



Veterans' Review Board

Annual Report

2003-04

© 2004 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 prior written permission from the Commonwealth available from the Department of Communications, Information Technology and the Arts. Requests and inquiries concerning reproduction and rights should be addressed to the Commonwealth Copyright Administration, Intellectual Property Branch, Department of Communications, Information Technology and the Arts, GPO Box 2154, Canberra ACT 2601 or posted at <http://www.dcita.gov.au/cca>.



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 De-Anne Kelly MP
Minister for Veterans' Affairs
Minister Assisting the Minister for Defence
Parliament House
CANBERRA ACT 2600

Dear Minister

In accordance with subsection 215(4) of the *Veterans' Entitlements Act 1986*, I present my report on the operations of the Veterans' Review Board for the year ending 30 June 2004.

Yours sincerely

W D ROLFE
Brigadier (Rtd)
Principal Member

4 November 2004

CONTENTS

2003-04 AND THE VRB – AN OVERVIEW	1
OBJECTIVES, FUNCTION AND POWERS	4
Objectives	4
Function	4
Powers.....	5
ORGANISATION	6
Membership	7
OPERATIONS	9
VRB Procedures	9
Outcome 1: Finalise high numbers of applications for review	14
Applications Lodged.....	16
Applications Finalised.....	17
Applications Outstanding.....	19
Distribution of Applications Outstanding	20
Age of Applications Outstanding	21
Statistical Summary.....	22
Outcome 2: Complete reviews at a quality level that affords a high assurance that review decisions are correct	23
Adjournments.....	24
Outcome of VRB Decisions.....	25
Outcome 3: Complete all process stages subject to the VRB’s control on a timely basis.	29
Processing Times	29
Outcome 4: Undertake reviews in a manner that is efficient in resource usage	32
Listing	32
Postponements	33
Applications Dismissed.....	35
Applications Lapsed.....	35
Applications Withdrawn	36
Members	37
Staff.....	38
Resources	39
Outcome 5: Accessible and responsive to veteran community stakeholders	41
Representation for Applicants.....	41
Regional Hearings.....	42
Commission Representation at VRB Hearings	43
Other Activities	44

Complaints	46
APPENDIX 1.....	48
Court Decisions.....	48
High Court of Australia.....	48
Federal Court of Australia.....	48
Federal Magistrates Court of Australia	49
Issues Dealt with by Court Decisions.....	50
United Nations Human Rights Committee.....	54
<i>VeRBosity</i>	55
APPENDIX 2.....	56
Administrative Appeals Tribunal	56
APPENDIX 3.....	58
Other Forms of Administrative Review	58
APPENDIX 4.....	59
Membership of the Veterans’ Review Board – By Category	59
APPENDIX 5.....	62
Membership of the Veterans’ Review Board – By State.....	62
APPENDIX 6.....	65
FOI Statement	65
APPENDIX 7.....	69
Commonwealth Disability Strategy.....	69
APPENDIX 8.....	71
Service Charter.....	71
APPENDIX 9.....	75
Business Plan	75
APPENDIX 10	80
VRB Addresses	80
INDEX.....	82

GRAPHS & TABLES

Graph 1 – Applications Lodged, Finalised and Outstanding, 1985-2004.....	15
Graph 2 – Applications Lodged	16
Graph 3 – Applications Finalised	17
Graph 4 – Applications Finalised by Decision of the VRB	18
Graph 5 – Applications Outstanding	19
Table 1 – Matters Finalised by Decision of the VRB.....	18
Table 2 – Distribution of Applications Outstanding.....	20
Table 3 – Age and Distribution of Outstanding Applications	21
Table 4 – Summary	22
Table 5 – Section 151 and 152 Adjournments	25
Table 6 – Outcome of Published Decisions.....	26
Table 7 – Decisions Reviewed and Set Aside	28
Table 8 – Mean Times Taken to Process (in Days).....	31
Table 9 – Hearings Postponed.....	34
Table 10 – Dismissal Action	35
Table 11 – Applications Withdrawn.....	36
Table 12 – Members.....	37
Table 13 – Staff.....	38
Table 14 – Veterans’ Review Board – Expenditure (\$000s)	40
Table 15 – Representation at VRB Hearings.....	41
Table 16 – Number of Days Hearings Held in Regional Locations	42
Table 17 – Video Hearings.....	43

2003-04 AND THE VRB – AN OVERVIEW

The Reporting Year 2003-2004 brings to a close 19½ years of operation of the Veterans' Review Board (VRB) and begins a new era with the implementation of the *Military Rehabilitation and Compensation Act 2004*. It is anticipated that there will be little call for the exercise of VRB functions under the new legislation in its first year of operation. The coming year will focus attention on adjusting procedures, developing familiarity with the new legislation and implementing case tracking processes. A report on those activities must await another day.

In the meantime, in the last year, the VRB has applied well settled routines and evolving case law to a reducing number of applications for review under the *Veterans' Entitlements Act 1986*. During the year 5 110 new applications were made and 5 266 were finalised by either dismissal, lapsing, withdrawal or by decision. In the latter category, 2 902 applications were finalised by decisions involving a total of 5 059 entitlement and assessment issues - down from a total of 6 005 the previous year.

At year end there were 4 738 applications outstanding with 68% in the hands of applicants and not ready to proceed to a hearing. Processing times have been stable so that hearings were relatively quickly arranged once an applicant confirmed readiness to proceed. A decision was published, on average, within 11 days of the hearing.

Around the country, 86% of applications for review occurred in the three eastern states. The remaining 14% (about 700 applications) occurred in South Australia, Western Australia and Tasmania – in that order. The percentages also reflect the approximate hearing rates. Broken down further the data reveals that of the 3 590 hearings 39% were conducted in New South Wales, 30% in Queensland, 15% in Victoria, 10% in South Australia, 5% in Western Australia, and 1% in Tasmania. This has resulted in two panels per week (sometimes three) in Sydney, usually two panels per week (one regional) in Queensland, one four day panel per week in Melbourne, two panels every five weeks in Adelaide, approximately two three day panels every five weeks in Perth and intermittent panels in Tasmania – at both Hobart and Launceston.

This manner of allocation of hearing panels is flexible and remains under constant review to ensure timely hearings for applicants. This has been assisted to a degree by a slowly increasing use of video conference facilities in our Brisbane and Melbourne Registries. Thirty six video hearings were conducted in Brisbane and 25

in Melbourne for a total of 61, an increase over the 40 of the previous year. They are still not well accepted in the veteran community but they do offer advantages to applicants in remote areas. The technology is clear and it is anticipated that more applicants will utilise it in the future.

Notwithstanding this flexibility, the issue of the administrative process in preparing a matter for hearing remains a difficult one – not unsurmountable but difficult. The problem is multi faceted and is impacted by all stakeholders. Questions may arise about the adequacy of identification of an injury or disease resulting in delay while the matter is referred back to the Department of Veterans' Affairs (the Department). Applicants may have little understanding of the complex legislation or of the usefulness of basic information that is readily available to them. Some, for a variety of reasons, may not seek assistance from ex-service organisations, which hold themselves ready to provide help. Others seek assistance but find that representatives have a considerable volume of work, which leads to delay in the presentation of their application. In still other cases, after long delays, applicants may seek a postponement of the hearing due to personal circumstances or the realisation of a deficiency in the materials supporting their application. On other occasions the VRB may identify the deficiency and agree to or direct an adjournment.

These types of problems do not necessarily give rise to 'fault' on the part of any stakeholder, although this sometimes occurs. Where a precise weakness is identified it can be assessed and procedures developed to prevent its reoccurrence. On many occasions, however, no systemic failure can be identified and delays, if that be the issue, can be attributed to the unusual circumstances of a particular case.

A number of these types of issues were examined by the Senate Finance and Public Administration References Committee in its December 2003 Report on Administrative Review of Veteran and Military Compensation and Income Support. Among the findings and recommendations the Senate Committee particularly proposed a trial in a state of a variation of the existing review process. It proposed that the trial should include introduction into the VRB of pre-hearing mediation and conciliation processes as employed in the Administrative Appeals Tribunal (AAT) , including the presence of the claimant, the advocate and a representative of the Department. It also proposed an increased use of VRB Registrars to ensure that applications are not deficient with regard to all necessary supporting material including medical evidence.

