



**Australian Government**  
**Department of Veterans' Affairs**

# **ELECTRONIC RECORDS**

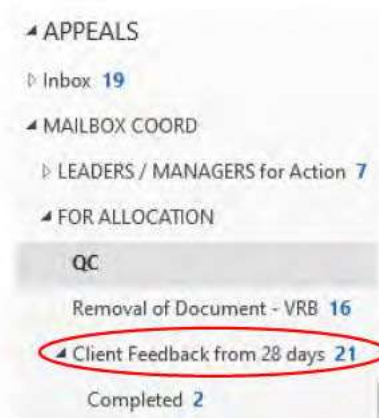
**NB: These documents have been obtained from an electronic record. An original hard-copy version of this record does not exist.**

## Appendix 27 - 28 Day Role

After an S137 Report has been compiled and sent to the client, the 28 day period for client comment begins. **In line with legislation under section 137(3), clients must receive the full 28 days.** Within this 28 day period, any additional evidence received to support the clients appeal must be recorded in the “28 Day Tracking Sheet” and added to the s137 Report before it is sent to the Veterans’ Review Board.

Emails received during this 28 day period for client comment may be regarding:

- Additional medical evidence/contention statements;
- Withdrawals
- Extension of time requests;
- Requests to waive the 28 day period for client comment;
- General S137 Report updates/client call back requests



Emails from clients regarding this 28 day period will be dropped by the Mailbox Officer to the “Client Feedback from 28 days” folder located in the Appeals subfolder as pictured. All emails received from the client and/or representative/advocate are to be saved in TRIM.

### Actioning “Client Feedback From 28 Days” Subfolder

Additional medical evidence/contention statements:

When additional information is received e.g. Medical documents, injury comments, written statements etc., the email will need to be saved in TRIM and forwarded to the Review Officer for review. This new evidence provided *may* allow the Review Officer to intervene in the determination.

- TRIM email first
  - File location: Client E doc -> Rehab and Comp External Review -> VRB
  - Add “Additional evidence” to the beginning of the “Title (Free Text Part)” of the document title. Ensure the DVA File number, client surname and VRB case number are included if not already.  
e.g., Additional evidence: SMITH, NSMXXXXX, A21/XXXX,

- *Forward* the email to the Review Officer dealing with the case. Add “Additional evidence:” to the beginning of the email subject line and include this template:

Hi [RO]

Please find attached / below additional information (TRIM xxx) received for the above listed VRB case. Once you have had an opportunity to review this information, please confirm the action path required, by including the relevant response in your reply email.

- Having considered the additional evidence submitted, I find no grounds for intervention. My reasons are as follows: (INSERT BRIEF SUMMATION.) Please include the additional information and continue the claim to the VRB.
  - The additional evidence has been considered. I am intervening on this case and will forward the intervention letter to the Appeals inbox.
  - Other: \_\_\_\_\_ (please provide relevant instructions to the Appeals Team)
- Add case note in ISH stating the document type received and that it has been forwarded to the Review Officer. If the case is a legacy case/ War widow, then add the TRIM number to the 28 Day Tracking spreadsheet
  - NOTE: It can be helpful down the track to note what the document type is ie. XXXXXXXXXC-extension req, XXXXXXXXXC-extension or XXXXXXXXXC-medical documents (look for duplicates/privacy), just to keep on top of anything you may need to check etc.
  - Mark email as complete and file in ‘Completed’ email subfolder of the “Client Feedback from 28 days” folder

#### After the 28 day has passed

- Update S137 Report with all TRIM documents in the 28 Day Tracking spreadsheet (see *appendix instructions*)
- Upload S137 Report to the VRB Portal (see *appendix instructions*)
- Send a copy to the client/rep using the template (see *appendix*)
- TRIM your sent email and updated S137 Report separately
- Update ISH status (see *appendix instructions*)
- Archive client S137 compiling folder

## Withdrawals

Withdrawals can be received from clients during the 28 day period for client comment.

Withdrawn cases that have been lodged through the VRB pathway should be updated and sent to the VRB as soon as possible so that the case can be dismissed and closed off.

- TRIM email first
  - File location: Client E doc -> Rehab and Comp External Review -> VRB
  - Ensure to clearly label the email by entering in "Withdrawal" at the beginning of the "Title (Free Text Part)"
- Copy TRIM number and add to 28 Day Tracking spreadsheet
- File email in 'Completed' subfolder
- Update S137 Report (see *appendix instructions*)
- Upload S137 Report to the VRB Portal (see *appendix instructions*)
- Update ISH status (see *appendix instructions*)
- Archive client S137 compiling folder
  - \\Dvastaff.dva.gov.au\data\Shared\Rehab & Support\Det Supp & Rvws\VEA Appeals & Rvws\Special\VRB Accessible\RVW LETTER TEMPLATES\Staff files\28 Day Amended s137s

Name

 1-Archive

## Extension of time requests

Extensions of time can be granted at any time during the 28 day period for client comment.

Action may be required to ascertain a date to which the client would like the extension to.

If/once an extension date is established, the time period can be granted.

## Extension of time requests – initial 6 months or less

**s 47E**

1. Reply to the clients email using the template
2. TRIM your sent email
  - File location: Client E doc -> Rehab and Comp External Review -> VRB
  - Ensure to clearly label the email by entering in "Extension request" at the beginning of the "Title (Free Text Part)"
3. Copy TRIM number and add to 28 Day Tracking spreadsheet column 'M – TRIM Number' and add in the new expiration date column O - (see below)



M		N	O
TRIM Number		29 Day Date	Extensions
s 47F - Email and att request 08/11/2021		29/06/2021	8/11/2021
s 47F Extension			

4. Update ISH
  - Add case note "Received extension request. Approved until <dd/mm/yyyy>"
  - Move case/s from Assigned to: '28 days, s137' to 'Ext of time, s137' holding bay
- NOTE: If case is VEA, both steps will need to be copied to the second file
5. Mark email as complete and file in 'Completed' email folder

#### When the extension date has passed:

1. Update S137 Report with all TRIM documents in the 28 Day Tracking spreadsheet (see [appendix instructions](#))
2. Upload S137 Report to the VRB Portal (see [appendix instructions](#))
3. Send a copy to the client/rep using the template
4. TRIM your sent email and updated S137 Report separately
5. Update ISH status (see [appendix instructions](#))
6. Archive client S137 compiling folder

#### Requests to waive the 28 day period for client comment

Clients are able to request the 28 day period for client comment to be waived however, the request needs to be a clear, in writing, and must be included in the S137 Report uploaded to the VRB. Waiver requests can be received *prior to the S137 Report being compiled OR after the S137 Report has been sent.*

#### Waiver request received after the S137 Report has been sent

Should a request clearly indicate the desire to waive the comment period *after the S137 Report has been sent*, action with urgency.

