

# COURTS-MARTIAL APPEALS.

**No. 16 of 1955.**

## An Act to provide for Appeals from Courts-Martial to a Courts-Martial Appeal Tribunal.

[Assented to 8th June, 1955.]

**B**E it enacted by the Queen's Most Excellent Majesty, the Senate,  
and the House of Representatives of the Commonwealth of  
Australia, as follows :—

### PART I.—PRELIMINARY.

1. This Act may be cited as the *Courts-Martial Appeals Act* 1955. Short title.
2. This Act shall come into operation on a date to be fixed by Commencement.  
Proclamation.
3. This Act is divided into Parts, as follows :— Parts.
  - Part I.—Preliminary (Sections 1-5).
  - Part II.—Courts-Martial Appeal Tribunal (Sections 6-19).
  - Part III.—Appeals to Tribunal.
    - Division 1.—Bringing of Appeals (Sections 20-22).
    - Division 2.—Determination of Appeals (Sections 23-30).
    - Division 3.—Incidental Powers of Tribunal (Sections 31-38).
    - Division 4.—Miscellaneous (Sections 39-42).
  - Part IV.—Offences in Relation to Tribunal (Sections 43-50).
  - Part V.—Reference to High Court of Questions of Law (Sections 51-57).
  - Part VI.—Miscellaneous (Sections 58-60).

## Interpretation.

4.—(1.) In this Act, unless the contrary intention appears—

“ air force court-martial ” means a court-martial constituted under air force law ;

“ air force law ” means—

(a) the *Air Force Act* 1923–1952 and regulations in force under that Act ;

(b) the *Defence Act* 1903–1953 in its application to and in relation to the Royal Australian Air Force and the members of that Force ; and

(c) if any law of the United Kingdom applies to or in relation to the Royal Australian Air Force or the members of that Force—that law in that application ;

“ appeal ” means an appeal to the Tribunal under this Act ;

“ appellant ” means a person who has been convicted by a court-martial and, under this Act, appeals, or applies for leave to appeal, to the Tribunal against the conviction ;

“ Australia ” includes the Territories to which this Act extends ;

“ court of summary jurisdiction ”, in relation to a Territory of the Commonwealth, includes a court of that Territory sitting as a court for the making of summary orders or the summary punishment of offences under the law of the Territory ;

“ court-martial ” means a naval court-martial, military court-martial or air force court-martial ;

“ member ” or “ member of the Tribunal ” means a member of the Tribunal, and includes the President and Deputy President ;

“ military court-martial ” means a court-martial constituted under military law ;

“ military law ” means—

(a) the *Defence Act* 1903–1953 and the regulations in force under that Act in their application to and in relation to the military forces of the Commonwealth and the members of those forces ; and

(b) if any law of the United Kingdom applies to or in relation to the military forces of the Commonwealth or the members of those forces—that law in that application ;

“ naval court-martial ” means a court-martial constituted under naval law, and includes a disciplinary court constituted under section fifty-seven A of the *Naval Discipline Act* in its application to and in relation to the naval forces of the Commonwealth and the members of those forces ;

“naval law” means—

- (a) the *Naval Defence Act* 1910–1952 and regulations in force under that Act ;
- (b) the *Defence Act* 1903–1953 in its application to and in relation to the naval forces of the Commonwealth and the members of those forces ; and
- (c) if any law of the United Kingdom applies to or in relation to the naval forces of the Commonwealth or the members of those forces—that law in that application ;

“the Air Board” means the Air Board constituted under regulations in force under the *Air Force Act* 1923–1952 ;

“the Deputy President” means the Deputy President of the Tribunal, and includes a member appointed to act as Deputy President under sub-section (5.) of section seven of this Act ;

“the Military Board” means the Military Board constituted under the *Defence Act* 1903–1953 ;

“the Naval Board” means the Naval Board constituted under the *Naval Defence Act* 1910–1952 ;

“the Naval Discipline Act” means the Imperial Act known as the Naval Discipline Act ;

“the President” means the President of the Tribunal ;

“the Registrar” means the Registrar of the Tribunal, and includes a deputy of the Registrar appointed under sub-section (2.) of section nineteen of this Act ;

“the Tribunal” means the Courts-Martial Appeal Tribunal constituted under this Act.

(2.) For the purposes of this Act, a finding substituted, by virtue of powers conferred by military law or air force law, for a finding of a court-martial, or a sentence substituted, by virtue of powers conferred by naval law, military law or air force law, for a sentence passed by a court-martial, shall be deemed to be a finding of, or a sentence passed by, the court-martial and a conviction obtaining by virtue of a finding so substituted shall be deemed to be a conviction by the court-martial.

5. This Act extends to all the Territories of the Commonwealth.

Extension of Act to Territories.

## PART II.—COURTS-MARTIAL APPEAL TRIBUNAL.

6. For the purposes of this Act, there shall be a Tribunal to be known as the Courts-Martial Appeal Tribunal.

Courts-Martial Appeal Tribunal.

7.—(1.) The Tribunal shall consist of a President, a Deputy President and such other persons as are appointed to be members of the Tribunal in pursuance of this Act.

Constitution of Tribunal.

(2.) The President, Deputy President and other members of the Tribunal shall be appointed by the Governor-General by commission.

(3.) A member of the Tribunal shall be appointed for such period as the Governor-General determines, but shall be eligible for re-appointment.

(4.) In the event of the absence, through illness or otherwise, or the suspension of the President, or of a vacancy in the office of President, the Deputy President has all the powers and shall perform all the duties of President during the absence, suspension or vacancy.

