

Veterans' Review Board

Annual Report
2007-08

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The Hon Alan Griffin MP
Minister for Veterans' Affairs
Parliament House
CANBERRA ACT 2600

Dear Minister

In accordance with subsection 215(4) of the *Veterans' Entitlements Act 1986*, I present my report on the operations of the Veterans' Review Board for the year ending 30 June 2008.

This report has been prepared in accordance with the Requirements for Departmental Annual Reports issued by the Department of Prime Minister and Cabinet, to the extent that they are relevant to the Board's operations.

Yours sincerely

A handwritten signature in blue ink that reads "Michael Griffin". The signature is written in a cursive style.

M GRIFFIN
Principal Member

30 September 2008

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2007-08 Principal Member's Overview

I took up the appointment as Principal Member on 26 June 2007 and shortly thereafter commenced a strategic review of the Veterans' Review Board's (VRB) operations and structures.

Several significant initiatives to enhance service delivery to Australian Defence Force (ADF) members and veterans and to achieve cost efficiencies were identified in the review. Some of those changes have been implemented during the reporting period with others planned to follow during the coming year.

The changes and new initiatives include:

- The appointment of additional members in Western Australia, South Australia, Victoria, New South Wales, Australian Capital Territory and Queensland to maintain capacity to conduct hearings;
- The use of Administrative Appeals Tribunal facilities to conduct VRB hearings in Canberra and Adelaide;
- The use of Federal Court facilities to conduct VRB hearings in Hobart;
- The publication of various submission templates on the VRB internet website for the assistance of veterans and representatives;
- The regular and timely publication of *Practice Notes* on the VRB internet website explaining recent developments in case law, legislation and procedure;
- The biannual publication of a more in-depth *Verbosity* journal expanding on recent developments in case law, legislation and procedure;
- The development and quarterly distribution of a customer satisfaction survey to all VRB applicants for Quality Assurance purposes;
- The development and delivery nationally of a standardised training package for Ex-Service Organisation (ESO) representatives;
- The development of an objective competency based performance appraisal system for VRB members;
- The introduction of alternative dispute resolution through the mechanism of confidential and voluntary 'neutral evaluation' by a senior member of applications for review;
- The concentration of Principal Registry functions in the VRB Sydney office to allow for economies of scale;
- The re-structure and streamlining of VRB staffing to allow for multi-skilling and redundancy systems;
- The selected targeting of older VRB applications for expedited hearing to reduce delays for veterans and widows;
- The introduction of member appraisal of applications earlier in the case management process to reduce the incidence of adjournments;

- The development of a proposal for legislative amendment to allow for decisions favourable to applicants to be made 'on the papers' where possible.

The operations of the VRB nationally maintained a high volume of hearing and deciding review applications, across the spectrum of the Board's jurisdictional base. The total number of applications for review continued to follow the recent historical decline. However, the number of hearings has remained almost constant over the past five years. Moreover, the complexity of issues contained within the disability applications continues to increase in inverse proportion to the rate of decline. That is, as the number of veterans lodging applications for review reduces annually, the number of issues arising in those applications and their degree of complexity increases at a similar rate. In fact, the average number of issues that must be decided in an application for review of disability matters has increased by some seventy two per cent (72%) over the past five years. As I indicated last year, this may be a reflection of the changing demographic of the veteran community and the medical issues confronting veterans and their bereaved spouses.

The Board has benefited considerably from consultation and interaction with various key stakeholders in the veteran community during the year. The feedback and comment received in various forums in capital cities and regional centres has informed the strategic review, the new initiatives and the introduction of changes in procedures and structure. By way of example, following a suggestion from an ESO congress, the VRB sought and obtained the assistance of the Chief of Defence Force to provide military refresher and familiarisation training for VRB members annually.

In his last annual report, my predecessor Brigadier Bill Rolfe wrote, 'Overall the VRB continues to provide a service that is valued by veterans, members and widows...In spite of the difficult nature of its role the VRB holds a valued place in the compensation determining system'. With respect I concur entirely with that view and again adopt it as an accurate statement of the current status of the Board.

I conclude by thanking the staff and members of the VRB for their commitment to serving the members of the ADF, the veterans and their families. I also want to thank the key stakeholders in the veterans community such as the Vietnam Veterans groups, the Returned and Services League, the Peacekeepers and Peacemakers associations, Legacy and several individual representatives who have offered support to me and the Board. I wish to acknowledge the support given to me and to the Board by the Minister for Veterans' Affairs and his staff, and the assistance provided by the Department of Veterans' Affairs under Mr Mark Sullivan, and by the Administrative Appeals Tribunal under Justice Downes.

I look forward to the VRB maintaining the high quality level of service to the veteran and defence communities.

Objectives, Function, Powers and Jurisdiction

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* (the VEA), which came into effect on 22 May 1986. Since then the VRB's operations have been governed by the VEA.

In conferring additional jurisdiction on the VRB, the *Military Rehabilitation and Compensation Act 2004* (the MRCA) applies provisions of the VEA with some modifications. This means that the VRB operates under the VEA, as modified, when deciding matters under the MRCA 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;
 - claims for the grant or assessment of attendant allowance;
- 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;
 - treatment;
 - rehabilitation programs;
 - allowances and other benefits;
- 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 VEA. For the purposes of reviewing determinations under the MRCA and the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*, the VRB's powers in Part IX of the VEA are modified by s 353 of the MRCA.

Appendix 7 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 relevant legislation.

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 (the MRCC). 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.

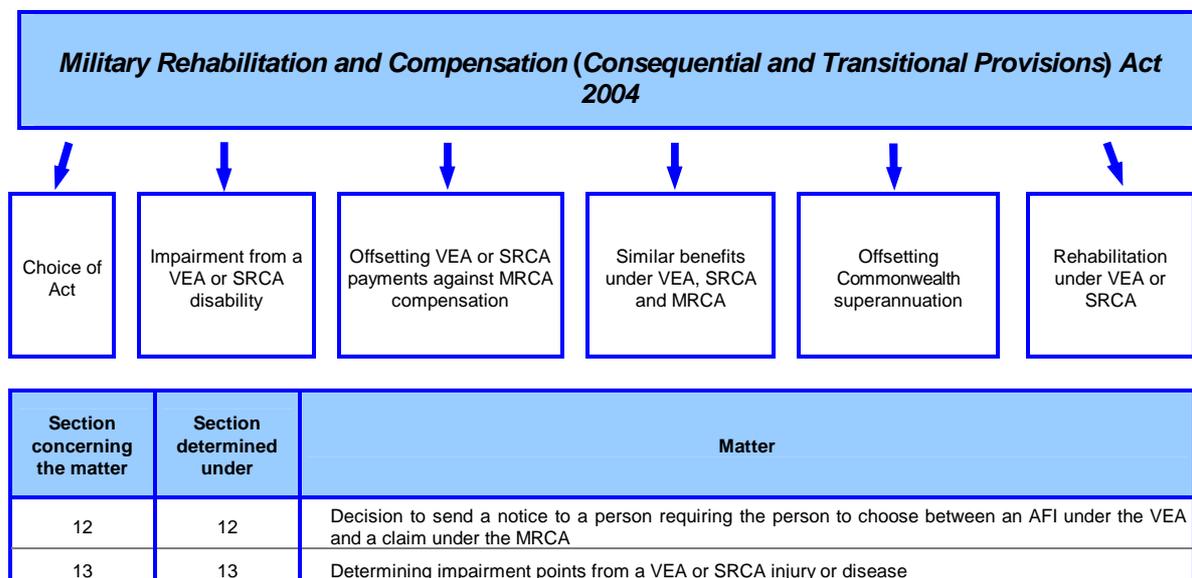
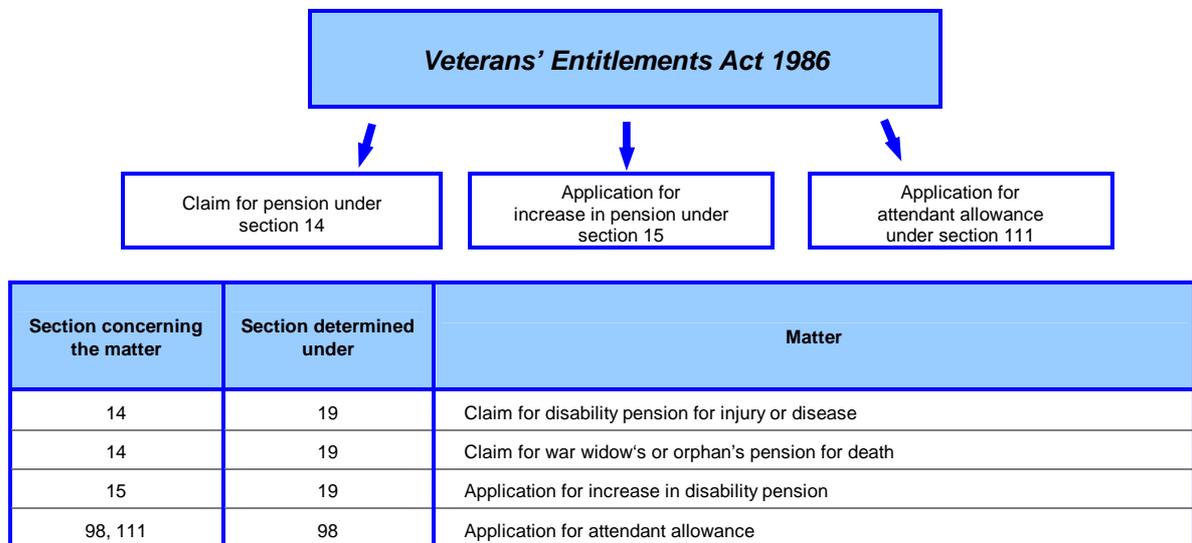
In conducting a review of a decision or determination, the VRB may, by s 139(3) of the VEA, exercise all the powers and discretions of the primary decision-maker. It may affirm, vary or set aside the decision under review and, where appropriate, substitute its own decision. The VRB does not have a general power to remit matters to the Repatriation Commission or the MRCC. This means that it must make a decision or determination itself using the same powers that the relevant Commission could use if it were deciding the matter again. The only limited power of remittal that the VRB possesses is in relation to the assessment of a rate of pension upon the acceptance of an injury or disease as war-caused or defence-caused under the VEA, or the assessment of an amount of compensation if the VRB has granted compensation under the MRCA.

Decisions and determinations 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.

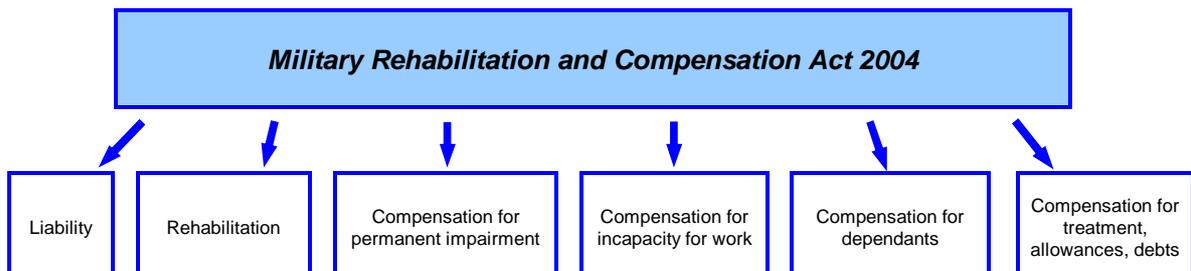
The VRB aims to do all it can to ensure that those seeking a review quickly receive their proper entitlement under veterans' law and military rehabilitation and compensation law.

Reviewable decisions

The VRB does not have a general power to review decisions made under the VEA or MRCA. As a statutory tribunal it has only those powers given to it by legislation. The VRB must be able to identify a specific provision that authorises it to make a particular decision or take a particular action. Each decision must relate to a prior decision – the decision under review. The VRB substitutes its own decision for the decision it is reviewing if it thinks the decision should be changed. It makes a new decision in place of the previous decision. In substituting that for the original decision, the VRB may exercise all the powers and discretions that are conferred on the Repatriation Commission, the MRCC or a service chief. The legislative provisions concerning decisions or determinations that the Board has jurisdiction to review are set out below.



