



Veterans' Review Board

Annual Report

2002-03

© 2003 Commonwealth of Australia

ISSN 0-818-0679

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



Veterans' Review Board Principal Registry

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

The Hon Danna Vale MP
Minister for Veterans' Affairs
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 2003.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'W D Rolfe'.

W D ROLFE
Brigadier (Rtd)
Principal Member

13 October 2003

CONTENTS

2002-03 AND THE VRB – AN OVERVIEW	1
OBJECTIVES, FUNCTION AND POWERS.....	4
OBJECTIVES	4
FUNCTION	4
POWERS	5
ORGANISATION	7
MEMBERSHIP	8
OPERATIONS.....	10
VRB PROCEDURES	10
OUTCOME 1: FINALISE HIGH NUMBERS OF APPLICATIONS FOR REVIEW...16	
APPLICATIONS LODGED	18
APPLICATIONS FINALISED	20
APPLICATIONS OUTSTANDING.....	22
DISTRIBUTION OF APPLICATIONS OUTSTANDING.....	23
AGE OF APPLICATIONS OUTSTANDING	24
STATISTICAL SUMMARY.....	25
OUTCOME 2: COMPLETE REVIEWS AT A QUALITY LEVEL THAT AFFORDS A HIGH ASSURANCE THAT REVIEW DECISIONS ARE CORRECT	26
ADJOURNMENTS	27
OUTCOME OF VRB DECISIONS	28
OUTCOME 3: COMPLETE ALL PROCESS STAGES SUBJECT TO THE VRB'S CONTROL ON A TIMELY BASIS	32
PROCESSING TIMES.....	32
OUTCOME 4: UNDERTAKE REVIEWS IN A MANNER THAT IS EFFICIENT TO RESOURCE USAGE	35
LISTING.....	35
POSTPONEMENTS	36
APPLICATIONS DISMISSED.....	38
APPLICATIONS LAPSED	38
APPLICATIONS WITHDRAWN	39
MEMBERS	40
STAFF.....	42
RESOURCES	43
OUTCOME 5: ACCESSIBLE AND RESPONSIVE TO VETERAN COMMUNITY STAKEHOLDERS.....	45
REPRESENTATION FOR APPLICANTS	45

REGIONAL HEARINGS.....	46
COMMISSION REPRESENTATION AT VRB HEARINGS.....	48
OTHER ACTIVITIES.....	49
COMPLAINTS.....	51
APPENDIX 1	53
COURT DECISIONS	53
HIGH COURT OF AUSTRALIA	53
FEDERAL COURT OF AUSTRALIA.....	53
FEDERAL MAGISTRATES COURT OF AUSTRALIA	58
APPENDIX 2	60
THE ADMINISTRATIVE APPEALS TRIBUNAL	60
REVIEW OF VRB DECISIONS	60
REVIEW OF DISMISSALS	61
APPENDIX 3	62
OTHER FORMS OF ADMINISTRATIVE REVIEW.....	62
OMBUDSMAN.....	62
FREEDOM OF INFORMATION ACT 1982	62
APPENDIX 4	63
MEMBERSHIP OF THE VETERANS’ REVIEW BOARD – BY CATEGORY.....	63
APPENDIX 5	66
MEMBERSHIP OF THE VETERANS’ REVIEW BOARD – BY STATE	66
APPENDIX 6	69
FOI STATEMENT.....	69
APPENDIX 7	73
COMMONWEALTH DISABILITY STRATEGY.....	73
APPENDIX 8	75
SERVICE CHARTER.....	75
APPENDIX 9	79
BUSINESS PLAN	79
APPENDIX 10	84
VRB ADDRESSES	84
INDEX	86

GRAPHS & TABLES

Graph 1 – Applications Lodged, Finalised and Outstanding, 1985-2003	17
Graph 2 – Applications Lodged.....	19
Graph 3 – Applications Finalised	20
Graph 4 – Applications Finalised by Decision of the VRB.....	21
Graph 5 – Applications Outstanding	22
Table 1 – Matters Finalised by Decision of the VRB.....	21
Table 2 – Distribution of Applications Outstanding	23
Table 3 – Age and Distribution of Outstanding Applications	24
Table 4 – Summary	25
Table 5 – Section 151 and 152 Adjournments.....	28
Table 6 – Outcome of Published Decisions.....	29
Table 7 – Decisions Reviewed and Set Aside	31
Table 8 – Mean Times Taken to Process (in Days).....	34
Table 9 – Hearings Postponed	37
Table 10 – Dismissal Action.....	38
Table 11 – Applications Withdrawn.....	39
Table 12 – Members	41
Table 13 – Staff	42
Table 14 – Veterans’ Review Board – Expenditure (\$000s).....	44
Table 15 – Representation at VRB Hearings.....	45
Table 16 – Number of Days Hearings Held in Regional Locations	46
Table 17 – Video Hearings	47

2002-03 AND THE VRB – AN OVERVIEW

The Veterans' Review Board (VRB) has concluded another year of operations aimed principally at consolidating administrative gains of recent years. The details in the following pages indicate that the VRB remains a high volume jurisdiction but that the numbers are in steady decline, particularly reflecting the aging of World War 2 veterans. That group now represents only 40% of the applications made to the VRB.

Despite the general decline, a total of 6 179 new applications were made and 6 394 were finalised by either dismissal, lapsing, withdrawal or by decision. In the latter category, 3 595 applications were finalised by decisions involving a total of 6 005 entitlement and assessment matters. At the end of the year 4 894 applications were outstanding with 75% in the hands of applicants and not ready to proceed to hearing. Sixty eight per cent of the outstanding applications were less than one year old. The processing times again showed general improvement so that hearings were relatively quickly arranged once an applicant confirmed readiness to proceed. A decision was published, on average, within ten days of the hearing.

One surprising feature to emerge from VRB statistics was the sudden and significant decline in applications lodged with the VRB in Victoria. The number of applications for review fell by almost 500 (whilst remaining steady in Queensland and slightly increasing in New South Wales). It was also noticeable that over 50% of applications finalised in Victoria were withdrawn. The result was that only 800 hearings were conducted in Victoria – being half the number heard in New South Wales and only two thirds the number in Queensland.

The issue is not critical but it points up the need for some care in administering the quite varied needs in different states. Queensland calls for regular regional hearings and, as in New South Wales, there is a larger proportion of younger veterans. New South Wales still requires two panels each week while numbers in Victoria have resulted in one panel, four days per week. Tasmania, South Australia and Western Australia call for intermittent panels with about 20 per year in South Australia but less than 10 in Tasmania. Numbers remain low and stable in Western Australia but panels sit for three days at a time (rather than one week) to ensure that there are no unreasonable delays in hearing.

In noting the changing circumstances in the states it also became apparent that there were many opportunities to improve the service offered to applicants. The more obvious have been trialed and implemented: for example we provide a video hearing

service from our Brisbane and Melbourne Registries, which will likely develop as representatives become familiar and confident in its use. Some VRB staff, veterans' representatives and staff of the Department of Veterans' Affairs (the Department) have undertaken the Veterans' Law Course developed by Bruce Topperwien in association with the School of Law and Justice at Southern Cross University.

The reasonable success and advantage of such efforts have prompted other ideas. A National Case Appraisal Registrar was established mid reporting year. The driver of this idea was the fact that a percentage of applicants appeared at hearings unrepresented (that is, without a lay ex-service organisation representative) and concern that some applicants may suffer disadvantage through lack of understanding of the role of the VRB, the legislation, and the Statements of Principles (despite efforts of staff in screening cases and VRB members in explaining issues).

The National Case Appraisal Registrar developed a staff review regime beyond the normal screening process and served as a contact point for ex-service representatives who, it was anticipated, would occasionally seek assistance. Like all new ideas, it has had its ups and downs. The 'appraisal' did not show a particular need beyond the screening normally conducted by staff although effort expended in talking over the issues with unrepresented applicants was normally well received. The procedure employed in appraisal and the responsibility for contact with unrepresented applicants has now been taken up by the state based Registrars. The intention to provide a contact point for representatives seeking some technical assistance slowly but clearly expired for lack of use.

We are not dismayed at these outcomes. Close contact with veteran organisations and experience suggests that the general assistance envisaged is required and that the real issue is packaging and perseverance.

The VRB intends to devote further time and effort in the coming year to the provision of broad assistance to representatives and unrepresented applicants.

In the course of the year the VRB sought to improve its knowledge of our military history and service environment. A number of additional books have been purchased, located strategically, and notified to members on our Intranet site. Five Senior Members and Members attended the Chief of Army's History Conference in Canberra on 3 to 4 October 2002 where the subject was The Australian Army and the Vietnam War 1962-1972. The VRB was most grateful for the opportunity provided by the RAAF to a number of members from Perth, Hobart and Melbourne and to Sydney members and staff to view RAAF operations first hand at RAAF Richmond and Williamstown on 21 March 2003.