The VRB has adopted the sense and purpose of this particular recommendation in using its best endeavours to ensure that a claim has been adequately investigated and presented to a panel for consideration, but it has resisted the introduction of a formal mediation and conciliation process. In particular the VRB will be working towards improved case management of claims and targeted oversight of unrepresented and more complex cases by Registrars and Case Managers. Two Case

Appraisal Officers will be appointed, one each in Sydney and Brisbane (with the larger workloads) to assist staff in targeted appraisals prior to submission to the VRB. These measures do not preclude implementation of the broader Senate Committee recommendations at a later stage. They do ensure an increased focus on some of the practical problems referred to above (and others identified by the Senate Committee) but without the dramatic change to the *modus operandi* of the VRB (and the Department) in establishing a formal mediation and conciliation process. Such a measure would interpose another review process without precluding the possibility of a subsequent hearing by the VRB (and possible further conciliation and hearing at the AAT level).

Consistent with this effort the VRB has continued to work closely with ex-service organisations in promoting the knowledge base of veteran representatives in those organisations. Over 150 representatives attended workshops conducted by the Executive Officer of the VRB in 8 locations around the country through the year. These workshops are conducted as an adjunct to the external Veterans' Law course conducted by Southern Cross University. The VRB achieves considerable synergies in its association with the University in the development of supporting training material for use by the VRB, in the opportunity for accredited training for staff, and the further opportunity to pass the knowledge base to veteran representatives.

The VRB intends to work closely and cooperatively with veterans, ex-service organisations and the Department in considering any fair, practical and timely measures that will ensure that any appropriate entitlements are quickly identified.

These issues aside, the VRB has enjoyed a productive year. The members and staff are stable in numbers and committed to their function. Good relations have been maintained with the Department and veteran organisations in promoting effective working systems. The VRB publication *VeRBosity* has been well received as has been the continuing efforts of the Executive Officer and Registrars to keep ex-service organisation representatives up to date on evolving case law.

The VRB offers its sincere thanks to the many volunteer organisations involved in the provision of assistance to veterans and widows in the preparation of applications for review. It also offers its thanks to the many Departmental officers who provide assistance and support for the functions of the VRB.

Finally it remains to thank the members and staff of the VRB. The commitment and effort of these officers is reflected in the following pages of this Report.

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 veterans' 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 (the 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.

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.

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

Registrars conduct 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.

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 might 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*, a copy of which is available from the VRB's Internet site at www.vrb.gov.au.

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.

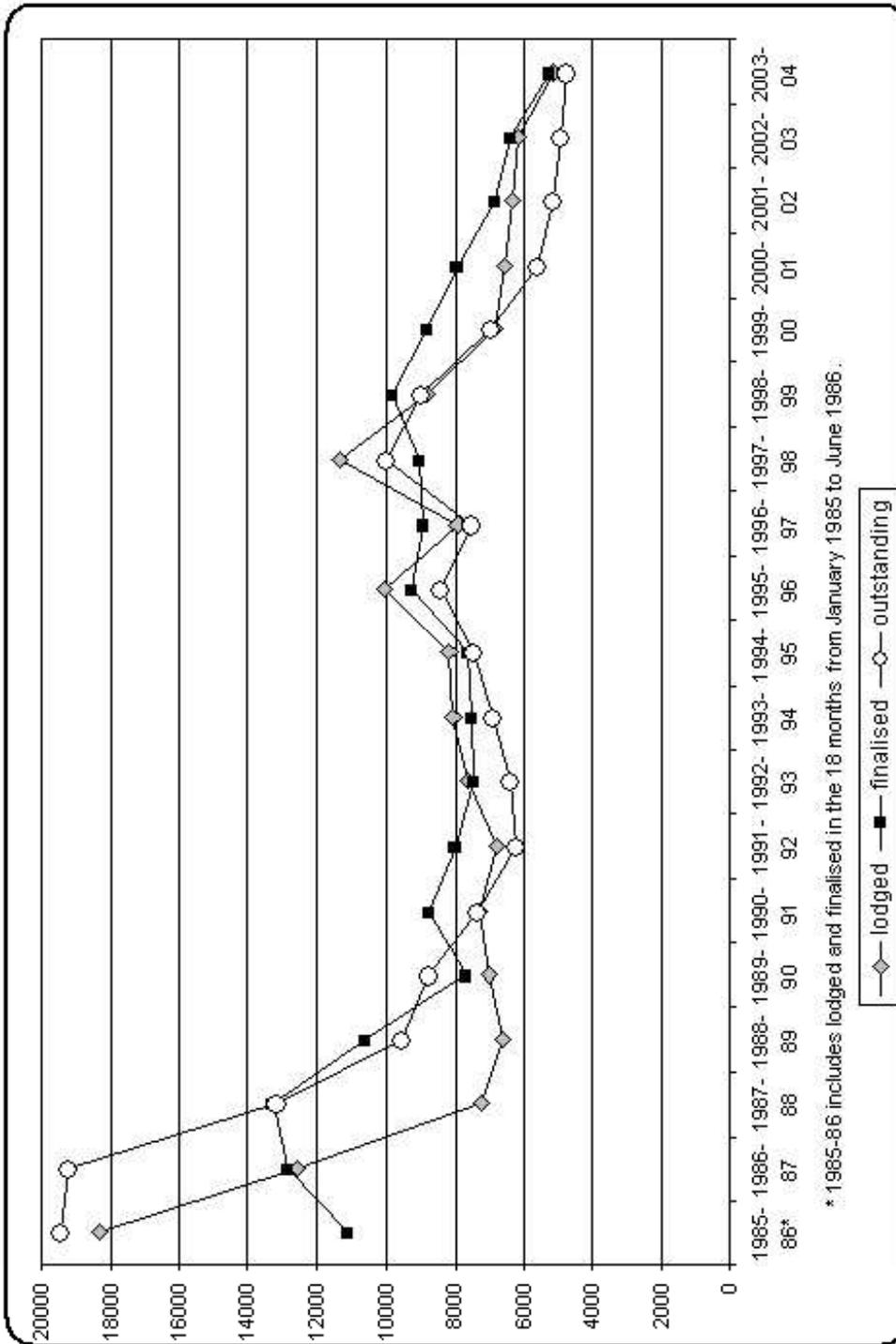
Under the *Administrative Decisions (Judicial Review) Act 1977* the Federal Magistrates Court or the Federal Court of Australia may review any VRB decision on the basis that the VRB has erred in law, on a ground set out in that Act, but the Court may exercise its discretion not to review on the basis that the person has an alternative review right to the AAT (section 10 AD(JR) Act). An application for judicial review may also be brought under section 39B of the *Judiciary Act 1903*.

Outcome 1: Finalise high numbers of applications for review

In the course of the year, 5 110 new applications were lodged and 5 266 applications were finalised. At year end, 4 738 applications were outstanding, a reduction over the previous year of 156. The geographic distribution of applications lodged, total applications finalised, applications finalised by decision, and applications outstanding, and the comparison with 2002-03 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 six financial years the VRB has finalised more applications than it has received new lodgements, resulting in a reducing number of outstanding applications.

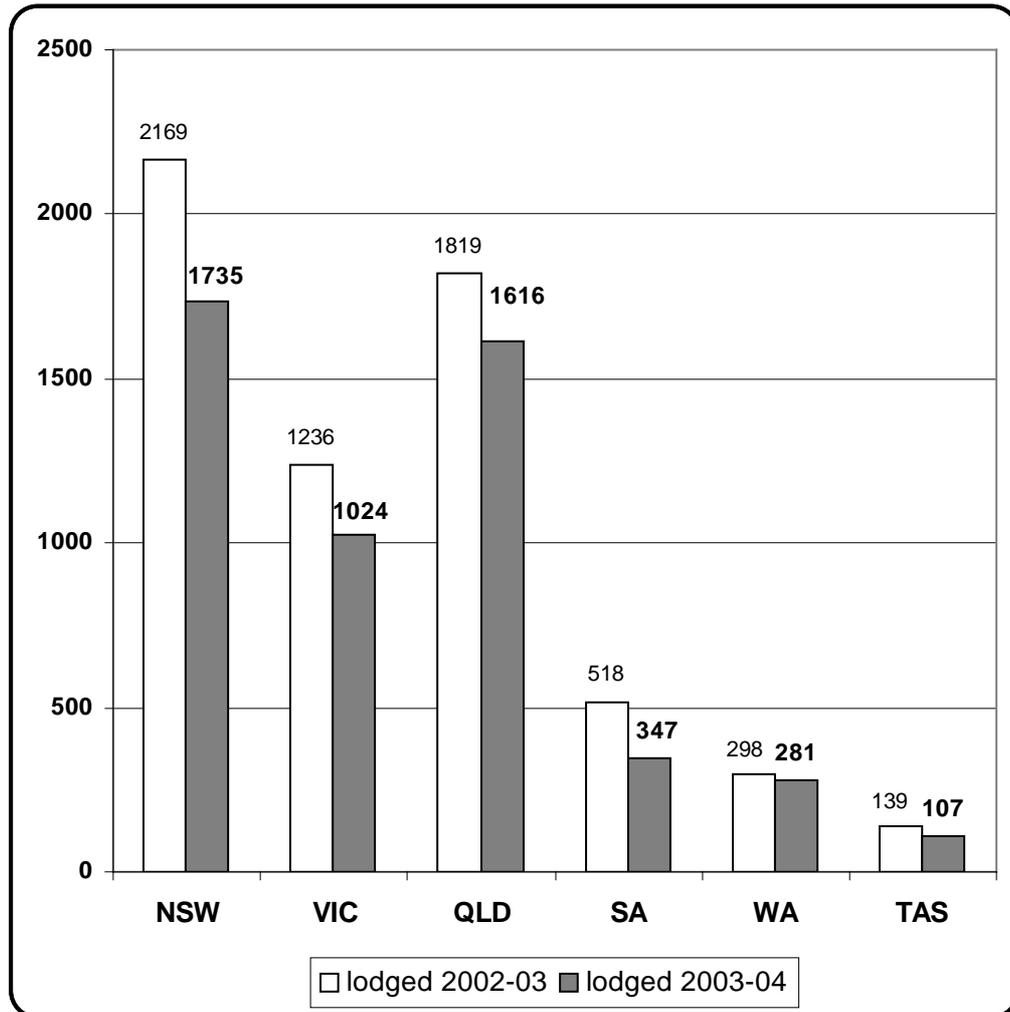
Graph 1 – Applications Lodged, Finalised and Outstanding, 1985-2004



