

# STATUTORY RULES.

1957. No. 20.

REGULATIONS UNDER THE COURTS-MARTIAL APPEALS ACT 1955.\*

I, THE GOVERNOR-GENERAL in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Courts-Martial Appeals Act 1955*.

Dated this

16<sup>th</sup>

day of

May

, 1957.

W. J. SMITH

Governor-General.

By His Excellency's Command,

(Sgd.) NEIL O'SULLIVAN

Attorney-General.

COURTS-MARTIAL APPEALS REGULATIONS.

1. These Regulations may be cited as the Courts-Martial Appeals Regulations. Citation.

2. In these Regulations, unless the contrary intention appears— Definitions.

“country witness” means a witness who resides more than five miles from, and does not ordinarily proceed to an office or place of employment within five miles of, the place where he attends as a witness;

“deputy Registrar” means a deputy of the Registrar appointed under sub-section (2.) of section 19 of the Act;

“legal practitioner” has the same meaning as in section 39 of the Act;

“petition” means a petition under paragraph (a) of sub-section (2.) of section 20 of the Act;

“the Act” means the *Courts-Martial Appeals Act 1955*;

“the Board” means the Naval Board, the Military Board or the Air Board;

“the Registrar” does not include a deputy Registrar.

\* Notified in the *Commonwealth Gazette* on \_\_\_\_\_, 1957.  
2107/56.—PRICE 5d. 9/7.1.1957.

3. For the purposes of sub-section (2.) of section 17 of the Act, the prescribed period within which a person affected by a decision given by a single member of the Tribunal may appeal to the Tribunal from the decision is a period of ten days from the day on which he is notified of the decision. Period for appeal from a decision of a single member of the Tribunal.

4. For the purposes of paragraph (a) of sub-section (2.) of section 20 of the Act, the prescribed period within which a petition shall be lodged is— Period for lodging petition.

- (a) where the conviction to which the petition relates is a conviction by a court-martial held in Australia—a period of forty days from the day on which, in the case of a naval court-martial, the conviction was pronounced and, in any other case, the finding of the court-martial was promulgated; and
- (b) in any other case—a period of sixty days from that day.

5.—(1.) A petition may be lodged with the authority which, for the purposes of section 20 of the Act, is the prescribed authority in relation to the conviction to which the petition relates or— Person or authority with whom a petition may be lodged.

- (a) where the petitioner is serving in, or is in custody on board, a ship of the naval forces of the Commonwealth or of any other part of the Queen's dominions—with the captain of the ship;
- (b) where the petitioner is in custody on board a ship, other than a ship referred to in the last preceding paragraph, being a ship on board which is a body, contingent or detachment of the Defence Force of the Commonwealth—with the officer commanding the body, contingent or detachment;
- (c) where the petitioner is serving with a unit of the Australian Military Forces or of the Royal Australian Air Force—with the officer commanding the unit;
- (d) where the petitioner is confined in detention quarters of the Royal Australian Navy—with the officer in charge of the quarters;
- (e) where the petitioner is confined in a prison, detention barrack or corrective establishment of the Australian Military Forces or of the Royal Australian Air Force—with the commandant of the prison, barrack or establishment;
- (f) where the petitioner is confined in a civil prison in Australia—with the governor of the prison; or
- (g) where the petitioner is a civilian and is outside the Commonwealth—with the officer commanding any unit of the Defence Force of the Commonwealth stationed outside the Commonwealth.

(2.) Where a petition is lodged with a person referred to in a paragraph of the last preceding sub-regulation, that person shall forward the petition without delay to the authority which, for the purposes of section 20 of the Act, is the prescribed authority in relation to the conviction to which the petition relates.

6. A petition shall include a statement to the effect that it is lodged Petition to refer to Act. for the purposes of the Act.

7. For the purposes of sub-paragraph (ii) of paragraph (b) of sub-section (2.) of section 20 of the Act, the prescribed period after the day on which a petition is lodged is— Period for consideration of petition.

- (a) where the conviction to which the petition relates is a conviction by a court-martial held in Australia—a period of forty days; and
- (b) in any other case—a period of sixty days.

8. For the purposes of paragraph (b) of sub-section (1.) of section 21 of the Act, the prescribed period within which application for leave to appeal shall be lodged is a period of ten days commencing on the day on which the appellant becomes entitled to make the application. Period within which application for leave to appeal may be lodged.

9.—(1.) For the purposes of paragraph (b) of sub-section (1.) of section 21 of the Act, the person with whom, in lieu of the Registrar or a deputy Registrar, an application for leave to appeal may be lodged is— Person with whom an application for leave to appeal may be lodged.

