EXPLANATORY STATEMENT

Veterans’ Entitlements (Period to Show Decision is Reviewable by Veterans’ Review Board) Instrument 2014

EMPOWERING PROVISION

Paragraph 155(7)(b) of the Veterans’ Entitlements Act 1986 (the Act or VEA).

PURPOSE

The attached instrument (2014 No. Min 84) prescribes, for the purposes of paragraph 155(7)(b) of the Act, a period (28 days) in relation to a set of circumstances involving an application to the Veterans’ Review Board (VRB) for the review of a decision by the Repatriation Commission or the Military Rehabilitation and Compensation Commission (application for review).

The circumstances are that the National Registrar of the VRB has notified the applicant that the decision of the Repatriation Commission or the Military Rehabilitation and Compensation Commission (the decision) that is the subject of the application for review does not appear to be reviewable by the VRB i.e. the decision is not one set out in section 135 of the Act, and will move to have it dismissed.

The applicant has until the end of the prescribed period to show the decision is reviewable by the VRB.

The prescribed period is the period specified in a legislative instrument made by the Minister for Veterans’ Affairs for the purposes of these circumstances. The Minister, by the attached instrument, has specified “28 days” as the prescribed period.

If, by the end of 28 days, the applicant does not offer any reason why the VRB is able to review the decision, or offers an insufficient reason, the Principal Member of the VRB may dismiss the application without proceeding to review the decision.

A decision of the Principal Member to dismiss the application is reviewable by the Administrative Appeals Tribunal (s. 155A(2)).

The power in the Principal Member to dismiss an application for review in the relevant circumstances was given by the Veterans’ Affairs Legislation Amendment (Mental Health and Other Measures) Act 2014.

The purpose of the power is to enhance the operations of the VRB by enabling an ostensibly baseless application for review to be dismissed without the need for the VRB to actually review the decision on which the application is based – which would save VRB time.

CONSULTATION

Yes. The Principal Member of the VRB.
Noting that paragraph 26(1A)(d) of the *Legislative Instruments Act 2003* requires an Explanatory Statement for a legislative instrument to contain a description of the nature of any consultation in relation to the instrument, the consultation in the present case was comprised of meetings, telephone conversations and e-mails with the Principal Member.

**RETROSPECTIVITY**

None.

**DOCUMENTS INCORPORATED-BY-REFERENCE**

None.

**HUMAN RIGHTS STATEMENT**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The attached legislative instrument could engage an applicable right or freedom. Possibly it relates to Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) which provides that: ‘All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law’.

Arguably by giving a person in a legal proceeding a reasonable period (28 days) in which to contest a decision by the adjudicator to dismiss the person’s case, the person’s right to a fair hearing is enhanced and thus the attached instrument is compatible with the Article 14(1) of the ICCPR.

The period of 28 days was chosen because it is currently used under the *Veterans’ Entitlements Act 1986* in a situation similar to the present. Thus under subsection 137(3) of the Act an applicant to the VRB has 28 days in which to provide comments to the Secretary of the Department of Veterans’ Affairs (DVA) in relation to a report prepared by DVA concerning evidence in DVA’s control that is relevant to the person’s application.

Conclusion

The attached legislative instrument is considered to be compatible with the human right to a fair hearing by a Court or Tribunal in that the period prescribed in it for a litigant to challenge a decision by the VRB to dismiss the person’s application for review on the ground of lack of jurisdiction to hear the person’s application is reasonable in the circumstances.

Michael Ronaldson  
Minister for Veterans’ Affairs  
Rule-Maker

**FURTHER EXPLANATION OF NEW PROVISIONS**

See: Attachment A
Attachment A

**Section 1**
This section prescribes 28 days for the purposes of paragraph 155(7)(b) of the *Veterans’ Entitlements Act 1986*.

**Section 2**
This section sets out the name of the instrument - *Veterans’ Entitlements (Period to Show Decision is Reviewable by Veterans’ Review Board) Instrument 2014*.

**Section 3**
This section provides that the instrument commences on the day after registration.