Applications Lodged

During 2003-04, a total of 5 110 new applications were notified to the VRB compared to a total of 6 179 new applications during 2002-03. This was a reduction of 17.3% from the lodgements in 2002-03. (SA – 33.0%, TAS – 23.0%, NSW – 20.0%, VIC – 17.1%, QLD – 11.1%, WA – 5.7%)

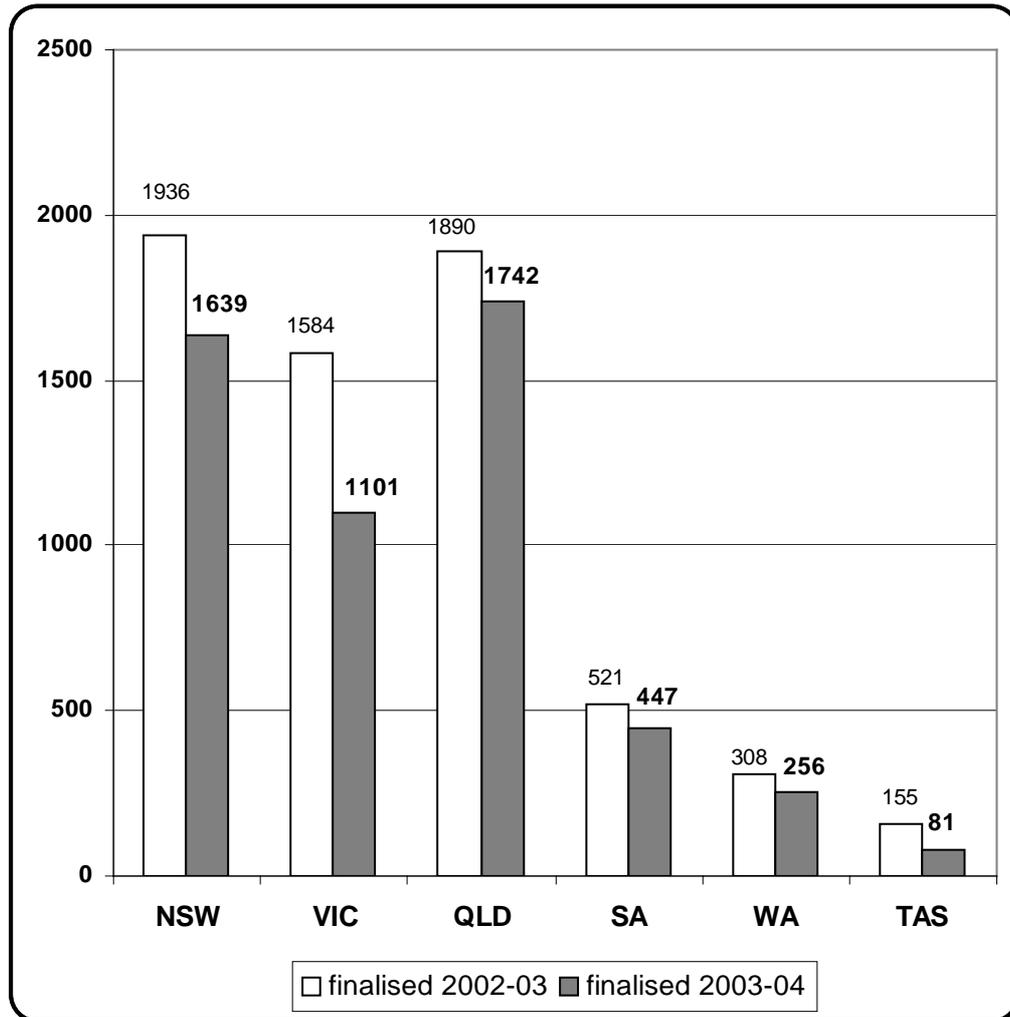
Graph 2 – Applications Lodged



Applications Finalised

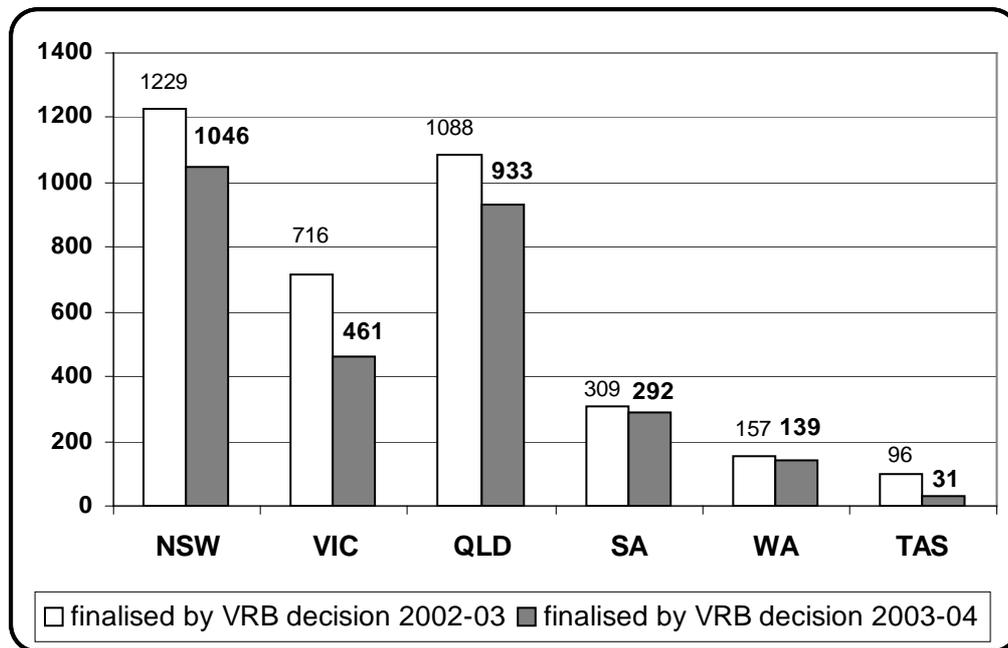
During 2003-04, a total of 5 266 applications to the VRB were finalised compared to a total of 6 394 applications during 2002-03. Applications may be finalised by dismissal (see p 35), lapsing (see p 35), withdrawal (see p 36), and by decision of the VRB following a hearing (see p 25).

Graph 3 – Applications Finalised



During 2003-04, a total of 2902 applications were finalised by VRB decision following a hearing compared to a total of 3595 in 2002-03.

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 26).

