



Veterans' Review Board

Annual Report

2000-01

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Veterans' Review Board Principal Registry

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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 2001.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'W D Rolfe', written over a vertical line.

W D ROLFE
Brigadier (Rtd)
Principal Member

22 October 2001

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2000-01 AND THE VRB – AN OVERVIEW

Outcome 1: Finalise high numbers of applications for review

The following table shows the number of new applications lodged, the number finalised and the number of applications outstanding in successive years from 1997:

	Lodged	Finalised	Outstanding
1997-1998	11 312	8 986	9 984
1998-1999	8 796	9 797	8 965
1999-2000	6 840	8 769	6 980
2000-2001	6 548	7 925	5 596

The current year figures show a steadying of the number of new applications lodged, a continuing high rate of finalisation of applications relative to lodgements and a consequent continuing reduction in the number of applications outstanding. At any one time about 17% of the outstanding applications were in the hands of the Veterans' Review Board (VRB) and, subject to availability of applicants and/or their representatives, were ready to proceed. This allowed the VRB to convene and maintain an average of seven panels per week over 50 weeks of the year. A normal hearing week involved three members on each panel preparing, hearing and writing up 15 decisions in relation to applications for review.

Over 65% of cases are now less than one year old and in Queensland (one of the two states where lodgements have increased) the figure is close to 80%. The age of outstanding applications remains a concern but is driven by many factors outside the control of the VRB.

In general terms, while the number of applications have steadily declined, the VRB retains the capacity, and has in fact continued to finalise high numbers of reviews.

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

It is difficult to measure this outcome. The VRB employs staff training measures, case management procedures, research materials on an Intranet site and advisory member bulletins in order to ensure that all relevant materials are available for perusal by the VRB panels. Nevertheless some 12% of applications are adjourned to obtain further information. The figure has remained constant for many years and is manageable.

Review of VRB decisions by the Administrative Appeals Tribunal (AAT) (see Appendix 2) is not a comfortable measure of this outcome. It is often the case, as it is at most levels of review in the veterans' jurisdiction that considerable additional information is brought to light as a result of an earlier review. This is sometimes reflected in the number of applications withdrawn from the VRB following a section 31 review (Repatriation Commission internal review) or conceded by the Commission before hearing at the AAT.

All AAT cases and Federal Court decisions in the veterans' jurisdiction are examined to detect any errors of principle applied by the VRB process. (All such decisions are available to all members of the VRB on its Intranet site.) Application of principles enunciated by the Federal Court can be difficult as evidenced by the issue of 'accrued rights' raised initially in the *Keeley* case. The issue was considered by no less than 17 judges of the Federal Court, resulting in what appeared to be five different approaches.

The VRB statistics reveal that 27% of entitlement decisions reviewed were set aside, an increase over the previous year, while about 47% of assessment decisions were set aside. The higher figure in assessment cases is often explained by continuing deterioration as a result of accepted conditions and often considerable time lags in obtaining medical information concerning such changes.

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

The VRB statistics indicate substantial improvement in the time taken to contact veterans following receipt of section 137 reports from the Department of Veterans' Affairs (Department) and a reduction to two weeks in the time taken to complete decisions and reasons and publish them to veterans. The time taken from Certificate of Readiness to Hearing has remained steady and additional effort and consultation with veteran representatives will be necessary to improve upon this figure.

A performance audit by the Australian National Audit Office (ANAO) completed in late 2000 concluded:

“VRB is managing those aspects of the review process within its direct control in a timely and effective manner. The ANAO concluded that VRB is managing its part of the external review process so as to continually improve its performance.”

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

The VRB maintains a sophisticated case management system, which ensures careful and effective tracking and listing of applications for review. Training of staff is aimed at effective utilisation of this resource and in ensuring that materials put to the VRB panels are complete and as comprehensive as possible. Panel members of the VRB are inducted and are supported by information bulletins and an Intranet site which provides ready access to legislation, decisions of the Administrative Appeals Tribunal and of the Federal Court, as well as a range of other relevant information. Periodic discussion seminars are held. Panels of the VRB are centrally convened and managed to promote equity in number of hearings by members, consistency in decision-making and variety in the multi-member panels.

Each of these aspects of administration is carefully managed. On occasions judgement must be exercised in balancing the management needs of the VRB and the needs of veterans and widows of advancing years. This is often reflected in regional hearings and increased cost to the VRB in travel to regional centres. An increasing need for training adds to those costs.

Expenditure remained at the same level as the previous year, but in a climate of reducing numbers of applications. The VRB will continue to carefully monitor and manage expenditure to ensure efficient resource usage.

Outcome 5: Accessible and responsive to veteran community stakeholders

It is apparent that this element offers a common thread in all outcomes sought. The VRB aims at courtesy and the maintenance of the dignity of all persons involved in its proceedings. It seeks to ensure good working relations with veteran organisations and advocates, veterans themselves and the Department of Veterans' Affairs and Repatriation Commission. It promotes its function by attendance at major forums and regularly offers staff and members to assist in training or consultation. The Principal Member, Executive Officer and Registrars are regularly involved in a range of such activities.

Regional hearings are offered in a number of locations, predominantly in Queensland. The number of hearings in south-eastern Queensland has increased consistent with the number of veterans relocating there. The Executive Officer and NSW Registrar visited towns in northern NSW late in 2000 offering regional hearings although to date the offer has not been taken up. It may be that the steady development of video conferencing will provide new opportunities in such areas.

In Western Australia it has proved necessary to reduce the normal hearing week to about three days to reduce delays in obtaining hearings. Similar measures may be necessary in other locations as the numbers decline.

The VRB has continued experiments with video conference hearings as an additional mode of hearing. It has the capacity to reduce costs and to assist veterans who may be unable or unwilling for other good reason to travel to a capital or regional centre to speak with the VRB. Some 18 hearings were conducted using this technique with generally favourable results, often governed more by the quality of equipment than any other issue.

One measure of accessibility and responsiveness is the level of complaint concerning the VRB. Thirty-three letters concerning functions of the VRB were received during the year: 15 were letters of appreciation, and 18 expressed one or other of a number of concerns. Careful consideration was given to each of the concerns raised either by a Registrar or in the case of any matter concerning conduct of hearings, by the Principal Member. The complaints relate to a very small proportion of the procedures applied and matters dealt with in the course of a year. While low in number they are important indicators for the VRB. The number decreased relative to the previous year and the aim is to eliminate them completely.

In general terms the ANAO audit report of early 2001 found that ex-service organisation representatives it had spoken to 'were satisfied with the level of service provided by the VRB'.

The VRB extends its sincere appreciation to Departmental personnel and the many members of veteran organisations who, through their cooperation and assistance, ensure the continuation of a fair, effective and timely review process for veterans.

Finally, on a personal note, I wish to acknowledge the dedicated work of the members and staff of the VRB located around Australia. The work is sometimes stressful, often demanding and always important. It takes a special type of effort to treat each of a large number of applications as an entirely separate case deserving of its own careful consideration. The members and staff are committed to this approach: it promotes respect in self and the function to be performed and it ensures respect for the right of veterans and widows to have their claims reviewed. Their commitment is also reflected in efforts to broaden their own knowledge and to readily participate in and contribute to measures to streamline processes.

I acknowledge that commitment and thank each of them for their support.

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;
- (d) undertake reviews in a manner that is efficient to resource usage; and
- (e) be accessible and responsive to veteran community stakeholders;

These objectives are directly reflected in the VRB's five outcomes.

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*. Decisions of the VRB must be made under and in accordance with the Act.

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.

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 under Outcome 4 and in Appendices 4 and 5.

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.

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

In performing its adjudicative functions, members of the VRB are assisted by a number of administrative staff (see under Outcome 4 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 10.

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.

OPERATIONS

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 that 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. 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.

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.

Under section 31 of the *Veterans' Entitlements Act 1986*, 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.

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.

If 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 if either wishes to be represented or participate. A hearing is arranged as soon as possible, except if a party has advised that they are not ready to proceed.

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 generally listed for hearing in the chronological order in which the Certificates of Readiness for Hearing 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 1990. This process was enhanced in 1999 with the introduction of case managers.

The aim of administrative screening is to maximise the productivity of the VRB by ensuring:

- effective administrative processing of applications;
- relevant material has been provided to the VRB by the Department and the parties;
- maximum listings before each panel; and
- 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 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:

- cases are examined by case managers with a view to clarifying the issues, ensuring jurisdiction and standing, and checking sufficiency of information;
- at certain intervals, case managers 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, as delegates of the Principal Member, may ask the Department, under s148(6A), to conduct further investigations or obtain further information essential to the application being finalised but not necessarily supportive to either party;
- 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.

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 if 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 if 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 in accordance with the *Archives Act 1983*.

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 (AAT) 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 that Act, but the Court may exercise its discretion not to review on the basis that the person has an alternative review right to the AAT.

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 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's *Operations Manual*.

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;
- an applicant may request the VRB to deal with the case in his or her absence ('in absentia'); or
- in some cases a hearing may be conducted by video link.

