



Veterans' Review Board

General Practice Direction

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1. Introduction

The Board supports veterans, current serving members, and their families in obtaining the benefits for service-related conditions to which they are entitled. The Board's purpose is to provide an accessible, fair, informal, quick and mechanism of review for the veteran community.

The procedures in this practice direction apply to all appeals, unless they are varied by a specific direction of the Principal Member or Board Member.

The Board's procedures are designed to assist veterans to resolve their appeals without the need to attend a full Board hearing.

It is also very important that appeals are resolved quickly without unreasonable delay. To ensure this occurs, the Board will proactively manage cases and may issue directions which:

- require things to be done;
- set time limits; or
- ask for submissions or other information to be provided.

2. The parties

Every appeal before the Board has two parties: "the applicant" and "the respondent".

The applicant is the person seeking review of a decision. This is usually the veteran, current serving member, or dependant.

The respondent is the primary decision-maker; either the Repatriation Commission or the Military Rehabilitation and Compensation Commission. Generally, the Commissions are represented by staff of the Department of Veterans' Affairs.

3. Information for veterans who are not represented

Veterans may represent themselves in their appeals. However, the Board encourages veterans to source and engage a representative of their choice.

A number of ex-service organisations (and the Legal Aid Commission in some states and territories) provide representatives free of charge, whether the veteran is a member of the organisation or not. The Board is able to provide a list of these organisations.

Lawyers cannot represent veterans at Board hearings, but they can appear at Alternative Dispute Resolution ("ADR") events and can help veterans to prepare their cases.

The Board also welcomes family members or friends who wish to support a veteran at ADR events or hearings.

4. Responsibilities of representatives

Representatives are an integral part of the veterans' appeal journey and play an important role in assisting veterans, current serving members and their dependents.

All representatives who represent veterans in their appeals before the Board must comply with the Board's Code of Conduct.

For more information, please read: *Code of Conduct for Representatives*.

5. Section 137 Documents (Departmental Report)

For every appeal, the respondent is required to provide the Board and the veteran with a copy of all of the documents relevant to the decision under review. The documents form part of the "Departmental" or section 137 report. This report must be provided within 6 weeks of an appeal being lodged.

For more information, please read the Practice Direction: "*Lodgement of Documents under section 137 for further information.*"

6. How the Board manages appeals

All appeals to the Board proceed to "Alternative Dispute Resolution" (ADR).ⁱ

ADR puts veterans at the centre of their appeals and promotes the concept of therapeutic jurisdiction. ADR gives veterans the best possible opportunity to resolve their appeals as early as possible and without the need for a full hearing.

ADR aims to:

- Let veterans tell their stories;
- Avoid delay and resolve applications as quickly as possible;
- Be more accessible to veterans, by utilising a facilitative Conference Registrar;
- Resolve or limit the issues in dispute;
- Use resources more efficiently, avoiding costly postponements; and
- Give outcomes that are lawful, effective and acceptable to the veteran and the Commission.

6.1 What is an outreach?

The first step in the ADR program is called an 'outreach'. An outreach will be held after the respondent has provided the Departmental section 137 report and the veteran has advised of the chosen representative. Generally, the Board provides the veteran's representative with a period of 4 weeks to prepare for the initial outreach.

The outreach is an opportunity for the veteran to tell his or her story. The veteran and representative are invited to speak directly with a Conference Registrar with a view to resolving the application/s.

The Conference Registrar will help veterans and their advocates to identify issues and the next best step to resolve applications quickly. Practically, this means identifying evidence which may be relied upon to raise the relevant causal connection with service, and/or identifying any additional evidence which is likely to assist.

Because discussions are such an important part of the outreach, the outreach will be held in private and is not recorded. The veteran or representative can attend by phone (or in person, upon request). The respondent does not participate in an outreach.

6.2 What do I need to prepare for an outreach?

A veteran is not required to prepare any written material for the initial outreach. However, a veteran is more than welcome to do so, as this may assist in progressing the appeal, quickly without delay.

6.3 What happens after the outreach?

The Board will always aim to resolve a veteran's appeal at the first outreach, wherever possible. There is no limit to the number of outreaches that may take place, only that they be utilised to resolve the veteran's application within a reasonable timeframe.