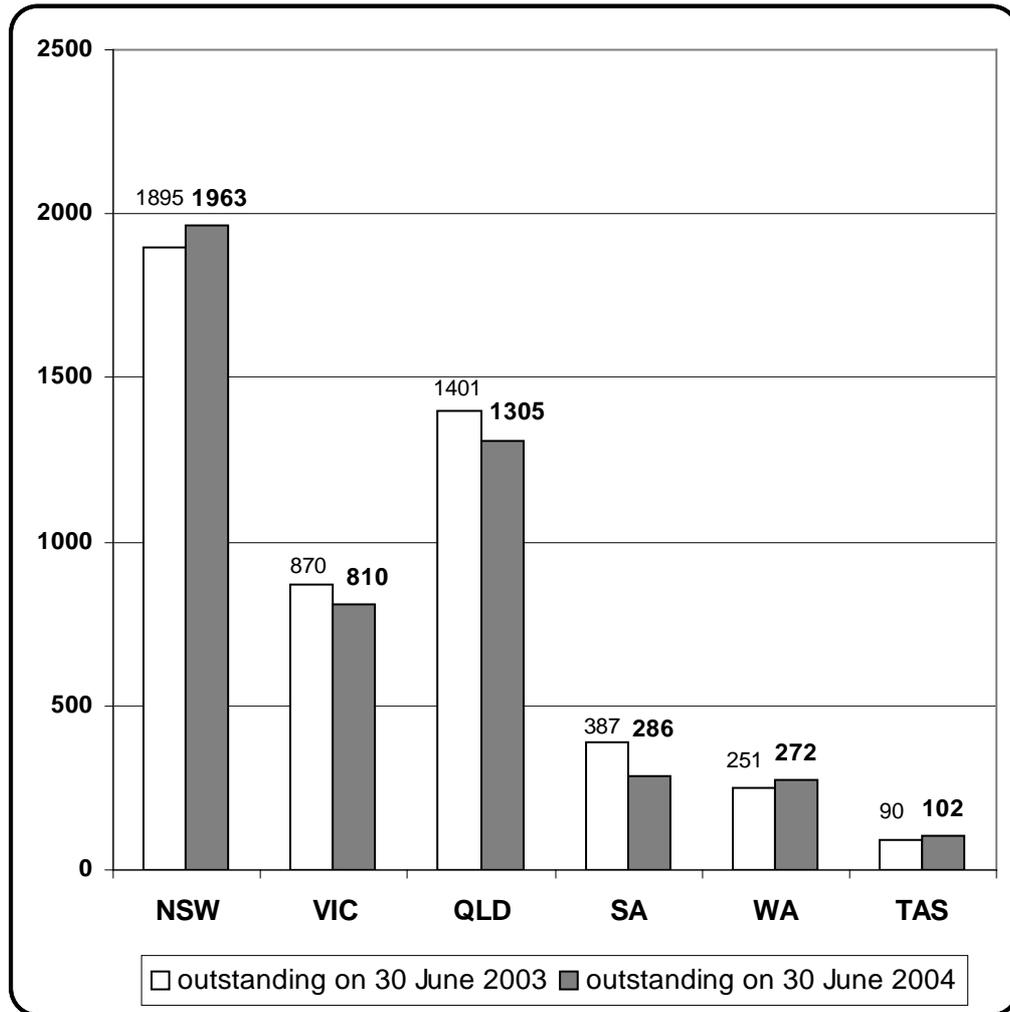
Table 1 – Matters Finalised by Decision of the VRB

	Entitlement		Assessment		Attendant Allowance	
	2002-03	2003-04	2002-03	2003-04	2002-03	2003-04
NSW	1 641	1 561	394	344	2	2
VIC	951	597	180	119	4	-
QLD	1 551	1 352	419	373	5	2
SA	348	348	94	90	2	-
WA	217	185	58	47	1	-
TAS	112	31	40	12	2	1
Aust	4 820	4 074	1 185	985	16	5

Applications Outstanding

At the end of 2003-04, a total of 4738 applications were outstanding at the VRB compared to a total of 4894 applications at the end of 2002-03. There have been slight increases in numbers outstanding in NSW, WA and TAS. The variations are not significant and do not suggest a change to the general trend.

Graph 5 – Applications Outstanding



Distribution of Applications Outstanding

Not all of the 4738 applications outstanding are in the hands of the VRB, the following table shows the distribution of responsibility as at the end of 2003-04. 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	198*	50	174	5*	56	14	497
Applicant	1 153	649	955	240	172	63	3 232
VRB	612	111	176	41	44	25	1 009
Total	1 963	810	1 305	286	272	102	4 738
% in VRB control	31%	14%	14%	14%	16%	25%	21%

* 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 2003-04, the average time to process each of the stages of an application totalled 392 days. This compares with 361 in 2002-03. (See Table 8 at p 31 for further detail.) Table 3 shows that at 30 June 2004, 9% of outstanding applications were more than 2 years old. This figure was 7% at 30 June 2003. 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 June 04	June 2003
< 1 year old	1 177 (60%)	553 (68%)	869 (67%)	175 (61%)	181 (66%)	64 (63%)	3 019 (64%)	3 338 (68%)
1-2 years old	583 (30%)	183 (23%)	346 (26%)	77 (27%)	73 (27%)	26 (26%)	1 288 (27%)	1 227 (25%)
2-3 years old	175 (9%)	63 (8%)	75 (6%)	30 (11%)	18 (7%)	10 (10%)	371 (8%)	285 (6%)
3-4 years old	22 (1%)	11 (1%)	13 (1%)	4 (1%)	–	1 (1%)	51 (1%)	39 (1%)
> 4 years old	6	–	2	–	–	1	9	5
Total	1 963	810	1 305	286	272	102	4 738	4 894

Statistical Summary

The following table summarises the VRB's major actions in processing applications during 2003-04:

Table 4 – Summary

	NSW	VIC	QLD	SA	WA	TAS	AUST
Outstanding Year End 2002-03	1 895	870	1 401	387	251	90	4 894
Lodged 2003-04	1 735	1 024	1 616	347	281	107	5 110
Heard 2003-04	1 406	539	1 080	344	192	29	3 590
Adjourned 2003-04	296	58	121	36	57	4	572
Finalised 2003-04	1 639	1 101	1 742	447	256	81	5 266
Withdrawn 2003-04	523	625	732	152	116	48	2 196
Dismissed 2003-04	50	13	54	3	1	–	121
Lapsed 2003-04	20	2	23	–	–	2	47
Outstanding Year End 2003-04	1 963	810	1 305	286	272	102	4 738

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 number 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.

If an applicant or representative is experiencing difficulties in obtaining relevant material they may approach a Registrar who, if he or she considers it appropriate, might exercise their power under section 148(6A) to request the Secretary of the Department to conduct an investigation to obtain the relevant material. This is a preferable course of action to asking the VRB for a request under section 152 if that was the purpose of asking for the hearing.

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	1 406	539	1 080	344	192	29	3 590
Adjourned s151	103	15	38	13	17	–	186
s151 as % of Heard	7.3	2.8	3.5	3.8	8.9	–	5.2
Adjourned s152	193	43	83	23	40	4	386
s152 as % of Heard	13.7	8.0	7.7	6.7	20.8	13.8	10.8
Total Adj% 03-04	21.1	10.8	11.2	10.5	29.7	13.8	15.9
Total Adj % 2002-03	17.5	6.1	10.6	12.4	13.3	3.8	12.4

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 during 2003-04, there were 1.8 matters decided by the VRB for each application heard. During 2003-04, 5 457 decisions were published relating to 2 902 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	208
Injury or disease accepted as war/defence-caused and remitted to the Repatriation Commission to assess applicable pension rate	830
Injury or disease accepted as war/defence-caused and VRB assessed the rate of pension to be paid	125
Total Set Aside	1 163
Veteran's death NOT war/defence-caused	449
Injury or disease NOT war/defence-caused	2 457
No power to review	5
Total Affirmed	2 911
TOTAL ENTITLEMENT	4 074
ASSESSMENT	
Set aside and rate of pension increased	419
Set aside and rate of pension reduced	11
Total Set Aside	430
Assessment decisions affirmed	553
No power to review	2
Total Affirmed	555
TOTAL ASSESSMENT	985
ATTENDANT ALLOWANCE	
Total Set Aside	2
Total Affirmed	3
TOTAL ATTENDANT ALLOWANCE	5
Entitlement – description of injury or disease varied[†]	287
Assessment – remitted[‡]	106
TOTAL DECISIONS PUBLISHED	5 457

[†] 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:

- 28.5% of entitlement decisions reviewed by the VRB were set aside; this figure was 24% for 2002-03.
- 43.7% of assessment decisions reviewed by the VRB were set aside; this figure was 42.5% for 2002-03.

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	1 561	597	1 352	348	185	31	4 074
Set Aside	529	131	316	112	64	11	1 163
% Set Aside 03-04	33.9	21.9	23.4	32.2	34.6	35.5	28.5
% Set Aside 2002-03	30.2	19.7	21.5	29.3	12.9	11.6	24.0
Total Assessment	344	119	373	90	47	12	985
Set Aside	177	37	170	24	21	1	430
% Set Aside 03-04	51.5	31.1	45.6	26.7	44.7	8.3	43.7
% Set Aside 2002-03	47.5	35.6	45.1	29.8	37.9	35.0	42.5

Set aside and affirmation rates may vary for a wide variety of reasons. Some of the factors that 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.
- Changes in an applicant's degree of incapacity between the date of the decision under review and the date of the VRB's final hearing in an assessment matter.