Section concerning the matter	Section determined under	Matter
14	14	Offsetting VEA and SRCA payments against Special Rate Disability Pension under the MRCA
15	15	Determine whether a benefit under the VEA or SRCA is a 'similar benefit' to a MRCA benefit
16	16	Offsetting Commonwealth superannuation amounts against MRCA compensation
17	17	Determine the weekly compensation under MRCA if the person has redeemed compensation under SRCA
18	18	Determine that a VEA or SRCA rehabilitation stop being provided and approve instead a new program

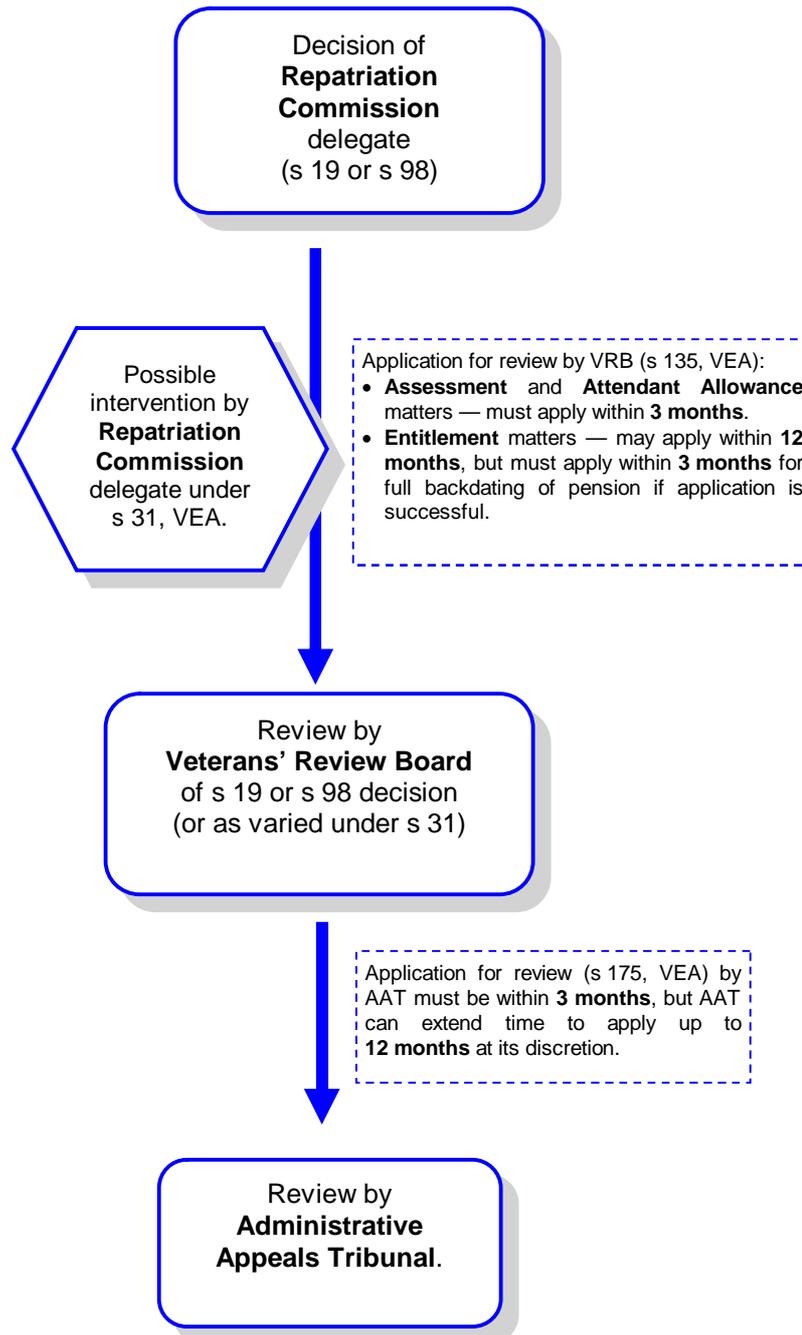


Section concerning the matter	Section determined under	Matter
CHAPTER 2		ACCEPTING LIABILITY
23	333	Liability for service injury or disease
24	333	Liability for service death
CHAPTER 3		REHABILITATION
44	44	Whether to carry out an assessment for rehabilitation
45	45	Require a person to undergo an examination
48	48	Payment of costs reasonably incurred in connection with an examination
51	51	Whether the person is to undertake a rehabilitation program
51	51	Content of a rehabilitation program
53	53	Cessation or variation of a rehabilitation program
58	333	Whether an alteration, aid or appliance is reasonably required
58	333	Amount of compensation for alteration, aid or appliance
61	61	Assist the person in finding suitable work
64	64	Appointment of a case manager
CHAPTER 4		COMPENSATION FOR MEMBERS AND FORMER MEMBERS
68	333	Whether the person suffers an impairment that is permanent and stabilised
68	333	Degree of impairment
68	333	Date on which the person became entitled to compensation under s68
71	333	Additional compensation
74	333	The effect on lifestyle
75	333	Interim compensation
78	78	Whether to extend the choice period
82	333	Amount of compensation for financial advice
89	333	Amount of compensation for incapacity for service or work for members
118	333	Amount of compensation for incapacity for service or work for former members
201	201	Whether to extend the choice period
203	333	Whether to receive special rate disability pension

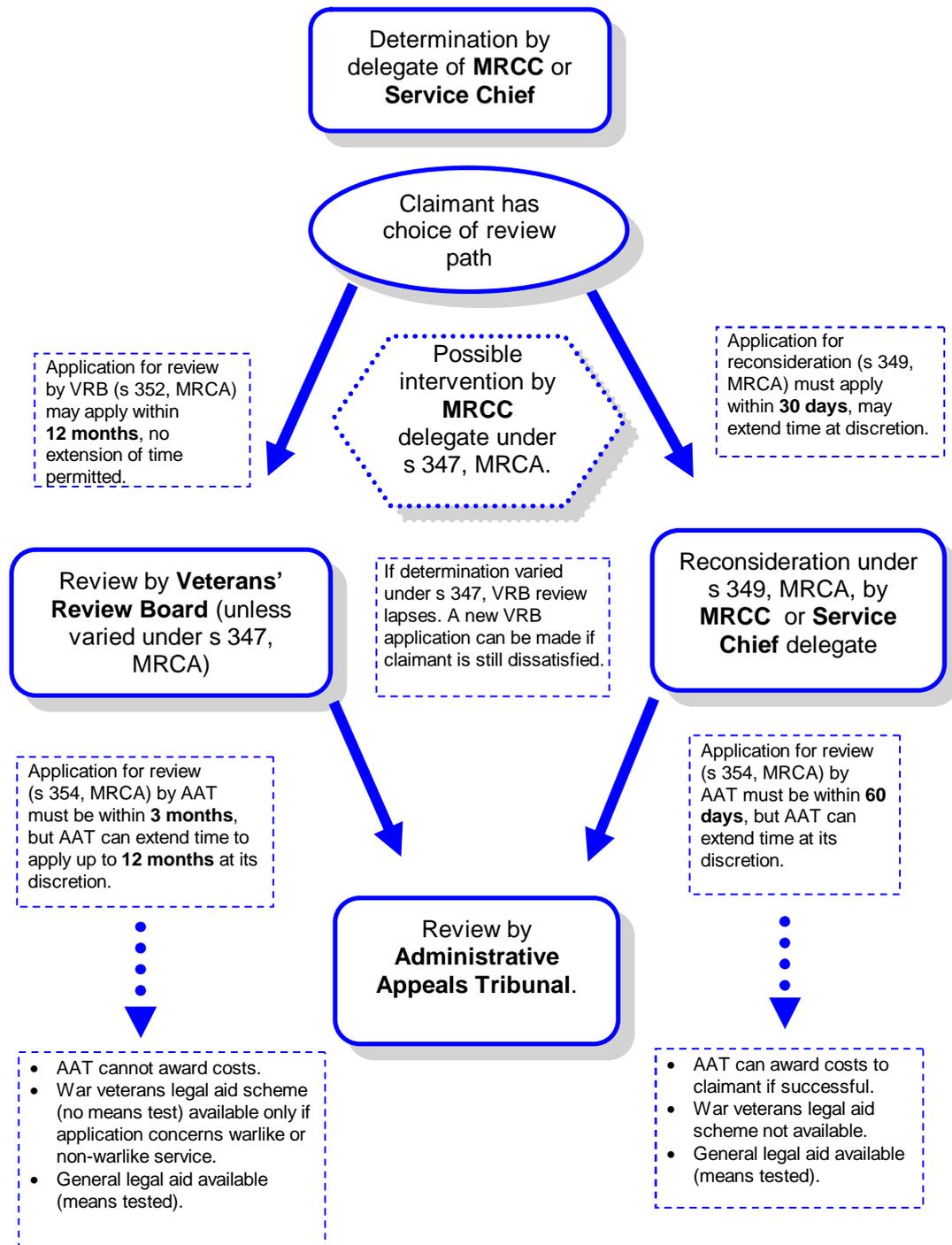
Section concerning the matter	Section determined under	Matter
206	333	Amount of compensation for financial advice
212	333	Compensation under the Motor Vehicle Compensation Scheme
214	333	Compensation for household services
217	333	Compensation for attendant care services
221	333	Telephone allowance
226	333	Compensation for loss of, or damage to, medical aids
CHAPTER 5		COMPENSATION FOR DEPENDANTS
233	333	Compensation for wholly dependent partners re death
236	236	Whether to extend the choice period
240	333	Amount of compensation for financial advice
242	333	Compensation for wholly dependent partners re permanent impairment and incapacity
244	333	Directions re payment if 2 or more partners entitled to compensation
245	333	Telephone allowance
251	333	Compensation for eligible young person re death
255	333	Compensation for eligible young person re permanent impairment and incapacity
257	333	Directions re payment if 2 or more eligible young persons entitled to compensation
263	333	Compensation for other dependants
267	333	Funeral compensation
CHAPTER 6		TREATMENT
271	276	Compensation for cost of treatment under Part 2
273	276	Compensation for cost of treatment before determination of entitlement under Part 3
291	333	Compensation for cost of accommodation relating to treatment
291	291	Approval of an attendant to accompany the patient
293	333	Compensation for cost of journey relating to treatment
297	333	Compensation for transportation of another person to hospital or mortuary
300	333	Pharmaceutical allowance
315	315	Amount of overpayment to be recovered
316	316	Amount of interest to be recovered
317	317	Reduction of payment because of previous overpayment
CHAPTER 7		CLAIMS
320	320	Approval of person to make claim on behalf of a person
325	325	Needs assessment
328	328	Requiring a medical examination
330	330	Refusal to deal with a claim for failure to comply with obligation notice
333	333	Determination of claim for compensation
340	340	Determination overriding RMA decision concerning a SoP
342	342	Onset date of incapacity for service or work
343	343	Date of death
CHAPTER 10		LIABILITIES APART FROM THE ACT
398	398	Deductions from an award of damages for compensation paid and costs incidental to claim
CHAPTER 11		MISCELLANEOUS
424	333	Special assistance
428	428	Amount of debt that should be written off
429	429	Amount of debt that should be waived

The determining systems

The VEA system



MRCA determining system



Organisation

The VRB is an agency within the Veterans' Affairs portfolio. It performs its adjudicative functions by the allocation of members to the hearing of particular cases.

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.

The VRB has its Principal Registry in Sydney and a presence in each state capital. The Principal Registrar 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 Principal Registrar is assisted by two Directors: one is responsible for the VRB's corporate services and the other for the VRB's legal services. A Registrar in each State is responsible to the Principal Registrar for the administrative operations of the VRB in each State. The Registrar in Victoria is also responsible for operations in Tasmania.

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 14.

