



Australian Government
Department of Veterans' Affairs

Litigation Policy for Veterans' AAT Appeals

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Contents

Contents	2
Background.....	3
1. General Approach	4
2. Engagement of Legal Providers	4
3. Standing Instructions	4
4. Model Litigant Policy	5
5. Transparency in AAT proceedings as to use of veterans' information	6
6. Best endeavours	6
7. Emphasis on Early Resolution	7
8. Confidentiality	8
Early dispute resolution.....	9
Confidentiality order	9
Legal professional privilege	9
Implied undertaking	10
Public interest immunity	10
9. Self-Represented Veterans	11
10. Hearings and Evidence	12
Giving evidence concurrently	12
Giving expert and opinion evidence.....	13
11. Counsel	13
12. Role of Counsel where veterans are not legally represented	14
13. Use of social media	14
14. No surveillance	15
15. Commencement of policy	15
Bibliography.....	16

Background

The Department of Veterans' Affairs (**DVA**) is responsible for overseeing the conduct of veterans' appeals in the Administrative Appeals Tribunal (**AAT**) on behalf of the Repatriation Commission and the Military Rehabilitation and Compensation Commission (**MRCC**) (collectively referred to as **the Commissions**).

The Repatriation Commission is responsible under the *Veterans' Entitlements Act 1986* (**VEA**) for providing treatment and granting pensions, allowances and other benefits to veterans, their dependants and other eligible persons.

The MRCC administers benefits and makes determinations related to the acceptance of liability for service related conditions under the *Military Rehabilitation and Compensation Act 2004* (**MRCA**) and the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (**DRCA**).

DVA recognises that the decision to pursue an appeal in the AAT can be stressful and difficult for a veteran and their family. This policy outlines DVA's expectations for how litigation will be conducted on behalf of the Commissions in the AAT, and any subsequent appeals. It is specifically intended to promote transparency and clarity as to how DVA will instruct its Advocates and Legal Providers in the conduct of proceedings in the AAT.

Fundamentally, DVA Advocates and Legal Providers must conduct matters on behalf of the Commissions in accordance with the objectives of the AAT. These are to provide appeals which are 'accessible, fair, just, economical, informal and quick', and 'proportionate to the importance and complexity of the matter'.¹

The Commissions expect DVA Advocates and Legal Providers to be fully aware of the relevant provisions in the legislation under which an appeal is brought and of any relevant practice directions, jurisdictional guides and guidelines available on the AAT website.

This policy has been developed with the assistance of Emeritus Professor Robin Creyke AO and has significantly benefited from her expertise in military and veteran law and her deep experience as a former Senior Member of the AAT.

¹ AAT Act s 2A(a)-(c).

1. General Approach

- 1.1 The Commissions conduct AAT proceedings in accordance with their obligations under:
 - a. the law,
 - b. the *Legal Services Directions 2017*,
 - c. the *Administrative Appeals Tribunal Act 1975 (AAT Act)*,
 - d. any applicable case law,
 - e. the AAT Practice Directions, jurisdictional guides and guidelines, and
 - f. any applicable Commonwealth Government or DVA/Commission policies.
- 1.2 The Commissions endeavour to finalise AAT proceedings in a fair, timely and equitable manner consistent with the law and strive to assist the AAT make its decision, as required by section 33(1AA) of the AAT Act.
- 1.3 Consistent with the veteran-centric focus of DVA, the conduct of AAT proceedings should be in a manner that is sensitive to the health and welfare of the veteran applicant, recognising that a veteran's decision to pursue an application in the AAT can be stressful and difficult for the veteran and their family.
- 1.4 There is an expectation that if a veteran may benefit from mental health support, DVA staff and Legal Providers should encourage the veteran to seek assistance through the Department's 24 hour counselling service, Open Arms – Veterans & Families Counselling service – telephone 1800 011 046. Most Veterans can also access treatment for any mental health condition through DVA's Non-Liability Health Care program. More information is available at <https://www.dva.gov.au/health-and-treatment/injury-or-health-treatments/mental-health-care/free-mental-health-care-veterans>.