- Respond to the waiver request/confirmation email with the template (see [appendix 28](#))
- TRIM your sent email (which shows email trail request and response)
- Copy TRIM number and add to 28 Day Tracking spreadsheet
- Update S137 Report (see [appendix instructions](#))
- Upload S137 Report to the VRB Portal (see [appendix instructions](#))
- Send a copy to the client/rep using the template
- TRIM your sent email and updated S137 Report separately
- Update ISH status (see [appendix instructions](#))
- Add a note to ISH stating the TRIM of the response email "28 day waiver approved TRIM #. S137 Uploaded to VRB Portal"

- Email Team Leader the TRIM ref for the waiver email that was sent.
  - E.g. subject line – Waiver of 28 day Comment Period: SURNAME, First name – s137 Report – File number- VRB number
  - Body of email: Trim reference number.
- Archive client S137 compiling folder

### **Waiver request during 28 day period.**

28 day waivers can also be requested *prior/during* the 28 day period for client comment.

In these instances, the 28 day coordinator will send out the email template in (see appendix 29).

When this occurs, the same process above applies.

### [General S137 Report updates/client call back requests](#)

General emails requesting status updates of the S137 Report or requests for call back are not required to be added to the S137 Report but must still be saved to TRIM and actioned. Often these enquires might be simple enough to be handled within the 28 day role but enquires concerning specific case or act knowledge should be passed to the corresponding Review Officer.

**NOTE:** Should no TRIM numbers be added to a client's case during the 28 day period, the initial S137 Report that was sent to the client would be uploaded to the VRB portal. No requirement to notify the client as this process was explained in the initial email.

## [Appendix 28 - Updates to S137s](#)

### [Confirmation of 28 day waiver request](#)

Dear xxx,

Thank you for your email of xxx requesting that the remaining consultation period for your s137 Report be waived and the Report be provided to the VRB immediately. We confirm that we will now provide this Report to the VRB. To note:

- DVA is of the understanding that in waiving your statutory period for comments you do not wish to provide any additional evidence or make further comments at this stage. However, we wish to advise that you can submit additional evidence to the VRB during their review process.

Kind regards,

**First Name (Position Number)**

Review Support Officer

BIQA | Clients' Benefits | Brisbane Office

Department of Veterans' Affairs

Phone: 1800 VETERAN (1800 838 372) | Ext: 1858608 | GPO Box 9998 BRISBANE QLD 4001

[Appeals@dva.gov.au](mailto:Appeals@dva.gov.au) | [www.dva.gov.au](http://www.dva.gov.au)



Updates to the S137s can occur:

- before the tagging has been compiled;
- after the report has been sent to the client;
- after the report has been uploaded to the VRB.

Updates can include:

- additional information submitted by the client;
- additional information obtained by the Commission;
- intervention determination from the Commission
- Withdrawal.

How the update is handled depends solely on when the update is received.

Before the tagging is complete

- The relevant documents to be saved to TRIM;
- Email to mailbox asking for S137 to be updated before being sent to client.

After the report is sent to the client

- The relevant documents are saved to TRIM;
- Add comment on ISH case to note the TRIM number which are to be updated;  
**S137 Update – TRIM #, index titling**
- 28 day officer updates the S137 report;
- Note the four topics above – work on wording.
- TRIM new version of S137
- Resends copy to client/rep/sol as per distribution instructions;
- TRIM email to client/rep/sol
- Uploads to VRB portal;
- Change status on ISH to Await VRB Decision and VRB status to with VRB

After the report has been uploaded to the VRB

- The relevant documents are saved to TRIM;
- Upload relevant document to portal;
- Note placed in ISH that TRIM # has been uploaded to VRB portal

## Appendix 29 -

### Waiver request enquiry

Dear [name],

You have 28 days from the date of the initial s137 report email, dd/mm/yy, to provide comments on the report.

Any comments you make should be in writing and can touch on any aspect of the evidence contained in the report. This could include providing additional evidence to support your claim.

If you wish to waive the 28 day comment period, please send a request via return email. Once we have received your request to waive the comment period, we will send the s137 report to the Veteran's Review Board (VRB). Please be assured that after the s137 Report is sent to the VRB, applicants still have further opportunities to provide evidence direct to the VRB during their review process.

Kind regards,

**First Name (Position Number)**

Review Support Officer

BIQA | Clients' Benefits | Brisbane Office

Department of Veterans' Affairs

Phone: 1800 VETERAN (1800 838 372) | Ext: 1858608 | GPO Box 9998 BRISBANE QLD 4001

**[Appeals@dva.gov.au](mailto:Appeals@dva.gov.au) | [www.dva.gov.au](http://www.dva.gov.au)**

# Compliance with Section 137 of the *Veterans'* *Entitlements Act* **1986**

**MARCH 2022 Version 1.1**



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Department of Veterans' Affairs

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*To support those who serve or have served in the defence of our nation  
and commemorate their service and sacrifice*



# Document Administration



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## Document Administration

### Document Ownership

<b>Owner</b>	Business Improvement & Quality Assurance Branch
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### Document Changes

Version	Date	Reason
1.0	15 March 2022	Initial Version
1.1	22 March 2022	Minor updates

### Document Endorsement History

This document has been cleared and approved by:

Name	Position	Version	Date
Luke Brown	Assistant Secretary – Business Improvement & Quality Assurance	1.0	16 March 2022
Luke Brown	Assistant Secretary – Business Improvement & Quality Assurance	1.1	22 March 2022





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## Introduction

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This introduction sets out the procedures of the Department of Veterans' Affairs (DVA) and Veterans' Review Board (VRB) in relation to the documents a decision-maker must lodge with the VRB under section 137 of the *Veterans' Entitlements Act 1986* (VEA).