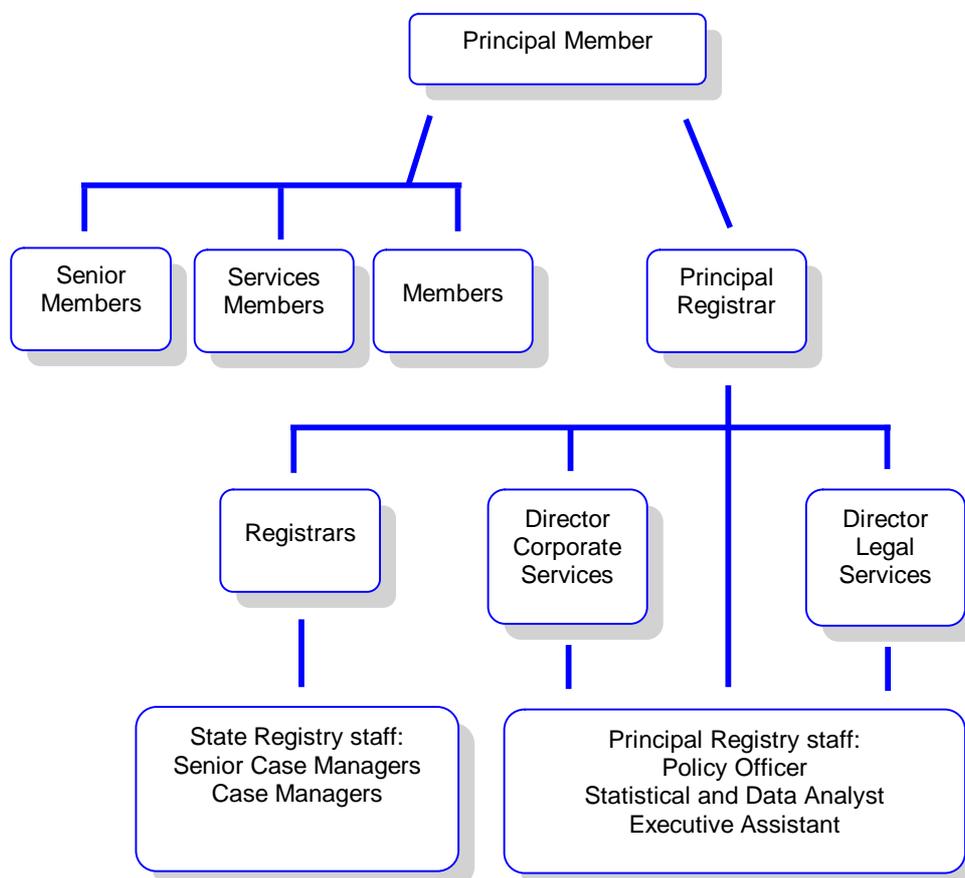
Membership

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 only circumstances in which VRB members can be removed from office are those set out in section 164 of the VEA. They are:

- proved misbehaviour;
- physical or mental incapacity;
- bankruptcy;
- engagement in outside employment without approval (if a full-time member);
- absence without leave for 14 consecutive days, or 28 days in any 12 months (if a full-time member).

VRB Structure



Operations

VRB Procedures

The VEA sets out the broad procedural requirements to be followed by the VRB in dealing with applications under that Act, and as modified by the MRCA for applications for review of determinations made under that Act or the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*. 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 VEA); or
- the Military Rehabilitation and Compensation Commission (for a matter under the MRCA); and
- if the matter concerns rehabilitation of a serving member of the ADF under the MRCA, 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 (s 147(2) of the VEA).

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 MRCA or an application concerning an entitlement matter under the VEA 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 VEA 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 s 137 of the VEA. 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 MRCC formally transmits the relevant documents to the VRB.

The documents comprise:

- the s 137 report;
- any comments or further evidence submitted by the applicant in response to the s 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 s 31 of the VEA, 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 s 347 of the MRCA, the MRCC can reconsider its original determination in light of the applicant's comments, or any further evidence submitted by the applicant or obtained by the Commission.

Section 148 Notice

On receiving these documents from the Department or the MRCC, the VRB, in accordance with s 148 of the VEA, 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 review 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 s 148(4) of the VEA, 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.

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 preparation of 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 MRCC, under s 148(6A) of the VEA, to conduct further investigations or obtain further documents essential to the application being finalised but not necessarily supportive to either party.

Case appraisal

Case Managers conduct a limited form of case appraisal when section 137 reports are received from the Department and again when a Certificate of Readiness is lodged. In a number of instances, applicants are assisted in the evidentiary development of their cases and in others they are assisted in obtaining representation. The VRB has begun to involve members in the examination of cases at early stages to assist in clarifying issues and evidentiary development.

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 relevant 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 or digital media to provide an accurate record of what is said. Copies of these tapes or CDs are made available free of charge to the parties on request, or the original recording may be listened to at the VRB's premises. The recording 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 – it cannot generally remit the decision-making to the relevant Commission.

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 MRCC to seek additional information, reports or evidence for consideration by the VRB.

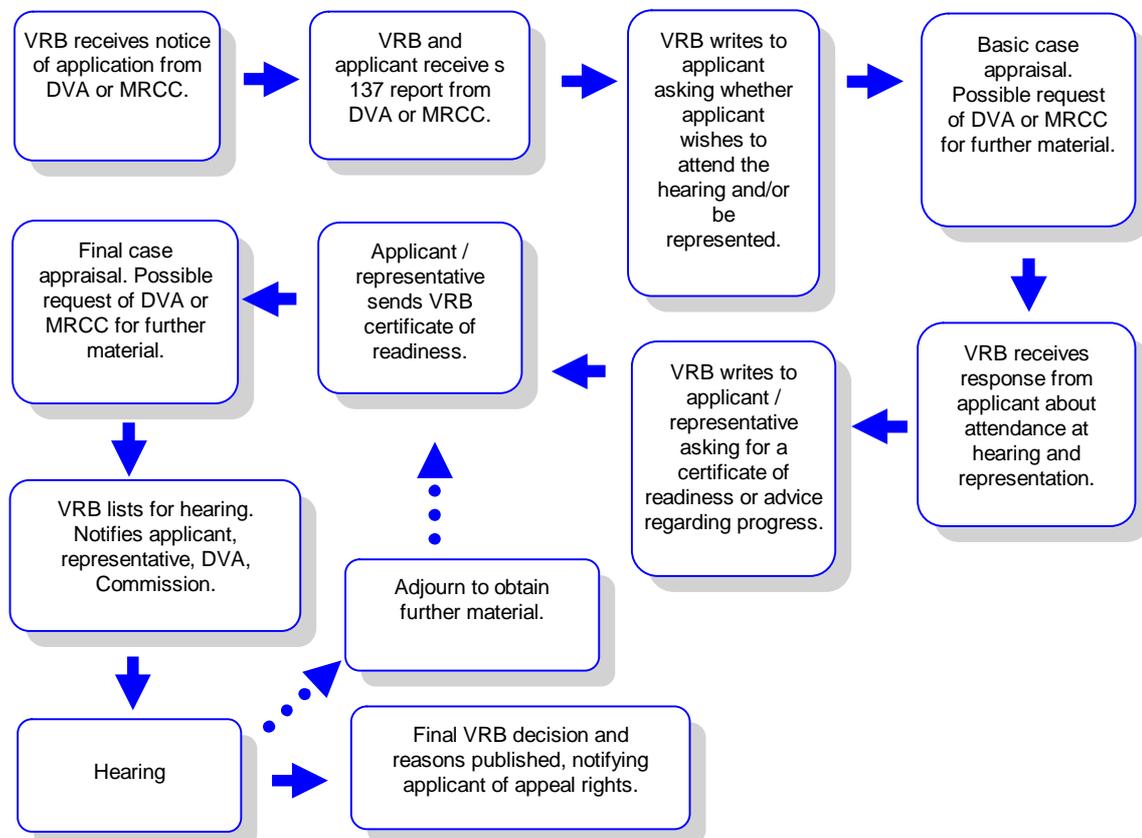
The above paragraphs reflect the procedures followed in most cases. In some cases, however, an application will raise different considerations – for example, questions may arise whether an application comes within the scope of VRB review as set out in s 135 of the VEA or s 352 of the MRCA, or whether 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.

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

The application process



Further review rights

The applicant, the Repatriation Commission, the MRCC, or a service chief may apply to the AAT for a review of a VRB decision or determination affirming, varying or setting aside the decision or determination 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 (s 155AA and s 155AB of the VEA).

From a decision of the AAT, a party may appeal to the Federal Court of Australia on a question of law. That Court may, at its discretion, transfer the appeal to the Federal Magistrates Court.

Under the *Administrative Decisions (Judicial Review) Act 1977* (the AD(JR) Act) 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 (s 10, AD(JR) Act). An application for judicial review may also be brought under s 39B of the *Judiciary Act 1903*. An action may be commenced in the High Court for a constitutional writ or injunction under s 75(v) of the *Constitution*.

Outcome 1: Finalise high numbers of applications for review

In the course of the year, 3 427 new applications were lodged: 3 359 under the VEA and 68 under the MRCA.

There were 3 452 applications heard in the year: 3 418 under the VEA and 34 under the MRCA.

Applications may be finalised by dismissal, withdrawal, and by decision of the VRB following a hearing. There were 4 303 applications finalised in the year: 4 268 under the VEA and 35 under the MRCA.

An application may include more than one 'matter' to be decided. There were 9 202 matters finalised in the year: 9 124 under the VEA and 78 under the MRCA.

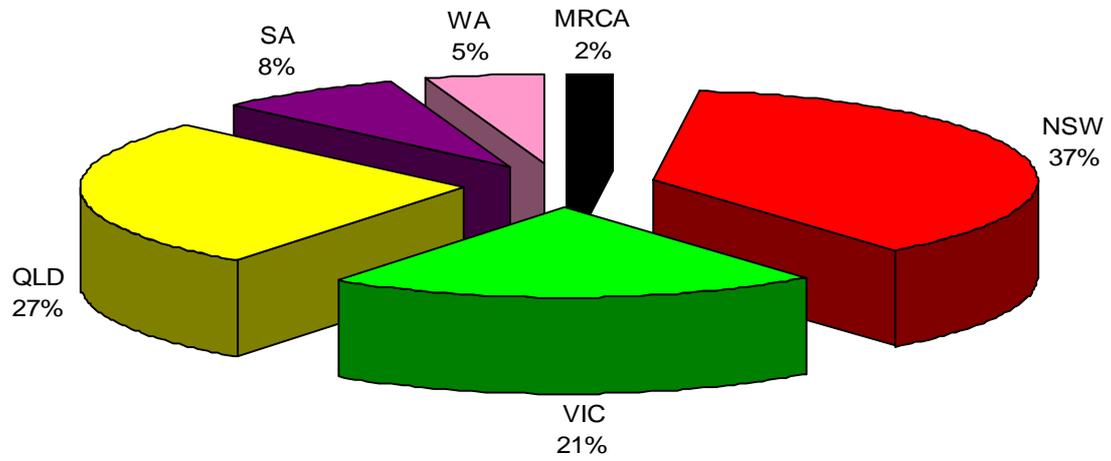
At year end, 3 035 applications were outstanding: 2 970 under the VEA and 65 under the MRCA. Overall, this was a reduction over the previous year of 879.

The geographic distribution of applications lodged, finalised, heard, and outstanding, and the comparison with 2006-07 figures are shown in the following graphs and tables. NSW includes ACT figures; Victoria includes Tasmanian figures, and South Australia includes Northern Territory figures.

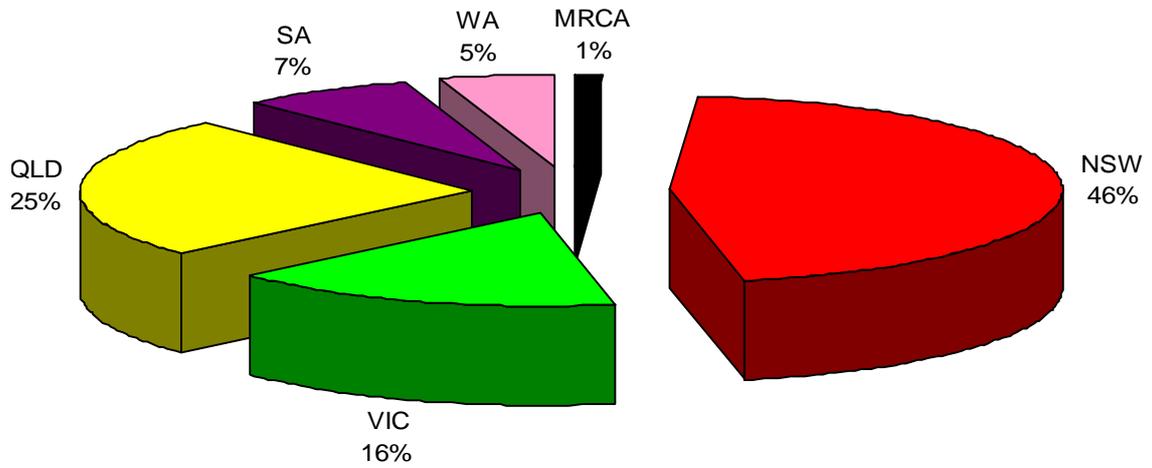
Table 1 – Applications lodged, finalised, heard and outstanding