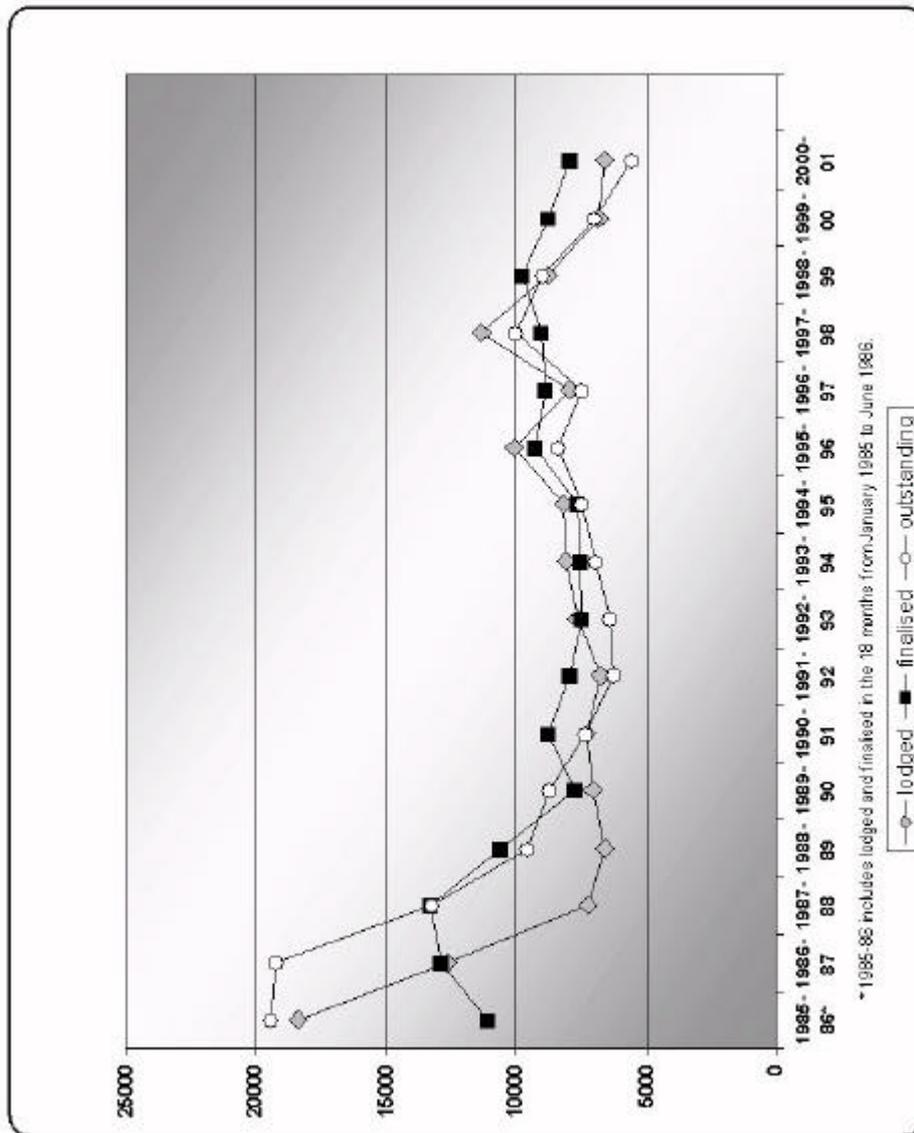
Outcome 1: Finalise high numbers of applications for review

In the course of the year 6 548 new applications were lodged and 7 925 applications were finalised. At year end 5 596 applications were outstanding, a reduction over the previous year of 1 384. The geographic distribution of applications lodged, applications finalised and applications outstanding and the comparison with 1999-2000 figures are shown in the following graphs and tables.

Graph 1 shows the lodgements and finalisations for each year of the VRB's operations since 1985, together with the number of outstanding applications at the end of each financial year.

For the last three financial years the VRB has finalised significantly more applications than new lodgements, resulting in a rapidly reducing number of outstanding applications. However, the rate of decline in the number of new lodgements appears to be levelling out. A limiting factor on the VRB's capacity to continue to finalise cases at the current rate is the time it takes applicants and their representatives to prepare their cases for hearing. As noted in Tables 4 and 5, below, in some States nearly 80% of applications are less than a year old, and only 22% of applications are in the VRB's hands. As the number of applications outstanding decreases, fewer cases will be available for the VRB to list and an even smaller proportion will be in the VRB's hands.

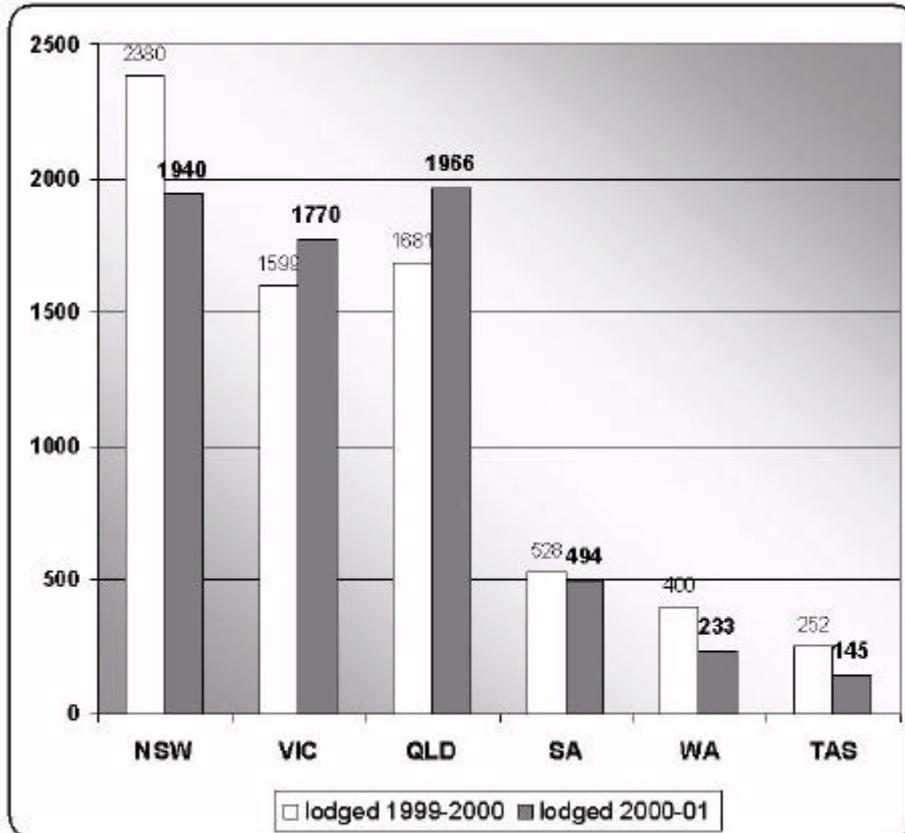
Graph 1 – Applications Lodged, Finalised and Outstanding, 1985-2001



Applications Lodged

During 2000-01, a total of 6 548 new applications were notified to the VRB compared to a total of 6 840 new applications during 1999-2000.

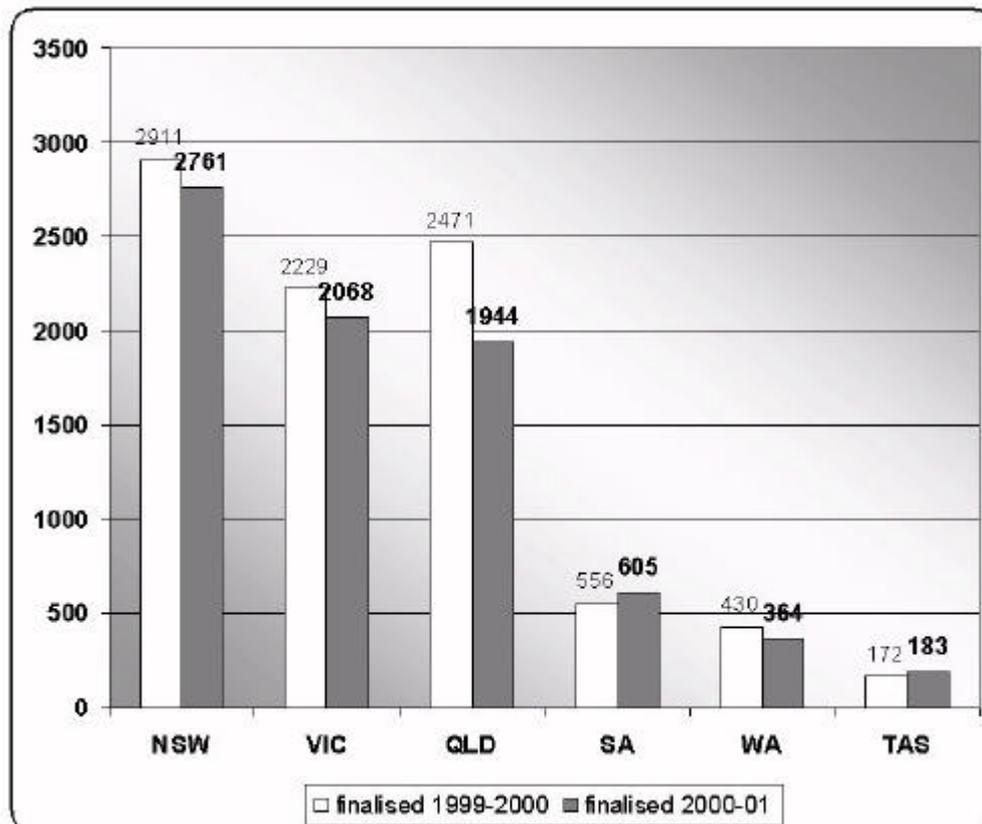
Graph 2 – Applications Lodged



Applications Finalised

During 2000-01, a total of 7 925 applications to the VRB were finalised compared to a total of 8 769 applications during 1999-2000.

