

Following up on questions from Senators Ciccone, Pocock and Lambie today.

- The statistics in respect of Tribunal reviews and their outcomes as requested by Senator Ciccone are set out on pages 40 and 41 of the Tribunal's submission. 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.
- A schedule of proposed miscellaneous and administrative amendments to the Tribunal's operating legislation that was discussed with Senator Pocock was attached to the Tribunal's submission to the Committee's *Inquiry into the Defence honours and awards system* is attached to this email.

Proposed miscellaneous amendments to Part VIIIC of the Defence Act 1903 – Modernisation of DHAAT legislation	
Objective of the Tribunal	There is nothing in Part VIIIC that sets out the objective of the DHAAT. In contrast, section 2A of the Administrative Appeals Tribunal Act 1975 (Cth) provides that: 2A Tribunal's objective In carrying out its functions, the Tribunal must pursue the objective of providing a mechanism of review that: (a) is accessible; and (b) is fair, just, economical, informal and quick; and (c) is proportionate to the importance and complexity of the matter; and (d) promotes public trust and confidence in the decision-making of the Tribunal. It is proposed that a similar provision should be included in Part VIIIC in relation to the Tribunal's review function. A corresponding provision may also be included to state an objective for the Tribunal's inquiry function. It could be along the following lines: In carrying out its inquiry function, the Tribunal must pursue the objective of providing the Minister with a report that addresses the matters that are the subject of the Minister's direction in a manner that: (a) is comprehensive; (b) has regard to all relevant considerations; and (c) is informed by extensive research and consultation with other persons and organisations whose interests might be affected by findings and recommendations made therein.
General Conduct of Proceedings	It is further proposed that, in relation to its review function, there should be added a general statement of procedure along the lines of section 33(1) of the <i>Administrative Appeals Tribunal Act 1975</i> (Cth), which is in the following terms: 33 Procedure of Tribunal

	(1) In a proceeding before the Tribunal: (a) the procedure of the Tribunal is, subject to this Act and the regulations and to any other enactment, within the discretion of the Tribunal; (b) the proceeding shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and of every other relevant enactment and a proper consideration of the matters before the Tribunal permit; and (c) the Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate. Section 33(1AA) of that Act further provides that the decision-maker whose decision is subject to review and “must use his or her best endeavours to assist the Tribunal”. It is not considered necessary for this provision to be replicated in Part VIIIC as that obligation on Defence is already imposed by the Legal Services Directions made by the Attorney-General Under the <i>Judiciary Act</i> 1903. However, section 33(1AB) imposes an additional obligation in the following terms: (1AB) A party to a proceeding before the Tribunal, and any person representing such a party, must use his or her best endeavours to assist the Tribunal to fulfil the objective in section 2A. It is suggested that this would be a desirable addition to Part VIIIC as it would impose an obligation on applicants for review, without increasing the burden of the existing obligation on Defence.
Invalid applications	Part VIIIC makes no provision enabling the DHAAT to dispose of an application for review that has not been validly made to it. Other tribunals commonly have an express power in this regard – see, for example, section 44 of the <i>State Administrative Tribunal Act 2004</i> (WA) and section 95 of the <i>Civil and Administrative Tribunal Act 2014</i> (NT).

	It is thus suggested that a provision should be added along the following lines: (1) The Chair may reject an application on the ground that — (a) it is made by a person not entitled to make it; or (b) it does not otherwise comply with this Act.
Withdrawal of otherwise valid applications	Part VIIIC is silent on the question of whether an applicant may withdraw an application after it has been validly made and, if they do so, what consequences follow. Section 46 of the <i>Civil and Administrative Tribunal Act 2009</i> (Qld) provides an example of a provision which, it is suggested, might be mirrored in Part VIIIC. 46 Withdrawal of application or referral (1) An applicant may... withdraw the applicant's application or referral for a matter before the matter is heard and decided by the tribunal. (2) If an applicant withdraws an application or referral, the applicant can not make a further application or referral, or request, require or otherwise seek a further referral, relating to the same facts or circumstances without leave of the tribunal.
Directions	Once a valid application for review is lodged, other tribunal legislation generally provides a power for the tribunal to issue directions designed to facilitate the orderly management and hearing of the application. For example, section 33 of the <i>Administrative Appeals Tribunal Act 1975</i> (Cth) is in the following terms: <i>Directions hearing</i>