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 2003-04 the average time for the VRB to undertake this stage was 12 days, this compares with 7 days in 2002-03.

The increased time reflects increased scrutiny of documents for adequacy, completeness and legibility by VRB Case Managers at this stage of processing.

From Receipt of 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 68 days in 2003-04. This compares with 61 days in 2002-03.

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 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 2003-04 the average time from the date of hearing to the publication of the decision was 11 days, this compares with 10 days in 2002-03.

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	36 (40)		
Receipt of s137 Report to s148 Notice sent			12 (7)
s148 Notice sent to s148 Reply received		30 (28)	
s148 Reply to Certificate of Readiness received		235 (215)	
Certificate of Readiness to Hearing			68 (61)
Hearing to Publication of decision & reasons			11 (10)
Total Average Time with DVA, applicants or VRB	36 (40)	265 (243)	91 (78)
Average % of Time with DVA, applicants or VRB	9.2% (11.1)	67.6% (67.3)	23.2% (21.6)

Figures in (brackets) represent figures for 2002-03

Not included in Table 8 are those times when applications are referred to the Department for further investigation or development of the material. With the greater scrutiny of material by VRB staff the numbers of cases returned to the Department has increased in 2003-04. The Department completed 1294 requests for further investigation or development of the material in 2003-04 at an average time of 78 days. Of these, 926 requests were made by Registrars and 368 following s152 adjournments.

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

During 2003-04, 5 110 new applications were lodged, 3 590 hearings were held, and 5 266 applications were finalised.

At 1 July 2003, 18% of outstanding applications were with the VRB, 75% 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 (delegated to Registrars) or a panel of the VRB, or review by the Repatriation Commission).

The total number of applications outstanding as at the 30 June 2004 was 4 738. A total of 1 009 applications (21%) were with the VRB, 3 232 applications (68%) were with the applicant or their representatives and not ready to be heard, 497 applications (11%) 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 2002-03, in Western Australia, the VRB began arranging three days of hearings (nine hearing slots) rather than wait until 15 hearing slots could be filled for a full week of hearings. This practice, which has meant a reduction in waiting times in that State, continued in 2003-04 and a similar arrangement has been in place for hearings in Hobart and Launceston, where either two or three days of hearings are usually arranged for each city. In Melbourne, where there has been a substantial reduction in the number of applications in the last two years the VRB has been

forced into having four day hearing weeks during most weeks because of the reduced number of applications notified as ready to proceed.

Of the 1009 (21%) applications outstanding with the VRB, 292 had already been allocated a hearing date and time. Although a further 397 were ready to proceed to hearing, a proportion of these applications were in the hands of a relatively small number of representatives who maintain their own listing queues. Such representatives 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, 281 applications listed for hearing were postponed prior to the commencement of the hearing. Substitute applications were found for 213 postponements. This resulted in 68 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	1 406	539	1 080	344	192	29	3 590
Postponed	129	32	96	6	12	6	281
Substituted	100	11	88	8	6	–	213
% substituted 2003-04	77.5	34.4	91.7	133	50	–	75.8
% substituted 2002-03	74.2	46.0	94.3	100	77.8	83.3	76.8

Applications Dismissed

During 2003-04, the VRB sent out a total of 554 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 121 applications being dismissed, 75 being withdrawn and 145 requests for a hearing. The remainder provided reasonable explanations or were still being followed up in accordance with the legislation. There were 3 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	310	66	163	11	4	–	554
Reasonable Answer	101	28	37	2	–	–	168
Withdrawn	47	5	22	1	–	–	75
Hearing Requested	96	9	36	4	–	–	145
Dismissed 2003-04	50	13	54	3	1	–	121
Dismissed 2002-03	62	19	25	8	–	1	115

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 2003-04, a total of 47 applications were lapsed. The figure for 2002-03 was 46.

Applications Withdrawn

During 2003-04, 2 196 applications were withdrawn by applicants; this represents 41.7% of applications finalised during the year. This compares with 2 638 withdrawals (41.3%) 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	1 639	1 101	1 742	447	256	81	5 266
Withdrawn	523	625	732	152	116	48	2 196
% Withdrawn 2003-04	31.9	56.8	42.0	34.0	45.3	59.3	41.7
% Withdrawn 2002-03	32.1	53.3	40.4	39.0	48.4	36.1	41.3

Members

As at 1 July 2003, the membership of the VRB was 45.

From 1 July 2003 to 30 June 2004 the following changes in membership occurred:

- 2 members resigned:
 - Robert David Park from 16 January 2004
 - Robert Graham Kenny from 9 February 2004

At 30 June 2004, there were 43 members of the VRB: the Principal Member, 13 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 2004 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	–	13 (8)	13 (8)
Services Member	–	16	16
Member	–	13 (8)	13 (8)
Total	1	42 (16)	43 (16)

Full details of the VRB membership as at 30 June 2004 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 2003, there were 39 staff employed by the VRB. That figure was also 39 at the end of the financial year. There is one Senior Executive Service staff position at the VRB – that of the Executive Officer.

The break-up of staff as at 30 June 2004 is set out in the following table, number of women are shown in brackets:

Table 13 – Staff

	SES 1	EL 1	APS 6	APS 5	APS 4	APS 3	Total June 2004	Total June 2003
ACT	1	1 (1)	1 (1)	1 (1)	1 (1)		5 (4)	6 (4)
NSW		1			2*(1)	7 (6)	10 (7)	11(6)
VIC		1			2 (1)	5 (4**)	8 (5)	8 (5)
QLD		1 (1)			2 (1†)	7 (6‡)	10 (8)	8 (6)
SA			1		1 (1)	1 (1)	3 (2)	3 (2)
WA				1 (1)		1	2 (1)	2 (1)
TAS			1				1	1
TOTAL	1	4 (2)	3 (1)	2 (2)	8 (5)	21(17)	39(27)	39(24)

* 1 NSW part-time, † 1 QLD part-time, ** 2 VIC part-time, ‡ 1 QLD part-time

Resources

Table 14 outlines estimated expenditure for the VRB for the 2002-03 and 2003-04 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 2003-04 was \$6775000 compared to \$7043000 in 2002-03. Average expenditure on each application finalised by the VRB during the year was \$1286. In 2002-03 the figure was \$1101.

The difficulty in this situation is that fixed costs remain constant while being apportioned against reduced numbers of cases. The result is increasing costs per case despite the reducing workload.

The most significant factors in the increased cost per case were member fees, staff salaries (including redundancy and retirement payments), travel costs, and postponed hearings that could not be replaced with other cases on short notice.

Accommodation is a substantial fixed cost that has slightly increased since the previous financial year, and has significantly added to the increased cost per finalised case due to the smaller number of finalised cases compared to last year.

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

	1 July 02 – 30 June 03		1 July 03 – 30 June 04	
Salaries (includes superannuation)				
Members	2 380		2 205	
Staff (includes o/time & temps)	2 297	4 677	2 220	4 425
Rental of Premises (includes outgoings)	1 102	1 102	1 155	1 155
Applicants’ Expenses	17	17	15	15
Fares				
Members	175		156	
Staff	45		48	
Cars (includes parking)	36	256	38	242
Travelling Allowance				
Members	337		256	
Staff	38	375	45	301
Office Requisites				
Stationery and office requisites	30		25	
Library	68		76	
Printing	19		25	
Equipment	30	147	33	159
Postage and Telephones				
Postage	24		23	
Telephones/fax	57	81	53	76
Office Services				
Plant hire	6	6	6	6
Computer Equipment (includes services)	242		270	
vrbSAM (System for Application Management) development	20	262	–	270
Incidental Expenditure				
Freight & cartage	27		35	
Advertising	–		6	
Training	22		17	
Miscellaneous	5	54	8	66
Comcare Premium	42	42	47	47
Archiving	9	9	9	9
Legal	15	15	4	4
TOTAL		7 043		6 775

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 2002-03 figures, are shown in the following table:

Table 15 – Representation at VRB Hearings

	NSW	VIC	QLD	SA	WA	TAS	AUST
Unrepresented	115	33	85	16	17	5	271
In absentia/Unrep	131	41	42	15	10	–	239
In absentia/Rep	20	8	90	2	4	–	124
Represented at hearing	1 140	457	863	311	161	24	2 956
Total	1 406	539	1 080	344	192	29	3 590
% Represented 2003-04	82.5	86.3	88.2	91.0	85.9	82.8	85.8
% Represented 2002-03	78.2	82.6	83.9	89.3	80.1	92.5	82.1