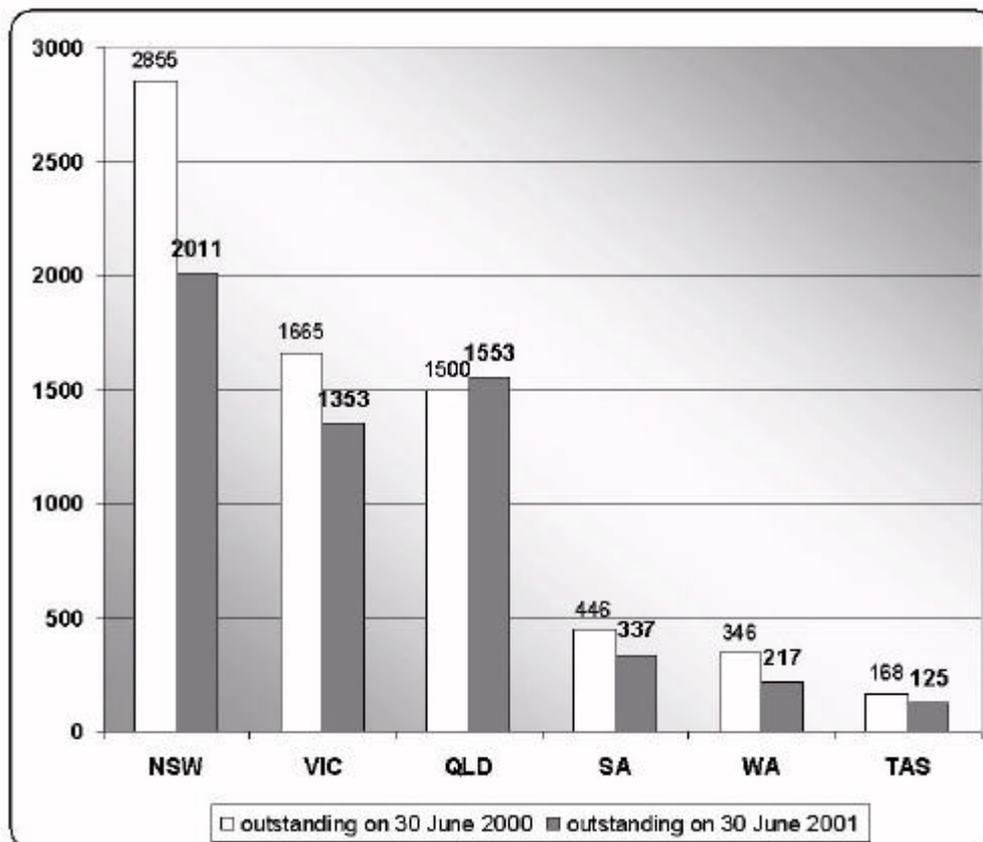
Graph 3 – Applications Finalised



Applications Outstanding

At the end of 2000-01, a total of 5 596 applications were outstanding at the VRB compared to a total of 6 980 applications during 1999-2000.

Graph 4 – Applications Outstanding



Distribution of Applications Outstanding

Not all of the 5 596 applications outstanding are in the hands of the VRB, the following table shows the distribution of responsibility as at the end of 2000-01. The outstanding applications can be either in the hands of the applicants and/or their representative (and not ready to proceed), or in the hands of the Department (awaiting action under section 31, section 137, section 148(5A), section 152 or other administrative action) and the remainder are in the hands of the VRB.

Although the VRB is not directly responsible for applications that are not in its hands, Case Managers regularly follow-up those matters by seeking information from the applicant, representative, or the Department about the progress of the matters within their control.

Table 1 – Distribution of Applications Outstanding

	NSW	VIC	QLD	SA	WA	TAS	AUST
Department	98*	110	230	6*	35	30	509
Applicant	1 401	1 019	982	276	139	59	3 876
VRB	512	224	341	55	43	36	1 211
Total	2 011	1 353	1 553	337	217	125	5 596
% in VRB control	25%	17%	22%	16%	20%	29%	22%

* The numbers of applications with the Department in NSW and SA (and thus the Australian total) are actually higher than the figures, above, indicate. In those States, the VRB is not notified of new applications until the Department has prepared and forwarded the section 137 reports to the VRB.

Age of Applications Outstanding

In 2000-01, the average times to process each of the stages of an application totalled 396 days. This compares with 437 in 1999-2000. (See Table 7 for further detail.) Table 2 shows that only 9% of outstanding applications are more than 2 years old. As noted above, these cases are regularly followed-up and nearly all of them are either with the Department for further investigation, or with applicants who are actively seeking further evidence, or are in the process of being listed for hearing, or dismissal action is being taken by the VRB. The VRB has an active program in place to seek to bring older cases to hearing as soon as possible.

Table 2 – Age and Distribution of Outstanding Applications

	NSW	VIC	QLD	SA	WA	TAS	AUST
< 1 year old	1 117 (56%)	923 (68%)	1 201 (77%)	243 (72%)	131 (60%)	85 (68%)	3 700 (66%)
1-2 years old	628 (31%)	347 (26%)	263 (17%)	71 (21%)	63 (29%)	34 (27%)	1 406 (25%)
2-3 years old	220 (11%)	71 (5%)	82 (5%)	22 (6%)	22 (10%)	6 (5%)	423 (8%)
3-4 years old	42	10	7	1	1	–	61 (1%)
> 4 years old	4	2	–	–	–	–	6
Total	2 011	1 353	1 553	337	217	125	5 596

Statistical Summary

The following table summarises the VRB's major actions in processing applications during 2000-01:

Table 3 – Summary

	NSW	VIC	QLD	SA	WA	TAS	AUST
Outstanding Year End 1999-2000	2 855	1 665	1 500	446	346	168	6 980
Lodged 2000-01	1 940	1 770	1 966	494	233	145	6 548
Heard 2000-01	2 041	1 113	1 294	388	260	96	5 192
Adjourned 2000-01	256	106	152	33	45	14	606
Finalised 2000-01	2 761	2 068	1 944	605	364	183	7 925
Withdrawn 2000-01	825	1 020	692	235	153	82	3 007
Dismissed 2000-01	152	50	67	29	8	7	313
Lapsed 2000-01	33	15	25	–	2	9	84
Outstanding Year End 2000-01	2 011	1 353	1 553	337	217	125	5 596

This table does not include the following actions undertaken by the VRB: transfer of applications between States, restoration of old applications (eg, applications that had been lapsed due to loss of contact with the applicant), deletion of duplicate applications, and follow-up of cases with applicants, their representatives, and the Department.

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

For the VRB to make the correct or preferable decision in each case it must have a proper understanding of the law and sufficient material on which to make a careful decision about the merits.

VRB members are kept well informed of changes of the law and recent court and tribunal decisions by the VRB's Legal and Information Services Section, a comprehensive Intranet site, members' meetings, and a training program for new members.

To ensure the VRB has adequate material upon which to consider the merits of each case, the Secretary to the Department provides copies of relevant material to the VRB under section 137 of the *Veterans' Entitlements Act 1986*. Under subsection 148(6A) of the Act the Principal Member (or a Registrar to whom the power has been delegated) may request the Secretary to conduct a further investigation and provide further material. VRB Case Managers inspect the material provided by the Department to conduct a preliminary assessment of its adequacy and relevance to the matters under review. As a consequence of this assessment, Registrars refer a significant proportion of cases to the Department under subsection 148(6A) for further development of the material.

When the VRB panel reviews an application and receives further oral evidence during a hearing, issues might need clarification or further investigation, or the applicant might need a further opportunity, consistent with procedural fairness, to assess his or her position. In light of these considerations, the VRB might adjourn the hearing of a review.

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 issues or 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 the material.

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 if a party is genuinely 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 table 4:

Table 4 – Section 151 and 152 Adjournments

	NSW	VIC	QLD	SA	WA	TAS	AUST
Applications Heard	2 041	1 113	1 294	388	260	96	5 192
Adjourned s151	79	40	35	11	13	4	182
s151 as % of Heard	3.9	3.6	2.7	2.8	5.0	4.2	3.5
Adjourned s152	177	66	117	22	32	10	424
s152 as % of Heard	8.7	5.9	9.0	5.7	12.3	10.4	8.2
Total Adj% 00-01	12.5	9.5	11.7	8.5	17.3	14.6	11.7
Total Adj % 1999-2000	12.2	8.3	16.4	5.3	12.6	7.1	12.1

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 1.8 matters decided by the VRB for each application heard. During 2000-01, 8 098 decisions were published relating to 4 521 applications. The outcome of the published decisions was as follows:

Table 5 – Outcome of Published Decisions

ENTITLEMENT	
Veteran’s death accepted as war/defence-caused and a war widows’/widowers’ pension granted	227
Injury or disease accepted as war/defence-caused and remitted to the Repatriation Commission to assess applicable pension rate	860
Injury or disease accepted as war/defence-caused and VRB assessed the rate of pension to be paid	262
Injury or disease set aside and a varied decision substituted	407
Total Set Aside	1 756
Veteran’s death NOT war/defence-caused	625
Injury or disease NOT war/defence-caused	4 110
No power to review	1
Total Affirmed	4 736
TOTAL ENTITLEMENT	6 492
ASSESSMENT	
Set aside and rate of pension increased	727
Set aside and rate of pension reduced	15
Total Set Aside	742
Assessment decisions affirmed	763
No power to review	3
Total Affirmed	766
Remitted*	78
TOTAL ASSESSMENT	1 586
ATTENDANT ALLOWANCE	
Total Set Aside	3
Total Affirmed	17
TOTAL ATTENDANT ALLOWANCE	20
TOTAL DECISIONS PUBLISHED	8 098

* If an entitlement matter is set aside and remitted to the Commission any assessment matter, the subject of that application for review, is also remitted.

