



# Veterans' Review Board

## General Practice Direction

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## 1. Introduction

The role of the Veterans' Review Board (**the Board**) is to provide 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).

The VEA requires the Board is to do this in a fair, just, economical, informal and quick way.

This practice direction sets out the procedure to be adopted for all applications for review before the Board. It 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 parties to the review every reasonable opportunity to present their case.

Please note that the procedures set out in this document can be varied by specific direction of the Principal Member or by a Board Member in relation to a particular review. This practice direction has effect on and from **30 September 2016**.

## 2. The parties to the review

Every application before the Board has two parties to the review they are called "the applicant" and "the respondent".

**The applicant** is the person who has sought review of a decision.

**The respondent** is the person who made the decision, either the Repatriation Commission or the Military Rehabilitation and Compensation Commission.

In this practice direction, a reference to the "applicant" and "respondent" includes any representative.

## 3. Information for applicants who are not represented

If you do not have a representative, the Board would encourage you to find and engage a representative to assist you to prepare and present your case.

A number of ex-service organisations and the Legal Aid Commission in some states and territories provide representatives free of charge, whether the applicant is a member of their organisation or not. A list of these organisations is available from your local Registry.

Please note that lawyers cannot represent you at a hearing before the Board, but they can help to prepare your case. To find out more please contact your local VRB registry.

#### 4. Responsibilities of Applicant representatives

Representatives are an integral part of the work of the Board and play an important role in assisting veterans and their dependents. As a representative, you should present the case to the best of your ability and promote the timely resolution of the case consistent with the best interests of the applicant. This includes:

- only taking on work that you can efficiently undertake in order to comply with timetables made by the Board;
- have the case ready to be heard as soon as practicable; and
- present the identified issues and relevant evidence clearly and succinctly.

In addition, as a representative before the Board you have a duty:

- to not mislead the Board;
- to maintain your objectivity and exercise independent judgment in the conduct and presentation of the case to the Board;
- to be aware of the relevant legislation and case precedents so as to be able to advise the Board of any sections of the Act(s), SoPs and factors, case law and policy which are relevant, regardless of whether they support or detract from the case; and
- to act courteously and behave in a proper manner before the Board.

#### 5. Responsibilities of Respondent (Commission) representatives

In addition to the duties noted above, pursuant to section 148(9) of the VEA, the respondent must use his or her best endeavours to assist the Board to make a decision in relation to a review.

#### 6. Section 137 Documents (Departmental Report)

For every application, the respondent is required to provide the Board and the applicant with a copy of the Departmental report, within 6 weeks of an application being lodged. The report must contain a copy of all of the documents relevant to the claim. Please see the specific Practice Direction: Lodgement of Documents under section 137 for further information.

#### 7. Further evidence added to the section 137 documents

**For non-ADR program cases**, the Board's practice is to, on receiving material from a party, add it to the section 137 documents and give a sequential folio number. A copy of the folioed material is then sent to the applicant and the respondent to add to their own copies of the s137 documents. The only exception to this is where the Board forms a view that the material may contain confidential or prejudicial information.

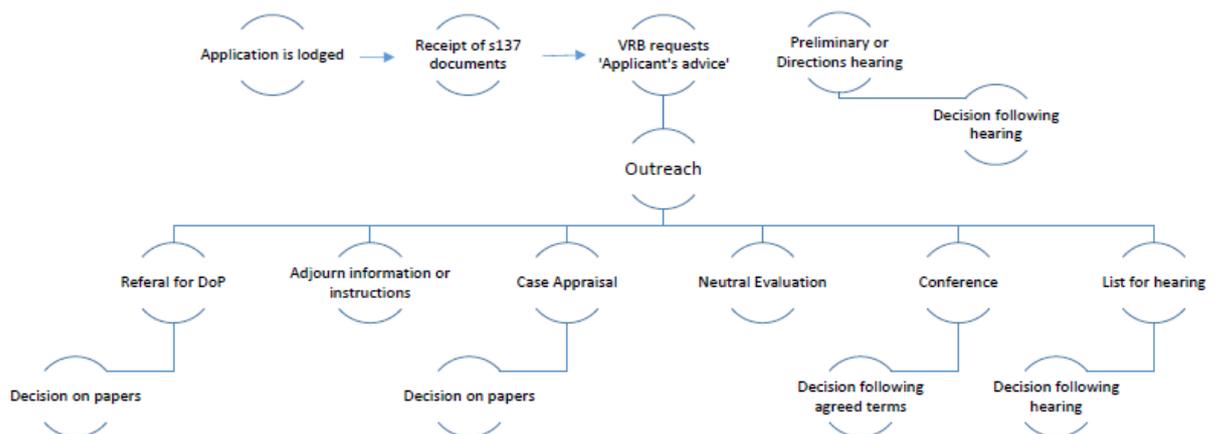
**In ADR program cases**, any material provided during an ADR event will not automatically be added to the section 137 documents.

