



# **Veterans' Review Board**

Annual Report

2004-05

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## Veterans' Review Board Principal Registry

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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 2005.

Yours sincerely

W D ROLFE  
Brigadier (Rtd)  
Principal Member

5 October 2005



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# 2004-05 AND THE VRB – AN OVERVIEW

This Annual Report is prepared at a time when the Veterans' Review Board (VRB) has been operating for a period of 20 years – having commenced operations on 1 January 1985 – and at a time when review of applications under the *Military Rehabilitation and Compensation Act 2004* has been included in its jurisdiction – effectively the commencement of a new era.

In 1985, the VRB inherited 11781 applications for review from the previous determination system and the subsequent 20 years has seen 163 463 applications for review lodged, 145 382 applications heard, and 172 158 applications finalised. The finalised applications were either reviewed by a panel of the VRB, withdrawn, dismissed or lapsed. The average number of applications finalised is over 7 000 a year, although the numbers have varied considerably year to year. The numbers were very high in the early years but tapered until a resurgence in the late 1990s. As recently as 1998 the VRB finalised 9000 applications. Since that time the numbers have steadily declined. During 2004-05 a total of 4 676 applications for review were lodged with the VRB, 3 597 applications were heard, and 5 165 were finalised either by review by a panel, withdrawn, dismissed or lapsed. At end of the year there were 4257 applications outstanding.

Apart from the decline in numbers the figures bear a remarkable similarity to those of the previous year. Eighty-six per cent of applications outstanding occur in the 3 eastern States (40% NSW, 29% Qld, 17% Vic) while 14% occur in South Australia, Western Australia and Tasmania. Across the jurisdiction approximately 27% of entitlement issues are set aside as are 44% of assessment issues. The time taken to process applications to review (discussed at some length in the overview last year) remains high but stable. The time taken to publish a decision following a review has improved again to an average of 9 days.

The VRB maintains generally good, co-operative relations with veteran organisations and their advocates and with the Department of Veterans' Affairs (the Department). The VRB provides willing support to veteran organisation training seminars and offers regular assistance to veteran/Departmental seminars. The VRB maintains a continuing staff development and training program and regularly reviews processes and procedures and its monthly statistics to ensure that it continues to meet its stated objectives.

Notwithstanding this relatively satisfactory situation it is important that the VRB look to the future and the variety of challenges that are likely to emerge – it seeks the assistance of the broad veteran community in assessing these challenges. First among these will be implementation of its review function under the *Military Rehabilitation and Compensation Act 2004*. This could be a slow process and it will be necessary to retain knowledge and expertise under the *Veterans' Entitlements Act 1986* while developing familiarity with the former. Other matters that arise include the changing clientele at the VRB. In broad terms post-World War 2 applicants now make up about 65% of the business of the VRB. Fully half of the 35% of applications that concern service in World War 2 are widows. These widows comprise almost 99% of all widow applications. Many of these applications are difficult because of the age of the applicant and the length of time that has passed since the events that base the applications. Equally difficult are the proportion of younger veteran applications involving psychiatric illness and applications for special rate of pension. These cases are difficult more for their complexity. Added to these issues are functional questions of how the VRB is to operate a practical, effective and cost efficient national jurisdiction where the vast majority of the work is located in the eastern States.

Wider still, but important for its impact on the function of the VRB, is the question of the assistance provided to applicants by representatives of ex-service organisations. There is a wide variety of experience and capacity in the people that take up this role. Some representatives are employed by ex-service organisations and regularly attend at the VRB, others take up the role as volunteers or, initially, to help a mate. It provides a worthwhile cause and mental stimuli for some and inordinate stress for others. Some have good training, some do not. Some very few make it plain to the VRB that they are simply holding a hand until they can hand the matter to a solicitor to raise the application at another tribunal. Still other cases (about 15%) have no active representation and/or little knowledge of the provisions of either the legislation or Statements of Principles.

The VRB must approach these various situations on the basis that each applicant requires a fair and reasonable consideration of the claim they have made, but the manner of approach to each one will inevitably be different. This is a proper function of an administrative tribunal but it poses real challenges for application of resources and methods of operation – as well as for the style of operation. These types of issues are likely to be exacerbated by the falling numbers of veterans, increases in some categories of applicants (such as widows) over particular periods, and different types of service giving rise to the applications. It is clear to the VRB that the Department of Veterans' Affairs has commenced reconsideration of its structure for the future. Veterans' organisations will inevitably reflect on such matters. The VRB is alive to these issues and is intent on being constructively involved.

It remains to thank a committed membership and staff for the work they have undertaken during the year, and the many officers of veteran organisations and the Department who have assisted the VRB in its function.

# 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. On 1 July 2004 the VRB's jurisdiction was extended to review original determinations made by delegates of the Military Rehabilitation and Compensation Commission. 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*.

In conferring additional jurisdiction on the VRB, the *Military Rehabilitation and Compensation Act 2004* applies provisions of the *Veterans' Entitlements Act 1986* with some modifications. This means that the VRB operates under the *Veterans' Entitlements Act 1986*, as modified, when deciding matters under the *Military Rehabilitation and Compensation Act 2004* or the *Military Rehabilitation and Compensation (Consequential and transitional Provisions) Act 2004*.

The VRB is a part of the governmental machinery for the delivery of Repatriation benefits to veterans and their dependants, and rehabilitation and compensation to members and former members of the Australian Defence Force (ADF) and their dependants. The principal components of the system are:

- the Department of Veterans' Affairs;
- the Repatriation Commission;
- the Military Rehabilitation and Compensation 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 or determinations 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; and
- the Military Rehabilitation and Compensation Commission on such matters as:
  - liability for compensation for injury, disease or death;
  - compensation for permanent impairment;
  - compensation for incapacity for work or incapacity for service;
  - rehabilitation programs;
  - compensation for medical treatment costs; and
  - allowances and other benefits; and
- the Service Chiefs of the Army, Navy, and Air Force in relation to rehabilitation programs for members of the Forces.

## Powers

The powers of the VRB are set out in Part IX of the *Veterans' Entitlements Act 1986* as modified by the *Military Rehabilitation and Compensation Act 2004*. 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 are lodged with and investigated by the Department of Veterans' Affairs. They are then decided by the Repatriation Commission or the Military Rehabilitation and Compensation Commission. In most cases, this decision is made by an officer of the Department of Veterans' Affairs to whom the relevant Commission has delegated its decision-making power.

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

The VRB aims to do all it can to ensure that those seeking a review quickly receive their proper entitlement under veterans' law and military rehabilitation and compensation 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 at p 34 and in Appendix 4 at p 61 and Appendix 5 at p 63.

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 at p 34 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 at p 82.

## 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 under that Act, and as modified by the *Military Rehabilitation and Compensation Act 2004* for applications for review of determinations made under that Act. 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 an outline of those processes.

### **Parties to the review**

The parties to a review by the VRB are the applicant and:

- the Repatriation Commission (for a matter under the *Veterans' Entitlements Act 1986*); or
- the Military Rehabilitation and Compensation Commission (for a matter under the *Military Rehabilitation and Compensation Act 2004*); and
- if the matter concerns rehabilitation under the *Military Rehabilitation and Compensation Act 2004* of a serving member of the ADF, the relevant service chief may choose to be a party.

Each party 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 under the *Military Rehabilitation and Compensation Act 2004* or an application concerning an entitlement matter under the *Veterans' Entitlements Act 1986* 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 under the *Veterans' Entitlements Act 1986* concerning an assessment matter or an attendant allowance must be lodged within three months of notice of the decision.

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 or the Military Rehabilitation and Compensation Commission must 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 or determination under review. The applicant then has 28 days, or such further period as he or she may request, to provide the Department or the Military Rehabilitation and Compensation Commission with written comments on the report. At the end of that period the Department or the Military Rehabilitation and Compensation Commission formally transmits the relevant documents to the VRB. The documents comprise:

- the section 137 report;
- any comments or further evidence submitted by the applicant in response to the section 137 report; and
- any further evidence obtained by the Department or the Military Rehabilitation and Compensation Commission as a result of the applicant's response.

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

Similarly, under section 347 of the *Military Rehabilitation and Compensation Act 2004*, the Military Rehabilitation and Compensation Commission can reconsider its original determination in 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 or the Military Rehabilitation and Compensation Commission, the VRB, in accordance with section 148 of the *Veterans' Entitlements Act 1986*, writes to the applicant and the relevant Commission or service chief 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 'stand-by 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.

The parties are notified of the hearing if they wish 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 lodging a Certificate of Readiness for Hearing with the VRB.

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 Secretary of the Department or the Military Rehabilitation and Compensation Commission, 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 and Case Appraisal Officers 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 are assisted in the evidentiary development of their cases and in others they are 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, the Military Rehabilitation and Compensation 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 or the Military Rehabilitation and Compensation Commission 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 section 352 of the *Military Rehabilitation and Compensation Act 2004*, or whether there is some statutory bar in that legislation to 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](http://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, the Repatriation Commission, the Military Rehabilitation and Compensation Commission, or a service chief 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, 4676 new applications were lodged: 4674 under the *Veterans' Entitlements Act 1986* and 2 under the *Military Rehabilitation and Compensation Act 2004*.

