

## **ADDITIONAL SUBMISSION**

### **A Better Way to Support Veterans – Draft Report**

The Principal Member of the Veterans' Review Board (VRB) welcomes the opportunity to contribute further to the Productivity Commission's Inquiry into Compensation and Rehabilitation for Veterans. This submission should be read in conjunction with an earlier submission provided to the Inquiry, which included information on the following:

- Merits review
- Alternative Dispute Resolution
- Obtaining evidence
- Board hearings before a 3-member panel
- Board decisions and reasons
- Protocols for veterans at risk of harm
- Case management
- Advocates
- Self represented veterans
- Liaison with the Department

The purpose of this submission is to provide an update on the information already provided about the Board's processes and procedures. In particular, the submission will focus on the specialised nature of the VRB, its determinative powers, and the developments that have occurred at the VRB since July 2018, when the earlier submission was prepared.

#### **A specialist Merits Review Tribunal**

Merits review is an integral part of ensuring good governance, accountability and transparency in public administration and contributes more broadly to better administrative decision making. Each year, thousands of veterans apply for merits review by the Board.<sup>1</sup> The Board offers accessible, informal and economical processes in which veterans can exercise their right to seek review of administrative decisions affecting their interests.

Over the years, the Australian Government has recognised the unique nature of military service and decided that veterans require a tribunal with expertise and procedures to ensure the efficient and effective determination of their disputes. In this respect, the VRB has remained a stand-alone body, in an environment where the majority of boards and tribunals at both a state and federal level are part of a unified framework.

The VRB's need for specialist expertise is met by the appointment of appropriately qualified and experienced members in the categories of Senior Member, Member and Services Member. Each member is appointed by the Governor-General on the recommendation of the Minister for Veterans' Affairs. Additionally, to be considered for appointment, Services Members, who have military experience, must be nominated by an ex-service organisation. Members of the VRB are statutory appointees and are not public servants employed by the Department of Veterans' Affairs.

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<sup>1</sup> The Board received around 2900 applications for review in 2017-18. This compares, for example, with the 44,400 liability conditions determined by the Department of Veterans' Affairs in 2017-18.

In the latter half of 2018, the Australian Government recommended the appointment of 29 members, the majority for a term of five years (the maximum term available under the legislation). As a result of these recent appointments, the VRB now has 47 members located across Australia. This is the highest level of members in the VRB's recent history, and also the highest representation of women, who account for approximately 45% of the VRB's membership.

Importantly, VRB members bring significant knowledge and experience to their roles. The membership consists of those with extensive legal, health professional and military experience, and includes a developed understanding of service life. All arms of the ADF (Army, Navy and Air Force) are represented, and service experience includes Vietnam, Middle East, East Timor service and peacekeeping service, contemporary operations as recent as 2019, and current service in Australian Headquarters Joint Operations Command (HQJOC).

Furthermore, members with service experience are not solely limited to one category of membership and frequently sit across all categories, including as Senior Members and Members. The Board has also welcomed members with health professional expertise in the Australian Defence Force (ADF), and currently has members who are medical specialists, nurses and psychologists, including those who continue to look after the wellbeing of serving members of the ADF.

The VRB's membership includes those with more than a decade's VRB experience, and who come from a diverse range of backgrounds. As such, the VRB has dedicated subject matter experts in both veterans' law and military service, encompassing a range of conflicts as well as peacetime service. The appointment of longstanding members has been critical to the retention of the VRB's specialist expertise and knowledge, and through their mentoring and induction training of new members, the VRB has been able to further broaden its specialist base. In this regard, the VRB has a demonstrated commitment to best practice succession planning, supported by the Australian Government over the last decade.

In addition, recognising the complexity of the legislative framework and the nature of the medical evidence it considers, the VRB is committed to the ongoing learning and development of members and staff. Most recently, the VRB has harnessed technology within its learning and development platform using webisodes and webinars to capture and preserve specialist knowledge. It is the intention of the VRB to share certain of its online resources more broadly, including with its external users.

### **Developments in the Board's review processes**

The Board's review processes are designed to resolve applications using the VRB's Alternative Dispute Resolution (ADR) program. The processes are also designed to ensure that those matters that are unable to be fully resolved via ADR, can be finalised at hearing informally and without undue delay.

The VRB's ADR program has had a staged roll-out to each VRB location in Australia, with Queensland being the final State to offer ADR to its resident veterans. From 1 January 2019, every application for review will enter into the VRB's ADR program. The full implementation of ADR across the country ensures that the VRB is in a position to continue to meet its objective of providing a review process for veterans that is fair, just, economical, informal and quick.

## **Outcomes 1 July – 31 December 2018**

During the period 1 July to 31 December 2018, the VRB had finalised more than 80% of applications by ADR, without the need for a full hearing, in under 5 months.

Furthermore, during this period, the VRB resolved more than 1580 applications. This was an increase of around 12% (or 200 applications) as compared to the number of applications resolved at the same time in the previous year.