In summary:

- 27.0% of entitlement decisions reviewed by the VRB were set aside; this figure was 24.5% for 1999-2000.
- 46.8% of assessment decisions reviewed by the VRB were set aside; this figure was 52.5% for 1999-2000.

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

Table 6 – Decisions Reviewed and Set Aside

	NSW	VIC	QLD	SA	WA	TAS	AUST
Total Entitlement	2 436	1 543	1 759	362	278	114	6 492
Set Aside	668	377	525	73	96	17	1 756
% Set Aside 00-01	27.4	24.4	29.8	20.2	34.5	14.9	27.0
% Set Aside 1999-2000	25.6	18.6	28.6	19.7	32.1	13.6	24.5
Total Assessment	624	277	482	110	64	29	1 586
Set Aside	330	87	229	54	34	8	742
% Set Aside 00-01	52.9	31.4	47.5	49.1	53.1	27.6	46.8
% Set Aside 1999-2000	57.1	42.3	54.1	51.3	52.2	25.8	52.5

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 extent to which intervention occurs by the Repatriation Commission under section 31;
- the adequacy of information presented to primary decision-makers; and
- the nature and extent of 'new' material presented on review.

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

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.

The average time for the VRB to undertake this stage was 14 days in 2000-01. This was a significant time reduction from the previous year (34 days), and was largely brought about through new procedures adopted as a result of the new computer case management system.

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 there are restrictions on the availability of representatives, with the result that

many cases are not available for listing for some weeks from when the Certificate of Readiness is received.

The average time for the VRB to undertake this stage was 75 days in 2000-01.

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.

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. VRB records are examined each week for all cases heard for which a decision has not been published. Each case more than three weeks old is then followed-up by the Principal Member to effect early publication of the decision and reasons.

During 2000-01 the average time from the date of hearing to the publication of the decision was 14 days, this compares with 19 days in 1999-2000.

The significant reduction in time taken to publish reasons is largely the result of members doing their own typing, better follow-up processes brought about by stage 2 of the new computer case management system (vrbsAM) implemented in January 2001, and by a continuing commitment on the part of members and staff to complete and publish decisions at the earliest opportunity.

Table 7 – Mean Times Taken to Process (in Days)

STAGE	Primarily under DVA control	Primarily under applicants' control	Primarily under VRB control
Lodgement to Receipt of s137 Report	46 (54)		
Receipt of s137 Report to s148 Notice sent			14 (34)
s148 Notice sent to s148 Reply received		43 (40)	
s148 Reply to Certificate of Readiness received		206 (215)	
Certificate of Readiness to Hearing			75 (75)
Hearing to Publication of decision & reasons			14 (19)
Total Average Time with DVA, applicants or VRB	46 (54)	249 (255)	103 (128)
Average % of Time with DVA, applicants or VRB	11.6% (12.4)	62.6% (58.4)	25.9% (29.2)

Figures in (brackets) represent figures for 1999-2000

Not included in this table are those times when applications are referred to the Department for further investigation or development of the material. Because of the individual nature of such referrals it is not meaningful to provide an average time taken.

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

During 2000-01, 6 548 new applications were lodged, 5 192 hearings were held, and 7 925 applications were finalised.

During the year, the Australian National Audit Office conducted a performance audit of the VRB. In its report to Parliament (*Review of Veterans' Appeals Against Disability Compensation Entitlement Decisions*, Audit Report No. 29, 2000-2001) the ANAO said:

“The ANAO concludes that the VRB has in place an active approach to case management.” (p77)

“VRB is managing those aspects of the review process within its direct control in a timely and effective manner. The ANAO concluded that VRB is managing its part of the external review process so as to continually improve its performance” (p78)

At 1 July 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 (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). This distribution of applications did not change markedly throughout the year. The total number of applications outstanding as at the 30 June 2001 was 5 596. A total of 3 876 applications (69%) were with the applicant or their representatives and not ready to be heard, 509 applications (9%) were with the Department for action under sections 137, 148(6A), 152 or 31 (this figure, as previously explained, is probably understated in NSW and SA because of the Department's working practice in those states of not advising the VRB of new applications until the s137 report is forwarded to the VRB), and 1 211 applications (22%) were with the VRB.

Listing

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.

Of the 1211 (22%) applications outstanding with the VRB, 433 had already been allocated a hearing date and time. Although a further 538 were ready to proceed to hearing 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.

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, 378 applications listed for hearing were postponed prior to the commencement of the hearing. Substitute applications were found for 332 postponements. This resulted in 46 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	2 041	1 113	1 294	388	260	96	5 192
Postponed	171	76	98	15	13	5	378
Substituted	143	74	86	16	8	5	332
% substituted 2000-01	83.6	97.4	87.8	106	61.5	100	87.8
% substituted 1999-00	85.7	96.6	91.8	90.9	22.2	0	87.9

Applications Dismissed

During 2000-01, the VRB sent out a total of 1 002 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 313 applications being dismissed, 230 being withdrawn and 306 requests for a hearing. The remainder provided reasonable explanations or were still being followed up in accordance with the legislation. There were 5 appeals concerning dismissals lodged with the AAT.

For more information concerning AAT appeals see Appendix 2.

Table 9 – Dismissal Action

	NSW	VIC	QLD	SA	WA	TAS	AUST
Letters Sent	542	137	234	59	18	12	1 002
Reasonable Answer	139	29	42	12	8	1	231
Withdrawn	118	55	41	11	3	2	230
Hearing Requested	147	27	96	29	4	3	306
Dismissed 2000-01	152	50	67	29	8	7	313
Dismissed 1999-2000	163	31	67	14	5	6	286

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 2000-01, a total of 84 applications were lapsed. The figure for 1999-2000 was 60.

Applications Withdrawn

During 2000-01, 3 007 applications were withdrawn by applicants; this represents 37.9% of applications finalised during the year. This compares with 3 166 withdrawals (36.1%) for the previous year.

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

Table 10 – Applications Withdrawn

	NSW	VIC	QLD	SA	WA	TAS	AUST
Finalised	2 761	2 068	1 944	605	364	183	7 925
Withdrawn	825	1 020	692	235	153	82	3 007
% Withdrawn 2000-01	29.9	49.3	35.6	38.8	42.0	44.8	37.9
% Withdrawn 1999-00	26.6	43.4	39.6	37.2	39.3	40.1	36.1

Members

As at 1 July 2000, the membership of the VRB was 52.

From 1 July 2000 to 30 June 2001 the following changes in membership occurred:

- 4 members resigned:
 - Suellen Mitchell Bullock from 22 September 2000
 - Patricia Anne Campbell from 13 October 2000
 - Jillann Frances Farmer from 12 January 2001
 - John Leon Lesser from 16 October 2000.
- 2 members changed their State of appointment:
 - Anthony Michael Carwardine, part-time Services Member, Sydney to part-time Services Member, Canberra as from 10 July 2000
 - Charles White, part-time Services Member, Adelaide to part-time Services Member, Sydney from 1 June 2001.
- 6 members' terms of office expired from 31 May 2001:
 - Alexander Edward Bates, part-time Member, Brisbane
 - Anthony Thomas Giurissevich, part-time Member, Sydney
 - Leon Roderic Greville, part-time Services Member, Brisbane
 - James Curnow Hughes, part-time Services Member, Melbourne

- Desmond Joseph Mealey, part-time Services Member, Brisbane
 - Gerald Lawrence Purcell, part-time Senior Member, Melbourne.
- 9 new members were appointed from 1 June 2001:
 - Zita Rose Antonios, part-time Member, Sydney
 - Francis Brown, part-time Services Member, Sydney
 - Jennifer Ann D’Arcy, Senior Member, Sydney
 - Marella Louise Denovan, part-time Member, Brisbane
 - Allan John Farquhar, part-time Services Member, Brisbane
 - Janet Ann Hartmann, part-time Member, Sydney
 - Kerrie Ellen Laurence, part-time Member, Sydney
 - Gavin William Robins, part-time Member, Melbourne
 - Andrea Michelle Treble, part-time Senior Member, Melbourne.

At 30 June 2001, there were 51 members of the VRB: the Principal Member, 16 Senior Members, 17 Services Members and 17 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 17.

The breakup of membership as at 30 June 2001 is set out in the following table:

Table 11 – Members

Class of Member	Full-time	Part-time (women)	Total (women)
Principal Member	1	–	1
Senior Member	–	16 (8)	16 (8)
Services Member	–	17	17
Member	–	17 (9)	17 (9)
Total	1	50 (17)	51 (17)

Full details of the VRB membership as at 30 June 2001 are set out in Appendices 4 and 5.

