EXPLANATORY STATEMENT

Veterans' Entitlements (Period to Show Decision Reviewable by Veterans’ Review Board) Instrument 2025

Authority

1. The Minister for Veterans’ Affairs makes this instrument under paragraph 155(7)(b) of the *Veterans’ Entitlements Act 1986* (the Act)*.*

Purpose

1. This instrument repeals and replaces the existing *Veterans’ Entitlements (Period to Show Decision is Reviewable by Veterans’ Review Board) Instrument 2014*, due to sunset on 1 April 2025.
2. This instrument is a disallowable legislative instrument.

Overview

1. Subsection 155(7) of the Act allows the Principal Member to dismiss an application for the review of a decision if—
   1. the National Registrar has given written notice to the applicant, telling the applicant that the decision sought to be reviewed does not appear to be reviewable by the Board; and
   2. the applicant is unable to show that the decision is reviewable by the Veterans’ Review Board before the end of a period prescribed by the Minister.
2. Paragraph 155(7)(b) of the Act confers on the Minister the power to make a legislative instrument prescribing the period (the ***prescribed period***). This instrument is made under the power.
3. In this instrument, the Minister prescribes a period of 28 days beginning from the day the National Registrar notifies the applicant as the period before the end of which the applicant must show that a decision is reviewable by the Board. If the applicant is unable to show that before the end of the prescribed period, the power of the Principal Member to dismiss the application without reviewing it is enlivened.
4. Under section 36 of the *Acts Interpretation Act 1901*, the first day of the 28-day period is the day after the day the National Registrar notifies the applicant in writing under paragraph 155(7)(a) of the Act.

Consultation

The Veterans’ Review Board was consulted in the development of this Instrument.

Commencement

The instrument commences on the day after the day it is registered.

Human rights implications

This instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment A.**

Making the instrument

The instrument is made by the Minister for Veterans’ Affairs.

Attachment A

Statement of Compatibility with Human Rights

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

*Veterans' Entitlements (Period to Show Decision Reviewable by Veterans’ Review Board) Instrument 2025*

The attached legislative instrument engages an applicable right or freedom. This instrument may be perceived to have limited the right outlined in Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR):

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

The right under Article 14(1) of the ICCPR encompasses the right to a fair hearing. One element of the right to a fair hearing is that each party must have a reasonable opportunity to present their case.[[1]](#footnote-1) It also includes the obligation that a matter be finalised expeditiously within a reasonable period and undue delay.

Although this instrument prescribes a set period within which an applicant for review of decision must show that the decision is reviewable by the Veterans’ Review Board, it is a reasonable period of 28 days after the day the National Registrar notifies the applicant under paragraph 155(7)(a) of the Act.

Also, the application for review is not dismissed automatically if the applicant fails to show the decision is reviewable by the end of the prescribed period. Rather, it merely allows the Principal Member of the Board to dismiss the application. The Principal Member may, but need not, dismiss the application.

It is in the interest of all parties to have an application for review finalised expeditiously so the applicant may carry on with their life with a level of certainty, and can decide on the next steps to be taken. The Commission would also be able to plan ahead as to any potential legal actions that it may be involved in in relation to the application.

By giving a person in a legal proceeding a reasonable period in which to contest a decision by the Principal Member to dismiss the person’s application, the person’s right to a fair hearing is in fact promoted and thus the attached instrument is compatible with the Article 14(1) of the ICCPR.

The period of 28 days is prescribed because it is the period that applies under the Act in a situation similar to the present. Under subsection 137(3) of the Act, an applicant to the Board has 28 days in which to provide comments to the Secretary of the Department in relation to a report prepared by the Department concerning evidence in its control that is relevant to the application. Consistency in the duration of the period in which an applicant for review is to respond to an assertion by the Commission, the Board or the Secretary would assist applicants in navigating the review processes under the Act.

Conclusion

The attached legislative instrument is compatible with the right to a fair hearing by a court or tribunal in that the period prescribed in it for a person seeking review to show that, before the application may be dismissed, the National Registrar erred in holding that the application was not reviewable by the Board.

Minister for Veterans’ Affairs

Rule-Maker

1. UN Human Rights Committee, *General Comment No. 32, Article 14, Right to equality before courts and tribunals and to fair trial* (2007) [13]. [↑](#footnote-ref-1)