analysis of the changes which it opposes, and the reasons for its objections, are set out in the following passages.

The “20 year rule”

47. In the Second Reading Speech for the Bill, the Minister said in the House of Representatives that:

Currently, a person can seek a review of a defence honour and award by the Defence Honours and Awards Appeals Tribunal when they are dissatisfied with a decision regarding a defence honour, defence award or foreign award concerning conduct or service dating all the way back to the commencement of our involvement in the Second World War—3 September 1939—a time when our Defence Force members were only actually eligible for imperial awards.

The difficulties of making assessments regarding defence honours and awards for historical actions are considerable, given the senior members of the time are often sadly no longer

with us and therefore objective evidence is difficult to obtain and verify. This is the case with nearly all 20th century conflicts that Australia has been involved in.

There has also been an 'end of roll' process, or similar, undertaken after the conclusion of such major 20th century conflicts by Australian defence authorities.

In order to avoid the tribunal being put in a position where it is having to review Defence decisions where it is having to rely on very imperfect evidence, the bill amends the time period that the tribunal can review in three ways depending on the nature of the honour or award and the nature of the operation that the relevant Defence member was participating in.

Going forward, the tribunal will only be able to review a Defence decision to decline a defence honour, operational service award or foreign award if the application to Defence for the medal was made within 20 years of the relevant operation ending.

Where the Defence decision to decline a defence honour or award relates to an operation that does not have an end date or is not operational in nature, the relevant service said to be relevant for such an honour or award must have been within the last 20 years of an application having been made to Defence.

This gives an applicant a reasonable period of time to apply for a defence honour, operational service award or foreign award, and to seek a review of any refusal decision.

This means if a member served on an operation that ended in 2021, and had sought a decision from Defence regarding an honour or award regarding service in that operation by 2041, they would be able to seek a review of a refusal decision by the tribunal.

The exception to the 20-year period is for length of service awards. These are awards that recognise a member's length of service with the Australian Defence Force (ADF). The bill provides that a refusal decision relating to a length of service award will be reviewable up until the member has, or would have, turned 100 years old. This is an appropriate and inclusive measure and ensures that current and former serving personnel, their families, and other personal representatives can continue to seek a review of decisions relating to length of service awards for a significant period of time, even after the death of the relevant Defence member, without being entirely open ended.

48. The Tribunal is very concerned about various aspects of the statements made in the above passages.

49. Of the greatest importance is the assertion that, in nearly all 20th century conflicts in which Australia has been involved, there are considerable difficulties in making assessments regarding defence honours and awards for historical actions *given the senior members of the time are often sadly no longer with us and therefore objective evidence is difficult to obtain and verify.*

50. The simple fact is that the Tribunal has experienced little if any difficulty in obtaining relevant and reliable evidence to allow it to make sound decisions in relation to Vietnam and all subsequent conflicts. While it has resolved many contentious recognition issues concerning that conflict, the

Tribunal continues to receive applications relating to the Vietnam War and, in its experience, there are often readily available first-hand witnesses or reports that mean that reliable decision-making is able to be confidently achieved. And, in more recent conflicts, it is highly likely that there will be applicants and witnesses who were present at the events in question and even more reliable contemporaneous documentation. Furthermore, because the 20-year rule would operate on a “rolling” basis, increasingly well-documented modern and future service would be excluded from review with the passage of time.

51. Moreover, even in the oldest conflict within the Tribunal’s jurisdiction, the Tribunal has found reliable and adequate evidence to enable it to confidently make a decision on the issue raised by the applicant in a number of cases concerning events in the Second World War. For example, in five recent such cases:

- in *Barnett on behalf of Sheean*,¹⁸ there were eye witness evidence and contemporary documentary records of Ordinary Seaman Sheean’s actions in 1942, and the essential question was whether those actions met the eligibility criteria for the Victoria Cross for Australia;
- in *Silver on behalf of Murray*,¹⁹ there was eye witness evidence of Private Murray’s actions in 1945, and the essential question was whether those actions met the eligibility criteria for any defence honour;
- in *Ryan on behalf of Ryan*, there was definitive documentary evidence of the service of the applicant’s father, and the only question was whether that service met the eligibility criteria for the 1939-45 Star;²⁰
- in *Albrecht on behalf of Cowan, Taylor, Polack and Sheard*,²¹ there was documentary eye-witness evidence from the pilot of a Japanese Zero fighter that shot down the Australian Hudson bomber, killing all four crew who had each been posthumously awarded a Medal for Gallantry in reliance on that evidence which Defence accepted as credible, and the question at issue was limited to whether all or any of the crew should instead have been awarded the Victoria Cross for Australia or any other defence honour; and
- in *Juniper on behalf of Hardman*, there was definitive documentary evidence of the service of the applicant’s father and the only question was whether that service met the eligibility criteria for the Australia Service Medal 1939-45.²²

52. The Tribunal acknowledges that it has itself suggested limiting appeal rights in older conflicts on two occasions:

¹⁸ Barnett and the Department of Defence re: Sheean [2019] DHAAT 9

¹⁹ Silver and the Department of Defence re: Murray [2022] DHAAT 14

²⁰ Ryan and the Department of Defence re: Ryan [2023] DHAAT 11

²¹ Albrecht and the Department of Defence re: Cowan, Taylor, Polack and Sheard [2025] DHAAT 9

²² Juniper and the Department of Defence re: Hardman [2025] DHAAT 12

- In August 2017, the Tribunal completed its *Inquiry into recognition for Far East Prisoners of War who were killed while escaping or following recapture* (the FEPOW Inquiry). Over the course of this inquiry, the Tribunal encountered difficulties obtaining and corroborating reliable contemporaneous evidence relevant to its consideration of these cases. The Tribunal observed that the youngest living operational veteran of that war would, at that time, be aged at least 90. For those reasons, the Tribunal report recommended that a limitation period be introduced with effect from 3 September 2020 for claims for medallic recognition with respect to veterans of the Second World War, which would have been 75 years after the cessation of hostilities;²³ and
- In 2020, shortly before his retirement, the former Chair of the Tribunal wrote to the then Minister for Defence Personnel expressing concern around a lack of progress in progressing that proposal. Mr Sullivan's letter suggested that the legislation could be amended to preclude, after an appropriate transitional period, applications for review of decisions relating to defence honours and foreign awards for service prior to 1975, which coincides with the introduction of the Australian honours and awards system. Such change would have removed the issue of the 'posthumous gap' between the Imperial Victoria Cross and the Mention in Despatches, and the use of the Australian honours system to recognise service, which was originally covered by the Imperial system. This would also have removed the ongoing examination of issues relating to the honours and awards system of the former Government of the Republic of Vietnam.

53. The Tribunal as presently constituted does not support the Sullivan proposal in the exact terms in which it was put. Further, it considers that recent experience with the recent Second World War cases discussed above indicates that the earlier FEPOW proposal for a ban on all applications relating to recognition of Second World War service would preclude Tribunal consideration of all cases related to that War when experience shows that there are still cases coming forward in which there is reliable and probative evidence.

54. Crucially however, the Tribunal notes that both of those previous proposals involved a transition period – in the FEPOW report three years was suggested - to afford people a reasonable and adequate time to bring forward any remaining concerns about medallic recognition for the conflicts that would be affected by the removal of existing appeal rights.

55. In contrast, the Bill would assure no minimum transition period and a maximum transition period of only six months – this is because it provides that the amendments would come into effect on a date fixed by proclamation or, if no proclamation is made, six month after Royal Assent.

56. It is very important to note that, under the Bill, the proposed limitation on the age of service that may be raised for consideration would apply only to applications for review made to the Tribunal and not to original applications for recognition lodged with the Department. This means that, in the view of the Tribunal, Defence decision-making would be unjustifiably shielded from the independent merits review to which it is currently subject.

²³ Report, *Inquiry into unresolved recognition for Far East Prisoners of War who were killed while escaping or following recapture*, Defence Honours and Awards Appeals Tribunal, 2017, p.10

57. The Tribunal further notes that there is no reason to believe that there would in the future be any insurmountable problem with continuation of the present jurisdiction stretching back to 3 September 1939. This is because, where adequate reliable evidence is not available, the Tribunal would simply decide to affirm the Defence decision to refuse to recommend the honour or award that had been sought.