(5.) In the event of the absence, through illness or otherwise, or the suspension of the Deputy President, or of a vacancy in the office of Deputy President, the Governor-General may appoint another member, being a member who is qualified to be appointed as Deputy President, to act as Deputy President during the absence, suspension or vacancy.

**Qualification  
of members.**

8.—(1.) A person is not qualified to be appointed as President or Deputy President unless—

- (a) he is or has been a justice or judge of a federal court or of the Supreme Court of a State or Territory of the Commonwealth ; or
- (b) he is one of Her Majesty's Counsel learned in the law.

(2.) Subject to the last preceding sub-section, a person is not qualified to be appointed as a member unless—

- (a) he is qualified to be appointed as President of the Tribunal ;
- (b) he is a barrister or solicitor of the High Court, or of the Supreme Court of a State or Territory of the Commonwealth, of not less than five years' standing ; or
- (c) he has had legal experience of a kind that makes him especially suitable for appointment.

**Oath or  
affirmation of  
allegiance.**

9. Each member shall, before proceeding to discharge the duties of his office, take an oath or make an affirmation in accordance with the form of oath or affirmation in the Schedule to this Act.

**Remuneration  
of members  
and deputies.**

10. The President, Deputy President and other members shall be paid such remuneration and allowances as the Governor-General determines.

**Removal and  
suspension of  
members from  
office.**

11.—(1.) The Governor-General may remove a member from office upon an address praying for the removal of the member being presented to the Governor-General by each House of the Parliament in the same session of the Parliament.

(2.) A member may be suspended from office by the Governor-General.

(3.) The Minister shall cause to be laid before each House of the Parliament a statement of the grounds of suspension within seven sitting days of that House after the suspension.

(4.) The member shall be restored to office by the Governor-General unless each House of the Parliament, within fifteen sitting days of that House after the statement has been laid before it, declares by resolution that the member ought to be removed from office.

(5.) If each House within that time so declares, the member shall be removed from office by the Governor-General accordingly.

(6.) A member shall not be removed from office except as provided by this section.

**12.—(1.)** The Governor-General may grant leave of absence to a member upon such terms and conditions as to remuneration or otherwise as the Governor-General determines. **Leave of absence and resignation.**

(2.) A member may resign his office by writing under his hand addressed to the Governor-General, but the resignation is not effective unless and until it has been accepted by the Governor-General.

**13.** Where a member was, immediately before his appointment, an officer of the Public Service of the Commonwealth, his service as a member of the Tribunal shall, for the purpose of determining his existing and accruing rights, be taken into account as if it were service in the Public Service of the Commonwealth, and the *Officers' Rights Declaration Act 1928-1953* applies as if this Act and this section had been specified in the Schedule to that Act. **Officers' Rights Declaration Act.**

**14.—(1.)** Sittings of the Tribunal shall be held at such times and places, which may include places outside Australia, as the President determines. **Sittings of the Tribunal.**

(2.) The President shall preside at all sittings of the Tribunal at which he is present.

(3.) At a sitting of the Tribunal at which the President is not present, the Deputy President, if present, shall preside.

(4.) At a sitting of the Tribunal at which neither the President nor the Deputy President is present, a member appointed for that purpose by the President shall preside.

(5.) A member who is not qualified to be appointed as President shall not be appointed under the last preceding sub-section to preside at a sitting of the Tribunal other than a sitting held for the purposes of an appeal or matter in relation to which the President has given a direction under sub-section (2.) of the next succeeding section.

(6.) The determination of a question before the Tribunal shall be according to the opinion of the majority of the members exercising the powers of the Tribunal in relation to that question.

(7.) The Tribunal constituted by one or more members may sit and exercise the powers of the Tribunal notwithstanding that the Tribunal constituted by one or more other members is, at the same time sitting and exercising those powers.

Exercise of powers of Tribunal.

15.—(1.) Except as otherwise provided in this Act, the powers of the Tribunal shall not be exercised—

- (a) except by an uneven number of members, being a number of not less than three; and
- (b) unless at least one of those members is the President, the Deputy President or a member who is qualified to be appointed as President.

(2.) Where an appeal, or a matter preliminary or incidental to an appeal, is to be heard in a place outside Australia, the President may, if he thinks fit, direct that paragraph (b) of the last preceding sub-section shall not apply in relation to the appeal or matter.

Member ceasing to sit on an appeal.

16.—(1.) Where—

- (a) the hearing of an appeal, or of a matter preliminary or incidental to an appeal, has been commenced before the Tribunal but, before the appeal or matter has been finally determined, a member sitting on the hearing has ceased to be a member or, for any reason, has ceased to sit on the hearing; and
- (b) the remaining members sitting on the hearing are not less than three in number and, except in the case of an appeal or matter in relation to which the President has given a direction under sub-section (2.) of the last preceding section, include the President, the Deputy President or a member who is qualified to be appointed as President,

the Tribunal constituted by the remaining members may, if the hearing has not been completed, complete the hearing and, if a majority of those members concur in the decision, but not otherwise, determine the appeal or matter.

(2.) If, for any reason, the Tribunal constituted by the remaining members does not complete the hearing or determine the appeal or matter, the Tribunal constituted in accordance with the last preceding section shall, subject to the next succeeding section, hear and determine the appeal or matter and, for that purpose, may have regard to the evidence given, the arguments adduced and the reasons for any decision given during the previous hearing.

Single member may determine certain matters.