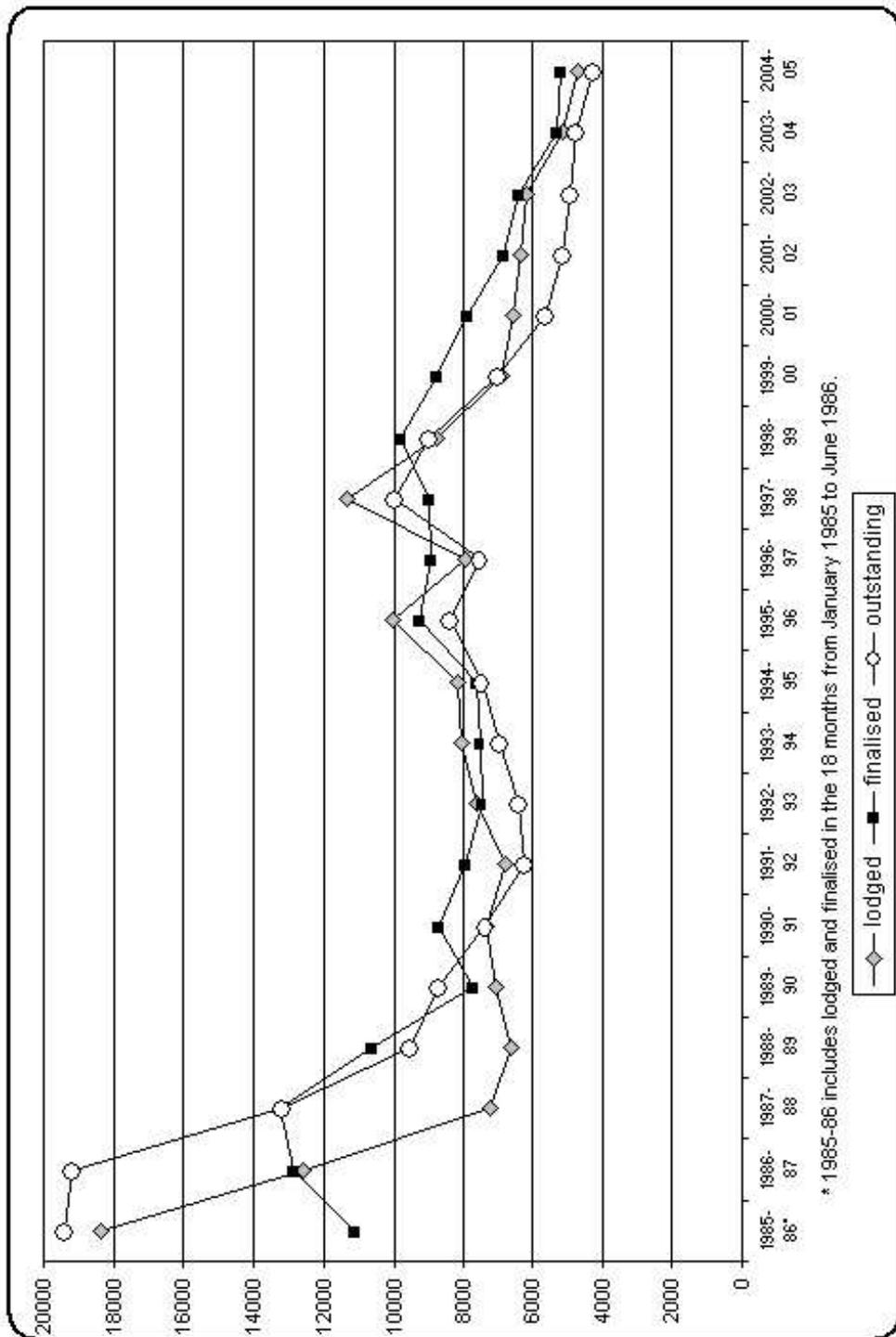
There were 5165 applications finalised in the year: 5165 under the *Veterans' Entitlements Act 1986* and nil under the *Military Rehabilitation and Compensation Act 2004*.

At year end, 4257 applications were outstanding: 4255 under the *Veterans' Entitlements Act 1986* and 2 under the *Military Rehabilitation and Compensation Act 2004*. Overall, this was a reduction over the previous year of 481.

The geographic distribution of applications lodged, total applications finalised, applications finalised by decision, and applications outstanding, and the comparison with 2003-04 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 seven financial years the VRB has finalised more applications than it has received new lodgements, resulting in a reducing number of outstanding applications.

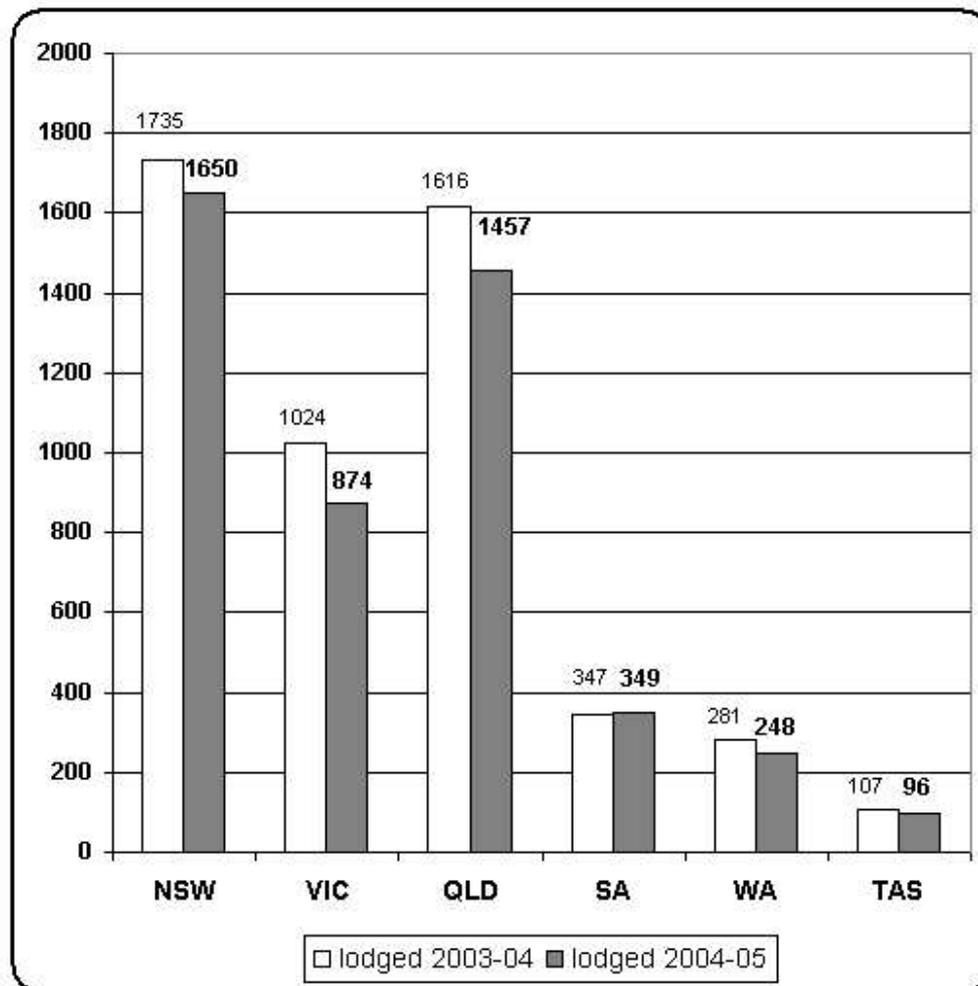
Graph 1 – Applications Lodged, Finalised and Outstanding, 1985-2005



## Applications Lodged

During 2004-05, a total of 4 676 new applications were notified to the VRB compared to a total of 5 110 new applications during 2003-04. This was a reduction of 8.5% from the lodgements in 2003-04 (decrease in Vic: 14.6%, WA: 11.7%, Tas: 10.3%, Qld: 9.8%, NSW: 4.9%, and an increase in SA: 0.6%). Of the new applications notified, 2 were under the *Military Rehabilitation and Compensation Act 2004*.

