



# Veterans' Review Board

## Fair Hearing Obligation

### Introduction

1. The Veterans' Review Board (VRB) is an independent tribunal that reviews certain decisions of the Repatriation Commission made under the *Veterans' Entitlements Act 1986* and decisions made under the *Military Rehabilitation and Compensation Act 2004*. Since its inception in 1985, the VRB's purpose has been provide a means of review that is fair, just, economical, informal and quick in an environment, which ensures respect for the service of applicants and dignity in the conduct of proceedings.
2. The purpose of this practice note is to provide some procedural guidance as to how the fair hearing obligation may be discharged.
3. This practice note has effect on and from **20 February 2012**.

### What is the fair hearing obligation?

4. The VRB has a general duty to ensure the right to a fair hearing. A fair hearing involves the provision of a reasonable opportunity for applicants to put their case – the right to be heard – and for the case to be determined to law by a competent, independent and impartial panel of members of the VRB.

## **What are the obligations of members?**

5. Members of the VRB have a responsibility to ensure that all parties receive a fair hearing and that the parties and their representatives are treated with courtesy and respect.

6. The provision of a fair hearing requires Members of the VRB to identify the difficulties experienced by any party, whether due to lack of representation, literacy difficulties, ethnic origin, religion, disability or any other cause, and find ways to overcome those difficulties and assist them through the VRB processes.

7. In some circumstances, a Member of the VRB may need to intervene in proceedings in order to:

- Clarify uncertainty;
- Identify relevant issues;
- Ensure that hearings are conducted efficiently;
- Ask a party or a witness questions to elicit information in relation to the relevant issues in the proceeding; and
- Deal effectively with inappropriate behaviour.

8. Members of the VRB have a duty to assist parties in order to ensure they are provided with a fair hearing. The assistance provided by a Member of the VRB may, depending on the circumstances, include:

- Explaining the relevant legislative provisions;
- Identifying the issues which are central to the determination of the application;
- Asking a party questions designed to elicit information in relation to the issues which are central to the determination of the application;
- Adjourning a hearing in circumstances where it would be unfair for a party to proceed.

## **What is the duty of the VRB to assist self represented applicants?**

9. Members have a responsibility to assist self represented applicants to the extent necessary to ensure a fair hearing. What a member must do to assist a self represented applicant depends on the particular circumstances and the nature of the case.

10. However, the assistance provided to a self represented applicant is limited. It is necessary to balance the interests of applicants who represent themselves with the need to afford procedural fairness and to ensure that hearings are conducted efficiently.

11. A member cannot become an advocate of the self represented applicant. Members must maintain a proper balance between:

- Assisting those appearing before the VRB and enabling them to participate fully; and
- The impartiality of the VRB.

## **What are the obligations of applicants and representatives?**

12. All parties must participate in the VRB's processes in a responsible way in order to assist the VRB to provide a fair hearing. Parties must:

- Treat the members of the VRB hearing the application and other representatives with courtesy and respect at all times;
- Act honestly in relation to the proceeding and must not knowingly give false or misleading information to the VRB;
- Cooperate with the VRB to facilitate the just, efficient, and timely resolution of real issues in dispute
- Act promptly, comply with all VRB directions for the timely resolution of disputes and minimise delay;
- Participate in Alternative Dispute Resolution (ADR), where appropriate, and when engaged in ADR:

- Use reasonable endeavours to resolve any issues that can be resolved and narrow the scope of any remaining issues in dispute.

13. Representatives for the Repatriation Commission and the Military Rehabilitation and Compensation Commission do not generally appear before the VRB. However, in respect of all matters before the VRB they have an obligation to act as a model litigant. In essence, this requires acting in good faith, with complete propriety, fairly and in accordance with the highest professional standards.

14. Finally, any communication by a person with the VRB in relation to an application must be through the relevant local Case Manager, Deputy Registrar or Registrar. A person must not contact a member of the VRB directly in relation to an application.

Doug Humphreys  
Principal Member