2. Engagement of Legal Providers

- 2.1 The Litigation Team has day-to-day responsibility for the management of AAT and appeal matters, including the engagement and management of Legal Providers.

3. Standing Instructions

- 3.1 Standing Instructions have been developed to outline the expectations and requirements for managing veterans' appeals in the AAT. These contain relevant quality assurance processes, as well as forms and templates that are to be utilised. Standing Instructions are provided to all Legal Providers.

4. Model Litigant Policy

- 4.1 AAT and appeals matters are to be conducted in a manner consistent with all requirements of the Model Litigant Policy, as set out in Appendix B to *the Legal Services Directions 2017*.² DVA is required to provide comprehensive and accurate reporting of allegations of non-compliance via an annual compliance certificate, and to take appropriate remedial action.³
- 4.2 DVA Advocates and Legal Providers are to act with propriety, fairly, honestly, ethically and according to the highest professional standards. The standards of a model litigant exceed the ordinary ethical obligations of the legal profession.⁴
- 4.3 A significant proportion of matters that proceed to the AAT involve veterans who are either self-represented or represented by a non-legally qualified veterans' advocate. The following elements of the Model Litigant Policy are particularly relevant when dealing with veterans that do not have legal representation:
 - Avoid unnecessary delay in litigation;
 - Making an early and realistic assessment of the Commissions' prospects;
 - Acting transparently and consistently in the handling of litigation;
 - Endeavouring to limit the scope of proceedings wherever possible;
 - Giving consideration in all cases to alternative dispute resolution (ADR) processes;
 - Not requiring veterans to prove matters which are known to DVA or the Commissions to be true;
 - Not contesting liability if the dispute is about quantum;
 - Facilitating early settlement of litigation where appropriate;
 - Not relying on technical defences unless the Commonwealth's interests would otherwise be prejudiced; and
 - Not taking advantage of a veteran's lack of resources.

² *Legal Services Directions 2017*, Appendix B – the Commonwealth's obligation to act as a model litigant

³ Attorney-General's Department, Office of Legal Services Coordination *Guidance Note 3*.

⁴ *Legal Services Directions 2017*, Appendix B cl 2, notes 1 and 3.

- 4.4 If a party raises concerns regarding adherence to the Model Litigant Policy, this needs to be raised immediately with the Director Litigation and General Counsel, with the relevant self-assessment and notification to be made to the Office of Legal Services Coordination (OLSC).

5. Transparency in AAT proceedings as to use of veterans' information

- 5.1 As part of an AAT appeal, it may be necessary to provide the AAT with evidence about a veteran's service, medical conditions, personal circumstances and financial affairs. In such cases, and as part of the pre-hearing processes of the AAT, DVA Advocates and Legal Providers are expected to maintain transparency. This includes informing the Tribunal and the parties about the information and evidence that will be collected and provided to the Tribunal and to identify issues that will be tested if the matter proceeds to a hearing.

6. Best endeavours

- 6.1 There is an obligation on both parties to use their 'best endeavours' to assist the AAT to fulfil its statutory objectives.⁵ This requires DVA Advocates and Legal Providers to focus on assisting the AAT to reach the correct or preferable decision. The purpose of the obligation has been described as follows:

[Best endeavours] is intended to assist the Tribunal in managing the conduct of reviews, by encouraging parties and their representatives to conduct themselves in a manner that would facilitate the fair, just, economical, informal and quick resolution of the matter at hand (amongst the other aspects of the Tribunal's objectives). New subsection 33(1AA) would reinforce the nature of merits review in the Tribunal as an administrative process that must be accessible to users and produce the correct or preferable decision with the least possible attendant cost and delay.⁶

- 6.2 Best endeavours does not impose a strictly legal obligation but in conjunction with other procedural provisions, there may be sanctions for breach. Failure to provide centrally relevant evidence,⁷ information that is the subject of a direction, or that misleads the AAT or the other party by omission or half-truth, may result in the matter being dismissed without review⁸, or used as evidence to support a finding against a party.⁹
- 6.3 Examples of practical steps to assist the AAT are:

⁵ AAT Act s33(1AA) and (1AB). See also *Legal Services Directions 2017* Appendix B cl 4.

