File No.: 18/30519

December 2018

 **Subject: AUSTRALIAN APPROACHES AND CHALLENGES WITH REGARD TO APPLICATION PROCEDURES FOR OBTAINING THE STATUS OF CONSCIENTIOUS OBJECTOR TO MILITARY SERVICE**The Australian Government has the pleasure to provide the following information to the Office of the High Commissioner for Human Rights (OHCHR) , for use in preparing the report ***“On different approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards,"*** under HRC resolution 36/18.

**Response:**First, it must be noted that military service in the Australian Defence Force (ADF) is entirely voluntary. However, Defence Act 1903 (Cth) (the Act) outlines the legislative regime governing the exceptional circumstance of Australia calling its people to serve in the ADF in a time of war.

Part IV of the Act states that, during a time of war only, the Governor General may call upon persons to serve in the ADF for the duration of the conflict. The power of the Governor General to call for conscripts can only be exercised during a "time of war" - this requires a state of war to actually exist. This period runs from the time when a proclamation of war is issued, to the time of a declaration that the war has ceased. The last time this power was used was during the Vietnam War, and national service formally ended in 1972.

Under s. 60 of the Act, the Governor General may call upon persons to serve in the ADF, except those exempt from service. Persons exempt from service in the ADF in a time of war include those whose conscientious beliefs do not allow them to participate in war or warlike operations, or in a particular war or particular warlike operations (s. 61 A).

Under the s. 4(3) of the Act, a conscientious belief must involve a fundamental conviction of what is morally right and morally wrong (whether or not based on religious considerations); must be so compelling in character for that person that he or she is duty bound to espouse it; and is likely to be of a long standing nature. No member of the Defence Force who has conscientious objection shall be compelled to answer any question as to his or her religion (S.123B).

The person claiming exemption from service must have his or her conscientious objector status determined by the Conscientious Objection Tribunal. Part IV, Divisions 2-4 of the Act, outline the legislative framework to establish a Conscientious Objector Tribunal. The Tribunal is an independent body established by the Minister, comprised of three members appointed by the Minister. The presiding member of the Tribunal must be a legal practitioner with at least seven years standing. The Tribunal procedures must be quick, fair, just and economical, act according to substantial justice and the merits of the case, and not be bound by technicalities.

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The function of the Conscientious Objector Tribunal is to determine whether the applicant is exempt from service because of conscientious beliefs; ie. whether the belief is a fundamental conviction, compelling and a longstanding belief. The onus of proving to the Tribunal that the belief is a conscientious belief warranting exemption from military service rests with the applicant.