

DEFENCE FORCE DISCIPLINE APPEAL TRIBUNAL

Practice Direction

We, the President, Deputy President and Members of the Defence Force Discipline Appeal Tribunal, make the following Practice Direction.

Date: 4 March 2026

J. A. Logan AM RFD
President

M. A. Perry
Deputy President

J A Halley
Member

L Crowley
Member

General

1. This Practice Direction replaces all previous Practice Directions issued by the Defence Force Discipline Appeal Tribunal (**Tribunal**), with immediate effect.
2. Unless context dictates otherwise, references to statutory provisions contained in this Practice Direction shall be taken to be references to provisions of the *Defence Force Discipline Appeals Act 1955* (Cth) (**Act**) and the *Defence Force Discipline Appeals Regulation 2016* (Cth) (**Regulation**).
3. Practitioners and parties are encouraged to contact the Tribunal if they have any queries in relation to the practice of the Tribunal, including the matters set out in this Practice Direction. The Tribunal can be contacted by email DFDAT@fedcourt.gov.au, by phone on 1300 720 980 or by calling the Registry of the Tribunal located in your State or Territory. The Registries of the Federal Court of Australia function as the Registries of the Tribunal.
4. The Tribunal, a member of the Tribunal or the Registrar may excuse non-compliance with this Practice Direction on such terms as may be just.

Sitting Dates

5. The Tribunal will sit on dates determined by the President pursuant to s 14(1) of the Act. Sitting dates for the Tribunal are published on the Tribunal's website, which can be accessed at the following link: www.defenceappeals.gov.au/tribunal-sitting .
6. The President may convene a special fixture of the Tribunal on a date other than that referred to in [5] above where the President considers it in the interests of justice to do so.
7. Where the power of the Tribunal is to be exercised by a single member, the date and place of that sitting will be organised by the Tribunal in consultation with the parties.

Commencing an Appeal

8. For the purposes of s 21(1)(b) of the Act an appeal, or an application for leave to appeal, or an application for an extension of time, may be lodged with the Registrar by filing that document with the Tribunal in one of the ways set out below. Alternatively, documents may be lodged with one of the persons prescribed by reg 7 of the Regulation. It is expected that most proceedings will be commenced by filing the relevant documents with the Tribunal by electronic means (email or provision of electronic link).

9. Parties are required to use the forms approved by the Tribunal, which can be found on its website: www.defenceappeals.gov.au . Parties may modify the forms where necessary.
10. Notices of appeal from a court martial, from a Defence Force Magistrate or from a single member of the Tribunal shall be in Form 1.
11. Applications for leave to appeal or for an extension of time to appeal shall also be in Form 1.
12. The respondent shall file and serve a notice of address for service in Form 2 within 14 days of the commencement of a proceeding.

Extensions of Time

13. Section 21 of the Act provides that an appeal must be commenced within 30 days commencing immediately after the earlier of:
 - (a) the notification of the result of the automatic review of the proceeding under s 152 of the *Defence Force Discipline Act 1982 (Cth)* (**Automatic Review**); or
 - (b) the last day of a period of 30 days after the relevant conviction.
14. If an appeal is sought to be commenced outside of the period prescribed in s 21 of the Act, the appeal must be commenced by an application for an extension of time to appeal. That application must be supported by an affidavit in Form 4 which sets out:
 - (a) the reasons why the appeal was not filed in time;
 - (b) the grounds of the proposed appeal; and
 - (c) why such grounds have a reasonable prospect of success.
15. The Automatic Review may not be completed within 30 days of the relevant conviction. In most circumstances it will be appropriate for a prospective appellant to await the outcome of the Automatic Review prior to commencing an appeal in the Tribunal.
16. An application for an extension of time to appeal should be filed promptly after the notification of the result of the Automatic Review.