### **When and how does this process apply?**

This process applies to any appeal to the VRB for review of a decision made by a decision maker at DVA to which section 137 of the VEA applies, including those reviewable decisions made under the *Military Rehabilitation and Compensation Act 2004* (MRCA). Note that section 136 of the VEA provides the requirements in the making of an application for review by the VRB.

### **When and to who must section 137 documents be provided?**

The decision maker at DVA must provide a copy of the section 137 report to the applicant within 42 days after receiving his or her application to the VRB for a review of a specified decision of the Commission in which the VRB has jurisdiction to review. The application for review must fully identify and provide details of the decision that the applicant is requesting for review by the VRB. The applicant will have 28 days after being sent the section 137 report to provide his or her comments in relation to that report. The applicant may request an extension of time to provide his or her comments. All reasonable extension of time requests should be granted.

The decision maker must forward a copy of the section 137 report to the VRB as soon as practicable, but *only after* the applicant has:

- (i) provided comments to the section 137 report within the 28 day period; or
- (ii) provided comments beyond the 28 day period but within the extension period requested by the applicant and granted by the DVA; or
- (iii) informed DVA that he or she is not providing any comments within the 28 day period after being provided the section 137 report; or
- (iv) not provided any comments and the 28 day period has expired

If any comments made by a veteran require DVA to conduct an investigation, the section 137 report is to be provided to the VRB as soon as practicable *after* the completion of that further investigation.

This process is explained further in the sections that follow.

## Introduction



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### How must the section 137 documents be provided?

#### *To the applicant*

By delivering, posting or sending by electronic communication the section 137 report to a person's nominated contact address.

#### *To the VRB*

A copy of the section 137 report should be uploaded to the VRB portal. If there are any difficulties uploading the section 137 report to the VRB portal the s137 report should be forwarded to the relevant VRB registry email address.

For NSW, ACT, VIC & TAS appeals	Sydney Registry
For QLD, SA, NT & WA appeals	Brisbane Registry

### What should the section 137 documents contain?

The section 137 report must contain the relevant documents under the decision-maker's control, which are relevant only to the review of the decision that has been appealed to the VRB, including **all** documents that were taken into consideration by the decision-maker.

This is further discussed below.

### How should the section 137 documents be presented?

The section 137 documents must be arranged in the following order:

- (a) the application for review to the VRB;
- (b) any internal review decisions and reasons and/or screening minute;
- (c) the relevant Commission's decision and reasons for its decision;
- (d) the applicant's formal claim and/or application for increase;
- (e) all other documents in chronological order from the earliest to latest date.

Items (a) and (d) must contain a clearly visible record of the date the document was received by the decision maker at DVA.

Each document must be identified with a number commencing with the application for review as 'T1'. Subsequent documents will bear 'T' numbers in sequence. Each page must be numbered sequentially. The section 137 documents must be accompanied by a Coversheet/Index, which sets out the date of each document and a brief description of each document. This will be further discussed below.



## Before getting started

### Programs you will need

ISH  
HPE Content Manager  
VIEW  
Outlook  
Mainframe  
CCPS  
VEA & MRCA Tagging templates  
VEA & MRCA Coversheet Template  
VEA & MRCA Index Template  
Client Template (email or letter version)  
Cadet  
VRB Portal



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### Important housekeeping

*A copy of the Section  
137 report must be  
provided to the  
veteran within 42  
days of appeal  
receipt date*

## Finding your work

Cases will be allocated to you in ISH. You should work from oldest to newest, ensuring you are mindful that a copy of the section 137 report should be provided to the veteran within 42 days of appeal receipt date, in accordance with subsection 137(1) of the VEA.

Be mindful that you may receive notification of an urgent case due to exceptional circumstances. These cases should be prioritised.

Locate the case you wish to commence work on, click into it and take note of the assigned VRB number. This number is unique to the appeal and is used by the VRB throughout the life of the appeal. The following is an example of the VRB number.

Status: Under investigation [Edit](#)

VRB/AAT Reference: Q20/0045 [Edit](#)



Using the UIN number for the veteran, locate the veteran's electronic file in HPE Content Manager and expand the file.

You are now ready to start tagging the relevant documents for inclusion in the Section 137 report.

The Tagging Template will be set out as follows. You will notice the most important pieces of information are always in the first four lines of the template in the yellow section.

ADF General Medical Records (OCR Entries, MECR, Annual Health Assessments etc.)



## Completing the Tagging Template



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### Completing the Tagging Template

In completing the Tagging Template, you should ensure the veteran's details are placed at the top left.

You should start listing the documents the delegate referred to in the determination under review in the grey section of the Tagging Template, as shown in the below example.

General rules about what to tag depend on your case type and will be further discussed later under 'What to include in the tagging template?'

Place the TRIM (HPE Content Manager) record number in the left column, with the date of the document in the middle. There are some general rules regarding the date to use. This will be further discussed later.



NAME: John Citizen  
FILE NUMBER: QX00000  
VRB NO: Q20/0001  
UIN: 12345678

VRB Appeal, S347/S31 File Note, Determ, Claim Form  
Specialist Reports/Surgical Reports/Imaging/Pathology  
ADO Service Records  
ADF General Medical Records (OCR Entries, MECR, Annual Health Assessments etc.)

		<b>Folios to be printed</b> (entire document to be printed if no folios specified)
Trim Document No:	Date	Each Box should have its own T number on the index
		VRB Application for Appeal
		S31/S347 screening minute
		Determination
		Claim Form
12345678C	1/01/2020	Combined Impairment Report
122345678C	10/12/2019	CMA opinion extracted from ISH
111234567C	1/12/2019	Medical Impairment Assessment forms
33215648C	1/12/2019	Specialist Medical report of Dr John Doe

#### Important housekeeping

Have additional documents been provided in support of the appeal?

If so, these must be included in the Tagging Template and labelled accordingly



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## Date Column Rules

There are some rules to remember when selecting the date for your Tagging Template.