	Year	MRCA	NSW	VIC	QLD	SA	WA	AUST
Applications lodged	2006-07	36	1 417	857	1 156	312	244	4 022
	2007-08	68	1 273	717	934	259	176	3 427
Applications finalised	2006-07	12	1 564	888	1 261	349	262	4 336
	2007-08	35	1 732	866	1 173	273	224	4 303
Matters finalised	2006-07	27	3 432	1 760	2 975	629	475	9 298
	2007-08	78	3 732	1 867	2 563	496	466	9 202
Applications finalised by hearing	2006-07	6	1 143	451	788	209	135	2 732
	2007-08	17	1 310	440	689	180	99	2 735
Applications heard	2006-07	10	1 410	608	967	263	192	3 450
	2007-08	34	1 584	564	859	252	159	3 452
Matters heard	2006-07	29	3 138	1 224	2 362	499	373	7 625
	2007-08	108	3 439	1 152	1 897	425	282	7 303
Applications outstanding	1 July 2007	33	1 651	696	1 046	232	256	3 914
	30 June 2008	65	1 175	558	816	219	202	3 035
Matters outstanding	1 July 2007	70	3 794	1 467	2 018	433	570	8 352
	30 June 2008	188	2 656	1 298	1 665	424	419	6 650

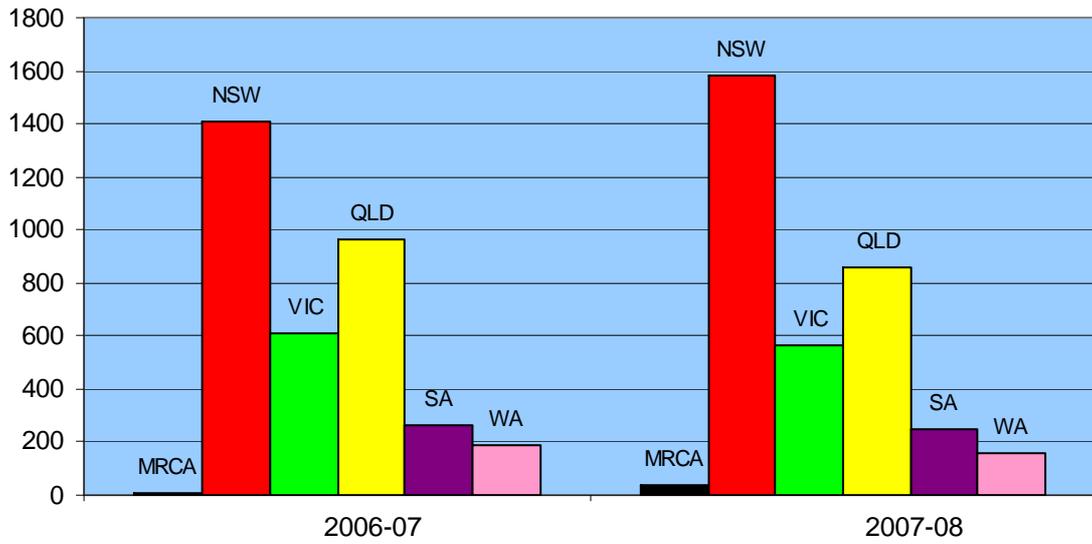
Graph 1 – Percentage distribution of applications lodged in 2007-08



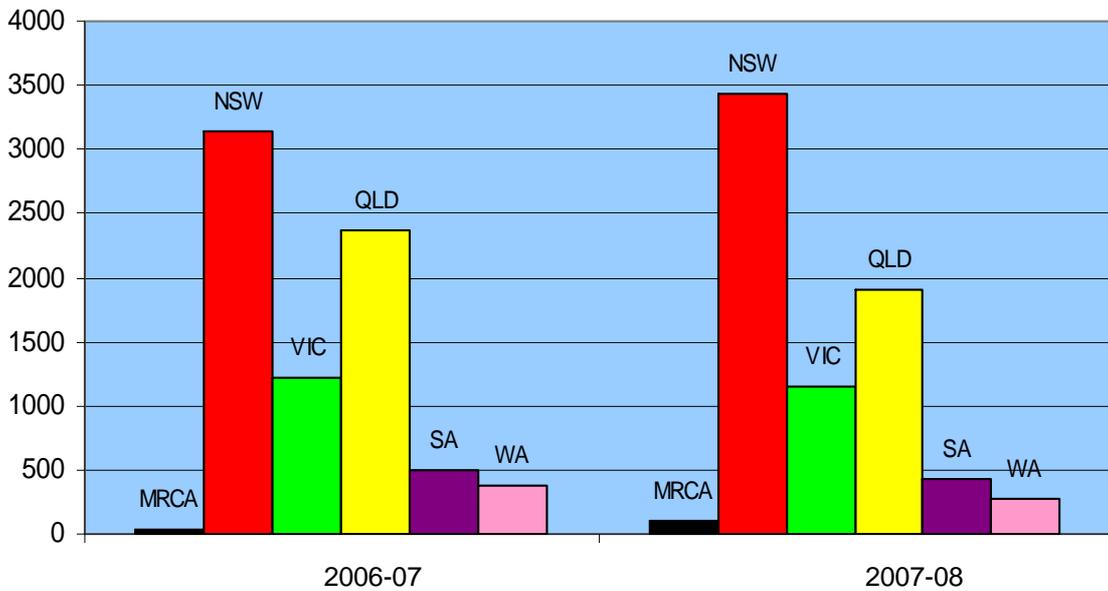
Graph 2 – Percentage distribution of applications heard in 2007-08



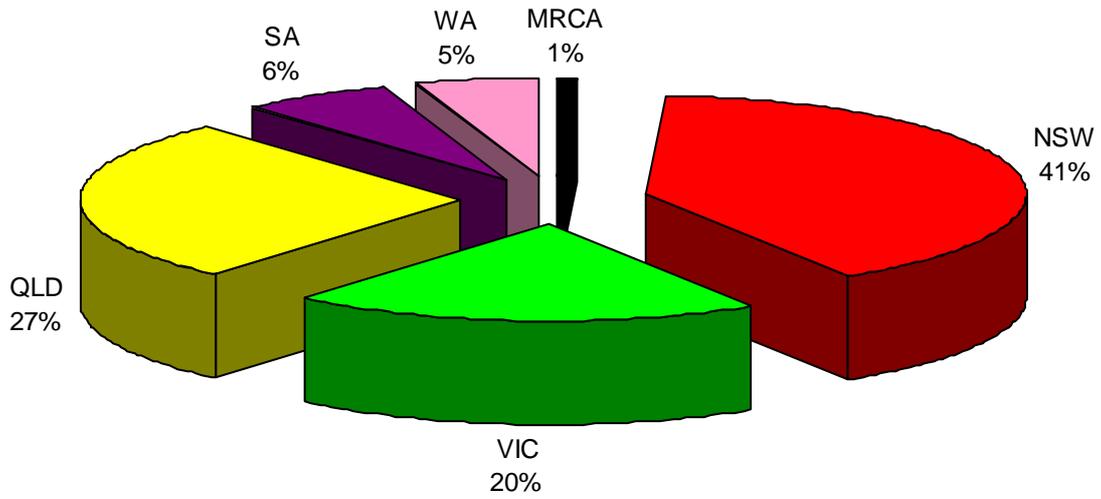
Graph 3 – Applications heard in 2007-08



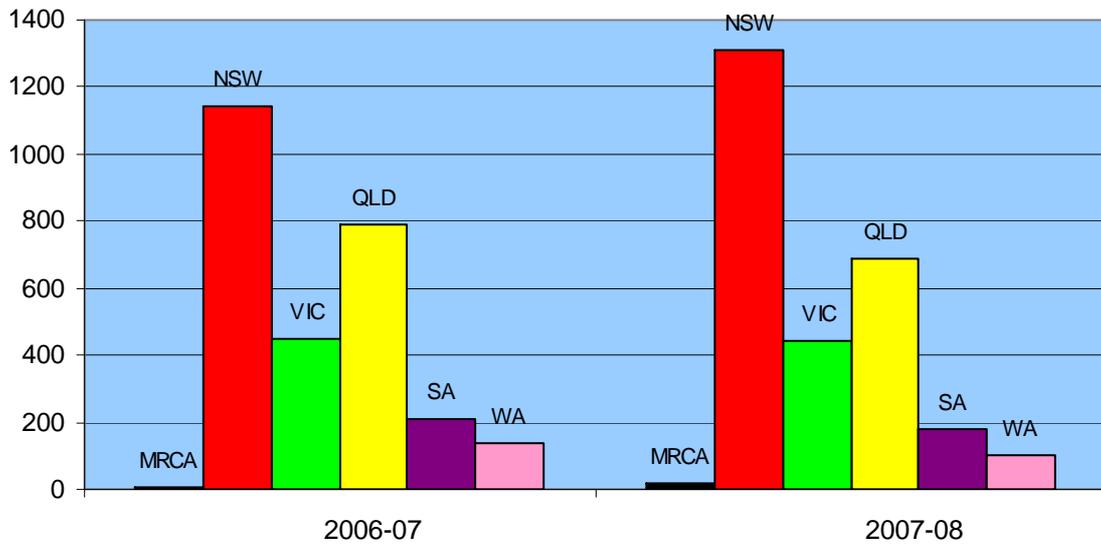
Graph 4 – Matters heard in 2007-08



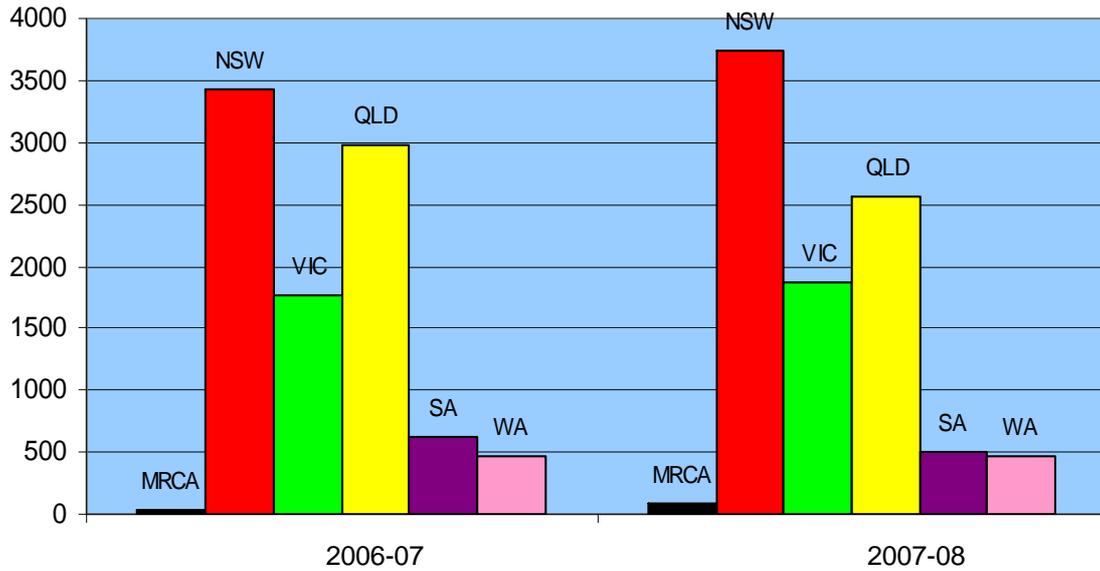
Graph 5 – Percentage distribution of applications finalised in 2007-08



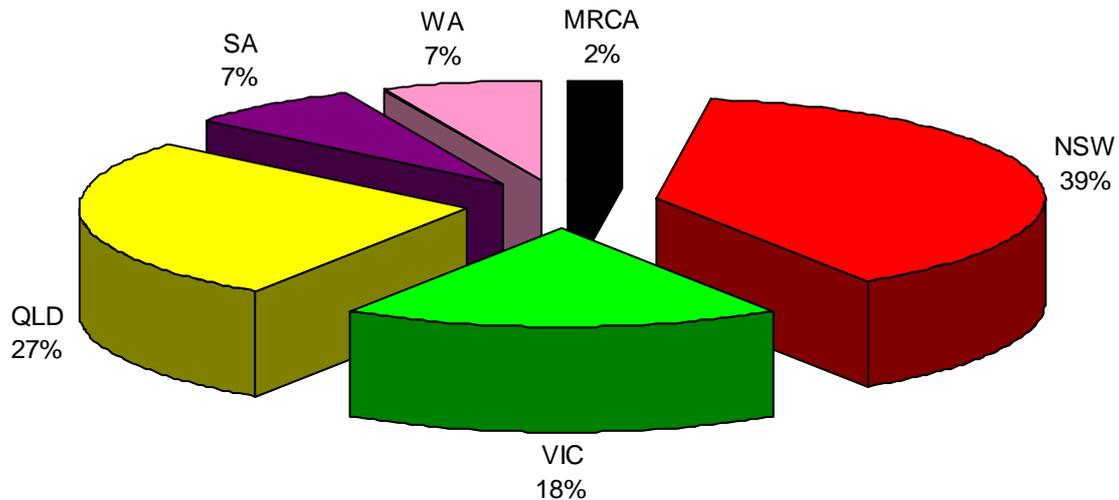
Graph 6 – Applications finalised by hearing in 2007-08



Graph 7 – Matters finalised in 2007-08



Graph 8 – Percentage distribution of applications outstanding at 30 June 2008



Note about statistical counting in future years

The Department counts a claim for acceptance of an injury or disease, that is made on the same form as an application for increase in pension, as two separate 'claims'. Since 1999-2000, and consistent with the Federal Court decision in *Stafford* (explained in that year's Annual Report at page 15), the VRB has regarded an application involving review of a decision that involved both an entitlement matter and an assessment matter as a single application. The VRB will continue to do so. However, for statistical and comparative purposes, it will, in future years, provide statistics identifying the number of applications involving both an entitlement matter and an assessment matter as if they were two applications. This will enable a more direct comparison between the DVA caseload and the application rate to the VRB. The 3 427 applications lodged in 2007-08 equate to 4 337 cases using this proposed method of counting.

