**EXPLANATORY STATEMENT**

Issued by the authority of the Chair of the Defence Honours and Awards Appeals Tribunal

*Defence Act 1903*

***Defence Honours and Awards Appeals Tribunal Amendment Procedural Rules 2022***

Part VIIIC of the *Defence Act 1903* (the Act) establishes the independent Defence Honours and Awards Appeals Tribunal (the Tribunal).

Section 110XH of the Act provides that:

             (1)  After consulting the other Tribunal members, the Chair may, by legislative instrument, make procedural rules (not inconsistent with this Part) in relation to the practice and procedure to be followed by or in relation to the Tribunal.

             (2)  Without limiting subsection (1), the procedural rules may provide for the following:

                     (a)  the constitution of the Tribunal for Tribunal proceedings;

                     (b)  how the work of the Tribunal is to be allocated between the Tribunal members;

                     (c)  the nature or form of Tribunal proceedings (for example, whether proceedings are to take the form of a hearing, and whether a hearing is to be in public or private);

                     (d)  the circumstances in which a person may be represented by a legal practitioner or other person in a Tribunal proceeding;

                     (e)  how applications are to be made to the Tribunal;

                      (f)  requiring lodgement with the Tribunal of material relating to the making of reviewable decisions that are the subject of applications to the Tribunal;

                     (g)  how evidence is to be given, or submissions are to be made, to the Tribunal;

                     (h)  how people are to be summoned to attend before the Tribunal;

                      (i)  any other matters that the Chair considers necessary or convenient.

             (3)  The procedural rules must be complied with in relation to Tribunal proceedings.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant, or issue any instrument of a legislative or administrative character (including rules), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, amend or vary such instrument.

The *Defence Honours and Awards Appeals Tribunal Amendment Procedural Rules 2022* (the Amendment Rules)*,* amends the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2021* (the Procedural Rules) which determine the Tribunal’s procedure.

This instrument amends the Procedural Rules as follows:

* Amend the definitions of ‘audio-link’ and ‘audiovisual link’, which both refer to ‘2 way’ communication, in recognition of the fact that, with the increasing use of virtual hearings, the Tribunal often has multiple parties or witnesses participating.
* Rule 9 provides details about the role of the Secretary of Defence in providing a report to the Tribunal in relation to a review of a reviewable decision. To provide for greater flexibility and efficiency in Defence’s preparation of its reports, Rule 9 has been amended to extend to an ‘office holder designated by the Secretary, in writing from time to time, and notified to the Tribunal’.
* Rule 18 has been amended to provide that the Chair may decide not to publish the name of an applicant or of a person to whom a recommendation relates or any other information that is likely to identify such a person, or to redact from the published version other personal information or sensitive information that the Chair considers it appropriate to withhold from publication. It also specifies that a review of a decision must be published within 20 working days after it is provided to the parties, or at a later date as determined necessary by the Chair to allow time to consider whether to publish the name of an applicant or of a person to whom a recommendation relates or any other information that is likely to identify such a person.
* Under the current Procedural Rules, except in special circumstances, the Tribunal *must* require a person who gives evidence before the Tribunal to take an oath or make an affirmation. Under the Amended Rules, Rule 27 provides that the Tribunal *may* require a person who gives evidence before the Tribunal to take an oath or make an affirmation
* A new Rule 31 has been inserted to allow the Tribunal, where it considers it appropriate, to arrange for a hearing, or a part of a hearing, that is to be held in public to be broadcast by live-streaming or other technology in order to allow members of the public not in attendance who wish to do so to observe proceedings at that hearing or that part of a hearing.

The Amendment Rules are a legislative instrument for the purposes of the *Legislation Act 2003.*

The details of the Amendment Rules are set out in Attachment A.

**Commencement**

The Amendment Rules will commence on the day after it is registered on the Federal Register of Legislation.

**Consultation**

As required under subsection 110XH(1) of the *Defence Act 1903*, the members of the Tribunal were consulted before the Procedural Rules were amended.

**Regulatory Impact Statement**

The Office of Impact Analysis was consulted and advised that no Regulation Impact Statement is required (ID: OBPR22-03659).

**Human Rights Statement**

A Statement of Compatibility with Human Rights is at Attachment B.

**ATTACHMENT A**

**Section 1 – Name**

1. This section states that the name of this instrument is the *Defence Honours and Awards Appeals Tribunal Amendment Procedural Rules 2022.*

**Section 2 – Commencement**

1. This section states that the whole of the instrument commences the day after this instrument is registered on the Federal Register of Legislation.

