

## CHAPTER 46

# FORFEITURE AND RESTORATION OF SERVICE AWARDS

### Introduction

**46.1** Awards are given to recognise achievement and service. There may be circumstances when the right to receive or retain awards is forfeited. The circumstances when this will occur will be different for various awards. For example, decorations for gallantry and medals for active service represent actions and service that has been rendered in the past and may be less likely to be forfeited than other service awards that recognise effective service or good conduct. These latter awards are considered to have an implied condition of continued service and failure to do so could result in consideration of forfeiture of such awards.

**46.2** There are also conditions that allow the restoration of forfeited awards.

**46.3** This chapter details the policies and administrative procedures that apply to the forfeiture and restoration of service awards.

### Definitions

**46.4** The following definitions apply:

- a. **Decoration** means an award made to an individual for acts of gallantry, distinguished or meritorious service.
- b. **Medal** means operational service medal or long service medal.
- c. **Member** means any member or former member of the Australian Defence Force (ADF).
- d. **Prescribed authority** is a person who, because of their appointment, may make a determination relating to the forfeiture or restoration of awards in accordance with the Regulations for those awards.
- e. **Service award (award)** for the purpose of this manual refers only to military specific decorations, honours and medals which are:
  - (1) part of the Australian Honours System; or
  - (2) Imperial awards issued to serving members of the ADF before 1992.
- f. **War badge** means any official badge issued to recognise a member's service eg Returned from Active Service Badge.

## FORFEITURE OF ENTITLEMENT TO SERVICE AWARDS

**46.5** The conditions for forfeiture (or cancellation) of awards are normally prescribed in the regulations for the respective awards. Forfeiture of entitlement to service awards can either be mandatory or discretionary. These are detailed below.

### Mandatory forfeiture

**46.6** Forfeiture of entitlement to an award(s) is mandatory when a member is convicted of any of the following offences prescribed in relevant Regulations:

- a. treason;
- b. receiving or assisting a person known to be guilty of treason, or doing nothing to prevent the commission of an offence by a person known to be intending to commit treason;
- c. treachery;
- d. inciting mutiny;

- e. assisting prisoners of war to escape;
- f. sabotage of own and allied assets;
- g. aiding an enemy;
- h. communicating with an enemy with intent to assist the enemy;
- i. taking part in a mutiny;
- j. sedition in time of war;
- k. cowardice in the face of the enemy; or
- l. desertion (in the face of the enemy) from an operational area, or while on leave from an operational area.

### **Discretionary forfeiture of awards**

**46.7** Award entitlements may be forfeited if a member is convicted for a crime or offence, or for an act or acts, which in the opinion of the prescribed authority, are considered to be so disgraceful or serious that it would be improper for the offender to retain the award. However, the circumstances under which gallantry and distinguished service decorations are awarded dictate that entitlements should not be forfeited except under extreme conditions.

**46.8** The member's entire service in the ADF will be taken into account when considering whether one or more awards should be forfeited. A decision that one award should be forfeited does not necessarily result in the forfeiture of all awards. This is particularly so in the forfeiture of honours and decorations. For example, entitlement to an honour or decoration for general service may be forfeited, but not entitlement to an operational service honour or award.

**46.9** A dishonourable or disciplinary discharge or termination of service is not, in itself, a reason for forfeiture of awards. Nevertheless, the circumstances may be a consideration for the prescribed authority. There are exceptions to this, notably the Australia Service Medal 1939–1945 that has a provision in the Royal Warrant for that medal specifically stating that only those who are honourably discharged are entitled to be awarded the medal.

### **Forfeiture as a result of a false claim**

**46.10** Awards are to be forfeited in circumstances where they were approved as a result of a false application or declaration as to entitlement.

### **Forfeiture process**

**46.11** The forfeiture of an entitlement to an award is a very serious matter. Accordingly, all submissions must provide conclusive evidence as to why an entitlement to an award should be forfeited. Hearsay, rumour or similar types of evidence are not acceptable.

**46.12** Any serving ADF member who has knowledge of an act or circumstance which could justify the forfeiture of a member's entitlement to an award, may, using the chain-of-command, raise a submission for consideration by the Director of Honours and Awards. When a submission may involve a member in the chain of command, the submission may be sent direct to the Director of Honours and Awards via the originator's Service chief.

**46.13** If after investigation it is found that there is a case to answer, the Director of Honours and Awards is to write to the member whose entitlement to an award is being reviewed and:

- a. detail the reasons that have prompted a review of the member's entitlement to an award(s);
- b. invite the member to show cause why their entitlement to any particular award(s) should not be forfeited; and

- c. give the member a minimum of 28 days to provide a written response.

**46.14** At the end of the period prescribed, and after consideration of any submission received from the member, the Director of Honours and Awards will make a recommendation to the prescribed authority who will determine whether the entitlement is to be forfeited. The prescribed authority is to be provided with all available information including any submissions provided by the member. For Imperial awards the Director of Honours and Awards is the prescribed authority. The Director of Honours and Awards is to ensure that the member is advised of the outcome and whether any awards are to be returned.

### **Appeal**

**46.15** Regulations do not provide for an appeal against any decision that entitlement to an award(s) should be forfeited. The decision to grant or forfeit an award is at the sole discretion of the prescribed authority.

### **Illegal wearing of awards**

**46.16** In some cases, persons will wear an award, or a replica of an award, to which they have no entitlement. Such persons have committed an offence under Section 80A of the *Defence Act 1903*. In the case of civilians and discharged ADF members, the matter should be reported to the civilian police—not the Department of Defence. Cases involving serving members of the ADF should be reported to the member's commanding officer or the Service police.

## **RESTORATION OF AN ENTITLEMENT TO SERVICE AWARDS**

### **Process for restoration**

**46.17** Restoration of a forfeited entitlement reinstates the right of an eligible member to have, and wear, an award. Restoration will only be considered in cases where the person affected is still living and that person makes a personal application for restoration of the forfeited entitlement. Applications on behalf of a deceased member cannot be considered.

**46.18** The prescribed authority does not have the authority to restore an award that has been subject to mandatory forfeiture or forfeited as a result of the findings from a Court-Martial or civil court.

**46.19** In all other cases, a decision to restore or not restore an entitlement will be based solely on the merits of the argument presented.

**46.20** A decision that one award should be restored will not necessarily lead to the restoration of all awards.

### **Applications for restoration of an entitlement**

**46.21** A person may apply to the Director of Honours and Awards to have their forfeited entitlement to an award(s) restored.

**46.22** Applications for restoration of an entitlement should be made directly to:

The Director of Honours and Awards  
CP2-1  
Department of Defence  
PO Box 7952  
CANBERRA BC ACT 2610

### **Recording of Australian Honours and Awards**

**46.23** When an entitlement to an award from within the Australian Honours System is forfeited, the name of the recipient will be removed from the Register of Names and that person will be required to return the relevant award to Directorate of Honours and Awards. Similarly, when entitlement is restored, the entry will be re-entered into the register and all awards will be returned to the original recipient. In all cases, the forfeiture or restoration is to be endorsed on the member's service record.