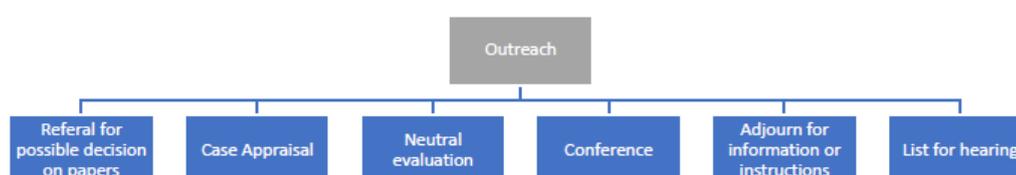


Fig 2. The options following outreach

6.4 What are the next steps following an outreach?

After an outreach, the Board has a variety of options to progress an appeal. These include:

- A favourable decision for the veteran being made on the papers;
- The whole or part of an appeal being withdrawn;
- The outreach adjourned, pending further information/instructions being obtained;
- Listing for a conference for the Commission to attend;
- Referring for a case appraisal or neutral evaluation.
- Listing for a full hearing

6.5 A favourable decision for the applicant, on the papers

Prior to the outreach, the Conference Registrar will have read the Departmental S137 report and any material provided by the veteran or representative. Based on this evidence, the Conference Registrar may consider that the appeal can be resolved favourably for the veteran. In these circumstances, the Conference Registrar may refer the appeal to the Principal Member or another Board member for approval for a favourable decision to issue.

If the whole of the appeal cannot be decided favourably for the veteran, the Conference Registrar may ask the veteran at the outreach if they wish to withdraw part of their appeal that cannot be decided favourably. If the veteran elects to do so, the remaining conditions may be decided favourably on the papers.

Where a favourable decision is issued, the veteran and the respondent will be sent a copy of the draft decision. If the veteran chooses to accept the draft decision, the Board will publish the decision and the appeal will be finalised. If a veteran does not accept the draft decision, the appeal will be listed for a full hearing before a panel of three Board members (who have not been involved in the ADR process and who are not bound by the draft decision).

It is important to note, whether or not a favourable decision can be issued is a matter for the Principal Member (or individual Board Member tasked with assessing the appeal) and cannot be pre-determined. If a favourable decision is not possible, the appeal will be listed for a further outreach so that the veteran has an opportunity to consider how they wish to proceed.

6.6 Outreach adjourned - more information/instructions

At an outreach, Conference Registrars may identify the kind of evidence the veteran needs to support his or her case and discuss how that material can be gathered. This can be done a number of ways:

- the veteran may be requested to obtain the further material within a certain time frame; or
- the respondent may be requested to obtain the further material (a section 148(6A) request).

As is the case for many tribunals, the Board is not bound by the rules of evidence. The Board encourages the parties to obtain relevant material in an efficient and economical way, in order to avoid delaying an outcome for the veteran.

If a veteran chooses to obtain material for his or her appeal, the Department of Veterans' Affairs will reimburse the costs of obtaining medical evidence up to a maximum amount of \$1000.00 per claimed condition.

Additionally, reimbursement of reasonable travelling expenses incurred in obtaining such medical evidence (and travelling expenses for those of an attendant) to a maximum of \$500 may also be paid.

In addition to making a direction about the required evidence and the time frame in which it should be provided, the Conference Registrar will also make a direction to 'adjourn the outreach'. This means the veteran will have an opportunity to further discuss the new material that has been obtained. The Conference Registrar will also set a time and date for the next discussion to take place.

6.7 Conferences

The ADR program also offers a 'conference' for suitable cases, which requires the active involvement of the veteran and respondent in reaching an agreement.

Conferences at the Board work in a similar way to a Conciliation model. There is a 'hands-on' and facilitative approach by the Conference Registrar, which includes the ability to suggest terms of agreement that accord with the requirements of the legislation.

The Conference Registrar will advise the parties of any material, such as a 'Statement of Issues', required before the conference. If the parties are directed to provide a statement of issues, each must prepare a brief statement setting out the issue(s) they consider to be in dispute. The parties must exchange their statements and send a copy to the Board at least one working day prior to the first conference. The statement of issues must address the specific issue(s) in question and must not be expressed in general terms. A template is available on the Board's website.