It will only be added if the parties make a request and they agree to the material being made available at any future hearing.

There are two exceptions:

- material obtained under a section 148(6A) request will automatically be added to the section 137 documents (see further at 6.3 below), unless a party objects; and
- case appraisal reports and neutral evaluation reports will be automatically added to the section 137 report, unless a party objects (see further below at 8.5 and 8.6). Please note that the Board member who conducted the appraisal or evaluation will not sit on any subsequent hearing.

## 8. Alternative Dispute Resolution Program



**Fig1. The ADR case management model**

In 2015, the Board conducted a trial of modern and effective alternative dispute resolution (ADR) processes. The trial applied to new applications lodged in New South Wales (NSW) and the Australian Capital Territory (ACT) on or after 1 January 2015. The trial was extended in NSW and ACT while an independent review was undertaken.

The review concluded that the ADR program was a resounding success and that ADR was an essential element to allow the Board to achieve its objective of a providing a mechanism of review that is fair, just, economical, informal and quick. The ADR program is the subject of a state-by-state, progressive rollout. Importantly, the next location for rollout is Victoria and Tasmania. All new applications lodged in these states, on or after **30 September 2016**, will be referred to the ADR program.

All new applications lodged in New South Wales and the Australian Capital Territory will continue to be referred to the program. Limited ADR (as set out in section 7.6 and 7.7), in the form of case appraisals and neutral evaluations, continues to be available to non-ADR program applications.

The events in the ADR program at the Board are conducted by Conference Registrars. The first step in the ADR program for all applications is one mandatory **outreach** (for more detail please see below at 6.1).

If an application is not finalised at the first outreach, the next possible ADR step and the requirements for a hearing, will be discussed. At the end of the outreach, a direction will be issued by the Conference Registrar.

There is no limit on the number of outreaches that may occur in any application, within a reasonable timeframe. The key aim of the ADR program is to finalise as many applications as possible, without the need for a hearing. If an application is not finalised by an ADR processes it will listed for hearing.

The Board's ADR program is unique. It has been designed to take account of this special jurisdiction, where the majority of representatives are lay advocates and often volunteers. The program is focused on facilitative ADR with significant flexibility to resolve an application without the need for a hearing. Most importantly, it aims to encourage applicants to engage with the Board at the earliest possible opportunity.

Specific directions relating to the lodging of documents and other procedural matters may be given by a Conference Registrar or Board Member at any time. Any departure from the ADR procedures, set out below, must be with the consent of the Board.

## 8.1 Outreach

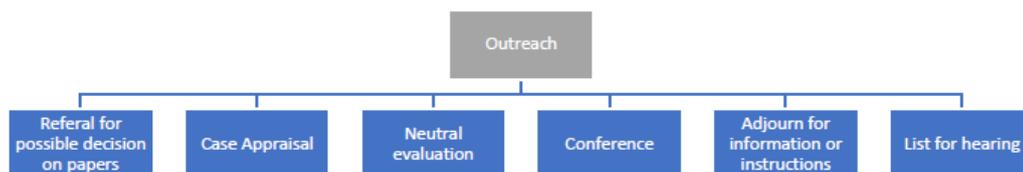


Fig 2. The options following outreach

The first step in the ADR program for all applications is one mandatory outreach. The purpose of outreach is to provide information about the Board's practices and processes to applicants who do not have a representative and provide an opportunity for them to consider representation in their appeal. In all other cases, the purpose of an outreach is to discuss how the application will proceed before the Board.