Directions

17. The Tribunal will list the appeal for directions shortly after the commencement of a proceeding. Amongst other matters, these directions will usually fix a hearing date, time

and place, as well as setting a timetable for the filing of appeal books, outlines of submissions and lists of authorities.

18. The Tribunal expects that prior to the date of the first directions hearing, the parties will confer with a view to agreeing directions for the further conduct of the appeal. The usual form of order that the Tribunal will make is set out in Form 8.
19. Two days prior to the date fixed for the first directions hearing, the parties must provide the Tribunal via email:
 - (a) if the parties agree on the proposed orders for the further conduct of the proceeding, a draft order and indicate that the parties seek for that order to be made in chambers by consent; or
 - (b) if the parties have not reached agreement, the competing orders and indicate that the parties have not reached agreement.
20. The Tribunal may make the proposed orders in chambers in the circumstances in [19(a)] above.
21. A party may make an application for directions (including applications for legal aid pursuant to reg 9 of the Regulation). An application for directions must be in Form 3, and should be supported by an affidavit in Form 4. The Tribunal may convene a hearing for the application for directions (including by way of video or telephone link).
22. Where appropriate, the Tribunal may deal with an application for directions on the papers.

Venue for Hearing

23. To facilitate the attendance in person by an applicant/appellant defence member and other defence members in particular, the longstanding practice of the Tribunal is to sit, ideally in court premises, at the location where the applicant/appellant defence member is based. If an alternative venue or mode of hearing is proposed, this should be raised by the parties at the first directions hearing (after consultation between the parties in advance).

Filing and Serving Documents

24. A party may file a document with the Tribunal by:
 - (a) emailing the document to DFDAT@fedcourt.gov.au;

- (b) the provision of an emailed link to a secure file sharing platform. This may be a convenient method of filing very large documents such as court books in electronic form. If this method is to be used, care should be taken to ensure that the security permissions pertaining to the relevant document permit the Tribunal accessing it; or
 - (c) lodging the document in hard copy at a Registry of the Tribunal.
25. The Tribunal's security firewall may cause a delay in the delivery of an email. It will also block emails with attachments of more than 20MB in size. For these reasons, if you seek to file a document by email urgently, please call the Tribunal to confirm that it has been received.
26. Wherever possible, documents should be filed in native PDF (Portable Document Format) or Word format, rather than scanned PDF. Documents produced in native PDF (or Word) are substantially smaller in size than scanned PDFs. If it is necessary to file a document produced in scanned PDF, then it must be subjected to an Optical Character Recognition (**OCR**) process before filing. The OCR process enables text searches to be conducted.
27. An electronic signature may be used on any document other than an affidavit or a statutory declaration.
28. Where a document is filed with the Tribunal, the lodging party must also serve a copy on all other parties to the proceeding. Where a document is filed by email to the Tribunal, service may be achieved by copying the email to all other parties.

Applications for Legal Aid

29. Any application for legal aid pursuant to reg 9 of the Regulations should be made to the Tribunal in accordance with Form 6. Form 6 includes a statutory declaration contemplated by reg 9(3), together with a report by a solicitor.
30. The application for legal aid must be completed to the best of the appellant's ability. Failure to provide adequate or complete information may cause:
- (a) delays in processing the application; or
 - (b) the application to be dismissed.
31. If an order for the grant of legal aid is made, the Tribunal will forward a copy of the relevant order and any accompanying reasons to the Attorney-General's department.

Due to processing timeframes within the Attorney-General's department, applications for legal aid should be filed promptly.

Appeal Books

32. Unless the Tribunal orders otherwise, the appeal books will be prepared by the respondent and/or the Registrar of Military Justice in consultation with the Registrar.
33. The usual form of order includes provision for the preparation of appeal books. This includes:
 - (a) the settling of a draft index to the appeal book;
 - (b) the lodging of an electronic copy of the appeal book with the Tribunal; and
 - (c) the lodging of four hard copies of the appeal book with the Tribunal.
34. Duplicates of documents must not be included in the appeal books.