- (a) where the appellant is serving in, or is in custody on board, a ship of the naval forces of the Commonwealth or of any other part of the Queen's dominions—the captain of the ship;
- (b) where the appellant is in custody on board a ship, other than a ship referred to in the last preceding paragraph, being a ship on board which is a body, contingent or detachment of the Defence Force of the Commonwealth—the officer commanding the body, contingent or detachment;
- (c) where the appellant is serving with a unit of the Australian Military Forces or of the Royal Australian Air Force—the officer commanding the unit;
- (d) where the appellant is confined in detention quarters of the Royal Australian Navy—the officer in charge of the quarters;
- (e) where the appellant is confined in a prison, detention barrack or corrective establishment of the Australian Military Forces or of the Royal Australian Air Force—the commandant of the prison, barrack or establishment;
- (f) where the appellant is confined in a civil prison in Australia—the governor of the prison; or
- (g) where the appellant is a civilian and is outside the Commonwealth—the officer commanding any unit of the Defence Force of the Commonwealth stationed outside the Commonwealth.

(2.) Where an application for leave to appeal is lodged with a person referred to in the last preceding sub-regulation, not being an application presented to that person in pursuance of sub-section (2.) of section 21 of the Act, that person shall forward the application to the Registrar without delay.

**10.—(1.)** Where application for leave to appeal against a conviction by a court-martial is lodged under the Act, the Naval Board, the Military Board or the Air Board, as the case requires, shall, if so requested by the Registrar, cause—

Records of court-martial proceedings, &c., to be furnished to Registrar.

- (a) 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;
- (b) a record of the proceedings, if any, with respect to the confirmation of the finding and sentence of the court-martial; and
- (c) any petition presented by the appellant with respect to the conviction,

to be furnished to the Registrar for the use of the Tribunal for the purposes of the appeal.

(2.) Where a record of proceedings, or a petition, furnished to the Registrar in pursuance of the last preceding sub-regulation is no longer required for the purposes of the appeal in relation to which it was furnished, the Registrar shall return the record or petition to the Board to which the request for its furnishing was made.

**11.—(1.)** An appellant may, within a period of fourteen days, or such longer period as the Tribunal allows, from the day on which he lodged his application for leave to appeal, apply to the Tribunal for the approval of the Tribunal to the granting of legal aid to the appellant under this regulation.

Legal aid.

(2.) An application under the last preceding sub-regulation shall be accompanied by a statutory declaration made by the appellant setting out such information as is necessary to enable the Tribunal to determine whether his means are insufficient to enable him to prosecute his appeal.

(3.) If, upon an application being made to the Tribunal under this regulation, the Tribunal is satisfied—

- (a) that the appellant has insufficient means to enable him to prosecute his appeal; and
- (b) that it appears desirable in the interests of justice that legal aid should be granted to the appellant under this regulation,

the Tribunal may, by order, approve the granting to the appellant of legal aid under this regulation.

(4.) If the Tribunal approves the granting to an appellant of legal aid under this regulation, the Attorney-General may arrange for one or more legal practitioners to represent the appellant at the hearing of the appeal or of a matter preliminary or incidental to the appeal.

(5.) Where, under the last preceding sub-regulation, the Attorney-General arranges for a legal practitioner to represent an appellant, the legal practitioner shall be paid by the Commonwealth such amount for fees and disbursements as is determined by the Attorney-General.

**12.** An appellant may, by notice in writing to the Registrar—

Discontinuance of appeals, &c.

- (a) withdraw his application for leave to appeal at any time before the hearing of the application is commenced; or
- (b) discontinue his appeal at any time before the hearing of the appeal is commenced.

**13.** An order made under sub-section (3.) of section 37 of the Act for the payment of the amount of any costs may be enforced—

Manner of enforcing order for payment of costs.

(a) by the Commonwealth suing for and recovering the amount in a court of competent jurisdiction as if the amount were a debt due to the Commonwealth; or

(b) by deducting the amount from any pay and allowances earned by the appellant as a member of the Defence Force of the Commonwealth,

or partly in one way and partly in the other way.

**14.** Where, by virtue of sub-section (1.) of section 38 of the Act, the operation of an order made in relation to property is suspended, the authority which made the order shall, at any time during the period of suspension when the property is not in the custody of the Registrar, cause the property to be kept in safe custody.

Orders for restitution of property, &c.

**15.** For the purposes of section 51 of the Act, the prescribed period within which a request shall be made to the Tribunal to refer to the High Court a question of law involved in a decision given by the Tribunal in respect of an appeal is a period of twenty-one days from the day on which the decision is given.

Period for request to refer question of law.

**16.—(1.)** Where an appellant in custody is entitled to be present at the hearing of his appeal, or of a matter preliminary or incidental to the appeal, the Registrar shall transmit to the person who has the custody of the appellant a certificate signed by the Registrar stating—

Appellant in custody.