58. The Tribunal considers that, in contemplating any reduction in the period of ADF service to which an application for review relates, due consideration must be given to the position in which many applicants to the Tribunal find themselves. History shows that very many veterans and others do not raise the issue of medallic recognition of ADF service for many years and even decades after that service has been rendered. This may be for many reasons such as:

- it may only be after a full career that a former member reflects on what they have achieved and whether it might warrant medallic recognition;
- serving members may not be prepared to take action that they think may be perceived as a challenge to more senior officers who have either not nominated them for recognition or who have refused an application or nomination for recognition – given the ADF minimum enlistment age of 17 and the compulsory retirement ages of 60 for permanent service and 65 for reserve service, there could be very many serving ADF members who would wish to challenge their medallic eligibility for service up to 48 years earlier in their career, but who would not be prepared to do so while still serving because of perceived risk of adversely affecting their future career;
- service-related mental health problems may mean that a member or veteran is unable to cope with the process of seeking recognition for a considerable time after the events for which they might believe they meet the eligibility criteria for medallic recognition;
- equally the emergence of service-related mental health problems may itself give rise to a focus on recognition and those problems may be worsened if an application that has been refused cannot be independently reviewed in a thorough and trauma-informed way; and
- some families may become fully aware of the bravery displayed or service rendered by a member or veteran only after their death.

59. With respect to the statement that *There has also been an 'end of roll' process, or similar, undertaken after the conclusion of such major 20th century conflicts by Australian defence authorities*, the Tribunal considers that this provides no justification for the abolition of existing rights of appeal in relation to older service. The 'end of roll' process for those conflicts has simply involved a re-visiting of the internal Defence nomination process with a view to ascertaining whether any nominations previously made did not proceed as they should have done. But the Defence nomination process itself provides no assurance that all service that should have been considered for medallic recognition was in fact put forward or properly considered. The Tribunal has recommended defence honours for nine ADF members who were never the subject of an internal nomination – eight of those recommendations were accepted and one is awaiting a Government decision. In another 11 cases, the Tribunal recommended a defence honour in circumstances where an internal nomination was said

to have been raised but no documentation of it could be found. The Committee's 2025 report on the Defence honours and awards system found manifold problems with the ADF nomination process. While the Tribunal acknowledges that Defence has made steps to improve that process over recent years and may take others in light of the Committee's recommendations, none of that change does anything to remedy the past defects that have seen cases worthy of recognition confined to obscurity – only access to merits review by the Tribunal can be relied on to sufficiently remedy those problems.

60. Finally, the Tribunal notes that the Bill purports to set different criteria for determining the 20-year period, depending on whether the events in question occurred on what is referred to as an "operation that has an end date". The Tribunal understands that this formulation was intended to ensure that all service in Afghanistan was able to be the subject of an application for review, and not just that which was within 20 years of the application made to Defence. The Tribunal considers that the drafting of these provisions in the Bill may not give effect to that intention and, moreover, that it may generate other anomalies. At Attachment C is an extract from an advice provided to the Minister in this regard.

61. In conclusion on the matter of service for which review should be available, it is relevant to note that:

- the Tribunal receives on average only 30 applications per year; and
- since 2020 it has received only nine applications relating to service in the Second World War but 44 applications relating to service in Vietnam.

62. If, however, there is to be any limitation on the period of service to which an application for review relates, the Tribunal suggests that a transitional period of at least two to three years should be provided to allow ADF members and veterans, their families and others to acclimatise to any new limitation on the age of service that may be raised and to conduct necessary research and preparation before lodging their application.

63. This in turn would mean that there would need to be a prior program of effective engagement with the service and veteran community to ensure that, so far as possible, all ADF members and veterans and their supporters are aware of the impending cut-off date for resolution of outstanding claims, and that they have the opportunity to make application to Defence and to have any subsequent Tribunal appeals dealt with in a reasonable period.

Who may appeal a defence honour rejection?

64. The Bill proposes significant limitations on those who would have standing to lodge an application for Tribunal review:

- The present right of an ADF member or veteran, their family or other supporters to apply for review of a Defence decision refusing to recommend a defence honour would be totally abolished – the only people who would be able to lodge such an application would be a person more senior in the chain of command of the ADF member or veteran,

or an eye-witness to the events in question; and

- Applications for review by other than an ADF member or veteran in relation to operational service awards, length of service awards and foreign awards would be limited to a very narrowly defined class of immediate family.

65. This part of the Tribunal's submission focuses on the abolition of appeal rights in respect of defence honours, which raises the greater concerns for the Tribunal. The limitation on appeal rights in relation to defence and foreign awards is of somewhat less concern to the Tribunal and is considered separately later in this submission.

66. The abolition of current appeal rights in relation to defence honours would compound the impact of the proposed 20-year rule to such an extent that the Tribunal considers that, for the reasons discussed below, if the Bill is passed by the Parliament without amendment, valid applications concerning defence honours would become exceptionally rare. This would be notwithstanding the fact that, only because of Tribunal reviews, the honours granted to people such as "Teddy" Sheean and Richard Norden have won national acclaim. It is particularly pertinent to note that in each of the Sheean and Norden and in other successful cases such as Murray and in several of the Long Tan reviews, the application for review was not made by someone more senior in the chain of command or an eye-witness to the events in question.

67. The Second Reading Speech states that:

Currently, anyone that made an original application to Defence can seek a review of that decision and there is no restriction on who can make such applications to Defence in the first place.

With increasing frequency, applications are being made to Defence for the issuing of a defence honour or award or for the upgrading of a defence honour by academics and amateur historians with no connection to the member or their family.

Such applications, subsequent refusals and resultant tribunal hearings can serve to create unnecessary angst and concern with family members of a deceased Defence member, long since passed away, for no objective benefit. However, if the family themselves wish to have the matter reviewed, that should and will remain open to them.

For a defence award and foreign award, the bill provides for a suitably broad range of potential applicants. This includes the affected person, their immediate family member, or, if the member is deceased, an executor, administrator, trustee of the estate or other personal representative of the affected person.

For a defence honour, given the discretionary nature of such medals, only an ADF member that is, or was, more senior in the chain of command, or an ADF member or veteran who was an eyewitness to the action or service, may apply for a review, provided they have the consent of the member under consideration or their immediate family.

An individual will not be permitted to seek a review in relation to a defence honour for themselves.

68. There are significant issues with some of these statements:

- Whatever the situation may be with applications made to Defence, there is no evidence of any increasing frequency in applications for review being made to the Tribunal by academics and amateur historians with no connection to the ADF member or their family. Any problem that Defence may be experiencing will not be solved by limiting appeals to the Tribunal;
- It is not correct to say that it will remain open to families to have the matter of defence honours and awards for a deceased ADF member or veteran reviewed, because the Bill would prohibit an application by any family member seeking a defence honour for an ancestor, and would limit the classes of family members who might apply for review in relation to a defence or foreign award; and
- The two cases of which the Tribunal is aware in which there has been any *unnecessary angst and concern with family members of a deceased Defence member* as a result of an application for review lodged by someone with no service or family connection to the ADF member concerned are exceptionally limited. In one, this was resolved by ensuring that family members were appropriately informed regarding the Tribunal proceeding; in the other, angst and concern arose because Defence had failed to recognise the status and qualifications of an ADF member and had provided incomplete and ambiguous information to the Tribunal.

69. In relation to the Minister's statement that *An individual will not be permitted to seek a review in relation to a defence honour for themselves*, the Explanatory Memorandum states that:

81. The policy intention regarding defence honours is that:

a. nominations for defence honours are considered as part of an in-confidence process;

b. honours are to bestow recognition on the individual who has given service worthy of recognition; and

c. honours are a discretionary gift from the Sovereign, following nomination by either an eyewitness or someone more senior in the chain of command.