If an application is not resolved at a first conference, the Conference Registrar may direct that it be listed for a further conference. If an application proceeds to a second conference the parties will be requested to provide a 'Statement of Facts and Contentions'.

6.8 Statements of Facts and Contentions and supporting material

At least 14 days prior to the second conference, the veteran's representative is required to send a statement of facts and contentions to the respondent and the Board.

This statement must clearly and concisely set out the facts upon which the veteran relies and any contentions to be drawn from those facts, and should include references to relevant legislation and case law. All supporting material, including medical reports, questionnaires or statements, must also be exchanged and lodged at this time.

At least 7 days prior to the second conference, the respondent is to send to the veteran's representative and the Board a statement in reply, together with all relevant material.

If the veteran and the respondent agree on some facts, they can provide an 'agreed statement of facts' to the Board 14 days before the second conference. The parties will then have 7 days to lodge a statement of the contentions which they say should be drawn from those facts.

A template 'statement of facts and contentions' is available on the Board's website.

Please note that unrepresented veterans are not required to prepare a statement of facts and contentions.

6.9 What happens when the parties reach an agreement?

The Board encourages the veteran and the respondent to enter into discussions (independent of the Board) before or after any conference, with the objective of reaching an agreement.

Where the parties reach agreement, the Board will ask for the terms of this agreement to be set out in writing; referred to the "terms of agreement." The terms generally reflect the first page of a Board decision. The terms of agreement will need to be signed and dated by both parties.

The Board will review the agreement to ensure it is acceptable and lawful. If so satisfied, the Board will confirm the agreement by issuing a consent decision.

Templates for the terms of agreement are available on the Board's website.

6.10 Case appraisals and neutral evaluations

In addition to outreaches and conferences, ADR measures also include 'case appraisals' and 'neutral evaluations'. These are written assessments undertaken by Board members used to help veterans in making choices about their applications, including those that may have conflicting or insufficient evidence and/or are unlikely to be successful.

6.11 Listing for hearing

If a veteran's appeal is not resolved through an ADR event, the Conference Registrar will make a direction that the matter be listed for hearing. At the final ADR event, the Conference Registrar will also confirm with the veteran and/or representative whether they wish to add the material provided during the ADR process to the Departmental S137 report for consideration by the panel conducting the hearing. The material in question includes responses to section 148(6A) request/s, case appraisals or neutral evaluations.

Once the direction is made, the veteran's appeal will proceed to be listed for hearing by Registry staff. The veteran (or their representative) will receive a telephone call and listing notice from registry staff confirming the hearing date.

7. At the hearing

If an application cannot be resolved by ADR, the hearing allows the veteran a final opportunity to tell his or her story and make submissions in support of the appeal. Three Board members (a Senior Member, Services Member and Member) will listen to the veteran's submissions and may ask questions that are relevant to the Board's determination. The Board will make a decision, either orally at the end of the hearing, or in writing within 28 days of the hearing.

If a veteran does not wish to attend a hearing in person, he or she may be able to use video or telephone technology. Please see *Practice Direction No 4 of 2014 - Access to the Board: Use of Telephone and Video Links*.

8. Adjournments

If a veteran and/or representative cannot participate in the hearing on the scheduled date, they should request a change of hearing date as soon as possible. Whilst the Board will try to accommodate requests in extenuating circumstances, please note there is no guarantee that the hearing will be re-scheduled. Please see the Board's *Practice Direction No 5 of 2014 – Listing and Adjournments*.

9. Preliminary and directions hearing

A preliminary or directions hearing is a brief hearing conducted by the Principal Member or single Board Member to decide on how an appeal should be managed. Directions hearings are not required for every appeal. The Board may decide to hold a directions hearing if your appeal is failing to progress or the veteran has failed to appear. Alternatively, a party may ask for a directions hearing to determine a preliminary issue or concern that is unable to be resolved through the ADR process.



Jane Anderson
Principal Member

29 October 2018

ⁱ The full ADR program is not yet available to veterans in Queensland. However, limited ADR is available in the form of neutral evaluations and case appraisals. The Board anticipates the full ADR program will be made available to veterans in Queensland in early 2019.