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 2000, there were 46 staff employed by the VRB. That figure was 44 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 2001 is set out in the following table:

Table 12 – Staff

	EL 2	EL 1	APS 6	APS 5	APS 4	APS 3	Total
ACT	1	2	1		2		6
NSW		1	1		2	8	12
VIC		1	1		2	6	10
QLD		1	1		2	6	10
SA			1		1	1	3
WA				1		1	2
TAS			1				1
TOTAL	1	5	6	1	9	22	44

Resources

Table 16 outlines estimated expenditure for the VRB for the 1999-2000 and 2000-01 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 2000-01 was \$7 142 000 compared to \$7 134 000 in 1999-2000. Actual average expenditure on each application finalised by the VRB during the year was \$901. In 1999-2000 the figure was \$813. However, when account is taken of the fact that in previous years, applications involving both entitlement and assessment matters were counted as two applications, and that many such finalised applications were only counted as one application in 2000-01, the 1999-2000 figure would have equated to approximately \$890 per application. Thus there was only a small increase in cost per finalised application in real terms of approximately \$11.

Table 13 – Veterans’ Review Board – Expenditure (\$000’s)

	1 July 99 -30 June 00		1 July 00 –30 June 01	
Salaries (includes superannuation)				
Members	2 564		2 565	
Staff (includes o/time & temps)	2 397	4 961	2 364	4 929
Rental of Premises (includes outgoings)	774	774	752	752
Applicants’ expenses	75	75	41	41
Fares				
Members	166		146	
Staff	55		53	
Cars (includes parking)	46	267	50	249
Travelling Allowance				
Members	275		302	
Staff	56	331	50	352
Office Requisites				
Stationery and office requisites	35		29	
Library	61		71	
Printing	9		24	
Equipment	18	123	20	144
Postage and Telephones				
Postage	30		26	
Telephones/fax	59	89	53	79
Office Services				
Plant hire	5	5	7	7
Furniture and Fittings	3	3	–	–
Computer equipment (includes services)	249		276	
vrbSAM Phase 1 (Development & implementation)	117		–	
vrbSAM Phase 2 (Planning & development)	35	401	167	443
Incidental Expenditure				
Freight & cartage	34		34	
Advertising	–		26	
Training	–		14	
Miscellaneous	24	58	23	97
Comcare Premium	40	40	38	38
Archiving	7	7	11	11
TOTAL		7 134		7 142

Outcome 5: Accessible and responsive to veteran community stakeholders

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 1999-2000 figures, are shown in the following table:

Table 14 – Representation at VRB Hearings

	NSW	VIC	QLD	SA	WA	TAS	AUST
Unrepresented	268	73	100	25	18	10	494
In absentia	324	99	274	29	21	2	749
Represented	1 449	941	920	334	221	84	3 949
Total	2 041	1 113	1 294	388	260	96	5 192
% Represented 2000-01	71.0	84.5	71.1	86.1	85.0	87.5	76.1
% Represented 1999-00	69.5	90.9	74.7	81.8	75.8	81.6	77.0

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. The representatives in those cases sometimes provide written submissions to the VRB.

Regional Hearings

During 2000-01 regional hearings were again arranged in Bundaberg, Cairns, Canberra, Gold Coast, Launceston, Palm Beach, Rockhampton, Surfers Paradise and Townsville.

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

Table 15 – Number of Days Hearings Held in Regional Locations

Location	1999-2000	2000-01
Alice Springs, NT	2	–
Bundaberg, Qld	29	10
Cairns, Qld	15	10
Canberra, ACT	55	64
Darwin, NT	3	–
Gold Coast, Qld	10	15
Launceston, Tas	12	14
Mackay, Qld	10	–
Palm Beach, Qld	15	20
Rockhampton, Qld	10	5
Southport, Qld	5	–
Surfers Paradise, Qld	38	54
Townsville, Qld	19	15
Total days of hearings	223	207

In 2000-01, the VRB trialed video hearings to enhance its service to applicants in regional areas. This has proved to 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. During 2000-01, the VRB held video hearings in the following sites:

Table 16 – Video Hearings

Remote location	VRB location	Hearings
Bundaberg, Qld	Brisbane	2
Canberra, ACT	Melbourne	1
Mackay, Qld	Brisbane	4
Mildura, Vic	Melbourne	4
Perth, WA	Melbourne	1
Rockhampton, Qld	Brisbane	2
Wangaratta, Vic	Melbourne	4
Total hearings		18

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 2000-01 the Commission was not represented at any hearings.

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.

Research and information services

The VRB's intermediate role and high-volume jurisdiction mean that members have to deal with their caseload 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 *Operations Manual* which sets out details of the administrative processing of applications to the VRB; and
- a monthly 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.

Veterans' law course

In late 2000, Professor Brian Fitzgerald, Head of the School of Law and Justice at Southern Cross University, approached the VRB's Executive Officer, Mr Bruce

Topperwien, with a view to establishing a short course in Veterans' Law for non-lawyers. In exchange for a number of free places on the course for VRB staff, Mr Topperwien agreed to write the course materials for three of the four units and be the unit coordinator and assessor for two of the units. The VRB saw this as an opportunity to develop the knowledge and skills of veterans' representatives beyond the basic level provided by the Training and Information Program funded by the Department. It was also an opportunity to update and enhance the in-house training materials for VRB members and provide a well structured, university accredited, training program for VRB staff.

This short external course, completion of which can count as credit for degree and diploma courses in legal studies at the university, consists of the following four units: Veterans' Law 1, Veterans' Law 2, Legal Research and Writing, and Law & Government Decision-Making. These units are given over two semesters. The course commenced in Semester 1 of 2001. Notwithstanding that course fees were \$700 per unit and the Department did not provide funding to ex-service organisations for this purpose through its grant programs, there was still a significant number of enrolments from veterans' advocates, as well as from Departmental staff. It is anticipated that this course, which will be offered again in 2002, will significantly raise the standard of representation for veterans and greatly enhance the skill and knowledge levels of VRB and Departmental staff.

Access and equity

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 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.

Complaints

In the course of the year the VRB received 15 letters of appreciation and 18 letters of complaint. The former (an increase over the eight received the previous year) were particularly welcomed by staff and members who are genuinely concerned to place all veterans and widows at ease, to protect their dignity and to ensure a fair and comprehensive hearing. Such letters are not solicited. One veteran wrote following an unfavourable result expressing appreciation for the effort devoted to hearing his case.

Complaints are a concern, although they have fallen below the number received last year. Twelve of the 18 complaints were referred for comment from the Minister's office and involved the following issues: incorrect details in decision (1); concern at the decision or aspects of the decision (5); concern over dismissal procedures (1); concern over an adjournment (1); concern over postponement of a hearing due to cyclone alert (1); concern over selection procedures for membership of the VRB or the composition of the membership (2); concern over past VRB procedures (1). The Executive Officer or the Principal Member investigated each of these matters and responses were provided.

Other complaints sent to the VRB were: concern over the composition of the panel (1); concern at the reimbursement rate for private motor vehicle use in attending the VRB (1); incorrect detail regarding status of veteran in decision and reasons (1); concern at time taken by DVA in responding to request for further investigation by the VRB (1); concern at delay in commencing a telephone hearing (1); concern at accuracy of material provided by representative at a hearing (1).

Each of these concerns was examined in detail and responses were provided in a timely manner. In some cases personal contact by telephone was initiated by the Principal Member in order to confirm or add to any explanation offered.

The VRB is gratified that the complaints are few in relation to the total of matters dealt with. Nevertheless it is clear that the issues raised were significant to the individuals concerned. The VRB continues to aim at reducing the possibility of complaint.

APPENDIX 1

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 against 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 judicial review under the *Judiciary Act 1903*.

Certain matters may also be heard by the Federal Magistrates Service, either in its original jurisdiction under the *AD(JR) Act* or upon transfer from the Federal Court. The Federal Magistrates Service commenced hearings in July 2000.

High Court of Australia

During the year, there was one application to the High Court for special leave to appeal in a matter arising under the *Veterans' Entitlements Act 1986*. Mrs Keeley had applied for review at the AAT and sought to rely on the Statement of Principles which was in force at the time of the Commission's decision. A second Statement of Principles was made after the application for review was lodged with the AAT. In *Repatriation Commission v Keeley* (2000) 31 AAR 150, the Full Court of the Federal Court held that the introduction of Statements of Principles in 1994 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 her application reviewed by reference to the Statement of Principles in force at the time of the Commission's decision under review.

The High Court refused the Commission's application for special leave to appeal.

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.