82. The making of an application from a member for their own actions for a defence honour does not align with the above policy position and intent, nor with the values of the ADF. Accordingly, this amendment will ensure a person is unable to 'self-nominate' for an application for review. This is not to say the affected member has no say in the review process. Either their consent, or that of an immediate family member, would be required before an application for review could be made.

70. Defence runs an internal nomination process under which an individual may not put themselves forward for a defence honour. But, at the same time and, presumably in Defence's estimation in accordance with the *values of the ADF*, outside that process it receives and processes applications for honours from individual members (and veterans, their families and other supporters) and decisions refusing such applications are currently reviewable by the Tribunal. The Bill does not prevent the continued making of those applications to Defence but instead seeks only to preclude Tribunal review, thus rendering such decisions immune from the accountability to which they are currently subject.

71. The internal Defence nomination process is simply not an adequate substitute for the present rights of Tribunal review. For example, there was never a nomination for Ronald Swanton or Richard Murray and, in cases such as these, it was only through an application to the Tribunal that rightly deserved medallic recognition was able to be achieved.

72. More significantly, the internal Defence nomination process is not one that carries any assurance that all ADF personnel who deserve medallic recognition will actually be recognised. The Tribunal is aware of cases in which:

- nominations have been wrongly down-graded or arbitrarily edited and curtailed without reference to the nominator, thereby depriving them of the persuasive force they might otherwise have had;
- nominations for comparable service have not been put forward because of a commander self-imposing an informal "quota";
- one nomination has put forward in preference to another for comparable service only because the text of the former was thought to "read better";
- a commander has reportedly refused to nominate anyone in their command no matter how superlative their service on the basis that, no matter how well they may perform, they are "just doing their job"; and
- exemplary service has simply not been drawn to the attention of potential nominators.

73. The Tribunal accepts that the nomination process is worthwhile and desirable, but it is simply not a complete answer that assures that all deserving service is appropriately recognised. Two recent cases before the Tribunal starkly illustrate its inadequacy:

- on 13 November 1965, Warrant Officer Ronald Swanton was fatally wounded while trying to save a wounded comrade, and Warrant Officer Kevin Wheatley was then killed while trying to save the dying Swanton. Wheatley was nominated for and received the Victoria Cross for his actions; Swanton was not nominated for any medal and received nothing in recognition of his closely comparable service. Following an application for review lodged in 2023, the Tribunal recommended on 8 November 2023 that

Warrant Officer Swanton should now be recognised by the Medal for Gallantry.²⁴ That recommendation was accepted the Minister.

- on 7 July 2009, Sapper Rohan Conlon who had been trained in Combat First Aid and another sapper who had done similar training each rendered vital first aid to comrades who had suffered severe injuries when an improvised explosive device was triggered under the vehicle in which they were travelling. The other Sapper was nominated for and received a Commendation for Distinguished Service. Mr Conlon was told that he was similarly nominated but that his nomination did not progress because the other nomination “read better”. Mr Conlon subsequently applied to Defence for recognition of both his service on 7 July 2009 and other service on 9 August 2009. In response to that application, Defence decided to recommend him for a Commendation for Distinguished Service for his actions on 7 July and that was granted by the Governor-General. However, Defence refused to recommend him for recognition of his actions on 9 August. Mr Conlon applied to the Tribunal for review of that decision. A Tribunal recommendation on 6 March 2024 that the citation for Mr Conlon’s Commendation for Distinguished Service be amended to recognise what it assessed as his distinguished service on both dates was accepted by the Minister.²⁵

74. Compounding these problems, if ADF members and veterans, their families and their supporters are to be precluded from making applications for Tribunal review, there must be real doubts about whether persons more senior in the chain of command or eye-witnesses will be either motivated or able to do so.

75. There would seem to be little likelihood that a person senior in the chain of command of an ADF member or veteran would be motivated or practically able to pursue an application to the Tribunal:

- If they had nominated that person while still serving and the nomination had been rejected, it is hard to see why would they be motivated to pursue that rejection by applying to the Tribunal, especially if they were still serving and would likely perceive that challenging the rejection might not be a good career choice – the fact is that, notwithstanding that nomination rejections are currently able to be appealed to the Tribunal by the nominator, no nominator has ever lodged an application for review of a nomination rejection;
- If they had not previously nominated the member or veteran, it is similarly hard to see why they would later pursue an application for review – their failure to nominate might simply have been because they were unaware of the actions in question, and they may well still be unaware.

²⁴ Hartley and the Department of Defence re: Swanton [2023] DHAAT 21

²⁵ Conlon and the Department of Defence [2024] DHAAT 1

76. And even if a person more senior on the chain of command might be amenable to pursuing recognition for a more junior ADF member, they may simply be unable to locate that person to gain the consent the Bill would require, especially as Defence or the Department of Veterans Affairs may no longer have contact details or may be constrained by privacy concerns in revealing any personal data they may hold.

77. So far as an eye-witness to the event in question is concerned, again they may not be motivated to pursue an application on behalf of a former comrade, especially if they have been similarly refused recognition for their own involvement in the events in question and were precluded by the Bill from pursuing their own Tribunal application. And again, even if so motivated, they may face the same practical difficulty in locating their former comrade to gain the consent the Bill would require.

78. Those same practical difficulties could well confront an ADF member or veteran, their family or other supporter in locating a former person more senior in the chain of command or an eye-witness to ascertain whether or not they would be prepared to lodge an application for review “on behalf of” the ADF member or veteran. This problem is compounded by the fact that the internal Defence nomination process is conducted in confidence, with the result that an ADF member or veteran will most likely never know that another ADF member had nominated them for an honour or award.

79. The Tribunal believes that the purpose of defence honours and awards is not just to make ADF members and veterans feel good about their service, or to provide solace to the families of deceased members and veterans, but to signify the nation’s respect and appreciation of those who have served on its behalf – and especially those who have served with gallantry or distinction or conspicuously. Abolishing appeal rights against the refusal of defence honours in the manner proposed in the Bill would, in the view of the Tribunal, undermine that purpose and thereby detract significantly from the integrity of the defence honours and awards system.

80. The Tribunal acknowledges that an individual may not put themselves forward for an award in the Order of Australia or an Australian Bravery Decoration. But that provides no parallel justification for the limitations proposed in the Bill. Any other member of the community may put forward such a nomination, whether or not they have any family, service or other relationship with the person they wish to nominate. And nominations are considered by the Council for the Order of Australia, the membership of which is very broadly based and not confined to the nominee’s workplace. The Council comprises 19 members, including representatives of each state and territory, public office holders and community representatives.

81. The Tribunal therefore believes that there is no sound justification for abolition of the current right of an ADF member or veteran, their family or their supporters to seek Tribunal review of a decision refusing to recommend a defence honour.

Abolition of accrued appeal rights for previous defence decisions

82. There would be an unknown number - hundreds but maybe even thousands – of cases in which, since the statutory Tribunal was created in 2011, Defence has rejected an application for a defence honour, a defence award or a foreign award and told the applicant that they have a right of appeal to the Tribunal. In so doing, Defence has quite properly not specified any time within which

such a right must be exercised, because the present law allows an appeal at any time. The Tribunal often receives applications for review lodged a considerable time after an adverse Defence decision, and there may be very good personal reasons for such delays.

83. The Tribunal considers it not only inappropriate but also unreasonable that the Bill proposes to abolish almost all of these already accrued rights of appeal. The only past decision that will be able to be appealed would be one where the application for review is made within six months of the Defence decision, and there will be no obligation on Defence to advise affected persons of that time limit. That is, accrued rights of appeal against adverse decisions made over a period of around 14 years would be summarily abolished without the affected person being alerted to that possibility.

84. Moreover, the Bill does not even impose an obligation on Defence to advise future unsuccessful applicants of the six-month time limit that will apply to them. And the six-month period would run from the date of the Defence decision, and not from the date it is advised to the applicant.

85. While the Bill proposes that the Tribunal is to have a power to extend the time for applying for review beyond six months, this would be available only where “exceptional circumstances” exist. There may be a real question of law whether the Tribunal could find that exceptional circumstances existed where a right had been expressly abolished by the Parliament.