**Section 3 – Authority**

1. This section states that the instrument is made under section 110XH of the *Defence Act 1903.*

**Section 4 – Schedules**

1. This section provides that each instrument that is specified in a Schedule to the Procedural Rules is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

**Schedule 1 - Amendments**

Defence Honours and Awards Appeals Tribunal Procedural Rules 2021

Item 1 Rule 4 (definition of *approved form*)

1. This item fixes a typographical error by omitting the number ‘4’ and substituting it with the number ‘6’.

Item 2 Rule 4 (definition of *audio link*)

1. This item repeals and substitutes the definition of audio link which previously referred to ‘2 way’ communication, in recognition of the fact that, with the increasing use of virtual hearings, the Tribunal often has multiple parties or witnesses participating.

Item 3 Rule 4 (definition of *audiovisual link*)

1. This item repeals and inserts a new definition of audiovisual link, which previously referred to ‘2 way’ communication. This amendment is made in recognition of the fact that with the increasing use of virtual hearings, the Tribunal often has multiple parties or witnesses participating.

Item 4 Subrule 9(1)

1. This item amends subrule 9(1) so that the Tribunal may give an application to the Secretary or an ‘office holder designated by the Secretary, in writing from time to time, and notified to the Tribunal’ and defines this term as a *designated office holder.*

Item 5 Subrules 9(2), 9(3), 9(5) and 9(6)

1. This item inserts ‘or a designated office holder’ after the word ‘Secretary’, wherever occurring.

Item 6 Subrule 10(1)

1. This item fixes a typographical error by omitting ‘7’ and substituting with ‘9’.

Item 7 Paragraphs 11(1)(a) and 11(1)(b)

1. This item fixes two typographical errors by omitting ‘7’ and substituting with ‘9’.

Item 9 Paragraph 15(1)(c)

1. This item is a consequential amendment following the repeal and insertion of a new definition of *audiovisual link* in item 3. This item omits ‘audiovisual’ in paragraph 15(1)(c) and substitutes with ‘video’.

Item 10 Subrule 18(4)

1. This item repeals and substitutes subrule 18(4) to provide that the Chair may decide not to publish the name of an applicant or of a person to whom a recommendation relates or any other information that is likely to identify such a person, or to redact from the published version other personal information or sensitive information that the Chair considers it appropriate to withhold from publication.

Item 11 Subrule 18(5)

1. This item inserts a new subrule that specifies a review of a decision must be published within 20 working days, or at a later date as determined necessary by the Chair to allow the parties time to consider whether or not they wish to make a request for non-publication of their name, other identifying material, or material that they consider to be particularly personally sensitive.

Item 12 Paragraph 23(1)(b)

1. This item fixes a typographical error by omitting ‘audiovisual 34’ and substituting with ‘video link’.

Item 13 Rule 27

1. This item repeals and substitutes Rule 27 to provide that the Tribunal may require a person who gives evidence before the Tribunal to take an oath or make an affirmation.

Item 14 Rule 31

1. This item inserts a new rule to provide that the Tribunal may, if it considers it appropriate, arrange for a hearing, or a part of a hearing, that is to be held in public to be broadcast by live-streaming or other technology in order to allow members of the public not in attendance who wish to do so to observe proceedings at that hearing or that part of a hearing.

**ATTACHMENT B**

 **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.*

***Defence Honours and Awards Appeals Tribunal Amendment Procedural Rules 2022***

The *Defence Honours and Awards Appeals Tribunal Amendment Procedural Rules 2022*are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.*

**Overview of the Legislative Instrument**

This instrument amends the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2021* as follows:

* Amend the definitions of ‘audio-link’ and ‘audiovisual link’.
* Provide for greater flexibility and efficiency in Defence’s preparation of its reports by amending Rule 9 to extend to an office holder designated by the Secretary, in writing from time to time, and notified to the Tribunal.
* Provide that the Chair may decide not to publish the name of an applicant or of a person to whom a recommendation relates or any other information that is likely to identify such a person, or to redact from the published version other personal information or sensitive information that the Chair considers it appropriate to withhold from publication.
* Specify that a review of a decision must be published within 20 working days after it is provided to the parties, or at a later date as determined necessary by the Chair to allow time to consider whether to publish the name of an applicant or of a person to whom a recommendation relates or any other information that is likely to identify such a person.
* Provide that the Tribunal may require a person who gives evidence before the Tribunal to take an oath or make an affirmation.
* Provide that the Tribunal may, where it considers it appropriate, arrange for a hearing, or a part of a hearing, that is to be held in public to be broadcast by live-streaming or other technology in order to allow members of the public not in attendance who wish to do so to observe proceedings at that hearing or that part of a hearing.

**Human rights implications**

There are no relevant human rights and freedoms engaged by the legislative instrument.

**Conclusion**

This instrument is compatible with human rights as it does not engage any of the applicable human rights or freedoms.