Administrative Appeals Tribunal Act 1975

During the year, the Federal Court handed down 30 decisions, including 5 decisions of the Full Court, on matters that were appealed from decisions of the AAT. Decisions were set aside in 12 cases and the matters were remitted to the AAT for re-hearing. The Federal Court decisions were as follows (in chronological order):

Harris v Repatriation Commission
Hill v Repatriation Commission
Thompson v Repatriation Commission
Gartrell v Repatriation Commission (Full Court)
Repatriation Commission v Applebee
Husband v Repatriation Commission (Full Court)
Arnott v Repatriation Commission
Mason v Repatriation Commission
Webb v Repatriation Commission
Harris v Repatriation Commission (Full Court)
Cook v Repatriation Commission
Kershaw v Repatriation Commission
Borrett v Repatriation Commission
Lamers v Repatriation Commission
Repatriation Commission v Walters
McLean v Repatriation Commission
Rose v Repatriation Commission
Repatriation Commission v Leighton
Arnott v Repatriation Commission (Full Court)
Gorton v Repatriation Commission
Budworth v Repatriation Commission
Repatriation Commission v Thompson (Full Court)
Repatriation Commission v Spargo
Graham v Repatriation Commission
Repatriation Commission v Tiernan
Symons v Repatriation Commission
Meehan v Repatriation Commission
Williams v Repatriation Commission
Benjamin v Repatriation Commission
Bull v Repatriation Commission

Causation issues

Harris concerned a claim about lumbar spondylosis and the definition of ‘trauma to the lumbar spine’, which referred to ‘altered mobility or range of movement of the joint’. The Court held that the AAT had erred in law by failing to address whether the hypothesis was consistent with the template in the Statement of Principles, in accordance with the procedure set out in *Repatriation Commission v Deledio* (1998) 83 FCR 82. The Court refused to remit the matter for rehearing on the basis that it would be futile to do so, as the decision was correct on the material before the AAT. An appeal to the Full Court was dismissed.

Arnott also concerned a claim in respect of lumbar spondylosis and the meaning of the expression ‘acute symptoms and signs of pain’. The Court at first instance dismissed the application. The Full Court set aside the AAT’s decision on the basis that the AAT had failed to consider whether the veteran’s pain was ‘acute’ in terms of the Statement of Principles.

McLean involved a claim by the widow of a veteran killed by a falling rock. It was contended that due to a war-caused back condition, the veteran was unable to move quickly to avoid being hit by the rock. The Court held that although the AAT had erred in deciding that no hypothesis was raised, the hypothesis that the veteran’s mobility was restricted was not pointed to by the material before the AAT and was therefore unreasonable. The appeal was dismissed.

Mason, Cook, Borrett, Leighton and *Bull* each involved examination of whether the AAT had followed the correct approach in applying the relevant Statement of Principles. The appeals were dismissed in all cases except *Borrett*.

Standard of proof as to diagnosis

Budworth dealt with the standard of proof to be applied on questions of diagnosis. The AAT had accepted that the applicant suffered from a disease and the question was raised as to whether it had applied the correct standard of proof in refusing the claim. The Court held that in circumstances where questions of causation are bound up in the question of diagnosis in a disease such as post traumatic stress disorder, the reverse ‘beyond reasonable doubt’ standard in sections 120(1) and (3) of the *VE Act* should be applied. The issue of diagnosis was also addressed in the cases of *Meehan* and *Benjamin* and has caused some difficulties for the decision-makers. It is hoped that further consideration of this issue by the Full Court in the coming year will clarify this important issue.

Accrued rights

In *Thompson*, the Court examined the situation where there was no Statement of Principles for irritable bowel syndrome at the time of the Commission’s decision, but

a Statement was made prior to hearing of a review application by the AAT. The Court held that the applicant had an accrued right to have the matter reviewed by the AAT without applying the Statement of Principles. The right which had accrued was protected by provisions of the *Acts Interpretation Act 1901*. It said that given the beneficial nature of the *VE Act*, the substantive rules should not be changed to an applicant's disadvantage during the review process. An appeal to the Full Court was dismissed.

In *Gartrell*, the Full Court held that where the Statement of Principles was determined after the claim was lodged but prior to the Commission's decision, there was no accrued right to have the matter reviewed by the AAT without applying the Statement of Principles.

In *Gorton*, the Court interpreted the findings of the Full Court in *Keeley* as requiring that the most beneficial Statement of Principles is to be applied. Thus, if the Statement in force at the time of the AAT's review is more beneficial to the applicant than that applied by the Repatriation Commission in the decision under review, the later Statement is to be applied. The Court reached the same conclusion in *Williams*.

In *Symons*, in circumstances where several Statements of Principles were gazetted after the Commission's decision under review, the Court held that the AAT could apply either the initial Statement based on an accrued right or the current Statement but not intervening Statements.

In *Walters*, the Court set aside the AAT's decision on the basis that the wrong Statement of Principles had been applied.

Special rate

Husband dealt with the issue of whether the AAT had erred in finding that the veteran was ineligible for the intermediate or special rate. The AAT found that he was incapacitated by a non defence-caused condition which was the main factor preventing him from working and he could not satisfy the 'alone' test in sections 23(1)(c) and 24(1)(c). The Full Court dismissed the appeal.

Hill and *Lamers* also involved consideration of aspects of 'remunerative work' in relation to the special rate.

In *Rose*, the Court held that where a veteran had claimed unsuccessfully for lumbar spondylosis prior to 1994 and was successful with a later claim, he was required to satisfy the more restrictive provisions of the intermediate or special rate introduced in 1994.

GARP assessment

In *Applebee*, the Court found that the AAT had erred in finding that the veteran's glaucoma was a sequela of his war-caused cerebrovascular disease and could be assessed under the GARP. As the glaucoma did not meet the relevant Statement of Principles, it could not be assessed as a sequela of cerebrovascular disease. The Commission's appeal was allowed on this basis.

In *Kershaw*, the Court rejected a submission that the criteria in GARP in relation to lifestyle assessment are illustrative only and not binding on decision-makers.

Operational service

In *Spargo*, the Commission was successful in its appeal against a finding by the AAT that a veteran had rendered operational service in Korea. He was injured while en route from Australia and returned to Australia from Japan without entering the Korean operational area. The Court held that section 6C(1) of the *VE Act* required physical presence in the operational area.

Qualifying service

In *Graham* and *Tiernan*, the Court examined aspects of qualifying service for service pension and Gold Card eligibility.

Procedure

In *Webb*, the applicant sought to enforce a compromise agreement arising from discussions between the parties at the AAT concerning the rate of pension to be paid. The Court held that it had no jurisdiction in terms of the *Judiciary Act* to enforce the alleged agreement.

Federal Magistrates Service

The case of *Hardcastle* was the first decision of the new Federal Magistrates Service in the veterans' jurisdiction. The case dealt with an issue of salt supplements in relation to hypertension. The appeal was dismissed.

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

APPENDIX 2

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 2000-01, the VRB was notified of the lodgement of 1 331 applications for review by the AAT of matters involving VRB decisions. During the same period, the VRB lodged 143 section 37 statements with the AAT. The average time taken for preparation and lodgement of those statements was 18 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 2000-01, there were 1 331 AAT applications and the VRB finalised 4 521 applications by decisions made at hearings. This represents an estimated appeal rate of 29.4%. The estimated appeal rate for 1999-2000 was 33.9%.

The Repatriation Commission lodged one appeal in relation to a VRB decision during 2000-01.

Statistics obtained from the Department of Veterans' Affairs indicate that, of applications finalised by the Veterans' Divisions of the AAT during the year:

- 29% were withdrawn by the applicants; and
- 42% were conceded by the Repatriation Commission.

Of the remaining 29% that were finalised by decisions formally published with reasons:

- 244 (49.7%) involved an affirmation of the decision under review; and
- 247 (50.3%) led to the decision under review being varied or set aside.

In virtually every case where the VRB's decision was set aside or varied by the AAT, there was evidence before the AAT that was not put at the VRB.

Review of Dismissals

Applications can also be made to the AAT for review of 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 2000-01, there were 5 new appeals relating to dismissal decisions lodged with the AAT, and 1 application for extension of time to appeal. The application for extension of time to appeal was refused by the AAT on the ground that the applicant had no prospects of success. There were 9 dismissal cases finalised at the AAT:

- 1 was remitted to the VRB by consent;
- 3 were withdrawn by the applicant; and
- 5 were affirmed on review by the Tribunal.

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

APPENDIX 3

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 2000-01, the Ombudsman formally contacted the VRB in relation to one matter. This concerned the application of the dismissal provisions of the *Veterans' Entitlements Act 1986*. The Ombudsman completed the investigation satisfied that the VRB's actions were appropriate.

Freedom of Information Act 1982

There were 5 requests to the VRB for access to documents under the FOI Act during the year. Full access was granted in 4 cases and partial access was granted in 1 case.