**Graph 2 – Applications Lodged**

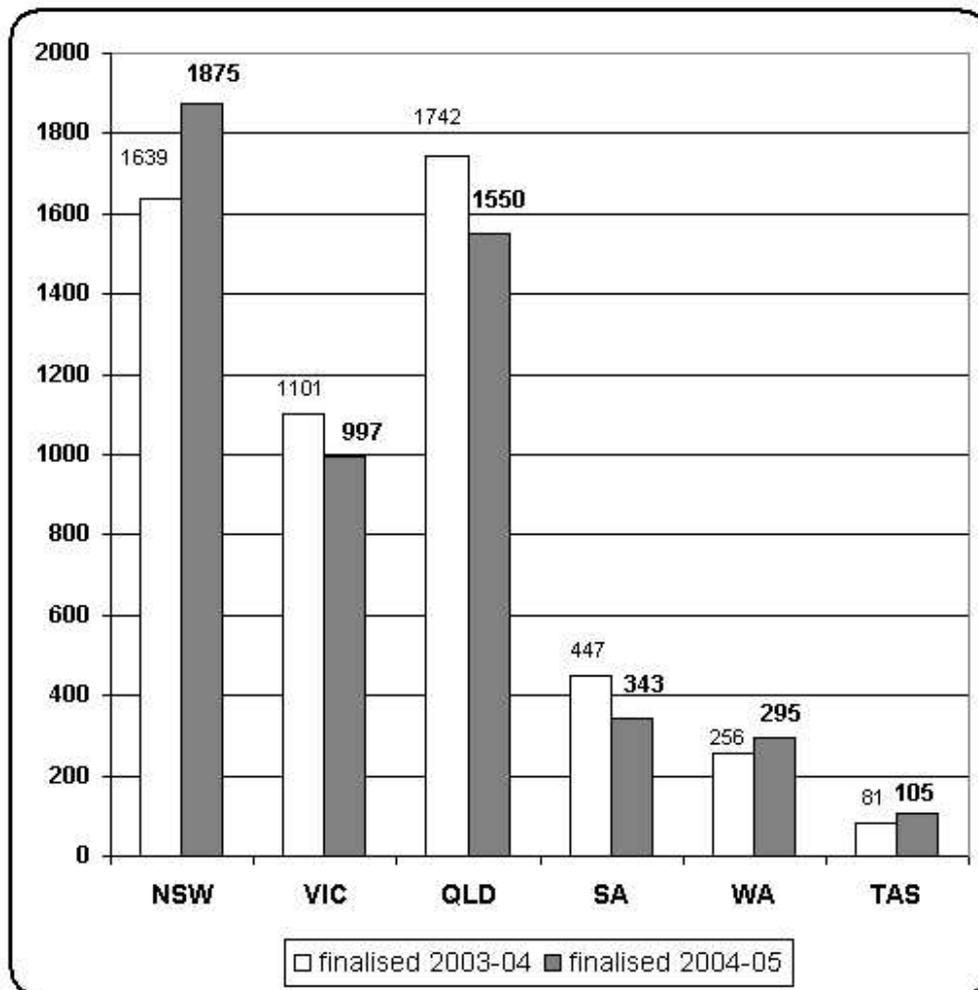


## Applications Finalised

During 2004-05, a total of 5 165 applications to the VRB were finalised compared to a total of 5 266 applications during 2003-04. No *Military Rehabilitation and Compensation Act 2004* applications were finalised.

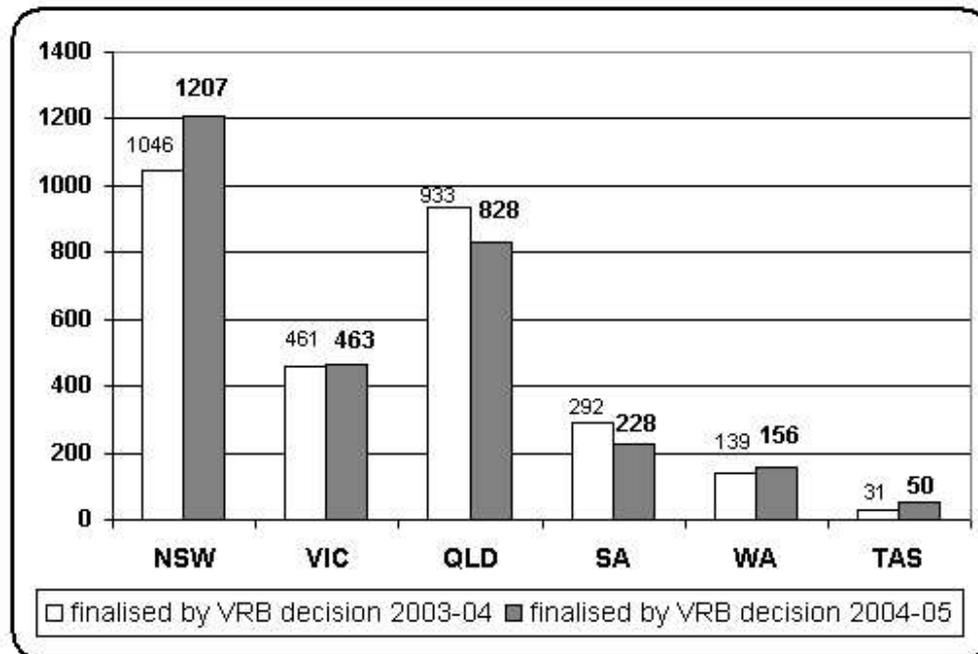
Applications may be finalised by dismissal (see p 37), lapsing (see p 37), withdrawal (see p 38), and by decision of the VRB following a hearing (see p 27).

**Graph 3 – Applications Finalised**



During 2004-05, a total of 2 932 applications were finalised by VRB decision following a hearing compared to a total of 2 902 in 2003-04. No matters were finalised under the *Military Rehabilitation and Compensation Act 2004* by hearing.

**Graph 4 – Applications Finalised by Decision of the VRB**



An application may include more than one ‘matter’ to be decided. The following table sets out the numbers of matters decided in applications finalised by VRB decision (see also Table 6 at p 28).

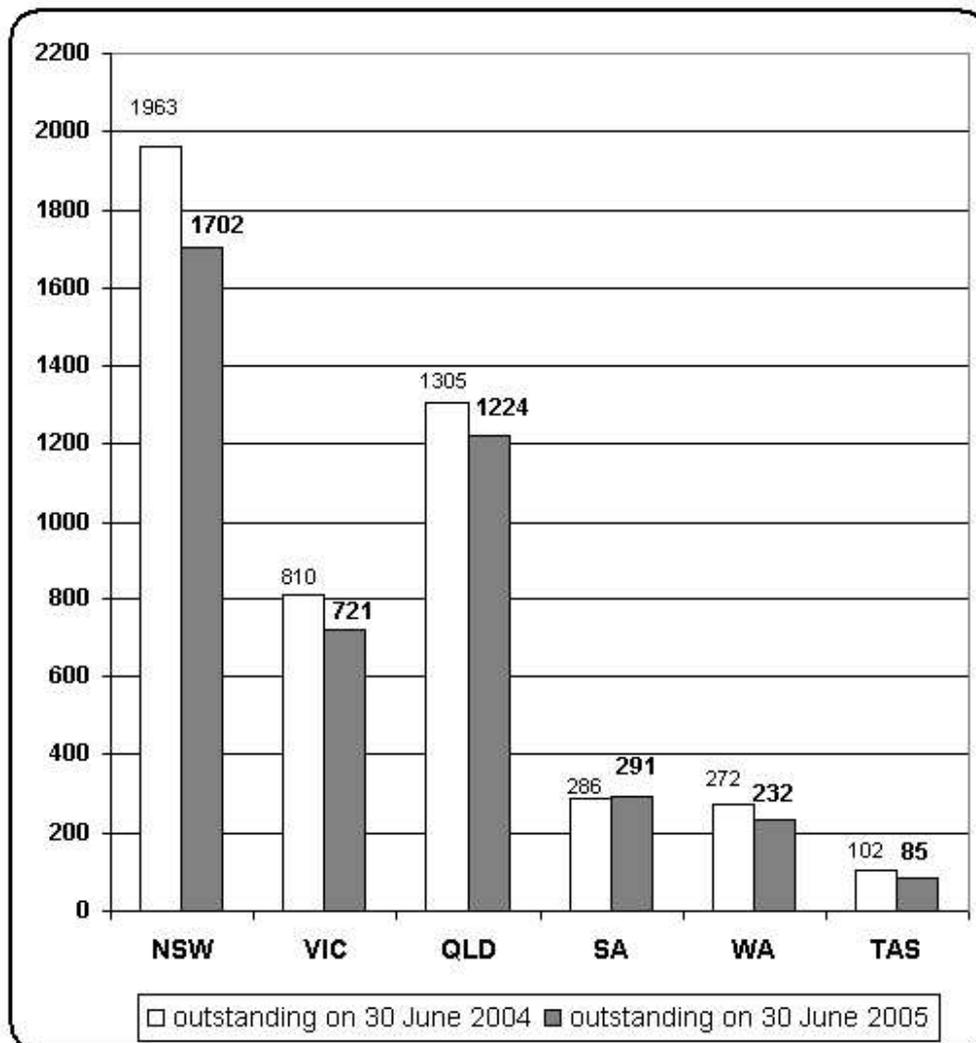
**Table 1 – Matters Finalised under the *Veterans’ Entitlements Act 1986* by Decision of the VRB**

	Entitlement		Assessment		Attendant Allowance	
	2003-04	2004-05	2003-04	2004-05	2003-04	2004-05
<b>NSW</b>	1 561	<b>1 639</b>	344	<b>431</b>	2	<b>3</b>
<b>VIC</b>	597	<b>611</b>	119	<b>145</b>	–	<b>1</b>
<b>QLD</b>	1 352	<b>1 205</b>	373	<b>316</b>	2	<b>1</b>
<b>SA</b>	348	<b>222</b>	90	<b>77</b>	–	<b>1</b>
<b>WA</b>	185	<b>217</b>	47	<b>40</b>	–	<b>1</b>
<b>TAS</b>	31	<b>32</b>	12	<b>21</b>	1	–
<b>Aust</b>	4 074	<b>3 926</b>	985	<b>1 030</b>	5	<b>7</b>

## Applications Outstanding

At the end of 2004-05, a total of 4 257 applications were outstanding at the VRB (included in this number were 2 applications under the *Military Rehabilitation and Compensation Act 2004*). This compares with a total of 4 738 applications outstanding at the end of 2003-04.