86. The Tribunal therefore believes that rights of appeal accrued prior to the commencement of the Bill should be “grandfathered”, and that the six-month period for lodgement of any application for review of any future Defence decision should run only from the time that a person is advised by Defence of both the relevant decision and the six-month time limit (or such longer period as may be allowed by the Tribunal in exceptional circumstances).

Who may appeal an award rejection

87. The Bill would limit the persons who may appeal a Defence decision refusing to recommend a defence or foreign award to an ADF member or veteran or a member of their very tightly defined “immediate family”.

88. It would therefore preclude applications for review by family members not included within that definition, or by other supporters who have no family, service or other connection with the ADF member or veteran.

89. The Tribunal is not implacably opposed to these limitations, but considers that they warrant some refinement.

90. In its experience, applications for review have very seldom been lodged by a person with no family or service connection with an ADF member or veteran. And, where such an application might otherwise be made in the future, the Tribunal would expect that the intending applicant (such as an ex-service or similar organisation) should generally be able to find an ADF member or veteran, or member of their immediate family, who would be able to lodge an application in their own name for an appeal that might, once launched, be managed and progressed by that otherwise precluded

applicant.

91. However, the Tribunal does consider that the definition of “immediate family member” has been undesirably drawn too tightly. The definition is essentially limited to what may be described as a single line in the family tree – parents, ADF member or sibling or spouse, children and grandchildren. It thus excludes relatives such as cousins, nephews and nieces and their children. The Tribunal is aware of a few cases (including Sheean) where family members such as these have been active in seeking recognition for an ancestor – perhaps an uncle or great-uncle who was an unmarried child of deceased parents. Moreover, where an ADF member has been killed on service, it is more likely that they would not have had children. The Tribunal’s preference would thus be for the definition to be expanded to include cousins, nephews and nieces and their children.

Previously cancelled honours and awards

92. Currently, no provision exists for a decision to cancel a defence honour or award to be directly reviewed by the Tribunal. However, if an honour or award is cancelled (such as for serious misconduct), there is the potential that the affected party may nonetheless apply to Defence to have that award reinstated. If that application is refused, the Tribunal would then have jurisdiction to review the matter.

93. The Bill would prevent such an application for review being made.

94. The Tribunal agrees that the present situation is unwieldy and inappropriate, and that it should be changed. The circuitous course of securing review is unwieldy because it simply adds deterrence and delay to an affected ADF member or veteran securing independent review of a very significant decision. And it is inappropriate because, if such a case were brought before the Tribunal, it would in effect be reviewing a decision that had already been made by the Governor-General (or their delegate).

95. However, the seriousness of a decision to cancel a previously granted honour or award is such that the Tribunal does not believe it would be appropriate to simply abolish the existing unwieldy right of review as proposed by the Bill.

96. Rather, the Tribunal considers that such seriousness instead underlines the importance of a right of independent merits review. While cancellation decisions may be taken very carefully and only after advice from very high levels within Defence, that advice is not thereby immune from the possibility of error.

97. The Tribunal therefore considers that it would be preferable, and more consistent with the principles of accountability and transparency in Government decision-making, to allow an application for review of a proposed cancellation to be directly made to the Tribunal. Such an application should be required to be made within, say, 56 days of the affected party being advised of that proposed decision, with cancellation or withdrawal being deferred until the time for applying for review has expired or, where an application for review has been made, the process of review and subsequent decision-making has been completed.

98. The Tribunal recommendation after such a review would of course not be binding on the Minister or the Governor-General (or their delegate), but would ensure that they were better able to take into consideration all relevant matters and would avoid the risk under the present arrangements that the Tribunal could come to a compelling but different conclusion on cancellation.

99. This proposed mechanism would give additional assurance to the Minister in making a recommendation for cancellation to the Governor-General that such a recommendation was soundly-based after an independent review of all relevant facts and applicable law. Furthermore, it would give additional assurance to the affected party that their views had been fully heard and independently considered through a process that conformed with the principles of procedural fairness.

Tribunal powers of recommendation

100. The Bill would repeal the present provision that empowers the Tribunal to make “any recommendations that it considers appropriate on matters that arise out of or relate to” a Tribunal review in a defence award or foreign award case. It would also limit the Tribunal in a defence honours case to only making a recommendation that was confined to “whether the reviewable decision is consistent with the eligibility criteria of the defence honour at the time the reviewable decision was made”. The Tribunal has exercised these powers in only a small percentage of cases, but these have all been cases in which it has considered that some action beyond but closely related to the issue or refusal of a defence honour or award was appropriate.

101. The Second Reading Speech included the following statement:

The bill amends the functions of the tribunal so that its recommendations to government regarding a defence honour are focused on eligibility for the honour rather than making broader recommendations regarding the honours and awards system, which is properly the scope of the tribunal if conducting an inquiry, or recommendations concerning other aspects of service or government decisions that are not relevant to the question of eligibility per se.

102. In its submission to the previous Committee inquiry Defence put forward arguments in support of such limitations on a basis which was deeply flawed, as explained in the Tribunal’s supplementary submission to that inquiry. At that time, Defence said that the Tribunal had made recommendations about “nature of service”. That is simply incorrect -the Tribunal has never done so. Defence also said that the Tribunal had made recommendations about discharge of members from the ADF. That also was simply incorrect - the Tribunal has never done so.

103. The discussion in the Explanatory Memorandum to the Bill suggests that these same misconceptions may be driving these proposed amendments.

104. The facts are that all the recommendations that the Tribunal has made over and above deciding the individual case before it have been closely confined to matters arising from the eligibility criteria in issue. For example:

- in some cases where the Tribunal concluded that an ADF member had performed creditably but did not meet the statutory eligibility criteria for the honour they sought, the Tribunal has recommended that consideration should be given to issuing a commendation under the ADF's non-statutory scheme for such alternative recognition;
- in a series of cases relating to service in HMAS *Manoora* in East Timor in 2000, the Tribunal recommended that scrutiny should be applied to other cases concerning the same service in which it seemed clear that awards had been issued without the eligibility criteria being met; and
- in another case, the Tribunal recommended that the Minister should consider amendment of the Regulations governing the Defence Long Service Medal to allow it to be awarded where a member did not serve for the required period because they were discharged for service-related medical reasons, so as to mirror the comparable provision in the Regulations governing the Australian Defence Medal.

105. The Tribunal considers that the proposed limitations on the Tribunal's power of recommendation are in no way justified and, moreover, would be a retrograde step. For example, the amendments would preclude the Tribunal from recommending that a defence honour other than that sought by the applicant and refused by Defence should be conferred. The Tribunal has made 12 such recommendations and, in the cases subsequently decided by the Minister, all but one of those recommendations have been accepted. In 19 other cases, the Tribunal has recommended some other action (such as for consideration of a related matter) and, of the cases subsequently decided by the Minister, a very significant majority of those recommendations have been accepted.

New powers to make Regulations

106. The Tribunal does not support all of the new regulation-making powers included in the Bill, which would allow:

- the period of service to which an application may relate to be reduced below the 20-year period;
- the Tribunal to be precluded from having regard to otherwise relevant evidence; or
- the operation and procedures of the Tribunal to be confined, without any limitation.

107. As a matter of first principles, the Tribunal considers that these are issues that should be dealt with by an amending Act after deliberation by the Parliament as a whole, and not left to the vagaries of regulatory disallowance after the event. Rather, the Tribunal believes that it would be preferable to include in the Bill a range of measures to allow the more efficient disposition of the business of the Tribunal. These measures have already been identified, along with existing precedents for them in the legislation governing other administrative tribunals, and Defence has not raised objection to these.

What alternative changes would the Tribunal not oppose?

108. The Tribunal's primary position is that there is no strong case to limit the period of service in relation to which an application to the Tribunal may currently be made. Experience shows that, even in cases going back as far as the Second World War, confident decision-making can be made in reliance on first-person accounts and contemporaneous records. And, of course, where a decision cannot be made with confidence, affirming a Defence decision refusing to recommend a defence honour or award would be appropriate.