Outlines of Submissions

35. Each party shall prepare a written outline of submissions on the appeal.
36. The outline of submissions shall set out concisely:
 - (a) the issues presented by the appeal;
 - (b) an outline of the argument to be presented on each issue, specifying the steps in the argument, and any legislation, reference to authority or finding of fact to be relied upon in support of each such step; and
 - (c) where there is to be a challenge to any findings of fact, the error (including any failure to make a finding of fact), the finding which the party contends ought to have been made, and the reason it is said that the error has been made, in each case referring to any evidence to be relied upon in support of the argument.
37. The outline of submissions must not exceed 10 pages without prior leave of the Tribunal.
38. All references to documents should include pinpoint references to the relevant page numbers. In the case of transcript, the relevant line numbers should also be set out (e.g. AB 27.5 – 28.2).

39. Similarly, references to authority should give the case name, citation and pinpoint the relevant paragraph or page and the relevant part of the page (e.g. *A v B* (1964) 112 CLR 210 at 212.5 to 212.7, *C v D* (1998) 196 CLR 318 at [14]).
40. It is expected that the oral arguments will follow the outline of submissions. New issues, not included in the outline, may not be advanced at the hearing of the appeal unless leave of the Tribunal is granted.

Lists of Authorities

41. Lists of authorities may be provided to the Tribunal in one of two alternative formats. Parties should confer with a view to agreeing the format by which lists of authorities will be provided to the Tribunal. The agreed format must be adopted by both parties.

Preferred Format

42. The preferred way in which the parties should, to the extent resources permit, provide the Tribunal with authorities is via the filing electronically of a bundle of authorities with cases in the bundle accessible via cross-document relative hyperlinks in an index.
43. If the preferred format is to be adopted, the bundle of authorities should comply with the following requirements:
 - (a) PDFs and other types of files can be attached to a PDF index. It is intended that if the PDF index is moved to a new storage location, the attachments move with it. In this Practice Direction, the term “cross-document relative hyperlinks” means: a file attachment to a PDF, saved within the PDF index and linked by a hyperlink that contains an address that is relative to the address of the destination file.
 - (b) All authorities must be subject to an OCR process to allow for text to be searched and copied.
 - (c) The list of authorities must comprise of an index with cross-document relative hyperlinks to attachments that complies with the following:
 - (i) the index is to be in the form of a table with rows containing sequentially numbered tabs, document titles, and dates where applicable (such as the date in force of legislation);
 - (ii) the index is to be divided into authorities, legislation and bills and other explanatory material, with each section being arranged in alphabetical order;

- (iii) the index is to include for each listed document a cross-document relative hyperlink to the attached document;
- (iv) the cross-document relative hyperlink must operate such that when the cross-document hyperlink in the index is activated, the attached document opens separately and so as to enable multiple documents from the index to be open concurrently;
- (v) the attachments to the index are to be separate documents so that when the cross-document relative hyperlink in the index is activated, the attached document opens so as to enable multiple documents from the index to be open concurrently;
- (vi) the relative hyperlinked attachments are to be PDF documents;
- (vii) the attached documents are to be named according to their corresponding tab numbers followed by a sufficient description of the authority, for example "02. Watson v Chief of Army [2010] ADFDAT 3.pdf"

Alternate Format

- 44. Parties may also adopt the following format for the provision of lists of authorities in circumstances where the preferred format is impracticable.
- 45. Lists of authorities and legislation should be divided into two parts. Part "A" should contain only authorities and legislation from which passages are to be read. Part "B" should contain authorities and legislation to which counsel might refer but from which passages are not to be read. The relevant sections of legislation should be specified.
- 46. The Tribunal will supply up to ten cases for its own use, which are to be included in part "A" of the list marked with a single asterisk.
- 47. The parties may each identify in part "A" up to five cases to which they wish to refer at some length. These cases are in addition to those referred to in the preceding paragraph, and are to be identified by a double asterisk.
- 48. A party who intends to cite from a book or a case other than one referred to in the Reports in [42] and [47] above shall provide photocopies of the relevant parts of the book or the Report for the use of the Tribunal to be handed up during argument.
- 49. Parties need not supply copies of:

- (a) cases reported in the Commonwealth Law Reports, Federal Court Reports, Australian Law Reports, the authorised reports of the State or Territory where the appeal is to be heard, or those that are unreported Tribunal cases; or
- (b) the Act, the Regulation, the *Defence Force Discipline Act 1982* (Cth) or any regulations thereunder.

Non-Publication and Non-Disclosure Orders

- 50. Proceedings in the Tribunal are to be held in public: s 18(1) of the Act. However, public interest considerations arising out of the nature of the offence(s) from which the appeal is brought, the subject matter of the appeal or evidence tendered in the proceeding below may necessitate non-publication or non-disclosure orders being made by the Tribunal.
- 51. Where a party seeks non-publication or non-disclosure orders, that party should file an application for directions (Form 3), together with an affidavit in support (Form 4). Where non-publication or non-disclosure orders are sought on the basis of public policy considerations, the deponent of the affidavit must have sufficient senior policy determinative responsibility (as opposed to mere subordinate command or administrative responsibility) to provide an evidentiary foundation to ground the making of the relevant order. For example, in cases where a public interest immunity claim is sought to be supported by deponents other than a Minister, or the Chief of Defence Force, the claim may not be regarded as having a sufficient evidentiary foundation to support it.
- 52. Where the proceeding in first instance was subject to non-publication obligations, for example, by virtue of s 74 of the *Evidence (Miscellaneous Provisions) Act 1991* (ACT), as made applicable to a proceeding before a service tribunal, documents filed in the Tribunal should adopt pseudonyms used in the proceeding in first instance. Upon cause being shown, the Tribunal will make appropriate non-publication orders in the appeal proceeding where there is doubt as to whether statutory non-publication obligations continue to apply.

Applications to Call Further Evidence

- 53. A party who intends to ask the Tribunal to consider further evidence pursuant to s 23(2) of the Act shall file and serve written notice of such intention as soon as possible. The notice shall include:
 - (a) a brief summary of the evidence; and
 - (b) a statement as to how it satisfies each of the requirements of s 23(2) of the Act.

Abandonment

54. An applicant or appellant may, pursuant to reg 10 of the Regulation, withdraw an application for leave to appeal or discontinue an appeal. This notice shall be in Form 5.
55. The Tribunal may, at the request of the respondent or of its own motion, give notice to an applicant or appellant that if some specified act, being an act necessary for the prosecution of the proceeding, is not done within the time specified in the notice, then the proceeding shall be deemed to be abandoned. This notice shall be in Form 7.
56. If the applicant or appellant does not appear, either personally or by a legal practitioner, at the time and place fixed for the hearing of the proceeding the Tribunal (or a single Member when the Tribunal is so constituted) may declare that the proceeding is deemed to be abandoned.

Dress for Counsel

57. On the hearing of an appeal the dress for counsel is that worn in the Court of Criminal Appeal or equivalent in the State or Territory where the hearing takes place.

Applicant or Appellant in Custody

58. Where an applicant or appellant is in custody, notice of this fact should be given to the Registrar. If the applicant or appellant is entitled to be present at the hearing, the Registrar will, pursuant to reg 12 of the Regulation, issue a certificate in Form 9.

Hearings overseas

59. The Act (s 7(1)) contemplates that the Tribunal may sit overseas. To date, no case has occasioned such a need. If such a possible need is identified by a party, the subject should be raised at the earliest opportunity, usually the first case management hearing, on notice to the other party and supported by appropriate affidavit evidence. Such evidence should address the need for such a hearing, any need for foreign government approval at the place contemplated and whether that has been obtained and security and logistic arrangements contemplated.