A substantial proportion (52%) 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 2003-04 regional hearings were again arranged in Bundaberg, Cairns, Canberra, Currumbin / Palm Beach / Tweed Heads, 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	2002-03	2003-04
Bundaberg, Qld	24 (74)	18 (50)
Cairns, Qld	7 (20)	11 (32)
Canberra, ACT	42 (118)	34 (97)
Currumbin/Palm Beach/Tweed Heads, Qld	118 (303)	114 (278)
Launceston, Tas	14 (38)	6 (17)
Mackay, Qld	8 (24)	3 (9)
Townsville, Qld	23 (70)	17 (48)
Total days of hearings	236 (647)	203 (531)

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 2003-04, the VRB held video hearings in the following sites:

Table 17 – Video Hearings

VRB Brisbane			VRB Melbourne		
Remote location	2002-03	2003-04	Remote location	2002-03	2003-04
Bundaberg, Qld	1	1	Albury, NSW	–	2
Cairns, Qld	2	–	Bairnsdale, Vic	–	1
Coffs Harbour, NSW	1	–	Benalla, Vic	–	1
Emerald, Qld	–	1	Bendigo, Vic	1	–
Hervey Bay, Qld	–	5	Frankston, Vic	1	–
Mackay, Qld	–	6	Korumburra, Vic	4	–
Rockhampton, Qld	5	13	Mildura, Vic	2	2
Surfers Paradise, Qld	–	1	Mt Gambier, SA	–	1
Townsville, Qld	1	7	Rockhampton, Qld	3	–
VRB Sydney, NSW	–	1	Rosebud, Vic	1	–
VRB Melbourne, Vic	1	1	Sale, Vic	4	1
			Sea Lake, Vic	7	6
			Swan Hill, Vic	1	–
			Traralgon, Vic	–	3
			Wangaratta, Vic	–	1
			Warragul, Vic	1	2
			Wonthaggi, Vic	4	4
			VRB Brisbane, Qld	–	1
Total Hearings	11	36	Total Hearings	29	25

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 2003-04 the Commission was not represented in any hearings.

Other Activities

The VRB worked closely during the year with ex-service and related organisations and the parties to its hearings with a view to ensuring that its procedures worked effectively. Senior VRB staff participated in various workshops and seminars conducted by 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 and Executive Officer attended and addressed a number of state and national ex-service organisation 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 or preferable 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 quarterly journal called *VeRBosity*. This journal 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 regular editions of *VeRBosity* were

published as well as a special edition summarising the law and court cases concerning the special rate of disability pension.

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 2003-04, 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 2005.

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. In 2003-04 there were over 150 attendances by veterans' representatives at these workshops held in Canberra, Sydney, Melbourne, Brisbane, Adelaide, Perth, Cairns and Lismore.

Telephone advisory service

The VRB has a national 1300 number telephone advisory service (1300 135 574) to assist veterans' representatives in technical legal or advocacy issues. While only a few representatives take advantage of this service, which is advertised in the VRB's journal, *VeRBosity*, the VRB considers it a useful adjunct to its technical assistance programs for representatives.

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 4 letters of appreciation and 19 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.

Eight of the 19 complaints were referred for comment from the Minister's office and involved the following issues: concern over conduct of a hearing (2); concern over assessment of evidence (1); concern over legislative criteria (4); concern over travelling expenses to attend a hearing (1). The Executive Officer or the Principal Member investigated each of these matters and responses were provided.

Other complaints sent to the VRB were: concern at the decision or aspects of the decision (5); concern over conduct of the hearing (3); concern over VRB procedures (1); concern over legislative criteria (1); concern over length of appeal process (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 relative 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* (VEA) 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 VEA. 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. Additionally, as has been demonstrated in a case decided during the year, a matter may, in exceptional circumstances, be taken from the VRB directly to the United Nations Human Rights Committee.

High Court of Australia

During the year, one application for special leave to appeal to the High Court was heard in matters arising under the VEA (the matter of *Hendy v Repatriation Commission* [2003] HCATrans 358). The High Court refused the application. Two applications were pending at the end of the year, in the cases of *Sleep* and *Roncevich*.

Federal Court of Australia

Administrative Decisions (Judicial Review) Act 1977 and Judiciary Act 1903

No applications concerning the VEA were decided under either the *Administrative Decisions (Judicial Review) Act 1977* or the *Judiciary Act 1903* during the year.

Administrative Appeals Tribunal Act 1975

During the year, the Federal Court handed down 27 decisions, including 8 decisions of the Full Court, concerning matters related to VRB decisions on cases that were appealed from decisions of the AAT. The AAT decisions were set aside in 6 cases and those matters were remitted to the AAT for re-hearing. The Federal Court decisions were (in chronological order) as follows:

Repatriation Commission v Hancock [2003] FCA 711
Woodward v Repatriation Commission [2003] FCAFC 160
Gundry v Repatriation Commission [2003] FCAFC 160
Dunlop v Repatriation Commission [2003] FCAFC 201
Repatriation Commission v Van Heteren [2003] FCA 888
Leane v Repatriation Commission [2003] FCA 889
Repatriation Commission v Parr [2003] FCA 970
Brown v Repatriation Commission [2003] FCA 1130
Tate v Repatriation Commission [2003] FCA 1169
Repatriation Commission v Nugent [2003] FCA 1184
Demczuk v Repatriation Commission [2003] FCA 1188
Repatriation Commission v Towns [2003] FCA 1262
Cameron v Repatriation Commission [2003] FCA 1323
Meehan v Repatriation Commission [2003] FCA 1371
Repatriation Commission v Stoddart [2003] FCAFC 300
Sleep v Repatriation Commission [2003] FCAFC 304
Whitworth v Repatriation Commission [2003] FCA 1530
Roscoe v Repatriation Commission [2003] FCA 1568
Van Ewijk v Repatriation Commission [2004] FCA 17
Pritchard v Repatriation Commission [2004] FCA 44
Delahunty v Repatriation Commission [2004] FCA 309
Leane v Repatriation Commission [2004] FCAFC 83
Repatriation Commission v Crane [2004] FCAFC 86
Gerzina v Repatriation Commission [2004] FCAFC 96
White v Repatriation Commission [2004] FCA 633
Smith, G J v Repatriation Commission [2004] FCA 743
Ward v Repatriation Commission [2004] FCA 796

Federal Magistrates Court of Australia

During the year, the Federal Magistrates Court handed down 6 decisions concerning matters related to VRB decisions. These had all been remitted to the Court from the Federal Court on appeal from decisions of the AAT. All the appeals were dismissed. The Federal Magistrates Court decisions were as follows (in chronological order):

Brydon v Repatriation Commission [2003] FMCA 299

Gerzina v Repatriation Commission [2003] FMCA 490
Suckling v Repatriation Commission [2004] FMCA 193
Brand v Repatriation Commission [2004] FMCA 270
Stewart v Repatriation Commission [2004] FMCA 321
Smith, M J v Repatriation Commission [2004] FMCA 368

Issues Dealt with by Court Decisions

‘Kind of death’

In *Hancock*, the Federal Court held that, as a preliminary matter before considering whether a hypothesis of a connection to service is raised, the ‘kind of death’ met by the veteran had to be determined on the ‘reasonable satisfaction’ (balance of probabilities) standard of proof. In *Towns* the Court said that the ‘kind of death’ had to be interpreted broadly. The concept of ‘kind of death’ as a preliminary matter was also considered in *Roscoe*. In *Suckling*, the Federal Magistrates Court applied *Hancock’s* case in holding that the ‘kind of death’ had to be determined on the reasonable satisfaction standard of proof.

‘Arose out of, or was attributable to’

In *Crane* the Federal Court considered the scope of operation of the ‘arose out of, or was attributable to’ test of service connection. The Court held that the test applied to a veteran who developed a psychiatric disorder as a consequence of discovering, many years after his eligible service, that he had been exposed to a substance that could cause his death. He had been exposed to this substance both during the brief periods of eligible service as well as more extensive periods of non-eligible service. The Court dismissed the appeal against the AAT’s decision, which had found the psychiatric disorder to be war-caused.

In *Stewart* the Federal Magistrates Court also considered the ‘arose out of, or was attributable to’ test and held that merely because a smoking habit started during the veteran’s eligible service did not mean that it arose out of or was attributable to his service. There had to be a causal connection with service, not merely a temporal connection.

At 30 June 2004 there was still before the High Court a special leave application in *Roncevich*, which is likely to raise the meaning and application of the ‘arose out of, or was attributable to’ test. This provision was last considered by the High Court in *Repatriation Commission v Law* (1981) 147 CLR 635.