The Principal Member, Executive Officer and State Registrars have sought to maintain cooperative and effective working arrangements with ex-service organisations and their representatives. National and state conferences and

workshops are regularly attended. The Principal Member and Executive Officer place particular emphasis on assisting in the development and implementation of training.

It remains to thank a number of people for their efforts during the year. The VRB staff understand the efforts being made to give them 'ownership' in their roles and have proved willing participants in any effort to develop their knowledge and expertise. The members of the VRB have worked assiduously throughout the year, in sometimes very difficult circumstances, to produce good quality decisions in reasonable time. Both these groups are committed to the functions of the VRB and their efforts are reflected in constantly improved performance.

The veteran organisations that sponsor and support representation services and the various representatives themselves, some employed and others volunteers, deserve considerable praise for their efforts. The task is often thankless and always difficult. Significant ethical issues are regularly confronted and there is constant pressure to learn more about medical conditions, the Statements of Principles, legislation and case-law. Last but not least are the Department's staff who assist the VRB on various occasions to meet its responsibilities. The VRB relies heavily on its members and staff, the veteran community and the Department to meet its responsibilities in providing a review service to eligible applicants. I thank you all for your commitment to veterans and for your help.

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*. Appendix 6 briefly describes each of the powers of the VRB, the Principal Member and presiding members. 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 decision-making power.

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 (AAT) 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 VRB panel may also be constituted by the Principal Member, a Senior Member and a Services 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.

Parties to the review

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 (subsection 147(2) of the *Veterans' Entitlements Act 1986*).

Lodgement of applications

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.

Section 137 Report

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.

Section 148 Notice

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 or video link 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.

Certificate of Readiness for Hearing

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 representative 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.

Administrative screening

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, and further developed in 2003 with the introduction of case appraisal.

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.

Case management

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 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.

Case appraisal

Case appraisal of unrepresented applications was introduced in 2003 following the temporary creation of a National Case Appraisal Registrar position to develop and trial a system of more detailed examination of unrepresented applications to assist applicants in understanding the legislation, the evidentiary situation, and the legal and medical issues in their cases. In a number of instances, applicants were assisted in the evidentiary development of their cases and in others they were assisted in obtaining representation. The VRB has now taken steps to have each of its state Registrars actively involved in such case appraisal.

As part of this case appraisal trial, a national 1300 number telephone advisory service was established to assist veterans' representatives in technical legal or advocacy issues. While only a few representatives took advantage of that service, which was advertised in the VRB's journal, *VeRBosity*, the VRB will persist with it and also look to develop additional methods of assisting representatives in their work for applicants.

Urgent hearings

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 that might be alleviated by a successful outcome to an application.

In these circumstances, and with cooperation between applicants, their representatives, the Repatriation Commission and the Department of Veterans' Affairs, hearings can be arranged at very short notice.

Hearings

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 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
- a hearing may be conducted by video link.

Further review rights

The applicant or the Repatriation Commission may apply to the 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 Principal Member or his delegate under the dismissal legislation (sections 155AA and 155AB of the *Veterans' Entitlements Act 1986*). 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 (section 10 AD (JR) Act).

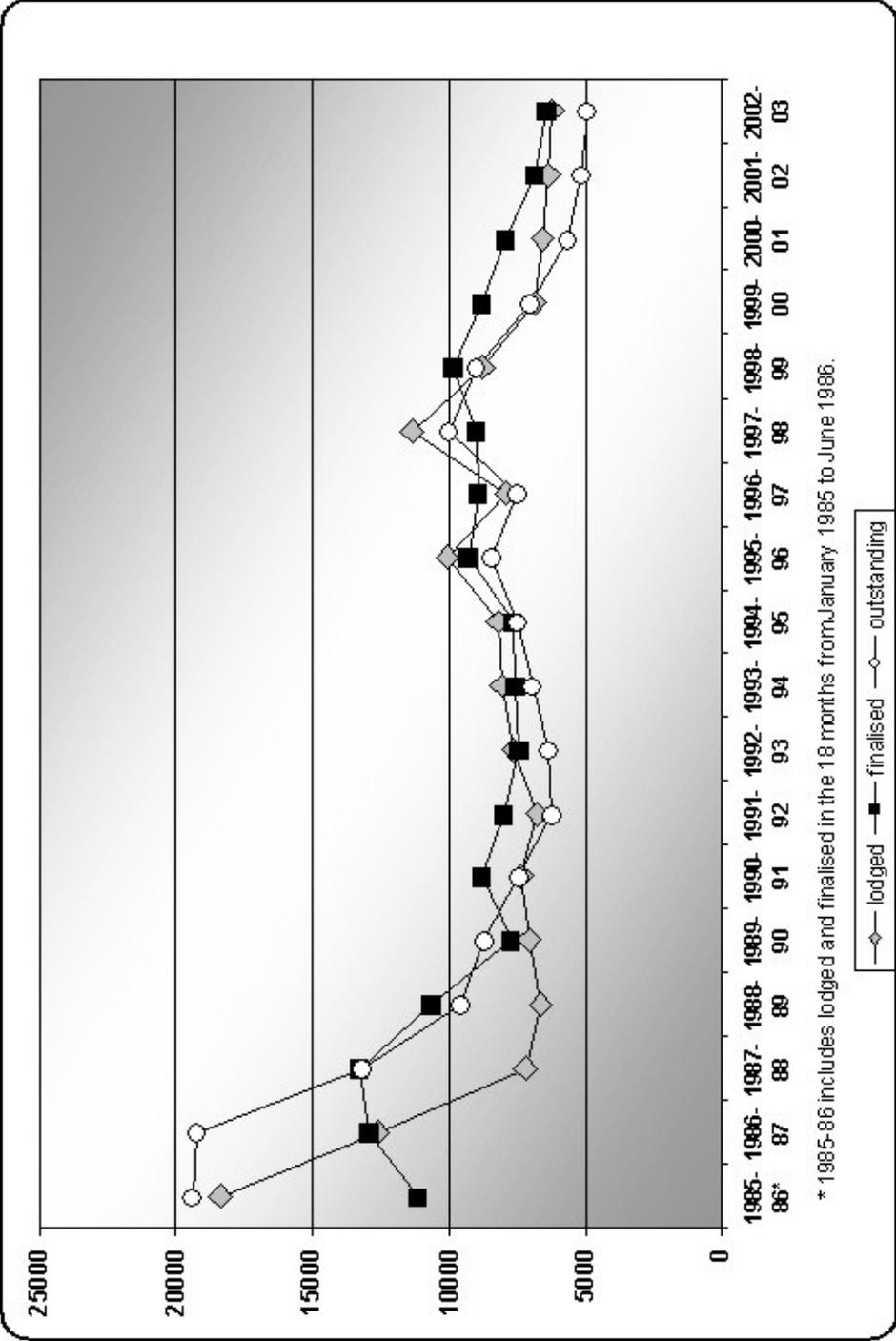
Outcome 1: Finalise high numbers of applications for review

In the course of the year, 6 179 new applications were lodged and 6 394 applications were finalised. At year end, 4 894 applications were outstanding, a reduction over the previous year of 210. The geographic distribution of applications lodged, applications finalised, applications finalised by decision and applications outstanding and the comparison with 2001-02 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 five financial years the VRB has finalised more applications than new lodgements, resulting in a 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 2 and 3 (at pp 23, 24), only 18% of applications are in the VRB's hands (21% last year) and 68% of applications are less than a year old (70% last year). In last year's report, it was noted that 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. This has proven to be the case this year.