NAME: John Citizen  
FILE NUMBER: QX00000  
VRB NO: Q20/0001  
UIN: 12345678

VRB  
Spe  
ADC  
ADF  
Anr

Trim Document No:	Date	Foli (en
		Eac
		VRB
		S31
		Det
		Clai
12345678C	1/01/2020	Cor
122345678C	10/12/2019	CM
111234567C	1/12/2019	Me
33215648C	1/12/2019	Spe



**Something to remember....**

Never use a TRIM record number registration date – this is incorrect.

The date should be listed in DD/MM/YYYY format

- VRB Application for Appeal** should always be the date DVA received the document. This might appear as a date stamp or the date an email with the attached application for review was received
- Claim form** should always be the date DVA received the document
- Screening Minute** should always be the date the Review Officer completed the screening
- All other documents** should be the date of the document i.e. the date the client or doctor signed the document / date of report
- If a document is not dated** you may write 'undated' in the date column, with a received date in the description column
- For multiple documents** i.e. pay slips or clinical notes you may write 'various' and only include them once in the index
- Service documents** will be included as one bundle and labelled 'various' in the date column
- Defence medical documents** will be included as one bundle and labelled 'various' in the date column

## What to include in the Tagging Template?



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### What to include in the Tagging Template?

In general terms, each document the delegate referred to in the determination under review should be included in the Tagging Template.

**Important:** You should also always look out for additional documents the veteran sent with the application for appeal. These are important documents and should always be included in the Tagging Template.

The following can be used as a checklist for documents that will *usually* be included in the Tagging Template with a MRCA or VEA case sub-type. (Please note this is a non-exhaustive list and there may be other documents in the veteran's file that are relevant).

#### ***VEA – Entitlement Appeal***

1. Statement of Service and relevant Defence medical records including (but not limited to):
  - a. MECRBs
  - b. CPHEs
  - c. Enlistment Medical
  - d. Discharge Medical
  - e. Injury reports
  - f. Psychological Screening
  - g. Radiology reports
  - h. Condition specific extracts
2. Medical Advisor opinion (extracted from ISH)
3. Delegate notes if applicable (extracted from ISH)
4. Diagnostic reports
5. Claimant Reports (lifting / carrying / repetitive use / injury / smoking / alcohol)
6. Relevant radiology
7. Audiology and Tinnitus TFI
8. Clinical notes
9. Previous VEA entitlement determinations (for same injury/disease) / medical evidence / if applicable
10. Veteran contention statements



# What to include in the Tagging Template?



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## ***Be mindful of....***

*Has this same matter  
previously been  
heard by the VRB? Is  
the previous VRB  
decision relevant to  
be included?*

## ***VEA – Assessment Appeal***

1. Medical Impairment Assessment forms
2. Audiology and Tinnitus TFI
3. Combined Impairment Report (Extracted from ISH)
4. Specialist Medical Reports
5. Lifestyle Questionnaire
6. Lifestyle Rating Form
7. Medical Advisor opinion if applicable (Extracted from ISH)
8. Workability Report
9. Specific Hours Questionnaire
10. Incapacity Assessment
11. Financial Documents (Tax returns, BAS etc.)
12. Previous VEA assessment determinations / medical evidence / if applicable
13. Veteran contention statements

## ***VEA – War Widow Pension Appeal***

1. Death Certificate
2. Coroner's report
3. Medical Advisor's opinion on cause of death
4. GP clinical notes
5. Hospital clinical notes
6. Smoking Questionnaire
7. Alcohol Questionnaire
8. Widow's proof of identification and documents evidencing dependency including marriage certificate if applicable
9. Previous VEA war widow pension determinations if applicable
10. Widow contention statements

# What to include in the Tagging Template?



## ***MRCA – Initial Liability Appeal***

1. Statement of Service and relevant Defence medical records including (but not limited to):
  - a. MECRBs
  - b. CPHEs
  - c. Enlistment Medical
  - d. Discharge Medical
  - e. Injury reports
  - f. Psychological Screening
  - g. Radiology reports
  - h. Condition specific extracts
2. Medical Advisor opinion, including those extracted from ISH
3. Delegate notes if applicable (extracted from ISH)
4. Diagnostic reports
5. Claimant Reports (lifting / carrying / repetitive use / injury / smoking / alcohol)
6. Relevant radiology
7. Audiology and Tinnitus TFI
8. Clinical notes
9. Injury Disease Details sheets (D2049)
10. Previous MRCA liability determinations / medical evidence / if applicable
11. Veteran contention statements

## ***MRCA – Permanent Impairment Appeal***

1. Medical Impairment Assessment forms
2. Audiology and Tinnitus TFI
3. Combined Impairment Report (Extracted from ISH)
4. Lifestyle Questionnaire
5. Lifestyle Rating Form
6. Medical Advisor opinion if applicable (Extracted from ISH)
7. Specialist Medical Reports
8. Delegate notes if applicable (extracted from ISH)
9. Previous MRCA PI determination / medical evidence / combined impairment report / if applicable
10. Veteran contention statements

## What to include in the Tagging Template?



### ***MRCA – Incapacity Appeal***

1. Statement of Service
2. Reserves Pay Slips
3. Civilian Pay Slips
4. Rank and Pay information
5. Status Lines
6. Reserves Earnings
7. Tax Returns
8. Superannuation benefits
9. Loss of Allowance information
10. Salary Variance Advices (SVA)
11. Rehabilitation Plan reports (approved study information)
12. Specialist / Medical Reports concerning capacity for work
13. Medical Certificates / Reports
14. Veteran contention statements

### ***MRCA – Special Rate Disability Pension Appeal***

1. Include the same documents as with the Incapacity Payments appeal
2. Copy of MRCA PI determination letter showing 80+ points

### ***MRCA – Household Services Appeal***

1. Occupational Therapist Home Assessment Report
2. Activities of Daily Living Report
3. Specialist Medical Reports if applicable
4. Veteran contention statements
5. Quotations for gardening / cleaning / window washing / if applicable
6. Photos of home and garden if available



## Section 137(1) of the *Veterans' Entitlements Act 1986* (VEA) and “evidence”

As required by subsection 137(1) of the VEA (as it is currently drafted), a section 137 report is to refer to “the evidence under the control of the Department that is relevant to the review” and we understand that some veterans may express strong views as to what does and does not constitute evidence.