Outcome 2: 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 Services Section, a comprehensive Intranet site, Practice Notes, 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 s 137 of the VEA. Under s 148(6A) of the VEA 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 MRCC under s 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 VEA confers two powers of adjournment. The first (s 151) is a general power exercisable at the VRB's discretion; the second (s 152) must be exercised if the VRB decides to seek further information from the Secretary of the Department or the MRCC.

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 or to consider their position in relation to issues or material before the VRB (s 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 (s 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 representative could not reasonably have foreseen the eventual necessity for such an adjournment. This is particularly important where a representative 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 s 148(6A) of the VEA to request the Secretary of the Department or the MRCC to conduct an investigation to obtain the relevant material. This is a preferable course to asking the VRB to adjourn under s 152 and seek the information – which the VRB may or may not agree to do.

In 2007-08 there were 181 applications adjourned under s 151, representing 5.2% of applications heard. There were 337 applications adjourned under s 152, representing 9.8% of applications heard. In total, there were 518 adjournments of both kinds, representing 15.0% of applications heard. These figures compare with 158 adjournments under s 151 in the previous year, or 4.6% of applications heard; 435 adjournments under s 152, or 12.6% of applications heard; and 593 total adjournments, or 17.2% of applications heard.

The adjournments during the year by kind and state are shown in Table 2. The percentages in the table denote the proportion of heard applications in which the hearings were adjourned.

Table 2 – Section 151 and 152 Adjournments

	Year	MRCA	NSW	VIC	QLD	SA	WA	AUST
S 151 adjournments	2006-07	0	76	15	49	11	7	158
		0.0%	5.4%	2.5%	5.1%	4.2%	3.6%	4.6%
	2007-08	1	112	18	25	9	16	181
		2.9%	7.1%	3.2%	2.9%	3.6%	10.1%	5.2%
S 152 adjournments	2006-07	3	183	63	119	37	30	435
		30.0%	13.0%	10.4%	12.3%	14.1%	15.6%	12.6%
	2007-08	10	144	35	89	34	25	337
		29.4%	9.1%	6.2%	10.4%	13.5%	15.7%	9.8%
Total adjournments	2006-07	3	259	78	168	48	37	593
		30.0%	18.4%	12.8%	17.4%	18.3%	19.3%	17.2%
	2007-08	11	256	53	114	43	41	518
		32.4%	16.2%	9.4%	13.3%	17.1%	25.8%	15.0%

Outcome of VRB Decisions and Determinations

The review of a Repatriation Commission decision may involve deciding more than one substantive matter of entitlement and/or assessment. On average during 2007-08, there were 2.1 matters decided by the VRB for each VEA application heard. During 2007-08, decisions concerning 5 558 matters were published. This compares to 5 052 in 2006-07.

The review of a MRCC determination also usually involves determining more than one substantive matter of liability, compensation, treatment, rehabilitation or other matter. During 2007-08 there were an average of 3.2 matters for each MRCA application heard. In 2007-08, determinations concerning 58 matters were published; this compares with 17 in 2006-07.

The outcomes of the published decisions under the VEA and determinations under the MRCA is shown in Table 3. In this table 'disability matters' applies to cases under the VEA, while its equivalent under the MRCA is 'liability'; 'assessment matters' applies to cases under

the VEA, while under the MRCA matters other than liability, such as compensation, treatment and rehabilitation are referred to as 'other'.

Table 3 – Outcome of published decisions and determinations (set aside and affirmed only)

	Year	MRCA	NSW	VIC	QLD	SA	WA	AUST	
Set aside death	2006-07	0	167	46	42	13	7	275	
			52.7%	29.5%	29.0%	46.4%	38.9%	41.4%	
	2007-08	0	256	42	39	31	4	372	
			56.3%	31.1%	33.1%	73.8%	57.1%	49.1%	
Affirmed death	2006-07	0	150	110	103	15	11	389	
			47.3%	70.5%	71.0%	53.6%	61.1%	58.6%	
	2007-08	0	199	93	79	11	3	385	
			43.7%	68.9%	66.9%	26.2%	42.9%	50.9%	
Set aside disability or liability	2006-07	6	394	117	216	51	32	816	
			75.0%	30.5%	26.8%	25.4%	23.0%	23.9%	27.7%
	2007-08	9	535	147	257	38	29	1 015	
			36.0%	38.1%	32.2%	35.5%	23.6%	28.7%	35.3%
Affirmed disability or liability	2006-07	2	897	320	636	171	102	2128	
			25.0%	69.5%	73.2%	74.6%	77.0%	76.1%	72.3%
	2007-08	16	871	309	466	123	72	1 857	
			64.0%	61.9%	67.8%	64.5%	76.4%	71.3%	64.7%
Set aside assessment or other	2006-07	3	226	43	174	36	30	512	
			37.5%	51.7%	32.8%	49.9%	43.4%	57.7%	48.3%
	2007-08	4	333	49	183	32	26	627	
			12.1%	65.7%	40.2%	53.0%	49.2%	56.5%	56.1%
Affirmed assessment or other	2006-07	5	211	88	175	47	22	548	
			62.5%	48.3%	67.2%	50.1%	56.6%	42.3%	51.7%
	2007-08	29	174	73	162	33	20	491	
			87.9%	34.3%	59.8%	47.0%	50.8%	43.5%	43.9%
Set aside all matters	2006-07	9	787	206	432	100	69	1 603	
			56.3%	38.5%	28.5%	32.1%	30.0%	33.8%	34.3%
	2007-08	13	1 124	238	479	101	59	2 014	
			22.4%	47.5%	33.4%	40.4%	37.7%	38.3%	42.4%
Affirmed all matters	2006-07	7	1 258	518	914	233	135	3 065	
			43.8%	61.5%	71.5%	67.9%	70.0%	66.2%	65.7%
	2007-08	45	1 244	475	707	167	95	2 733	
			77.6%	52.5%	66.6%	59.6%	62.3%	61.7%	57.6%

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 set aside or affirm the decision 'as varied'. In 2007-08, 276 disability (or under the MRCA, liability) matters, representing 9.6% of disability matters decided, were varied. This compares to 272 matters, representing 9.2% of disability matters decided, in 2006-07.

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 Repatriation 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 2007-08, 128 such assessment matters were remitted. In 2006-07, this figure was 125 matters.

The VRB also decides applications in respect of attendant allowance matters. In 2007-08, 4 such applications were decided and 1 set aside. In 2006-07, 4 attendant allowance applications were decided and none set aside.

These kinds of published decisions under the VEA and determinations under the MRCA in 2007-08 and 2006-07 are shown in Table 4.

Table 4 – Other VRB decisions (not including adjournments)

	Year	MRCA	NSW	VIC	QLD	SA	WA	AUST
Varied description	2006-07	1	91	37	104	23	16	272
		12.5%	7.0%	8.5%	12.2%	10.4%	11.9%	9.2%
	2007-08	1	97	57	99	17	5	276
		4.0%	6.9%	12.5%	13.7%	10.6%	5.0%	9.6%
Remitted assessment	2006-07		76	7	36	3	3	125
	2007-08		72	23	26	3	4	128
Attendant allowance	2007-08		3	1	0	0	0	4
	Set aside		1	0	0	0	0	1
			33.3%	0.0%	0.0%	0.0%	0.0%	25.0%
	Affirmed		2	1	0	0	0	3
		66.7%	100.0%	0.0%	0.0%	0.0%	75.0%	

In summary:

- 49.1% of death matters reviewed by the VRB were set aside in 2007-08; this figure was 41.4% for 2006-07;
- 35.3% of disability matters reviewed by the VRB were set aside in 2007-08; this figure was 27.7% in 2006-07;
- 56.1% of assessment matters reviewed by the VRB were set aside in 2007-08; this figure was 48.3% for 2006-07;
- 42.4% of all matters reviewed by the VRB were set aside in 2007-08; this figure was 34.3% in 2006-07.

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 s 31 of the VEA or the Military Rehabilitation and Compensation Commission under s 347 of the MRCA;
- the adequacy of information presented to primary decision-makers;
- the nature and extent of new material presented on review; and
- changes in an applicant's degree of incapacity or impairment between the date of the decision under review and the date of the final hearing at the VRB in an assessment or compensation matter.

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

Processing Times

Applications for review proceed through a number of stages from lodgement to finalisation. Not all applications necessarily proceed through all stages. While some are primarily under the control of the VRB others fall largely under the control of DVA or the applicant (or representative). Stages largely under the control of DVA are:

- from receipt of the application by the Department to receipt of the s 137 report by the VRB;
- while obtaining information requested by the Registrar under s 148(6A) of the VEA; and
- while obtaining information requested by the VRB after adjournment of a hearing under s 152 of the VEA.

In 2007-08 the average time taken from lodgement of an application to receipt of a s137 report was 53 days. This compares with 47.7 days in 2006-07.

During 2007-08, 1 846 requests were completed by DVA, at an average time for completion of 103.0 days. Of these, 1 402 requests had been made by Registrars, at an average time for completion of 76.4 days; and 444 requests had been made following adjournments, at an average time for completion of 187.2 days. These figures compare with 1 712 requests completed in 2006-07, at an average time of 102.1 days. Of these, 1 250 requests had been made by Registrars, at an average time for completion of 73.5 days; and 462 requests had been made following adjournments, at an average time for completion of 179.3 days.

Stages largely under the control of the applicant (or representative) are:

- from sending of a s 148 notice by the VRB to the applicant to its return; and
- from sending of a Certificate of Readiness (COR) by the VRB to the applicant to its return.

While applications are in these stages, Case Managers regularly follow them up with the appropriate party to ensure that they are progressed as rapidly as possible.

During 2007-08 the average time to complete the former stage was 30.0 days. In 2006-07 it was 32.1 days. During 2007-08 the average time to complete the latter stage was 264.2 days. In 2006-07 it was 286.3 days.

Stages primarily under the control of the VRB are:

- from receipt of the s 137 report from the Department until a s 148 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.

These three stages are considered in more detail below.

From Receipt of s 137 Report to s 148 Notice

When the s 137 Report is received, a Case Manager examines the documents in the report for completeness and accuracy. If it appears that relevant documents are missing or incomplete, the Department is asked to rectify it. Following this preliminary check, a s 148 notice is sent to the applicant seeking advice about whether the person wishes to be represented, attend the hearing, and is ready to proceed to a hearing.

During 2007-08 the average time for the VRB to complete this stage was 11.4 days. In 2006-07 the average time was 9.1 days.

From Receipt of Certificate of Readiness to Hearing

When the VRB receives a Certificate of Readiness from an applicant or representative, the s 137 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 unless there are reasons to treat the application with greater urgency. 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.

During 2007-08 the average time for the VRB to complete this stage was 100.7 days. In 2006-07 the average time was 97.3 days.

From Hearing to Publication of Decision and Reasons

The VRB aims to publish its decisions and reasons as soon as possible, and at most within 28 days, after the hearing. Each VRB panel hears up to three cases a day. After a hearing the panel discusses the merits of the case and allocates one member to draft the reasons. When this is done they are circulated to the other two members for comment and discussion. After every member is satisfied with the decision and reasons, the document is signed by all and given to the VRB Case Managers 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 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 publication of the decision and reasons.