17.—(1.) The powers of the Tribunal may be exercised by a single member with respect to—

- (a) the granting of leave to appeal to the Tribunal against a conviction by a court-martial;
- (b) the extension of the period within which, under this Act, an application for leave to appeal to the Tribunal is required to be lodged;
- (c) the granting of legal aid to an appellant under the regulations;
- (d) the granting of leave to an appellant to be present at the hearing of an appeal or matter under this Act;
- (e) the allowance of remuneration and allowances under sub-section (2.) of section thirty-four of this Act;

(f) the giving of a direction under sub-section (1.) of section thirty-seven of this Act for the payment of a sum or sums by the Commonwealth to an appellant or the making of an order under sub-section (3.) of that section for the payment of costs ; or

(g) a prescribed matter of practice or procedure.

(2.) A person affected by a decision of a single member of the Tribunal given with respect to a matter referred to in paragraph (a), (b), (c) or (d) of the last preceding sub-section may, within the prescribed period, appeal to the Tribunal constituted in accordance with section fifteen of this Act from that decision, and the Tribunal so constituted shall hear and determine the matter.

18.—(1.) Except when the Tribunal is dealing with a matter of procedure or is deliberating, proceedings of the Tribunal shall, subject to the next succeeding sub-section, be held in public. Sittings of Tribunal to be in public

(2.) At a sitting of the Tribunal, the member presiding at the sitting, or, if the Tribunal is constituted by a single member exercising the powers of the Tribunal under the last preceding section, that member, may, if he considers it necessary in the interests of the defence of the Commonwealth, the proper administration of justice or public morals—

(a) order that some or all of the members of the public shall be excluded during the whole or a part of the sitting ; or

(b) order that no report of or relating to the whole or a specified part of the proceedings of the Tribunal at the sitting shall be published.

19.—(1.) There shall be a Registrar of the Tribunal, who shall be appointed by, and shall hold office during the pleasure of, the Governor-General. The Registrar.

(2.) The Governor-General may appoint deputies of the Registrar, who shall hold office during the pleasure of the Governor-General.

(3.) The Registrar and a deputy of the Registrar shall have respectively such powers, duties and functions as are prescribed.

### PART III.—APPEALS TO TRIBUNAL.

#### *Division 1.—Bringing of Appeals.*

20.—(1.) Subject to this Act, a person convicted by a court-martial after the commencement of this Act may, with the leave of the Tribunal, appeal to the Tribunal against his conviction. Bringing of appeals.

(2.) A person is not entitled to apply for leave to appeal to the Tribunal against a conviction, other than a conviction involving sentence of death—

(a) unless he has, within the prescribed period, lodged a petition praying that the conviction be quashed by the prescribed authority ; and

(b) subject to sub-section (2.) of the next succeeding section, unless—

(i) he has been notified that the petition has been refused ; or

(ii) the prescribed period after the day on which the petition was lodged has expired.

(3.) Where a person convicted by a court-martial lodges a petition for the purpose of the last preceding sub-section praying that his conviction be quashed, the prescribed authority shall consider the petition and may grant the petition and quash the conviction or may refuse the petition.

(4.) For the purposes of this section, the prescribed authority is—

(a) in the case of a conviction by a naval court-martial or a conviction of a member of the naval forces of the Commonwealth by an air force court-martial—the Naval Board ;

(b) in the case of a conviction by a military court-martial—the Military Board ; and

(c) in the case of a conviction by an air force court-martial, other than a conviction of a member of the naval forces of the Commonwealth—the Air Board,

or such other authority or person as is prescribed.

Application for  
leave to appeal.

21.—(1.) An application for leave to appeal to the Tribunal under this Act—

(a) shall specify the grounds on which leave to appeal is sought ; and

(b) subject to the next succeeding sub-section, shall be lodged with the Registrar, or with such other person as is prescribed, within the prescribed period or within such further period as the Tribunal, either before or after the expiration of the prescribed period, allows.

(2.) Where a person convicted by a court-martial outside Australia has lodged a petition under the last preceding section in respect of the conviction, that person may, at any time before either the event referred to in paragraph (a) of sub-section (2.) of the last preceding section, or the event referred to in paragraph (b) of that sub-section, has occurred in relation to the petition, present an application for leave to appeal against the conviction to the person or authority with whom he lodged the petition.

(3.) Where an application for leave to appeal against a conviction has been presented by a person under the last preceding sub-section, then, upon the occurrence in relation to the petition lodged by the person of the event referred to in paragraph (a) of sub-section (2.) of the last preceding section or the event referred to in paragraph (b) of that sub-section—

(a) the authority which or the person who, for the purposes of the last preceding section, is the prescribed authority in relation to the conviction shall cause the application for leave to appeal to be forwarded to the Registrar ; and

(b) the application for leave to appeal shall, for the purposes of this Act, be deemed to have been duly lodged with the Registrar in accordance with paragraph (b) of sub-section (1.) of this section.



22. Where the Tribunal dismisses an application for leave to appeal against a conviction by a court-martial and it appears to the Tribunal that the application was frivolous or vexatious, the Tribunal may order that any sentence of imprisonment or detention passed upon the appellant in the proceedings from which it is sought to appeal shall begin to run from the day on which the Tribunal dismisses the application.

*Frivolous  
appeals.*

*Division 2.—Determination of Appeals.*

23.—(1.) Where, upon the hearing of an appeal against a conviction by a court-martial, the Tribunal considers—

*Determination  
of appeals in  
ordinary cases.*

- (a) that the finding of the court-martial—
- (i) is unreasonable, or cannot be supported, having regard to the evidence; or
  - (ii) involves a wrong decision of a question of law; or
- (b) that, on any ground, there was a miscarriage of justice, the Tribunal shall, subject to this Division, allow the appeal.