**Graph 5 – Applications Outstanding**



## Distribution of Applications Outstanding

Not all of the 4 257 applications outstanding are in the hands of the VRB, the following table shows the distribution of responsibility as at the end of 2004-05. 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**

	MRCA	NSW	VIC	QLD	SA	WA	TAS	AUST
Department	1	215*	83	201	16*	55	16	587
Applicant		1 028	542	856	233	148	49	2 856
VRB	1	459	96	167	42	29	20	814
<b>Total</b>	<b>2</b>	<b>1 702</b>	<b>721</b>	<b>1 224</b>	<b>291</b>	<b>232</b>	<b>85</b>	<b>4 257</b>
% in VRB control	50%	27%	13%	14%	14%	13%	24%	19%

\* 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 2004-05, the average time to process each of the stages of an application totalled 420 days. This compares with 392 in 2003-04. (See Table 8 at p 33 for further detail.) Table 3 shows that at 30 June 2005, 10% of outstanding applications were more than 2 years old. This figure was 9% at 30 June 2004. 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**

	MRCA	NSW	VIC	QLD	SA	WA	TAS	AUST June 2005	June 2004
< 1 year old	2 (100%)	992 (58%)	496 (69%)	826 (67%)	190 (65%)	158 (68%)	53 (62%)	<b>2 717</b> <b>(64%)</b>	3 019 (64%)
1-2 years old	–	505 (30%)	167 (23%)	303 (25%)	57 (20%)	61 (26%)	21 (25%)	<b>1 114</b> <b>(26%)</b>	1 288 (27%)
2-3 years old	–	176 (10%)	45 (6%)	77 (6%)	33 (11%)	12 (5%)	8 (9%)	<b>351</b> <b>(8%)</b>	371 (8%)
3-4 years old	–	23 (1%)	11 (2%)	13 (1%)	11 (4%)	1	3 (4%)	<b>62</b> <b>(2%)</b>	51 (1%)
> 4 years old	–	6	2	5	–	–	–	<b>13</b>	9
<b>Total</b>	<b>2</b>	<b>1 702</b>	<b>721</b>	<b>1 224</b>	<b>291</b>	<b>232</b>	<b>85</b>	<b>4 257</b>	<b>4 738</b>

## Statistical Summary

The following table summarises the VRB's major actions in processing applications during 2004-05:

**Table 4 – Summary**

	MRCA	NSW	VIC	QLD	SA	WA	TAS	AUST
Outstanding Year End 2003-04	–	1 963	810	1 305	286	272	102	4 738
Lodged 2004-05	2	1 650	874	1 457	349	248	96	4 676
Heard 2004-05	–	1 495	587	963	289	206	57	3 597
Adjourned 2004-05	–	300	53	133	56	39	7	588
Finalised 2004-05	–	1 875	997	1 550	343	295	105	5 165
Withdrawn 2004-05	–	556	507	640	108	132	53	1 996
Dismissed 2004-05	–	97	26	57	6	5	–	191
Lapsed 2004-05	–	15	1	25	1	2	2	46
<b>Outstanding Year End 2004-05</b>	<b>2</b>	<b>1 702</b>	<b>721</b>	<b>1 224</b>	<b>291</b>	<b>232</b>	<b>85</b>	<b>4 257</b>

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 in 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 or the Military Rehabilitation and Compensation Commission 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 or the Military Rehabilitation and Compensation Commission 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 or the Military Rehabilitation and Compensation Commission.

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 or the Military Rehabilitation and Compensation Commission to conduct an investigation to obtain the relevant material. This is a preferable course to asking the VRB to adjourn under section 152 and seek the information – which the VRB may or may not agree to do.

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	1 495	587	963	289	206	57	3 597
<b>Adjourned s151</b>	<b>91</b>	<b>17</b>	<b>28</b>	<b>14</b>	<b>11</b>	<b>1</b>	<b>162</b>
s151 as % of Heard	6.1%	2.9%	2.9%	4.8%	5.3%	1.8%	4.5%
<b>Adjourned s152</b>	<b>209</b>	<b>36</b>	<b>105</b>	<b>42</b>	<b>28</b>	<b>6</b>	<b>426</b>
s152 as % of Heard	14.0%	6.1%	10.9%	14.5%	13.6%	10.5%	11.8%
<b>Total Adj% 04-05</b>	<b>20.1%</b>	<b>9.0%</b>	<b>13.8%</b>	<b>19.4%</b>	<b>18.9%</b>	<b>12.3%</b>	<b>16.3%</b>
Total Adj % 2003-04	21.1%	10.8%	11.2%	10.5%	29.7%	13.8%	15.9%

## Outcome of VRB Decisions

The review of a Repatriation Commission decision may involve deciding more than one substantive matter of entitlement and/or assessment. On average during 2004-05, there were 2.0 matters decided by the VRB for each application heard. During 2004-05, 5 413 decisions were published relating to 2 932 applications. The outcome of the published decisions was as follows:

**Table 6 – Outcome of Published Decisions Concerning Reviews under the Veterans' Entitlements Act 1986**

<b>ENTITLEMENT</b>	
Veteran's death accepted as war/defence-caused and a war widows'/widowers' pension granted	236
Injury or disease accepted as war/defence-caused and remitted to the Repatriation Commission to assess applicable pension rate	736
Injury or disease accepted as war/defence-caused and VRB assessed the rate of pension to be paid	104
<b>Total Set Aside</b>	<b>1 076</b>
Veteran's death NOT war/defence-caused	468
Injury or disease NOT war/defence-caused	2 381
No power to review	1
<b>Total Affirmed</b>	<b>2 850</b>
<b>TOTAL ENTITLEMENT</b>	<b>3 926</b>
<b>ASSESSMENT</b>	
Set aside and rate of pension increased	432
Set aside and rate of pension reduced	17
<b>Total Set Aside</b>	<b>449</b>
Assessment decisions affirmed	576
No power to review	5
<b>Total Affirmed</b>	<b>581</b>
<b>TOTAL ASSESSMENT</b>	<b>1 030</b>
<b>ATTENDANT ALLOWANCE</b>	
<b>Total Set Aside</b>	<b>1</b>
<b>Total Affirmed</b>	<b>6</b>
<b>TOTAL ATTENDANT ALLOWANCE</b>	<b>7</b>
<b>Entitlement – description of injury or disease varied<sup>†</sup></b>	<b>316</b>
<b>Assessment – remitted<sup>‡</sup></b>	<b>134</b>
<b>TOTAL DECISIONS PUBLISHED</b>	<b>5 413</b>

† 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:

- 27.4% of entitlement decisions reviewed by the VRB were set aside; this figure was 28.5% for 2003-04.
- 43.6% of assessment decisions reviewed by the VRB were set aside; this figure was 43.7% for 2003-04.

Percentage *Veterans’ Entitlements Act 1986* entitlement and assessment ‘set aside’ rates, by State, are shown in the following table:

**Table 7 – Entitlement and Assessment Decisions Reviewed and Set Aside under the *Veterans’ Entitlements Act 1986***

	NSW	VIC	QLD	SA	WA	TAS	AUST
<b>Total Entitlement</b>	1 639	611	1 205	222	217	32	3 926
<b>Set Aside</b>	<b>552</b>	<b>123</b>	<b>269</b>	<b>61</b>	<b>60</b>	<b>11</b>	<b>1 076</b>
<b>% Set Aside 04-05</b>	<b>33.7%</b>	<b>20.1%</b>	<b>22.3%</b>	<b>27.5%</b>	<b>27.6%</b>	<b>34.4%</b>	<b>27.4%</b>
% Set Aside 2003-04	33.9%	21.9%	23.4%	32.2%	34.6%	35.5%	28.5%
<b>Total Assessment</b>	431	145	316	77	40	21	1 030
<b>Set Aside</b>	<b>202</b>	<b>47</b>	<b>145</b>	<b>29</b>	<b>17</b>	<b>9</b>	<b>449</b>
<b>% Set Aside 04-05</b>	<b>46.9%</b>	<b>32.4%</b>	<b>45.9%</b>	<b>37.7%</b>	<b>42.5%</b>	<b>42.9%</b>	<b>43.6%</b>
% Set Aside 2003-04	51.5%	31.1%	45.6%	26.7%	44.7%	8.3%	43.7%

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 of the *Veterans' Entitlements Act 1986* or the Military Rehabilitation and Compensation Commission under section 347 of the *Military Rehabilitation and Compensation Act 2004*;
- 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 2004-05 the average time for the VRB to undertake this stage was 14 days, this compares with 12 days in 2003-04.