Application of Statements of Principles in psychiatric matters

A number of cases concerned the application of Statements of Principles for psychiatric disorders that the Repatriation Medical Authority has determined can be related to eligible service through ‘experiencing a severe stressor’. In *Woodward*, the Full Federal Court held that, in relation to the post traumatic stress disorder (PTSD) Statements of Principles, a person could meet the experiencing a severe stressor factor ‘if the event said to constitute the threat, judged objectively from the point of view of a reasonable person in the position of the applicant experiencing it, was capable of conveying, and did convey, the risk of death or serious injury. In other words, “experiencing” should be construed as having at least this partially subjective connotation.’ This test was endorsed in *Stoddart*, in which the Full Court indicated that the type of threat had to be a serious one consistent with the degree of threat indicated in the examples given in the Statement of Principles. In *Delahunty* the Federal Court indicated that the definition of experiencing a severe stressor must be approached in a manner that is not unduly restrictive.

In *White* the Federal Court considered the ‘experiencing a severe psychosocial stressor’ factor in the anxiety disorder Statement of Principles, and said that it concerns, ‘an occurrence that, objectively, is an occurrence the nature of which is such as to evoke feelings of a particular kind in a person exposed to that occurrence and which, subjectively, evokes feelings of substantial distress in the particular person concerned. Both aspects are relevant and necessary.’

In *Gerzina* the Federal Magistrates Court considered the meaning of ‘intense fear, helplessness, or horror’, which appears as part of the diagnostic criteria for PTSD in DSM-IV and in the PTSD Statement of Principles. The Court agreed with the AAT, which had held that the adjective ‘intense’ applied to ‘horror’ as well as ‘fear’ and ‘helplessness’. On appeal in the Full Federal Court, the Court said that the interpretation of the phrase in DSM-IV issue was a question of fact and not of law and so it could not be the subject of a challenge in the Court.

Application of Statements of Principles in other matters

In *Gundry* the Full Federal Court held that the Statements of Principles apply to cases raising the ‘occurrence’ test for relationship to service. This had been doubted but not decided in an earlier Full Federal Court case of *Keeley*, in which it had been suggested that if the circumstances of a particular case raised the ‘occurrence’ test, then the Statements of Principles did not apply. *Gundry*’s case made it clear that this was incorrect.

In *Parr* the Federal Court held that the Statements of Principles required the AAT to identify the time when all the diagnostic features were present as the time of ‘clinical onset’ of the claimed disease. In *M J Smith* it was argued that once the disease was found to exist and that there had been the relevant exposure to the

causal factor, the reverse onus of proof should apply in relation to the date of clinical onset. The Federal Magistrates Court rejected that proposition and held that there had to be material pointing to the time of clinical onset as required by the Statement of Principles.

In *Brown* the Federal Court considered the factor, 'inability to obtain appropriate clinical management', and indicated that the factor could not be met if the veteran had access to medical assistance but chose not to seek it.

Application of *Deledio* steps and the nature of evidence required to raise a reasonable hypothesis

A number of cases concerned the application of the four steps set out in *Repatriation Commission v Deledio* (1998) 83 FCR 82. In summary, the four steps are: (1) After consideration of all the material, is a hypothesis of a connection to service raised? (2) Has the Repatriation Medical Authority made a Statement of Principles concerning the kind of injury, disease or death claimed? (3) Is the hypothesis reasonable? Does it fit the template of the Statement of Principles? (4) Has the reasonable hypothesis been disproved beyond reasonable doubt?

In *Dunlop* the Federal Court said that the AAT did not need to proceed from step to step in a mechanical way provided it clearly applied the principles, including that the hypothesis had to be pointed to by the facts raised by the material though not proven on the balance of probabilities. This requires material pointing to every essential link or element in the hypothesis.

In *Demczuk* the Court reiterated that the Tribunal could not embark on fact-finding in the first three steps. In *Cameron* the applicant suggested that the AAT had found facts at steps 1 to 3. However, the Court held that it is not fact-finding to conclude, as the AAT had done, that there is no reasonable hypothesis if the only support for a hypothesis is a medical opinion that is unsupported by any other material. Similarly, in *Whitworth* the Court upheld the AAT's rejection of medical evidence that was theoretical and not based on any substantiating fact.

In *Brand* the applicant alleged the AAT had concerned itself with conflicts in the material at steps 1-3. But the Federal Magistrates Court held that it had not done so, it merely recited the relevant evidence and found that the hypothesis required by the Statement of Principles had not been raised by that material.

In *Meehan* the Court upheld the AAT's rejection of medical evidence that was based on the applicant's evidence, which the AAT had found had been disproved beyond reasonable doubt.

In *Tate* the Court upheld the AAT's rejection of a claim at step 4 on the basis that the expert evidence had so undermined the applicant's evidence that it had

destroyed the foundation to support the raised facts on the beyond reasonable doubt standard.

In *M J Smith* the Federal Magistrates Court held that the existence of a disease said to be part of the causal chain (and the object of a sub-hypothesis) is not to be determined on the reasonable satisfaction standard, but merely needs to be pointed to by the material.

Special rate of pension

Hendy concerned the test for the special rate of pension in s 24(1)(c) of the VEA. It was argued that the series of Federal Court cases, including *Cavell* (1988) 9 AAR 534 and *Forbes* (2000) 101 FCR 50, that had held that incapacity from war-caused injury or disease must be the *only* factor preventing the veteran from continuing to undertake the kind of work he or she had previously undertaken, were wrongly decided. The High Court refused Mr Hendy special leave to appeal.

In *Van Heteren* the Federal Court considered the ‘alone’ test in s 24(1)(c) and found that the AAT had erred by finding that it was satisfied that the veteran’s war-caused injuries and diseases were *sufficient* to prevent him from continuing to undertake his previous remunerative work rather than determining whether they were the *only* factors having that effect. In *Nugent* the Court held that the AAT had not made a legal error when it found that incapacity from war-caused disease was the sole reason for the veteran being prevented from continuing to undertake the kind of work he had undertaken. In *Pritchard* the Court said that the AAT was 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.

In *Van Ewijk* the Federal Court noted that why the veteran ‘ceased to engage in remunerative work’ in s 24(2)(a) is a wider question than the reason why the veteran left his or her last job, but that evidence on that point might be relevant to the wider issue. In *G J Smith* the Federal Court found that the AAT had not made an error of law in finding that it was the veteran’s decision not to work rather than his incapacity that was the reason he had ‘ceased to engage in remunerative work’ and that had caused his loss of earnings.

In *Leane* the Full Federal Court considered what was meant by ‘genuinely seeking to engage in remunerative work’ in s 24(2)(b) of the VEA. The Court accepted that ‘seeking’ meant attempting or trying to obtain work and meant more than a mere wish or hope. It held that the word ‘genuinely’ was used in the sense of ‘sincerely’ or ‘honestly’, and so the Court held that it meant that the veteran had to be honestly trying to engage in remunerative work. The Court held that the claimant did not have to have been genuinely seeking work at all times during the assessment period, but had to have done so at least at some point in that time.

In *Brydon* the Federal Magistrates Court held that for a person who was over 65 years at the application day, the AAT had to characterise the veteran's 'last paid work' and determine whether he or she was an employee or whether he or she was working on his or her own account and then whether he or she had been continuing to work in that same capacity for a continuous period of at least 10 years beginning before he or she turned 65 years. The Court also considered the nature of remuneration received and whether it could be properly characterised as remuneration for work performed. It held that the benefits received by the veteran since 1995 were not related to any work he performed and so it could not be said that he was engaged in remunerative work for the relevant 10 year period.

Attendant allowance

In *Sleep*, the Court held that the AAT had not made an error of law in not characterising the veteran's reduced effectiveness of his immune system, fatigue, malaise, and skin disorders as being of similar effect or severity to a disease affecting the cerebro-spinal system. Thus he was not entitled to an attendant allowance.

Date of effect of grant of pension

In *Ward* the Federal Court held that a pension could not be backdated to a date that might have applied had a previous, rejected, claim for the same injury or disease been successful.

United Nations Human Rights Committee

During the year, the United Nations Human Rights Committee decided a matter, *Young v Australia*, which had been brought to it from a decision of the VRB. Mr Young was the partner of a male veteran who had served during World War 2. After the veteran's death, Mr Young applied for a pension under the VEA. The Repatriation Commission refused his claim on the basis that he was not the 'dependant' of the veteran as defined in subsection 5E(2) of the VEA, which provides:

- (2) A person is a member of a couple for the purposes of this Act if:
 - (a) the person is legally married to another person and is not living separately and apart from the other person on a permanent basis; or
 - (b) all of the following conditions are met:
 - (i) the person is living with a person of the opposite sex ...

The Commission's decision was affirmed on review by the VRB on the basis that Mr Young was not living with a person of the opposite sex. Instead of appealing to

the AAT, Mr Young took his case to the United Nations Human Rights Committee. He argued that Australia's refusal to grant him a pension on the ground that he did not meet the definition of 'dependant', for having been in a same-sex relationship, violated his rights under international law.