During 2007-08 the average time for the VRB to complete this stage was 11.9 days. In 2006-07 the average time was 11.8 days.

Nationally, to process applications from their receipt at DVA to finalisation by the VRB took on average 406.3 days in 2007-08. This compares with 397.2 days in 2006-07.

Table 5 shows the average times, in days, required to process those stages noted in the preceding paragraphs. The information is shown by state and nationally, for 2007-08 and the previous year.

Table 5 – Applications times taken to process

	Year	MRCA	NSW	VIC	QLD	SA	WA	AUST
Lodgement to receipt of s 137 report	2006-07	128.9	56.9	32.8	49	37.8	56.1	47.7
	2007-08	115.9	67.6	45.6	24.4	37.3	55.7	53
Receipt of s 137 report to s 148 notice sent	2006-07	8.7	13.8	1	10.1	5.2	9.8	9.1
	2007-08	22.5	10.5	1.7	20.7	3.5	12.7	11.4
S 148 notice sent to its return	2006-07	39.4	44.4	24.2	24.6	31.0	27.4	32.1
	2007-08	41.4	35.5	28.8	24.9	26	29.1	30
COR sent to its return	2006-07	106.1	283.6	266.2	277.5	342.2	346.8	286.3
	2007-08	109.1	275.6	268.1	237.7	258.6	362.1	264.2
Request for information from Registrar	2006-07	60.5	98.6	80.5	58.8	88.0	59.9	73.5
	2007-08	32.4	112.9	59.1	52.2	66.2	80.0	76.4
COR receipt to hearing	2006-07	93.7	131.3	75.5	79.3	55.2	52.3	97.3
	2007-08	80.6	130.5	78.7	77.3	56.4	67.8	100.7
Request for information from adjournment	2006-07	-	158	168.4	217.7	182.9	173.6	179.3
	2007-08	123.0	193.9	136.2	212.1	133.8	244.5	187.2
Hearing to publication of decision	2006-07	9.6	13.2	11	11.3	7.8	12.9	11.8
	2007-08	14.2	11.8	11.2	13.6	6.6	14.4	11.9
Lodgement to finalisation	2006-07	294.7	319.1	316.4	378.2	413.7	410.8	397.2
	2007-08	327.1	474.0	344.0	365.4	333.6	439.2	406.3

White indicates stages primarily within the control of the VRB.

Yellow indicates stages primarily within the control of DVA.

Turquoise indicates stages primarily within the control of the applicant/representative.

Grey indicates a mixture of stages, within the control of DVA, the applicant and the VRB.

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

On 1 July 2007 the number of applications outstanding was 3914. Of these, 979 applications (25.0%) were primarily under the control of the VRB, 2 204 (56.3%) were primarily under the control of the applicants or representatives and not ready to be heard, and 731 (18.7%) were primarily under the control of the Department.

During 2007-08, 3 427 new applications were received by the VRB, 3 452 hearings were held and 4 304 applications were finalised.

On 30 June 2008 there were 3035 applications outstanding. Of these, 772 (25.4%) were largely under the control of the VRB, 1 747 (57.6%) were largely under the control of the applicants or representatives and not ready to be heard, and 516 (17.0%) were largely under the control of the Department.

Table 6 shows the outstanding applications according to who has primary control of them: the VRB, the applicant (or representative) or DVA. The percentages in the table show the proportion of corresponding applications as percentages of the total outstanding for the relevant financial year.

Table 6 – Distribution of applications according to control

	Date	MRCA	NSW	VIC	QLD	SA	WA	AUST
Control of VRB	1 July 2007	9	605	128	164	41	32	979
		0.2%	15.5%	3.3%	4.2%	1.0%	0.8%	25.0%
	30 June 2008	9	386	109	203	25	40	772
		0.3%	12.7%	3.6%	6.7%	0.8%	1.3%	25.4%
Control of applicants	1 July 2007	22	836	460	538	174	174	2 204
		0.6%	21.4%	11.8%	13.7%	4.4%	4.4%	56.3%
	30 June 2008	37	634	366	426	161	123	1 747
		1.2%	20.9%	12.1%	14.0%	5.3%	4.1%	57.6%
Control of DVA	1 July 2007	2	210	108	344	17	50	731
		0.1%	5.4%	2.8%	8.8%	0.4%	1.3%	18.7%
	30 June 2008	19	155	83	187	33	39	516
		0.6%	5.1%	2.7%	6.2%	1.1%	1.3%	17.0%

Listings

During the year, the VRB aimed to list 15 hearing times per panel per week (assuming five sitting days) 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, at the same time.

On 30 June 2008, of the 772 applications outstanding and primarily under the control of the VRB, 269 had already been allocated hearing dates and times. Although a further 285 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 capacity of the VRB 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 procedures of the VRB 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 2007-08, 261 applications listed for hearing were postponed prior to the commencement of the hearing. This represented 7.6% of applications heard that year. Substitute applications were found for 199 of the postponements: a rate of 76.2%. This resulted in about 62 hearing times not being able to be used, or the equivalent of just over four weeks of hearings for a 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.

Dismissals

During 2007-08 the VRB sent a total of 371 letters asking for a written statement from applicants as to why they were not ready to proceed to a hearing. This is an increase of 33 over the previous year. These letters resulted in a total of 97 applications being dismissed, 57 being withdrawn and 81 requests for a hearing. These compare with 96 dismissals, 35 withdrawals and 71 requests for hearing in the previous year. The remainder of responses from applicants or their representatives provided reasonable explanations or were still being followed up in accordance with the legislation. There were two appeals concerning dismissals lodged with the AAT. For more information concerning AAT appeals see Appendix 2. No dismissal action was undertaken in 2007-08 in relation to any MRCA matters.

Withdrawals

During 2007-08, 1 444 applications were withdrawn by applicants; this represents 33.6% of applications finalised during the year. This compares with 1 488 withdrawals (34.3% of those finalised) in 2006-07. The VRB is usually not 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 s 31 of the VEA, or the applicant gaining a desired benefit as a result of a new successful primary claim lodged with the Department.

Table 7 – Listings, postponements, dismissals, and withdrawals

	Date / Year	MRC						
		A	NSW	VIC	QLD	SA	WA	AUST
Listed for hearing	1 July 2007	0	87	43	88	28	5	251
	30 June 2008	2	120	39	83	11	14	269
Ready to proceed	1 July 2007	3	349	55	36	2	13	458
	30 June 2008	1	173	29	63	10	9	285
Postponements	2006-07	0	145	39	74	13	18	289
	2007-08	2	122	56	57	12	12	261
Percentage substitutions	2006-07	-	82.1%	52.8%	68.9%	53.8%	77.8%	73.4%
	2007-08	0.0%	86.9%	60.7%	82.5%	50.0%	50.0%	76.2%
Dismissal letters sent	2006-07	0	183	35	61	51	8	338
	2007-08	0	202	58	67	26	18	371
Reasonable answer	2006-07	0	63	12	15	13	0	103
	2007-08	0	49	20	8	7	0	84
Withdrawal requests	2006-07	0	16	7	7	5	0	35
	2007-08	0	33	7	12	1	4	57
Hearing requested	2006-07	0	29	5	16	18	3	71
	2007-08	0	48	10	14	4	5	81
Dismissed	2006-07	0	45	14	17	17	3	96
	2007-08	0	54	10	14	11	8	97
Withdrawals	2006-07	6	370	423	449	118	122	1 488
		50.0%	23.7%	47.6%	35.6%	33.8%	46.6%	34.3%
	2007-08	16	360	413	459	80	116	1 444
		45.7%	20.8%	47.7%	39.1%	29.3%	51.8%	33.6%

Members

As at 1 July 2007, there were 40 members of the VRB.

From 1 July 2007 to 30 June 2008 the following changes in membership occurred:

- 7 part-time members were appointed from 1 October 2007 to 30 September 2009:
 - Gary Charles Barrow, Member, Perth
 - Graham Michael Barter, Member, Sydney
 - Andrew Harding Braban, Member, Brisbane
 - Edward Bertram Mark Jolly, Senior Member, Adelaide
 - Andrea Marilyn Hall-Brown, Senior Member, Brisbane
 - Amanda MacDonald, Senior Member, Sydney
 - Victor Kent Patrick, Member, Adelaide
- 1 full-time member was appointed from 1 October 2007 to 30 September 2009:
 - Ivan Cahill, Senior Member, Canberra
- 3 part-time members resigned:
 - Beverley Christine Wright, Services Member, Canberra, from 1 February 2008
 - Marella Louise Denovan, Senior Member, Brisbane, from 25 March 2008
 - Alan Leslie Thompson, Senior Member, Melbourne, from 30 March 2008
- 2 part-time members' term of office expired from 30 March 2008:
 - Susan Denise Gillett, Member, Perth
 - William Bennett Lane, Senior Member, Brisbane
- 5 part-time members were appointed from 31 March 2008 to 30 September 2009:
 - Christopher George Appleton, Services Member, Canberra
 - Ann Frances Graham, Senior Member, Melbourne
 - Christopher Anthony Vincent Keher, Senior Member, Sydney
 - Terrence John Nolan, Services Member, Melbourne
 - Warwick Anthony Young, Services Member, Sydney
- 15 part-time members were reappointed from 31 March 2008 to 30 September 2009:
 - Zita Rose Antonios, Member, Sydney
 - Francis Harding Benfield, Services Member, Brisbane
 - Murray Phillip Blake, Services Member, Brisbane
 - Francis Brown, Services Member, Sydney
 - Stuart Alexander Bryce, Services Member, Hobart
 - Jennifer D'Arcy, Senior Member, Sydney
 - Collins Joseph Fagan, Services Member, Melbourne
 - Allan John Farquhar, Services Member, Brisbane

- Jackie Miriana Fristacky, Member, Melbourne
- Janet Ann Hartmann, Member, Sydney
- Kerrie Ellen Laurence, Member, Sydney
- Gregory Mawkes, Services Member, Perth
- Robin Terence Regan, Services Member, Melbourne
- Andrea Michelle Treble, Senior Member, Melbourne
- Sylvia Winters, Senior Member, Brisbane

At 30 June 2008, there were 48 members of the VRB: the Principal Member, 15 Senior Members, 18 Services Members and 14 Members. Of these, the Principal Member and one Senior Member were full-time appointees, all others were part-time. The number of women holding appointments was 15.

The break-up of membership as at 30 June 2008 is set out in the following table:

Table 8 – Members

Gender		ACT	NSW	VIC	QLD	SA	WA	TAS	AUST	
Principal Member	Male	1							1	
Senior Members	Male	1	3	1	1	1			7	
	Female	3		2	3				8	
		1		6	3	4	1			15
Services Members	Male	2	5	3	4	2	1	1	18	
	Female									0
		2		5	3	4	2	1	1	18
Members	Male	2		2		2	1			7
	Female	4		2	1					7
		0		6	2	3	2	1	0	14
Total	Male	3	11	4	7	5	2	1	33	
	Female	0		7	4	4	0	0	0	15
		3		18	8	11	5	2	1	48

Full details of the VRB membership as at 30 June 2008 are set out in Appendices 4, 5 and 6.

Staff

Under section 172 of the VEA, the Secretary of the Department is required to make available any staff required to assist the VRB in the performance of its statutory functions. Nine VRB staff were on AWAs and were entitled to performance pay. Information regarding certified agreements, AWAs, and performance pay for VRB staff is contained in the Annual Report of the Department of Veterans' Affairs.

At 1 July 2007, there were 38 staff employed by the VRB. That figure was 37 at the end of the financial year (35 ongoing and 2 non-ongoing staff). There is one Senior Executive Service staff position at the VRB – that of the Principal Registrar. A staffing structure review was conducted and is to be implemented in 2008-09.