APPENDIX 4

Membership of the Veterans' Review Board – By Category

	Commencement of Appointment	Expiration of Appointment
PRINCIPAL MEMBER		
Brigadier William Douglas Rolfe (Rtd)	8 April 1997	7 April 2002
PART-TIME SENIOR MEMBERS		
Mr John Charles Cooke	1 January 1990	30 September 2002
Ms Julie Cowdroy	1 January 1993*	30 September 2002
Ms Jennifer D'Arcy	1 June 2001	30 September 2004
Mr Robert Eadie	1 October 1997	30 September 2002
Ms Deirdre Ann FitzGerald	1 January 1985*	30 September 2002
Hon John Ward Greenwood RFD QC	1 January 1998	30 September 2002
Ms Andrea Marilyn Hall-Brown	1 October 1997*	30 September 2002
Ms Naida Isenberg	30 July 1998	30 September 2002
Mr Robert Graham Kenny	21 April 1988*	30 September 2004
Mr William Bennett Lane	29 May 1990*	30 September 2004
Mr Robert David Park	1 January 1993*	30 September 2004
Ms Denyse Christina Phillips	1 January 1993	30 September 2004
Ms Julie Ann Shead	1 October 1997	30 September 2004
Commodore		
Alan Leslie Thompson AM (Rtd)	1 January 1998	30 September 2002
Ms Andrea Michelle Treble	1 June 2001	30 September 2004
Colonel Leslie James Young (Rtd)	1 October 1997	30 September 2002

- * Ms Cowdroy – Resigned 12 July 1996, reappointed 30 July 1998
 Ms FitzGerald – Resigned 22 February 1989, reappointed 1 January 1998
 Ms Hall-Brown – Changed category: Member to Senior Member from 30 July 1998
 Mr Kenny – Changed category: Member to Senior Member from 1 January 1990
 Mr Lane – Changed category: Member to Senior Member from 1 October 1997
 Mr Park – Changed category: Member to Senior Member from 1 October 1997

PART-TIME SERVICES MEMBERS

Mr Francis Harding Benfield Major General	28 May 1999	30 September 2004
Murray Phillip Blake AO MC (Rtd)	28 May 1999	30 September 2004
Lieutenant Colonel Francis Brown (Rtd) Wing Commander	1 June 2001	30 September 2004
Stuart Alexander Bryce (Rtd) Air Commodore	25 November 1991	30 September 2004
Frank Edward Burt OBE (Rtd) Rear Admiral	1 January 1998	30 September 2002
Anthony Michael Carwardine AO (Rtd) Lieutenant Colonel	1 January 1998	30 September 2002
Graeme Kingsley Chapman (Rtd) Commodore	1 January 1995	30 September 2004
James Stewart Dickson AM MBE (Rtd) Group Captain Collins Joseph Fagan (Rtd)	1 January 1998	30 September 2002
Captain Allan John Farquhar RAN (Rtd) Brigadier	1 June 2001	30 September 2004
Patrick Thomas Francis Gowans (Rtd) Group Captain	1 January 1998	30 September 2002
Jonathon Scott Hamwood AM (Rtd) Lieutenant Colonel Geoffrey Hourn (Rtd)	1 January 1998	30 September 2002
Brigadier Laurence John Lewis (Rtd) Major Gregory Mawkes (Rtd)	1 January 1998	30 September 2002
Colonel Robin Terence Regan CSC (Rtd) Squadron Leader Charles White (Rtd)	1 January 1993	30 September 2004
	28 May 1999	30 September 2004
	1 January 1995	30 September 2004

PART-TIME MEMBERS

Ms Zita Rose Antonios	1 June 2001	30 September 2004
Dr David Caryl Blaikie	1 October 1997	30 September 2002
Mr Peter John Cappe	28 May 1999	30 September 2002
Dr Marella Louise Denovan	1 June 2001	30 September 2004
Ms Jackie Miriana Fristacky	1 October 1997	30 September 2004
Ms Janet Ann Hartmann	1 June 2001	30 September 2004
Ms Hilary Lorraine Kramer	30 July 1998	30 September 2002
Ms Kerrie Ellen Laurence	1 June 2001	30 September 2004
Mr Hugh Duncan Logue	30 July 1998	30 September 2002
Ms Morag Angus McColm	1 January 1998	30 September 2002
Mr Dennis Isaac Meadows	1 October 1997	30 September 2004
Ms Mina France Podbereski	30 July 1998	30 September 2002
Dr Derek Alan Purcell	1 January 1998	30 September 2002
Mr Gavin William Robins	1 June 2001	30 September 2004
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 5

Membership of the Veterans' Review Board – By State

AUSTRALIAN CAPITAL TERRITORY

Principal Member

Brigadier William Douglas Rolfe (Rtd)

Part-Time Services Member

Rear Admiral Anthony Michael Carwardine AO (Rtd)

NEW SOUTH WALES

Part-Time Senior Members

Mr John Charles Cooke

Ms Jennifer D'Arcy

Ms Naida Isenberg

Ms Julie Ann Shead

Colonel Leslie James Young (Rtd)

Part-Time Services Members

Lieutenant Colonel Francis Brown (Rtd)

Air Commodore Frank Edward Burt OBE (Rtd)

Brigadier Patrick Thomas Francis Gowans (Rtd)

Squadron Leader Charles White (Rtd)

Part-Time Members

Ms Zita Rose Antonios

Mr Peter John Cappe

Ms Janet Ann Hartmann

Ms Hilary Lorraine Kramer

Mr Kerrie Ellen Laurence

Ms Mina France Podbereski

VICTORIA

Part-Time Senior Members

Mr Robert Eadie
Ms Deirdre Ann FitzGerald
Commodore Alan Leslie Thompson AM (Rtd)
Ms Andrea Michelle Treble

Part-Time Services Members

Lieutenant Colonel Graeme Kingsley Chapman (Rtd)
Commodore James Stewart Dickson AM MBE (Rtd)
Group Captain Collins Joseph Fagan (Rtd)
Colonel Robin Terence Regan CSC (Rtd)

Part-Time Members

Ms Jackie Miriana Fristacky
Mr Dennis Isaac Meadows
Mr Gavin William Robins
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)
Captain Allan John Farquhar RAN (Rtd)
Group Captain Jonathon Scott Hamwood AM (Rtd)

Part-Time Members

Dr Marella Louise Denovan
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)

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 6

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 under Outcome 4 and Appendices 4 and 5.

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 provides the details required by section 9 of the FOI Act.

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 10 to this Report.

APPENDIX 7

Commonwealth Disability Strategy

The VRB is within the Veterans' Affairs portfolio and although it is an independent body from the Department of Veterans' Affairs, it generally follows Departmental guidelines concerning access and equity issues.

Of the 5 roles specified in the Commonwealth Disability Strategy's Performance Reporting Framework (Policy Adviser, Regulator, Purchaser, Provider and Employer), the VRB performs 2 – Provider and Employer. Accessibility to VRB hearings by applicants and representatives with disabilities is covered by the Provider role. Accessibility issues for VRB employees and job applicants with disabilities are covered by the Employer role.

Our commitment to people with a disability

- The VRB's Service Charter states the VRB's commitment to ensuring access to services for people in the veteran community with a disability. The VRB's policies and practices take into account the physical, mental and social well-being of applicants and representatives; and
- VRB staff are provided by the Department of Veterans' Affairs and are covered by the Department's employment policies, procedures and practices. The Department's Enterprise Agreements, Workplace Diversity Strategic Plan, Equal Employment Opportunity Plan, Disability Discrimination Action Plan and Managers' Guide indicate the commitment to employees with disabilities and ensure employment practices that do not discriminate against people with disabilities. The same disability strategy policies apply to VRB members.

The following information covers the VRB's current level of performance against the Commonwealth Disability Strategy's Performance Reporting Framework for the Provider role. The VRB's Employer role is included within the Department's performance reporting in the Department's Annual Report.

Performance indicator 1 — Providers have established mechanisms for quality improvement and assurance

Performance measure

Evidence of quality improvement and assurance systems in operation

Current level of performance

The VRB liaises with veterans' representatives in relation to access issues. We are able to provide hearings for all applicants. The VRB endeavours to provide a better service by reviewing complaints as they arise to identify priority areas for improvement in meeting the needs of the veteran community. In 2000-01 the VRB provided video hearings, which give easier access for disabled remote locality veterans.

Performance indicator 2 — Providers have an established service charter that specifies the roles of the provider and consumer and service standards, which address accessibility for people with disabilities

Performance measure

Established service charter that adequately reflects the needs of people with disabilities in operation

Current level of performance

The VRB has a Service Charter, which specifies the provision of equitable access. The Charter also identifies an avenue for comments, suggestions or complaints.

Performance indicator 3 — Complaints/grievance mechanism, including access to external mechanisms, in place to address issues and concerns raised about performance

Performance measure

Established complaints/grievance mechanisms, including access to external mechanisms, in operation

Current level of performance

The VRB has a Feedback Management System in which complaints and grievances are recorded. We use this mechanism to assist in assessing our performance.

APPENDIX 8

Service Charter

This Charter sets out our commitment of service to you. It is a public statement regarding the type and quality of services that the veteran community can expect to receive from the VRB.

The VRB is committed to maintaining and improving the quality of its services. We monitor our performance in meeting the commitments set out in this Charter. Your suggestions for improvements are welcome.

The VRB's Annual Report details our performance against the standards we set in this Charter.

ABOUT THE VRB

The Veterans' Review Board (VRB) is part of the Repatriation determining system but is independent of the Repatriation Commission and the Department of Veterans' Affairs.

The VRB is a tribunal created by Parliament to review decisions about Repatriation pensions (other than service pensions) and attendant allowance. It aims to provide correct, high quality, impartial decisions in a timely and efficient manner.

The VRB is made up of staff who manage its affairs and assist members, and panels of members who hear and decide applications for review. A panel consists of up to three persons with a wide range of skills, including service experience and legal qualifications. All panel members are independent persons appointed by the Governor-General.

OUR COMMITMENTS

The VRB will:

1. Treat you with courtesy and respect

When you visit us, we will acknowledge your arrival and attend to you promptly. We will ensure our office is tidy and functional and that you are made to feel as comfortable as possible.

We will answer your telephone call promptly during normal office hours. We will identify ourselves to you and give you accurate and helpful information. We will return your call if a more detailed answer is necessary.