(2.) Notwithstanding that the Tribunal is of the opinion that an appeal might otherwise be decided in favour of the appellant, the Tribunal may refuse to allow the appeal if it considers that no substantial miscarriage of justice has occurred.

(3.) Subject to this Division, if the Tribunal allows an appeal, it shall quash the conviction, and, if the Tribunal does not allow an appeal, it shall dismiss the appeal.

24. Where—

- (a) it appears to the Tribunal upon the hearing of an appeal against a conviction by a court-martial that the appellant, although not properly convicted on one charge preferred against him before the court-martial, was properly convicted on another charge so preferred; and
- (b) the sentence passed on the appellant by the court-martial could not lawfully have been so passed for the offence of which he was properly convicted,
- the Tribunal shall pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as the Tribunal thinks proper, being a sentence which could lawfully have been passed on the appellant by the court-martial for the offence of which he was properly convicted.

*Substitution of  
sentence where  
appellant not  
guilty of one  
charge but  
guilty of  
another.*

25. Where—

- (a) a person has been convicted of an offence by a court-martial and the court-martial could lawfully have found him guilty of another offence; and
- (b) it appears to the Tribunal upon the hearing of an appeal against the conviction that the court-martial must have been satisfied of facts which proved him guilty of that other offence,

*Substitution  
of finding and  
sentence where  
appellant  
wrongly  
convicted  
but guilty  
of another  
offence.*

the Tribunal may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the other offence and pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as the Tribunal thinks proper, being a sentence which could lawfully have been passed on the appellant by the court-martial if it had found him guilty of that other offence, but not being a sentence of greater severity than the sentence passed by the court-martial.

Substitution of sentence in case of offence involving two degrees of punishment.

#### 26. Where—

- (a) a person has been convicted by a court-martial of an offence committed under circumstances involving the higher of two degrees of punishment ; and
- (b) it appears to the Tribunal upon the hearing of an appeal against the conviction that the court-martial ought to have found the appellant guilty of the offence as being committed under circumstances involving the lower degree of punishment,

the Tribunal may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the offence as being committed under circumstances involving the lower degree of punishment and pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as the Tribunal thinks proper, being a sentence which could lawfully have been passed on the appellant by the court-martial if it had convicted the appellant of the offence as being committed under circumstances involving the lower degree of punishment, but not being a sentence of greater severity than the sentence passed by the court-martial.

Substitution of sentence where court-martial should have recorded a special finding.

27. Where a person has been convicted of an offence by a court-martial and it appears to the Tribunal upon the hearing of an appeal against the conviction that the court-martial ought to have recorded a special finding of guilty of the offence subject to exceptions or variations, the Tribunal may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the offence subject to the exceptions or variations and pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as the Tribunal thinks proper, being a sentence which could lawfully have been passed on the appellant by the court-martial if it had found him guilty of the offence subject to the exceptions or variations, but not being a sentence of greater severity than the sentence passed by the court-martial.

Quashing of sentence where appellant insane.

28.—(1.) Where, upon the hearing of an appeal against a conviction by a court-martial, it appears to the Tribunal that, although the appellant was guilty of the act or omission charged against him, he was insane at the time the act was done or the omission made so as not to be responsible according to law for his actions, the Tribunal may quash the sentence passed by the court-martial.

(2.) Where, under the last preceding sub-section, the Tribunal quashes a sentence passed by a court-martial, any provision of naval law, military law or air force law, as the case requires, that relates to the custody of persons found by a court-martial to be insane applies to and in relation to the appellant in the same manner as if the finding of the Tribunal were the finding of the court-martial and, in the case of an appeal from a conviction by a naval court-martial, the court-martial had ordered the appellant to be kept in custody.

29. A sentence passed by the Tribunal in substitution for a sentence passed by a court-martial—

Effect of sentences passed by Tribunal.

- (a) shall be deemed to be a sentence passed by the court-martial ; and
- (b) if the sentence passed by the court-martial was required by law to be confirmed—shall be deemed to have been confirmed,

and the term of the sentence of the Tribunal shall, unless the Tribunal otherwise directs, be deemed to have begun to run from the time from which it would have begun to run if it had been passed in the proceedings from which the appeal was brought.

30. The determination by the Tribunal of an appeal, or of any other matter which, under this Act, the Tribunal has power to determine, is not subject to review under naval law, military law or air force law.

Determination of Tribunal is final and conclusive.

### *Division 3.—Incidental Powers of Tribunal.*

31.—(1.) For the purposes of proceedings before the Tribunal under this Part, the Tribunal may—

Supplementary powers.

- (a) appoint a person (who may be a member of the Tribunal) to receive evidence on behalf of the Tribunal and allow the admission of evidence given before, and of documents, books or writings produced to, a person so appointed ;
- (b) summon a person, being a person who would have been a compellable witness at the trial by the court-martial, by writing under the hand of a member of the Tribunal, to attend the Tribunal or a person appointed by the Tribunal to receive evidence on behalf of the Tribunal, at a time and place named in the summons, and then and there to give evidence and to produce any documents, books or writings in his custody or control which he is required by the summons to produce ;
- (c) receive the evidence, if tendered, of any witness, including the appellant, who is a competent but not compellable witness and, on the application of the appellant, of the husband or wife of the appellant in a case where the evidence of the husband or wife could not have been given at the trial except on such an application ;

- (d) where a question arising on an appeal involves prolonged examination of documents or accounts, or a scientific or local investigation, being an examination or investigation which cannot, in the opinion of the Tribunal, conveniently be conducted before the Tribunal—order the reference of the question for inquiry and report to a special commissioner appointed by the Tribunal and act upon the report of the commissioner so far as the Tribunal thinks fit to adopt it; and
- (e) where it appears to the Tribunal that special knowledge of a matter is required for the proper determination of an appeal—appoint a person with that special knowledge to act as assessor to the Tribunal.

