



# Veterans' Review Board

ANNUAL REPORT 1999-2000

022/68  
PIC. OFF A.R. TURNER.  
77 SQDN  
KORAEA

022/68



# **Veterans' Review Board**

Annual Report

1999-2000

© 2000 Commonwealth of Australia

ISSN 0-818-0679

This work is copyright. Apart from any use permitted under the *Copyright Act 1968*, no part may be reproduced by any process without written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to the Copyright Officer, AusInfo, GPO Box 1920, Canberra ACT 2601.



## Veterans' Review Board Principal Registry

10th Floor, 13 Keltie Street, Woden ACT 2606 • PO Box 294, Woden ACT 2606 • Phone (02) 6285 1911 • Fax (02) 6289 4848

---

The Hon Bruce Scott MP  
Minister for Veterans' Affairs  
Minister Assisting the Minister for Defence  
Parliament House  
CANBERRA ACT 2600

Dear Minister

In accordance with subsection 215(4) of the *Veterans' Entitlements Act 1986*, I present my report on the operations of the Veterans' Review Board for the year ending 30 June 2000.

Yours sincerely

W D ROLFE  
Brigadier (Rtd)  
Principal Member

4 October 2000



# CONTENTS

<b>1999-2000 AND THE VRB – AN OVERVIEW.....</b>	<b>1</b>
SUMMARY.....	5
<b>OBJECTIVES FUNCTION AND POWERS .....</b>	<b>6</b>
OBJECTIVES .....	6
FUNCTION.....	6
POWERS.....	7
<b>ORGANISATION .....</b>	<b>9</b>
<b>MEMBERSHIP AND STAFF .....</b>	<b>11</b>
MEMBERSHIP .....	11
STAFF.....	14
<b>OPERATIONS .....</b>	<b>15</b>
BACKGROUND.....	15
REPLACEMENT COMPUTER MANAGEMENT SYSTEM.....	16
THE SITUATION AT THE BEGINNING OF THE YEAR.....	17
NEW APPLICATIONS .....	18
PROCESSING TIMES .....	18
CASES READY TO LIST.....	20
REGIONAL HEARINGS .....	21
REPRESENTATION FOR APPLICANTS.....	22
COMMISSION REPRESENTATION AT VRB HEARINGS.....	23
IN ABSENTIA REVIEWS .....	23
POSTPONEMENTS .....	24
ADJOURNMENTS.....	25
APPLICATIONS DISMISSED .....	26
APPLICATIONS WITHDRAWN.....	27
APPLICATIONS LAPSED .....	28
OUTCOME OF VRB DECISIONS.....	28
APPLICATIONS FINALISED.....	31
APPLICATIONS OUTSTANDING.....	31
STATISTICAL SUMMARY .....	32
THE SITUATION AT THE END OF THE YEAR .....	33
<b>COURT DECISIONS.....</b>	<b>34</b>
HIGH COURT OF AUSTRALIA .....	34
FEDERAL COURT OF AUSTRALIA .....	35
NSW COURT OF APPEAL .....	37

<b>THE ADMINISTRATIVE APPEALS TRIBUNAL .....</b>	<b>38</b>
REVIEW OF VRB DECISIONS .....	38
REVIEW OF DISMISSALS .....	39
<b>OTHER FORMS OF ADMINISTRATIVE REVIEW.....</b>	<b>40</b>
OMBUDSMAN .....	40
FREEDOM OF INFORMATION ACT 1982 .....	40
<b>RESOURCES .....</b>	<b>41</b>
<b>OTHER ACTIVITIES .....</b>	<b>42</b>
<b>SERVICE CHARTER.....</b>	<b>44</b>
COMPLAINTS.....	44
<b>APPENDIX 1 .....</b>	<b>46</b>
MEMBERSHIP OF THE VETERANS' REVIEW BOARD AS AT 30 JUNE 2000 – BY CATEGORY	46
<b>APPENDIX 2 .....</b>	<b>49</b>
MEMBERSHIP OF THE VETERANS' REVIEW BOARD AS AT 30 JUNE 2000 – BY STATE .....	49
<b>APPENDIX 3 .....</b>	<b>52</b>
VRB PROCEDURES.....	52
<b>APPENDIX 4 .....</b>	<b>57</b>
VETERANS' REVIEW BOARD – EXPENDITURE (\$000's).....	57
<b>APPENDIX 5 .....</b>	<b>58</b>
FOI STATEMENT.....	58
POWERS OF THE VRB .....	58
ARRANGEMENTS FOR OUTSIDE PARTICIPATION.....	61
CATEGORIES OF DOCUMENTS.....	61
FACILITIES FOR FOI ACCESS AND INITIAL CONTACT POINTS .....	62
<b>APPENDIX 6 .....</b>	<b>63</b>
VRB ADDRESSES .....	63
<b>APPENDIX 7 .....</b>	<b>65</b>
COMPLIANCE WITH ANNUAL REPORT GUIDELINES FOR STATUTORY AUTHORITIES .....	65

# TABLES

Table 1 – VRB Membership as at 30 June 2000.....	13
Table 2 – Staff as at 30 June 2000.....	14
Table 3 – Distribution of Applications at 2 July 1999.....	17
Table 4 – New Applications.....	18
Table 5 – Mean Times Taken to Process (in Days).....	20
Table 6 – Number of Days Hearings Held in Regional Locations.....	21
Table 7 – Representation at VRB Hearings .....	22
Table 8 – Hearings Postponed.....	25
Table 9 – Section 151 & 152 Adjournments .....	26
Table 10 – Dismissal Action .....	27
Table 11 – Applications Withdrawn.....	28
Table 12 – Outcome of Published Decisions 1999-2000 .....	29
Table 13 – Decisions Reviewed and Set Aside.....	30
Table 14 – Summary .....	32
Outstanding.....	32
Year End 99-00 .....	32
Table 15 – Distribution of Applications .....	33

# 1999-2000 AND THE VRB – AN OVERVIEW

This overview foreshadows a changed reporting format for the year 2000-01. This results from the development of a Business Plan to underpin the operations of the Veterans' Review Board (VRB). The plan will focus on 'outcomes' with the aim of promoting accountability in VRB operations. As a practical matter the outcomes are built around long held objectives. As an interim step in developing the new reporting format this overview of the reporting year presents material in terms of the proposed outcomes.

## **Outcome 1: Finalise high numbers of applications for review**

Results: In the course of the year 6 840 new applications were lodged and 8 769 applications were finalised. At year end 6 980 applications were outstanding, an improvement over the previous year of 1 985.

On 30 June 2000 approximately 5 000 of these outstanding applications were in the hands of applicants and/or their representatives (and not ready to proceed) some 500 were with the Department of Veterans' Affairs (DVA) awaiting action under section 31, section 137, section 148(6A), section 152 or other administrative action, and the remaining 1 500 were in the hands of the VRB. Of this latter figure, some 900 had been certified by the applicant/representative as ready to proceed. Applying the latter figure to the average number of panels maintained by the VRB through the year of seven (which is dependent to a degree on the availability of applicants and/or their representatives) this amounts to about eight or nine weeks of work for the VRB.

A high hearing rate was maintained by ready availability of members, careful planning of hearing weeks, flexible listing practices allowing the substitution of 88% of hearings postponed and by offering a variety of modes of hearing (including hearing with or without representative, telephone hearing, hearing in absentia). In addition 223 days of hearings were conducted in 13 locations remote from State registries (including four locations not previously visited).

Veteran organisations generally registered satisfaction with efforts to provide a high hearing rate, different modes of hearing, additional hearing locations and the high throughput of applications.

## **Outcome 2: Complete reviews at a quality level that affords a high assurance that review decisions are correct**

Result: This outcome is notoriously difficult to measure in any meaningful way. Quality levels are sustained using a variety of methods. VRB appointments are sought after and are rigorously selected resulting in appointees of experience, skill and empathy. The VRB retains a practice of sitting panels comprising three members for a week at a time. This practice promotes consistency and equally, the application of three independent minds, utilising a range of individual skills and experience, ensures a careful consideration of all issues. Members are supported in their work by the Legal and Information section, which undertakes some research, regularly publishes a Bulletin for members and staff, and produces *VeRBosity*, an in-house publication with a mailing list to veteran support organisations of 800 copies. Panel decisions are examined by the Principal Member to detect trends and issues that are discussed in Senior Member meetings and regional meetings of all local members. All Administrative Appeals Tribunal decisions and Federal and High Court decisions pertaining to disability claims are examined for impact on VRB decisions. All the above materials are contained on an increasingly sophisticated Intranet site utilised by members in preparing decisions and reasons.

These efforts are aimed at quality. The difficulty arises in objectively assessing that quality. As a matter of statistical outcomes the VRB set aside 25% of Repatriation Commission entitlement decisions and 53% of assessment decisions. Many factors bear on these rates not the least being the constantly changing circumstances of veterans as they age.

Figures available to the VRB indicate that 1 783 or 34% of decisions made at hearings by the VRB were appealed to the AAT. Almost inevitably, it seems, additional medical information is obtained prior to consideration by the AAT. Information from DVA indicates that approximately 45% of such applications to the AAT are conceded by the Repatriation Commission while a further 35% of applications are withdrawn. Of the matters that went to hearing 57% were affirmed while 43% were varied or set aside.

It is not possible to draw positive or negative conclusions from these statistics. The still high numbers of veterans and dependants, the wide variety in circumstances of service, their age, the types of conditions suffered, the passage of time and the impact of Statements of Principles all suggest that the present hierarchy of consideration and review is the most reasonable that can be prescribed.

Still another measure of quality is the nature and level of complaint. In the course of the year the VRB received eight letters of appreciation. Such letters are neither sought nor used in assessment of approach although in a corporate sense they tend to confirm the intention to provide a service that is helpful and respectful. On the

other hand ten complaints were noted in Registries and advised to the Principal Registry while a further 15 were referred directly to the Principal Member – a total of 25 for the year. Of the 15 referred to the Principal Member one came from a Member of Parliament on behalf of a constituent, seven were referred from the office of the Minister for Veterans' Affairs following letters from veterans and the remainder were sent direct to the Principal Member.

The number of complaints is very small compared to the almost 9 000 applications finalised but they act as useful prompts to wider issues of hearing and administration. Concerns expressed by advocates have led to further consideration of means of assistance and cooperation with advocates. Concern over the accuracy of particular details in decisions and reasons has highlighted the hurt that may be occasioned by such mistakes and resulted in even greater effort to avoid any errors of fact or circumstance. The fortunately few complaints serve as a timely reminder of the human issues which the VRB deals with.

On the whole the efforts devoted to quality personnel and systems together with consistent objective data and relatively few complaints indicate that a satisfactory quality level has been maintained.

**Outcome 3: Complete all process stages subject to the VRB's control on a timely basis**

Results: The VRB has long aimed to publish decisions and reasons quickly. In the reporting year the average time taken from hearing to publication was 19 days, an improvement over the 24 days of the previous year. A focus on this issue has tended to mask other process areas under the control of the VRB and processes that the VRB could perhaps influence in the interests of timeliness. Some emphasis was placed on initial contact with veterans in the latter half of the year with quite dramatic results. In the coming year particular objectives will be set to measure performance in processing. At the present time the process from lodgement of application to publication of the decision and reasons averages 437 days with 30% of that period under the control of the VRB. Some assistance from and cooperation with applicants and representatives will be necessary but the time taken must be shortened.

**Outcome 4: Undertake reviews in a manner that is efficient to resource usage**

Result: The cost per finalised application increased by 6.4% over the year, from \$764 per application to \$813. Approximately half of the increase resulted from the upgrade of APS 2 Review Officer positions to APS 3 Case Manager positions and the redundancy of five staff members while the other half flowed from the cost of Year 2000 computer compliance and ongoing maintenance costs. In the course of the year staff dealt with in excess of 15 000 files, being the matters outstanding

from 1998-99 and the new applications received, and supported just under 6 000 hearings.