The outreach will usually be held once the applicant has the Departmental section 137 report. Generally, this will be a minimum of 4 weeks after the 'Applicant's Advice' form is received by the Board. If there are any special circumstances, a person may request that an outreach be held at an earlier or later date.

The outreach will take place between the applicant and the Conference Registrar only (the respondent does not attend). Generally, it will take place by telephone. If there is a need for an outreach to take place face to face, you should advise the Board as soon as possible.

The applicant is not required to prepare any written material for the outreach. However, they are more than welcome to do so, should they wish too, as this may assist progressing the application. As a minimum, at an outreach an applicant must:

- understand the issues to be decided;
- know the next step they wish to take; and
- know what evidence they want to gather.

If a representative appears they must have clear instructions from the applicant. As noted above, there is no limit on the number of outreaches that may occur in an application, within a reasonable timeframe, with the key aim of ADR being to finalise as many applications as possible, without the need for a hearing.

### **What are the next steps following an outreach?**

The next steps following an outreach may include a:

- favourable decision for the applicant, on the papers; or
- direction or request for additional information; and
- adjournment of outreach; or
- first conference; or
- case appraisal; or
- neutral evaluation; or
- direction to list for a full hearing.

Information on each one of these processes is set out below.

### **8.2 A favourable decision for the applicant, on the papers**

Prior to the outreach, the Conference Registrar will have read the section 137 report and any material provided by the parties. In some cases, if it appears the application can be resolved entirely favourably for the applicant, based on the papers, the Conference Registrar may refer the application to a Board member to determine if a favourable decision can be issued.

In the case where a favourable decision can be issued, the applicant will be sent a draft decision. If they choose to accept the draft decision, it will be published in the normal way and the application will be finalised.

It is important to note, whether or not a favourable decision can be issued is a matter for the individual Member assessing the case and cannot be pre-determined. If a favourable decision is not possible, the application will be listed for a further outreach so that the applicant has an opportunity to consider how they wish to proceed.

### **8.3 Direction or request for additional information**

At the outreach, the Conference Registrar may determine, in consultation with the applicant, that additional information is required. This can be done a number of ways:

- the applicant may be directed to obtain the further material within a certain timeframe; or
- the respondent may be directed to obtain the further material (this is called a section 148(6A) request); or
- the applicant may wish to make an FOI request; or
- the applicant may wish to request a conference, where the respondent is asked to attend with the Departmental files and the parties together can determine any additional material to be lodged as a supplementary section 137 report.

As noted above, it is important to understand that any material which results from a section 148(6A) request (whether favourable to the case or not) will be automatically added to the section 137 report and made available to the Board at any future hearing, if the appeal is not finalised by an ADR event. However, a party has a right to object and they should advise the Board of this ASAP after receiving the material.

In every application, where it is identified at the outreach that further material is required, the Conference Registrar will issue a direction that sets out which party is to obtain the material and in what timeframe. Usually, the Conference Registrar will also direct that the outreach be adjourned and resumed once the additional information is received. Alternatively, the Conference Registrar may direct that:

- the information be provided for another ADR process (such as conference, case appraisal or neutral evaluation); or
- in rarer cases, the application be listed for hearing once the additional information is received.

All of these options will be discussed at the outreach and directions made in consultation with the applicant.

## 8.4 Adjournment of outreach

Independent of the need to obtain further information, the Conference Registrar may in some cases direct that the outreach be adjourned. Usually, this would be done to allow the applicant an opportunity to consider if they wish to withdraw the whole application or part of the application. Where an outreach is adjourned, the Conference Registrar will always make a direction setting out a timeframe for when the outreach will be resumed.

## 8.5 Case appraisal

The reasons why an application may proceed to a case appraisal include:

- the applicant is seeking guidance as to whether the application turns on a particular evidentiary or factual issue;
- any hearing of the appeal would appear to be complex and lengthy based on the available material and as such, would benefit from a review by a Board member before proceeding;
- the applicant is seeking guidance as to whether additional independent investigation may assist in finalising the application; or
- it may be more convenient to evaluate on the papers rather than proceeding immediately to a hearing.