### **Example issue:**

Veterans sometimes object to the inclusion of opinions from Medical Advisors, either on the basis that such opinions do not comply with the *Evidence Act 1995* (the **Evidence Act**) or because those opinions ought not be included because the Medical Advisors did not assess the veterans in person prior to formulating their opinions. Medical Advisors include but are not limited to, an occupational therapist, pharmacist, dentist, general practitioner, psychiatrist and other medical specialist.

### **Recommended approach to the issue:**

It is not a requirement of section 137 that the Secretary only include such material that complies with the rules of evidence in the section 137 report. Accordingly, we consider that an objection to the inclusion of Medical Advisor opinions by veterans on the basis of any non-compliance with the Evidence Act, and indeed any reliance on the limitation of information or documents to be used in the section 137 report based on the Evidence Act generally, is misplaced.

The Secretary's power to prepare reports under section 137 is a mandatory, and not a discretionary, power. Section 137 requires the Secretary to include any evidence under DVA's control that is relevant to the review, subject only to the other provisions in section 137, and **ALL** evidence that was considered by the primary delegate in the determination under review **must** be included in the section 137 report in order for a proper review of the determination to take place. DVA's position is that opinion and input by Medical Advisors in relation to the decision is relevant and ought to be included in the section 137 report even if a veteran objects to its inclusion.

## Section 137(2) of the VEA and excluded documents



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### **Be mindful of....**

*Information that is merely sensitive and information that may be prejudicial to the physical or mental well-being of a veteran. Sensitive information may still be relevant to the appeal and should be included in the section 137 report.*

### **Confidential and/or Prejudicial Information**

Pursuant to section 137(2), where the section 137 report contains information, opinions or other matters which are, in the opinion of the Secretary, confidential, or might be prejudicial to the physical or mental health or well-being of a veteran, the report to be provided to the veteran **shall not** contain or refer to that information, opinion or other matter.

The mandatory language used in section 137(2) supports the view that no discussion with or consent from a veteran permits the Secretary to nevertheless include the confidential or prejudicial information in the section 137 report.

**However, please note that whilst any confidential or prejudicial information cannot be included in the section 137 report to be sent to the veteran, the information must be sent to the VRB pursuant to section 137(4) which dictates that "all relevant documents" be forwarded to the Principal Member of the VRB.**

#### **Please note:**

It is open to delegates to discuss the relevance of **sensitive** documents with a veteran that may need to be included in the section 137 report for relevance. However, any such discussion:

- a) Would be separate to the section 137(2) process; and
- b) Should not be about any documents that satisfy the description in section 137(2).

Where a veteran's file contains a report from a psychiatrist or psychologist that has been obtained by DVA, consideration must be given in those circumstances as to whether it is appropriate to have the report included in the section 137 report which the veteran will have access to and given an opportunity to comment.

On occasion, such reports may include material that could potentially harm the veteran, if that material were disclosed. In accordance with current policy and practice, psychiatrists should be advised that such information should be on a separate page of the report and clearly marked "MAY BE HARMFUL TO THE CLAIMANT". Where such a page is so marked, it would satisfy the description in section 137(2) such that it should not be included in the section 137 report.

If the veteran is represented it may be possible to discuss the concerns about the material (and its non-inclusion) with the representative to agree an appropriate way forward. It is also possible to take steps to have medical reports provided to the VRB treated as confidential but not included in the section 137 report that is provided to the veteran.

## Section 137(2) of the VEA and excluded documents

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### *Confidential and/or Prejudicial Information*

#### Other excluded documents

As a general rule, documents borne from ADR processes (such as from prior VRB proceedings) **should not** be included in section 137 reports (unless both the veteran and the Secretary consent to the inclusion of documents borne from ADR processes: section 145D(2) or (3)).





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Department of Veterans' Affairs



## Be mindful of...

Review Officers should always remember their internal review power under s 31 of the VEA and s 347 of the MRCA.

If upon screening there is an opportunity to intervene and make a decision in the favour of the veteran, then this should be conducted internally.

## Screening Minute

The screening minute is an important document to be completed by a Review Officer and included in the Tagging Template. You will notice it is included in the second line of the yellow section, as follows:

NAME: John Citizen  
FILE NUMBER: QX00000  
VRB NO: Q20/0001  
UIN: 12345678

VRB Appeal, S347/S31 File Note, Determ, Claim Form  
Specialist Reports/Surgical Reports/Imaging/Pathology  
ADO Service Records  
ADF General Medical Records (OCR Entries, MECR, Annual Health Assessments etc.)

		<b>Folios to be printed</b> (entire document to be printed if no folios specified)
Trim Document No:	Date	Each Box should have its own T number on the index
		VRB Application for Appeal
		S31/S347 screening minute

The screening minute has two purposes:

1. To indicate the appeal has been screened by a Review Officer for possible intervention under either section 31 of the VEA or section 347 of the MRCA; and
2. If applicable, to provide the veteran additional comments or information about why the claim cannot be reconsidered under one of the relevant internal review powers.

The veteran is to be advised within this screening minute that they have 28 days upon receipt of the section 137 report to make any comment to DVA about the contents of the section 137 report.

Please see section below for more information on the section 31/section 347 process.



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New South Wales State Office

### SECTION 31 SCREENING MINUTE

The screening minute should appear in the Section 137 Report as follows:



VETERAN'S NAME:	
DVA FILE NUMBER:	
CA DECISION DATE:	
APPEAL RECEIVED DATE:	
TYPE:	
REPRESENTATIVE:	
Your appeal will stay with DVA for 28 days to provide you the opportunity to review the enclosed Section 137 report and make any comments on the evidence contained in it.	

Screened by:

Review Officer  
Date: |



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## Be mindful of....

The Coversheet Template is not allocated a 'T' number.

It will appear in the section 137 report before the T documents commence

The Coversheet Template will appear as the very first document within the section 137 report.

It is a summary of the unique information in regards to the veteran and their appeal.

It includes information such as the appeal type, the legislation under which the appeal has been lodged.

Details of the Review Officer who prepared the report as well as the Support Officer who compiled the report will be provided here.