(2.) A summons under paragraph (b) of the last preceding sub-section may be served personally or by being left at the usual place of abode of the person named in the summons.

Arrest of witness failing to appear.

32.—(1.) Where a person who has been summoned under paragraph (b) of sub-section (1.) of the last preceding section to attend the Tribunal, or to attend a person appointed to receive evidence on behalf of the Tribunal, fails to attend or appear before the Tribunal or that person as required by the summons, a member of the Tribunal may, on proof by statutory declaration of the service of the summons, issue a warrant for the apprehension of that person.

(2.) A warrant so issued authorizes the apprehension of the person and his being brought before the Tribunal, or before the person appointed to receive evidence on behalf of the Tribunal, as the case may be, and his detention in custody for that purpose until he is released by order of a member of the Tribunal.

(3.) A warrant so issued may be executed by a person who is a member of the Police Force of a State or Territory of the Commonwealth or a Peace Officer holding office under the *Peace Officers Act 1925*, or by any person to whom it is addressed, and the person executing the warrant has power to break and enter any place, building or vessel for the purpose of executing the warrant.

(4.) The apprehension of a person under this section does not relieve him from any liability incurred by him by reason of his failure to attend before the Tribunal or the person appointed to receive evidence on behalf of the Tribunal.

Power to examine upon oath.

33.—(1.) A member of the Tribunal, or a person appointed by the Tribunal to receive evidence on behalf of the Tribunal, may administer an oath to a person appearing as a witness before the Tribunal or the person so appointed, whether the witness has been summoned or appears without being summoned, and that member or any other member of the Tribunal, or the person so appointed, may examine the witness upon oath.

(2.) Where a witness to be examined before the Tribunal, or before a person appointed to receive evidence on behalf of the Tribunal, conscientiously objects to take an oath, he may make an affirmation that he so objects and that the evidence he will give will be the truth, the whole truth and nothing but the truth.

(3.) An affirmation so made is of the same force and effect, and entails the same liabilities, as an oath.

34.—(1.) A witness attending before the Tribunal, or before a person appointed to receive evidence on behalf of the Tribunal, shall be paid such allowances as are fixed by or under the regulations.

Payment of witnesses, special commissioners, &c.

(2.) A person appointed under paragraph (a) of sub-section (1.) of section thirty-one of this Act to receive evidence on behalf of the Tribunal, a special commissioner to whom a question is referred under paragraph (d) of that sub-section and a person appointed under paragraph (e) of that sub-section to act as assessor shall be paid such remuneration and allowances as the Tribunal, subject to the regulations, allows.

(3.) The claim of a person to an allowance or remuneration under this section, certified by the Registrar, shall be paid by the Treasurer out of moneys provided by the Parliament for the purpose.

35.—(1.) The Tribunal may, by writing under the hand of a member of the Tribunal, issue any warrant necessary for enforcing a sentence passed on an appellant by the Tribunal.

Tribunal may issue warrants to enforce sentences.

(2.) A warrant issued under the last preceding sub-section is of the same effect as if the sentence had been passed on the appellant by the court-martial by which the appellant was convicted and the warrant had been issued by the president of the court-martial.

36.—(1.) Where, upon the hearing of an appeal under this Act against a conviction by a court-martial, the Tribunal thinks it necessary or expedient in the interests of justice so to do, the Tribunal may, subject to the next succeeding sub-section, direct such steps to be taken as are necessary to obtain from a member of the court-martial by which the appellant was tried, or from the person who officiated as judge advocate at the trial, a report giving his opinion upon the case, or upon a point arising in the case, or containing a statement as to any facts the ascertainment of which appears to the Tribunal to be material for the purpose of the determination of the appeal.

Tribunal may obtain reports to assist in determination of appeals.

(2.) The Tribunal shall not give a direction under the last preceding sub-section for the purpose of obtaining a report from a member of a court-martial other than the president of the court-martial unless—

- (a) the Tribunal also gives a direction for the purpose of obtaining a report from the president of the court-martial; or
- (b) the Tribunal is satisfied that the obtaining of a report from the president of the court-martial is impracticable or would involve undue delay.

Costs.

37.—(1.) Where the Tribunal allows an appeal, it may, if it thinks fit, direct the payment by the Commonwealth to the appellant of such sums as appear to the Tribunal reasonably sufficient to compensate the appellant for expenses properly incurred by him in the prosecution of his appeal, and any proceedings preliminary or incidental to the appeal, or in carrying on his defence against the charge or charges out of which the appeal arose.

(2.) The Treasurer shall pay to an appellant, out of moneys provided by the Parliament for the purpose, any sum which the Commonwealth is directed to pay to the appellant under the last preceding sub-section.

(3.) Where the Tribunal dismisses an appeal or an application for leave to appeal, it may, if it thinks fit, order the appellant to pay to the Commonwealth the whole or any part of the costs of the appeal or application, including allowances paid to a witness under section thirty-four of this Act and the costs of copying or transcribing any documents for the use of the Tribunal.

(4.) An order made under the last preceding sub-section may be enforced in such manner as is prescribed.

Restitution  
of stolen  
property.

38.—(1.) Where, upon a conviction by a court-martial, an order is made under naval law, military law or air force law in relation to property stolen, embezzled or otherwise unlawfully obtained, its operation is, subject to the next succeeding sub-section, suspended—

- (a) until the expiration of the period within which, under this Act, application for leave to appeal against the conviction may be lodged but not in any case beyond the time specified in the next succeeding paragraph; and
- (b) if application for leave to appeal against the conviction is duly lodged—until the application is finally refused or is withdrawn or the appeal is finally determined or is abandoned.