Where the Conference Registrar directs that an application is to be listed for a case appraisal, the applicant may be directed to provide material in support of this or submissions to clarify issues of diagnosis, kind of death (where applicable), medical and other evidentiary matters. The case appraisal will be expedited, where there is relevant material provided by the applicant to assist the member conducting the appraisal.

Case Appraisal is a process of assessing the facts in a case and by that process assisting the parties to finalise the matter, as outlined below:

- a. The appraiser (usually a Board member) reads all of the documents, including any submissions sent by the parties.
- b. The appraiser assesses the merits of the case.
- c. An outcome may be that a favourable decision can be made on the papers. However, this is a decision for the individual Member assessing the case and cannot be pre-determined.
- d. If a favourable decision can be made, the applicant will be sent a draft copy of the decision. If the applicant accepts the draft decision, it will be published in the usual way. If not accepted, the matter will proceed to a further ADR process or a hearing.
- e. If a favourable decision cannot be made on the papers, the appraiser will give a written opinion about the factual issues in dispute. This will only be a summary of the likely outcome at a hearing of the factual issues based on the evidence available at the time of the Case Appraisal. The opinion may be admitted in evidence at the Board hearing unless a party objects to the admission of the opinion.

- f. Further, the appraiser may make directions for a party to obtain relevant information which may assist in finalising the matter on the papers or to progress the matter to a hearing.

Where an application is referred for a case appraisal, the Conference Registrar will also set a timetable for the next step in the application. This is important to make sure the application continues to progress in the case where a favourable decision cannot be issued. Usually, the Conference Registrar will direct that the outreach be adjourned and resumed once the case appraisal has been completed. Alternatively, the Conference Registrar may direct that the once the case appraisal has been completed, the application be listed for:

- another ADR process; or
- hearing.

All of these options will be discussed at the outreach and directions made in consultation with the applicant.

**NOTE FOR APPLICATIONS OUTSIDE THE FULL ADR PROGRAM:**

Where a case appraisal is undertaken outside of the ADR program, and it does not result in a favourable decision on the papers, the applicant will be sent a copy and asked to advise of any further case preparation they wish to undertake or to lodge a completed certificate of readiness. Failure to advise the Board, within a reasonable timeframe, of the progress of the application following a case appraisal may result in an application being referred for a directions hearing.

## **8.6 Neutral Evaluation**

The reasons why an application may proceed to a case appraisal include:

- the applicant is seeking guidance as to whether a legal and/or factual issue is decisive; and
- is willing to have the identified issue evaluated; and
- most investigations and gathering of evidence has been completed and the applicant is seeking an opinion about the possible outcome of an application if it proceeded to hearing – based on the information available.

Neutral Evaluation is different to case appraisal. It is where an evaluator provides the applicant with an opinion about the outcome of a case, based on the papers, which can help a person work out if there is a setback in the application.

Before participating in Neutral Evaluation, the applicant is strongly encouraged to prioritise the issues for consideration.

At the conclusion of the evaluation, the evaluator will provide a non-binding opinion either on: what they think the possible or probable outcomes may be or particular point of law.

The purpose of the non-binding opinion is to provide an objective basis to assess how to proceed. For example, an applicant may wish to obtain a neutral evaluation to assist them in consider if they wish to proceed to hearing, or if they wish to withdraw the appeal.

If the matter is not finalised, the evaluator may recommend further relevant information be sought, which may assist in achieving finalisation through the use of some other ADR process or to progress the matter to a hearing.

In addition to issuing a direction referring an application for a neutral evaluation, the Conference Registrar will also set a timetable for the next step in the application, once the evaluation is completed. Usually, the Conference Registrar will direct that the outreach be adjourned and resumed once the neutral evaluation has been completed. Alternatively, the Conference Registrar may direct that the once the neutral evaluation has been completed, the application be listed:

- for another ADR process; or
- for hearing.

All of these options will be discussed at the outreach and directions made in consultation with the applicant.

**NOTE FOR APPLICATIONS OUTSIDE THE FULL ADR PROGRAM:**

Where a neutral evaluation is undertaken outside of the ADR program, the applicant will be sent a copy and asked to advise of any further case preparation they wish to undertake or to lodge a completed certificate of readiness. Failure to advise the Board, within a reasonable timeframe, of the progress of the application following a neutral evaluation may result in an application being referred for a directions hearing.