The Human Rights Committee adopted the view that the VEA breaches Article 26 of the International Covenant on Civil and Political Rights, because it does not recognise same-sex relationships. The Committee found that Mr Young was entitled to a reconsideration of his pension application without discrimination based on his sex or sexual orientation, if necessary through an amendment of the law.

The VEA has not been amended to conform with the view of the Human Rights Committee and a proposed amendment of the Military Rehabilitation and Compensation Bill 2003 to achieve such a result was rejected by the Government.

VeRBosity

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

APPENDIX 2

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 2003-04, the VRB was notified of the lodgement of 808 applications for review by the AAT of matters involving VRB decisions. During the same period, the VRB lodged 29 section 37 statements with the AAT. The average time taken for preparation and lodgement of those statements was 16 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 2003-04, there were 808 AAT applications and the VRB finalised 2 902 applications by decisions made at hearings. This represents an estimated appeal rate of 27.8%. The estimated appeal rate for 2002-03 was 28.5%.

The Repatriation Commission lodged no appeals in relation to a VRB decision during 2003-04.

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

- 31% were withdrawn by the applicants; and
- 42% were conceded by the Repatriation Commission.

Of the remaining 27% that were finalised by decisions formally published with reasons:

- 173 (58%) involved an affirmation of the decision under review; and
- 125 (42%) 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 2003-04, there were 3 new appeals relating to dismissal decisions lodged with the AAT. There were 5 dismissal cases finalised at the AAT. All were withdrawn by the applicant.

Another application to the AAT sought to reopen a previous AAT application finalised in 2000. The application to reopen the previous application was dismissed as frivolous and vexatious. The applicant has appealed that decision to the Federal Court of Australia.

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 2003-04, the Ombudsman did not notify the VRB of any complaints.

Freedom of Information Act 1982

There was one request to the VRB for access to documents under the *FOI Act* during 2003-04. Access was granted in full.

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 William Bennett Lane	29 May 1990*	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 Lane – 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)	1 January 1998	30 September 2005
Group Captain Collins Joseph Fagan (Rtd)	1 January 1985	30 September 2004
Captain Allan John Farquhar RAN (Rtd) Brigadier	1 June 2001	30 September 2004
Patrick Thomas Francis Gowans (Rtd) Group Captain	1 January 1998	30 September 2005
Jonathon Scott Hamwood AM (Rtd)	1 January 1998	30 September 2005
Lieutenant Colonel Geoffrey Hourn (Rtd)	1 January 1998	30 September 2005
Brigadier Laurence John Lewis (Rtd)	1 January 1998	30 September 2005
Major Gregory Mawkes (Rtd)	1 January 1993	30 September 2004
Colonel Robin Terence Regan CSC (Rtd)	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 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 Services Member

Brigadier Laurence John Lewis (Rtd)

Part-Time Members

Dr David Caryl Blaikie

Colonel Anthony James Wales (Rtd)

WESTERN AUSTRALIA

Part-Time Senior Member

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 that 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 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;
- subsection 166(1) – the Principal Member may delegate his powers under Part IX to a Senior Member or acting Senior Member;
- subsection 166(2) – the Principal Member may delegate his powers under subsection 148(6A) or section 155AA or 155AB to a Registrar or Deputy Registrar; 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. The VRB provides telephone and video hearings, which give easier access for disabled and/or 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. We also have 1300 and 1800 phone numbers available for your convenience.

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.

We have a VRB web site which provides details of our processes, contacts and general information to assist you. The address is www.vrb.gov.au. You can also email the VRB on contact@vrb.gov.au.

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 in 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, to allow Registries to focus on core function, and to allow oversight of flexible management by Registries of devolved functional responsibilities.

Priorities 2004-05

- Develop broadbanding arrangements in conjunction with staff, DVA and union as a vehicle for staff development.
- Establish Case Appraisal Officers in Brisbane and Sydney and develop procedures for targeting groups of cases for appraisals.
- Regular Registrar/Management meetings

Strategy 2 – Utilise Information Technology

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

Priorities 2004-05

- Continue enhancement of vrbSAM.
- Cooperate with DVA in implementation of strategy for Multi Function Devices (MFD)
- Develop System for Application Management of MRCS cases.

Strategy 3 – Continuous Training

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

Priorities 2004-05

- Maintain register of staff training and relate to performance assessments.
- Review standard documentation for decision writing in relation to VEA.
- Consider standard documentation for decision writing for MRCS.
- Assess adequacy of in house publications *Bulletin* and *VeRBosity* and possible extension of *Bulletin* to representatives.
- Promote 'workshops' for all staff.
- Conduct workshops for members on MRCS.

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 2004-05

- Establish effective VRB personal links in states and at national level with the Department and ex-service organisations.
- Review all published documents and materials and identify changes necessary to recognise jurisdiction under MRCS.
- Promote Veterans' Law Workshops as opportunities for staff to establish working relationships with veteran community.

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 Training Officer
Ian Hunt

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> >

VRB email: contact@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

Level 8, Macarthur Tower
259 Queen Street
Brisbane QLD 4000

Registrar
Joedy Bauer

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

7th 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, 46, 69, 78
- addresses, 80
- adjournments, 2, 12, 22, 23, 24, 25, 47, 66
- Administrative Appeals Tribunal, 2, 3, 5, 13, 35, 44, 46, 48, 49, 56, 57, 77
- Administrative Review Council, 4
- applications
 - dismissed, 13, 17, 22, 57
 - finalised, 1, 14, 17, 18, 22, 32, 36, 56, 57
 - heard, 1, 22, 25, 32, 34
 - lapsed, 17, 22, 35
 - lodged, 1, 14, 15, 16, 22, 32, 56
 - outstanding, 1, 14, 19, 20, 21, 32, 33
 - withdrawn, 17, 22, 35, 36
- attendant allowance, 18, 26, 54
- Business Plan, 75
- case appraisal, 3, 11, 46, 78
- case management, 2, 11, 20, 23, 76
- Certificate of Readiness, 11, 24, 29, 31, 33
- complaints, 46, 47, 58, 70, 74
- decisions, 4, 5, 17, 25, 26, 27, 28, 30, 44, 45, 48, 56, 57, 58, 74, 77, 78
- Disability Strategy, 69
- dismissals, 35, 57, 67
- Executive Officer, 3, 7, 44, 45, 47, 58, 68, 80
- expenditure, 39, 40
- Federal Court, 5, 13, 48, 49, 54, 77
- Federal Magistrates Court, 13, 48, 49
- Freedom of Information Act, 58, 65, 67, 68
- hearings, 12
- High Court, 48, 77
- in absentia hearings, 10, 12, 13, 41, 66
- Internet, 12, 72, 80
- Intranet, 23, 44
- investigation requests, 11, 12, 23, 24, 31
- legal issues
 - application of *Deledio*, 52
 - application of Statements of Principles, 51
- arose out of, 50
- attributable to, 50
- clinical onset, 52
- date of effect, 54
- experiencing a severe psychosocial stressor, 51
- experiencing a severe stressor, 51
- inability to obtain appropriate clinical management, 52
- kind of death, 50
- special rate of pension, 53
- matters decided, 18, 25, 26, 27, 28
- membership, 6, 7, 37, 47, 59, 62
- Ombudsman, 58
- postponements, 2, 11, 33, 39
- powers, 5, 24, 65
- Principal Member, 5, 6, 7, 11, 13, 23, 30, 32, 37, 44, 47, 57, 59, 62, 65, 66, 67, 68, 75, 76, 80
- procedures, 6, 9, 11, 12, 24, 29, 33, 44, 47, 65, 68
- processing times, 1, 29, 30, 31, 77
- publications, 44, 45, 68
- quorum, 6
- regional hearings, 6, 42
- Registrars, 2, 3, 7, 11, 23, 33, 81
- representatives, 2, 3, 9, 11, 12, 13, 20, 22, 28, 30, 32, 33, 41, 43, 44, 45, 46, 69, 70, 72, 73
- review by Repatriation Commission, 10, 36
- section 137 reports, 9, 10, 20, 23, 29, 32
- Senate Committee, 2, 3
- Service Charter, 69, 70, 71, 79
- Southern Cross University, 3, 45
- staff, 6, 7, 30, 38, 40, 44, 46, 68, 69, 71, 74, 76
- standby cases, 10
- Statements of Principles, 44, 51, 52
- telephone hearings, 10, 13, 47, 72, 73
- time limits, 9, 10
- Training and Information Program, 44, 45
- United Nations Human Rights Committee, 48

VeRBosity, 3, 44, 45, 46, 55, 57, 79
video hearings, 1, 13, 42, 43, 70

vrBAM, 40, 68, 78