Graph 1 – Applications Lodged, Finalised and Outstanding, 1985-2003



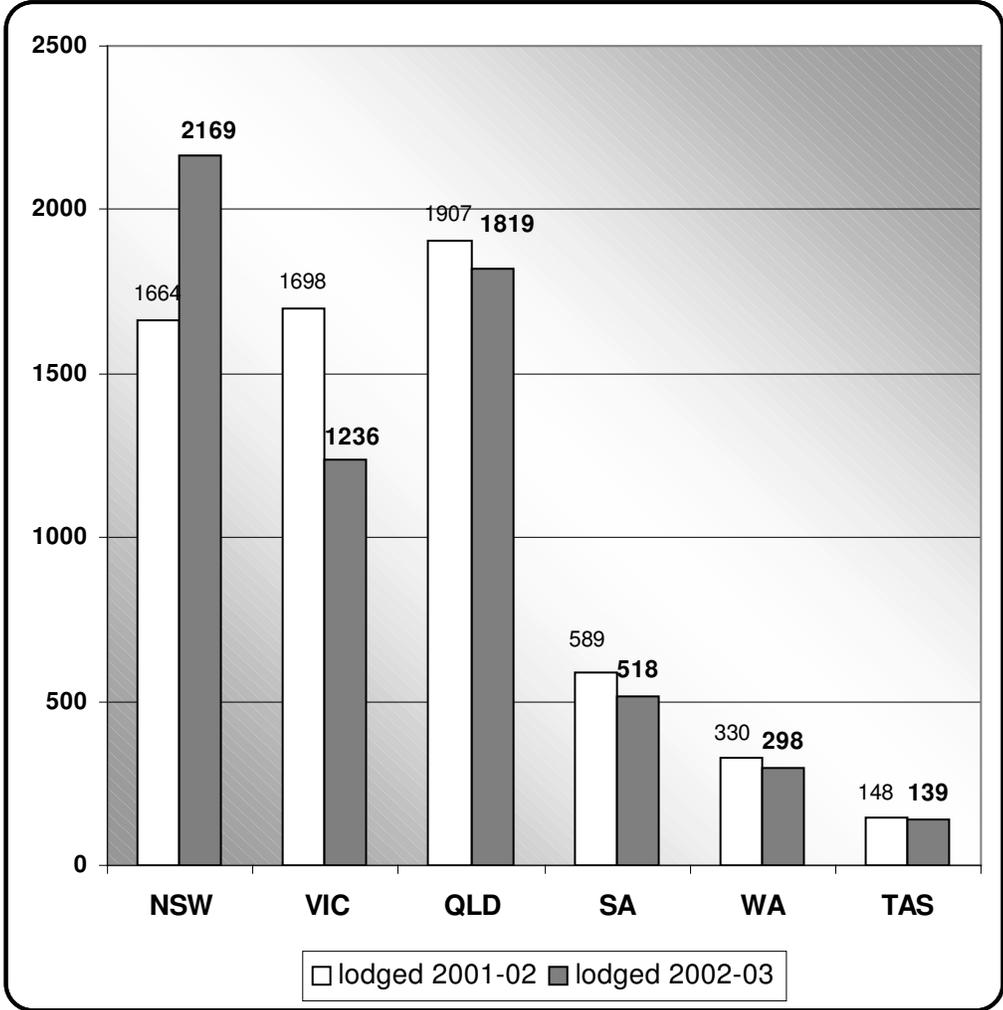
Applications Lodged

During 2002-03, a total of 6179 new applications were notified to the VRB compared to a total of 6336 new applications during 2001-02.

There was a substantial increase in the number of new applications notified to the VRB in NSW in 2002-03. Significantly, in December 2002, the Department notified the VRB of some 467 applications, which was more than double the average number of applications notified per month in the previous five months. This sudden influx of applications caused a substantial workload on VRB staff, who performed very well in processing it, but more importantly, the situation imposed a substantial burden on the veterans' organisations representing those applicants, at a time of the year when they were anticipating a winding down of their work. It appears that this difficult situation arose from a backlog of cases in the Department which the VRB was not aware of. Subsequently a level of consistency returned to receipt of applications in the six months to the end of the reporting year.

The VRB remains concerned at the possibility of significant peaks and troughs and will undertake discussions with the Department to establish procedures to reduce that risk.

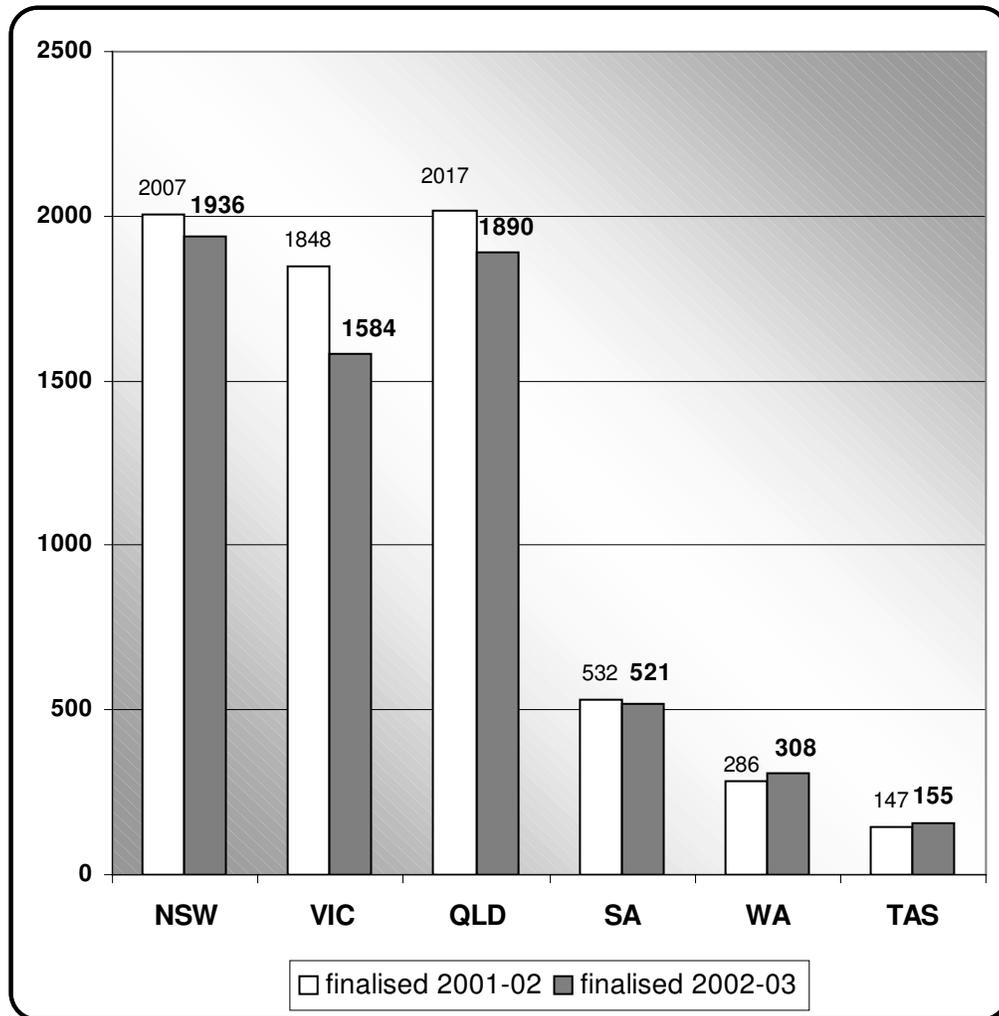
Graph 2 – Applications Lodged



Applications Finalised

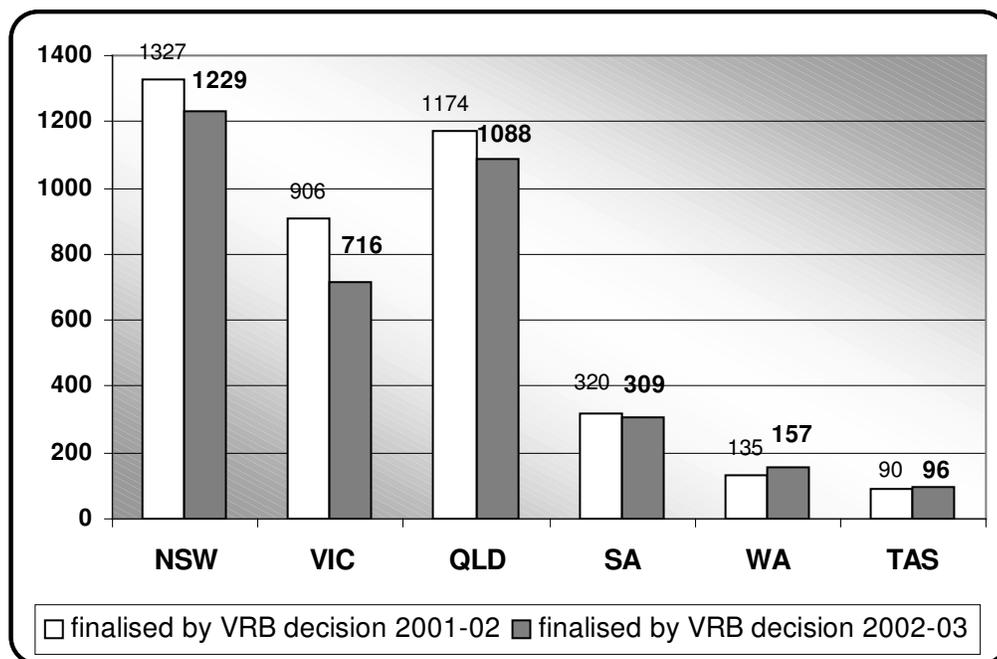
During 2002-03, a total of 6 394 applications to the VRB were finalised compared to a total of 6 837 applications during 2001-02. Applications may be finalised by dismissal (see p 38), lapsing (see p 38), withdrawal (see p 39), and by decision of the VRB following a hearing (see p 28).

Graph 3 – Applications Finalised



During 2002-03, a total of 3595 applications were finalised by VRB decision following a hearing compared to a total of 3952 in 2001-02.

Graph 4 – Applications Finalised by Decision of the VRB



The following table sets out the numbers of matters decided in applications finalised by VRB decision (see also Table 6 at p 29).