	(1A) The President or an authorised member may hold a directions hearing in relation to a proceeding. <i>Who may give directions</i> (2) For the purposes of subsection (1), directions as to the procedure to be followed at or in connection with the hearing of a proceeding before the Tribunal may be given: (a) where the hearing of the proceeding has not commenced—by a person holding a directions hearing in relation to the proceeding, by the President, by an authorised member or by an authorised officer; and (b) where the hearing of the proceeding has commenced—by the member presiding at the hearing or by any other member authorized by the member presiding to give such directions. <i>Types of directions</i> (2A) Without limiting the operation of this section, a direction as to the procedure to be followed at or in connection with the hearing of a proceeding before the Tribunal may: (a) require any person who is a party to the proceeding to provide further information in relation to the proceeding; or (b) require the person who made the decision to provide a statement of the grounds on which the application will be resisted at the hearing; or (c) require any person who is a party to the proceeding to provide a statement of matters or contentions upon which reliance is intended to be placed at the hearing; or (d) limit the number of witnesses who may be called to give evidence (either generally or on a specified matter); or (e) require witnesses to give evidence at the same time; or (f) limit the time for giving evidence or making oral submissions; or
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	(g) limit the length of written submissions. It is suggested that provisions along these lines should be added to Part VIIC.
Summons	Tribunal legislation generally confers on administrative tribunals a power to issue a summons for a person to give evidence or produce documents. Section 110XC in Part VIIC already confers such a power and there is no perceived need for amendment.
Power of tribunal at hearing	Tribunal legislation commonly makes provision for the powers that may be exercised by the tribunal during the course of a hearing. For example, section 40 of the <i>Administrative Appeals Tribunal Act 1975</i> (Cth) is suggested as a useful model (albeit with some appropriate variations). It is relevantly as follows: 40 Powers of Tribunal etc. (1) For the purpose of reviewing a decision, the Tribunal may: (a) take evidence on oath or affirmation; (b) proceed in the absence of a party who has had reasonable notice of the proceeding; and (c) adjourn the proceeding from time to time. <i>Oath or affirmation</i> (2) The member who presides at the hearing of a proceeding before the Tribunal: (a) may require a person appearing before the Tribunal at that hearing to give evidence either to take an oath or to make an affirmation; and (b) may administer an oath or affirmation to a person so appearing before the Tribunal.

	<i>Power to take evidence</i> (3) The power (the evidence power) of the Tribunal under paragraph (1)(a) to take evidence on oath or affirmation in a particular proceeding may be exercised on behalf of the Tribunal by: (a) the presiding member in relation to the review; or (b) another person (whether or not a member) authorised in writing by that member. (4) The evidence power may be exercised: (a) inside or outside Australia; and (b) subject to any limitations or requirements specified by the Tribunal. (5) If a person other than the presiding member has the evidence power: (a) the person has, for the purpose of taking the evidence, the powers of the Tribunal and the presiding member under subsections (1) and (2); and (b) this Act applies in relation to the person, for the purpose of taking the evidence in the exercise of those powers, as if the person were the Tribunal or the presiding member.
Splitting or combining applications	It is also common for tribunal legislation to permit the tribunal to either combine separate applications or to split a single application into parts to facilitate the more effective hearing and handling of the matters raised. Applications made to the DHAAT not infrequently raise multiple matters – for example, by seeking a number of separate honours or awards for the same individual – where different considerations and processes might make it sensible to deal with aspects of the application separately. And on occasions the DHAAT has received multiple applications raising the same matter on behalf of multiple applicants, where separate hearings may be needlessly inefficient.