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 72 days in 2004-05. This compares with 68 days in 2003-04.

### **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 2004-05 the average time from the date of hearing to the publication of the decision was 9 days, this compares with 11 days in 2003-04.

**Table 8 – Mean Times Taken to Process (in Days)**

Figures in brackets in this table represent figures for 2003-04.

<b>STAGE</b>	<b>Primarily under DVA control</b>	<b>Primarily under applicants' control</b>	<b>Primarily under VRB control</b>
<b>Lodgement to Receipt of s137 Report</b>	<b>38 (36)</b>		
<b>Receipt of s137 Report to s148 Notice sent</b>			<b>14 (12)</b>
<b>s148 Notice sent to s148 Reply received</b>		<b>33 (30)</b>	
<b>s148 Reply to Certificate of Readiness received</b>		<b>254 (235)</b>	
<b>Certificate of Readiness to Hearing</b>			<b>72 (68)</b>
<b>Hearing to Publication of decision &amp; reasons</b>			<b>9 (11)</b>
<b>Total Average Time with DVA, applicants or VRB</b>	<b>38 (36)</b>	<b>287 (265)</b>	<b>95 (91)</b>
<b>Average % of Time with DVA, applicants or VRB</b>	<b>9.0% (9.2)</b>	<b>68.3% (67.6)</b>	<b>22.6% (23.2)</b>

Not included in Table 8 are those times when applications are referred to the Department for further investigation or development of the material. The Department completed 1 583 requests for further investigation or development of the material in 2004-05 at an average time of 97 days. Of these, 1 133 requests were made by Registrars and 450 following s152 adjournments.

These figures compare with 1 294 requests in 2003-04 at an average time of 78 days, of which 926 requests were made by Registrars and 368 followed s152 adjournments.

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

During 2004-05, 4 676 new applications were lodged, 3 597 hearings were held, and 5 165 applications were finalised.

At 1 July 2004, 21% of outstanding applications were with the VRB, 68% were with applicants or their representatives and not ready to be heard, and 11% were with the Department for action under sections 137, 148(6A), 152 or 31 (ie for the preparation of a section 137 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 2005 was 4 257. A total of 814 applications (19%) were with the VRB, 2 856 applications (67%) were with the applicant or their representatives and not ready to be heard, 587 applications (14%) 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 2004-05 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 three years the VRB has conducted four-day hearing weeks during most weeks because of the reduced number of applications notified as ready to proceed.

Of the 814 (19%) applications outstanding with the VRB, 288 had already been allocated a hearing date and time. Although a further 333 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, 253 applications listed for hearing were postponed prior to the commencement of the hearing. Substitute applications were found for 209 postponements. This resulted in 44 hearing slots not being able to be used (the equivalent of nearly three 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	1 495	587	963	289	206	57	3 597
<b>Postponed</b>	<b>132</b>	<b>34</b>	<b>62</b>	<b>6</b>	<b>11</b>	<b>8</b>	<b>253</b>
Substituted	116	19	57	4	8	5	209
<b>% substituted 2004-05</b>	<b>87.9%</b>	<b>55.9%</b>	<b>91.9%</b>	<b>66.7%</b>	<b>72.7%</b>	<b>62.5%</b>	<b>82.6%</b>
% substituted 2003-04	77.5%	34.4%	91.7%	133%	50%	–	75.8%

## Applications Dismissed

During 2004-05, the VRB sent out a total of 673 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 191 applications being dismissed, 108 being withdrawn and 139 requests for a hearing. The remainder provided reasonable explanations or were still being followed up in accordance with the legislation. There were 7 appeals concerning dismissals lodged with the AAT.

For more information concerning AAT appeals see Appendix 2 at p 58.

**Table 10 – Dismissal Action**

	NSW	VIC	QLD	SA	WA	TAS	AUST
Letters Sent	361	88	208	10	6	–	673
Reasonable Answer	111	28	54	3	2	–	198
Withdrawn	63	10	35	–	–	–	108
Hearing Requested	73	19	44	1	2	–	139
<b>Dismissed 2004-05</b>	<b>97</b>	<b>26</b>	<b>57</b>	<b>6</b>	<b>5</b>	–	<b>191</b>
Dismissed 2003-04	50	13	54	3	1	–	121

## 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 2004-05, a total of 46 applications were lapsed. The figure for 2003-04 was 47.

## Applications Withdrawn

During 2004-05, 1 996 applications were withdrawn by applicants; this represents 38.6% of applications finalised during the year. This compares with 2 196 withdrawals (41.7%) 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* or the Military Rehabilitation and Compensation Commission under section 347 of the *Military Rehabilitation and Compensation Act 2004*.

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	1 875	997	1 550	343	295	105	5 165
<b>Withdrawn</b>	<b>556</b>	<b>507</b>	<b>640</b>	<b>108</b>	<b>132</b>	<b>53</b>	<b>1 996</b>
<b>% Withdrawn 2004-05</b>	<b>29.7%</b>	<b>50.9%</b>	<b>41.3%</b>	<b>31.5%</b>	<b>44.7%</b>	<b>50.5%</b>	<b>38.6%</b>
% Withdrawn 2003-04	31.9%	56.8%	42.0%	34.0%	45.3%	59.3%	41.7%

# Members

As at 1 July 2004, the membership of the VRB was 43.

From 1 July 2004 to 30 June 2005 the following changes in membership occurred:

- The Principal Member, William Douglas Rolfe, was reappointed from 8 April 2005 to 7 April 2008
- 3 part-time members resigned:
  - Graeme Kingsley Chapman, Services Member, Melbourne, from 27 August 2004
  - Geoffrey Hourn, Services Member, Perth, from 7 May 2005
  - Denyse Christina Phillips, Senior Member, Perth, from 20 June 2005
- 1 part-time member's term of office expired from 30 September 2004:
  - Julie Ann Shead, Senior Member, Sydney
- 1 part-time member was appointed as a part-time senior member from 1 October 2004 to 30 March 2008:
  - Charles Jeremy Ward, Senior Member, Brisbane
- 16 part-time members were reappointed from 1 October 2004 to 30 March 2008:
  - Zita Rose Antonios, Member, Sydney
  - Jennifer D'Arcy, Senior Member, Sydney
  - Francis Harding Benfield, Services Member, Brisbane
  - Murray Phillip Blake, Services Member, Brisbane
  - Francis Brown, Services Member, Sydney
  - Stuart Alexander Bryce, Services Member, Launceston
  - Marella Louise Denovan, Member, Brisbane
  - Collins Joseph Fagan, Services Member, Melbourne
  - Allan John Farquhar, Services Member, Brisbane
  - Jackie Miriana Fristacky, Member, Melbourne

- Janet Ann Hartmann, Member, Sydney
- William Bennett Lane, Senior Member, Brisbane
- Kerrie Ellen Laurence, Member, Sydney
- Gregory Mawkes, Services Member, Perth
- Robin Terence Regan, Services Member, Melbourne
- Andrea Michelle Treble, Senior Member, Melbourne

At 30 June 2005, there were 39 members of the VRB: the Principal Member, 12 Senior Members, 14 Services Members and 12 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 14.

The breakup of membership as at 30 June 2005 is set out in the following table:

**Table 12 – Members**

<b>Class of Member</b>	<b>Full-time</b>	<b>Part-time (women)</b>	<b>Total (women)</b>
Principal Member	1	–	1
Senior Member	–	12 (6)	12 (6)
Services Member	–	14	14
Member	–	12 (8)	12 (8)
<b>Total</b>	<b>1</b>	<b>38 (14)</b>	<b>39 (14)</b>

Full details of the VRB membership as at 30 June 2005 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 2004, there were 39 staff employed by the VRB. That figure was 41 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 2005 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 2005	Total June 2004
<b>ACT</b>	1	2 (1)	1 (1)		2 (2)		<b>6 (4)</b>	5 (4)
<b>NSW</b>		1	1 (1)		2 (2)	7 (4)	<b>11 (7)</b>	10 (7)
<b>VIC</b>		1			2 (1)	4 (3)	<b>7 (4)</b>	8 (5)
<b>QLD</b>		1 (1)	1		4 (3*)	5 (5 <sup>†</sup> )	<b>11 (9)</b>	10 (8)
<b>SA</b>			1		1 (1)	1 (1)	<b>3 (2)</b>	3 (2)
<b>WA</b>				1 (1)		1 (1)	<b>2 (2)</b>	2 (1)
<b>TAS</b>			1				<b>1</b>	1
<b>TOTAL</b>	<b>1</b>	<b>5 (2)</b>	<b>5 (2)</b>	<b>1 (1)</b>	<b>11 (9)</b>	<b>18 (14)</b>	<b>41 (28)</b>	39 (27)

\* 1 QLD part-time, † 1 QLD part-time

## Resources

Table 14 outlines estimated expenditure for the VRB for the 2003-04 and 2004-05 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 2004-05 was \$7 223 000 compared to \$6 775 000 in 2003-04. Average expenditure on each application finalised by the VRB during the year was \$1 398. In 2003-04 the figure was \$1 286.

