



# Veterans' Review Board

## Practice Note 3 of 2018 Evidence

Evidence helps the Board to resolve veterans' appeals.

### Applicants' responsibilities in obtaining evidence

There is no onus of proof on veterans in respect of their appeals. However, the legislation does require the parties to use their best endeavours to assist the Board in meeting its objective of providing a mechanism of review that is accessible, fair, informal, quick and efficient.

After an applicant lodges an appeal, the respondent (the Repatriation Commission or Military Rehabilitation and Compensation Commission) is required to provide the veteran and the Board with a copy of all of the documents relevant to the decision under review. This is called the "Departmental" or section 137 report.

The section 137 report may not contain all of the documents that the applicant expects to be available. However, the Board welcomes veterans supplementing and adding information to the section 137 report, to ensure that the best case possible is brought forward in the appeal process.

### Types of evidence

The Board commonly receives the following types of evidence:

- Medical evidence: including service medical records, hospital notes or surgery reports and doctors' expert opinions.
- Documentary evidence: including service records, unit diaries or other published historical or contemporary accounts of events that took place during service.
- Witness statements: including those of fellow service personnel who can confirm the details of incident/s, participation in a sporting activities/occupations, or postings or deployments.
- The veteran's own story that describes the details of the disability, incident, or service event.

The veteran's own personal story is often the most important evidence the Board receives. It may be new evidence that the Department did not have when it made the primary decision. A veteran's own story is often an important factor in the Board making a favourable decision for a veteran. As such, the Board encourages veterans to participate in their appeals by participating in ADR events and attending Board hearings.

## How evidence is obtained

As is the case for many Tribunals, the Board does not apply the strict rules of evidence. Rather, the Board encourages the parties to obtain relevant and probative material in a manner that is informal, economical and quick. In order to avoid unreasonable costs to the parties and reduce the risk of unreasonable delay to the finalisation of veterans' appeals, the Board requests the parties to consider:

- Where appropriate, obtaining oral evidence from a doctor or specialist (who has reviewed the veteran) over the telephone during a hearing or ADR conference, rather than requiring the veteran to undergo a further medical assessment and obtain a full medical report. The oral evidence can be confirmed in a follow up email following an ADR outreach event;
- Where a medical report *is* required, the examination of the veteran is conducted by video or telephone conference, to avoid unnecessary travel, expense or delay;
- Witness statements provided by colleagues or other persons by email;
- The parties agreeing to obtain reports jointly, using a collaborative approach.

A veteran or representative is welcome to ask a Conference Registrar in an ADR event (or Registry staff prior to a hearing) if evidence can be obtained via one of the ways noted above.

## Assistance in obtaining your own evidence

Rather than asking the respondent to obtain material, it may be quicker and more economical for veterans to obtain their own medical evidence. It also gives the veteran more control over the choice of health professionals, location and timing of appointments, including the option of using tele-health where appropriate.

A veteran or representative is welcome to ask a Conference Registrar in an ADR event for help in drafting a schedule of questions for a health professional. The schedule of questions can be included in the direction that is issued following the ADR event.

## Reimbursement for veterans

If a veteran chooses to obtain his or her own material for the purposes of the 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. More information can be found at: [www.dva.gov.au](http://www.dva.gov.au).



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