The break-up of staff as at 30 June 2008 is set out in the following tables (figures in brackets indicate the numbers of part-time staff):

Table 9 – Staff

	Gender	ACT	NSW	VIC	QLD	SA	WA	AUST
SES	Female		1					1
Legal 1	Female		1					1
EL 2	Female	1						1
EL 1	Male		1	1	1	1		4
	Female				1			1
	Total	0	1	1	2	1	0	5
APS 6	Male		2					2
	Female	1	1				1	3
	Total	1	3	0	0	0	1	5
APS 5	Male		3					3
	Female		1		3			4
	Total	0	4	0	3	0	0	7
APS 4	Male		1	1				2
	Female		1		(3)	1		5 (3)
	Total	0	2	1	3	1	0	7
APS 3	Male			1				1
	Female		3	2	(1)		1	7 (1)
	Total	0	3	3	1	0	1	8
APS 2	Female		1		(1)			2 (1)
Total	Male	0	7	3	1	1	0	12
	Female	2	9	2	9 (5)	1	2	25
	Total	2	16	5	10 (5)	2	2	37 (5)

Table 10 – Staff – full-time and part-time

	Gender	ACT	NSW	VIC	QLD	SA	WA	AUST
Full-time	Male	0	7	3	1	1	0	12
	Female	2	9	2	4	1	2	20
	Total	2	16	5	5	2	2	32
Part-time	Male	0	0	0	0	0	0	0
	Female	0	0	0	5	0	0	5
	Total	0	0	0	5	0	0	5
All	Male	0	7	3	1	1	0	12
	Female	2	9	2	9	1	2	25
	Total	2	16	5	10	2	2	37

Resources

In the Department of Veterans' Affairs Portfolio Budget Statement (PBS) and the Portfolio Additional Estimates Statement (PAES) the VRB comes under Outcome 1 and Output 1.3. Detailed financial statements including those relating to the VRB are contained in the Annual Report of the Department of Veterans' Affairs.

Table 12 outlines actual expenditure for the VRB for the 2006-07 and 2007-08 financial years. Total expenditure for the VRB in the financial year 2007-08 was \$7 944 000 compared to \$7 253 000 in 2006-07. Average expenditure on each application finalised by the VRB during the year was \$1 846. In 2006-07 the figure was \$1 673.

Table 11 sets out the VRB's workloads from 2003-04 to 2007-08.

The major cost to the VRB is in cases 'heard' as this is directly related to members' salary costs. The number of hearings required to finalise applications is not reducing even though the overall numbers of applications are gradually reducing.

In summary, while the overall VRB case intake numbers are reducing, the volume of hearings (cases heard) has remained relatively constant over the last 5 years. As fixed costs and the unit cost of hearings, which is a factor of members' salaries, have increased at an annual average rate of 4%, the VRB expenditures have increased commensurately.

Table 11 – Workload over last 5 years

	2003-04	2004-05	2005-06	2006-07	2007-08
Cases Finalised	5 266	5 165	4 536	4 336	4 303
Cases Lodged	5 110	4 676	4 497	4 022	3 427
Cases Heard	3 590	3 597	3 445	3 450	3 452
VRB Panels	274	267	265	276	292

Table 12 – Veterans’ Review Board – Expenditure (\$000s)

	2006-07		2007-08	
Salaries (includes superannuation)				
Members	2 743		3 440	
Staff (includes o/time & temps)	2 429	5 172	2 694	6 134
Rental of Premises (includes outgoings)*	902	902	929	929
Applicants’ Expenses#	27	27		
Fares				
Members	244		166	
Staff	77		81	
Cars (includes parking)	69	390	58	305
Travelling Allowance				
Members	398		228	
Staff	68	466	73	301
Office Requisites				
Stationery and office requisites	42		37	
Library	23		4	
Printing	21		15	
Equipment	14	100	–	56
Postage and Telephones				
Postage	24		34	
Telephones/fax *	–	24	2	36
Office Services				
Furniture	1		3	
Plant hire	4	5	3	6
Computer Equipment (includes services)				
Service and equipment *	–	–	3	3
Incidental Expenditure				
Freight & cartage	48		46	
Advertising	22		6	
Training	20		15	
Miscellaneous	12	102	31	97
Comcare Premium	50	50	51	51
Archiving	9	9	10	10
Legal	6	6	16	16
TOTAL		7 253		7 944

* As a consequence of oneDVA, these costs were met by the Department of Veterans’ Affairs.

Applicants’ expenses are no longer allocated to the VRB as they are a Departmental payment.

Fraud control

The VRB remains committed to developing and maintaining best practice strategies for the prevention and detection of fraud. The Director (Corporate Services) bears responsibility for fraud control and prevention and detection activities within the VRB.

There were no incidents of fraud detected or reported for the VRB during the financial year.

Certification of VRB Fraud Control Arrangements

I, Michael Griffin, certify that I am satisfied that for the financial year 2007-08 the VRB:

- Has had appropriate fraud risk assessments and fraud control plans in place that comply with the Commonwealth Fraud Control Guidelines;
- Has had appropriate fraud prevention, detection, investigation and reporting procedures and processes in place; and
- Has collected and reported on annual fraud data in a manner that complies with the Commonwealth Fraud Control Guidelines.



Michael Griffin
Principal Member
30 September 2008

Risk Management

The Risk Management Framework ensures that all identified risks relevant to the VRB are considered and that a systematic approach to risk mitigation is followed. The approach adopted by the VRB is consistent with the Australian Risk Management Standard (AS/NZS 4360) and considers the following risk areas:

- maintaining a safe work environment for staff, members, clients and visitors;
- safeguarding and maintaining assets;
- managing human resources;
- managing technology and information resources;
- ensuring compliance with environmental obligations;
- achieving established objectives and goals;
- ensuring the reliability and integrity of financial and operational information;
- complying with internal policies and procedures;
- complying with laws and regulations;
- managing change in the VRB's internal and external environments; and
- managing 'significant interruption' to critical business processes.

For each of these areas, the likelihood and consequences of identified risks have been determined and inform the VRB's approach to risk mitigation.

Consultants, advertising and market research

During 2007–08, the VRB paid \$13,090 to ODS Management Consulting Pty Ltd to conduct a VRB structure staffing review. Impartial assessment by an independent expert was required.

Asset management

All the VRB's assets are provided to it by the Department. As such, the Department manages, conducts regular stock-takes, and accounts for those assets.

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.

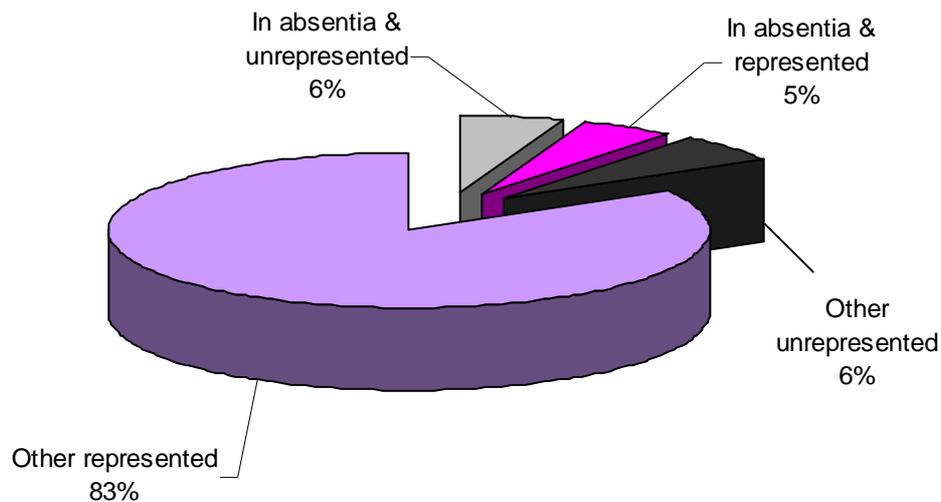
Table 13 shows the applications heard according to whether the applicants were represented and whether the hearings took place in absentia.

Table 13 – Representation at hearings

	Year	MRCA	NSW	VIC	QLD	SA	WA	AUST
In absentia and unrepresented	2006-07	2	75	34	24	10	8	153
	2007-08	2	90	38	38	14	13	195
In absentia and represented	2006-07	0	114	32	24	0	11	181
	2007-08	0	102	19	29	10	5	165
Other unrepresented	2006-07	1	86	44	66	9	19	225
	2007-08	8	83	39	54	15	15	214
Other represented	2006-07	7	1 135	498	853	244	154	2 891
	2007-08	24	1 309	468	738	213	126	2 878
Total unrepresented	2006-07	3	161	78	90	19	27	378
		30.0%	11.4%	12.8%	9.3%	7.2%	14.1%	11.0%
	2007-08	10	173	77	92	29	28	409
		29.4%	10.9%	13.7%	10.7%	11.5%	17.6%	11.8%
Total represented	2006-07	7	1 249	530	877	244	165	3 072
		70.0%	88.6%	87.2%	90.7%	92.8%	85.9%	89.0%
	2007-08	24	1 411	487	767	223	131	3 043
		70.6%	89.1%	86.3%	89.3%	88.5%	82.4%	88.2%
Total heard	2006-07	10	1 410	608	967	263	192	3 450
	2007-08	34	1 584	564	859	252	159	3 452

A substantial proportion (45.8%) of applicants who have 'in absentia' hearings are represented, but both the applicant and the representative have chosen not to participate at the hearing. The representatives in those cases sometimes provide written submissions to the VRB.

Graph 9 – Representation at hearings



There are a number of ways that applicants and their representatives can participate at hearings: one or both can have a telephone hearing, or one or both can appear in person. Combinations of applicant and representative participation are also possible. In addition, in 2000-01, the VRB undertook a trial of video hearings to enhance its service to applicants in regional areas. The number of video hearings has varied but 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.

Table 14 shows the applications heard according to whether the hearings took place in absentia or whether the applicants and or representatives participated by telephone, video, or in person. The information is shown by state and nationally for 2007-08. Because applicants and representatives can have different methods of participation during the same hearing – for example, the applicant may be available by telephone and the representative may attend – hearings can fall into more than one category. Therefore the sum of the applications in the various categories is greater than the total number of applications heard in a state or nationally.

Table 14 – Types of hearings

	MRCA	NSW	VIC	QLD	SA	WA	AUST
Video	0	0	20	26	0	2	48
In absentia	2	191	56	68	24	19	360
Telephone	11	619	124	177	35	26	992
Personal attendance	26	1 248	444	660	205	129	2 712

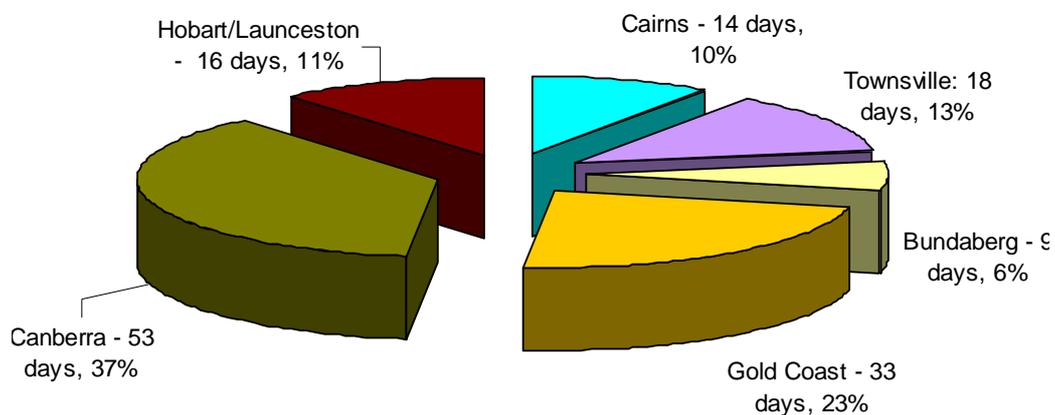
Regional Hearings

During 2007-08 regional hearings were again arranged in Cairns, Townsville, Bundaberg, Gold Coast, Canberra, Hobart and Launceston. Table 15 shows the number of days of hearings, and applications and matters heard in the above locations, for 2007-08 and the previous year. Information regarding number of matters was not available for 2006-07.

Table 15 – Regional hearings

	Year	Days	Applications	Matters
Cairns	2006-07	4	13	n/a
	2007-08	14	32	65
Townsville	2006-07	20	51	n/a
	2007-08	18	41	80
Bundaberg	2006-07	20	50	n/a
	2007-08	9	18	42
Gold Coast	2006-07	54	140	n/a
	2007-08	33	77	165
Canberra	2006-07	34	81	n/a
	2007-08	53	119	240
Hobart/Launceston	2006-07	20	53	n/a
	2007-08	16	44	64
Total	2006/07	152	388	n/a
	2007-08	143	331	656

Graph 10 – Distribution of regional hearings



Representation at VRB Hearings by the Repatriation Commission, MRCC, and Service Chiefs

The Repatriation Commission and the MRCC are formally parties to all proceedings before the VRB for matters arising under the VEA and MRCA respectively. Additionally, the service chiefs may choose to be a party in applications concerning the MRCA. As a matter of practice, however, they have seldom been represented at VRB hearings. During 2007-08 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 ex-service organisations and the Department.