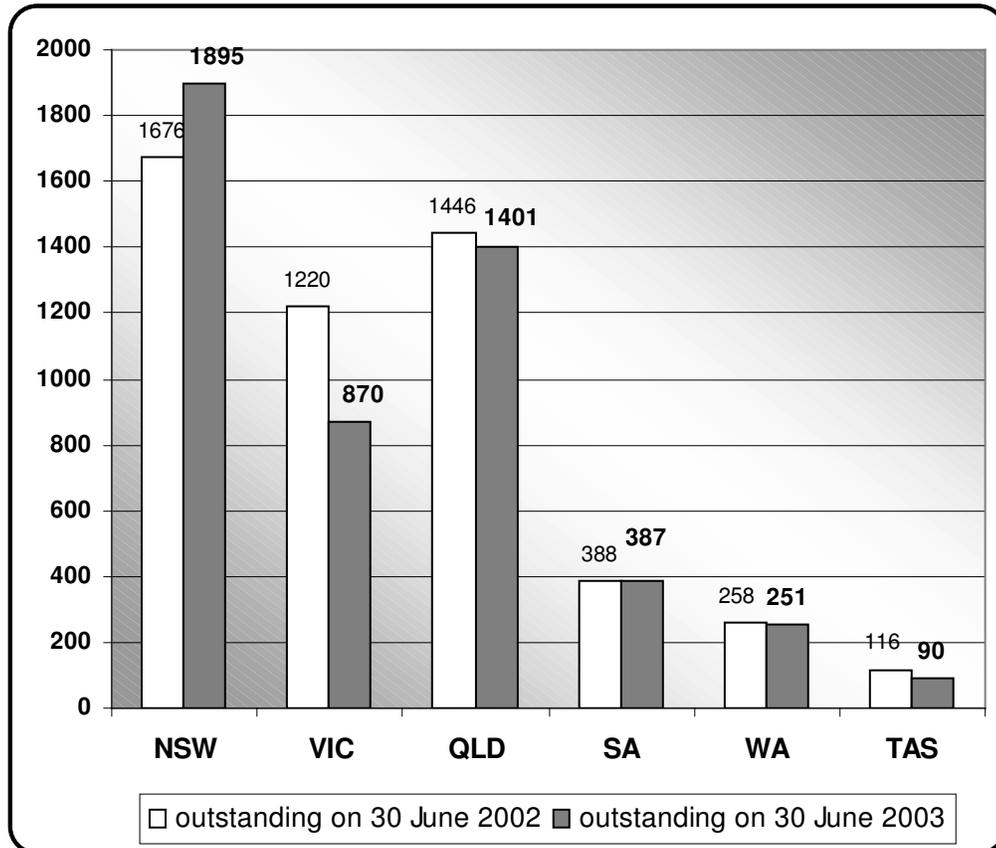
Table 1 – Matters Finalised by Decision of the VRB

	Entitlement		Assessment		Attendant Allowance	
	2001-02	2002-03	2001-02	2002-03	2001-02	2002-03
NSW	1 676	1 641	459	394	3	2
VIC	1 284	951	287	180	1	4
QLD	1 656	1 551	478	419	1	5
SA	382	348	89	94	–	2
WA	192	217	30	58	–	1
TAS	100	112	35	40	1	2
Aust	5 290	4 820	1 378	1 185	6	16

Applications Outstanding

At the end of 2002-03, a total of 4 894 applications were outstanding at the VRB compared to a total of 5 104 applications at the end of 2001-02.

Graph 5 – Applications Outstanding



Distribution of Applications Outstanding

Not all of the 4894 applications outstanding are in the hands of the VRB, the following table shows the distribution of responsibility as at the end of 2002-03. 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, subsection 148(6A), 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 2 – Distribution of Applications Outstanding

	NSW	VIC	QLD	SA	WA	TAS	AUST
Department	103*	83	126	10*	42	8	372
Applicant	1 330	687	1 097	300	175	65	3 654
VRB	462	100	178	77	34	17	868
Total	1 895	870	1 401	387	251	90	4 894
% in VRB control	24%	11%	13%	20%	14%	19%	18%

* 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 2002-03, the average time to process each of the stages of an application totalled 361 days. This compares with 368 in 2001-02. (See Table 8 at p 34 for further detail.) Table 3 shows that at 30 June 2003 only 7% of outstanding applications were more than 2 years old, this figure was also 7% at 30 June 2002. 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 3 – Age and Distribution of Outstanding Applications

	NSW	VIC	QLD	SA	WA	TAS	AUST 2002-03	June 2002
< 1 year old	1 214 (64%)	600 (69%)	1 003 (72%)	272 (70%)	182 (73%)	67 (74%)	3 338 (68%)	3 590 (70%)
1-2 years old	534 (28%)	209 (24%)	308 (22%)	97 (25%)	63 (25%)	16 (18%)	1 227 (25%)	1 148 (22%)
2-3 years old	123 (7%)	56 (6%)	79 (5%)	16 (4%)	5 (2%)	6 (7%)	285 (6%)	313 (6%)
3-4 years old	21 (1%)	4 (1%)	10 (1%)	2 (1%)	1	1 (1%)	39 (1%)	45 (1%)
> 4 years old	3	1	1	–	–	–	5	8
Total	1 895	870	1 401	387	251	90	4 894	5 104

Statistical Summary

The following table summarises the VRB's major actions in processing applications during 2002-03:

Table 4 – Summary

	NSW	VIC	QLD	SA	WA	TAS	AUST
Outstanding Year End 2001-02	1 676	1 220	1 446	388	258	116	5 104
Lodged 2002-03	2 169	1 236	1 819	518	298	139	6 179
Heard 2002-03	1 563	791	1 222	363	181	106	4 226
Adjourned 2002-03	274	48	129	45	24	4	524
Finalised 2002-03	1 936	1 584	1 890	521	308	155	6 394
Withdrawn 2002-03	621	845	764	203	149	56	2 638
Dismissed 2002-03	62	19	25	8	–	1	115
Lapsed 2002-03	24	4	13	1	2	2	46
Outstanding Year End 2002-03	1 895	870	1 401	387	251	90	4 894

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 of 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.

If a 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 5:

Table 5 – Section 151 and 152 Adjournments

	NSW	VIC	QLD	SA	WA	TAS	AUST
Applications Heard	1 563	791	1 222	363	181	106	4 226
Adjourned s151	105	18	31	11	10	–	175
s151 as % of Heard	6.7	2.3	2.5	3.0	5.5	–	4.1
Adjourned s152	169	30	98	34	14	4	349
s152 as % of Heard	10.8	3.8	8.0	9.4	7.7	3.8	8.3
Total Adj% 02-03	17.5	6.1	10.6	12.4	13.3	3.8	12.4
Total Adj % 2001-02	13.2	8.6	12.7	10.0	16.6	13.0	11.9

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 1.7 matters decided by the VRB for each application heard. During 2002-03, 6 414 decisions were published relating to 3 595 applications. The outcome of the published decisions was as follows:

Table 6 – Outcome of Published Decisions

ENTITLEMENT	
Veteran's death accepted as war/defence-caused and a war widows'/widowers' pension granted	202
Injury or disease accepted as war/defence-caused and remitted to the Repatriation Commission to assess applicable pension rate	797
Injury or disease accepted as war/defence-caused and VRB assessed the rate of pension to be paid	159
Total Set Aside	1 158
Veteran's death NOT war/defence-caused	558
Injury or disease NOT war/defence-caused	3 103
No power to review	1
Total Affirmed	3 662
TOTAL ENTITLEMENT	4 820
ASSESSMENT	
Set aside and rate of pension increased	493
Set aside and rate of pension reduced	11
Total Set Aside	504
Assessment decisions affirmed	673
No power to review	8
Total Affirmed	681
TOTAL ASSESSMENT	1 185
ATTENDANT ALLOWANCE	
Total Set Aside	5
Total Affirmed	11
TOTAL ATTENDANT ALLOWANCE	16
Entitlement – description of injury or disease varied[†]	301
Assessment – remitted[‡]	92
TOTAL DECISIONS PUBLISHED	6 414

[†] The VRB may vary the description of the injury or disease that was determined by the Repatriation Commission. For example, after examining the medical evidence, the VRB

might vary the description of a disease from post traumatic stress disorder to post traumatic stress disorder with depressive features. If so, it will then go on to determine whether or not that differently described injury or disease is war-caused or defence-caused by setting aside or affirming the decision 'as varied'.

‡ If an entitlement matter is set aside, and a decision substituted determining the injury or disease to be war-caused or defence-caused, the pension assessment may be remitted to the Commission. If this happens, any assessment matter that was also the subject of that application for review is not determined by the VRB but is also remitted to the Commission.

In summary:

- 24% of entitlement decisions reviewed by the VRB were set aside; this figure was 25.1% for 2001-02.
- 42.5% of assessment decisions reviewed by the VRB were set aside; this figure was 46.9% for 2001-02.