The 51 part-time members sat for an average of 23 weeks each in the year. Members made themselves readily available for sittings and a capacity existed for an average of up to ten panels per week. In fact the average sustained was between seven and eight panels a week due largely to the VRB's dependence on the availability of ex-service organisation advocates, many of whom render voluntary part-time service.

Staff and members work closely together in a mutually respectful environment.

The reduced number of applications for review provided little respite for members and staff as further effort was devoted to processing outstanding applications. On the whole the members and staff constitute an effective hard working team which is well aware of the responsibility to provide a professional result at a low cost.

### **Outcome 5: Accessible and responsive to veteran community stakeholders**

Result: The VRB maintains a cooperative relationship with DVA National Office where the Principal Registry is located and in respective state offices. The VRB is now colocated with DVA in Sydney, Melbourne, Brisbane, Perth and Hobart. Separate offices are retained in Adelaide where space limitations made colocation impracticable.

The Principal Member and Executive Officer maintain effective communications with a variety of national and regional veteran organisations and with an equal variety of advocacy groups supported by veteran organisations. Registrars and staff support these efforts in frequent contacts with applicants and representatives and periodic meetings with groups to exchange views and provide information. Some members have been allocated by the Principal Member, on invitation, to assist the Training and Information Program (TIP) in training veterans' representatives.

An established practice of regular provision of performance data to interested veteran organisations fell away during the year as a result of implementation of the system for application management. This will be revitalised in the coming year.

The various points of communication with veteran community stakeholders indicate a general level of satisfaction with VRB efforts to meet its established objectives.

## **Summary**

In the course of the year the VRB finalised high numbers of applications for review at a rate which exceeded lodgement of new applications. Decisions and reasons were of a consistent professional quality with a complaint rate across all activities of the VRB registering below one-third of 1%. VRB processes were timely in the circumstances although critical analysis has suggested areas for improvement. The average cost of finalised cases increased by 6.4% over the previous year with the increase largely associated with staffing costs and necessary technological improvements.

The VRB managed in excess of 15 000 files for the year and supported and conducted almost 6 000 hearings. The work was conducted in a mutually respectful environment with all due courtesy and respect extended to applicants and representatives. Effective communication and cooperation was maintained with all stakeholders in the veteran community.

The Principal Member extends his sincere thanks to members and staff of the VRB for their commitment, flexibility and professionalism and acknowledges, with gratitude, the cooperation and support provided by veteran organisations and advocacy groups and by DVA staff, to ensuring the independent and effective functioning of the VRB.

# OBJECTIVES FUNCTION AND POWERS

## Objectives

The VRB was established to implement the Government's decision to adopt the recommendations of the Administrative Review Council that a statutory review body be established to review on the merits of the case primary decisions made by delegates of the Repatriation Commission on claims for pension. To this end the VRB aims to:

- (a) finalise high numbers of applications for review;
- (b) do so at a quality level that affords a high assurance that review decisions are correct;
- (c) complete all process stages subject to the VRB's control on a timely basis; and
- (d) undertake reviews in a manner that is efficient to resource usage.

## Function

The VRB was established by the *Repatriation Legislation Amendment Act 1984* and began operations on 1 January 1985. It was continued in existence by the *Veterans' Entitlements Act 1986*, which came into effect on 22 May 1986. Since then the VRB's operations have been governed by the *Veterans' Entitlements Act 1986* and its companion legislation, the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*.

The VRB is a part of the governmental machinery for the delivery of Repatriation benefits to veterans and their dependants, the principal components of which are:

- the Department of Veterans' Affairs;
- the Repatriation Commission;

- the VRB; and
- the Administrative Appeals Tribunal.

Although the VRB comes within the Minister for Veterans' Affairs portfolio and for administrative purposes is included as a sub-program in the Department of Veterans' Affairs, it is an independent statutory authority. The Minister has no statutory power of direction over the VRB.

The VRB's function is to review decisions of the Repatriation Commission on such matters as:

- claims for the acceptance of injury or disease as war/defence-caused;
- claims for war widows'/widowers'/orphans' pensions;
- assessment of the rate of pension paid for incapacity from war/defence-caused injury or disease; and
- claims for the grant or assessment of attendant allowance.

## **Powers**

The powers of the VRB are set out in Part IX of the *Veterans' Entitlements Act 1986*.

Claims for the grant of pension or allowance, or applications for increase in pension rate, are lodged with and investigated by the Department of Veterans' Affairs. They are then decided by the Repatriation Commission. In most cases, this decision is made by an officer of the Department of Veterans' Affairs to whom the Repatriation Commission has delegated its power of decision-making.

In conducting a review of a decision, the VRB may, by section 139(3) of the *Veterans' Entitlements Act 1986*, exercise all the powers and discretions of the primary decision-maker to grant or assess pension or allowance.

It may affirm, vary or set aside the decision under review and, where appropriate, substitute its own decision.

Decisions of the VRB are, in turn, reviewable by the Administrative Appeals Tribunal upon application to that Tribunal. Appeals from decisions of the AAT may be made, but only on a question of law, to the Federal Court of Australia.

Decisions of the VRB must be made under and in accordance with the *Veterans' Entitlements Act 1986*.

Upon its establishment, the VRB adopted the aim of doing all it could to ensure that those seeking a review receive quickly their proper entitlement under Repatriation law.

# ORGANISATION

The VRB performs its adjudicative functions by the allocation of members to the hearing of particular cases. Details of membership during the year are provided in the chapter headed Membership and Staff and in Appendices 1 and 2.

Membership of the VRB is in a number of categories – the Principal Member, Senior Members, Services Members (selected from lists of candidates submitted to the Minister by ex-service and related organisations), and Members.

The Principal Member is responsible for the efficient operation of the VRB and the arrangement of its business, including its procedures and the constitution of its panels. The Principal Member cannot direct any member on the law or on the decision to be made in a particular case.

For the purpose of conducting a review, a VRB panel is usually constituted by:

- the Principal Member or a Senior Member, who presides;
- a Services Member; and
- a Member.

A quorum of two members may sit if one of the three members who was to constitute the panel becomes unavailable. As a matter of practice, every reasonable effort is made to replace an unavailable member to avoid the need for the remaining two members to sit as a quorum.

With the consent of the Minister for Veterans' Affairs, the VRB may be constituted by one member sitting alone.

A Bill was introduced into Parliament in June 2000 for amendment of the *Veterans' Entitlements Act 1986* to permit a panel to be constituted by the Principal Member, a Senior Member and a Services Member. If passed, this would allow greater flexibility in the constitution of panels.

Depending on the number of cases available for hearing, panels generally sit for most weeks of the year in each State capital. As the need arises and subject to availability of resources, panels also sit in various regional centres.

In performing its adjudicative functions, members of the VRB are assisted by a number of administrative staff (see the chapter headed Membership and Staff for further details).

The VRB has its Principal Registry in Canberra and a Registry in each State capital. The Executive Officer acts as chief legal counsel to the Principal Member and is responsible to the Principal Member for the direction and coordination of the activities of the staff. The Executive Officer is assisted by two Directors. One is responsible for the VRB's corporate services and the other for the VRB's legal and information services. A Registrar in each State is responsible to the Executive Officer for the administrative operations of the VRB in his or her State.

The Registry addresses and the names of VRB officers, including the information officer, who can provide further details about the VRB, are set out at Appendix 6.

# MEMBERSHIP AND STAFF

## Membership

All members of the VRB are appointed by the Governor-General and hold office for such period, not exceeding five years, as is specified in the instrument of appointment. They are eligible for reappointment. The statutory retiring age for full-time members is 65 years. *The Veterans' Affairs Legislation Amendment Act 1992* removed a similar statutory age limit for appointment and reappointment of part-time members to the VRB.

The only circumstances in which VRB members can be removed from office are those set out in section 164 of the *Veterans' Entitlements Act 1986*. This section is as follows:

### 164 Removal from office

- (1) The Governor-General may remove a member from office on the ground of proved misbehaviour or physical or mental incapacity.
- (2) The Minister may suspend a member from office on the ground of misbehaviour or physical or mental incapacity.
- (3) Where the Minister suspends a member from office, the Governor-General may, on the recommendation of the Minister:
  - (a) remove the member from office;
  - (b) direct that the suspension of the member continue for such further period as the Governor-General specifies; or
  - (c) direct that the suspension of the member terminate.
- (4) The suspension of a member from office under this section does not affect any entitlement of the member to be paid remuneration and allowances.
- (5) If:
  - (a) a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit;
  - (b) a member, being a member who has been appointed as a full-time member:
    - (i) engages, except with the approval of the Minister, in paid employment outside the duties of the member's office; or

- (ii) is absent from duty, except on leave of absence, for 14 consecutive days or 28 days in any 12 months; or
- (c) a member fails, without reasonable excuse, to comply with the member's obligations under section 165;

the Governor-General shall remove the member from office.

- (6) The Governor-General may, with the consent of a member who is:
  - (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
  - (b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*;

by notice in writing, retire the member on the ground of physical or mental incapacity.

(6A) The notice must specify the day on which the member is to be retired.

(6B) The day specified in the notice must not be a day earlier than the day on which the Governor-General signed the notice.

(7) A member shall not be suspended, removed or retired from office except as provided by this section.

- (8) In spite of anything contained in this section, a member who:
  - (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
  - (b) has not reached his or her maximum retiring age within the meaning of that Act;

is not capable of being retired from office on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under section 54C of that Act.

- (9) In spite of anything contained in this section, a member who:
  - (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
  - (b) is under 60 years of age;

is not capable of being retired from office on the grounds of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No.1 has given a certificate under section 13 of that Act.

As at 1 July 1999, the membership of the VRB was 56.

From 1 July 1999 to 30 June 2000 the following changes in membership occurred:

- one member resigned:
  - Wayne Edward Shennan from 29 November 1999.

- one member changed his State of appointment:
  - Robert Eadie, part-time Senior Member, Perth to part-time Senior Member, Melbourne as from 2 October 1999
- three members' terms of office expired:
  - Ross Buchanan Freeman, part-time Member, Sydney from 30 September 1999
  - William Raynham Holloway, part-time Senior Member, Melbourne from 30 September 1999
  - John Raymond Da Costa, part-time Services Member, Sydney from 31 December 1999.

At 30 June 2000, there were 52 members of the VRB: the Principal Member, 17 Senior Members, 18 Services Members and 16 Members. Of these, only the Principal Member was a full-time appointee and all others were part-time. The number of women holding appointment was 14.

The breakup of membership as at 30 June 2000 is set out in the following table:

**Table 1 – VRB Membership as at 30 June 2000**

<b>Class of Member</b>	<b>Full-time</b>	<b>Part-time (women)</b>	<b>Total (women)</b>
Principal Member	1	-	1
Senior Member	-	17 (7)	17 (7)
Services Member	-	18	18
Member	-	16 (7)	16 (7)
<b>Total</b>	<b>1</b>	<b>51 (14)</b>	<b>52 (14)</b>

Full details of the VRB membership as at 30 June 2000 are set out in Appendices 1 and 2.

## Staff

Under the *Veterans' Entitlements Act 1986*, the Secretary of the Department is required to make available any staff required to assist the VRB in the performance of its statutory functions.

At 1 July 1999, there were 48 staff employed by the VRB. That figure was 46 at the end of the financial year. There are no Senior Executive Service staff positions at the VRB.