(2.) Where the authority making an order referred to in the last preceding sub-section is of the opinion that the title to the property in relation to which the order is made is not in dispute, the authority may direct that the last preceding sub-section shall not apply in relation to the order.

(3.) Where the operation of an order is suspended by virtue of sub-section (1.) of this section, the order does not take effect if the conviction upon which the order was made is quashed on appeal.

(4.) The Tribunal may, by order, on an appeal against a conviction upon which an order referred to in sub-section (1.) of this section was made, annul or vary that order notwithstanding that the conviction is not quashed and—

- (a) if the order is annulled—it does not take effect; and
- (b) if the order is varied—it takes effect as varied.

(5.) The regulations may make provision for securing the safe custody of any property in relation to which an order referred to in sub-section (1.) of this section is made for the period for which the operation of the order is suspended under this section.

*Division 4.—Miscellaneous.*

39.—(1.) An appellant may be represented at the hearing of his appeal before the Tribunal, or of a matter preliminary or incidental to the appeal, by a legal practitioner. Representation of appellants and hearing of appeals.

(2.) The Tribunal may hear and determine an appeal, or a matter preliminary or incidental to an appeal, notwithstanding the absence of the appellant.

(3.) An appellant is entitled to be present at the hearing of his appeal, or of a matter preliminary or incidental to the appeal—

(a) in a case in which the regulations so provide; or

(b) in any other case—with the leave of the Tribunal.

(4.) In this section, “legal practitioner” means a barrister or solicitor of the High Court or of the Supreme Court of a State or Territory of the Commonwealth and, in relation to the hearing of an appeal, or of a matter preliminary or incidental to an appeal, at a place outside Australia, includes a person authorized by law to practice as a legal practitioner at that place.

40.—(1.) A member of the Tribunal, a person appointed under paragraph (a) of sub-section (1.) of section thirty-one of this Act to receive evidence on behalf of the Tribunal, a special commissioner to whom a question is referred under paragraph (d) of that sub-section and a person appointed under paragraph (e) of that sub-section to act as assessor have, in the exercise of their respective powers and the performance of their respective functions under this Act, the same protection and immunity as a Justice of the High Court. Protection and immunity of members of Tribunal and of certain other persons

(2.) A barrister or solicitor appearing before the Tribunal has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

(3.) An appellant appearing before the Tribunal has the same protection and immunity as a person who has been convicted of an indictable offence and has appealed to the High Court against the conviction has in appearing before the High Court on the appeal.

(4.) Subject to this Act, a witness summoned to attend or appearing before the Tribunal has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities in any civil or criminal proceedings, as a witness in proceedings before the High Court.

41. Where the conviction of a person by court-martial for an offence has been quashed under this Act, he is not liable to be tried again for that offence by a court-martial or by any other court. Persons not to be tried again where conviction quashed

Defence of  
appeals.

42.—(1.) On an appeal to the Tribunal against a conviction by a naval court-martial, it is the duty of the Naval Board to undertake the defence of the appeal.

(2.) On an appeal to the Tribunal against a conviction by a military court-martial, it is the duty of the Military Board to undertake the defence of the appeal.

(3.) On an appeal to the Tribunal against a conviction by an air force court-martial, it is the duty of the Air Board to undertake the defence of the appeal.

PART IV.—OFFENCES IN RELATION TO TRIBUNAL.

Failure to  
attend or  
produce  
documents.

43. A person served with a summons under this Act to attend the Tribunal, or to attend a person appointed to receive evidence on behalf of the Tribunal, shall not, without reasonable excuse—

- (a) fail to attend the Tribunal or the person so appointed ; or
- (b) fail to produce any document, book or writing in his custody or control which he was required by the summons to produce.

Penalty : One hundred pounds or imprisonment for three months.

Duty of  
witness to  
continue in  
attendance.

44. A person who has been summoned under this Act to attend the Tribunal, or to attend a person appointed to receive evidence on behalf of the Tribunal, as a witness shall appear and report himself from day to day unless excused, or until released from further attendance, by a member of the Tribunal or the person so appointed.

Penalty : One hundred pounds or imprisonment for three months.

Refusal to be  
sworn or give  
evidence.

45. A person appearing as a witness before the Tribunal, or before a person appointed to receive evidence on behalf of the Tribunal, shall not, without reasonable excuse—

- (a) refuse or fail to be sworn or to make an affirmation ; or
- (b) refuse or fail to answer a question which he is required to answer by a member of the Tribunal or the person appointed to receive evidence on behalf of the Tribunal, as the case may be.

Penalty : One hundred pounds or imprisonment for three months.

Offences against  
the Tribunal.

46. A person shall not—

- (a) wilfully insult or disturb the Tribunal ;
- (b) interrupt the proceedings of the Tribunal ;
- (c) use insulting language towards the Tribunal or a member of the Tribunal ; or
- (d) by writing or speech use words calculated—
  - (i) to influence improperly the Tribunal or a witness before the Tribunal ; or
  - (ii) to bring the Tribunal or a member of the Tribunal into disrepute.

Penalty : One hundred pounds or imprisonment for three months.



47. A person shall not contravene or fail to comply with an order made in pursuance of section eighteen of this Act. Orders under section 18.

Penalty : One hundred pounds or imprisonment for three months.

48.—(1.) Subject to the succeeding provisions of this section—

(a) the several courts of summary jurisdiction of the States are invested with federal jurisdiction ; and

(b) jurisdiction is conferred on the several courts of summary jurisdiction of the Territories of the Commonwealth,

with respect to offences against the preceding provisions of this Part, whether committed within or outside Australia.