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

Table 7 – Decisions Reviewed and Set Aside

	NSW	VIC	QLD	SA	WA	TAS	AUST
Total Entitlement	1 641	951	1 551	348	217	112	4 820
Set Aside	495	187	333	102	28	13	1 158
% Set Aside 02-03	30.2	19.7	21.5	29.3	12.9	11.6	24.0
% Set Aside 2001-02	29.7	20.6	23.9	27.2	30.7	10.0	25.1
Total Assessment	394	180	419	94	58	40	1 185
Set Aside	187	64	189	28	22	14	504
% Set Aside 02-03	47.5	35.6	45.1	29.8	37.9	35.0	42.5
% Set Aside 2001-02	50.1	37.3	49.2	46.1	56.7	45.7	46.9

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 representatives 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 the Department 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.

During 2002-03 the average time for the VRB to undertake this stage was 7 days, this compares with 6 days in 2001-02.

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. Generally, the VRB seeks to give applicants and their representatives three or four weeks' notice of their hearing date and time.

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 61 days in 2002-03. This compares with 72 days in 2001-02.

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. All 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 2002-03 the average time from the date of hearing to the publication of the decision was 10 days, this compares with 12 days in 2001-02.

Table 8 – 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	40 (41)		
Receipt of s137 Report to s148 Notice sent			7 (6)
s148 Notice sent to s148 Reply received		28 (28)	
s148 Reply to Certificate of Readiness received		215 (209)	
Certificate of Readiness to Hearing			61 (72)
Hearing to Publication of decision & reasons			10 (12)
Total Average Time with DVA, applicants or VRB	40 (41)	243 (237)	78 (90)
Average % of Time with DVA, applicants or VRB	11.1% (11.1)	67.3% (64.4)	21.6% (24.5)

Figures in (brackets) represent figures for 2001-02

Overall, the time with the VRB has again substantially decreased from the previous financial year (from 90 days to 78 days on average), reaching optimal levels. The VRB is now able to focus its attention to seeing what can be done to assist applicants and their representatives in reducing the time in which they have control of their applications. The case appraisal scheme is designed to assist in this.

Not included in Table 8 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 2002-03, 6 179 new applications were lodged, 4 226 hearings were held, and 6 394 applications were finalised.

At 1 July 2002, 21% of outstanding applications were with the VRB, 72% were with applicants or their representatives and not ready to be heard, and 7% 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).

The total number of applications outstanding as at the 30 June 2003 was 4 894. A total of 868 applications (18%) were with the VRB, 3 654 applications (75%) were with the applicant or their representatives and not ready to be heard, 372 applications (7%) 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).

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. If an applicant had more than one application they were heard, where possible, during the one hearing time slot.

In Western Australia, the VRB has begun arranging three days of hearings (9 hearing slots) rather than wait until 15 hearing slots can be filled for a full week of hearings. This has meant a reduction in waiting times in that State. A similar arrangement has been in place for hearings in Hobart and Launceston, where either two or three days of hearings are arranged for each city. In Melbourne, there has been a substantial reduction in the number of applications and the VRB has been forced into having 4 day hearing weeks during some weeks because of the unavailability of applications notified as ready to proceed.

Of the 868 (18%) applications outstanding with the VRB, 312 had already been allocated a hearing date and time. Although a further 312 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 that 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, 297 applications listed for hearing were postponed prior to the commencement of the hearing. Substitute applications were found for 228 postponements. This resulted in 69 hearing slots not being able to be used (the equivalent of nearly five weeks of hearings for a VRB panel). 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 9 – Hearings Postponed

	NSW	VIC	QLD	SA	WA	TAS	AUST
Applications Heard	1 563	791	1 222	363	181	106	4 226
Postponed	132	50	88	12	9	6	297
Substituted	98	23	83	12	7	5	228
% substituted 2002-03	74.2	46.0	94.3	100	77.8	83.3	76.8
% substituted 2001-02	70.3	94.6	91.3	88.9	87.5	85.7	83.2

The significantly lower substitution rate in Victoria is attributable to the rapid decline in numbers of available applications in that State. This decline in application numbers in Victoria is largely due to veteran population movements such that there is a significantly lower proportion of non-World War 2 veterans in Victoria than New South Wales and Queensland. With the reduction of some of the Melbourne panels to 4 days a week it is expected that the proportion of non-substituted hearing slots will reduce, increasing the efficiency of hearings in that State.

Applications Dismissed

During 2002-03, the VRB sent out a total of 619 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 115 applications being dismissed, 100 being withdrawn and 163 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 10 – Dismissal Action

	NSW	VIC	QLD	SA	WA	TAS	AUST
Letters Sent	378	74	139	21	1	6	619
Reasonable Answer	121	17	46	5	–	1	190
Withdrawn	67	5	25	1	2	–	100
Hearing Requested	100	23	29	8	–	3	163
Dismissed 2002-03	62	19	25	8	–	1	115
Dismissed 2001-02	111	19	27	15	3	1	176

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 2002-03, a total of 46 applications were lapsed. The figure for 2001-02 was 52.

Applications Withdrawn

During 2002-03, 2 638 applications were withdrawn by applicants; this represents 41.3% of applications finalised during the year. This compares with 2 657 withdrawals (38.9%) for the previous year. The VRB is not always advised of the reasons for withdrawal, but it appears likely that a substantial proportion of withdrawals are the consequence of intervention by the Repatriation Commission under section 31 of the *Veterans' Entitlements Act 1986*.

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

Table 11 – Applications Withdrawn

	NSW	VIC	QLD	SA	WA	TAS	AUST
Finalised	1 936	1 584	1 890	521	308	155	6 394
Withdrawn	621	845	764	203	149	56	2 638
% Withdrawn 2002-03	32.1	53.3	40.4	39.0	48.4	36.1	41.3
% Withdrawn 2001-02	27.5	49.7	39.3	36.8	50.3	37.4	38.9

Members

As at 1 July 2002, the membership of the VRB was 51.

From 1 July 2002 to 30 June 2003 the following changes in membership occurred:

- 4 members resigned:
 - Gavin William Robins from 7 July 2002
 - Mina France Podbereski from 25 July 2002
 - Charles White from 31 January 2003
 - Dennis Isaac Meadows from 14 April 2003.
- 2 members' terms of office expired from 30 September 2002:
 - John Ward Greenwood, part-time Senior Member, Brisbane
 - Hugh Duncan Logue, part-time Member, Brisbane.
- 23 members were reappointed from 1 October 2002 to 30 September 2005:
 - David Caryl Blaikie, part-time Member, Adelaide
 - Frank Edward Burt, part-time Services Member, Sydney
 - Peter John Cappe, part-time Member, Sydney
 - Anthony Michael Carwardine, part-time Services Member, Canberra
 - John Charles Cooke, part-time Senior Member, Sydney
 - Julie Cowdroy, part-time Senior Member, Brisbane
 - James Stewart Dickson, part-time Services Member, Melbourne
 - Robert Eadie, part-time Senior Member, Melbourne
 - Deirdre Ann FitzGerald, part-time Senior Member, Melbourne
 - Patrick Thomas Francis Gowans, part-time Services Member, Sydney
 - Andrea Marilyn Hall-Brown, part-time Senior Member, Brisbane
 - Jonathon Scott Hamwood, part-time Services Member, Brisbane
 - Geoffrey Hourn, part-time Services Member, Perth
 - Naida Isenberg, part-time Senior Member, Sydney
 - Hilary Lorraine Kramer, part-time Member, Sydney

- Laurence John Lewis, part-time Services Member, Adelaide
- Morag Angus McColm, part-time Member, Brisbane
- Derek Alan Purcell, part-time Member, Perth
- Kathleen Adair Sanders, part-time Member, Melbourne
- Alan Leslie Thompson, part-time Senior Member, Melbourne
- Anthony James Wales, part-time Member, Adelaide
- Charles Jeremy Ward, part-time Member, Brisbane
- Leslie James Young, part-time Senior Member, Sydney.

At 30 June 2003, there were 45 members of the VRB: the Principal Member, 15 Senior Members, 16 Services Members and 13 Members. Of these, only the Principal Member was a full-time appointee and all others were part-time. The number of women holding appointments was 16.

The breakup of membership as at 30 June 2003 is set out in the following table:

Table 12 – Members

Class of Member	Full-time	Part-time (women)	Total (women)
Principal Member	1	–	1
Senior Member	–	15 (8)	15 (8)
Services Member	–	16	16
Member	–	13 (8)	13 (8)
Total	1	44 (16)	45 (16)

Full details of the VRB membership as at 30 June 2003 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 2002, there were 41 staff employed by the VRB. That figure was 39 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 2003 is set out in the following table, number of women are shown in brackets:

Table 13 – Staff

	EL 2	EL 1	APS 6	APS 5	APS 4	APS 3	Total June 2003	Total June 2002
ACT	1	2 (1)	1 (1)	1 (1)	1 (1)		6 (4)	6 (4)
NSW		2			2 (1)	7 (5)	11(6)	10(6)
VIC		1			2 (1)	5 (4*)	8 (5)	10(5)
QLD		1 (1)			2 (1 [†])	5 (4 [‡])	8 (6)	9 (6)
SA			1		1 (1)	1 (1)	3 (2)	3 (2)
WA				1 (1)		1	2 (1)	2 (2)
TAS			1				1	1
TOTAL	1	6 (2)	3 (1)	2 (2)	8 (5)	19(14)	39(24)	41(25)

* 1 part-time, [†] 1 part-time, [‡] 1 part-time

Resources

Table 14 outlines estimated expenditure for the VRB for the 2001-02 and 2002-03 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 2002-03 was \$7 043 000 compared to \$6 811 000 in 2001-02. Actual average expenditure on each application finalised by the VRB during the year was \$1101. In 2001-02 the figure was \$996.