109. If, however, there is to be any limitation on the period of service to which an application for review relates, the Tribunal suggests that:

- service within the 50 years prior to an application to Defence should always be reviewable. This period would cover the period of up to 48 years during which a person may serve in the permanent and reserve ADF forces, and allow a period of at least two years post-separation during which former service personnel may give due consideration to whether or not they wish to pursue a defence honour or award not already issued to them; and
- there should be a transitional period (of at least two to three years) before any such limitation comes into effect to allow ADF members and veterans, their families and others to acclimatise to any new limitation on the age of service that may be raised and to conduct necessary research and preparation before lodging their application for recognition for service more than 50 years prior.
 - This in turn would mean that there would need to be a concerted program of effective engagement with the service and veteran community to ensure that, so far as possible, all ADF members, veterans, families and other supporters are aware of the impending cut-off date for resolution of outstanding matters, and that they have the opportunity to make application to Defence and to have any subsequent Tribunal appeals dealt with in a reasonable period.

110. At present, there is no limitation on who might apply to the Tribunal for review of a defence decision refusing to recommend a defence honour, defence award or foreign award so long as they were the person, or among a class of persons, who made the original application to Defence for that honour or award.

111. The Tribunal's primary position in regard to this question of standing to apply is that:

- ADF members and veterans and members of their immediate family (defined more broadly than in the Bill, to include cousins, nephews and nieces and their children) should continue to be able to seek Tribunal review of a Defence decision refusing to recommend a defence honour, a defence award or a foreign award.
- Additionally, other serving or ex-service ADF personnel should be able to apply to the Tribunal where they had made an application in respect of another ADF member

or veteran (whether through the internal nomination process or direct to the Directorate of Honours and Awards), and without any limitation that they had necessarily been more senior in the chain of command or an eye witness to the events in question.

112. So far as other persons who could currently apply to the Tribunal are concerned, the Tribunal acknowledges that it is highly unusual for administrative review proceedings to be able to be initiated by a person not directly or personally affected by a decision for which review is sought. But there is much about the defence honours and awards system that is unique and this is just one aspect of that broader position.

113. More importantly, there is no evidence of which the Tribunal is aware that exercise of the present right or appeal by people without a service or family connection to the ADF member or veteran is causing a problem that could not be readily resolved by early engagement by the applicant or the Tribunal with the ADF member/veteran or their family.

114. The overwhelming majority of applications for review are lodged either:

- by the ADF member or veteran themselves;
- by a member of their family;
- by another ADF veteran with a service connection, even though they may not have been in the direct chain of command; or
- by or on behalf of an ex-service organisation.

115. There have been extremely few applications for review lodged by a person with no service or family connection and none of those have been unmeritorious, frivolous or vexatious. And, even if an application were considered frivolous or vexatious, the Act already permits the Tribunal Chair to dismiss such an application (section 110VC(1)(c)).

116. In fact, the evidence is that by applications by people with no family or service connection have actually been very meritorious and essential to ensure proper recognition of most deserving service – for example, in the cases of Sheean, Murray and Swanton referred to above.

117. Therefore, in the view of the Tribunal, there is no pressing need to change the present standing rules despite their apparently very liberal nature.

118. However, to guard against the possibility that the present position might be abused in the future, the Act could be amended to allow the Chair to dismiss an application by such a person where, for example:

- A representative member of the immediate family has indicated that they would not support the application;
- The intending applicant has not made all reasonable endeavours to contact and gain the consent of an immediate family member; or

- The Chair otherwise considers that the application is not of sufficient merit to warrant further consideration.

119. In addition to these alternative changes, the Tribunal also refers to its proposals:

- at paragraphs 95-98, in relation to rights of appeal in relation to cancelled honours and awards;
- at paragraphs 81 to 85, in relation to the transitional provisions affecting rights of appeal previously advised by Defence without any indication of a time-limit for the lodgement of an application for Tribunal review; and
- at paragraph 106, for the inclusion of additional provisions to enable the more efficient conduct of Tribunal business.

Counter-intuitive approach to decision-making

120. As mentioned earlier, and by way of general comment, the Tribunal considers that various measures in the Bill reflect a counter-intuitive approach to defence honours and awards decision-making.

121. Decision-making for length of service awards is relatively straightforward with a only a very minor proportion of eligible cases being appealed in the Tribunal, and the points of contention are generally limited to fairly simple issues such as the computation of time served or the reasons for early discharge.

122. Campaign and operational service award decision-making can be more complicated, with many more eligibility criteria that can be contentious, such as nature of service, temporal and geographic connection, and technical questions such as force assignment or reason for departure from the field of operations.

123. But decisions relating to defence honours are far more complicated, involve highly conceptual and undefined issues of valour, gallantry, distinguished and conspicuous service, and require far more complicated fact-finding and assessment. This difference in the rigour of decision-making is reflected by the fact that, while only about 0.09% of applications for an operational service award, a length of service award or a foreign award lead to an application for Tribunal review, on average more than 20% of Defence's decisions on application for defence honours are appealed to the Tribunal.

124. In the Tribunal's view, it is counter-intuitive that:

- the more dangerous the service and the more valorous the service, the more current rights of appeal would be abolished; and

- the more complex and prone to error the required decision-making, the more Defence decision-making would be rendered immune from independent merits review by the Tribunal.

Mental Health considerations

125. In closing, the Tribunal wishes to stress to the Committee the need for caution to ensure that any changes to the present system do not cause any harm to those for whose benefit the system should exist.

126. It is not uncommon for ADF personnel, current or former, who seek review in the Tribunal to have service-related mental health issues. These applicants tend to be particularly focussed on having their service recognised by an honour or award for which they believe they are qualified, and tend to be particularly critical of their dealings with Defence in relation to prior attempts to achieve that recognition.

127. All Tribunal members (and its staff) undertake training in trauma-informed care and are hopefully thereby better equipped to deal appropriately and sensitively with these applicants, while still applying the necessary analytical rigour to the issue of medallic entitlement.

128. Applicants generally, but particularly those with mental health issues, often express their appreciation of their dealings with both the staff and the members of the Tribunal and, even where the outcome is not that which they sought, are thankful that they have been able to have direct conversations and interactions with Tribunal members and receive detailed statements of reasons explaining in detail why their application may not have been successful.

129. It appears to the Tribunal that there is a real potential that abolishing or severely limiting rights of appeal to the Tribunal in the manner proposed by Defence, may seriously aggravate the mental health of at least some of these applicants.

Conclusion

130. In the view of the Tribunal, the Bill in its present form would work to the very significant disadvantage of ADF members and veterans, their families and other supporters by abolishing existing rights of independent merits review in the Tribunal and would thereby detract from the integrity of the defence honours and awards system.

131. Moreover, the Bill would have those adverse effects without any countervailing advantage to any party other than Defence, whose ongoing decision-making would be rendered immune from the scrutiny and accountability currently afforded by Tribunal review.

132. While there are elements of the Bill that the Tribunal does not oppose (discussed at paragraph 45 above), the Tribunal cannot support the key measures of the Bill - in particular, the proposed 20-year rule limiting the service to which an application for review may relate, and the proposed prohibition on appeals by the most relevant parties affected by a defence honour rejection. The

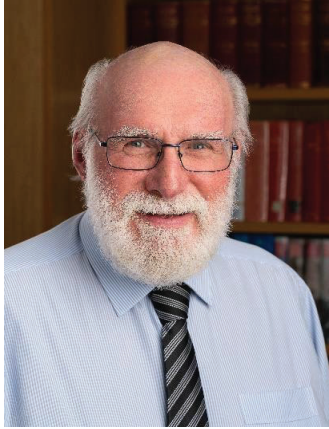
Tribunal's reasons for objecting to these measures are detailed at paragraphs 46 to 81 above.

133. However, if it is perceived that there is a need for change to the present system despite the fact that is actually working well under the existing legislation, the Tribunal suggests that there are alternative changes which it considers would strike a reasonable and appropriate balance between the competing interests of all affected. These are detailed at paragraphs 108 to 119 above.