⁶ Explanatory Memorandum, Tribunals Amalgamation Bill 2015 Sch 1 item 55

⁷ *Kasupene v Minister for Immigration and Citizenship* [2008] FCA 1608.

⁸ *The Applicant 0108 of 2014 and Secretary, Department of Social Services* [2019] AATA 4091 at [18]-[20].

⁹ *Frugtniet v Australian Securities and Investments Commission* [2016] FCA 995 per Bromberg J at [159], [169]-[170]; *Re Whitlock and Comcare* [2019] AATA 1911 at [69].

- Making information easily available to the Tribunal
- Avoiding delays
- Presenting new material where relevant, and
- Providing specialist evidence when it may assist.¹⁰

7. Emphasis on Early Resolution

- 7.1 The Commissions endeavour to identify matters that can be resolved at an early stage. This includes identifying the prospects of a matter, and whether further evidence would assist in resolving a matter at an earlier stage.
- 7.2 By emphasising the early resolution of matters, the goal of the Commissions is to reduce the number of matters that proceed to formal AAT conciliations and hearings. This is to minimise the potential burden of litigation on veterans, to ensure early resolution of the matter, and that resources are used as effectively as possible. That being said, the Commissions can only resolve matters where there is a legitimate legal basis for doing so.¹¹
- 7.3 Early resolution of a claim is not limited to the Commissions conceding a matter either in whole or in part. It should also be noted that the emphasis on early resolution does not prevent the Commissions from acting firmly and properly to protect their interests. This means the Commissions are not precluded from taking all legitimate steps to pursue, test or defend a claim.¹²
- 7.4 Factors to be considered in determining whether to attempt to resolve a matter at an early stage, include but are not limited to:
- prospects of success;
 - whether further evidence would increase prospects of success for either the Commissions or the client;
 - whether such further evidence can be quickly and easily obtained;
 - the impact on the client of ongoing proceedings, including on their mental health;
 - the potential ongoing cost to the Commonwealth of accepting the claim as made; and
 - the cost to the Commonwealth of running the matter through to hearing.

¹⁰ Attorney-General's Department Office of Legal Services Coordination, Guidance Note 1 *The Administrative Appeals Tribunal Act 1975: Obligation to assist the Tribunal* (2018).

¹¹ *Legal Services Directions 2017*, Appendix C – Handling monetary claims, notes “A settlement on the basis of legal principle and practice requires the existence of at least a meaningful prospect of liability being established. In particular, settlement is not to be effected merely because of the cost of defending what is clearly a spurious claim”. As to the importance of there being a lawful foundation for a consent order see the judgment of French J in *Kovalev v Minister for Immigration and Multicultural Affairs* [1999] FCA 557; (1999) 100 FCR 323; 59 ALD 71 at [11]-[12] and in general, [7]-[12].

¹² *Legal Services Directions 2017*, Appendix B – the Commonwealth's obligation to act as a model litigant, *Legal Services Directions 2017*, Note 4, and *Legal Services Directions 2017* – Part 1, section 4.3 Acting in accordance with legal principle and practice.

- 7.5 The AAT directions emphasise that parties engaging in early dispute resolution processes are expected to act in ‘good faith’.¹³ This means that DVA Advocates and Legal Providers should be prepared to participate fully and effectively in the early resolution of disputes and to have authority to settle any matters that have been agreed to in early dispute resolution processes.
- 7.6 Early dispute resolution processes available at the AAT include conferencing, mediation, neutral evaluation, case appraisal, and conciliation.¹⁴ Process models for each form of early dispute resolution process are available on the AAT website.