The most significant factors in the increased cost per case were the cost of accommodation, increases in staff salaries under the DVA Enterprise Agreement (including redundancy and retirement payments), travel costs, and an increase in postponed hearings that could not be replaced with other cases on short notice.

Table 14 – Veterans’ Review Board – Expenditure (\$000s)

	1 July 01 – 30 June 02		1 July 02 – 30 June 03	
Salaries (includes superannuation)				
Members	2 449		2 380	
Staff (includes o/time & temps)	2 197	4 646	2 297	4 677
Rental of Premises (includes outgoings)	991	991	1 102	1 102
Applicants’ expenses	21	21	17	17
Fares				
Members	140		175	
Staff	36		45	
Cars (includes parking)	40	216	36	256
Travelling Allowance				
Members	284		337	
Staff	43	327	38	375
Office Requisites				
Stationery and office requisites	30		30	
Library	74		68	
Printing	14		19	
Equipment *	16	134	30	147
Postage and Telephones				
Postage	27		24	
Telephones/fax	60	87	57	81
Office Services				
Plant hire	7	7	6	6
Furniture and Fittings	4	4	-	-
Computer equipment (includes services)	261		242	
vrSAM (System for Application Management) development	-	261	20	262
Incidental Expenditure				
Freight & cartage	26		27	
Advertising	-		-	
Training	19		22	
Miscellaneous	8	53	5	54
Comcare Premium	40	40	42	42
Archiving	11	11	9	9
Legal	13	13	15	15
TOTAL		6 811		7 043

* 2002-03 includes \$10 000 for lease of video conferencing equipment

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 2001-02 figures, are shown in the following table:

Table 15 – Representation at VRB Hearings

	NSW	VIC	QLD	SA	WA	TAS	AUST
Unrepresented	149	79	124	22	24	6	404
In absentia/Unrep	191	59	73	17	12	2	354
In absentia/Rep	23	4	76	1	5	–	109
Represented at hearing	1 200	649	949	323	140	98	3 359
Total	1 563	791	1 222	363	181	106	4 226
% Represented 2002-03	78.2	82.6	83.9	89.3	80.1	92.5	82.1
% Represented 2001-02	73.6	86.6	79.3	86.9	86.6	89.0	80.0

A substantial 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 2002-03 regional hearings were again arranged in Bundaberg, Cairns, Canberra, Currumbin / Palm Beach, Launceston, Mackay and Townsville.

Table 16 shows the number of days hearings held in the above locations. The figures in brackets indicate the number of applications heard in those locations.

Table 16 – Number of Days Hearings Held in Regional Locations

Location	2001-02	2002-03
Bundaberg, Qld	20 (60)	24 (74)
Cairns, Qld	11 (32)	7 (20)
Canberra, ACT	45 (133)	42 (118)
Currumbin/Palm Beach, Qld	103 (276)	118 (303)
Launceston, Tas	12 (36)	14 (38)
Mackay, Qld	13 (40)	8 (24)
Rockhampton, Qld	9 (26)	-
Townsville, Qld	24 (73)	23 (70)
Total days of hearings	237 (676)	236 (647)

In 2000-01, the VRB trialed video hearings to enhance its service to applicants in regional areas. During 2001-02, the number of video hearings increased and has become a popular method of hearing cases with some representatives. The provision of video hearings is 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 enables some applications to be heard sooner as the VRB does not have to wait for other applications in that region to be ready for hearing. During 2002-03, the VRB held video hearings in the following sites:

Table 17 – Video Hearings

Remote location	VRB location	Hearings 2001-02	Hearings 2002-03
VRB, Melbourne, Vic	Brisbane	–	1
Ararat, Vic	Melbourne	1	–
Bairnsdale, Vic	Melbourne	2	–
Bendigo, Vic	Melbourne	–	1
Bundaberg, Qld	Brisbane	–	1
Cairns, Qld	Brisbane	–	2
Coffs Harbour, NSW	Brisbane	–	1
Frankston, Vic	Melbourne	–	1
Hobart, Tas	Melbourne	1	–
Korumburra, Vic	Melbourne	4	4
Mildura, Vic	Melbourne	2	2
Rockhampton, Qld	Brisbane	–	5
Rockhampton, Qld	Melbourne	1	3
Rosebud, Vic	Melbourne	3	1
Sale, Vic	Melbourne	5	4
Sea Lake, Vic	Melbourne	4	7
Seymour, Vic	Melbourne	7	–
Swan Hill, Vic	Melbourne	1	1
Townsville, Qld	Brisbane	–	1
Wangaratta, Vic	Melbourne	3	–
Warragul, Vic	Melbourne	–	1
Wonthaggi, Vic	Melbourne	1	4
Total hearings		35	40

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 2002-03 the Commission was represented in one hearing.

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 the VRB, 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 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 published.

The VRB also publishes:

- an information brochure, which is 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*. Some library and source material is maintained in each Registry with the larger concentrations in Canberra, Sydney, Melbourne and Brisbane. These materials can be provided overnight between Registries.

Veterans' law course

In 2002-03, the VRB continued its association with the School of Law and Justice at Southern Cross University. The VRB's Executive Officer, Mr Bruce Topperwien updated the course materials for the Veterans Law units and the Law & Government Decision-Making unit of the University's Short Course in Veterans' Law. Mr Topperwien is the unit assessor for these units and runs workshops for students in those subjects. The Course has proved very successful, and a number of VRB staff, ex-service representatives, and Departmental staff have now successfully completed the course.

The VRB sees this association with the University 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 is 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 will be offered again in 2004.

The VRB through the cooperation of the University has been able to invite veterans' representatives not enrolled in the Course to attend the Veterans' Law workshops as part of its outreach program to assist representatives in gaining a more detailed understanding of veterans' law.

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 and video 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 9 letters of appreciation and 28 letters of complaint. The former 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.

Five of the 28 complaints were referred for comment from the Minister's office and involved the following issues: concern at the decision or aspects of the decision (1); concern over conduct of a hearing (1); concern over legislative criteria (1); concern over dismissal procedures (2). The Executive Officer or the Principal Member investigated each of these matters and responses were provided.

Other complaints sent to the VRB were: concern at the decision or aspects of the decision (2); concern over the composition of the panel (1); concern over dismissal procedures (2); concern over conduct of the hearing (9); concern over VRB procedures (3); concern over legislative criteria (4); concern over length of appeal process (1); concern over regional hearing room accommodation (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* (the AD(JR) Act), 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 in the Federal Magistrates Court, either in its original jurisdiction under the AD(JR) Act or upon transfer from the Federal Court.

High Court of Australia

During the year, no applications for special leave to appeal to the High Court were heard in matters arising under the *Veterans' Entitlements Act 1986*. Two applications were pending at the end of the year, in the cases of *Sleep* and *Hendy*.

Federal Court of Australia

Administrative Decisions (Judicial Review) Act 1977

Judiciary Act 1903

In *Johnson v Veterans' Review Board*, an application was made to the Federal Court under the AD(JR) Act and s 39B of the *Judiciary Act 1903*. The applicant sought to challenge the dismissal of his application for review lodged with the VRB. He had nominated a representative to respond to a notice from the VRB. When no response was received, his application for review was dismissed pursuant to s 155AB(5).

The Federal Court decided a number of important matters concerning the dismissal provisions, namely that:

- there is no requirement that a notice under s155AA(4) of the Act must be given to an applicant at or shortly after the end of the standard review period of two years;
- the subjective state of mind of the Principal Member or his delegate that the applicant should be ready to proceed at a hearing is a necessary precondition for the exercise of the power to issue a notice to the applicant;
- delay on the part of the Principal Member or delegate in issuing a notice does not invalidate the notice;
- a delegation from the Principal Member does not lapse when the Principal Member ceases to hold that office and is replaced by a new Principal Member; and
- a delegate need not state that they are acting as a delegate if they, in fact, have been delegated the relevant power by the Principal Member.

In dismissing an appeal by Mr Johnson to the Full Bench of the Federal Court, the Court held that the failure by a delegate to comply with every detail of a practice direction given by the Principal Member under s142(2)(a) of the Act does not invalidate the exercise of the power under s155AA(4).

In *Vietnam Veterans' Association of Australia NSW Branch v Specialist Medical Review Council*, the Full Court of the Federal Court heard an appeal in a matter that was initiated under s 39B of the *Judiciary Act 1903*. The VVAA had applied for review of a Statement of Principles relating to prostate cancer. During the review process, a new Statement was issued by the Repatriation Medical Authority. The Full Court held that upon revocation of the first Statement, there was nothing left to be reviewed and a declaration made by the Specialist Medical Review Council was void.

