

Veterans: Court and Tribunal Litigation

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Veterans Legal Issues Conference

LegalWise Seminars

1 December 2020

Termination of service

Statutory power to terminate service:

Defence Regulation 2016, r 24(1).

Termination of service

Grounds for termination:

r24(1)(a) the member is medically unfit for service
in the Defence Force;

Termination of service

Grounds for termination:

r24(1)(b) the member cannot usefully serve

because of redundancy in the Defence Force

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Grounds for termination:

r24(1)(c) retention of the member's service is not in the interests of the Defence Force.

Termination of service

Power to reduce a member's rank on similar grounds, including that retention of rank not in the interests of the Defence Force: r14(1).

Termination of service

Reasons for something being or not being in the interests of the Defence Force ***include*** reasons relating matters specified in r6(2).

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Not in interest of the Defence Force:

r6(2)(a): member's performance.

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Not in interest of the Defence Force:

r6(2)(b): member's behaviour (including any convictions for criminal or service offences).

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Not in interest of the Defence Force:
r6(2)(c): member's suitability to serve.

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Not in interest of the Defence Force:

r6(2)(f): the morale, welfare and discipline of the
Defence Force.

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Not in interest of the Defence Force:

r6(2)(g): the reputation and community standing of the Defence Force.

Termination of service

In summary, broad grounds for termination of a member's Defence service.

Termination of service

Redress of grievance: *Defence Regulation 2016*,
Part 7. For termination, lodge complaint within 14
days: r41(2).

Termination of service

Decision to terminate service is subject to judicial review: *Martincevic v Commonwealth of Australia* [2007] FCA 453, [100].

Termination of service

Standard grounds under *Administrative Decisions (Judicial Review) Act 1977*, s 5 – natural justice; error of law ; relevant / irrelevant considerations, etc.

Termination of service

Randall v Chief of the Defence Force [2020] FCA

1327: scope of termination power?

Termination of service

Member charged with disciplinary offences,
acquitted by Defence Force Disciplinary Appeal
Tribunal.

Termination of service

Defence then terminated member's service on the same or substantially the same grounds as charges of which he was acquitted – permissible?

Termination of service

Scope and limits of judicial review.

VRB Review Procedures

Shafran v Repatriation Commission [2019] FCA

1833: operation of s 137 of VEA.

VRB Review Procedures

Veterans' Entitlements Act 1986, s 137: procedure
when veteran applies for review to the VRB.

VRB Review Procedures

Section 137 also imported by *Military Rehabilitation and Compensation Act 2004*, s 353.

VRB Review Procedures

Section 137:

Requires Department to prepare a report referring to relevant evidence and serve on the applicant.

VRB Review Procedures

Section 137:

Applicant then has 28 days (or longer if granted) to furnish comments concerning the report.

VRB Review Procedures

Section 137:

Contemplates that Department may make further investigation as a result of applicant's comments.

VRB Review Procedures

Section 137:

Requires Department to give VRB all relevant documents, including applicant's comments and evidence obtained in any further investigation.

VRB Review Procedures

Shafran v Repatriation Commission [2019] FCA

1833: Applicant requested further time to make comments in response to Department's report.

VRB Review Procedures

Shafran: Department sent the s137 report to VRB without waiting for Applicant's comments.

VRB Review Procedures

Shafran: VRB directed Applicant to provide the comments under s 137 within 28 days.

VRB Review Procedures

Shafran: Federal Court held that receipt of all “relevant documents” is a condition precedent to exercise of VRB’s procedural powers under s 148 (including listing hearing of review).

VRB Review Procedures

Shafran: Federal Court held that power to extend time for making comments rests with Department, but any extended time must be reasonable.

VRB Review Procedures

Section 137 procedure a potential important avenue for applicants to influence decision-making process or achieve positive outcome.