8. Confidentiality

- 8.1 The guiding principle of the AAT is that hearings are to be public.¹⁵ That means AAT hearings are usually open to the public. The guiding principle is also evident in the AAT’s general practice of giving parties, and their representatives, access to all parts of an AAT file in their case. After the hearing, the public can usually access the evidence and other documents lodged with the AAT for the purpose of the hearing.¹⁶
- 8.2 Exceptions to the principle are:
- early dispute resolution processes are generally private;
 - the AAT may order that some or all of, a hearing, evidence provided, or the reasons for decisions be kept confidential;¹⁷
 - confidentiality of certain evidence at the AAT is subject to common law and/or statutory doctrines¹⁸ of legal professional privilege,¹⁹ an implied undertaking of confidence;²⁰ and public interest immunity.²¹

¹³ AAT Act s 34A (3); AAT Guideline *The Duty to Act in Good Faith in Alternative Dispute Resolution Processes* (2013) [6].

¹⁴ AAT Act s 3(1).

¹⁵ AAT Act s 35; AAT Fact Sheet *Privacy and confidentiality at the AAT*.

¹⁶ AAT Fact Sheet *Privacy and confidentiality at the AAT*.

¹⁷ AAT Act s 35.

¹⁸ Sian Leathem, Soo Choi ‘The ASAT: impact of common law on the disclosure and use of information’ [2016] *PrecedentAULA* 59; (2016) 136 *Precedent* 10.

¹⁹ *Attorney-General (NT) v Maurice* [1986] HCA 80; (1986) 161 CLR 475, 491 (Deane J); *Re Farnaby and Military Rehabilitation and Compensation Commission* [2007] AATA 1792; (2007) 97 ALD 788 [31].

²⁰ *Otter Gold Mines Ltd v McDonald & Ors* (1997) 76 FCR 467.

²¹ *Commissioner of Police, NSW v Guo* [2016] FCAFC 62.

Early dispute resolution

- 8.3 In principle, early dispute resolution processes are private to the parties and their representatives. Parties involved in such processes are required to act in ‘good faith’. Maintaining confidentiality is an integral element of ‘good faith’.²² Confidentiality generally applies to information exchanged, outcomes reached, and documents presented at the processes.
- 8.4 What is said or done during an early dispute resolution process cannot be admitted as evidence during a hearing in any other tribunal or court, nor at the AAT, unless the parties agree.²³
- 8.5 If the early dispute resolution process involves a report of a neutral evaluation or a case appraisal, then that report is admissible at an AAT hearing, unless a party to the proceeding objects in advance of the hearing.²⁴

Confidentiality order

- 8.6 In limited circumstances, confidentiality may be imposed by an AAT order at a hearing under s 35 of the AAT Act, or another legislative source. The confidentiality may apply to limit or prevent the public attending a hearing, or in relation to all or particular evidence received at the hearing, or to some or all of the reasons for the decision. An order is not provided lightly. The order can be made on the AAT’s own motion or following a submission by a party.

Legal professional privilege

- 8.7 It is accepted that, subject to 8.8, legal professional privilege applies at the AAT to oral and written communication.²⁵ This enables a party to resist the production or disclosure of oral or written communication provided by a lawyer for the dominant purpose of litigation.
- 8.8 A statutory exception for the Veterans’ Appeals Division is that the privilege does not apply to the T-documents lodged under s 37 of the AAT Act, unless the AAT directs otherwise under s 35(4) of the AAT Act.²⁶ Given the AAT’s guiding principle is openness, cogent reasons are required.²⁷

²² AAT Guideline *Confidentiality in Alternative Dispute Resolution Processes* (2014) [3].

²³ AAT Act s 34E (1), (2).

²⁴ AAT Act s 34E (3).

²⁵ *Waterford v Commonwealth* [1987] HCA 25; (1987) 163 CLR 54; *Re Farnaby and Military Rehabilitation and Compensation Commission* [2007] AATA 1792; (2007) 97 ALD 788 [31]; .[2017] AATA 1002;

²⁶ AAT Practice Direction *Lodgement of Documents under Section 37 and 38AA of the AAT Act*.