Administrative Appeals Tribunal Act 1975

During the year, the Federal Court handed down 24 decisions, including five decisions of the Full Court, on matters that were appealed from decisions of the AAT. The decisions were set aside in 11 cases and the matters were remitted to the AAT for re-hearing. The Federal Court decisions were as follows (in chronological order):

Stafford v Repatriation Commission
Meehan v Repatriation Commission
Repatriation Commission v Mitchell

Falconer v Repatriation Commission
Sleep v Repatriation Commission
Dunlop v Repatriation Commission
Repatriation Commission v Haskard
Roncevich v Repatriation Commission
Repatriation Commission v Thomas
Lees v Repatriation Commission (Full Court)
Onger v Repatriation Commission
Randall v Repatriation Commission
Fogarty v Repatriation Commission
Repatriation Commission v Hendy (Full Court)
Hill v Repatriation Commission
Parnell-Schoneveld v Repatriation Commission
Price v Repatriation Commission
Stoddart v Repatriation Commission
O'Sullivan v Repatriation Commission
Repatriation Commission v Alexander
Thomas v Repatriation Commission (Full Court)
Conway v Repatriation Commission
Fogarty v Repatriation Commission (Full Court)
Roncevich v Repatriation Commission (Full Court)

Causation issues

In *Stafford* and *Meehan*, decisions of the AAT were set aside and remitted for rehearing due to a failure to follow the approach required by s 120(1) and (3) of the VE Act.

In *Falconer*, the Court upheld the incorporation of an Obesity Statement into Statements of Principles issued by the Repatriation Medical Authority. The incorporated description of obesity formed part of the Statements of Principles. The AAT had found that the applicant's obesity was not within the incorporated description of obesity. The appeal was dismissed.

In *Dunlop*, the Court held that the 'death from an accepted injury or disease' provision in s 8(1)(f) only applies if the injury or disease had been accepted under s 9 before the death of the veteran.

In *Roncevich* the Court held that it was open to the AAT to find that the member's attendance at a function in the sergeant's mess and his excessive drinking at the function were not related in any way to his defence service.

In *Onger*, the Court held that it was open to the AAT to prefer the evidence of one specialist over that of another specialist, noting that the AAT had found the other specialist's opinion was speculative.

In *Lees*, the Full Court of the Federal Court examined a factor in the Statements of Principles that require 'clinical onset' of generalised anxiety disorder within 2 years of experiencing a stressor. The Court rejected a submission that 'clinical onset' means having commenced the process by which clinical diagnosis subsequently occurred. 'Clinical onset' means that all of the prescribed symptoms must be manifested, including conditions that may have a gradual onset.

In *Fogarty*, the Court examined whether the AAT had followed the four step process outlined by the Full Court in *Repatriation Commission v Deledio* (1998) 83 FCR 82. In allowing the appeal, the Full Court held that the AAT had failed to consider the existence of generalised anxiety disorder as a preliminary issue, in accordance with s 120(4). The AAT had also failed to apply the Statement of Principles in force at the time of its review.

In *Hill's* case, a decision of the AAT was set aside on the basis that the AAT had engaged in fact finding when considering whether the material raised a reasonable hypothesis in terms of s 120(3).

In *Stoddart*, the Court considered the proper interpretation of the expression 'experiencing a severe stressor' in the Statements of Principles for post traumatic stress disorder. The applicant submitted that the AAT had failed to consider whether he had subjectively experienced a severe stressor while serving in the RAN. The Court held that the definition requires that a threat of death or serious injury, or a threat to physical integrity, must be judged objectively from the point of view of a reasonable person in the position of, and with the knowledge of, the person experiencing those events. The definition also requires consideration of whether the person subjectively experienced the severe stressor. An appeal to the Full Court is pending.

Accrued rights

Thomas's case involved an appeal against a decision that prostate cancer was due to increased consumption of animal fat. The Court held that in applying the Statement of Principles that was in force at the date of the primary decision, the AAT had erred in law. In accordance with the Full Court's decision in *Repatriation Commission v Gorton* (2001) 110 FCR 321, the AAT should have applied the Statement that was in force at the time of its decision. If the circumstances did not fall within the 1999 Statement, the AAT should then have considered whether there was an accrued right arising from the 1995 Statement. The Court held that there is no accrued right to have a decision reviewed by the AAT by reference to the Statement in force at the time of the VRB's decision. An appeal to the Full Court was dismissed.

In *Stoddart's* case, the Court rejected a submission that an applicant has an accrued right to have an unsuccessful claim reviewed in terms of the Statement of Principles

in force at the time of lodging the original claim. Any accrued right is in relation to the Statement in force at the time of the primary decision.

Special rate of pension

In *Haskard*, the Court considered the over age-65 provisions in relation to prevention of last paid work for the purposes of the intermediate or special rate of pension. The veteran was continuing to carry out property valuations on a part-time basis. The Court held that in those circumstances, the veteran was not prevented from continuing to undertake his last paid work, in terms of s 24(3A)(d) or s 24(2A)(d).

In *Hendy's* case, the Full Court upheld an appeal by the Repatriation Commission against a decision of the primary judge. The Full Court held that the AAT had not erred in considering whether the veteran was prevented from continuing to engage in remunerative work, in terms of s 24(1)(c). The Court held that the decision-maker is required to take into account any factor that plays a part or contributes to a veteran being prevented from continuing to engage in remunerative work. If a period of time elapses after a veteran ceases remunerative work and before the commencement of the assessment period, lack of recent work experience, time out of the workforce and increasing age will be relevant for consideration under s 24(1)(c) of the Act. An application for special leave to appeal to the High Court is pending.

In *Alexander*, the Court also upheld an appeal by the Repatriation Commission against a decision concerning special rate. It was held that the AAT had erred by its failure to address the question of causation in the 'alone' test in s 24(1)(c).

In *Conway*, the Federal Court held that the AAT had not made an error of law in being satisfied that the applicant had not been genuinely seeking to engage in remunerative work. To be able to take advantage of s 24(2)(b) a veteran had to have made genuine efforts to obtain remunerative work rather than the 'brief and inconclusive' efforts made by the veteran in this case.

Procedural fairness

In *O'Sullivan*, the Court held that the applicant was denied procedural fairness in a hearing concerning his eligibility for special rate of pension. The applicant had been cross-examined at the AAT on the basis of an incomplete copy of a taxation return. Although the AAT members were not personally at fault, the misleading cross-examination had resulted in a denial of procedural fairness.

In *Randall's* case, the Court did not accept a submission that the applicant was denied procedural fairness in that he was not warned at the VRB that his rate of pension might be reduced upon review.

Qualifying service

In *Mitchell*, the Court dismissed an appeal by the Repatriation Commission against a decision of the AAT that the veteran had rendered qualifying service in terms of s 7A. The veteran was transported by sea from Townsville to Cape York during World War II. The AAT had found that he had incurred danger from hostile forces of the enemy from Japanese mines laid in the Torres Strait area in 1942.

Service pension

In *Sleep's* case, an appeal against a decision relating to the valuation of property for the purposes of the assets test was dismissed.

Compensation for Japanese interment

The cases of *Parnell-Schoneveld* and *Price* both involved claims for compensation under the *Compensation (Japanese Internment) Act 2001*. In *Parnell-Schoneveld*, the Court dismissed the appeal on the basis that the AAT had not erred in finding that the claimants were not domiciled in Australia before their internment. In *Price's* case, the Court considered the meaning of 'interned' in circumstances where the veteran had escaped from Singapore before being captured by Japanese forces.

Federal Magistrates Court of Australia

During the year, the Federal Magistrates Court handed down two decisions on matters that were appealed from decisions of the AAT. The decision was set aside in one case and the matter was remitted to the AAT for re-hearing. The Federal Magistrates Court decisions were as follows (in chronological order):

Sleep v Repatriation Commission

Repatriation Commission v Case

Sleep concerned an application for an attendant allowance. The Court held that the AAT had not erred by considering the Activities of Daily Living Tables in Chapter 16 of the GARP as a guide to the assessment of whether the effect or severity of the veteran's war-caused disabilities were similar in effect or severity to an injury or disease affecting the cerebro-spinal system. The Court found that the AAT had not applied Chapter 16 of the GARP as a rigid template but had recognised that it did not contain the sole criteria and had considered other matters as well.

Case involved an application for special rate of pension in circumstances where the veteran was retrenched from his employment. The Court held that the AAT had failed to consider the question whether the veteran was by reason of being

prevented from continuing to undertake the work that he had been undertaking, suffering a loss of salary wages, or earnings on his own account that he would not be suffering if he were free of his incapacity.

Court cases noted in *VeRBosity*

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 2002-03, the VRB was notified of the lodgement of 1 025 applications for review by the AAT of matters involving VRB decisions. During the same period, the VRB lodged 61 section 37 statements with the AAT. The average time taken for preparation and lodgement of those statements was 15 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 2002-03, there were 1 025 AAT applications and the VRB finalised 3 595 applications by decisions made at hearings. This represents an estimated appeal rate of 28.5%. The estimated appeal rate for 2001-02 was 28.0%.