## **New initiatives – Fast-Track trial**

The VRB strives for excellence, and in so doing, continuously seeks to improve and refine its review processes and be readily responsive to the needs of its users.

In late March 2019, the VRB will commence a 'Fast-Track' trial, utilising the conference mechanism (already offered as a part of the ADR program) in combination with the VRB's hearing model. The trial will provide a faster and more streamlined approach for a small category of particular disputes, including those which involve vulnerable veterans at risk of self-harm or financial hardship, where undue delay to the resolution of their applications would have a significant negative impact. The trial will also focus on applications involving incapacity payments, which often involve complex calculations requiring additional explanation.

Unlike the majority of VBR ADR events and hearings, applications that fall within the trial will require the active participation of a representative of the Repatriation Commission or Military Rehabilitation and Compensation Commission ('the Commission'). The Commission's role will not be to contest the veteran's application, but to properly inform the veteran and the VRB about the issues in dispute, for example, by providing live calculation tools and material to assist parties to reach agreement.

The trial will be led by VRB members with contemporary service experience, with expertise in conducting both VRB ADR events and hearings. The trial aims to facilitate the parties to reach agreement to resolve the dispute, and where that is not possible, to provide a mechanism to fully finalise the application on the day, without undue delay or expense.

If the parties are able to reach agreement during a conference facilitated by the VRB member, the VRB, after ensuring the agreement is legally correct, will immediately issue a decision that reflects the agreement reached by the parties, thereby effectively concluding the application for review. However, where an agreement cannot be reached during the conference, the VRB will convene an immediate hearing comprising a panel of three members who will determine the veteran's application that day.

## **The VRB's determinative powers**

There are two critical elements supporting the trial:

- The VRB's determinative powers; and
- The capacity for a full hearing before a panel of three VRB members.



The hybrid ADR and hearing model is used in a number of other jurisdictions to ensure the timely resolution of particular types of disputes. The immediacy of the hearing is conducive to parties focusing on the real issues in dispute, and encourages parties to reach agreement to resolve the application.

Significantly, in the event that the matter is unable to be resolved during the conference, the veteran does not have to effectively 'start from scratch' in presenting his or her case in an entirely new environment. Rather, the issues may well have been narrowed for any subsequent hearing. Importantly, the veteran avoids potential delay and stress by having a result delivered by the same determinative body on the same day.

The Fast-Track trial will have the additional benefit of shared learning; with the Commission's active participation in the proceedings enabling a closer understanding of the issues, both factual and legal, direct observation of ADR skills and practice, and direct proximity to the delivery of the VRB's reasons for decision in the event the matter proceeds to full hearing.

A full hearing is a critical element of the Fast-Track trial. VRB hearings are informal, quick and economical. The duration of a hearing is usually no more than one hour, and expert witnesses are not generally required to attend in person to give evidence. If further medical evidence needs to be clarified, this can be done simply and quickly by telephone. As lawyers and expert witnesses do not attend VRB hearings, party costs are very low as compared to other tribunal and court processes.

The Fast-Track trial is not a departure from the Board's wider ADR program, and the VRB will continue to provide the full range of ADR options presently available to veterans. In this regard, it is important to note that the ADR program will continue to be centred on the 'outreach'; a 15-30 minute discussion between the VRB and the veteran and/or representative during which issues are identified, options are developed and acceptable outcomes are discussed. The fact that the matters going through the VRB's ADR program are resolved on average after 1.5 outreaches (often by a decision on the papers) is testament to its success.

Finally, the VRB's determinative powers and the capacity for a full hearing are not only critical components of the Fast-Track trial, but comprise the essential framework underpinning the success of the VRB's ADR program.

### **Sustainable ADR**

Over the last four years, the VRB has been focused on creating sustainable ADR, and ensuring its continued integration into the review processes. There are five key elements in the VRB framework of sustainable ADR:

- (1) Independence
- (2) Flexibility
- (3) Accessibility
- (4) Certainty
- (5) Economy

**Independence** is a key element of sustainable ADR. Prior to an application for review being considered by the VRB, a veteran will have had correspondence with the Commission; both in respect of the primary decision made by the Commission and the internal review or 'screening' conducted by the Commission. On these occasions, the veteran has been informed that the Commission has made a decision, for example, to refuse his or her claim, and that there are no grounds to overturn that decision.

Often there is a natural progression in the evolution of the veteran's dispute, which can include the invocation of wider complaint mechanisms. By the time the matter reaches the VRB, the involvement of an ADR practitioner (a VRB member) who is independent of the parties can help to address the concerns, give the parties trust and confidence in the process, and an understanding that the application will be considered afresh; objectively and fairly.

During a VRB ADR process, a VRB member will assist the parties to understand if their assumptions about the case are right or wrong. Reality testing the parties often allows them to reach a common position and agreement. This approach risks being compromised if there is a perception by a party that the ADR facilitator is not independent.