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.

A considerable portion of the increased expenditure (approximately 40%) can be attributed to the fact of an additional payday falling within the reporting year. In addition 3 members of staff were recruited during the year. Two staff were appointed (both at the APS 6 level – one in Sydney and one in Brisbane) to focus on issues of case appraisal. These appointments flowed in part from recommendations made by the Senate Finance and Public Administration References Committee in its December 2003 Report on Administrative Review of Veteran and Military Compensation and Income Report. The Director, Legal and Information (EL 1 level), who resigned in September 2003 was also replaced during the year.

Additional expenditure was incurred in respect of travel of members to hearings interstate. This occurs as a deliberate matter of policy to ensure consistent levels of expertise and practice across the membership and increases the cost to the VRB from time to time as the workload declines or fluctuates in individual States. This has been mitigated to an extent by the gradual increase to 95 of reviews conducted by video (an increase of 34 over the previous year). The VRB expenditure is kept under careful and constant review.

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

	1 July 03 – 30 June 04		1 July 04 – 30 June 05	
<b>Salaries</b> (includes superannuation)				
Members	2 205		2 309	
Staff (includes o/time & temps)	2 220	<b>4 425</b>	2 470	<b>4 779</b>
<b>Rental of Premises</b> (includes outgoings)	1 155	<b>1 155</b>	1 126	<b>1 126</b>
<b>Applicants’ Expenses</b>	15	<b>15</b>	19	<b>19</b>
<b>Fares</b>				
Members	156		217	
Staff	48		53	
Cars (includes parking)	38	<b>242</b>	61	<b>331</b>
<b>Travelling Allowance</b>				
Members	256		319	
Staff	45	<b>301</b>	46	<b>365</b>
<b>Office Requisites</b>				
Stationery and office requisites	25		29	
Library	76		76	
Printing	25		18	
Equipment	33	<b>159</b>	33	<b>156</b>
<b>Postage and Telephones</b>				
Postage	23		27	
Telephones/fax	53	<b>76</b>	38	<b>65</b>
<b>Office Services</b>				
Furniture	–		21	
Plant hire	6	<b>6</b>	4	<b>25</b>
<b>Computer Equipment</b> (includes services)				
vrbsAM (System for Application Management) development	270	<b>270</b>	223	<b>223</b>
<b>Incidental Expenditure</b>				
Freight & cartage	35		45	
Advertising	6		2	
Training	17		19	
Miscellaneous	8	<b>66</b>	3	<b>69</b>
<b>Comcare Premium</b>	47	<b>47</b>	53	<b>53</b>
<b>Archiving</b>	9	<b>9</b>	9	<b>9</b>
<b>Legal</b>	4	<b>4</b>	3	<b>3</b>
<b>TOTAL</b>		<b>6 775</b>		<b>7 223</b>

## 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 2003-04 figures, are shown in the following table:

**Table 15 – Representation at VRB Hearings**

	NSW	VIC	QLD	SA	WA	TAS	AUST
<b>Unrepresented</b>	115	47	74	10	20	5	271
<b>In absentia/Unrep</b>	113	72	63	14	13	6	281
<b>In absentia/Rep</b>	24	8	82	1	9	–	124
<b>Represented at hearing</b>	1 243	460	744	264	164	46	2 921
<b>Total</b>	1 495	587	963	289	206	57	3 597
<b>% Represented 2004-05</b>	<b>84.7%</b>	<b>79.7%</b>	<b>85.8%</b>	<b>91.7%</b>	<b>84.0%</b>	<b>80.7%</b>	<b>84.7%</b>
% Represented 2003-04	82.5%	86.3%	88.2%	91.0%	85.9%	82.8%	85.8%

A substantial proportion (31%) 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 2004-05 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**

<b>Location</b>	<b>2003-04</b>	<b>2004-05</b>
Bundaberg, Qld	18 (50)	10 (28)
Cairns, Qld	11 (32)	3 (9)
Canberra, ACT	34 (97)	27 (81)
Currumbin/Palm Beach/Tweed Heads, Qld	114 (278)	54 (148)
Launceston, Tas	6 (17)	13 (36)
Mackay, Qld	3 (9)	3 (8)
Townsville, Qld	17 (48)	17 (50)
<b>Total days of hearings</b>	<b>203 (531)</b>	<b>127 (360)</b>

In 2000-01, the VRB trialed video hearings to enhance its service to applicants in regional areas. The number of video hearings has since 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 2004-05, the VRB held video hearings in the following sites:

**Table 17 – Video Hearings**

VRB Brisbane			VRB Melbourne		
Remote location	2003-04	2004-05	Remote location	2003-04	2004-05
Bundaberg, Qld	1	2	Albury, NSW	2	2
Cairns, Qld	–	22	Bairnsdale, Vic	1	1
Emerald, Qld	1	–	Benalla, Vic	1	1
Hervey Bay, Qld	5	2	Burnie, Tas	–	2
Launceston, Tas	–	2	Geelong, Vic	–	3
Mackay, Qld	6	12	Hobart, Tas	–	4
Rockhampton, Qld	13	13	Korumburra, Vic	–	1
Surfers Paradise, Qld	1	–	Mildura, Vic	2	2
Townsville, Qld	7	10	Mt Gambier, SA	1	–
VRB Sydney, NSW	1	–	Rosebud, Vic	–	2
VRB Melbourne, Vic	1	1	Sale, Vic	1	2
			Sea Lake, Vic	6	1
			Traralgon, Vic	3	1
			Wangaratta, Vic	1	–
			Warragul, Vic	2	–
			Wonthaggi, Vic	4	9
			VRB Brisbane, Qld	1	–
<b>Total Hearings</b>	<b>36</b>	<b>64</b>	<b>Total Hearings</b>	<b>25</b>	<b>31</b>

## **Repatriation Commission, Military Rehabilitation and Compensation Commission, and Service Chief Representation at VRB Hearings**

The Repatriation Commission and the Military Rehabilitation and Compensation Commission are formally parties to all proceedings before the VRB for matters arising under the *Veterans' Entitlements Act 1986* and *Military Rehabilitation and Compensation Act 2004* respectively. Additionally, the service chiefs may choose to be a party in applications concerning the *Military Rehabilitation and Compensation Act 2004*. As a matter of practice, however, they have seldom been represented at VRB hearings. During 2004-05 neither of the Commissions nor a service chief was represented in any VRB 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 military history and 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 editions of *VeRBosity* were published.

The VRB also publishes:

- an information brochure, which is sent to all applicants prior to their hearing;
- a booklet entitled *Procedures for Advocates* to assist advocates who appear at VRB hearings;
- an *Operations Manual*, which sets out details of the administrative processing of applications to the VRB; and
- a monthly summary of statistics relating to the operations of the VRB.

In order to optimise the quality of VRB decisions, it is important that members, applicants and advocates have access to appropriate library resources to enable research on material not contained in sources such as *VeRBosity*. Some library and source material is maintained in each Registry with the larger concentrations in Canberra, Sydney, Melbourne and Brisbane. These materials can be provided overnight between Registries.

### **Internet site**

The VRB also maintains a comprehensive Internet site ([www.vrb.gov.au](http://www.vrb.gov.au)) with detailed information and publications for applicants and their representatives, including material and links concerning jurisdiction and procedures, relevant legislation, case law, and guidance for practitioners.

### **Veterans' law course**

In 2004-05, 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 2006.

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 2004-05 there were over 150 attendances by veterans' representatives at these workshops held in Canberra, Sydney, Melbourne, Brisbane, Adelaide, Perth, 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 16 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.

Three of the 16 complaints were referred for comment from the Minister's office and involved the following issues: concern over conduct of a hearing (2); concern over VRB procedures (1). The Executive Officer or the Principal Member investigated each of these matters and responses were provided.

Other complaints sent to the VRB were: concern at the decision or aspects of the decision (3); concern over conduct of the hearing (3); concern over VRB procedures (3); concern over length of appeal process (1); concern over the location of the hearing (1); concern over advice given (1); concern over the constitution of the VRB Panel (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), the *Military Rehabilitation and Compensation Act 2004* (MRCA) 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.