134. The Tribunal would of course be happy to appear before the Committee or to provide any additional information its members may require.

Members of the Defence Honours and Awards Appeals Tribunal

MR STEPHEN SKEHILL - CHAIR



Mr Skehill was appointed as the Chair of the Tribunal in 2020 and was reappointed in December 2023. His career spans 28 years in the Australian Public Service and 26 years in private legal practice and consultancy. His public service positions have included Principal Member of the Veterans' Review Board, the Australian Government Solicitor, and Secretary of the Attorney-General's Department. Mr Skehill has also conducted numerous inquiries into public service structures, procedures and performance. As Special Counsel with the major law firm now known as King & Wood Mallesons, he specialised in administrative law, air and space law, and telecommunications law.

Mr Skehill has held a wide variety of statutory positions under Commonwealth legislation and, since 2008, has been the Ethics and Integrity Advisor to the Members of the Legislative Assembly of the Australian Capital Territory. He holds a Bachelor of Economics degree from Monash University and a Bachelor of Laws degree with first class honours from the Australian National University.

REAR ADMIRAL ALLAN DU TOIT AM RAN (Retd)



Rear Admiral du Toit was appointed to the Tribunal in May 2021 and reappointed in 2024. He retired from the Royal Australian Navy in 2016 after 40 years naval service. He was born in South Africa and entered the South African Navy in 1975. He joined the Royal Australian Navy in 1987. He commanded at all ranks including HMAS *Tobruk* during peacekeeping operations in Bougainville, the Australian Amphibious Task Group, the maritime interception force enforcing UN sanctions against Iraq, Combined Task Force 158 in the Persian Gulf, and Border Protection Command. He also served in a wide range of single-service and joint appointments ashore including Deputy Chief of Joint Operations and Head of Navy People. His final appointment was as Australia's Military Representative to NATO in Brussels.

Rear Admiral du Toit is currently chair of two defence industry companies. He is also a member of the Northern Territory Government's National Security Advisory Group. He has written and lectured on historical and contemporary defence and naval affairs both in Australia and abroad and has a doctorate from the UNSW Canberra where he is a Visiting Fellow and Adjunct Senior Lecturer. He served as President of the Australian Naval Institute from 2011 to 2013.

MS KAREN FRYAR AM



Ms Fryar was appointed to the Tribunal in July 2021 and reappointed in 2024. She retired in 2019 after 26 years as a magistrate and coroner in the Australian Capital Territory. She had also previously been a presidential member of a number of ACT tribunals including the Mental Health Tribunal and the Guardianship and Management of Property Tribunal. Prior to her appointment to the bench of the ACT Magistrates Court (as the first female judicial officer in the ACT), Ms Fryar's early legal career covered time in private practice, the Australian Government Solicitor and the ACT Legal Aid Office.

In January 2020, Ms Fryar was appointed as the President of the Legal Aid Commission (ACT), and she currently convenes mediations in civil litigation.

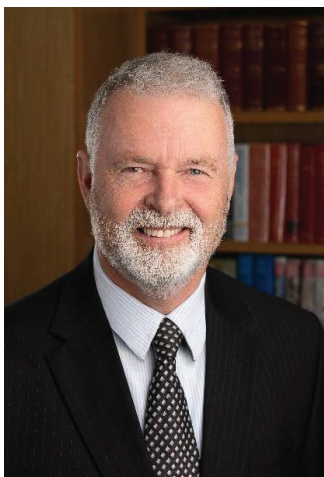
BRIGADIER DIANNE GALLASCH AM CSC (RETD)



Brigadier Gallasch was appointed to the Tribunal in January 2023. She retired from full time Australian Army service in 2016 after 33 years as a logistics officer. Brigadier Gallasch has commanded at all rank levels and has extensive joint and multi-national experience in personnel, training and logistics. Brigadier Gallasch's operational postings included Deputy Commander of the Force Logistics Support Group in East Timor from 1999 to 2000, the logistics plans officer with the Multi-National Force Iraq in 2008, and as the foundational Australian Director General Transition and Redeployment in the Middle East in 2012. Her last full-time position was as the Commandant of the Royal Military College of Australia.

Since transitioning from full time service, Brigadier Gallasch's primary role has been as an Inquiry Officer for the Australian Defence Force.

AIR COMMODORE ANTHONY GRADY AM (RETD)



Air Commodore Grady was appointed to the Tribunal in July 2021 and reappointed in 2024. He separated from the Royal Australian Air Force in 2015 after 35 years of service as a pilot, with experience in rotary wing and strike aircraft. He has extensive command experience, principally within Air Combat Group, and has filled a range of staff positions within Air Force, Air Command and the joint force as well as completing a number of operational tours in the Middle East. Air Commodore Grady has worked in Defence Industry, and holds two Masters degrees.

MS LOUISE HUNT



Ms Hunt was appointed to the Tribunal in August 2023. She is a lawyer and holds a statutory appointment as a part-time Member of the Veterans' Review Board. She is a member of the Law Council of Australia's Military Justice Committee.

Prior to her appointment to the Veterans' Review Board, Ms Hunt's legal career in private practice encompassed professional liability and discipline matters.

Ms Hunt is a serving Reserve Legal Officer in the Royal Australian Air Force. She has served for over 35 years and holds the rank of Group Captain. She performs work on behalf of the Inspector General of the Australian Defence Force.

Law.

Ms Hunt holds Bachelor Degrees in Law and a Master of International

MR JONATHAN HYDE



Mr Hyde was appointed to the Tribunal in August 2023. He is a barrister with over 30 years' experience, currently practicing at the NSW Bar from New Chambers. He specialises in public and administrative law and is retained by a range of commonwealth and state government agencies and statutory authorities, including ASIC and the AFP. He has considerable expertise in royal commissions, commissions of inquiry, coronial inquests, and administrative inquiries for both government and non-government bodies. He represented Cricket Australia, Queensland Cricket, and Tennis Australia at the Royal Commission held into Institutional Responses to Child Sexual Abuse, and more recently appeared in the Royal Commission into Defence and Veteran Suicide. Mr Hyde was counsel assisting the Australian Commissioner for Law Enforcement Integrity for a period of two years and is co-author of "Anti-Money Laundering and Financial Crime in Australia" (Lexis Nexis). He is a former Judge Advocate and

Defence Force magistrate and past president of the NSW RSL Discipline and Conduct Tribunal. Jonathan has operational service in Iraq. He is a part-time Deputy President on the NSW Mental Health Review Tribunal, a body that reviews persons charged with criminal acts but found not criminally responsible due to mental illness and conducts reviews to determine fitness to stand trial.

MAJOR GENERAL MARK KELLY AO DSC (RETD)



Major General Kelly was appointed to the Tribunal in July 2021 and reappointed in 2024. He retired from the Australian Army in June 2010 after 36 years as an Infantry officer. He held a number of senior command appointments including Commanding Officer of the 1st Battalion, The Royal Australian Regiment, Commander of the 3rd Brigade, Commander of the 1st Division, Land Commander Australia, and Commander of the Joint Task Force 633.

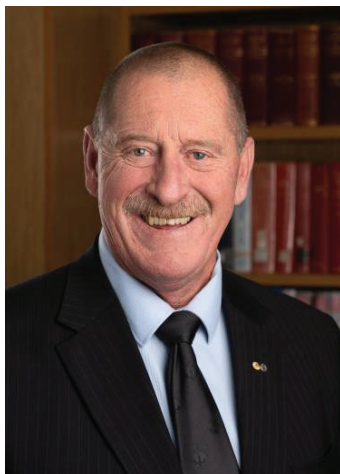
His operational service included Zimbabwe/Rhodesia in 1979 and 1980, East Timor with INTERFET in 1999 and 2000, the Middle East Area of Operations including Iraq, the Horn of Africa and Afghanistan in 2003 and 2004 and 2009 and 2010. He also served as the Repatriation Commissioner at the Department of Veteran Affairs from 2010 to 2019.