Furthermore, veterans can be empowered by the private context of the outreach, facilitated by a VRB member who is independent of the parties, to provide further information without the concern that this could be used to their disadvantage at any subsequent hearing.

**Flexibility** is also a key element in sustainable ADR. The VRB's ADR program recognises that an application for review must be approached in a manner that is both tailored and timely. The VRB is alert to the differing needs of veterans within a diverse community, involving different kinds of matters. In this respect, the VRB's ADR program has multiple options to actively facilitate a resolution that is acceptable to both parties, as well as assisting the parties to find their own solutions to their issues. The VRB's ADR program continues to evolve and adapt to the needs of its users, consistent with its broader remit.

The Fast-Track trial is evidence of the flexibility inherent in VRB ADR. It recognises that certain disputes would benefit from being fast-tracked to a conference with the parties, rather than be listed for an initial outreach that would ordinarily be required. The VRB will continue to utilise its broad suite of ADR mechanisms to best respond to different types of matters and the particular needs of the parties.

Complementing flexibility, ADR procedures need to be **easy to understand and easy to access**. The VRB invests and allocates resources to ensure parties not only are properly informed about available VRB ADR options and outcomes, but can be active participants in the review process.

The Australian Government allocated \$2.7 million to enable the introduction of a modern IT case management system to support the VRB's ADR program.<sup>2</sup> The VRB's IT case management system is now operational in every VRB location, and has allowed the VRB to transition to a paperless environment, speed-up internal processes, and reduce timeframes and their associated costs.

The VRB's IT transformation will be complete when an e-portal is launched in 2019. The e-portal will enable veterans to have better and improved access to the VRB, and easily obtain information about their applications for review. In particular, veterans will be able to e-File their documents through automated case management and monitor the progress of their cases online. This will be particularly welcomed by current serving members on postings away from home and those veterans who live in regional areas; providing a quick and seamless method of communication with the VRB and the Commission.

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<sup>2</sup> The Hon Dan Tehan MP Media Release 22 September 2016

Complementing the e-portal, the Board continues to ensure ease and access by providing veterans with a dedicated Client Service Officer for their matters. In this respect, every single ADR event, including an outreach, is scheduled one-one-one with the veteran or his or her representative to ensure their participation via an acceptable method (e.g. telephone, video-conference, or face-to-face) at an appropriate date and time. For example, it is not uncommon for the VRB to schedule an ADR event for current serving members on operational deployment; which requires special listing considerations. Importantly, the VRB does not issue notices to attend ADR events without consultation with the veteran or representative. This is a unique service, not generally offered by other courts or tribunals. Whilst resource intensive, it is an essential component of the VRB's operations, and is consistent with the specialist nature of the VRB and the specialist mechanism of review it provides.

In addition, the VRB recognises that a veteran's ability to access and participate in review processes will sometimes be affected by mental health concerns. Consequently, the VRB has prioritised and affirmed its commitment to veterans' mental health and individual wellbeing. Recently, the VRB has entered into a learning and development partnership with Phoenix Australia Centre for Posttraumatic Mental Health. The expertise of Phoenix Australia will assist VRB staff and members in better understanding veterans' mental health and to engage in best practice in every aspect of VRB work; be it on the reception desk or in the hearing room.

**Certainty** and finality are also key elements in the VRB framework of sustainable ADR. Resolution of disputes via a decision on the papers or following terms of agreement - avoids the time delays associated with those disputes that progress to hearing. Veterans' participation in ADR allows veterans to have a closer understanding of the issues in dispute, and to have more control over the outcome of their applications.

**Economy** is a final key element in sustainable ADR. Veterans are not charged any fees to access the VRB. If any costs are incurred in obtaining further material required during the VRB review process, these are usually borne by the Department of Veterans' Affairs. Generally, the costs incurred by the Commission during the VRB review process are also low. For the majority of VRB ADR events and hearings, a Commission representative is not required to attend. The prohibition of lawyers appearing at VRB hearings means that legal costs are also avoided. Finally, as indicated previously, on average, applications proceeding through the VRB's ADR program are resolved within 1.5 outreaches, representing approximately 25 to 45 minutes of total time taken in scheduled ADR activity. Similarly, those matters that proceed to hearing are listed for one hour and generally do not involve the attendance of expert witnesses. As such, witness costs are also avoided.

## **Conclusion**

The VRB welcomes the opportunity to respond to the Productivity Commission's draft report, and to provide an updated overview of the VRB's outcomes and activities.

The VRB is continuing its transformation to ensure it is at the forefront of modern administrative review, and is committed to consistently meeting its statutory objective of providing a mechanism of review that is accessible, fair, just, economical, informal and quick; is proportionate to the importance and complexity of the matters it reviews; and promotes public trust and confidence in its decision-making. The VRB is dedicated to harnessing its specialist expertise to provide its review processes to a diverse and evolving range of veterans and current serving members; ensuring their applications are resolved fairly, efficiently and effectively.