## High Court of Australia

During the year, two applications for special leave to appeal to the High Court were heard in matters arising under the VEA (the matters of *Sleep v Repatriation Commission* [2004] HCATrans 298 and *Roncevich v Repatriation Commission* [2004] HCATrans 379). The High Court refused the application in *Sleep*, but granted leave to appeal in *Roncevich*. The appeal was heard on 21 April 2005 ([2005] HCATrans 208), but no decision was handed down by the end of the year. There are no other applications before the High Court in matters arising under the VEA.

## 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 20 decisions, including 3 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:

*Hill v Repatriation Commission* [2004] FCA 851  
*Ward v Repatriation Commission* [2004] FCA 1163  
*Schmidt v Repatriation Commission* [2004] FCA 1158  
*Repatriation Commission v Turner* [2004] FCA 1184  
*Hardman v Repatriation Commission* [2004] FCA 1174  
*Anderson v Repatriation Commission* [2004] FCA 1009  
*Ryde v Repatriation Commission* [2004] FCA 1281  
*Repatriation Commission v Graham* [2004] FCA 1287  
*Mines v Repatriation Commission* [2004] FCA 1331  
*Brennan v Repatriation Commission* [2004] FCA 1431  
*Peacock v Repatriation Commission* [2004] FCA 1449  
*Youngnickel v Repatriation Commission* [2003] FCA 1691  
*Wright v Repatriation Commission* [2005] FCA 7  
*Fenner v Repatriation Commission* [2005] FCA 27  
*Hill v Repatriation Commission* [2005] FCAFC 23  
*Guy v Repatriation Commission* [2005] FCA 562  
*Hardman v Repatriation Commission* [2005] FCAFC 83  
*Ryde v Repatriation Commission* [2005] FCAFC 108  
*Giesen v Repatriation Commission* [2005] FCA 846  
*Repatriation Commission v Codd* [2005] FCA 888

## **Federal Magistrates Court of Australia**

During the year, the Federal Magistrates Court handed down 5 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):

*James v Repatriation Commission* [2004] FMCA 548  
*Griffin v Repatriation Commission* [2004] FMCA 486  
*Roberts v Repatriation Commission* [2004] FMCA 926  
*Hayes v Repatriation Commission* [2005] FMCA 125  
*Steicke v Repatriation Commission* [2005] FMCA 126

## Issues Dealt with by Court Decisions

### **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 (SoP) 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.

The case of *Hill* was appealed and dismissed by the Federal Court and the Full Court of the Federal Court within the year. The Court at first instance found the AAT had erred by not strictly applying the *Deledio* steps, but that did not mean it was prevented from adequately addressing the ultimate question. The Full Court agreed with the primary judge, but did caution that failure to observe the steps may give rise to an error of law. However, the Full Court also noted that if the AAT arrived at a decision that was clearly correct on the material before it, the Court may decline to set the decision aside even if an error of law had been demonstrated. It was also argued on appeal that had the AAT followed the *Deledio* steps it would have been able to raise an alternative hypothesis. The Full Court accepted that this could happen, but noted that it does not extend to an obligation to consider alternative hypotheses that are fanciful or speculative.

In *Hardman*, the Court at first instance found no error with the AAT's application of the *Deledio* steps, however on appeal the Full Court found that the AAT had erroneously engaged in fact-finding at step 3. The AAT had found that the hypothesis was not reasonable because the material before it 'overwhelmingly' suggested a clinical onset of depression more than two years after any relevant stressor. This finding indicated that the material pointed not in one direction (away from the hypothesis), but in two directions, one supporting the hypothesis and the other pointing, albeit 'overwhelmingly', in the other direction. Thus it could not be said that on the whole of the material the reasonable hypothesis was not raised.

Like *Hardman*, *Youngnickel's* case turned on the question of clinical onset. It concerned the application of the *Deledio* steps and the nature of the evidence that had to exist before it could be said that the hypothesis fitted the template of a SoP at step 3 of the process. The AAT had found that the material pointed to Mr Youngnickel experiencing a severe stressor but said that there was 'no material which pointed to features and symptoms of alcohol abuse/dependence' within 2 years after the alleged stressor as required by the relevant factor. The Court upheld the AAT's decision,

holding that the meaning of clinical onset was that ‘the disorder itself must be present at the specified time’.

In *Steicke* the Federal Magistrates Court also upheld an AAT decision where there was no material pointing to a clinical onset within the period required by the relevant SoP factor.

In *Mines*, the Court addressed the necessary step of properly determining an appropriate diagnosis prior to the application of the *Deledio* steps. It held that such a determination must be made on the balance of probabilities. In the case of PTSD, which requires the experiencing of a traumatic event as part of the diagnostic criteria, the Court held that ‘the decision-maker must be reasonably satisfied that the traumatic event occurred before reaching the conclusion that the veteran suffered PTSD’.

In *Fenner*, the Court criticised the AAT’s approach to the evidence indicating that if the AAT were to be satisfied to the ‘beyond reasonable doubt’ level of satisfaction, it is a requirement of procedural fairness that concerns about the credibility of the applicant’s evidence be put to the applicant when he or she is giving that evidence. The Court held that for the beyond reasonable doubt standard of proof to be achieved, it is not sufficient to prefer other evidence to that of the applicant’s or the applicant’s witnesses without seriously challenging their evidence.

In *Griffin’s* case, the Federal Magistrates Court noted that while there was some material pointing to satisfaction of the SoP factor, it was open to the AAT to find, on the whole of the material, that the material did not point to satisfying the factor in its entirety. The Court also noted that when an element of a factor is a medical condition, there needs to be medical evidence to point to that condition existing.

The Federal Magistrates Court in *Roberts* refused to extend time to appeal a decision of the AAT not to accept the applicant’s emphysema as being war-caused on the basis of a service-related smoking habit. The Court noted the merits of the application, and it observed that the evidence pointed only to a temporal rather than causal relationship between the applicant’s service and his smoking habit.

### **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’ and followed on from an examination of the issue in the cases of *Woodward v Repatriation Commission* [2003] FCAFC 160 and *Repatriation Commission v Stoddart* [2003] FCAFC 300 in the previous year.

In *Schmidt*, the Federal Court held that ‘a subjective fear for one’s life or safety is a necessary integer of the requirement’ of experiencing a severe stressor. In *Turner* the

Federal Court considered the factor, 'inability to obtain appropriate clinical management' in relation to a member's PTSD which had been initially caused by an incident outside eligible service. Although critical of the AAT's application of 'cultural factors' to satisfy the 'inability to obtain appropriate clinical management factor', the Court upheld the AAT's decision.

In *Brennan* the applicant sought to rely on a contention that receiving news of his brother's death was a severe psychosocial stressor which led to generalised anxiety disorder. The Court noted that there was very little evidence on which the AAT could have found that this event was a relevant stressor and upheld the AAT's decision.

In *Guy's* case, the Court held the AAT had found all the requirements required by the definition of 'experiencing a severe stressor' but then contradicted itself by finding the incident to be only an 'anxious moment'. The Court found that the correct approach is to ask 'whether the event might, or could possibly, evoke the relevant emotions.'

### **'Kind of death'**

In *Hayes*, the Federal Magistrates Court found no error with the AAT's finding that the kind of death suffered by the veteran was multiple myeloma, as opposed to a hypertension-related death.

In *Codd's* case, the Federal Court held that the AAT had erred in treating an alleged contributory cause of death as part of a hypothesis rather than determining whether the material before the tribunal was sufficient to satisfy it on the balance of probabilities that the veteran suffered the relevant symptoms of the alleged disease or that the disease contributed to the veteran's death.

### **Date of effect of grant of pension**

Two cases, *Ryde* and *Ward*, dealt with claims to have pensions backdated to earlier, rejected claims. *Ward* sought leave to appeal to the Full Court but was held to be outside the 21 day appeal period. *Ryde* was heard by both the Federal Court and Full Court but dismissed on the grounds of the well-settled principle that a claim for pension is spent once determined, and the process is initiated anew with the lodgment of a successive claim.

### **Special rate of pension**

In the case of *James* the Federal Magistrates Court considered one of rules for the special rate of pension for veterans aged over 65, namely that the veteran must have worked for the same employer for a continuous period of at least 10 years beginning before turning 65 years and continuing after that age. The applicant had sought to construe government work followed by similar work for a private company as

continuous. The Court rejected that argument stating that the VEA clearly required a continuous period of 10 years with the same employer.

*Anderson* concerned the test for the special rate of pension in s 24(1)(c) of the VEA. The AAT had decided that there was sufficient evidence to find that the veteran had ceased remunerative work many years prior to the claim for increase and for reasons other than his war-caused disabilities. The Court upheld the AAT's decision.

In *Graham* the Commission sought to argue that the AAT had erred in considering a managerial position that included manual labouring tasks as two separate types of work. The Court held that the AAT made no error in considering the different kinds of work activities as different kinds of remunerative work for the purpose of s 24(1)(c) because the test does not involve looking at a particular job, but requires an examination of the kind of remunerative work that the veteran had been undertaking and is now prevented from undertaking by reason of incapacity from war-caused injury or disease.