(a) that the appellant is so entitled; and

(b) particulars of the place where, and of the times at which, the appeal, or the matter preliminary or incidental to the appeal, as the case may be, will be heard.

(2.) Where a person who has the custody of an appellant receives a certificate under the last preceding sub-regulation, he shall, and by these Regulations is authorized to, take such steps as are necessary to ensure—

(a) that the appellant is taken to the place specified in the certificate at the times so specified; and

(b) that the appellant will continue to be present at that place during the hearing of the appeal or of the matter preliminary or incidental to the appeal, as the case may be.

(3.) Where an appellant in custody is to be taken to a place at which he is entitled to be present for the purposes of the Act, the person who has the custody of the appellant shall ensure that the appellant is under guard—

(a) during the time the appellant is travelling to, and returning from, the place; and

(b) unless the Tribunal otherwise orders, during the time the appellant is present at the place.

**17.—(1.)** There shall be a Registry of the Tribunal, which shall be at such place as the President directs.

Registry.

(2.) The Registrar shall have the custody of such of the records of the Tribunal as are kept in the Registry and of the documents lodged or filed with the Registrar or a deputy Registrar.

**(3.) The Registrar shall keep—**

- (a) proper records of proceedings before the Tribunal and of documents of which he has the custody; and
- (b) such indexes as will enable documents of which he has the custody to be referred to.

**18. The Registrar shall, as soon as practicable before the hearing** Notification of hearing.  
of an appeal, or of a matter preliminary or incidental to an appeal, notify—

- (a) the appellant or the legal practitioner, if any, by whom the appellant is to be represented at the hearing; and
- (b) the Board whose duty it is to undertake the defence of the appeal,

of the time, date and place of the hearing.

**19. The Registrar shall, as soon as practicable after he receives an** Copy of Regulations to be supplied.  
application for leave to appeal, supply the appellant with a copy of these Regulations free of charge.

**20.—(1.) Where the Registrar is required by any person to attend** Payment of Registrar's expenses.  
with a document of which he has the custody, or with a record of the Tribunal, at a court or any other place not situated in the same building as the Registry of the Tribunal, that person shall pay to the Registrar such amount as is sufficient to cover the expenses of the Registrar in so attending.

(2.) The Registrar may require the whole or part of an amount which will become payable to him under the last preceding sub-regulation to be paid to him in advance.

**21.—(1.) In this regulation, “the assistant Registrar” means—** Assistant Registrar.

- (a) where there is one deputy Registrar only—that deputy Registrar; or
- (b) where there is more than one deputy Registrar—the deputy Registrar appointed by the President to be the assistant Registrar.

(2.) In the event of the absence, through illness or otherwise, of the Registrar or of a vacancy in the office of Registrar, the assistant Registrar has all the powers and functions, and shall perform all the duties, of Registrar during the absence or vacancy.

**22. A witness attending before the Tribunal, or before a person** Allowance for witness.  
appointed to receive evidence on behalf of the Tribunal, shall be paid—

- (a) such allowance or allowances as are fixed by the Registrar in accordance with the Schedule to these Regulations;
- (b) where the witness is a country witness—such allowance as the Registrar fixes to provide for the expenses of conveyance of the witness to and from the place where he so attends; and
- (c) where the witness so attends to give skilled evidence—such allowance as the Registrar fixes to provide for expenses reasonably incurred by the witness in qualifying to give that evidence.

23. Where a copy of a document relating to an appeal is supplied by the Registrar to the appellant, the appellant shall pay to the Registrar a charge for the copy at the rate of Fourpence for each folio, or part of a folio, of seventy-two words contained in the copy. <sup>Fee for supplying copies.</sup>

THE SCHEDULE.

Regulation 22.

WITNESSES' ALLOWANCES.

Description of Witness.	Allowance per Day.		Additional Allowance per Day for Country Witness.	
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Professional men or women, including medical practitioners, legal practitioners, architects, engineers, surveyors, dentists, veterinary surgeons, university professors, accountants (carrying on business as principals) and patent attorneys ..	1 5 0	to 5 5 0	0 5 0	to 1 10 0
Graziers, merchants, bankers, accountants (not carrying on business as principals), auctioneers and the like ..	0 10 6	to 3 3 0	0 5 0	to 1 5 0
Police inspectors, journalists, tradesmen, artisans, mechanics, master mariners, farmers, clerks and the like ..	0 7 6	to 2 10 0	0 5 0	to 1 5 0
Constables, apprentices, sailors, labourers and the like ..	0 5 0	to 1 10 0	0 5 0	to 1 5 0
Women not engaged in business or a profession and not in receipt of salary or wages	0 5 0	to 1 1 0	0 3 0	to 1 5 0

By Authority: A. J. ARTHUR, Commonwealth Government Printer, Canberra.