²⁷ *Re VBN and Australian Prudential Regulation Authority* [2005] AATA 1060; (2005) 92 ALD 455 [25].

Implied undertaking

- 8.9 There is an implied obligation in two circumstances: at common law, there is an ethical obligation not to divulge written or oral information which a person knows or should know is intended to be confidential; and there is a statutory obligation not to use documents for another purposes. The common law obligation of confidentiality is inherent in the confidentiality expected of participants in early dispute resolution processes.²⁸
- 8.10 A statutory obligation of confidence arises when documents are provided under compulsion, such as the T-Documents, or following a direction or summons.²⁹ The party initially providing the documents, such as DVA, cannot use them for another purpose, such as a later hearing, without a release of the implied undertaking.
- 8.11 The obligation continues after the finalisation of a matter.³⁰ Breach may constitute a criminal offence.³¹ Exceptions apply to matters by the same applicant which are to be heard together or if the AAT gives permission for use in other circumstances.³²
- 8.12 In general, expert reports, witness statements and other evidence lodged with the AAT and used in early resolution processes are part of the AAT file and can be used at a hearing unless the AAT makes a confidentiality order.

Public interest immunity

- 8.13 The AAT Act provides for the Attorney-General of the Commonwealth or of a state or territory, to prohibit by certificate on public interest grounds, the disclosure of information or any matter in a document received by the AAT.³³ The information may be disclosed to the member of the Tribunal as constituted, or the parties at the AAT's discretion.³⁴ The exercise of the discretion must be by a member of the AAT who is a judge.³⁵ The provision for lodgement of T-documents takes precedence over the common law principles relating to public interest immunity.³⁶
- 8.14 The public interest immunity extends to responses to questions during a hearing at the request of the Attorney-General of the Commonwealth or a state or territory.³⁷ These provisions do not exclude the common law public interest immunity.³⁸

²⁸ *O'Brien v Komesaroff* (1982) 150 CLR 310 at 326-8.

²⁹ *Privacy Act 1988* (Cth) Sch1, Australian Privacy Principle 6. See also *AAT General Direction* [5.2]-[5.3].

³⁰ *AAT General Direction* [5.4].

³¹ AAT Act s 63.

³² *AAT General Direction* [5.5]-[5.8].

³³ AAT Act ss 36, 36A-D.

³⁴ AAT Act ss 36, 36B.

³⁵ AAT Act s 36D.

³⁶ AAT Act s 37(3).

³⁷ AAT Act ss 36A, 36C.

³⁸ *Commissioner of Police, NSW v Guo* [2016] FCAFC 62,

9. Self-Represented Veterans

- 9.1 Self-represented veterans, and to some extent veterans represented by non-legally qualified advocates, may find themselves challenged by AAT processes and procedures. This may occur due to a lack of familiarity with AAT processes and/or the law applied in the reviewable decision. Further, self-represented veterans may be elderly, frail or affected by serious physical or psychological conditions which may adversely affect their capacity to understand the decisions under review or effectively to put forward their applications.
- 9.2 Where AAT proceedings involve self-represented veterans, the Commissions expect DVA Advocates and Legal Providers to:
- Be familiar with the factual, legal and procedural aspects of the decision under review and to obtain comprehensive advice on these matters where their knowledge is lacking or the AAT member requests that assistance;
 - Be proactive in ensuring that self-represented veterans understand the decision under review and why the Commissions maintain their position with respect to the matter;
 - Assist and clarify issues or concerns raised by a self-represented veteran or the AAT as needed;
 - Be proactive in initiating ADR processes where a matter is suitable for ADR;
 - Ensure that self-represented veterans are given adequate time to consider evidence put before the AAT and matters of procedure;
 - Comply fully with any applicable AAT practice directions and specific directions issued in particular applications;
 - Assist self-represented veterans, as required, to understand applicable AAT practice directions and specific directions about their matter;
 - Ensure that all relevant information in relation to the decision under review is provided to the AAT and self-represented veterans;
 - Ensure that evidence before the AAT is current and up-to-date and, where it is not, obtain such evidence at the earliest possible time; and
 - Be proactive in obtaining evidence which is likely to be relevant to the determination of an application where self-represented veterans are unable to obtain this evidence themselves.
- 9.3 While the Commissions expect DVA Advocates and Legal Providers to assist self-represented veterans, particularly in matters of AAT procedure, their overriding professional obligation is to represent the Commissions and assist the AAT to reach the correct or preferable decision. DVA Advocates or Legal Providers who are concerned about a conflict between their duty to assist and their professional obligations should seek advice from the Director Litigation, or their relevant professional body.