The break-up of staff as at 30 June 2000 is set out in the following table:

**Table 2 – Staff as at 30 June 2000**

	<b>EL 2</b>	<b>EL 1</b>	<b>APS 6</b>	<b>APS 4</b>	<b>APS 3</b>	<b>Total</b>
<b>ACT</b>	1	2	1	2		<b>6</b>
<b>NSW</b>		1	1	2	7	<b>11</b>
<b>VIC</b>		1	1	2	7	<b>11</b>
<b>QLD</b>		1	1	2	7	<b>11</b>
<b>SA</b>			1	1	1	<b>3</b>
<b>WA</b>			1	1	1	<b>3</b>
<b>TAS</b>			1			<b>1</b>
<b>TOTAL</b>	<b>1</b>	<b>5</b>	<b>7</b>	<b>10</b>	<b>23</b>	<b>46</b>

The information officer is:

Narelle Peck  
Director (Corporate Services)  
Veterans' Review Board  
10th Floor  
13 Keltie Street  
WODEN ACT 2606

Phone: (02) 6285 1911  
Fax: (02) 6289 4848

# OPERATIONS

## Background

A brief statement of the procedures ordinarily followed by the VRB in the processing, consideration and finalisation of applications is set out at Appendix 3. This chapter analyses the operations of the VRB during 1999-2000 in detail.

Under s136 of the *Veterans' Entitlements Act 1986*, applications for review must be lodged at an office of the Department of Veterans' Affairs. The Department registers new applications, giving them sequential State-based registration numbers. That registration number is then used by the VRB as its reference number and is used as the VRB's file number for each application.

From July 1999, at the VRB's request, the Department of Veterans' Affairs has registered applications that sought review of a single Repatriation Commission decision concerning both entitlement and assessment matters as single applications. Previously, such applications would have been registered with two application numbers and treated as separate applications for review, one as an entitlement application and one as an assessment application.

This new approach to registration of applications is a consequence of the Federal Court's judgments in *Stafford's case*. In that case at first instance, Northrop J said that 'the [Repatriation Commission's] decision should be treated as one' rather than a number of decisions concerning separate matters. On appeal, the Full Court did not disturb that statement and held that the VRB is obliged to review everything decided by the Repatriation Commission in its overall decision unless there was a 'clear, unambiguous withdrawal' by the applicant of a matter decided by the Repatriation Commission within that decision. This global or composite decision approach to the characterisation of the decision under review means that the VRB must deal with the application for review as a single application rather than split the entitlement and assessment matters into separate applications to be dealt with independently of each other, as was the practice in the past.

This change in the registration procedure has affected the way in which applications are counted. Previous years figures were artificially inflated by counting a joint entitlement and assessment application as two. At 30 June 2000, there were 563 applications for review outstanding that had been notified to the VRB during

1999-2000 as relating to both entitlement and assessment matters. In previous years, these applications would each have been counted and treated as two applications. The artificial inflation of previous years' figures (estimated to be between 5% to 10%) needs to be kept in mind when comparing 1999-2000 figures with those of previous years.

## **Replacement Computer Management System**

During September and October 1999, the first phase of the VRB's System for Application Management (vrbSAM) was installed to replace the non-Year 2000 compliant Record Management System (RMS), which had been operating without substantial modification since 1989. Unlike the RMS, vrbSAM is a national database, allowing the Principal Registry to have direct access to statistical and other information concerning the processing of applications for review.

The second phase of vrbSAM, which is planned for implementation in the next financial year, will provide further operational enhancements, more detailed statistics, and increased efficiency in listing cases for hearing. Some planning and development work on this phase commenced in May 2000.

The development of, and ongoing technical support for, vrbSAM has been provided by the Information Management Unit of the Department of Veterans' Affairs, which employed the services of a contractor, Mr Ian Edwards, who undertook a large part of the technical development using SQL Server 7 and Visual Basic with links to Microsoft Access and Microsoft Word. The VRB is especially pleased with the standard of professionalism and quality of service provided by Mr Edwards and the Department.

## The Situation at the Beginning of the Year

The distribution of applications at the commencement of the year under review is outlined in the following table:

**Table 3 – Distribution of Applications at 2 July 1999**

	<i>Entitlement Applications</i>	<i>Assessment Applications</i>	<i>Total</i>
<b>With Department:</b>			
- for preparation of Departmental Reports or awaiting applicant's response	660	366	1 026
- for further evidence under s152	154	104	258
- for Commission review under s31	7	3	10
<b>Sub-total</b>	<b>821</b>	<b>473</b>	<b>1 294</b>
<b>With Applicant:</b>			
- awaiting applicant's advice re attendance at hearing	628	356	984
- applicant has advised not ready for hearing	3 072	1 838	4 910
<b>Sub-total</b>	<b>3 700</b>	<b>2 194</b>	<b>5 894</b>
<b>With VRB:</b>			
- awaiting despatch of s148 letter	10	5	15
- listed for hearing	253	154	407
- awaiting listing	510	370	880
- heard/awaiting decision	206	140	346
- for administrative action	77	52	129
<b>Sub-total</b>	<b>1 056</b>	<b>721</b>	<b>1 777</b>
<b>Total</b>	<b>5 577</b>	<b>3 388</b>	<b>8 965</b>

The situation at the end of the year is shown in Table 15.

## New Applications

During 1999-2000, a total of 6 840 new applications were notified to the VRB compared to a total of 8 796 applications during 1998-99.

The geographic distribution of new applications and the comparison with 1998-99 figures is shown in the following table:

**Table 4 – New Applications**

	NSW	VIC	QLD	SA	WA	TAS	AUST
<b>Year ending – 30 June 2000</b>	<b>2 380</b>	<b>1 599</b>	<b>1 681</b>	<b>528</b>	<b>400</b>	<b>252</b>	<b>6 840</b>
1998-99	2 915	2 114	2 625	551	448	143	8 796

## Processing Times

There are three processing stages over which the VRB has primary control:

- from receipt of the s137 report from DVA until a s148 notice is sent to the applicant;
- from receipt of a Certificate of Readiness until the hearing; and
- from the hearing until publication of the decision and reasons.

### **From Receipt of s137 Report to s148 Notice**

When the s137 Report is received, a VRB Case Manager examines the documents in the report for completeness and accuracy. If it appears that relevant documents are missing or incomplete, the Report is returned to the Department for rectification. Following this preliminary check, a s148 Notice is sent to the applicant seeking advice about whether the applicant wishes to attend the hearing, whether the applicant wishes to be represented, and whether the applicant is ready to proceed at a hearing.

### **From Certificate of Readiness to Hearing**

When the VRB receives a Certificate of Readiness from an applicant or representative, the s137 Report is again checked for completeness and DVA records are examined to determine whether there is further material that should be added to the Report. Depending on the availability of the applicant and his or her representative, the application is listed for hearing in the next available hearing slot, based on order of receipt of the Certificate of Readiness. In a significant number of cases, representatives place restrictions on their availability, with the result that many cases are not available for listing for some weeks from when the Certificate of Readiness is received.

### **From Hearing to Publication of Decision and Reasons**

The VRB aims to publish its decisions and reasons as soon as possible, and at least within 28 days, after the hearing. Each VRB panel usually hears three cases each day. After each hearing the panel discusses the merits of the case and allocates one member to draft the reasons. Most members type their own drafts. When the reasons have been drafted they are circulated to the other two members for comment and discussion. After each member is satisfied with the decision and reasons, the document is signed and given to the VRB staff for publication.

**Table 5 – Mean Times Taken to Process (in Days)**

<b>STAGE</b>	<b>Primarily under DVA control</b>	<b>Primarily under applicants' control</b>	<b>Primarily under VRB control</b>
<b>Lodgement to Receipt of s137 Report</b>	54		
<b>Receipt of s137 Report to s148 Notice sent</b>			34
<b>s148 Notice sent to s148 Reply received</b>		40	
<b>s148 Reply to Certificate of Readiness received</b>		215	
<b>Certificate of Readiness to Hearing</b>			75
<b>Hearing to Publication of decision &amp; reasons</b>			19
<b>Total Average Time with DVA, applicants or VRB</b>	<b>54</b>	<b>255</b>	<b>128</b>
<b>Average % of Time with DVA, applicants or VRB</b>	<b>12.4%</b>	<b>58.4%</b>	<b>29.2%</b>

## **Cases Ready to List**

At 2 July 1999, 20% of outstanding applications were with the VRB, 66% were with applicants or their representatives and not ready to be heard, and 14% were with the Department for action under sections 137, 148(6A), 152 or 31 (ie for the preparation of a Departmental Report, obtaining further evidence at the request of the Principal Member or a panel of the VRB, or review by the Repatriation Commission).

At 30 June 2000, 21% of outstanding applications were with the VRB, 71% were with applicants or their representatives and not ready to be heard, and 8% were with the Department for action under sections 137, 148(6A), 152 or 31.

During the year, the VRB aimed to list 15 hearing times per panel per week and those applications thought to be particularly complex or lengthy were allocated two or more hearing times. Where an applicant had more than one application they were 'merged' and heard, where possible, during the one hearing time slot.

## Regional Hearings

During 1999-2000 regional hearings were again arranged in Bundaberg, Cairns, Canberra, Darwin, Gold Coast, Launceston, Mackay, Rockhampton and Townsville.

In addition hearings were arranged for the first time in Alice Springs, Palm Beach, Southport and Surfers Paradise.

The number of days hearings held in the above locations were as follows:

**Table 6 – Number of Days Hearings Held in Regional Locations**

<b>Location</b>	<b>1998-99</b>	<b>1999-2000</b>
Alice Springs	-	2
Bundaberg	25	29
Cairns	20	15
Canberra	55	55
Darwin	5	3
Gold Coast	19	10
Launceston	10	12
Mackay	10	10
Palm Beach	-	15
Rockhampton	10	10
Southport	-	5
Surfers Paradise	-	38
Townsville	44	19
<b>Total days of hearings</b>	<b>198</b>	<b>223</b>

In 2000, the VRB began investigating the potential of using video conferencing to enhance its service to applicants in regional areas. Preliminary discussions have been held with a number of representatives of the ex-service community in regional areas, and some regional video conferencing facilities have been inspected to assess their suitability. The VRB anticipates that video hearings will be a useful *additional* means of providing hearings on a timely basis for applicants in regional areas. The VRB remains committed to conducting regional hearings while there are sufficient cases available in those areas. However, video conferencing may enable some applications to be heard sooner as the VRB would not have to wait for other applications in that region to be ready for hearing.

## Representation for Applicants

Representation for applicants at VRB hearings is provided by a number of ex-service and related organisations and by some private individuals.

The geographic distribution and numbers of applications heard where the applicants were represented, compared with 1998-99 figures, are shown in the following table:

**Table 7 – Representation at VRB Hearings**

	NSW	VIC	QLD	SA	WA	TAS	AUST
<b>Unrepresented</b>	270	70	143	31	44	11	569
<b>In absentia</b>	406	52	278	31	27	7	801
<b>Represented</b>	<b>1 542</b>	<b>1 225</b>	<b>1 245</b>	<b>278</b>	<b>222</b>	<b>80</b>	<b>4 592</b>
<b>Total</b>	2 218	1 347	1 666	340	293	98	5 962
<b>% Represented 1999-2000</b>	<b>69.5</b>	<b>90.9</b>	<b>74.7</b>	<b>81.8</b>	<b>75.8</b>	<b>81.6</b>	<b>77.0</b>
% Represented 1998-99	62.0	86.1	66.2	78.5	57.5	89.0	69.9

A significant proportion of applicants who have ‘in absentia’ hearings are represented, but both the applicant and the representative have chosen not to appear

at the hearing. Written submissions are sometimes provided to the VRB by the representatives in those cases.

## **Commission Representation at VRB Hearings**

The Repatriation Commission is formally a party to all proceedings before the VRB. As a matter of practice, however, it has seldom attended VRB hearings. During 1999-2000 the Commission was not represented at any hearings.