*Peacock's* case concerned the meaning of 'prevented' in the phrase 'prevented from continuing to undertake remunerative work the veteran was undertaking' in s 24(1)(c). The AAT had found that the fact that the veteran had tailored the termination of his contract of employment to coincide with the receipt of superannuation benefits was a factor that contributed to preventing him from continuing to undertake that kind of work. The Court held that this was no more than an inducement to retire. It did not 'prevent' the veteran from continuing to undertake that kind of work and so the AAT had made an error of law in saying that this precluded Mr Peacock meeting the 'alone' test. Nevertheless, the Court noted that the case still might not succeed under the test in s 24(2)(a) that deems there not to have been a loss of salary, wages or earnings if the person ceased work for a reason other than incapacity from an accepted disability.

In *Wright's* case the AAT had held that the applicant's artistic activity did not constitute remunerative work and was merely a hobby, and as a consequence he had not been genuinely seeking to engage in remunerative work. The Court disagreed and held that remunerative work should not be 'restricted to an action that is carried out with the intention of gaining one's livelihood.' Nevertheless, the Court was satisfied that the AAT had not erred in finding that in relation to the various types of work he had previously undertaken, the applicant was prevented from continuing to undertake them by reason of both war-caused and non war-caused factors, and so this error made no difference to the outcome of the case. Additionally, the Court held that the fact that Mr Wright was still creating and selling his paintings meant that he could not rely on that kind of work as work he had been prevented from continuing to undertake for the purpose of s 24(1)(c).

In the case of *Giesen* the Court held that it was open to the AAT to make the finding of fact that the applicant's non war-caused disabilities played a major role in

preventing him from obtaining any substantial remunerative work, and so the 'substantial cause' test could not be met.

## ***VeRBosity***

All Court decisions concerning veterans' entitlements and relevant military rehabilitation and compensation 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

All parties to a VRB application (including the applicant and, when relevant, the Repatriation Commission, the Military Rehabilitation and Compensation Commission, or a service chief) 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 relating to a matter under the *Veterans' Entitlements Act 1986* 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 or it is a matter under the *Military Rehabilitation and Compensation Act 2004*, the section 37 statement is prepared by the Department of Veterans' Affairs on behalf of the Repatriation Commission or the Military Rehabilitation and Compensation Commission. During 2004-05, the VRB was notified of the lodgement of 835 applications for review by the AAT of matters involving VRB decisions. During the same period, the VRB lodged 74 section 37 statements with the AAT. The average time taken for preparation and lodgement of those statements was 20 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 2004-05, there were 835 AAT applications and the VRB finalised 2 932 applications by decisions made at hearings. This represents an estimated appeal rate of 28.5%. The estimated appeal rate for 2003-04 was 27.8%.

The Repatriation Commission, the Military Rehabilitation and Compensation Commission and the service chiefs lodged no appeals in relation to a VRB decision during 2004-05.

Statistics obtained from the Administrative Appeals Tribunal indicate that, of applications finalised by the Veterans' Division of the AAT during the year:

- 32% were withdrawn by the applicants; and
- 38% were conceded in some respect by the Repatriation Commission.

Of the remaining 30% that were finalised by decisions formally published with reasons:

- 146 (52%) involved an affirmation of the decision under review; and
- 133 (48%) led to some part or all of 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.

There were no matters finalised in the AAT concerning appeals from the VRB under the *Military Rehabilitation and Compensation Act 2004*.

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 2004-05, there were 6 new applications concerning dismissal decisions lodged with the AAT. There was 1 dismissal case finalised at the AAT, which was withdrawn by the applicant.

# 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 2004-05, the Ombudsman did not notify the VRB of any complaints.

### **Freedom of Information Act 1982**

There were no requests to the VRB for access to documents under the *Freedom of Information Act 1982* during 2004-05.

## APPENDIX 4

### Membership of the Veterans' Review Board – By Category

	Commencement of Appointment	Expiration of Appointment
<b>PRINCIPAL MEMBER</b>		
Brigadier William Douglas Rolfe (Rtd)	8 April 1997	7 April 2008
<b>PART-TIME SENIOR MEMBERS</b>		
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 March 2008
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 March 2008
Commodore		
Alan Leslie Thompson AM (Rtd)	1 January 1998	30 September 2005
Ms Andrea Michelle Treble	1 June 2001	30 March 2008
Colonel Leslie James Young (Rtd)	1 October 1997	30 September 2005
Mr Charles Jeremy Ward	30 July 1998*	30 March 2008

- \* 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  
Mr Ward – Changed category: Member to Senior Member from 1 October 2004

## **PART-TIME SERVICES MEMBERS**

Mr Francis Harding Benfield Major General	28 May 1999	30 March 2008
Murray Phillip Blake AO MC (Rtd)	28 May 1999	30 March 2008
Lieutenant Colonel Francis Brown (Rtd) Wing Commander	1 June 2001	30 March 2008
Stuart Alexander Bryce (Rtd) Air Commodore	25 November 1991	30 March 2008
Frank Edward Burt OBE (Rtd) Rear Admiral	1 January 1998	30 September 2005
Anthony Michael Carwardine AO (Rtd) Commodore	1 January 1998	30 September 2005
James Stewart Dickson AM MBE (Rtd)	1 January 1998	30 September 2005
Group Captain Collins Joseph Fagan (Rtd)	1 January 1985	30 March 2008
Captain Allan John Farquhar RAN (Rtd) Brigadier	1 June 2001	30 March 2008
Patrick Thomas Francis Gowans (Rtd) Group Captain	1 January 1998	30 September 2005
Jonathon Scott Hamwood AM (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 March 2008
Colonel Robin Terence Regan CSC (Rtd)	28 May 1999	30 March 2008

## **PART-TIME MEMBERS**

Ms Zita Rose Antonios	1 June 2001	30 March 2008
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 March 2008
Ms Jackie Miriana Fristacky	1 October 1997	30 March 2008
Ms Janet Ann Hartmann	1 June 2001	30 March 2008
Ms Hilary Lorraine Kramer	30 July 1998	30 September 2005
Ms Kerrie Ellen Laurence	1 June 2001	30 March 2008
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

# 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

Colonel Leslie James Young (Rtd)

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

Lieutenant Colonel Francis Brown (Rtd)

Air Commodore Frank Edward Burtt 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**

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  
Mr Charles Jeremy Ward

### **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

**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 Services Members**

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 at p 34, Appendix 4 at p 61 and Appendix 5 at p 63. Details of the function of the VRB are set out under Objectives, Function and Powers at p 4.

The following provides the additional details required by section 8 of the *Freedom of Information Act 1982*.

### **Powers of the VRB**

The powers of the VRB are set out in the *Veterans' Entitlements Act 1986*, as modified by the *Military Rehabilitation and Compensation Act 2004*. 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. 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; or it can assess an amount of compensation to be paid or remit the matter to the Military Rehabilitation and compensation 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 or the Military Rehabilitation and Compensation Commission 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 or the Military Rehabilitation and Compensation Commission to provide 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, the Military Rehabilitation and Compensation 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 *Freedom of Information Act 1982*.

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 at p 82.

# APPENDIX 7

## Occupational Health and Safety and 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. The VRB is included within the Department's occupational health and safety strategy, which is outlined in the Department's Annual Report.

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, People Policies 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](http://www.vrb.gov.au). You can also email the VRB on [contact@vrb.gov.au](mailto: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 or determinations 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; and
- the Military Rehabilitation and Compensation Commission on such matters as:
  - liability for compensation for injury, disease or death;
  - compensation for permanent impairment;
  - compensation for incapacity for work or incapacity for service;
  - rehabilitation programs;
  - compensation for medical treatment costs; and
  - allowances and other benefits; and
- the Service Chiefs of the Army, Navy, and Air Force in relation to rehabilitation programs for members of the Forces.

### FUNCTION

On application for review the VRB is to:

- have regard to the evidence before the Repatriation Commission, the Military Rehabilitation and Compensation Commission or a service chief when the decision or determination 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 2005-06***

- Assess staffing levels in Registries in light of changing workloads.
- Assess adequacy of Case Appraisal method.
- Conduct Registrar Meeting.

#### 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 2005-06***

- Continue enhancement of vrbSAM.
- Undertake project to incorporate decision writing with vrbSAM.

**Strategy 3 – Continuous Training**

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

***Priorities 2005-06***

- Maintain register of staff training and relate to performance assessments.
- Implement standard documentation for decision writing in relation to VEA and 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 2005-06***

- 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)  
James McKay

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](mailto:contact@vrb.gov.au)

### **New South Wales Registry**

Level 2, Building B  
Centennial Plaza  
280 Elizabeth Street  
Surry Hills NSW 2010

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, Bank of Queensland Building  
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

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