### **8.7 A first conference**

If the Conference Registrar directs that an application be listed for a first conference, this will usually be held a minimum of 4 weeks after the outreach, or as directed. The conference will be conducted by telephone and will take place between both the parties. If there are any special circumstances, a party may request that a conference be held at an earlier or later date.

At a first conference, the issue(s) in dispute and the need to gather any further evidence will be discussed and the prospect of settlement will be explored.

The reasons why an application may proceed to a first conference, instead of to another ADR process or directly to a hearing may include:

- the matter is so complex that a conference with both the parties may assist in clarifying the issues in dispute eg. an appeal concerning a unique or uncommon matter or multi layered and complex appeals such as incapacity compensation under the MRCA or where an applicant has eligibility under multiple acts;
- the Conference Registrar is of the view that the respondent may either hold certain information in its possession or may be able to obtain some information (which the applicant and the Board do not have) and this should be discussed first with the respondent before a direction or section 148(6A) request is issued;
- a decision that is entirely favourable to the applicant may not be able to be issued by the Board (eg. a part of the application can be decided favourably but another part cannot) and the applicant wishes to proceed with all matters under review, but wants to explore the prospect of settlement prior to a full hearing; or
- the applicant may consider there is a particular issue in dispute which he or she wishes to discuss with the respondent before proceeding to a hearing.

#### **8.7.1 Statement of Issues**

A statement of issues is not mandatory in all first conferences and a Conference Register will issue the parties with a direction, if it is required.

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.

## **What are the next steps after a conference?**

The next steps following a conference may include:

- terms of settlement and finalisation of the application;
- a second conference;
- a neutral evaluation; or
- a direction to list for a full hearing.

Further information on second conference, settlement and listing for hearing is set out below. Please note that once an application has proceeded to conferencing it cannot be sent back to an outreach or a case appraisal. This means that the opportunity for a decision on the papers is no longer available.

## **8.8 Second Conference**

If an application is not resolved at a first conference, the Conference Registrar may direct that it be listed for a second conference. Usually, a second conference will be held 12 weeks after the first conference, or as directed. The conference will be conducted by telephone and will take place between both the parties and a Conference Registrar. The evidence that has been placed before the Board will be discussed and the parties will:

- identify the issues precisely;
- explore the merits of each case and settlement options; and
- if matter cannot be settled, ensure it is ready for hearing.

In the same way that there is no limit on the number of outreaches that may occur in an application, within a reasonable timeframe, similarly there is no limit on the number of conference that may occur. The ADR process is flexible and the key aim of ADR is to finalise as many applications as possible, without the need for a Board hearing.

### **8.8.2 Statements of Facts and Contentions and supporting material**

Where an application proceeds to a second conference, at least 14 days prior to the second conference, the applicant's representative is required to send a statement of facts and contentions to the Commission representative and the Board. This statement must clearly and concisely set out the facts upon which the applicant 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 Commission representative is to send to the applicant's representative and the Board a statement in reply, together with all relevant material. This statement is similar to the Board's "submission templates". An updated template for statements of facts and contentions is available on the Board's website.

If the facts are not in dispute between the parties, an agreed statement of facts should be sent 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.

Unrepresented applicants are not required to prepare a statement of facts and contentions.

### **8.9 How is a matter settled following a conference?**

Either in discussion between themselves before or after any Conference, or during a conference itself, the applicant and the respondent may agree to the terms of a decision. This means that the respondent may agree to concede either the whole or part of an application and that applicant agrees with this. Following an agreement:

- the terms (which reflects how the first page of a Board decision normally appears) are put in writing and signed by or on behalf of both the parties;
- the parties lodge the signed terms of agreement with the Board;
- the Board is satisfied that a decision in those terms is within its powers; and
- the Board issues a decision based on the parties terms and the application is finalised.