## **In Absentia Reviews**

The VRB offers each applicant the choice of having his or her application heard in a variety of ways:

- an applicant may attend and be represented;
- an applicant may be represented but not attend;
- an applicant may attend but not be represented;
- an applicant may discuss the matter with the VRB members by telephone during the course of the hearing and, in doing so, may or may not be represented; or
- an applicant may request the VRB to deal with the case in his or her absence ('in absentia').

When an applicant asks that his or her case be decided 'in absentia', the VRB has the flexibility to list that case on very short notice. Thus, an 'in absentia' case may be substituted as a standby for a case, the hearing of which has been cancelled on such short notice that a hearing for another case cannot be arranged.

This system of 'standby cases' helps to ensure that the VRB's hearing capacity is utilised to maximum effect. Its efficiency, however, depends upon the VRB receiving the earliest possible notice of the need for any postponement of a listed hearing.

Under subsection 148(4) of the *Veterans' Entitlements Act 1986*, cases can also be listed 'in absentia' where an applicant fails to respond to the VRB's request to advise whether the applicant wishes to appear at the hearing.

During the year, the VRB dealt with 801 cases 'in absentia' compared to 1 263 in 1998-99. As a proportion of all hearings held, 'in absentia' cases represented 13.4% compared to 18.0% in 1998-99.

## Postponements

A vital factor in the VRB's capacity to finalise applications is the effectiveness of its listing operations. If the VRB lists applications for hearing at times which subsequently become unsuitable to applicants or their representatives and the VRB does not receive timely advice of that unsuitability, the allocated hearing time may be wasted. Obviously there will always be some postponements – a sudden illness or other mishap cannot be avoided. However, it must be the aim of the VRB and those who regularly deal with it to ensure that the adverse effect of postponements is offset wherever possible by the substitution of another application. To this end, the VRB's procedures provide that requests for postponement on the day of a scheduled hearing will not be granted. In such cases, the hearing will commence as scheduled and the VRB panel will determine, after considering all the circumstances and the material before it, whether it will proceed with the hearing or adjourn the matter to a date to be fixed by the Registrar.

During the year, 355 applications listed for hearing were postponed prior to the commencement of the hearing. Substitute applications were found for 312 postponements. This resulted in 43 hearing slots not being able to be used.

The VRB continues to seek the cooperation of all parties in ensuring the effectiveness of its listing procedures – the lower the effective postponement rate, the higher the finalisation rate and, obviously, the shorter the waiting time for other applications in the system. In particular, advocacy organisations should realise that, where they have signed a Certificate of Readiness for Hearing, or have certified that a case is ready for hearing as a result of letters sent pursuant to the dismissal legislation, a subsequent request for a postponement would, apart from exceptional circumstances, be unlikely to be granted.

The following table shows the geographic distribution of postponements during the year and the number and percentages of cases substituted for such postponements:

**Table 8 – Hearings Postponed**

	NSW	VIC	QLD	SA	WA	TAS	AUST
Applications Heard	2 218	1 347	1 666	340	293	98	5 962
<b>Postponed</b>	<b>161</b>	<b>87</b>	<b>85</b>	<b>11</b>	<b>9</b>	<b>2</b>	<b>355</b>
Substituted	138	84	78	10	2	0	312
<b>% substituted 1999-2000</b>	<b>85.7</b>	<b>96.6</b>	<b>91.8</b>	<b>90.9</b>	<b>22.2</b>	<b>0</b>	<b>87.9</b>
% substituted 98-99	94.0	64.3	94.2	75.0	58.8	25.0	83.8

## Adjournments

The *Veterans' Entitlements Act 1986* confers two powers of adjournment. The first (section 151) is a general power exercisable at the VRB's discretion; the second (section 152) must be exercised if the VRB decides to seek further information from the Secretary of the Department. Broadly speaking, the VRB will adjourn a hearing in either of two situations – if it believes in the interests of procedural fairness that either or both of the parties to the hearing should have an opportunity to obtain further evidence in relation to material before the VRB (section 151 cases); or if it considers that there is or may be other evidence not then available to it which is relevant to and necessary for a proper determination of the points in issue (section 152 cases).

It is accepted that some adjournments will inevitably occur. On occasions, issues previously not recognised by the parties will only become apparent during the course of a hearing, or a witness may cast his or her evidence in a way that places quite a different complexion on the probative nature of that evidence.

But the aim of the VRB, and equally of the parties to the hearings, must be to confine adjournments to those that are inevitable – that is, the only hearings that should be adjourned are those where, with adequate case preparation, the advocate could not reasonably have foreseen the eventual necessity for such an adjournment. This is particularly important where an advocate has signed a Certificate of Readiness for Hearing or where a case is certified as ready for hearing following correspondence pursuant to the dismissal legislation. A request for hearing should

only be made where a party is actually ready to proceed to a hearing. Any subsequent request for an adjournment may suggest in some circumstances that the certification of readiness for a hearing was not genuine. This would be an unacceptable practice.

The VRB has adopted procedures designed to address unnecessary adjournments that result from the above circumstances, including the non-attendance of applicants at a scheduled hearing without adequate explanation.

The geographic distribution of adjournments during the year is shown in the following tables:

**Table 9 – Section 151 & 152 Adjournments**

	NSW	VIC	QLD	SA	WA	TAS	AUST
Applications Heard	2 218	1 347	1 666	340	293	98	5 962
<b>Adjourned s151</b>	<b>105</b>	<b>54</b>	<b>100</b>	<b>8</b>	<b>13</b>	<b>1</b>	<b>281</b>
s151 as % of Heard	4.7	4.0	6.0	2.4	4.4	1.0	4.7
<b>Adjourned s152</b>	<b>166</b>	<b>58</b>	<b>174</b>	<b>10</b>	<b>24</b>	<b>6</b>	<b>438</b>
s152 as % of Heard	7.5	4.3	10.4	2.9	8.2	6.1	7.3
<b>Total Adj% 99-00</b>	<b>12.2</b>	<b>8.3</b>	<b>16.4</b>	<b>5.3</b>	<b>12.6</b>	<b>7.1</b>	<b>12.1</b>
Total Adj % 98-99	13.7	9.9	14.3	8.1	12.2	17.6	12.7

## Applications Dismissed

During 1999-2000, the VRB sent out a total of 1 186 letters asking for a written statement from applicants as to why they were not ready to proceed at a hearing. These letters resulted in a total of 286 applications being dismissed, 254 being withdrawn and 333 requests for a hearing. The remainder provided reasonable explanations or were still being followed up in accordance with the legislation. There were 13 appeals concerning dismissals lodged with the AAT.

For more information concerning AAT appeals see the Administrative Appeals Tribunal chapter of this Report at pages 38-39.

**Table 10 – Dismissal Action**

	NSW	VIC	QLD	SA	WA	TAS	AUST
Letters Sent	693	171	228	60	23	11	1 186
Reasonable Answer	138	22	35	7	5	3	210
Withdrawn	119	61	61	8	4	1	254
Hearing Requested	215	24	62	17	13	2	333
<b>Dismissed 99-00</b>	<b>163</b>	<b>31</b>	<b>67</b>	<b>14</b>	<b>5</b>	<b>6</b>	<b>286</b>
Dismissed 98-99	135	15	70	60	17	3	300

## Applications Withdrawn

During 1999-2000, 3 166 applications were withdrawn by applicants; this represents 36.1% of applications finalised during the year. This compares with 3 244 withdrawals (33.1%) for the previous year.

The geographic distribution of applications withdrawn during the year is shown in the following table:

**Table 11 – Applications Withdrawn**

	NSW	VIC	QLD	SA	WA	TAS	AUST
Finalised	2 911	2 229	2 471	556	430	172	8 769
<b>Withdrawn</b>	<b>775</b>	<b>967</b>	<b>979</b>	<b>207</b>	<b>169</b>	<b>69</b>	<b>3 166</b>
% Withdrawn 99-00	26.6	43.4	39.6	37.2	39.3	40.1	36.1
% Withdrawn 98-99	25.7	41.5	33.3	31.8	39.1	41.1	33.1

## Applications Lapsed

Most applications lapse because an applicant dies and the legal personal representative does not wish to pursue the matter. An application, once registered, might also be disposed of if it is found to be a duplicate registration, or more properly regarded as a new claim for pension or an application for increase. During 1999-2000, a total of 60 applications were lapsed. The figure for 1998-99 was 76.

## Outcome of VRB Decisions

The review of a Repatriation Commission decision may involve deciding more than one substantive matter of entitlement and/or assessment. On average, there were 1.6 matters to be decided by the VRB for each application heard. During 1999-2000, 8 383 decisions were published relating to 5 257 applications. The outcome of the published decisions was as follows:

**Table 12 – Outcome of Published Decisions**

<b>ENTITLEMENT</b>	
Veteran's death accepted as war/defence-caused and a war widows'/widowers' pension granted	205
Injury or disease accepted as war/defence-caused and remitted to the Repatriation Commission to assess applicable pension rate	854
Injury or disease accepted as war/defence-caused and VRB assessed the rate of pension to be paid	349
Injury or disease set aside and a varied decision substituted	181
<b>Total Set Aside</b>	<b>1 589</b>
Veteran's death NOT war/defence-caused	425
Injury or disease NOT war/defence-caused	4 466
No power to review	1
<b>Total Affirmed</b>	<b>4 892</b>
<b>TOTAL ENTITLEMENT</b>	<b>6 481</b>
<b>ASSESSMENT</b>	
Set aside and rate of pension increased	978
Set aside and rate of pension reduced	13
<b>Total Set Aside</b>	<b>991</b>
Assessment decisions affirmed	887
No power to review	9
<b>Total Affirmed</b>	<b>896</b>
<b>TOTAL ASSESSMENT</b>	<b>1 887</b>
<b>ATTENDANT ALLOWANCE</b>	
<b>Total Set Aside</b>	<b>7</b>
<b>Total Affirmed</b>	<b>8</b>
<b>TOTAL ATTENDANT ALLOWANCE</b>	<b>15</b>
<b>TOTAL DECISIONS PUBLISHED</b>	<b>8 383</b>

In summary:

- 24.5% of entitlement decisions reviewed by the VRB were set aside; this figure was 21.4% for 1998-99.
- 52.5% of assessment decisions reviewed by the VRB were set aside; this figure was 55.6% for 1998-99.

Percentage entitlement and assessment 'set aside' rates, by State, are shown in the following table:

**Table 13 – Decisions Reviewed and Set Aside**

	NSW	VIC	QLD	SA	WA	TAS	AUST
<b>Total Entitlement</b>	2 257	1 665	1 836	299	321	103	6 481
<b>Ent. Set Aside</b>	<b>577</b>	<b>310</b>	<b>526</b>	<b>59</b>	<b>103</b>	<b>14</b>	<b>1 589</b>
<b>% Set Aside 99-00</b>	<b>25.6</b>	<b>18.6</b>	<b>28.6</b>	<b>19.7</b>	<b>32.1</b>	<b>13.6</b>	<b>24.5</b>
% Set Aside 98-99	24.4	17.6	23.3	13.0	19.4	13.1	21.4

	NSW	VIC	QLD	SA	WA	TAS	AUST
<b>Total Assessment</b>	820	345	503	119	69	31	1 887
<b>Ass. Set Aside</b>	<b>468</b>	<b>146</b>	<b>272</b>	<b>61</b>	<b>36</b>	<b>8</b>	<b>991</b>
<b>% Set Aside 99-00</b>	<b>57.1</b>	<b>42.3</b>	<b>54.1</b>	<b>51.3</b>	<b>52.2</b>	<b>25.8</b>	<b>52.5</b>
% Set Aside 98-99	57.1	48.2	60.2	55.4	47.5	20.0	55.6

Set aside and affirmation rates may vary for a wide variety of reasons. Some of the factors which may have influenced these results would include:

- the approach taken by applicants and advocates as to the matters on which review will be sought;

- the adequacy of information presented to primary decision makers; and
- the nature and extent of ‘new’ material presented on review.