The Repatriation Commission lodged no appeals in relation to a VRB decision during 2002-03.

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

- 28% were withdrawn by the applicants; and
- 41% were conceded by the Repatriation Commission.

Of the remaining 31% that were finalised by decisions formally published with reasons:

- 160 (44%) involved an affirmation of the decision under review; and
- 205 (56%) led to the decision under review being varied or set aside.

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

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

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 2002-03, there were 5 new appeals relating to dismissal decisions lodged with the AAT. There were 5 dismissal cases finalised at the AAT:

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

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 2002-03, the Ombudsman did not notify the VRB of any complaints.

Freedom of Information Act 1982

There were four requests to the VRB for access to documents under the *FOI Act* during 2002-03. Access was granted in full in two cases, partial access was granted in one case and access was refused in the fourth 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 2005
PART-TIME SENIOR MEMBERS		
Mr John Charles Cooke	1 January 1990	30 September 2005
Ms Julie Cowdroy	1 January 1993*	30 September 2005
Ms Jennifer D'Arcy	1 June 2001	30 September 2004
Mr Robert Eadie	1 October 1997	30 September 2005
Ms Deirdre Ann FitzGerald	1 January 1985*	30 September 2005
Ms Andrea Marilyn Hall-Brown	1 October 1997*	30 September 2005
Ms Naida Isenberg	30 July 1998	30 September 2005
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 2005
Ms Andrea Michelle Treble	1 June 2001	30 September 2004
Colonel Leslie James Young (Rtd)	1 October 1997	30 September 2005

- * 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 2005
Anthony Michael Carwardine AO (Rtd) Lieutenant Colonel	1 January 1998	30 September 2005
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 2005
Captain Allan John Farquhar RAN (Rtd) Brigadier	1 January 1985	30 September 2004
Patrick Thomas Francis Gowans (Rtd) Group Captain	1 June 2001	30 September 2004
Jonathon Scott Hamwood AM (Rtd) Lieutenant Colonel Geoffrey Hourn (Rtd)	1 January 1998	30 September 2005
Brigadier Laurence John Lewis (Rtd) Major Gregory Mawkes (Rtd)	1 January 1998	30 September 2005
Colonel Robin Terence Regan CSC (Rtd)	1 January 1993	30 September 2004
	28 May 1999	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 2005
Mr Peter John Cappe	28 May 1999	30 September 2005
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 2005
Ms Kerrie Ellen Laurence	1 June 2001	30 September 2004
Ms Morag Angus McColm	1 January 1998	30 September 2005
Dr Derek Alan Purcell	1 January 1998	30 September 2005
Ms Kathleen Adair Sanders	1 October 1997	30 September 2005
Colonel Anthony James Wales (Rtd)	1 October 1997	30 September 2005
Mr Charles Jeremy Ward	30 July 1998	30 September 2005

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)

Part-Time Members

Ms Zita Rose Antonios

Mr Peter John Cappe

Ms Janet Ann Hartmann

Ms Hilary Lorraine Kramer

Ms Kerrie Ellen Laurence

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
Ms Kathleen Adair Sanders

QUEENSLAND

Part-Time Senior Members

Ms Julie Cowdroy
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
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*:

- subsection 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;
- subsection 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;
- subsection 140A(1) – the VRB may give directions to a Registrar or Deputy Registrar to alter the text of a decision or statement of reasons if it is satisfied that there has been an obvious error in the text;
- subsection 140A(4) – the Principal Member or a presiding member may exercise the powers of the VRB in subsection 140A(1);

- subsection 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;
- subsection 148(3) – the Principal Member may defer the hearing of a review until the parties advise that they are ready to proceed;
- subsection 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;
- subsection 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;
- subsection 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;
- subsection 148(6A) – the Principal Member may request the Secretary of the Department of Veterans' Affairs to provide additional evidence in relation to a review;
- subsection 150(2) – the presiding member may give directions as to the persons who may be present at any hearing of a review;
- subsection 150(3) – the presiding member may permit a hearing, or part of a hearing, of a review to take place in public;
- subsection 151(1) – the VRB may take evidence on oath or affirmation and may adjourn the hearing of a review from time to time;
- subsection 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;
- subsection 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;

- subsection 155(1) – the VRB may consent to the withdrawal of an application the hearing of which has commenced but has not been completed;
- subsection 155AA(5) – the Principal Member must dismiss an application if a written statement has not been provided within 28 days;
- subsection 155AA(7) – the Principal Member must dismiss an application if he considers that no reasonable explanation has been provided;
- subsection 155AB(5) – the Principal Member must dismiss an application if a written statement has not been provided within 28 days;
- subsection 155AB(7) – the Principal Member must dismiss an application if he considers that no reasonable explanation has been provided;
- subsection 157 – the VRB may set the date from which its decision is to operate;
- subsection 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
- subsection 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 2002-03 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 of Veterans' Affairs (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 in the Veterans' Affairs portfolio;
- 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 or by video 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
- 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 management 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 2003-04

- Continue development of staff performance agreements.
- Regular Registrar/Management meetings.
- Review objective performance standards to utilise reporting systems and link to Registrar meetings.
- Development of broadbanding of staffing positions.

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 2003-04

- Continue development of system for application management (vrbSAM).
- Develop capacity to effectively employ video hearings.
- Cooperate with the Department in transition to Metaframe.
- Cooperate with the Department in installation of new telephony.

Strategy 3 – Continuous Training

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

Priorities 2003-04

- Reconsider indoctrination/training program for members.
- Rewrite standard documentation for decision writing.
- Enhance system for professional development for Case Manager Supervisors.
- 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 2003-04

- Establish effective VRB personal links in states and at national level with the Department and ex-service organisations.
- 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)
Vacant

National Case Appraisal Registrar
Joedy Bauer

National Training Officer
Ian Hunt

Research & Administrative Officer
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 Godwin

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

Victorian Registry

14th 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
Paul Murdoch

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

INDEX

- access and equity, 51, 73, 82
- accrued rights, 56
- addresses, 84
- adjournments, 14, 25, 26, 27, 28, 51, 70
- Administrative Appeals Tribunal, 5, 15, 38, 49, 51, 53, 54, 60, 61, 81
- Administrative Review Council, 4
- applications dismissed, 15, 20, 25, 61
- applications finalised, 1, 16, 20, 25, 35, 39, 60, 61
- applications heard, 25, 28, 35, 37
- applications lapsed, 20, 25, 38
- applications lodged, 1, 16, 17, 18, 25, 35, 60
- applications outstanding, 1, 16, 22, 23, 24, 35, 36
- applications withdrawn, 1, 20, 25, 38, 39
- attendant allowance, 21, 29, 58
- Business Plan, 79
- case appraisal, 2, 13, 34
- case management, 12, 13, 23, 26, 80
- Certificate of Readiness, 12, 13, 27, 32, 34, 36
- complaints, 51, 52, 62, 74, 78
- decisions, 4, 5, 20, 28, 29, 30, 31, 33, 49, 50, 53, 60, 61, 62, 78, 81, 82
- Disability Strategy, 73
- dismissals, 38, 61, 71
- Executive Officer, 2, 8, 50, 51, 62, 72, 84
- expenditure, 43, 44
- Federal Court, 5, 15, 53, 54, 81
- Federal Magistrates Court, 53
- Freedom of Information Act, 62, 69, 71, 72
- High Court, 53, 57, 59, 81
- in absentia hearings, 11, 14, 15, 45, 70
- Internet, 82, 84
- Intranet, 2, 26, 49
- matters decided, 21, 28, 29, 30, 31
- membership, 7, 8, 40, 41, 51, 63, 66
- National Case Appraisal Registrar, 2, 13, 84
- Ombudsman, 62
- postponements, 12, 36
- powers, 5, 27, 69
- procedural fairness, 57
- procedures, 7, 10, 12, 13, 14, 27, 32, 36, 49, 51, 69, 72
- publications, 49, 50, 71
- quorum, 7
- regional hearings, 46
- Registrars, 2, 8, 13, 26, 36, 82, 85
- representatives, 2, 10, 13, 14, 16, 23, 25, 31, 33, 35, 36, 45, 48, 49, 50, 51, 73, 74, 76, 77
- section 137 reports, 10, 11, 23, 26, 32, 35
- Service Charter, 73, 74, 75, 83
- Southern Cross University, 2, 50
- special rate of pension, 57
- staff, 2, 7, 8, 33, 42, 44, 49, 51, 72, 73, 75, 78, 80, 82
- standby cases, 11
- Statements of Principles, 2, 3, 49, 54, 55, 56
- telephone hearings, 11, 15, 51, 52, 76, 77
- VeRBosity*, 13, 49, 50, 59, 61, 83
- video hearings, 1, 15, 46, 47, 74, 82
- vrBOSAM, 44, 72, 82
- World War 2 veterans, 1, 37