COMMODORE VICKI McCONACHIE CSC RAN (RETD)



Commodore McConachie was appointed to the Tribunal in January 2023. She served in the permanent Navy from 1984 to 2012 undertaking senior roles in both legal and non-legal capacities, including operational service in Iraq, being Head of Navy People and Reputation, Director General Navy People, and Director General ADF Legal Services. From 2012 until 2020, Commodore McConachie was Chief General Counsel to a Commonwealth government entity and, while undertaking that role, she was a non-executive director for Defence Housing Australia from 2013 to 2019. Commodore McConachie holds Bachelor degrees in Arts (History) and Law, and a Masters degree in Law.

MAJOR GARY MYCHAELOAM CSM (RETD)



Major Mychael was appointed to the Tribunal in January 2023. Major Mychael enlisted in the Australian Regular Army in April 1979. After several Senior Leadership Group Regimental Sergeant Major appointments, he commissioned to the rank of Major in January 2016 before transferring to the Active Reserve in September 2020. Major Mychael has served in the 3rd Battalion of The Royal Australian Regiment, the Parachute Training School, the Soldier Career Management Agency, the Headquarters of the 5th Brigade and the 2nd Division, Headquarters Forces Command, Headquarters Career Management Army, and the Australian Defence Force Parachuting School.

His operational and representational deployments include Malaysia, New Zealand, United Kingdom, the United States of America, Jordan, Afghanistan, and the Middle East Area of Operations as Regimental Sergeant Major Joint Task Force 633, and on operations Slipper, Accordion and Manitou.

AIR VICE-MARSHAL TRACY SMART AO (RETD)



Air Vice-Marshal Smart was appointed to the Tribunal in November 2021 and reappointed in 2024. She is a medical doctor, health leader, aerospace medicine specialist and retired Royal Australian Air Force senior officer. Her 35-year Air Force career included many overseas deployments and culminated in the role of Surgeon General of the Australian Defence Force.

Air Vice-Marshal Smart is currently Professor, Military and Aerospace Medicine at the Australian National University, a Mission Specialist in Space Medicine at the University's Institute for Space and was the University's COVID-19 Public Health Lead from August 2020 to March 2022.

In addition to her ANU and DHAAT roles, she is a non-Executive Director on the Boards of Goodwin Aged Care Services and the Australasian College of Aerospace Medicine, and a consultant advisor to JFJ Aviation and Defence GmbH. She is also a member of various advisory and steering groups including the Australian Football League's Mental Health Steering Group, the Divisional Advisory Panel of Health Security Systems Australia, the Australian War Memorial Development Project Veterans' Advisory Group (as co-Chair), and the Australian Institute of Health and Welfare Veteran's Advisory Group. She is a regular keynote speaker in the areas of leadership, mental health, public health, cultural change, and diversity.

Air Vice-Marshal Smart holds a Bachelor of Medicine and Bachelor of Surgery, a Masters of Public Health, a Master of Arts (Strategic Studies), and a Diploma of Aviation Medicine. She is a Fellow of the Royal Australian College of Medical Administrators, the Australasian College of Aerospace Medicine, the Aerospace Medicine Association (US), and the Centre for Defence and Strategic Studies; and an Honorary Fellow of the Australasian College of Health Service Management.

Attachment B

Statistics on reviews

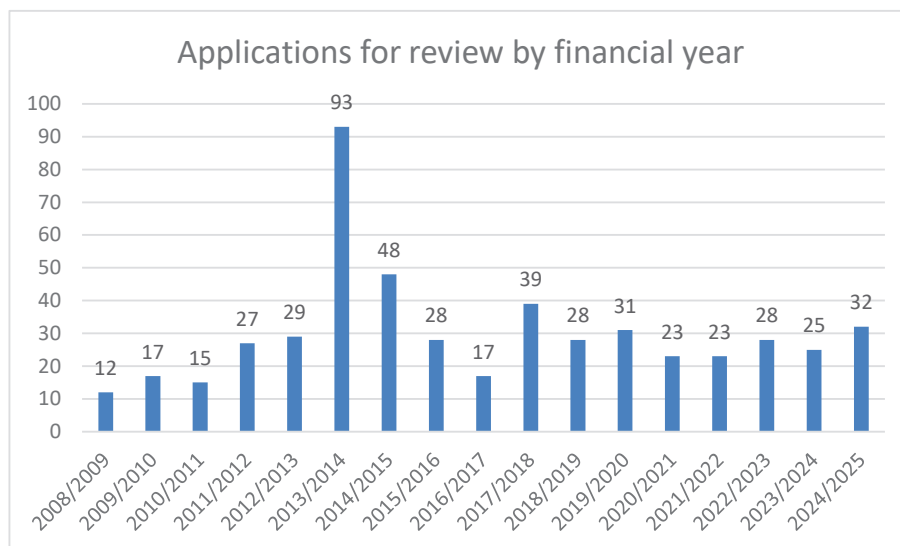
Since establishment as an administrative body in 2008, and continuing since establishment as a statutory body, 527 properly-made applications for review have been received by the Tribunal up to 30 September 2025, and 508 have been finalised. Under the current law, around one third of applicants to the Tribunal have received a favourable outcome following their application, as shown by the following statistics:

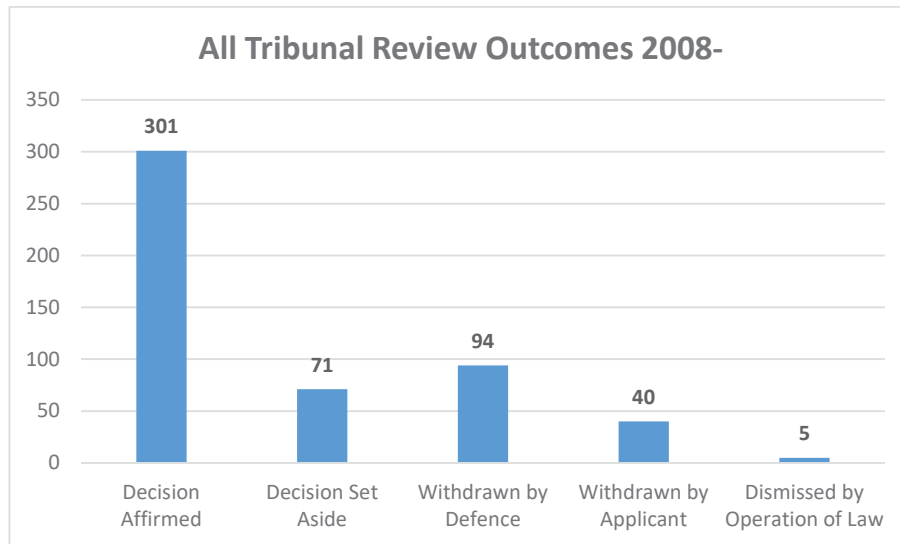
- In 71 cases (14 per cent), the Tribunal has set aside the decision, or recommended the decision be set aside and replaced with a new decision.
- In 94 cases (18 per cent), Defence has revisited its position in light of the application to the Tribunal and has made a decision to recommend the person for an honour or award. As noted earlier, the Tribunal has observed an uplift in this number in recent years.
- In 301 (59 per cent) of the finalised applications, the decision under review has been affirmed.
- In 40 cases (eight per cent), the applicant has chosen to withdraw their application for review.
- In five cases (less than one per cent), the Chair of the Tribunal has exercised the power under section 110VC(1) of the Act to dismiss the application under review. This has been because, in the Chair's opinion, the subject of the application for review has already been adequately reviewed (by the Tribunal or otherwise), or because there has been another process of Commonwealth review to which the application relates and the Chair decided that it was preferable for the decision to be first reviewed through that process.

