



Veterans' Review Board National Registry

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OFFICE OF THE PRINCIPAL MEMBER

Committee Secretary
Senate Foreign Affairs, Defence and Trade References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary,

Inquiry into the Veterans' Affairs Legislation Amendment (Omnibus) Bill 2017

Thank you for providing questions from the Committee, which I received on 22 May 2017.
Please find my responses to the questions, set out below:

- 1) **In light of recent changes to appeal pathways under the Military Rehabilitation and Compensation Act 2004, the committee has heard concerns that the board's workload will have increased considerably since 1 January 2017.**

To date, the VRB has not experienced a significant increase in appeals following the introduction of the Single Appeal Pathway. As at the end of April 2017, new appeals at the VRB totaled 2227, which compares to 2324 appeals in April 2016. Given that applicants have more than 12 months to lodge a MRCA appeal with the VRB, the single appeal pathway may not start to impact on the VRB's level of appeals until well into 2017-18.

- a. **What procedures does the board have in place to deal with large numbers of applications?**

To ensure that appeals are heard within the VRB's time standards the VRB has a suite of case management powers that can be used. These powers include the capacity to hold directions hearings and set timetables for the progress of appeals to finalisation. This suite of case management powers works with the VRB's new Alternative Dispute Resolution (ADR) program, which has significantly reduced the time taken to finalise appeals.

- b. What is the board's current process for assessing and dismissing 'frivolous' applications, or those deemed unlikely to succeed?**

The VRB cannot currently dismiss an appeal on the ground of it being 'frivolous' or unlikely to succeed. During the current Principal Member's tenure of 7 years, there have only been 3 matters where it may have been appropriate to hold a preliminary hearing to consider whether or not the matter should be dismissed on this ground, if the VRB were so empowered. Instead, in all of these cases, I was required to list the matters for a full hearing and the appeals were all progressed to an ordinary hearing before a 3 member panel, where the substantive issue was determined using the VRB's powers set out under section 139 of the *Veterans' Entitlements Act 1986* (VEA).

- c. What is the average time, from lodgement to finalisation, for the VRB to consider applications?**

The VRB's General Practice Direction sets out the aim that all appeals to the VRB, where possible, are finalised within 12 months (52 weeks). In 2015-16, the VRB again met this aim, with the average length of time appeals taking 51 weeks. Additionally in 2015-16, those cases referred to the VRB's ADR program, which were resolved without the need for a hearing, were finalised in under 3 months.

- d. Would the board provide the applicant with the reasons as to why an application was dismissed?**

Yes. As with all VRB decisions, a full and comprehensive set of reasons would need to be provided if the proposed dismissal power were exercised. A person would also, of course, have a right to make a request for reinstatement on the ground of an error or make an appeal to the AAT, if the power were exercised. This would be clearly set out in the VRB's General Practice Direction.

- 2) The bill proposes to allow the Principal Member to delegate his or her powers to dismiss applications summarily.**

- a. What would be the classification of officers that applications could be delegated to?**

The Principal Member will not delegate this power to any other VRB Member or staff member. The power would rest wholly with the Principal Member. This would be clearly set out in the VRB's General Practice Direction.

- b. Would it be possible for cases to be dismissed in error?**

Pursuant to section 155(11) of the VEA, the Principal Member has a discretion to reinstate any appeal that may have been dismissed in error.

- 3) **Submitters have argued that it is unclear at what stage the VRB may dismiss an application.**
- a. **Would the board care to alleviate some of the concerns and explain to the committee how dismissal powers would work in operation?**

The VRB's General Practice Direction would set out that in the circumstances where the VRB was considering exercising its power to dismiss an application, this would only be done following a preliminary hearing. Parties would be given full notice of any preliminary hearing and they would be invited to provide any submissions addressing the issue, preferably in writing. At the preliminary hearing itself, an applicant would also be afforded full procedural fairness, by being given an opportunity to address the Board orally on the issue, in addition to any written submissions. Following the hearing, if the VRB made a decision to dismiss an application it would give written reasons for doing so.

If an applicant considered that the Board made a mistake in dismissing the application, they would be welcome to ask the Principal Member to reinstate the appeal. Additionally, a person would also, of course, have a right of appeal to the AAT, if the power were exercised.

I would be happy to provide responses to any further questions on notice, should the Committee require additional information.

Yours sincerely

Doug Humphreys OAM
Principal Member



25 May 2017

