

ATTACHMENT 3: Proposed letter to be included on 137 report

VEA SECT 137 Provides for an applicant to put any matters of concern in relation to this 137 Report to the Secretary, this should be viewed in broad terms, and can include concerns relating to both the Merit of the decision, and also Judicial (legality) concerns of the decision. (There is a requirement that the decision maker has complied with Administrative Law in making this decision, more specifically the ADJR SECT 5 & SECT 6.

You need to be aware that you have 28 days to registers your “matters of concern”, should you need more time you will need to make a request for an extension within the 28 days. There is no restriction on how long the extension need be, and there is no capacity for the Commission to refuse an extension request.

There is no requirement to outline a reason, however you might need give consideration how long it takes for the following.

1. FFOI requests 28 Days (although DVA can request an extension to this)
2. External review of a refused FOI request to the Information Commissioner, no legislative time frame.
3. Complaint outcomes, no legislative time frames
4. Ombudsman Decisions, no legislated time frames
5. Creation of SoP,s, or creation of new SoP factors, no legislated time frames. (you might consider submitting a request to the RMA for an investigation into the creation of a new SoP (or Factors) if your claimed condition was non SoP. A new SoP, or factors might provide for the condition to be accepted. Accrued right provides for the condition to be accepted under the old SoP or non SoP circumstance or with existing factors, or under the new soP or factors should they be created.

Matters of Concern consideration could include, however is not restricted to the following restricted to the following.

1. S137 requires that report “refer to the evidence”, a list of the evidence can be found on your decision, (is there disparity between the list on the decision, and what has been included in the 137 Report?)
2. Are there document that you consider evidence that has not been included in the 137 Report?
3. In broad terms do you feel the Delegate has considered an irrelevant consideration?
4. In broad terms has the Delegate failed to consider a relative consideration?
5. Do you feel a thorough investigation has been conducted by the delegate? What aspect/s of the claim do you feel has not been appropriately investigated or overlooked?
6. Did the S31 review, conducted by the Review Officer adequately address the matters you outlined you were “**unhappy**” with in your application for a VRB review of the decision?

It is important you consider this opportunity to put “matters of concern to the Secretary” carefully, as there is a Federal Court Dictum that states that before seeking ADJR orders you

should exhaust other avenues of review, in so far as an ADJR, VEA SECT 137(3) is that avenue.

In failing to use this opportunity for review prior to seeking order you may be considered as a vexatious litigant by the court.

Effectively the decision has been made, if you seek legal assistance in having this remade or varied at Commission level you will be able to recover any (reasonable?) legal costs you have incurred under the CDDA process. In some instances you might also be able to recover costs should the matter proceed to the VRB. The exemption to this might be where you have provided new or clarifying evidence that is instrumental in having the decision remade or varied, that might be considered reasonable available to the Delegate.

The administrative consequences of this decision are as follows.

1. If the decision is remade and the condition is accepted the requirement for further review at either the VRB or AAT is negated.
2. If the decision is remade and the claim continues to be refused you will be provided with a more comprehensive reasoning which will more appropriately arm you for review at the VRB.
3. If the decision is varied, your claim will be accepted which negates the requirement for further review at either the VRB or AAT.

Should the Decision be either varied or remade, Departmental corrective measures will be initiated, they may include, as necessary.

1. Retraining the Delegate and S31 Review Officer
2. An immediate review of all open decision made by your Delegate, and all S31 Open Reviews conducted by the Review Officer.
3. A review of all refused Decision made by the Delegate and all S31 Reviews conducted by the Review Officer in the last 24(?) months.
4. Correction or creation of policy and instruction in order this same error cannot happen again under VEA
5. Consideration of corrective measures, should they be appropriate with other legislation.

The Secretary reserves the right to respond to “matters of concern” entirely as they deem fit, if the Secretary does not intervene, any matters of concern will be forwarded onto the VRB along with the results of any investigation the Secretary has had conducted into the matter.

In addition to S137 matters of concern to the Secretary, there is a Departmental representation that provides for you to request a new S31 review. Although the departmental representation outlines you will be contacted by the Review Officer and provided with clarification, you need be aware there is no legislated requirement for the department to review the matter, and there is no requirement to provide an outcome to an investigation.