- 9.4 The level of assistance to be provided to self-represented veterans by representatives of the Commissions is also dependent on an assessment by the representative, on a case-by-case basis of the veteran's apparent capacity to conduct the proceedings, the veteran's level of expertise, knowledge and understanding and the circumstances of each individual case.
- 9.5 Where a matter involving a self-represented veteran is to be settled, DVA Advocates or Legal Providers are to ensure that the veteran understands the scope and limits of the settlement.
- 9.6 To facilitate settlement, the DVA Advocate or Legal Provider will draft the agreed consent orders and terms of settlement, explain the consent orders and terms of settlement in simple language and highlight what limitations apply. This will allow a self-represented veteran to consider the scope and terms under which their matter will be finalised and to appreciate that the matter has come to an end. This also gives the veteran the opportunity to consider seeking their own legal advice. If there is a suggestion that a self-represented veteran does not fully understand the implications of settlement, the DVA Advocate or Legal Provider should suggest that the veteran seek their own legal advice.

10. Hearings and Evidence

- 10.1 The AAT is not a court. The rules of evidence specifically do not apply to tribunals.³⁹ The admission of evidence by the AAT is guided by principles of procedural fairness and relevance. Two circumstances which warrant special mention are:
- Giving evidence concurrently; and
 - Giving expert and opinion evidence.

Giving evidence concurrently

- 10.2 In cases involving expert witnesses by both parties, the AAT may direct that witnesses give their evidence concurrently. An AAT guideline explains the circumstances which make it appropriate for use, and the procedure adopted.⁴⁰ The purpose of concurrent evidence is to facilitate efficiency of hearings, to assist witnesses to provide evidence which is impartial, and by creating 'a setting in which the evidence and opinions of expert witnesses can be better explained, analysed and understood', thus enhancing the AAT's role of making the correct or preferable decision.⁴¹

³⁹ *Evidence Act 1995* (Cth). That rule does not avoid the need to assess whether a matter is one of substance or of evidence: Justice Rachel Pepper 'Making Sure that Curiosity Does not Kill the CAT: the Use of Expert Evidence in Merits Review Fora Where the Rules of Evidence Do Not Apply', paper presented at the 2019 COAT NSW Conference, 6 September 2019, Sydney.

⁴⁰ AAT Guideline *Use of Concurrent Evidence at the AAT* (2015).

⁴¹ AAT Guideline *Use of Concurrent Evidence at the AAT* (2015) [1.3]; The Hon G Downes AM 'Practice, Procedure and Evidence in the Administrative Appeals Tribunal', paper presented at the NSW Land and Environment Court Annual Conference, Sydney, 5 May 2011.

10.3 The presiding member at a hearing institutes the process, taking into account the complexity of the matter involving expert evidence, the expertise of the witnesses, and the impact on the length of the hearing, costs, whether both parties are represented, and the views of the parties.⁴² DVA Advocates and Legal Providers need to be aware that the arrangement for a concurrent evidence session can take additional time and organisation, particularly when there are busy medical experts involved. There is an obligation, accordingly, to commence the process early. The procedure and detail of the steps in the process are contained in the Guideline.⁴³

Giving expert and opinion evidence

10.4 The process that applies to the evidence of expert witnesses before the AAT is set out in an AAT guideline.⁴⁴ The process applies to the oral and written evidence of the witness. The purpose of the guideline is to facilitate the expert providing evidence which is impartial.⁴⁵ The Guideline includes a declaration by the witness that they 'have an overriding duty to provide impartial assistance to the Tribunal'.⁴⁶