Statistics on Tribunal applications up to 30 September 2025

Period	Since 2008		FY 2023 – 24		FY 2024 – 25	
	No.	%	No.	% of FY	No.	% of FY
Applications Lodged	527	-	25	-	32	-
Applications Finalised	508	-	26	-	35	-
<i>Withdrawn by applicant</i>	40	8%	1	4%	4	11%
<i>Withdrawn following Defence action</i>	94	16%	12	46%	17	49%
<i>Dismissed by operation of law</i>	5	1%	0	0%	0	0
<i>Decision affirmed by Tribunal</i>	301*	61%	7	27%	11*	31%
<i>Decision set aside by Tribunal</i>	71*	14%	6	23%	4*	11%
<i>Recommendation under S110VB(3)</i>	20		0		0	
On hand at end of reporting period	19		18		15	

*A small number of reviews have resulted in both a recommendation to affirm a Departmental decision along with a recommendation to set a further Departmental decision aside





Attachment C

Extract from “end of operation” advice

The 20-year rule in the settled Bill would apply to defence honours and operational awards and provide two alternative formulations - either:

- all of the service in question must have been rendered within 20 years before the application for recognition is made to Defence; or
- the honour or award must relate to a particular operation that has an end date, and the end date must be 20 years or less before the application for recognition is made to Defence.

Defence advised the Tribunal that the latter formulation was intended to give effect to your instruction that all Afghanistan service was to be reviewable.

In the view of all legally qualified members of the Tribunal, the ‘end of operation’ formulation cannot have that effect. There are multiple reasons for this.

First, the term ‘operation’ is not defined, either in the Bill or in the existing *Defence Act 1903* and Regulations. It is, therefore, of uncertain meaning. While Defence does establish operations of specific scope, purpose, area and duration, it does so on an administrative basis that has no statutory foundation. Some operations may be referred to in some honours and awards regulations or in instruments made under such regulations. But those references do not establish an operation and may become outdated with the passage of time – for example, an operation that is referred to as ‘ongoing’ may subsequently cease and have an administratively set end date. It is thus not clear that such regulations and instruments are to be the authoritative source for identifying an operation and whether or not it has an end date.

Second, the Bill couches the end of operation provisions as applying where the defence honour or operational award ‘relates to a particular operation’.

This requirement for such a relationship is not met by any defence honour:

- the Victoria Cross is awarded for action ‘in the presence of the enemy’ and regardless of whether or not the member was on any particular operation;
- the Star of Gallantry is awarded for service rendered ‘in action’ and regardless of whether or not the member was on any particular operation;
- the Distinguished Service Cross (Australia) is awarded for service ‘in warlike operations’ and not by reference to any ‘particular’ operation;
- the Conspicuous Service Cross is awarded for service ‘in non-warlike situations’ and regardless of whether or not the member was on any particular operation;
- the Nursing Service Cross was awarded for ‘the performance of nursing duties’;
- the Medal for Gallantry is awarded for service rendered ‘in action’ and regardless of whether or not the member was on any particular operation;
- the Distinguished Service Medal (Australia) is awarded for service ‘in warlike operations’ and not by reference to any ‘particular’ operation;

- the Conspicuous Service Medal is awarded for service ‘in non-warlike situations’ and regardless of whether or not the member was on any particular operation;
- the Commendation for Gallantry is awarded for service rendered ‘in action’ and regardless of whether or not the member was on any particular operation; and
- the Commendation for Distinguished Service is awarded service ‘in warlike operations’ and not by reference to any ‘particular’ operation.

Accordingly, as there is no connection between an operation and any of the defence honours, the ‘end of operation’ provision will not render any service in Afghanistan older than 20 years reviewable by the Tribunal where the Defence decision was a refusal to recommend a defence honour.

[This situation might have been different if, instead of referring to honours ‘relating to’ particular operations, the Bill had referred to ‘an application referred to in paragraph (1)(c) that related to service rendered on a particular operation that had an end date’ and if the term ‘operation’ was given a sufficiently clear definition to allow unambiguous identification.]

In relation to operational awards, the situation is different:

- the Australian Active Service Medal is awarded for service in or in connection with a ‘prescribed operation’;
- the Afghanistan Medal is awarded for service in Afghanistan on a ‘prescribed operation’;
- the Iraq Medal is awarded for service in Iraq on a ‘prescribed operation’;
- the Australian Service Medal is awarded for service in or in connection with a ‘prescribed operation’;
- the Australian Operational Service Medal is awarded for service during a ‘declared operation’;
- the Champion Shots Medal is awarded each year to the winner of competition in each of the three Services and is unrelated to any operation.

Accordingly, each of the operational awards other than the Champion Shots Medal is related to an operation. While the Regulations creating those awards do not refer to any ‘particular’ operation, instruments made under them do. In the view of the legally qualified members, the combined operation of each Regulation and the associated instrument would be likely to be held by a court to mean that each of those awards ‘relates to a particular operation’, although that is not certain. If that is so, however, whether the ‘end of operation’ provision will have any effect would thus be dependent on whether or not an operation particularised in any such instrument had an end date 20 or less years prior to the making of an application for recognition to Defence. In addition to the definitional problem of ascertaining whether an operation described in an instrument as ongoing actually has an end date, there is an obvious inherent potential unfairness of treatment between members in the same theatre that may arise depending on whether a particular operation has an ‘end date’.

In relation to the Afghanistan Medal, the instrument made by the Governor-General prescribes ‘the Afghanistan Operation’. In so doing, it does not specify any end date and thus, on that basis, the ‘end of operation’ would not render any service in the earlier years of Afghanistan reviewable.

However, in detailing ‘the Afghanistan Operation’, the instrument then goes on to refer to a number of constituent ‘operations’ as follows:

- Operation SLIPPER, which is stated to involve seven categories of activities in certain geographic areas between certain dates. Two of those categories have end dates more than 20 years ago; the other five have end dates less than 20 years ago. Because the Bill contains no definition of the term ‘operation’, it is not clear whether Operation SLIPPER has ‘an’ end date or multiple end dates. If the latter, then only some Operation SLIPPER service could be rendered reviewable by the ‘end of operation’ provision. Alternatively, if it was held that Operation SLIPPER had ‘an’ end date, and that date was the most recent of the various end dates referred to in the instrument, then service as old as 11 October 2001 could be reviewable so long as the application to Defence was made by 31 December 2034.
- Operation PALATE, which is stated to involve activities in Afghanistan that ended on 5 July 2004. The ‘end of operation’ provision would therefore not render any service on this Operation reviewable, and all service on that operation would become unreviewable from the time the Bill became law.
- Operation PALATE II, which is stated to have commenced on 27 June 2005 but for which no end date is specified. The ‘end of operation’ provision would therefore not render any service on this Operation reviewable and all service on that operation would become unreviewable either from the time the Bill became law or very soon thereafter.

As a result, it is arguable but not certain that the ‘end of operation’ provision might be interpreted to apply to each constituent operation rather than to ‘the Afghanistan Operation’ and, so interpreted, to render some earlier service in Afghanistan reviewable, but certainly not all of it.

Moreover, to the extent that the ‘end of operation’ provision might have any effect in relation to service in Afghanistan, for the reasons discussed above, it would only be in relation to the Afghanistan Medal and not in relation to any defence honour. In the view of the legally qualified members of the Tribunal, it would be a bizarre and probably indefensible policy outcome if denial of recognition for presence in Afghanistan could be remedied through the appeal process, but refusal of recognition for gallant or distinguished service during that same presence could not.

The ‘end of operation’ provision is also capable of causing some other apparently bizarre outcomes for which we can discern no defensible policy rationale. In this regard, we mention the following:

- in relation to the Australian Operational Service Medal, some ADF members deployed on particular Border Protection operations (such as Operation CRANBERRY and Operation MISTRAL) on particular dates would have a right of appeal while other members deployed on different Border Protection operations (such as Operation DIRK and Operation STANHOPE) on the same date and in the same defined geographic area would not; and
- in relation to the Iraq medal, some ADF members deployed on Operation CATALYST on particular dates would have a right of appeal while other members deployed on Operation FALCONER on the same date and in the same defined geographic area would not.

In drawing your attention to the above, the Tribunal wishes to stress that these may not be the only technical issues arising from the drafting of the Bill. Rather, they are just those we have identified to date and others may become apparent in attempting to implement the Bill if it were passed by the Parliament in its present form.