



Veterans' Review Board

OFFICE OF THE PRINCIPAL MEMBER
Mr Douglas Humphreys

10 September 2015

Foreign Affairs, Defence and Trade Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senators,

Veterans' Affairs Legislation Amendment (2015 Budget Measures) Bill 2015

As the Principal Member of the Veterans' Review Board, I do not seek to make any comment on the policy issues under consideration by the Committee. To do so would not be appropriate for a quasi-judicial body. However, I do wish to make some comment about the role of the Veterans' Review Board (Board), its independent nature and to correct some factual errors that have arisen during the debate on this legislation.

As you would be aware, the Board provides independent merits review of particular types of decisions and determinations specified in the *Veterans' Entitlements Act 1986* (Cth) (VEA) and the *Military Rehabilitation and Compensation Act 2004* (Cth) (MRCA).

Any suggestion that the Board does not act as an independent review body for matters that come before it and is in some way an extension of the Department of Veterans' Affairs 'in-house' review is simply not correct. Members of the Board swear an oath of independence upon appointment and act accordingly. I regularly sit as the Senior Member on Board panels and can assure Senators that all Board members bring an independent mind to every application they consider. I see the role of the Board not to be there to say "no" but to say "yes" if we can. This is consistent with the beneficial nature of the legislation we operate under.

Representation in appeals before the Board

There has been some comment made regarding the capacity for veterans to seek independent help in the appeal process before the Board.

Over the last three financial years, the Board has finalised on average 3300 appeals per year.

In those appeals, on average over 88.6 per cent of applicants had a representative. Largely, these representatives were from a variety of major ex-service organisations. Of those not represented, it was overwhelmingly their choice not to be represented.

Under section 147(3) of the VEA, people with legal qualifications are prohibited from representing applicants at Board hearings. This restriction was first introduced in 1929 as part of the *Australian Soldiers Act 1920*. It was brought in after lobbying from the Returned and Services League and it was intended to prevent appeal hearings becoming overly adversarial, technical and resource intensive. This prohibition continues to enjoy the support of most major Ex-Service Organisations.

Applicants are of course permitted to consult lawyers prior to their hearing. Written legal submissions will be accepted by the Board for consideration as evidence.

Time taken to progress appeals

Pursuant to section 133A of the VEA the Board aims to conduct merits review in a manner that is fair, just, economical, informal and quick.

The Board has a General Practice Direction in place which sets out the procedure to be adopted for all applications for review before the Board.

The General Practice Direction is designed to assist the Board in managing cases, with the aim that they be finalised within 12 months of lodgement, as well as giving the applicant and their representative every reasonable opportunity to present the case.

Over the last three financial years the average time taken to resolve at all types of applications including those made under the MRCA was just under 12 months, averaging at 50-51 weeks.

It is important to note that over the last three financial years, the primary control of applications was with the parties. Applicants and their representatives had control of around 57 per cent of outstanding applications and the Department 15 per cent of outstanding applications. The Board itself controlled on average around 28 per cent of outstanding applications. Thus the majority of the time taken to finalise appeals is outside the Board's control, it is in the hands of the applicant and their representative or the Department as the respondent.

In 2014 new legislation was introduced to enhance the operations of the Board and to provide improved case management powers, which did not exist previously. This includes the power to hold directions hearings. Since August 2014, the Board has held 198 directions hearings. These hearings have been held generally where there has been no significant action taken to progress an application to hearing. Directions hearings are designed to ascertain the reasons for the delay and to ensure the application progresses. If there are delays on the part of the Department, they will also be asked to attend and explain why there have been delays. The results of these directions hearings have been excellent in terms of progressing matters to finalisation within a reasonable time period.

Further, the Board is currently conducting a trial of Alternative Dispute Resolution in its NSW and ACT registry for all new matters lodged on or after 1 January 2015.

In the first six months of the trial, applications that had been referred were finalised on average in 27 days. Most importantly, over 51% of applications which had proceeded to the first step in the model, an outreach with a Conference Registrar, had been finalised without the need for a hearing. While the Board prides itself on conducting informal hearings, this has provided an even less demanding process for applicants, particularly elderly widows and veterans.

The Board expects these figures may fluctuate depending on the sample size of the trial. Further, the time taken to process and the capacity to settle matters before a hearing continues to be influenced by the parties to the review. However, the initial results are encouraging.

Appeal outcomes

There has been some comment made about the independent nature of review by the Board and the numbers of appeals that are affirmed.

I would note that at Board hearings, the Commission as a matter of policy does not appear. Further, in conducting a review, the Board is not bound by the rules of evidence or any of the findings within the decision it is reviewing. Board members sit in panels of three, with it being mandatory for a Services Member to sit on every appeal. Many members of the Board, although not Service members, have a service background, including myself. I suggest the Board has a very strong understanding of the unique nature of service. This understanding may not necessarily always be present at other bodies like the Administrative Appeals Tribunal.

The set aside rates for the Board certainly go some way in demonstrating the independent nature of review. Over the last three financial years, on average the Board decided 45.7 per cent of appeals favourably for applicants. This compares with the Administrative Appeals Tribunal (AAT), for the same period, where decisions concerning the veterans' jurisdiction stood at 36.3 per cent varied or set aside.

I would also note that the Commission appears in all appeals before the AAT and commonly, only one member will hear an appeal. There is also no requirement at the AAT, which is unique to the Board, that a member with a services background sit on the appeal.

The Board is also unique in its capacity to assist representatives to obtain further information for appeals. This often happens at a registry level, when a matter is being prepared for a hearing, and it is not uncommon for the Board to adjourn a matter to request the Department to obtain further evidence which might assist an applicant with their claim. This does not occur at the AAT, where the responsibility lies solely with the parties to the review. The cost of obtaining further information, where it is requested by the Board, is met by the Department and not by the applicant or their representative.

The Board regularly surveys applicants who have had their appeals finally determined. The survey specifically asks whether applicants agree that the Board was independent of the relevant Commissions. Over the last three years an average of 81.4 per cent of applicants agreed that the Board was independent.

Overall satisfaction

In the most recent client survey, applicants before the Board who had their appeals finally determined reported an 81.7 per cent satisfaction level.

This accords with the wider veteran community view, which recently saw the Board specifically excluded from the amalgamation of Commonwealth Tribunals. The support for the Board by the Veteran community was evident in the 1995 Better Decisions report by the Administrative Review Council and the more recent 2012 Skehill Review (Strategic Review of Small and Medium Agencies in the Attorney-General's Portfolio).

In concluding, while I make no comment on the policy issue regarding the single appeal pathway, I would note that the anecdotal feedback I have received from various members of major Ex-Service Organisations has been positive and supportive of the introduction of a single appeal path through the Board.

Yours Sincerely

Doug Humphreys
Principal Member