This document also contains key dates such as:

1. Application for review receipt date
2. Commission decision (original determination) date

An example of the Coversheet Template is as follows:

VRB no:  
DVA file no:  
UIN:

## SECTION 137 DOCUMENTS

First name LAST NAME

### Military Rehabilitation and Compensation Act 2004 - MRCA

Veterans' Details	
Name	First Name SURNAME
Date of birth	
Arm of service	
Accepted conditions (and relevant Act)	See Attachment
Non accepted conditions	See Attachment

Decision / determination under review
Type of Appeal

Key dates	
Receipt of AFR by DVA	
Commission decision	
Receipt of claim by DVA	
S137 Report sent to client	DD/MM/YYYY

Prepared by: AP56	Compiled by: AP53
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Department of Veterans' Affairs



## Be mindful of....

The View Sheet is not allocated a 'T' number.

It will appear in the section 137 report before the T documents commence

## Client Details Sheet

The Client Details Sheet will appear as the second crucial document within the section 137 report.

It is a summary of the veteran's personal information and includes:

1. Name, date of birth, file number etc.
2. Contact information including phone number / email / addresses etc.
3. Service details
4. Accepted conditions
5. Rejected conditions
6. Level of incapacity if applicable

An example of the View Sheet is as follows:

Client: SMITH, John  
File number: QSM12345  
UIN: 01234567  
Client state: QLD  
DOB: XX/XX/XXXX

### Phone and email

Mobile: XXXX XXX XXX  
Home email:

### Address details

Residential address:  
123 Training St

Postal address:  
PO Box 123

### Service periods

XX/XX/XXXX to XX/XX/XXXX ADF

Arm of service: Army / Air Force / Navy

Employment type: Permanent

Service number: XXXXXXXX

Discharge/transfer reason: XXXXXX

Defence reason: XXXXXXXX

### Deployments

Start date	End date	Operation/Service	Type
21/01/2016	13/06/2018		Peacetime

### Accepted conditions

Medical condition	Legislation Act	Effective date	Decision date
<a href="#">Plantar Fasciitis</a>	Military Rehabilitation and Compensation Act 2004 (MRCA)	29/03/2019	29/10/2019





## Index Template

The Index Template will appear as the third crucial document within the section 137 report.

It is a list of the relevant documents used in making the original determination / Commission decision which is under review.

It includes:

1. Tribunal Document Numbers or 'T' numbers – these are used to separate documents according to their type
2. Folio numbers – these are a record of page numbers or page ranges within the section 137 report
3. Date - Please refer to 'Date Column Rules' as previously discussed on page 7 of this document.

The Index Template is used as a 'Table of Contents' and its purpose is to provide the veteran with a clear and concise list of all documents contained within the section 137 report.

An example of the Index Template is as follows:

Veteran:  
File:  
UIN:  
VRB:

Index of documents for Veterans' Review Board

T-Doc No	Folio No	Date	Description
T1			Application for VRB Appeal
T2			S347 Screening File Minute
T3			MRCA / VEA Determination
T4			Claim Form
T5			
T6			
T7			
T8			
T9			
T10			
T11			
T12			

Prepared by / Compiled by

## Section 137 Report Cover Letter

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Department of Veterans' Affairs

### **Section 137 Report Cover Letter**

The section 137 report Cover Letter contains crucial information for the veteran about the enclosed section 137 report and what the section 137 report contains and is used for.

The Cover Letter advises the veteran they have 28 days from the date the report was served, to comment on the documents contained within the section 137 report.

Information regarding extensions and what happens if the veteran has no further comments to make on the section 137 report is contained within this letter. A copy of the section 137 report cover letter template is attached at Annexure A.

What happens during and after the expiration of the 28 day period is explained further below.

## Before sending the section 137 report



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Department of Veterans' Affairs

## Before sending the section 137 report

Before sending the section 137 report to the veteran there are some important things to check.

Use this checklist to ensure you have everything covered.



### Be mindful of...

To ensure the integrity of the data and maintain the privacy and security of the veteran's personal information you must ensure the section 137 report is Quality Assured prior to sending.

You must also ensure that the address of the veteran is correct and accurate and that any information to be provided actually relates to the veteran.

Check Action	Yes/No
Is the Coversheet inserted as the first document in the section 137?	
Is the Client Details Sheet inserted as the second document?	
Is the Index inserted as the third document?	
Is the Application for review inserted at T1?	
Is the section 31 screening minute or section 31 determination inserted at T2?	
Is the Commission decision under review inserted at T3?	
Is the veteran's formal claim or application for increase inserted at T4?	
Are all other relevant documents inserted at T5 in chronological order from the earliest to the latest date?	
Has all confidential and/or prejudicial information been removed from the section 137 report?	
Is the VRB number listed correctly within the documents?	
Has the section 137 report been carefully checked to ensure only the veteran's details are contained within? Specifically check: 1. Name 2. Date of Birth 3. UIN 4. Each page of the report to ensure it belongs to the veteran	

## Before sending the Section 137 report



*A veteran may phone and request a copy of the section 137 report be printed and posted*

Have the following been removed? <ol style="list-style-type: none"> <li>1. Blank pages</li> <li>2. Information leaflets</li> <li>3. Duplicates</li> <li>4. Invoices</li> <li>5. Cover letters that do not provide prudent information</li> <li>6. Proof of ID other than death or marriage certificates for War Widow Pension claims</li> </ol>	
Have the following details been redacted from the report? <ol style="list-style-type: none"> <li>1. DVA staff last names (including email addresses)</li> <li>2. Medical Advisor last names (including email addresses)</li> <li>3. Tax File Numbers</li> <li>4. Bank Details</li> <li>5. Old page numbers / T numbers that will interfere in the current report</li> </ol>	
Is the font on the Coversheet and Index Sheet Times New Roman?	
Do the dates selected on the Index meet the guidelines provided?	
Has the section 137 report undergone a Quality control (QC) check by a team member?	
Have any issues raised by the QC checker been rectified?	
Has the necessary data been recorded in the relevant spreadsheet?	

If upon review of the checklist you are satisfied you have answered yes for each section above, the section 137 report is ready to be provided to the veteran and their nominated representative.