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

### **8.10 What happens if part of the application can be conceded but applicant does not accept a part settlement?**

If the respondent agrees to concede only part of the application, but not the whole application and the applicant does not wish to accept the terms giving effect to a part settlement, the application will proceed to a full hearing. Prior to the hearing, the respondents offer to concede part of the application, will be added to the section 137 documents and provided to the Board at hearing. The Board may, in its decision on the review, give effect to the offer.

## **9. Hearing & Hearing Certificate**

If a matter has not finalised during an ADR process and a Conference Registrar directs that it is to be listed for hearing, within 7 days after the final conference, or as otherwise directed, the applicant will be required to send to the Board a completed hearing certificate. Hearing certificates can be obtained from the Board's website.

If a hearing certificate is not provided within the time directed, the application may be listed without further consultation or referred for a directions hearing, where the application may be considered for dismissal action.

## 9. Procedure for non-ADR program cases

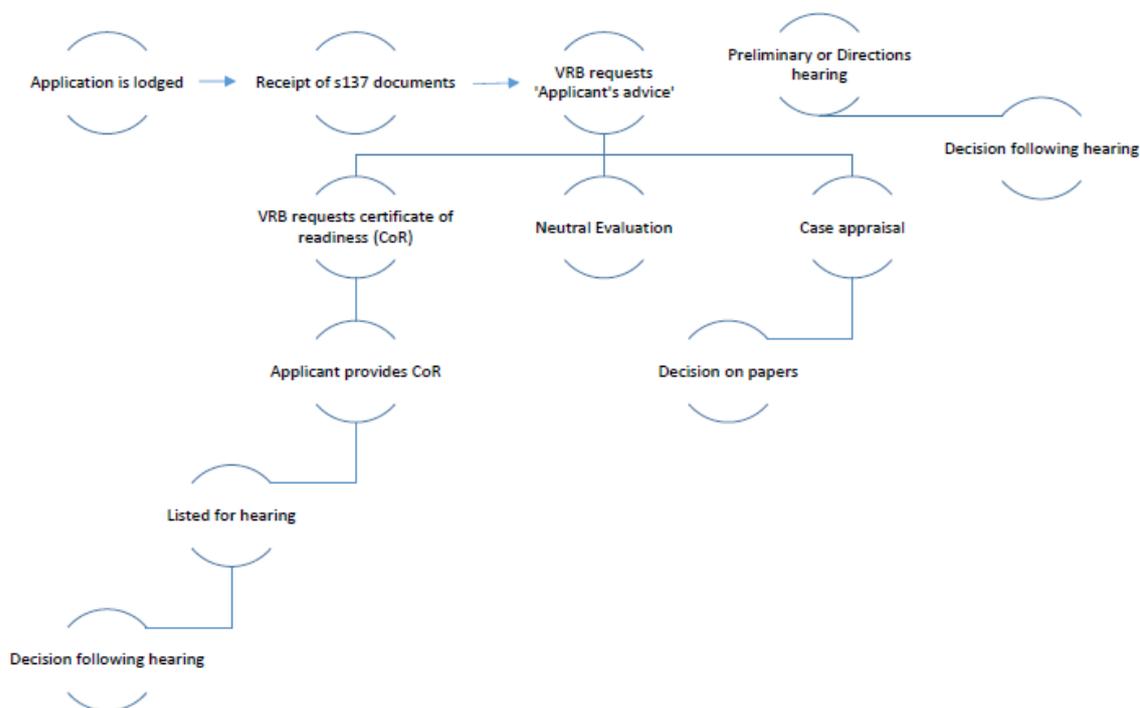


Fig 3 Non ADR program case management model

The non-ADR program case management model applies to the following:

- all applications lodged in QLD, SA, NT and WA; and
- all applications lodged in NSW / ACT prior to 1 January 2015; and
- All applications lodged in VIC /TAS prior to 30 September 2016.

## 10. Departmental Report and Freedom of Information Request

The Board must be satisfied that all material relevant to the review is available for their consideration. As such, the Board will request all Departmental files for a hearing.

If you consider that all the relevant information is not contained in the Departmental report you should consider making a Freedom of Information (FoI) request of DVA to obtain access to the files to ensure that your case is fully prepared.

Please consult the [DVA website page regarding FOI](#).