11. Counsel

- 11.1 The Commissions are subject to Commonwealth policies in engaging counsel. These include Appendix D of the *Legal Services Directions 2017*.⁴⁷ Subject to DVA's policy regarding the use of Counsel where the veteran is not legally represented (at 12 below), Legal Providers are encouraged to brief a broad range of Counsel, in particular women. Selection of Counsel needs to take into account suitable and expert Counsel for the particular case. The choice is not to occur in a manner which results in a narrow pool of Counsel for any particular category of Commonwealth work.
- 11.2 The Commissions will not engage Counsel without a Commonwealth approved rate. The approved rates for performing Commonwealth legal work is obtained from the OLSC. Where counsel has been engaged, Commissions will not accept an invoice for Counsel's service in excess of their OLSC approved rate unless this was negotiated at the time of engagement.

⁴² AAT Guideline *Use of Concurrent Evidence at the AAT* (2015) [2.2]-[2.3]. An example is *As-Sayeed and Comcare* [2013] AATA 210.

⁴³ AAT Guideline *Use of Concurrent Evidence at the AAT* (2015) [4]-[5].

⁴⁴ AAT Guideline *Persons Giving Expert and Opinion Evidence* (2015).

⁴⁵ AAT Guideline *Persons Giving Expert and Opinion Evidence* (2015) [3.1]-[4.5].

⁴⁶ AAT Guideline *Persons Giving Expert and Opinion Evidence* (2015) [4.5].

⁴⁷ *Legal Service Directions 2017*: Appendix D – Engagement of counsel

12. Role of Counsel where veterans are not legally represented

- 12.1 Generally, the Commissions will not seek to be represented by Counsel in cases where the veteran is self-represented, or represented by a non-legally qualified advocate (including ex-service organisation advocates). In such cases, the Commissions will generally either be represented by a DVA Advocate, or a solicitor from a Legal Provider.
- 12.2 The General Counsel (SES Band 1 Level) may authorise the use of Counsel if the veteran is not legally represented and where there is a compelling reason, including but not limited to the following:
- a. where the Commission has engaged Counsel in an appeal to the Federal Court and the matter is remitted to the AAT for re-hearing according to law;
 - b. where the matter is identified as significant, for one or more of the following reasons:
 - i. cases involving contended changes in legal principle in:
 - legislation
 - legislative Instruments (e.g. PIG, GARP V, GARP M, SOPs)
 - case law
 - ii. matters considered significant under the *Legal Services Directions 2017*
 - iii. cases considered significant by the Commissions
 - iv. where it is necessary to protect or test the correct interpretation of the law
 - v. where a DVA Advocate or a solicitor from a Legal Provider is not available to appear.

13. Use of social media

- 13.1 It is the Department's position that DVA Advocates and Legal Providers should not use a veteran's personal social media pages to obtain information for the purposes of an AAT proceedings, unless there are compelling reasons to do so and the General Counsel has provided authorisation.
- 13.2 Further, if a self-employed veteran has social media accounts linked to their business and information regarding that business is relevant to the proceedings, authorisation from the General Counsel is required for use in AAT proceedings.

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- 13.3 Where a social media post is used for the purposes of an AAT proceeding, the identity of an individual person who makes the post or comments on a post will be redacted unless their identity is relevant to the proceedings.
- 13.4 The potential use of such information needs to be advised to the applicant as per the transparency requirements set out in paragraph 5.1. As a matter of procedural fairness, if material is to be used, the material should be disclosed in advance of relevant AAT proceedings.

14. No surveillance

- 14.1 It is the Department's position that surveillance is not to be used as part of any AAT proceedings involving the Commissions.

15. Commencement of policy

- 15.1 This policy commenced on 9 December 2020, and is reviewed annually.
- 15.2 This policy was last reviewed on 27 June 2024.

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