The document should be attached to the Cover Letter and either sent by post or email, depending on the veteran's preference.

Be mindful that a veteran may contact the Department and request a hard copy of the section 137 report. This should be completed in a timely manner.

## Section 137(3)

### **Section 137(3) – Sending the report to the veteran and the veteran's opportunity to comment**

After the report is sent to the veteran, he/she has 28 days to provide comments on the section 137 report.



*Please ensure that any document or spreadsheet that is used to monitor the section 137 reports that have gone out to veterans is kept up to date so that the 28 day time period can be monitored.*

If a veteran and/or their representative make comments concerning the section 137 report, these comments must be saved and recorded on the file, as the comments will need to be considered and included in the section 137 report that is eventually sent to the VRB. You should respond to the veteran's comments in writing (usually by way of return email).

The comments may provide additional information or documentation to support the appeal. Additional information or documentation would need to be provided to the VRB and included as part of the section 137 report. In some circumstances the provision of additional information, documents and comments may trigger further investigation by DVA. Again, the additional information or documents resulting from the further investigation must be included as part of the section 137 report to be provided to the VRB as soon as practicable at the conclusion of that further investigation.

#### Extensions of time

Within 28 days of the report being sent to the veteran, he/she may also request an extension of time to provide comments. As a general rule, all reasonable extensions of time should be granted. An extension of time might be reasonable if:

- the extension sought is for a limited time such as a few days or weeks; and/or
- there is a reasonable justification for the extension sought, such as for medical reasons, or the limited capacity to obtain documents.

The above list is not exhaustive. It is necessary to consider the reasons for the request, and balance those reasons against the length of time being sought.

An extension of time may be unreasonable if the extension being requested is disproportionate and unnecessary. Where a veteran requests a significant extension of time, e.g. an additional 12 months, they should be reminded that they will have the opportunity to provide further information to the VRB during the review process.



## Section 137(3)



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### **FAQ: What if a veteran requests multiple extensions of time? Do I have to consider each extension of time and potentially grant multiple extensions?**

An extension of time to provide comments can only be granted if it is requested within 28 days of the section 137 report being provided to the veteran. If an extension of time is granted, a veteran is unable to request a further extension of time outside the initial 28 day period.

Decision-makers are encouraged to discuss how much time a veteran may need to make comments, in order to grant only one extension of an appropriate period of time. This will help avoid unnecessary complexities and delays in the decision-making process.

### **FAQ: What if a veteran indicates that he/she has no comments to make and requests that the section 137 report be sent straight to the VRB without waiting for the 28 days to end?**

As a general rule, section 137 reports should not be sent to the VRB until the 28 day window has expired.

However, occasionally, veterans may indicate that they do not wish to provide any comments, and therefore request that the section 137 report be forwarded to the VRB as soon as possible. In such a situation, before forwarding the report to the VRB, the veteran should be requested to provide a clear indication in writing that he or she:

- (a) Will not furnish any further comments;
- (b) Understands that the 28 day timeframe has not yet expired, but nevertheless;
- (c) Requests that DVA forward the section 137 report to the VRB without waiting for 28 days to expire.

If a veteran provides written confirmation of all of the above, the section 137 report can be sent to the VRB without waiting for the 28 days to end.

However, where a veteran does not provide written confirmation of all the above, the section 137 report should not be sent to the VRB until 28 days has elapsed.

### **FAQ: The veteran's comments contend that the section 137 report does not comply with the rules of evidence. Do I need to comply with the rules of evidence?**

No. The section 137 report does not need to comply with the rules of evidence.

## Section 137(4)

### **Section 137(4) – Sending the report to the VRB**



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The correct timing of the provision of section 137 reports to the VRB depends on the application of subsection 137(4). This sub-section sets out three scenarios and, depending on which one is applicable, determines when the section 137 must be provided to the VRB.

Those scenarios are:

- (a) If a veteran provides comments in response to the section 137 report within the 28 day period or within the further period granted pursuant to section 137(3) and no further investigation is made in consequence of those comments – then the section 137 report is to be provided to the VRB as soon as practicable after receipt of those comments. This means that as soon as comments from the veteran are received prior to the end of the 28 days, the report and comments should be sent to the VRB. DVA does not have to wait for the end of 28 days to send the report and any comments to the VRB. Similarly, as soon as comments from the veteran are received prior to the end of the further period for which the veteran has been granted an extension of time to respond, the report and comments should be sent to the VRB;
- (b) If a veteran provides comments and a further investigation is undertaken – then the section 137 report, veteran's comments and the results of the further investigation are to be provided to the VRB as soon as practicable after the completion of that further investigation; and
- (c) Where the veteran does not provide comments in response to the section 137 report - then the section 137 report is to be provided as soon as practicable after the expiration of the 28 day or further period granted pursuant to section 137(3). Note that the third scenario in section 137(4)(c) is stated to apply 'in any other case' and would therefore apply to any other scenarios not contemplated in section 137(4)(a) or (b) (scenarios (a) and (b) above).

Any comments made by a veteran in relation to the section 137 report should be collated and added to the section 137 report. Any other amendments to the report that are required as a result of any of these comments should also be actioned at this stage, including any documents that are to be added to the section 137 report.

As the legislation requires that reports be provided "as soon as practicable", you should aim to have the reports finalised and sent to the VRB as soon as your capacity permits.

## Section 137(4)

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**FAQ: Can I send the existing section 137 report to the VRB first, and then provide an amended or supplementary section 137 report at a later point in time?**

No, generally, section 137 reports are provided to the VRB in one go. However, DVA does have an ongoing duty to provide any relevant documents to the VRB. Therefore, if, after a section 137 report has been provided to the VRB, DVA obtains possession of a document which is relevant to the VRB's review, it should provide that document to the VRB as soon as practicable under section 137A of the VEA.

## Section 31 VEA & Section 347 MRCA

### **Section 31 of the VEA / Section 347 of the MRCA**



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In some circumstances, you may seek additional medical evidence where you feel there are gaps in the evidence. Sometimes this evidence will come in *after* a section 137 report has been provided to the VRB. In these circumstances, the VRB is usually unaware that DVA has requested or has received this additional evidence. This process forms part of the internal review process which is separate to, but sits alongside the section 137 process.

