



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

As the Principal Member of the Veterans' Review Board (VRB), I am responding to your request to make a written submission to the committee. I regret I am unavailable to give evidence in person due to a previous appointment.

I refer to schedule 1 and the proposed amendments to the *Veterans' Entitlements Act 1986* (VEA). From my perusal of the various submissions, interested parties support the proposed amendments with the exception of the proposed amendment which would provide the VRB with the power to dismiss a proceeding that is frivolous or vexatious. I note however that ADSO and the Commonwealth Ombudsman support this specific amendment.

I would seek to reassure the Committee that, as I have indicated on previous occasions, the VRB is here to say 'yes' to appeals, where it can. The Parliament set up the VRB to review decisions of the Repatriation and Military Rehabilitation and Compensation Commissions. Every veteran who appeals to the VRB is entitled to have their matter reviewed on its merits.

The dismissal power set out in the proposed s155(8A) is a power that exists in virtually every other merits review tribunal, including the Administrative Appeals Tribunal. The law on the area of 'frivolous and vexatious' is well settled and has a very high threshold. As such, this proposed dismissal power would only be used in the very rarest of circumstances.

During the seven years I have been Principal Member of the Board I can think of only 3 matters where it would have been appropriate to hold a preliminary hearing to consider whether or not the matter should be dismissed on that basis. One involved an applicant seeking to reopen a case that had been finalized some 10 years previously. Another involved an applicant who continually sought to have a particular condition accepted without any new evidence or contentions to support the claim and no change to the relevant Statement of Principles, notwithstanding the matter had been considered on a number of occasions by the Board and the AAT. He was eventually declared vexatious by the Federal Court. The third matter involved

the applicant seeking to use the review process before the Board, including the summons power, for collateral purposes to obtain documents he might not otherwise been able to access. It was a clear abuse of process.

If the proposed power is granted, I can assure the Committee that it will only be in the rarest of cases that it will be used. The alternative is for a hearing, involving 3 members and usually a lengthy period of sitting time followed by a lengthy decision. This power, if granted will allow for a preliminary hearing before myself as Principal Member, to determine if the matter should be allowed to proceed further. I emphasise the power applies to a particular application not to a particular person. It cannot be used to bar all applications to the Board by a particular person. Each application must be considered on its own merits.

I can assure the Committee that I will not delegate the power to other Board Members or Registrars. This would be set out in the VRB's General Practice Direction, which is publicly accessible. The Practice Direction would also clearly set out that adequate notice of any preliminary hearing would be required to be given to the applicant, any hearing would be required to afford full procedural fairness, including the opportunity to address the Board on the issue. Finally, as with all VRB decisions, a full and comprehensive set of reasons would need to be provided if the power were exercised, in accordance with section 140 of the VEA, which provides that the Board must give a copy of its decision to each party to the review. A person would also, of course, have a right of appeal to the AAT, if the power were exercised.

It is also perhaps appropriate before closing to make reference to some of the submissions made by Mr Briggs. He suggests that as Principal Member I am 'ill equipped' and 'not sufficiently educated in the law' to exercise the proposed power whereas the AAT can be trusted to "exercise dismissal powers competently". I suggest that these submissions have no basis in fact and are very pejorative. For the committee's benefit, I point out that I hold the following qualifications:

- Bachelor of Commerce/Bachelor of Laws (UNSW)
- Master of Laws (Tribunal Procedures) (Monash)
- Graduate Diploma of Military Law with Merit (ANU)
- Accredited Specialist in Government and Administrative Law with the Law Society of NSW.
- Awarded the 2012 Law Society Excellence in Government Legal Service Award

Prior to joining the Board I worked at the AAT for 7 years. Presumably since then my legal skills have not diminished. I currently hold the position of Senior Vice President of the Law Society of NSW and I suggest this is an indication of my standing within the legal profession in NSW.

While I have made it clear that as Principal Member of the Board I will not delegate this power, for completeness of response to Mr Briggs' concerns about the competency of VRB members, I should also point out that many of the members of the Board also hold part time appointments with local State Civil and Administrative Tribunals (for example NCAT and QCAT) and are thoroughly competent to exercise a summary dismissal power within that jurisdiction. To suggest they may not be competent within the Board's jurisdiction to exercise the same power lacks any substance.

For the Committee's information, I attach herewith, a copy of an email that I have received from Mr Briggs. In the light of the contents of that email, the Committee may wish to consider what weight it should give to Mr Briggs' evidence and submissions.

Yours sincerely

Doug Humphreys OAM
Principal Member

25 May 2017

Humphreys, Doug

From: Brian Briggs
Sent: Thursday, 18 May 2017 4:25 PM
To: Humphreys, Doug
Subject: Submission into the Veterans' Affairs Legislation Amendment(Omnibus) Bill 2017
[TO BE CLASSIFIED]

Dear Mr Humphreys,

A colleague has raised with me an issue of perception that might have arisen which I would like now to clarify.

In my submission " Inquiry into the Veterans' Affairs Legislation Amendment (Omnibus) Bill 2017 " dated the 5 th May,2017 at page 4, I make an observation, among others, about the Office of " The Principal Member" of the Veteran's Review Board and specifically its exercise of powers under proposed amendments.

I wish to clarify that my comments and or concerns raised are directed at the office and not to you or any individual who may now or in the future hold this position. To be clear, my commentary should not be considered to cast doubt on whether you in your capacity as the Principal Member are sufficiently legally qualified but rather, the submission as put, is a general proposition that the potential could arise in certain circumstances if the legislation as proposed proceeds.

I hope this clarifies my position.

Any questions, please feel free to call.

Yours sincerely,

Brian

Brian Briggs
National Military Compensation Expert
Accredited Specialist in Personal Injury Law

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