## **Applications Finalised**

During 1999-2000, 8 769 applications to the VRB were finalised, compared to 6 840 new applications lodged.

In finalising an application, the VRB seeks to ensure not only that the applicant receives his or her proper Repatriation entitlement, but also that the decision is advised as soon as possible after the VRB hearing.

With this aim in mind, VRB records are examined each week for all cases heard for which a decision has not been published. Each case that is over three weeks old is then followed up by the Principal Member to effect early publication of the decision and reasons. During 1999-2000 the average time from the date of hearing to the publication of the decision was 19 days, this compares with 24 days in 1998-99.

## **Applications Outstanding**

The total number of applications outstanding at the end of 1999-2000 was 6 980. A total of 4 997 applications (71%) were with the applicant, 534 applications (8%) were with the Department and 1 449 applications (21%) were with the VRB.

Of the 1 449 applications with the VRB, 909 were certified as ready to proceed to a hearing. This represents only 13% of the total number of applications outstanding. A proportion of these applications were in the hands of a relatively small number of advocates who maintain their own listing queues. Such advocates may only present one or two cases each week. This places limits on the capacity of the VRB to list such cases for hearing.

## Statistical Summary

The following table summarises the VRB's processing of applications during 1999-2000:

**Table 14 – Summary**

<u>Applications</u>	NSW	VIC	QLD	SA	WA	TAS	AUST
Lodged 99-00	2 380	1 599	1 681	528	400	252	6 840
Heard 99-00	2 218	1 347	1 666	340	293	98	5 962
Adjourned 99-00	271	112	274	18	37	7	719
Finalised 99-00	2 911	2 229	2 471	556	430	172	8 769
Withdrawn 99-00	775	967	979	207	169	69	3 166
Dismissed 99-00	163	31	67	14	5	6	286
Lapsed 99-00	31	7	12	4	2	4	60
<b>Outstanding Year End 99-00</b>	<b>2 855</b>	<b>1 665</b>	<b>1 500</b>	<b>446</b>	<b>346</b>	<b>168</b>	<b>6 980</b>

# The Situation at the End of the Year

**Table 15 – Distribution of Applications**

	<i>1998-99</i>	<i>1999-2000</i>
<b>With Department:</b>		
- for preparation of Departmental Reports or awaiting applicant's response	1 026	289
- for further evidence under s152	258	176
- for administrative action as requested by VRB	-	58
- for Commission review under s31	10	11
<b>Sub-total</b>	<b>1 294</b>	<b>534</b>
<b>With Applicant:</b>		
- awaiting applicant's advice re attendance at hearing	984	952
- awaiting applicant's advice re review s31	-	30
- awaiting applicant's advice re administrative action	-	4
- awaiting applicant's advice re dismissal action	-	154
- applicant or representative has advised not ready for hearing	4 910	3 857
<b>Sub-total</b>	<b>5 894</b>	<b>4 997</b>
<b>With VRB:</b>		
- awaiting despatch of s148 letter	15	220
- awaiting s31 action	-	2
- awaiting s152 action	-	29
- for administrative action	129	29
- awaiting listing for hearing (ready to proceed)	880	566
- listed for hearing	407	343
- heard/awaiting decision	346	260
<b>Sub-total</b>	<b>1 777</b>	<b>1 449</b>
<b>Total</b>	<b>8 965</b>	<b>6 980</b>

# COURT DECISIONS

Under the *Veterans' Entitlements Act 1986* and the *Administrative Appeals Tribunal Act 1975*, decisions of the VRB are subject to review on the merits by the Administrative Appeals Tribunal (AAT). Parties to proceedings before the AAT may appeal to the Federal Court on questions of law from decisions of the AAT. There is no direct right of appeal to the Federal Court from VRB decisions under the *Veterans' Entitlements Act 1986*. However, decisions of the VRB or conduct relating to the making of decisions are subject to review by the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977*, on the grounds set out in that Act, or alternatively by way of prerogative relief under the *Judiciary Act 1903*.

## High Court of Australia

The High Court heard two applications for special leave to appeal against decisions of the Full Court of the Federal Court in matters arising under the *Veterans' Entitlements Act 1986*.

In *Ogston v Repatriation Commission*, the applicant had lodged her claim for a war widow's pension before a Statement of Principles was made in respect of the disease from which her husband died. The issue was whether she had a right to have the Tribunal determine her claim according to the law in force when her claim was first made. The Full Court had ruled against her on this issue.

In *Winch v Repatriation Commission*, the Full Court had dismissed the veteran's appeal against a decision of the Tribunal that his disease was not war-caused. The issue concerned the correct approach to determining whether a hypothesis of causation is reasonable.

The High Court concluded in both cases that there were insufficient prospects of success to warrant the grant of special leave.

# Federal Court of Australia

## *Administrative Decisions (Judicial Review) Act 1977*

During the year, no applications were lodged with the Federal Court under the *AD(JR) Act* in respect of VRB decisions. (There was one application under the *AD(JR) Act* from a decision of a delegate of the Repatriation Commission in relation to the Vehicle Assistance Scheme, in the case of *Tracy v Repatriation Commission*. Issues discussed by the Court in that case have some relevance to the issues in attendant allowance matters.)

## *Administrative Appeals Tribunal Act 1975*

During the year, the Federal Court handed down 23 decisions, including seven decisions of the Full Court, on matters that were appealed from decisions of the AAT. AAT decisions were set aside in nine cases and the matters were remitted to the AAT for rehearing. The Federal Court decisions were as follows (in chronological order):

*Gibson v Repatriation Commission*  
*Repatriation Commission v Binding*  
*Howard v Repatriation Commission*  
*Grant v Repatriation Commission*  
*Keeley v Repatriation Commission*  
*Nolan v Repatriation Commission (Full Court)*  
*Brew v Repatriation Commission (Full Court)*  
*Repatriation Commission v Gosewinckel*  
*Wheeldon v Repatriation Commission (Full Court)*  
*Smith v Repatriation Commission*  
*Thomson v Repatriation Commission*  
*Repatriation Commission v Wellington*  
*Grant v Repatriation Commission (Full Court)*  
*Woodward v Repatriation Commission*  
*Thomson v Repatriation Commission (Full Court)*  
*Forbes v Repatriation Commission*  
*Husband v Repatriation Commission*  
*Gartrell v Repatriation Commission*  
*Repatriation Commission v Keeley (Full Court)*  
*Repatriation Commission v Flynn and Connolly*  
*Repatriation Commission v Wedekind*  
*Gibson v Repatriation Commission (Full Court)*  
*Connors v Repatriation Commission*

Decisions in the case of *Keeley*, both at first instance by Heerey J and by the Full Court, have significant implications for review of decisions of the Repatriation Commission. Mrs Keeley had applied for review of the refusal of a war widow's pension and sought to rely on the Statement of Principles as in force at the time of the Commission's decision. A new Statement of Principles was made after the application for review was lodged with the AAT. The AAT had decided that the new Statement of Principles was to be applied and affirmed the refusal of pension.

The Court held that the introduction of the Statements of Principles had affected substantive rights and were not merely procedural in character. Accordingly, Mrs Keeley had an 'accrued right' in terms of section 50 of the *Acts Interpretation Act 1901* to have the matter reviewed by reference to the first Statement of Principles. At the end of the year, an application by the Repatriation Commission for special leave to appeal to the High Court in this case had not been heard.

In several cases, the Federal Court considered aspects of the expression 'inability to obtain appropriate clinical management', which is a common factor to all Statements of Principles. In *Brew*, the Full Court held that 'inability' could be due to both objective and subjective barriers to treatment. In some circumstances, psychological or emotional influences could result in a person being unable to obtain appropriate treatment. In *Wellington*, the Court held that 'appropriate clinical management' must be measured against the standards prevailing at the time of a veteran's service, not current medical standards. *Wedekind* concerned a failure to diagnose a medical condition due to limitations of the technology available during war service. The Court held that the evidence before the Tribunal was incapable of supporting the findings it was obliged to make in reaching its decision.

The cases of *Wheeldon*, *Smith*, *Flynn and Connolly*, and *Connors* all involved consideration of whether the AAT had correctly applied the 'reasonable hypothesis'/'beyond reasonable doubt' provisions in subsections 120(1) and (3) of the *Veterans' Entitlements Act 1986*.

In *Gosewinckel*, the Court held that the AAT had wrongly applied the reverse 'beyond reasonable doubt' standard of proof instead of 'reasonable satisfaction' to the question of diagnosis of a disease. The Court also held that the AAT had erred in finding that the clinical onset of a disease could occur before all diagnostic criteria of the disease in the Statement of Principles were satisfied.

The cases of *Binding* and *Howard* involved claims for post traumatic stress disorder as a result of 'experiencing a stressor' as defined in the Statements of Principles.

*Gibson* involved a claim that conditions affecting the applicant's knees were war-caused. The Full Court found that the AAT had failed to observe the rules of

natural justice in its conduct of the proceedings when it did not give him an opportunity to make closing submissions concerning his knees.

*Grant, Thomson, Woodward, Forbes and Husband* all dealt with the application of the special rate provisions in section 24 of the *Veterans' Entitlements Act 1986*. The first three cases all dealt with the application of provisions relating to the 'last paid work' of veterans over the age of 65 years. *Husband* also raised issues relating to GARP assessment.

*Nolan* involved the determination of qualifying service for the purposes of service pension eligibility and the meaning of 'auxiliary forces', holding that it has a technical meaning in relation to the Australian forces.

## **NSW Court of Appeal**

In *Repatriation Commission v Vietnam Veterans' Association of Australia NSW Branch Inc & Ors*, the Repatriation Commission appealed against a decision of the judge at first instance that declarations by the Specialist Medical Review Council were invalid and that procedural fairness had been denied in the conduct of the review of four Statements of Principles. The Court of Appeal held that only one of the four declarations of the Council was invalid. The Court held that under subsection 5AB(2) of the *Veterans' Entitlements Act 1986*, it is not necessary that a causal relationship be established in accordance with the science of epidemiology. Also, in the expression 'the information that was available to the Authority' in subsection 196W(2), 'available' means the information that was in fact before the Repatriation Medical Authority, rather than all the possible information that the Authority might have been able to obtain. The Court allowed part of the Repatriation Commission's appeal. The Court's decision had no effect on the validity of any Statements of Principles.

All High Court and other Court decisions relating to Veterans' entitlements matters are noted and summarised in the VRB's publication, *VeRBosity*, which is published four times a year.

# THE ADMINISTRATIVE APPEALS TRIBUNAL

## Review of VRB Decisions

Both the applicant and the Repatriation Commission are entitled to apply to the Administrative Appeals Tribunal (AAT) for review of a VRB decision to affirm, vary or set aside a decision reviewed by the VRB. However, the VRB is not a party to these subsequent proceedings before the AAT.

Following notification of the lodgement of an application for review by the AAT, the decision-maker must lodge with the AAT, within 28 days, a statement and associated documentation pursuant to section 37 of the *Administrative Appeals Tribunal Act 1975*. Where the decision of the VRB was to set aside the decision reviewed by it, the section 37 statement is prepared by the VRB. Where the VRB has reviewed and affirmed or varied a decision, the section 37 statement is prepared by the Department of Veterans' Affairs on behalf of the Repatriation Commission. During 1999-2000, the VRB was notified of the lodgement of 1 783 applications for review by the AAT of matters involving VRB decisions. During the same period, the VRB lodged 168 section 37 statements with the AAT. The average time taken for preparation and lodgement of those statements was 26 days.