(2.) The jurisdiction invested in or conferred on courts of summary jurisdiction by the last preceding sub-section is invested or conferred within the limits (other than limits having effect by reference to the places at which offences are committed) of their several jurisdictions, whether those limits are as to subject-matter or otherwise.

(3.) The jurisdiction with which a court of summary jurisdiction of a State is invested by this section is subject to the conditions and restrictions specified in sub-section (2.) of section thirty-nine of the *Judiciary Act 1903-1955*.

(4.) Nothing in this section affects jurisdiction invested in or conferred on courts other than courts of summary jurisdiction by the *Judiciary Act 1903-1955* or by or under any other Act.

(5.) Except as provided by this section, the *Judiciary Act 1903-1955* applies in relation to offences with respect to which jurisdiction is invested or conferred by this section.

49. A member of the Defence Force who contravenes or fails to comply with a provision of section forty-three, forty-four, forty-five, forty-six or forty-seven of this Act shall be deemed to have committed an offence against the *Defence Act 1903-1953*. Punishment of members of Defence Force for offences against this Part.

50.—(1.) A person who contravenes or fails to comply with a provision of section forty-three, forty-four, forty-five, forty-six or forty-seven of this Act is, in addition to being guilty of an offence, also guilty of a contempt of the Tribunal. Contempt of the Tribunal.

(2.) Upon application made by the Attorney-General—

(a) in the case of a contempt of the Tribunal committed in Australia—to the High Court or to the Supreme Court of the State or Territory of the Commonwealth in which the contempt was committed ; or

(b) in the case of a contempt of the Tribunal committed outside Australia—to the High Court,

the contempt is punishable by the court to which the application was made as if it were a contempt of that court.

(3.) Subject to this section, proceedings in respect of a contempt of the Tribunal shall be instituted, carried on, heard and determined in accordance with the laws applicable to and in relation to the punishment of contempts in the court to which the application by the Attorney-General was made.

(4.) In so far as any such law is incapable of application, whether by reason of the Constitution or otherwise, a Justice or Judge of the court to which the application by the Attorney-General was made may give a direction as to the manner of instituting, carrying on, hearing or determining a proceeding referred to in the last preceding sub-section and, in that case, the proceeding shall be instituted, carried on, heard or determined, as the case may be, in accordance with the direction.

(5.) The trial of a person for a contempt of the Tribunal committed outside Australia may be held in any State or Territory of the Commonwealth.

(6.) The penalty which a court is empowered to impose in respect of a contempt of the Tribunal is the penalty which would have been applicable in respect of the offence constituting the contempt if proceedings in respect of the offence had been taken otherwise than under this section.

(7.) A person guilty of an offence referred to in sub-section (1.) of this section may be punished either under this section or otherwise but shall not be punished twice for the same offence.

(8.) Jurisdiction is, by this section, conferred on the High Court to hear and determine proceedings in respect of a contempt of the Tribunal, whether committed within or outside Australia.

(9.) Subject to the next succeeding sub-section—

(a) the several Supreme Courts of the States are invested with federal jurisdiction; and

(b) jurisdiction is conferred on the several Supreme Courts of the Territories of the Commonwealth,

to hear and determine proceedings in respect of a contempt of the Tribunal.

(10.) The jurisdiction with which the Supreme Court of a State is invested by this section is subject to the conditions and restrictions specified in paragraphs (a) and (c) of sub-section (2.) of section thirty-nine of the *Judiciary Act* 1903-1955.

#### PART V.—REFERENCE TO HIGH COURT OF QUESTIONS OF LAW.

51. Where the Tribunal has given a decision in respect of an appeal under this Act, not being a decision given by a single member exercising the powers of the Tribunal, the appellant, or the Naval Board, the Military Board or the Air Board, as the case requires, may, within the prescribed period, request the Tribunal to refer to the High Court a question of law involved in the decision.

Tribunal may be requested to refer a question of law to the High Court.

52.—(1.) Upon receipt by the Tribunal of a request under the last preceding section, the Tribunal shall state, in a case signed by the member who presided at the hearing of the appeal or, if that member has ceased to be a member or is, for any reason, unable to sign the case, by another member who sat on the hearing, the question of law and the circumstances upon which it arose and shall transmit to the Attorney-General—

*Certificate of Attorney-General.*

- (a) the case so stated together with a record of the proceedings on the appeal and of the proceedings out of which the appeal arose; and
- (b) a request in writing, signed by the President, that the Attorney-General certify upon the case whether the question of law should be referred to the High Court.

(2.) The Attorney-General, after considering a case stated by the Tribunal and transmitted to him under the last preceding sub-section, shall—

- (a) if he is of the opinion that the question of law stated in the case is of exceptional public importance and that it is desirable in the public interest that the question should be referred to the High Court—certify in writing upon the case that the question of law should be referred to the High Court and transmit the case, together with the record of any proceedings transmitted to him with the case, to the Principal Registrar of the High Court; or
- (b) if he is not of that opinion—certify in writing upon the case that the question of law should not be referred to the High Court and return the case, together with the record of any proceedings transmitted to him with the case, to the President.

53.—(1.) A Full Court of the High Court shall hear and determine a question of law stated in a case transmitted to the Principal Registrar of the High Court under the last preceding section and remit the case, together with the opinion of the Court on the question of law, to the Tribunal.

*Determination of question of law by High Court.*

(2.) Jurisdiction is, by this section, conferred on the High Court to hear and determine a question of law stated in a case transmitted to the Principal Registrar of the High Court under the last preceding section.