## **11. Advice of case preparation**

The applicant should consider carefully the need for further material and after receiving the section 137 report, advise the Board within a reasonable time of the case preparation that is being undertaken. If the Board is not advised of progress, the application may be referred for a directions hearing.

## **12. Costs**

If the applicant has already obtained medical evidence in support of the application and provided it to the Board, he or she can apply to the Department for reimbursement of the costs (including associated travel costs). Certain conditions and time limits apply and you should contact the Department for details. The Board is not involved in the processing of these claims.

## **13. Assistance from a Registrar**

Applicants are expected to obtain the material they consider to be important. However, a Registrar may assist the applicant to obtain relevant material. In making a request to a Registrar for assistance, you must:

- make the request as soon as possible;
- set out good grounds for seeking the particular evidence; and
- how the material would assist the Board in determining a relevant issue.

In the circumstances where a Registrar is satisfied the material will assist the Board in its determination and he or she makes a request for further evidence:

- the costs will be paid by the Department;
- while you need to identify the type of material that is required it is important to bear in mind that you cannot nominate specifics (such as a particular medical practitioner to provide a report or second opinions); and
- the material, whether favourable to your case or not, will be added to the Departmental report and provided to the Board, unless a party objects.

## **14. Summoning witnesses or documents**

A summons is an order for a person to appear at the Board and/or produce documents.

The Board will only issue a summons where there is no other practical way to obtain relevant material that will assist the Board.

It is a matter for the presiding member of the Board Panel hearing your case to issue a summons, at his or her discretion.

If you ask for a summons to be issued you are responsible for providing the person summonsed with expenses to travel to the Board and for paying the witness fees for any experts.

Please see the [Fact Sheet](#) available on the Board's website for further information regarding summons.

### **15. Lodging submissions, further evidence and certificate of readiness.**

By lodging a certificate of readiness (CoR), you are telling the Board that you are ready to go to hearing. Along with your certificate of readiness you should lodge the following:

- A submission addressing the specific issue(s) that you consider to be in dispute ([see the Board's submission templates](#)); and
- the material (eg. expert reports and the statements of all witnesses) referred to in your submission and on which you wish to rely.

The lodgement of all material ensures that it will be taken into consideration by the Board when reviewing your case.

You should lodge your CoR and accompanying documents as soon as you are ready to proceed to hearing. If an applicant does not progress in a reasonable time, it may be referred for a directions hearing, where dismissal action for failure to progress the application may be considered.

### **16. Case appraisal and other forms of alternative dispute resolution**

Currently, case appraisal and neutral evaluation are available for those non-ADR program applications. Please see paragraph 8.5 and 8.6 above for further information on these processes.

You can make a request for a case appraisal or neutral evaluation in a non ADR program application at any time with the Client Service Officer looking after your application. Generally, it is preferable to do this before you provide a CoR. When making a request, you should provide all material in support of the application, along with your submissions to clarify issues of diagnosis, kind of death (where applicable), medical and other evidentiary matters. The case appraisal will be expedited, where there is relevant material is provided to assist the member conducting the appraisal.

### **At the hearing**

### **17. Telephone or Video Proceedings**

At the discretion of the presiding member hearing your case, part of any hearing may be conducted either by telephone or video link. Please see Practice Direction No 4 of 2014 - Access to the Board: Use of Telephone and Video Links.

## **18. Adjournments**

Once a matter has been listed for hearing before the Board, an adjournment will not be granted unless there are good reasons to justify the adjournment. Please see the Board's Practice Direction No 5 of 2014 – Listing and Adjournments.

## **19. Preliminary hearing**

A preliminary hearing may be held if there are issues that must be resolved before the application can be considered by the VRB. Such issues include jurisdiction (whether the Board can review the application).

## **20. Directions Hearings**

A directions hearing may be listed at any time if the matter requires it, or the parties have not complied with this practice direction or with specific directions made by the VRB. Either party can make a request for a directions hearing if the need arises. The request should be in writing and set out the reasons for which the directions hearing is sought.

If you are asked to participate in the directions hearing, it is very important that the parties attend – this can be in person or by telephone. If you fail to participate in the directions hearing, the Board may continue with the hearing and make a direction or decision in your absence, including dismissing the application.

Doug Humphreys  
Principal Member