While it is not possible to determine the appeal rate accurately, it can be estimated by comparing the number of applications lodged with the AAT with the number of applications finalised by VRB decisions. This is not an accurate measure because applicants have up to 12 months from notice of the VRB decision to apply to the AAT. Nevertheless this method of estimation is the best available. During 1999-2000, there were 1 783 AAT applications and the VRB finalised 5 257 applications by decisions made at hearings. This represents an estimated appeal rate of 33.9%. The estimated appeal rate for 1998-99 was 33.7%.

The Repatriation Commission lodged one appeal in relation to a VRB decision during 1999-2000.

Statistics obtained from the Department of Veterans' Affairs indicate that 35% of applications finalised by the Veterans' Divisions of the AAT during the year were withdrawn by the applicants and 45% of applications were conceded by the

Repatriation Commission. Of the remaining 20% that were finalised by decisions formally published with reasons, 170 (57%) involved an affirmation of the VRB decision and 128 (43%) led to the VRB decision being varied or set aside.

## **Review of Dismissals**

Applications can also be made to the AAT for review of VRB decisions taken under the dismissal provisions of the *Veterans' Entitlements Act 1986*. Unlike the position with other appeals, the Principal Member of the VRB is a party to those proceedings.

During 1999-2000 there were 13 appeals relating to dismissal decisions lodged with the AAT. There were nine dismissal cases finalised at the AAT, seven were withdrawn by the applicant, and two were affirmed on review by the Tribunal.

In *Re Johnson and Veterans' Review Board*, the AAT held that the test as to whether a s155AB notice is valid is objective and does not depend upon whether a particular applicant understood the meaning of the notice. The AAT upheld the validity of the Principal Member's notice and affirmed the dismissal of the application. A Federal Court appeal was lodged in *Johnson's* case but was later discontinued.

In *Re Gregory and Veterans' Review Board*, the AAT held that an application had been properly dismissed even though the applicant had instructed his representative to advise the VRB concerning his readiness to proceed at a hearing. The failure of the representative to act on those instructions meant that no response was received by the VRB and the Principal Member had no option but to dismiss the application.

Selected decisions of the AAT relating to VRB decisions are noted and summarised in the VRB publication *VeRBosity*.

# **OTHER FORMS OF ADMINISTRATIVE REVIEW**

Decisions and actions of the VRB may be the subject of complaints to the Ombudsman. In addition, access to documents held by the VRB may be sought under the *Freedom of Information Act 1982*.

## **Ombudsman**

During 1999-2000, the Ombudsman did not formally contact the VRB about any matters.

## **Freedom of Information Act 1982**

There were three requests to the VRB for access to documents under the *FOI Act* during the year. Access was granted in full in two cases and a third request was withdrawn.

# RESOURCES

Under the *Veterans' Entitlements Act 1986*, the Secretary to the Department is required to make available any staff required to assist the VRB in the performance of its statutory functions. Staffing resources are identified at page 14 of this Report.

Appendix 4 to this report outlines estimated expenditure for the VRB for the 1998-99 and 1999-2000 financial years. Expenditure is said to be estimated rather than actual because some corporate costs directly attributable to the VRB are in fact borne by the Department of Veterans' Affairs.

Total estimated expenditure for the VRB in the financial year 1999-2000 was \$7 134 000 compared to \$7 481 000 in 1998-99. Actual average expenditure on each case finalised by the VRB during the year was \$813. The comparable figures for 1998-99 was \$764.

The increase in the cost per case is due to several major factors: the upgrade of APS 2 Review Officer positions to APS 3 Case Manager positions; voluntary retrenchments for several staff members; the development and implementation of the new case management system 'vrbSAM'.

## OTHER ACTIVITIES

The VRB worked closely during the year with ex-service and related organisations and the parties to its hearings with a view to ensuring that its procedures worked effectively. Senior VRB staff participated in various workshops and seminars conducted by both ex-service organisations and the Department of Veterans' Affairs.

The Principal Member and other members and staff attended a number of administrative law conferences and contributed to the Training and Information Program (TIP) managed by the Department and ex-service organisations for the training of pension and welfare officers and advocates. The Principal Member attended and addressed a number of state and national ex-service organisation pension and welfare committee meetings and maintained close contact with the larger advocacy organisations within the veteran community.

The VRB's intermediate role and high-volume jurisdiction mean that members have to deal with their case load as expeditiously as possible. At the same time, both parties expect the VRB to consistently reach the correct decision in accordance with the facts and relevant law. In order to accommodate these competing requirements, the VRB has developed research and information services to provide members with a research service on particular problems that arise from time to time, and to speedily provide them with:

- the relevant law as interpreted by the courts and the Administrative Appeals Tribunal;
- legislative amendments;
- relevant research papers; and
- details of significant or interesting VRB decisions.

An internal legal and information bulletin and a comprehensive Intranet assists in providing members with this material.

The VRB also publishes a booklet called *VeRBosity*. This booklet includes information about Statements of Principles, legislative amendments, and decisions by the Administrative Appeals Tribunal and courts in the Repatriation field together with other items of interest. It is distributed on request to people involved in the

Repatriation jurisdiction. During the year, four editions of *VeRBosity* were produced.

The VRB also publishes:

- two information brochures which are sent to all applicants prior to their hearing;
- a booklet entitled *Procedures for Advocates* to assist advocates who appear at VRB hearings;
- an index of relevant Court and Administrative Appeals Tribunal decisions on disability pensions;
- an *Operations Manual* which sets out details of the administrative processing of applications to the VRB; and
- a four-weekly summary of statistics relating to the operations of the VRB.

In order to optimise the quality of VRB decisions, it is important that members, applicants and advocates have access to appropriate library resources to enable research on material not contained in sources such as *VeRBosity*. There are libraries in all VRB Registries.

In conjunction with the Department of Veterans' Affairs strategy to comply with the Government's social justice policy, the VRB observes the requirements of access, equity, equality and participation.

The VRB serves an identifiable segment of the community. The VRB is aware of its obligations in dealing with elderly persons, people with non-English speaking backgrounds and persons with disabilities. The VRB was established to review primary decisions of delegates of the Repatriation Commission. The VRB holds hearings in some regional areas to ensure easier access for applicants. All applicants are advised of their right of appeal to the AAT on receiving advice of a VRB decision. Senior VRB staff speak on a regular basis at pensions seminars run by ex-service organisations and the Department of Veterans' Affairs, and visit regional areas to discuss the VRB's operations with ex-service organisation representatives.

In recognition of the fact that its staff are made available by the Department of Veterans' Affairs and operate in a comparable environment, the VRB acts consistently with Departmental policies and initiatives in such matters as occupational health and safety, enterprise bargaining, industrial democracy and equal employment opportunity.

# Service Charter

The Veterans' Review Board Service Charter was published in June 1999, and widely distributed. The Charter outlines the level and quality of service the veteran community can expect from the VRB. It was developed in line with Government guidelines for service charters and contains a commitment to evaluate the VRB's performance against the standards set.

A Business Plan for the year 2000-01 has been established which identifies specific outcomes. The overview of this Report is cast in terms of the outcomes identified for next year as an evolutionary step towards a report based on performance standards.

## Complaints

In the course of the year the VRB received eight letters of appreciation and a total of 25 letters of complaint. The former were particularly welcomed by members and staff who devote considerable effort to attempting to put veterans and dependants at ease. Such letters are not solicited and invariably are sent by older applicants from a more polite age who are sensitive to small courtesies.

The 25 complaints ranged across the administrative and review activities of the VRB and into broad policy areas relating to appointment of members and structure of the VRB. Seven complaints were referred by the Minister's office for comment by the Principal Member, one was referred to the Principal Member by a Member of Parliament on behalf of a constituent, ten were dealt with in local registries and seven were sent direct to the Principal Member. A summary of the nature of the complaints is set out below:

A number of the complaints did not relate to functions of the VRB. Several concerned functions performed by DVA (including time taken to obtain material under section 152 and delay in receipt of travel allowance) and one was referred to Military Compensation staff.

The other 21 dealt with the following issues: VRB not representative of servicemen/concern at former rank levels of Services Members (2); timeliness in receipt of decision (1); incorrect details in decision (1); concern at decision or aspects of the decision (6); concern at errors in decision (2); concern at hearing

date (1); offering comments on structure of VRB, alleged confrontational approach and proposing abolition (1); proposing a general caring attitude to Vietnam veterans (1). Issues specifically raised by representatives were as follows: not allowed to raise merits for out of time application (1); decision to remit for GARP assessment (1); telephone hearing commenced late (1); material sent to applicant rather than representative (1); concern at approach of Senior Member (2).

All of the complaints appeared quite genuine and were carefully examined in relation to the policy, administration, procedure or approach involved and written responses were sent. The Principal Member deals with the impact of such complaints in the 'Overview' at the outset of this report. In number, they constitute less than one-third of 1% of the 8 769 applications finalised but they are relevant to the issue of 'quality' of performance and serve as important indicators to matters that attract the concern of veterans in the issue of review.

# APPENDIX 1

## Membership of the Veterans' Review Board as at 30 June 2000 – By Category

	<b>Commencement of Appointment</b>	<b>Expiration of Appointment</b>
<b>PRINCIPAL MEMBER</b>		
Brigadier William Douglas Rolfe (Rtd)	8 April 1999	7 April 2002
<b>PART-TIME SENIOR MEMBERS</b>		
Ms Suellen Mitchell Bullock	30 July 1998	30 September 2002
Mr John Charles Cooke	1 October 1997	31 May 2001
Ms Julie Cowdroy	30 July 1998	30 September 2002
Mr Robert Eadie	1 October 1997	30 September 2002
Ms Deirdre Ann FitzGerald	18 June 1998	30 September 2002
Hon John Ward Greenwood RFD QC	1 January 1998	30 September 2002
Ms Andrea Marilyn Hall-Brown	30 July 1998	30 September 2002
Ms Naida Isenberg	30 July 1998	30 September 2002
Mr Robert Graham Kenny	1 October 1997	31 May 2001
Mr William Bennett Lane	1 October 1997	31 May 2001
Mr John Leon Lesser	1 October 1997	31 May 2001
Mr Robert David Park	1 October 1997	31 May 2001
Ms Denyse Christina Phillips	1 October 1997	31 May 2001
Commander Gerald Lawrence Purcell (Rtd)	1 October 1997	31 May 2001
Ms Julie Ann Shead	1 October 1997	31 May 2001
Commodore Alan Leslie Thompson AM (Rtd)	1 January 1998	30 September 2002
Colonel Leslie James Young (Rtd)	1 October 1997	30 September 2002

## **PART-TIME SERVICES MEMBERS**

Mr Francis Harding Benfield	28 May 1999	27 May 2001
Major General		
Murray Phillip Blake AO MC (Rtd)	28 May 1999	27 May 2001
Wing Commander		
Stuart Alexander Bryce (Rtd)	1 January 1998	31 May 2001
Air Commodore		
Frank Edward Burt OBE (Rtd)	1 January 1998	30 September 2002
Rear Admiral		
Anthony Michael Carwardine AO (Rtd)	1 January 1998	30 September 2002
Lieutenant Colonel		
Graeme Kingsley Chapman (Rtd)	1 January 1998	31 May 2001
Commodore		
James Stewart Dickson AM MBE (Rtd)	1 January 1998	30 September 2002
Group Captain Collins Joseph Fagan (Rtd)	1 January 1998	31 May 2001
Brigadier		
Patrick Thomas Francis Gowans (Rtd)	1 January 1998	30 September 2002
Brigadier Leon Roderic Greville DSO (Rtd)	1 January 1998	31 May 2001
Group Captain		
Jonathon Scott Hamwood AM (Rtd)	1 January 1998	30 September 2002
Lieutenant Colonel Geoffrey Hourn (Rtd)	1 January 1998	30 September 2002
Major General		
James Curnow Hughes AO DSO MC (Rtd)	1 January 1998	31 May 2001
Brigadier Laurence John Lewis (Rtd)	1 January 1998	30 September 2002
Major Gregory Mawkes (Rtd)	1 January 1998	31 May 2001
Colonel Desmond Joseph Mealey AM (Rtd)	1 January 1998	31 May 2001
Colonel Robin Terence Regan CSC (Rtd)	28 May 1999	27 May 2001
Squadron Leader Charles White (Rtd)	1 January 1998	31 May 2001