	It is thus suggested that a provision be inserted along the lines of the following sections of the <i>State Administrative Tribunal Act 2004</i> (WA): 51. Consolidating proceedings (1) The Tribunal may direct that 2 or more proceedings that concern the same or related facts and circumstances — (a) be consolidated into the one proceeding; or (b) remain as separate proceedings but be heard and determined together. (2) The Tribunal's power to give a direction under subsection (1) is exercisable by a sitting member for either of the proceedings who is a legally qualified member. (3) If proceedings are consolidated, evidence given in the consolidated proceeding is admissible in relation to matters involved in either of the proceedings that were consolidated. 51A. Splitting proceedings (1) The Tribunal may direct — (a) that any aspect of any proceedings be heard and determined separately; (b) that proceedings commenced by 2 or more persons jointly be split into separate proceedings. (2) The Tribunal's power to give a direction under subsection (1) is exercisable by a sitting member for the proceedings who is a legally qualified member.
Power to dismiss an application	Generally, the Administrative Appeals Tribunal and other comparable State and Territory tribunals have the power to dismiss an application in a wide range of circumstances, including: 1. Where the parties consent;

	2. Where the applicant discontinues or withdraws; 3. Where the applicant fails to appear at a hearing after appropriate notice; 4. Where the decision to which the application relates is not reviewable; 5. If the parties reach agreement; 6. If the proceeding is frivolous, vexatious, misconceived or lacking in substance or has no reasonable prospect of success or is otherwise an abuse of the process of the Tribunal; 7. Where the applicant fails to proceed with an application or comply with a tribunal direction; 8. If there has been a want of prosecution of the proceedings; 9. If the tribunal considers there is a more appropriate forum; and 10. If a party is conducting the proceeding in a way that unnecessarily disadvantages another party. In some cases, an applicant whose application has been dismissed under certain of these powers is precluded from lodging a further application raising the same issues without the leave of the tribunal – see, for example, <i>State Administrative Tribunal Act 2004</i> (WA) – section 49. In contrast the DHAAT has the power to dismiss an application only in the limited circumstances set out in section 110VC of the Defence Act, which is in the following terms: 110VC Power to dismiss review applications (1) Despite section 110VB, the Chair may, in writing, dismiss an application for review of a reviewable decision if the Chair considers that:
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	(a) there is another process for review, by the Commonwealth, of the decision, and it would be preferable for the decision to first be reviewed by that process; or (b) the question whether the person, or group of persons, concerned should be recommended for the defence honour, defence award or foreign award concerned has already been adequately reviewed (whether by the Tribunal or otherwise); or (c) the application is frivolous or vexatious. (2) The Chair's power under subsection (1) to dismiss an application for review of a reviewable decision may be exercised at any time, whether before or after the Tribunal has started to review the decision. (3) A dismissal under subsection (1) is not a legislative instrument. As a result, the current DHAAT power of dismissal covers only ground 9 and part of ground 6 above. It is proposed that Part VIIIC should be amended to allow the Tribunal to dismiss an application on most (if not all) of the grounds set out in 1-9 above.
Correction of errors	Tribunal legislation generally makes provision allowing the Tribunal to correct a minor error in its published decision or reasons. The DHAAT does not have an express power to do so and, while the need for such a power has only risen rarely in the past, it would be desirable to put the issue beyond doubt. For example, section 43AA of the <i>Administrative Appeals Tribunal Act 1975</i> (Cth) provides as follows: 43AA Correction of errors in decisions or statement of reasons <i>Correction of errors</i>

	(1) If, after the making of a decision by the Tribunal, the Tribunal is satisfied that there is an obvious error in the text of the decision or in a written statement of reasons for the decision, the Tribunal may direct the Registrar to alter the text of the decision or statement in accordance with the directions of the Tribunal. (2) If the text of a decision or statement is so altered, the altered text is taken to be the decision of the Tribunal or the reasons for the decision, as the case may be. <i>Examples of obvious errors</i> (3) Examples of obvious errors in the text of a decision or statement of reasons are where: (a) there is an obvious clerical or typographical error in the text of the decision or statement of reasons; or (b) there is an inconsistency between the decision and the statement of reasons. <i>Exercise of powers</i> (4) The powers of the Tribunal under this section may be exercised by the President or by the member who presided at the proceeding to which the decision relates.
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