**Please note:** If you receive additional medical evidence relevant to a review *after* a section 137 report has been provided to the VRB, you need to provide that evidence to the VRB in accordance with section 137A of the VEA. This section imposes an ongoing obligation to any party to the review (including DVA) to lodge a copy of any relevant document to the VRB.

If you decide not to reconsider the decision under review or make a new decision based on the additional evidence, you should advise the veteran and the VRB that you have decided not to undertake an internal review.

**FAQ: The veteran insists that the section 137 report should not be sent to the VRB until an internal review has been completed. However, DVA has decided not to do any internal review. What should I do?**

If DVA has decided not to undertake any internal review or any other investigation, then the section 137 report should be sent to the VRB as soon as the timeframe for the veteran to provide comments expires. The Secretary has a duty to forward the reports to the VRB "as soon as practicable" in accordance with section 137(4) of the VEA even if a veteran objects. The wording of section 137(4) does not allow for any discretion.

If DVA *does* decide to conduct a review under section 31 of the VEA or section 347 of the MRCA, this can occur before or after a section 137 report is provided to the VRB.

If you are looking to undertake internal review powers, you do not need to wait until the internal review process is complete before sending the section 137 report to a veteran or to the VRB following receipt of the applicant's comments. However, if you are undertaking an investigation in response to a veteran's comments on a section 137 report, you do need to wait for the outcome of that investigation before providing the relevant material to the VRB for its review.

It is a question of which 'hat' you are wearing – acting on behalf of the Secretary under section 137, or as a review officer of the relevant Commission under section 31 of the VEA or section 347 of the MRCA.

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## Frequently Asked Questions

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### **Other Frequently Asked Questions**

#### **FAQ: What should I do if the veteran seeks review of a decision that is not reviewable by the VRB?**

If the veteran seeks review of a decision that is not reviewable, you should prioritise the application as it will need to be brought to the attention of the VRB as soon as possible. There is technically no duty to prepare a section 137 report in circumstances where the VRB does not appear to have jurisdiction to review the Commission decision requested by a veteran because the decision does not appear to be clearly specified in the list of decisions that can be reviewed by the VRB under the VEA or MRCA. Jurisdiction on whether the VRB can review the decision is something that needs to be determined by the VRB, and not by DVA.

It is necessary to follow the standard practice of completing the section 137 process, inclusive of comments from the veteran, so the Board can decide whether it has jurisdiction to proceed with the review if necessary.

#### **FAQ: What if it is not clear which decision a veteran is seeking to review?**

If a veteran applies to the VRB for review but it is unclear what decision they are seeking review of, you must reach out to the veteran in the first instance to seek clarification on the decision for which review is being sought.

The section 137 report is to be prepared 'within six weeks after an application for review made under subsection 135(1), (2) or (3) is received...'

Subsection 135(1) states that a person who has made a claim or applications under sections 14, 15 or 98 of the VEA and who is dissatisfied with any decision made in respect of that claim or application may make an application to the VRB 'for a review of **the** decision of the Commission' (emphasis added).

Therefore, 'the' decision of the Commission must be identified before an application for review to the VRB can properly be 'made' by a veteran under subsection 135(1) and therefore 'received' by the Commission.

The six week period stipulated in subsection 137(1) starts once the decision that has been appealed to the VRB has been properly identified by the veteran.



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## Frequently Asked Questions

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**FAQ: Do I only include documents that are relevant to the particular part of the decision that is being challenged by the veteran, or do I include all the documents that are relevant to the decision under review? For example, what if a veteran was challenging only part of a permanent impairment decision relating to tinnitus, but the decision also referred to other permanent impairments for other injuries?**

This is dependent on the type of case under review. The duty under section 137 is to prepare a report with the evidence under DVA's control that is "*relevant to the review*".

For MRCA Permanent Impairment, MRCA Incapacity and VEA Pension Assessment cases, what is relevant to the review may change as the matter progresses. All of the material that is relevant to an assessment decision should be included in the report, and not just the material relating to the particular part of the decision that the veteran appears to be challenging. Excluding evidence in relation to other components of these types of decisions may affect the ability of the VRB to properly conduct its review. For permanent impairment cases, sometimes the assessment of impairment points for injuries and diseases that the veteran may not take issue with can affect the calculation of impairment points for the injuries or diseases that the veteran *does* take issue with.

For other cases, usually only material relating to the particular part of the decision that the veteran appears to be challenging is included.

**FAQ: If a veteran lodges a single application for review to the VRB, but the decision under review concerns multiple conditions, should I prepare a separate section 137 report for each condition?**

No, there should be one section 137 report per decision. If a decision concerns multiple conditions, and a veteran specifically requests that a report be prepared for each condition, there should only be one report per decision.

**FAQ: If a veteran lodges multiple applications for review to the VRB, for a single decision under review concerning the liability for multiple conditions, should I prepare a separate section 137 report for each condition?**

Where multiple applications for review relating to a single decision are lodged within a short time frame of one another and the section 137 report has not yet been completed, attempts should be made to combine the documents relevant to all applications for review into one section 137 report. The multiple application for review dates must be noted on the coversheet.

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## Frequently Asked Questions

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If however a subsequent application for review is received in relation to that decision after a section 137 report has been already been issued for the previous application(s) for review, then a separate section 137 report should be prepared

**FAQ: What if a veteran appeals a positive decision for liability to the VRB? Is the section 137 report prepared in the same way?**

An example may be where liability for an injury or disease is rejected under the VEA and accepted under the MRCA and the client disagrees with both decisions.

The answer is, yes, the section 137 report is prepared in the same way, as the VRB will be reviewing the correctness of the positive decision in the same way it would a decision which rejected liability. All relevant documents in relation to the positive decision should be included in the section 137 report and the usual processes under section 137 should be followed.

**FAQ: Should the names of staff involved in the section 137 process be included in the section 137 reports?**

No, full names of staff should not be included. First names and a contact number and email is sufficient. If the email and/or contact number is a generic one, then the veteran's application/matter should be able to be easily accessed by whoever responds/picks up the phone so that queries can be responded to in a timely manner.