## **PART-TIME MEMBERS**

Mr Alexander Edward Bates	1 October 1997	31 May 2001
Dr David Caryl Blaikie	1 October 1997	31 May 2001
Ms Patricia Anne Campbell	30 July 1998	31 May 2001
Mr Peter John Cappe	28 May 1999	27 May 2001
Dr Jillann Frances Farmer	30 July 1998	31 May 2001
Ms Jackie Miriana Fristacky	1 October 1997	31 May 2001
Mr Anthony Thomas Giurissevich	1 October 1997	31 May 2001
Ms Hilary Lorraine Kramer	30 July 1998	30 September 2002
Mr Hugh Duncan Logue	30 July 1998	30 September 2002
Mr Dennis Isaac Meadows	1 October 1997	31 May 2001
Ms Morag Angus McColm	1 January 1998	30 September 2002
Ms Mina France Podbereski	30 July 1998	30 September 2002
Dr Derek Alan Purcell	1 January 1998	30 September 2002
Ms Kathleen Adair Sanders	1 October 1997	30 September 2002
Colonel Anthony James Wales (Rtd)	1 October 1997	30 September 2002
Mr Charles Jeremy Ward	30 July 1998	30 September 2002

## **APPENDIX 2**

### **Membership of the Veterans' Review Board as at 30 June 2000 – By State**

#### **AUSTRALIAN CAPITAL TERRITORY**

##### **Principal Member**

Brigadier William Douglas Rolfe (Rtd)

#### **NEW SOUTH WALES**

##### **Part-Time Senior Members**

Ms Suellen Mitchell Bullock  
Mr John Charles Cooke  
Ms Naida Isenberg  
Ms Julie Ann Shead  
Colonel Leslie James Young (Rtd)

##### **Part-Time Services Members**

Air Commodore Frank Edward Burtt OBE (Rtd)  
Rear Admiral Anthony Michael Carwardine AO (Rtd)  
Brigadier Patrick Thomas Francis Gowans (Rtd)

##### **Part-Time Members**

Ms Patricia Anne Campbell  
Mr Peter John Cappe  
Mr Anthony Thomas Giurissevich  
Ms Hilary Lorraine Kramer  
Ms Mina France Podbereski

## **VICTORIA**

### **Part-Time Senior Members**

Mr Robert Eadie  
Ms Deirdre Ann FitzGerald  
Mr John Leon Lesser  
Commander Gerald Lawrence Purcell (Rtd)  
Commodore Alan Leslie Thompson AM (Rtd)

### **Part-Time Services Members**

Lieutenant Colonel Graeme Kingsley Chapman (Rtd)  
Commodore James Stewart Dickson AM MBE (Rtd)  
Group Captain Collins Joseph Fagan (Rtd)  
Major General James Curnow Hughes AO DSO MC (Rtd)  
Colonel Robin Terence Regan CSC (Rtd)

### **Part-Time Members**

Ms Jackie Miriana Fristacky  
Mr Dennis Isaac Meadows  
Ms Kathleen Adair Sanders

## **QUEENSLAND**

### **Part-Time Senior Members**

Ms Julie Cowdroy  
Hon John Ward Greenwood RFD QC  
Ms Andrea Marilyn Hall-Brown  
Mr Robert Graham Kenny  
Mr William Bennett Lane

### **Part-Time Services Members**

Mr Francis Harding Benfield  
Major General Murray Phillip Blake AO MC (Rtd)  
Brigadier Leon Roderic Greville DSO (Rtd)  
Group Captain Jonathon Scott Hamwood AM (Rtd)  
Colonel Desmond Joseph Mealey AM

### **Part-Time Members**

Mr Alexander Edward Bates  
Dr Jillann Frances Farmer  
Mr Hugh Duncan Logue  
Ms Morag Angus McColm  
Mr Charles Jeremy Ward

## **SOUTH AUSTRALIA**

### **Part-Time Senior Member**

Mr Robert David Park

### **Part-Time Services Members**

Brigadier Laurence John Lewis (Rtd)

Squadron Leader Charles White (Rtd)

### **Part-Time Members**

Dr David Caryl Blaikie

Colonel Anthony James Wales (Rtd)

## **WESTERN AUSTRALIA**

### **Part-Time Senior Members**

Ms Denyse Christina Phillips

### **Part-Time Services Members**

Lieutenant Colonel Geoffrey Hourn (Rtd)

Major Gregory Mawkes (Rtd)

### **Part-Time Member**

Dr Derek Alan Purcell

## **TASMANIA**

### **Part-Time Services Member**

Wing Commander Stuart Alexander Bryce (Rtd)

# APPENDIX 3

## VRB Procedures

The *Veterans' Entitlements Act 1986* sets out the broad procedural requirements to be followed by the VRB in dealing with applications. In implementing these requirements, the VRB has supplemented and built upon them with additional procedures designed to meet the principles of procedural fairness and sound management practices.

In most cases, the procedures which actually govern the processing of an application are quite straightforward. The following paragraphs provide a brief outline in relation to the review of decisions regarding disability or war widows'/widowers'/orphans' pensions.

The parties to a review by the VRB are the applicant and the Repatriation Commission. Each may be represented at the hearing, but only by a person who does not have legal qualifications.

An application to the VRB has to be in writing and lodged at an office of the Department of Veterans' Affairs. An application concerning an entitlement matter must be received by the Department within 12 months of notice to the applicant of advice of the decision he or she wishes to challenge. An application concerning an assessment matter or an application concerning an attendant allowance must be lodged within three months of notice of the advice.

Within six weeks of receiving an application, the Department has to provide the applicant with a report prepared in accordance with section 137 of the *Veterans' Entitlements Act 1986*. That report contains a copy of those documents from the Department's files that Departmental staff have identified as relevant to the decision under review. The applicant then has 28 days, or such further period as he or she may request, to provide the Department with written comments on the report. At the end of that period the Department formally transmits the relevant documents to the VRB. The documents comprise:

- the Departmental Report;

- any comments or further evidence submitted by the applicant in response to the Departmental Report; and
- any further evidence obtained by the Department as a result of the applicant's response.

The Commission can review its initial decision in the light of the applicant's comments, or any further evidence submitted by the applicant or obtained by the Department, and may delay the transmission of the above documents to the VRB while a review is conducted under section 31 of the *Veterans' Entitlements Act 1986*.

On receiving these documents from the Department, the VRB, in accordance with section 148 of the *Veterans' Entitlements Act 1986*, writes to the applicant and the Commission requesting written advice about whether they intend to be represented at the hearing. In addition, the applicant is asked whether he or she wishes to:

- attend the hearing of the application;
- discuss the application with the VRB by telephone during the hearing; or
- have the VRB deal with the application in his or her absence.

Where neither party wishes to be represented at or participate in a hearing ('in absentia' cases), the application is normally placed before a VRB panel for a decision without further correspondence with the parties. Such applications, where available, are also listed under the system of 'standby cases' in substitution for hearings postponed on notice too short to enable the hearing of another case to be arranged. Under subsection 148(4) of the *Veterans' Entitlements Act 1986*, cases can also be listed 'in absentia' if an applicant fails to respond to the VRB's request to advise whether the applicant wishes to appear at the hearing.

Both parties are notified of the hearing where either wishes to be represented or participate. A hearing is arranged as soon as possible, except where a party is not ready to proceed or requests a postponement.

The general practice is to list cases for hearing in the chronological order in which they become available to list – that is, when the applicant and/or advocate certify that they have submitted all the documentary material on which they intend to rely and they are ready to proceed to hearing. This is done by the lodging with the VRB of a 'Certificate of Readiness for Hearing'. Cases are not listed for hearing in the chronological order in which applications for review are lodged.

In the light of recommendations contained in the Veterans' Entitlements Act Monitoring Committee Reports, the VRB commenced an Administrative Screening process of applications in February 1990. The VRB decided to adopt the term 'administrative screening' instead of 'call-over' as the term 'call-over' is easily confused with well-established procedural operations in other jurisdictions.

The aims of Administrative Screening are to maximise the productivity of the VRB by ensuring:

- effective administrative processing of applications;
- maximum listings before each panel; and
- that a maximum number of applications listed are ready for final determination.

The achievement of these aims is measured by:

- the increased finalisation rate of applications heard by panels; and
- administrative action leading to the dismissal of applications that are not being actively pursued.

As stated previously, the VRB's procedures provide for cases to be listed for hearing following the lodgement of a 'Certificate of Readiness for Hearing', by an applicant or representative. The cases are usually listed for hearing in the order in which certificates are received by the VRB. However, the late withdrawal of cases, or late requests for adjournments or postponements often mean that substitution of another application is not possible. This means that available hearing slots are wasted. Administrative screening is therefore designed to monitor at various intervals the progress and preparedness for hearing of all cases with the VRB.

As part of the procedures to achieve effective case management, Registrars have the following powers:

- cases are examined by Registrars with a view to clarifying the issues, ensuring jurisdiction and standing, and checking sufficiency of information;
- at certain intervals, Registrars contact applicants or their representatives, usually by telephone, to discuss progress and the preparedness of their applications with a view to listing for hearing;
- in certain circumstances, Registrars may recommend to the Department that further investigations/information, essential to the application being finalised but not necessarily supportive to either party, be sought;

- while the ‘Certificate of Readiness for Hearing’ system still operates:
  - applications may be listed at the Registrar’s direction in certain circumstances;  
and
  - the Registrar can dismiss an application in certain circumstances.

In October 1999, the case management function was enhanced by changing the duties and upgrading the APS 2 Review Officer positions to APS 3 Case Manager positions, and training these staff to identify and respond to certain evidentiary and jurisdictional issues. This further development of administrative screening should result in closer liaison with applicants and representatives, reduced delays in gathering the material necessary for applications to proceed to resolution, and fewer adjournments.

The VRB recognises that there may be circumstances in which some cases should be afforded an urgent listing priority. An early hearing may be arranged where medical certification indicates that a delay in hearing may cause prejudice to an applicant’s mental or physical health or that deterioration in an applicant’s health over time may prejudice the effectiveness of a later hearing, or where an applicant is in severe financial distress which might be alleviated by a successful outcome to an application.

In these circumstances, and with cooperation between applicants, advocates, the Repatriation Commission and the Department of Veterans’ Affairs, a hearing can be arranged at very short notice.

The VRB is not bound by technicalities or the rules of evidence. Hearings are informal and normally conducted in private. The presiding member determines who may be present and, if requested by the applicant, may permit a hearing to take place in public. Although not usual, witnesses may be summoned and evidence may be taken on oath or affirmation.

Apart from ‘in absentia’ cases, all hearings are recorded on audiotape to provide an accurate record of what is said. Copies of these tapes are made available free of charge to the parties on request, or the original tape recording may be listened to at the VRB’s premises. The tape is retained for two years and then destroyed.

Issues are decided according to the opinion of the majority of members constituting the VRB panel. A copy of the decision and reasons of the VRB is mailed to each party, the applicant’s representative and the Department of Veterans’ Affairs.

The VRB decision may affirm, vary or set aside the decision under review. If the decision is to set aside, the VRB must substitute its own decision.

The VRB may adjourn the hearing of a review, either at the request of the parties or of its own volition. Upon an adjournment the VRB may also request the Secretary of the Department of Veterans' Affairs to seek additional information, reports or evidence for consideration by the VRB.