54. Upon receipt by the Tribunal of the opinion of the High Court on the question of law, the Tribunal shall, if it considers it desirable in the interests of justice so to do, in substitution for any decision previously given by the Tribunal in relation to the appeal, give such other decision as it thinks proper.

*Tribunal to give effect to opinion of High Court.*

55. Subject to the next succeeding section, the fact that a reference to the High Court under this Part of a question of law involved in a decision of the Tribunal is pending does not in the meantime affect that decision.

*A reference pending to High Court not to affect result of appeal.*

Detention of appellant pending determination of question of law by High Court.

56.—(1.) Where the Tribunal has allowed an appeal under this Act and, immediately after the decision has been given, notice is given to the Tribunal by or on behalf of the Naval Board, the Military Board or the Air Board, as the case requires, of its intention to request the Tribunal, under this Part, to refer to the High Court a question of law involved in the decision, the Tribunal may make an order providing for the detention of the appellant.

(2.) An order made by the Tribunal under the last preceding sub-section authorizes the detention of the appellant—

(a) until the expiration of the period within which, under this Act, the request may be made but not in any case beyond the time specified in the next succeeding paragraph; and

(b) if the request is duly made, until—

(i) the Attorney-General has certified in writing that the question of law should not be referred to the High Court;

(ii) the reference of the question of law to the High Court has been abandoned; or

(iii) the Tribunal has, after receiving the opinion of the High Court on the question of law, affirmed its earlier decision or given another decision.

Record of proceedings of Tribunal to be kept.

57. A record of proceedings before the Tribunal shall be kept for the purposes of this Part.

#### PART VI.—MISCELLANEOUS.

Effect of this Act on Royal prerogative of mercy and powers to quash.

58.—(1.) Nothing in this Act affects the Royal prerogative of mercy.

(2.) No power to quash a conviction by a court-martial possessed by a person or authority other than the Tribunal, whether that power exists under naval law, military law, air force law or otherwise, shall be exercised after an application for leave to appeal to the Tribunal against the conviction has been lodged under this Act.

Suspension of execution of death sentences.

59.—(1.) Where a person has been convicted of an offence and sentenced to death by a court-martial, the sentence shall not be executed until after the expiration of the period within which, under this Act, application for leave to appeal to the Tribunal against the conviction may be lodged.

(2.) If the person duly applies to the Tribunal for leave to appeal against the conviction, the sentence shall not be executed until the application is finally refused or is withdrawn or the appeal is determined or abandoned.

(3.) If the appeal is dismissed, the sentence shall not be executed until after the expiration of the period within which the person may, under this Act, request the Tribunal to refer to the High Court a question of law involved in the decision of the Tribunal.

(4.) If the person duly requests the Tribunal to refer to the High Court a question of law involved in the decision of the Tribunal, the sentence shall not be executed unless and until—

- (a) the Attorney-General has certified in writing that the question of law should not be referred to the High Court ;
- (b) the reference of the question of law to the High Court has been abandoned ; or
- (c) the Tribunal has, after receiving the opinion of the High Court on the question of law, affirmed its earlier decision or given another decision which involves a sentence of death.

(5.) Proceedings relating to an appeal involving sentence of death shall be heard and determined as expeditiously as practicable.

(6.) This section is in addition to and not in derogation of the provisions of section ninety-eight of the *Defence Act* 1903–1953.

60. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular—

Regulations.

- (a) for regulating the practice and procedure of the Tribunal ;
- (b) for prescribing fees to be charged in respect of proceedings under this Act ;
- (c) for prescribing the forms to be used for the purposes of this Act ;
- (d) for making provision for or in relation to the granting of legal aid to appellants and persons who desire to appeal to the Tribunal under this Act ;
- (e) for making provision for or in relation to the lodging of petitions under sub-section (2.) of section twenty of this Act and the giving of notices under paragraph (a) of that sub-section ;
- (f) for prescribing the manner in which an appellant in custody is to be taken and kept in custody at, and brought back from, a place at which he is entitled to be present for the purposes of this Act or to which the Tribunal or a member of the Tribunal may order him to be taken for the purpose of any proceedings of the Tribunal ;
- (g) for making provision for or in relation to the furnishing to the Tribunal by the Naval Board, the Military Board or the Air Board, as the case requires, for the purposes of an appeal under this Act against a conviction by a court-martial, of—
  - (i) a record of the proceedings of the court-martial, including proceedings, if any, with respect to the revision of the finding or sentence of the court-martial ;

- (ii) a record of the proceedings, if any, with respect to the confirmation of the finding and sentence of the court-martial ; and
- (iii) a petition presented by the appellant with respect to the conviction ;
- (h) for prescribing penalties, not exceeding a fine of Fifty pounds or imprisonment for three months, or both, for offences against the regulations ; and
- (i) for investing courts of summary jurisdiction of the States with federal jurisdiction, and conferring jurisdiction on courts of summary jurisdiction of the Territories of the Commonwealth, with respect to offences against the regulations, whether committed within or outside Australia.

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### THE SCHEDULE.

Section 9.

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#### OATH.

I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors according to law, that I will well and truly serve Her in the office of President (*or* Deputy President *or* member *as the case may be*) of the Courts-Martial Appeal Tribunal and that I will faithfully and impartially perform the duties of that office.

So HELP ME GOD !

#### AFFIRMATION.

I, A.B., do solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors according to law, that I will well and truly serve Her in the office of President (*or* Deputy President *or* member *as the case may be*) of the Courts-Martial Appeal Tribunal and that I will faithfully and impartially perform the duties of that office.

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