When you write to us, we will reply to your letter within 14 days. We will answer fully the questions or issues you raise. If a full reply is not possible within 14 days we will indicate when it will be available. We will use language that is clear and easy to understand. All letters will include the name and telephone number of the person who wrote to you.

We will listen to and carefully consider the matters you put to us.

2. Provide equitable access

We hold hearings in all capital cities and in some regional centres.

Wheelchair access is available to all our offices.

If you let us know your needs, we will assist you with special access or other requirements.

If you are telephoning from outside the metropolitan area, we can return your call to save you some of the cost of a STD call.

3. Provide appropriate explanatory material

We will send you pamphlets which will help you to prepare your case.

We will provide, on request, an information booklet designed to assist representatives appearing at the VRB.

We will tell you about organisations that may be able to assist you to prepare your case.

4. Give you an opportunity to be heard

You or your representative will have the opportunity to present your case to a VRB panel.

You may choose to appear in person and/or be represented at a hearing (refer to 6. Allow representation). Alternatively, you may choose to have a telephone hearing.

You may choose to have your case considered in your absence by reference to your application and all relevant files.

You or your representative may make written submissions to be considered in your absence.

We will arrange a hearing as soon as possible after you or your representative advise us that you are ready.

We will conduct hearings in an informal atmosphere but with due regard to the importance of the matter and your dignity.

Hearings with you and/or your representative present, or telephone hearings, are tape recorded and retained for two years. We will provide a copy of the tape on your request at any time up to two years after the hearing.

5. Provide confidentiality, where appropriate

VRB hearings are held in private.

Information about your case will not be given to other people unless authorised by law or with your consent.

6. Allow representation

You can conduct your own case at the VRB or you may choose to be represented by an advocate from one of a number of ex-service organisations which provide such a service free of charge.

You are entitled to seek any assistance you want in preparing your case but this will be at your own expense if you do not wish to use the free services available to you.

You may be represented by anyone, at your own expense, other than a legal practitioner (precluded under the *Veterans' Entitlements Act 1986*).

We will always allow you to bring a friend or relative to your VRB hearing, whether or not you are represented.

7. Provide reasons for our decision

We will give our decision and reasons in writing as soon as possible after the hearing and usually within 28 days.

We will let you know of your rights of appeal if you are dissatisfied with our decision.

8. Listen to any comments or complaints

We welcome your comments or suggestions about our operations.

We will respond quickly to complaints.

If you have a complaint, it is best first directed to the local Registrar. If the complaint cannot be resolved by the Registrar, we will let you know of further avenues available to you.

9. Cooperation and Independence

We will cooperate with all persons interested in assisting us in furthering our aims of providing correct, high quality, impartial decisions in a timely and efficient manner.

We will guard our independence in the interests of all parties.

YOUR RESPONSIBILITIES

To enable the VRB to meet its commitments you need to:

1. Respond to requests from VRB Registry staff in the way we ask you to.
2. Give us complete and accurate information within required time limits.
3. Treat VRB Registry staff and members in the way you would wish to be treated, that is with courtesy and respect.
4. Keep hearing or other appointments, or tell us beforehand if you cannot keep an appointment.
5. Let us know of any change of circumstances which might affect your VRB application for review, including any change of address.

APPENDIX 9

Business Plan

ROLE

The Veterans' Review Board (VRB) is an independent statutory tribunal established under the *Veterans' Entitlements Act 1986* to provide merits review of decisions made by delegates of the Repatriation Commission on matters such 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; and
- claims for the grant or assessment of attendant allowance.

FUNCTION

On application for review the VRB is to:

- have regard to the evidence before the Repatriation Commission when the decision was made and any further relevant evidence;
- satisfy itself with respect to or determine all matters relevant to the review in reaching the correct or preferable administrative decision; and
- record its decision and reasons for that decision in writing, indicating in its reasons its findings on any material questions of fact and referring to evidence on which the findings were based.

METHOD OF OPERATION

The VRB

- is headed by the Principal Member who is:
 - appointed by the Governor-General (section 158);
 - responsible for its efficient operation (section 142); and
 - required to report annually to the Minister on operations (section 215).

- comprises staff provided by the Secretary of the Department to the Principal Member to support the functions of the VRB and members appointed by the Governor-General to hear and determine applications for review;
- is funded as a sub-program of the Department;
- is managed centrally from a Principal Registry in Canberra through Registries in Sydney, Melbourne, Brisbane, Adelaide, Perth and Hobart;
- conducts hearings before three member panels convened by the Principal Member in hearing rooms at Registries and in ad hoc hearing rooms in regional centres as the occasion requires;
- promotes cooperation and liaison to the fullest extent possible in its relations with stakeholders in the review process.

AIM

The VRB aims to provide a means of review that is fair, just, economical, informal and quick in an environment which ensures respect for the service of applicants and dignity in the conduct of proceedings.

VALUES

The VRB seeks to integrate administrative law values of lawfulness, fairness, openness, participation and rationality with high standards of personal conduct reflecting independent and impartial minds, respect for the dignity of others, personal integrity and diligence.

OUTCOMES SOUGHT

Outcome 1 Finalise high numbers of applications for review

Achieved by:

- promoting accessibility
- effective case management
- flexibility in modes of hearing and locations.

Performance assessed by:

- measuring numbers finalised and hearing rate against application intake
- user satisfaction with modes and location of hearings.

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

Achieved by:

- making appropriate and relevant findings of fact and correctly applying legal principle in concise well written reasons for decision
- internal consideration of general issues, AAT and Federal and High Court decisions to promote accuracy and consistency in the application of principles.

Performance assessed by:

- internal review and discussion of issues and principles
- general level of satisfaction in veteran community with decision and reasons.

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

Achieved by:

- identifying impact on stakeholders of timeliness issues
- paying due regard to qualitative issues in setting timeliness objectives
- establishing time based performance objectives for process stages.

Performance assessed by:

- measuring achievement in relation to timeliness objectives
- general level of satisfaction among veteran community stakeholders with performance in relation to timeliness.

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

Achieved by:

- effective managements and regular review of utilisation of human and material resources
- effective application of technology to support role and functions
- promoting skills and development in available workforce.

Performance assessed by:

- cost effectiveness in human (morale and efficiency) and monetary terms.

Outcome 5 Accessible and responsive to the veteran community stakeholders.

Achieved by:

- effective cooperation and liaison with stakeholders consistent with independent role and function
- frank and forthright communication of aims and performance data to stakeholders.

Performance assessed by:

- general level of satisfaction among veteran community stakeholders.

STRATEGIES

Strategy 1 - Management

- Maintain centralised management to promote national approach and to allow oversight of flexible management by Registries of devolved functional responsibilities.

Priorities 2000-2001

- Continue development of staff performance agreements.
- Commence development of member performance agreements.
- Regular Registrar/Management meetings.
- Establish objective performance standards to utilise reporting systems and link to Registrar meetings.

Strategy 2 – Utilise Information Technology

- Employ effective IT based measurable systems to register, assess and list applications and to prepare, track, complete and publish written decisions and reasons.

Priorities 2000-2001

- Implement Phase 2 of system for application management (vrbSAM).
- Evaluate vrbSAM.
- Preliminary consideration of possible Phase 3 (application of IDMS to preparation of decisions and reasons).
- Assess capacity to effectively employ video hearings.
- Evaluate adequacy of VRB Intranet site.

- Consider development of VRB Internet site.

Strategy 3 – Continuous Training

- Promote continuous training and professional development focused on high quality processing, hearing and determination of applications

Priorities 2000-2001

- Reconsider indoctrination/training program for members.
- Rewrite standard documentation for decision writing.
- Implement system for professional development for Case Manager Supervisors.
- Continue evolutionary development of role of Case Manager and functional support officers.
- Examine further development of in-house publications *Bulletin* and *VeRBosity*.

Strategy 4 - Communication

- Employ effective communications at all levels of processing and determination to promote education in the role and functions of the VRB and transparent participation and cooperation.

Priorities 2000-2001

- Establish effective VRB personal links in states and at national level with the Department and ex-service organisations.
- Regular reporting of performance statistics to stakeholders.
- Review Service Charter.

APPENDIX 10

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.vrb.gov.au> >

New South Wales Registry

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

Registrar
Peter Studman

Phone: City: 1300 550 460
Phone: Country: 1800 550 460
Fax: (02) 9211 3074

Victorian Registry

12th Floor
300 La Trobe Street
Melbourne VIC 3000

Registrar
Ray Hoelzinger

Phone: City: 1300 550 460
Phone: Country: 1800 550 460
Fax: (03) 9602 1496

Queensland Registry

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

Registrar
Tom Eadie

Phone: City: 1300 550 460
Phone: Country: 1800 550 460
Fax: (07) 3220 0041

South Australian Registry

7th Floor
44 Waymouth Street
Adelaide SA 5000

Registrar
David Smith

Phone: City: 1300 550 460
Phone: Country: 1800 550 460
Fax: (08) 8231 2031

Western Australian Registry

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

Registrar
Robyn Davis

Phone: City: 1300 550 460
Phone: Country: 1800 550 460
Fax: (08) 9366 8583

Tasmanian Registry

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

Registrar
Ian Hunt

Phone: City: 1300 550 460
Phone: Country: 1800 550 460
Fax: (03) 6221 6637

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