The applicant or the Repatriation Commission may apply to the Administrative Appeals Tribunal for a review of a VRB decision affirming, varying or setting aside the decision under review. Applications can also be made to the AAT for review of decisions taken by the VRB pursuant to the dismissal legislation. From a decision of the AAT, a party may appeal to the Federal Court of Australia on a question of law. Under the *Administrative Decisions (Judicial Review) Act 1977*, the Federal Court of Australia may review any VRB decision on the basis that the VRB has erred in law, on a ground set out in the Act.

The above paragraphs reflect the procedures followed in most cases. In some cases, however, an application will raise different considerations – for example, questions may arise as to whether an application comes within the scope of VRB review as set out in section 135 of the *Veterans' Entitlements Act 1986*, or whether there is some statutory bar in that Act on the VRB reviewing the decision in question, or there may be information provided to the VRB which may cause physical or mental detriment to the applicant if directly disclosed. Procedures governing these limited circumstances are set out in the *VRB Operations Manual*.

# APPENDIX 4

## Veterans' Review Board – Expenditure (\$000's)

	1 July 98 -30 June 99		1 July 99 -30 June 00	
<b>Salaries</b> (includes superannuation)				
Members	2 817		2 564	
Staff (includes o/time & temps)	2 393	<b>5 210</b>	2 397	<b>4 961</b>
<b>Rental of Premises</b> (includes outgoings)	837	<b>837</b>	774	<b>774</b>
<b>Applicants' expenses</b>	86	<b>86</b>	75	<b>75</b>
<b>Fares</b>				
Members	289		166	
Staff	39		55	
Cars (includes parking)	43	<b>371</b>	46	<b>267</b>
<b>Travelling Allowance</b>				
Members	251		275	
Staff	28	<b>279</b>	56	<b>331</b>
<b>Office Requisites</b>				
Stationery and office requisites	27		35	
Library	79		61	
Printing	20		9	
Equipment	58	<b>184</b>	18	<b>123</b>
<b>Postage and Telephones</b>				
Postage	30		30	
Telephones/fax	76	<b>106</b>	59	<b>89</b>
<b>Office Services</b>				
Plant hire	5		5	
Minor works & maintenance	1	<b>6</b>	0	<b>5</b>
<b>Furniture and Fittings</b>	1	<b>1</b>	3	<b>3</b>
<b>Computer equipment</b> (includes services)	260		249	
vrbSAM Phase 1				
(Development & implementation)	-		117	
vrbSAM Phase 2				
(Planning & development)	-	<b>260</b>	35	<b>401</b>
<b>Incidental Expenditure</b>				
Freight & cartage	39		34	
Staff transfer expenses	27		-	
Miscellaneous	34	<b>100</b>	24	<b>58</b>
<b>Comcare Premium</b>	37	<b>37</b>	40	<b>40</b>
<b>Archiving</b>	4	<b>4</b>	7	<b>7</b>
<b>TOTAL</b>		<b>7 481</b>		<b>7 134</b>

# APPENDIX 5

## FOI Statement

Section 8 of the *Freedom of Information Act 1982* requires the VRB to include within its Annual Report certain information relating to its organisation and function, powers, document holdings and procedures for access thereto, and any arrangements which may exist for persons outside the Commonwealth to participate in policy making or administration of the VRB.

Details of the organisation of the VRB are set out in the body of this Report – see Organisation, Membership and Staff and Appendices 1 and 2.

Details of the function of the VRB are set out under Objectives Function and Powers.

The following provides the additional details required by section 8.

## Powers of the VRB

The powers of the VRB are set out in the *Veterans' Entitlements Act 1986*. In conducting a review of a decision, the VRB may, by section 139(3) of the *Veterans' Entitlements Act 1986*, exercise all the powers and discretions of the primary decision-maker to grant or assess pension or allowance. For the purpose of the conduct of a review, the VRB also has the following specific powers conferred on it by the *Veterans' Entitlements Act 1986*:

- section 139(3) – the VRB may affirm, vary or set aside a decision reviewed by it and, where it sets aside the decision under review, may substitute its own decision;
- section 139(4) – if the VRB sets aside a decision and substitutes its own decision, it can assess the rate at which pension is to be paid or remit the matter to the Repatriation Commission;

- section 142(2) – the Principal Member may give directions for the purpose of increasing the efficiency of the operations of the VRB and as to the arrangement of its business;
- sections 143 & 144 – the Principal Member may give directions in writing as to the members who are to constitute the VRB for the purposes of reviews to be conducted by it;
- section 148(3) – the Principal Member may defer the hearing of a review until the parties advise that they are ready to proceed;
- section 148(4) – where a party fails to advise, within the time specified in the notice served on the party, whether they wish to appear at the hearing of a review, the VRB may determine the application in the absence of that party;
- section 148(5) – the Principal Member may give general directions as to the procedure of the VRB with respect to reviews, including reviews the hearings of which have not been commenced;
- section 148(6) – the presiding member may give directions as to the procedure of the VRB with respect to a particular review, whether or not the hearing of that review has commenced;
- section 148(6A) – the Principal Member may request the Secretary of the Department of Veterans’ Affairs to provide additional evidence in relation to a review;
- section 150(2) – the presiding member may give directions as to the persons who may be present at any hearing of a review;
- section 150(3) – the presiding member may permit a hearing, or part of a hearing, of a review to take place in public;
- section 151(1) – the VRB may take evidence on oath or affirmation and may adjourn the hearing of a review from time to time;
- section 151(2) – the presiding member may summon a person to appear at the hearing of a review, to give evidence or produce documents, and to take an oath or make an affirmation;
- section 151(5) – the VRB may take evidence by a person authorised by the presiding member, and may do so within or outside Australia;

- section 152 – the VRB may request the Secretary of the Department of Veterans’ Affairs to provide it with additional evidence that the VRB thinks necessary for the conduct of a review;
- section 153 – the VRB may make additional evidence in its possession available to the parties to the hearing of a review;
- section 155(1) – the VRB may consent to the withdrawal of an application the hearing of which has commenced but has not been completed;
- section 155AA(5) – the Principal Member must dismiss an application if a written statement has not been provided within 28 days;
- section 155AA(7) – the Principal Member must dismiss an application if he considers that no reasonable explanation has been provided;
- section 155AB(5) – the Principal Member must dismiss an application if a written statement has not been provided within 28 days;
- section 155AB(7) – the Principal Member must dismiss an application if he considers that no reasonable explanation has been provided;
- section 157 – the VRB may set the date from which its decision is to operate;
- section 165(2) – if the Principal Member becomes aware that a member has a pecuniary or other interest in relation to a particular review, the Principal Member can direct that the member not take part in the review or disclose the interest of the member to both parties; and
- section 171(3) – the VRB may order that the Commonwealth shall pay the fees and allowances of a witness summoned to appear at a hearing before the VRB.

## **Arrangements for Outside Participation**

The only statutory arrangement for external participation exists in the right of organisations representing ex-servicemen and women throughout Australia to submit, when requested to do so by the Minister, lists of names of candidates they recommend be considered for appointment as Services Members. Once appointed, members so selected have the same obligations and take the same oath or affirmation of office as other members.

The Principal Member seeks, through meetings and correspondence, the views of the Department of Veterans' Affairs, the Repatriation Commission, and ex-service and related organisations on administrative matters of concern to the VRB.

## **Categories of Documents**

The following are the categories of documents maintained by the VRB in its Principal Registry and in Registries in each State:

### **Operations Manual**

This is issued by the Principal Member and includes directions and guidelines from the Principal Member for members and staff concerning the processing of applications to the VRB. The Manual is supplemented from time to time by memoranda issued by the Principal Member or senior staff of the VRB.

### **Members' Manual**

This is issued by the VRB's Director (Legal and Information Services) and concerns technical and legal matters relating to the functions of VRB members.

### **vrbsAM User Manual**

This is issued by the VRB's National Training Officer and concerns the procedures for the use and operation of vrbsAM the computerised System for Application Management used by VRB staff to track and manage applications for review.

## **Files**

Individual VRB files are held for each application for review by the VRB. Policy and operational files are held for various areas of the VRB's administration and include files on staffing, procedures, accommodation and furniture, stores, publications, meetings, etc.

## **Discussion Papers and Legal and Information Bulletins**

These are prepared by the Executive Officer and the Director (Legal and Information Services) to inform and to promote discussion among members and staff concerning topical legal and operational issues.

## **Facilities for FOI Access and Initial Contact Points**

Requests under the *Freedom of Information Act 1982* for access to or copies of documents held by the VRB may be made to the Executive Officer or a Registrar of the VRB. General information about freedom of information matters and facilities for physical access are available at any VRB Registry.

Registry addresses and the names of those who can assist with enquiries or requests for information, including the name of the information officer, are listed in Appendix 6 to this Report.

# APPENDIX 6

## VRB Addresses

The Principal Member is responsible for the VRB's operations. The Registrar in each State is responsible to the Executive Officer for arranging the VRB's day to day business. Registry addresses and the names of those who can assist with enquiries or requests for information are:

### Principal Registry

10th Floor  
13 Keltie Street  
Woden ACT 2606

Executive Officer  
Bruce Topperwien

Director (Corporate Services)  
Narelle Peck

Director (Legal and Information Services)  
Robert Kennedy

National Training Officer  
Ian Hunt

Library Assistant  
Nicky Langhorne

Information Officer  
Narelle Peck

Phone: (02) 6285 1911 Fax: (02) 6289 4848

Information about the VRB is available on the Internet.

The VRB Internet address is: '<http://www.dva.gov.au/aboutus/vrb/htm>'

**New South Wales Registry**

Level 2, Building B  
Centennial Plaza  
280 Elizabeth Street  
Surry Hills NSW 2000

Registrar  
Peter Studman

Phone: (02) 9211 3090  
Fax: (02) 9211 3074

**Victorian Registry**

12th Floor  
300 La Trobe Street  
Melbourne VIC 3000

Registrar  
Ray Hoelzinger

Phone: (03) 9602 8000  
Fax: (03) 9602 1496

**Queensland Registry**

2nd Floor, AMP Building  
10 Eagle Street  
Brisbane QLD 4000

Registrar  
Tom Eadie

Phone: (07) 3221 3772  
Fax: (07) 3220 0041

**South Australian Registry**

7th Floor  
44 Waymouth Street  
Adelaide SA 5000

Registrar  
David Smith

Phone: (08) 8231 5801  
Fax: (08) 8231 2031

**Western Australian Registry**

9th Floor, AMP Building  
140 St Georges Terrace  
Perth WA 6000

Registrar  
Graham Follington

Phone: (08) 9366 8580  
Fax: (08) 9366 8583

**Tasmanian Registry**

3rd Floor, Montpelier Building  
21 Kirksway Place  
Battery Point TAS 7004

Registrar  
Ian Hunt

Phone: (03) 6221 6636  
Fax: (03) 6221 6637

# APPENDIX 7

## Compliance with Annual Report Guidelines for Statutory Authorities

Section 215(4) of the *Veterans' Entitlements Act 1986* requires the Principal Member of the VRB to furnish to the Minister for Veterans' Affairs an Annual Report on the operations of the VRB. The Report is produced in accordance with guidelines for statutory authorities.

The Senate Standing Committee on Legal and Constitutional Affairs has recommended that a section such as this, detailing compliance with the guidelines, be incorporated in the report.

Item		Page
(i)	Enabling legislation	6
(ii)	Responsible minister and any statutory powers of direction	7
(iii)	Powers, functions and objects	6-8, 58-60
(iv)	Membership and Staff	
	- members and terms	11-13, 46-51
	- staff	14, 63-64
	- basis for staffing	14, 41
	- information officer (FOI)	14, 63
(v)	Financial statement	41, 57
(vi)	Activities and reports	1-5, 15-33, 52-56
(vii)	Operational problems	1-4
(viii)	Subsidiaries	n/a