The Principal Member and other members and staff attended a number of administrative law conferences and contributed to the Training and Information Program (TIP) managed by the Department and ex-service organisations for the training of pension and welfare officers and representatives. The Principal Member, Principal Registrar and Director (Legal Services) 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.

During the year the VRB:

- developed a new standardised training package to assist representatives in the preparation and presentation of applications for review before the VRB;
- trialed a computer in the NSW Registry for use by representatives to access DVA's CLIK online information service and Statements of Principles;
- changed the email addresses for staff and members to '@vrb.gov.au' instead of '@dva.gov.au'. This was done because it is an important part of the VRB's operational needs that it not only be independent, but be seen to be independent of DVA and the Commissions. Having staff and member email addresses that contain 'dva' in the domain name potentially compromised that important perception of independence;
- streamlined the VRB's Internet site and included a subscription service to receive news of regular updates to the site.

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 biannual journal called *Verbosity*. This journal includes information about Statements of Principles, legislative amendments, and decisions by the Administrative Appeals Tribunal and courts in the veterans' and military compensation field together with other items of interest. It is distributed on request to people involved in the jurisdiction. During the year, two regular editions of *Verbosity* were published.

The VRB also publishes:

- Practice Notes for members, staff and ESO representatives, which is published on the Internet site;
- an information brochure, which is sent to all applicants prior to their hearing;
- an Operations Manual, which sets out details of the administrative processing of applications to 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 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) with detailed information and publications for applicants and their representatives, including Practice Notes, material and links concerning jurisdiction and procedures, relevant legislation, case law, and guidance for practitioners.

An important addition to the website this year is the publication of a suite of submission templates for a variety of case types, designed to assist veterans and their representatives in preparing applications for review by the VRB.

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.

Other Tribunals

The VRB maintains relationships with other tribunals through the following forums:

- Council of Australasian Tribunals (COAT);
- Commonwealth Heads of Tribunals (CHOTS), involving the Administrative Appeals Tribunal, the Social Security Appeals Tribunal, the Migration Review Tribunal, the Refugee Review Tribunal and the National Native Title Tribunal;
- Meetings involving the senior managers/registrars from the above federal review tribunals; and
- General liaison between staff of specific corporate functions (including human resources, finance, training and information technology).

Quality assurance

In order to gauge applicant satisfaction and further develop members, in 2007-08, the VRB:

- developed a customer satisfaction survey;
- developed a system for appraisal and the development of members; and
- conducted military refresher and familiarisation training for members.

Ethical standards

The VRB is committed to maintaining the highest ethical standards. Its core values are embedded in its Service Charter and underpin its operations.

Australian Public Service Values and Code of Conduct

All VRB staff are bound by the Australian Public Service Values and Code of Conduct. All staff are encouraged to incorporate these values into their own workplace ethic. References to the Australian Public Service Values and Code of Conduct are also incorporated into core staff training.

Professional Standards for Tribunal Members

In addition to comprehensive guidance given to members in the VRB's Members Handbook, members are guided by the Administrative Review Council's publication, *A Guide to Standards of Conduct for Tribunal Members*. This document establishes principles of conduct relating to fairness, integrity, accountability and transparency, among others. The Guide is brought to the attention of all VRB members during induction activities and the principles referred to in ongoing member training.

To ensure that ethical standards are upheld, members, as statutory office holders, are required to complete a private interests declaration form and are subject to police and bankruptcy checks prior to commencing their VRB duties.

Complaints

In the course of the year the VRB received 19 letters of appreciation and 26 letters of complaint.

Eighteen of the 26 complaints were referred for comment from the Minister's office and involved the following issues: concern over the conduct of a hearing, the decision or aspects of the decision (8); concern over length of appeal processes (5); concern over VRB

procedures (3); concern about the proposed closure of the Adelaide Registry (1); concern about qualifications of VRB members (1). The Principal Registrar 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 (4); concern over VRB procedures (1); concern about the proposed closure of the Adelaide Registry (3).

Each of these concerns was examined in detail and responses were provided in a timely manner.

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 VEA, the 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 may appeal to the Federal Court on questions of law from decisions of the AAT.

While there is no direct right of appeal to the Federal Court from a decision of the VRB, decisions are subject to review by the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977* (AD(JR) Act), on the grounds set out in that Act or alternatively the *Judiciary Act 1903*.

Certain matters may 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

During the year, the High Court did not hand down any judgments directly concerning the VEA or MRCA.

Federal Court of Australia

Administrative Decisions (Judicial Review) Act 1977

One application was decided under the AD(JR) Act:

- *Godwin v Repatriation Commission* [2008] FCA 576 (30 April 2008)

Administrative Appeals Tribunal Act 1975

The 18 Federal Court judgments for this year were:

- *Repatriation Commission v Warren* [2008] FCAFC 64 (24 April 2008)
- *Riley v Repatriation Commission* [2008] FCA 531 (21 April 2008)
- *Tunks v Repatriation Commission* [2008] FCA 521 (18 April 2008)
- *Drew v Repatriation Commission* [2008] FCA 537 (15 April 2008)
- *Repatriation Commission v Newson* [2008] FCA 401 (31 March 2008)
- *Repatriation Commission v Money* [2008] FCA 118 (4 March 2008)
- *Repatriation Commission v Hill* [2008] FCA 50 (19 February 2008)
- *Hall v Repatriation Commission* [2007] FCA 2021 (18 December 2007)
- *Repatriation Commission v Robertson* [2007] FCA 1674 (4 December 2007)
- *Sleep v Repatriation Commission* [2007] FCA 1890 (30 November 2007)
- *Peacock v Repatriation Commission* [2007] FCAFC 156 (26 September 2007)
- *Repatriation Commission v Sergeant* [2007] FCA 1408 (10 September 2007)

- *Gittins v Repatriation Commission* [2007] FCA 1380 (30 August 2007)
- *Gardiner v Repatriation Commission* [2007] FCA 1290 (21 August 2007)
- *Byrne v Repatriation Commission* [2007] FCAFC 126 (13 August 2007)
- *Jakab v Repatriation Commission (No. 2)* [2007] FCA 1126 (31 July 2007)
- *Repatriation Commission v Brady* [2007] FCA 1087 (31 July 2007)
- *Repatriation Commission v Farley-Smith* [2007] FCA 1058 (18 July 2007)

Federal Magistrates Court

One judgment was handed down by the Federal Magistrates Court:

- *Repatriation Commission v Edmonds* [2008] FMCA 13 (29 January 2008)

Issues dealt with by Court Decisions

Identification of the claimed injury or disease

In *Repatriation Commission v Hill* [2008] FCA 50, the Federal Court followed the reasoning of Gray J in *Mines v Repatriation Commission* [2004] FCA 1331 that in deciding the threshold question of whether a veteran is suffering, or has suffered, Post Traumatic Stress Disorder (PTSD), the decision-maker must be reasonably satisfied that the traumatic event occurred before reaching the conclusion that the veteran suffered PTSD. Only if such a conclusion is reached does the reasonable hypothesis process of reasoning, and the method outlined in *Deledio*, come into operation. This position was also followed in *Drew v Repatriation Commission* [2008] FCA 537. The Court held that there was no error of law in the approach taken by the Tribunal. It having found that Mr Drew's feelings lacked the intensity required by criterion (A)(ii) and that no factual foundation existed for a finding that he suffered from PTSD.

In *Repatriation Commission v Brady* [2007] FCA 1087 the Federal Court held that it was an error of law for the Tribunal to fail to make a finding as to which of the two conditions (ie. alcohol dependence or alcohol abuse) was applicable to the veteran in this case. The court also emphasised that time of clinical onset can be determined only if the relevant disease is first properly identified because the time of clinical onset depends on when the particular disease's diagnostic criteria were first satisfied.

Identification of the 'kind of death'

In *Gittins v Repatriation Commission* [2007] FCA 1380, the Federal Court held that it was correct for the AAT to characterise the 'kind of death' by reference to the 'actual medical cause of death' for the purpose of applying a Statement of Principles. The Federal Court agreed with the Federal Magistrate that the SoP that applied to the kind of death found governs the determination of whether the hypothesis that the death arose from relevant service is reasonable.

Reasonable hypothesis and application of the *Deledio* steps

Gardiner v Repatriation Commission [2007] FCA 1290 continued the line of authority supporting the proposition that there must be a hypothesis pointed to by the facts, even though not proved upon the balance of probabilities: *East v Repatriation Commission* (1987) 16 FCR 517 at 532-3, *Bull v Repatriation Commission* (2001) 34 AAR 326 at 330. In *Gardiner*, the Federal Court held that the material must point to the connecting hypothesis, rather than the connection remaining purely in the realm of conjecture or speculation.

In *Tunks v Repatriation Commission* [2008] FCA 521, the Federal Court held that the Tribunal crossed the line into impermissible fact finding at stage 3 of *Deledio* when it made a

finding concerning the accuracy of a witness's evidence. Similarly, in *Collins v Repatriation Commission* [2007] FCAFC 111, the Full Court held that Tribunal went further at this stage three of *Deledio* than it was permitted to do by preferring one medical opinion over another and preferring some facts to others viewed as 'inadequate, inaccurate and inconsistent.'

Repatriation Commission v Newson [2008] FCA 401 provided clarification on the construction of factors in a Statement of Principles, which require exposure to a particular causative agent or undertaking a certain activity over a particular time period. The Federal Court held that the factors cannot be read in isolation, and that at least part of the exposure or activity over that time period must encompass at least part of a period of a relevant period of the person's eligible service.

Repatriation Commission v Sergeant [2007] FCA 1408, highlighted the importance of the decision maker identifying the relevant hypothesis at step 1 of *Deledio* and properly identifying the SoPs that uphold the whole of the hypothesis at step 2 of *Deledio*.

Procedural

In *Godwin v Repatriation Commission* [2008] FCA 576, the Full Court considered the scope of the power contained in s.31 of the VEA with respect to reviewing decisions previously made by the Tribunal. The general tenor of the Court's decision is that s.31 of the VEA is very broad. The Court considered that both s 31(4) and (6) conferred a power to review decisions previously made by the Tribunal. Specifically, subsection 31(4) allows the Commission to review a decision, including one made by the Tribunal, where it was based on evidence that was "false in a material particular". The Court held that false means 'objectively incorrect'.

Special Rate

Repatriation Commission v Edmonds [2008] FMCA 13 continued the line of authority supporting the proposition that in relation to above general rate assessments, that the type of work that a person had been undertaking for the purposes of s 24(1)(c) is usually better characterised in general terms.

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 usually published biannually.

Appendix 2

Administrative Appeals Tribunal

Review of VRB Decisions

VRB decisions are subject to merit review by the Administrative Appeals Tribunal (AAT). The applicant, the Repatriation Commission, the Military Rehabilitation and Compensation Commission, or a service chief may seek review of a VRB decision. However, the VRB is not a party to the 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 s 37 of the *Administrative Appeals Tribunal Act 1975*. Where the decision of the VRB relating to a matter under the VEA was to set aside the decision reviewed by it, the s 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 MRCA, the s 37 statement is prepared by the Department of Veterans' Affairs on behalf of the Repatriation Commission or the Military Rehabilitation and Compensation Commission. During 2007-08, the VRB was notified of the lodgement of 570 applications for review by the AAT of matters involving VRB decisions. During the same period, the VRB lodged 59 s 37 statements with the AAT. The average time taken for preparation and lodgement of those statements was 16.7 days.

As at 30 June 2008, applications for review by the AAT had been filed in respect of 570 VRB decisions made during 2007-08. The table below sets out the number and the percentage of decisions which have been the subject of applications for review by the AAT.

Table 16 – Applications for review by the AAT

	2007-08	2006-07	2005-06
Applications for review from VRB decisions	570	717	801
Application rate*	21%	26%	29%

* The application rate is estimated by comparing the number of applications lodged with the AAT with the number of applications finalised by VRB decisions made at hearings.

In the course of 2007-08 the AAT finalised 717 applications for review of decisions of the VRB. 714 of these had been made under the VEA and 3 under the MRCA. The tables below set out the outcomes of review by the AAT over the last three years.

Table 17 – AAT review outcomes

	2007-08	2006-07	2005-06
Withdrawn or dismissed	31%	40%	34%
Conceded (varied or set aside)	42%	38%	39%
Finalised by hearing	27%	22%	27%

Table 18 – Decisions published upon review by the AAT

	2007-08	2006-07	2005-06
Affirmed	98 (56%)	101 (60%)	155 (60%)
Varied or set aside	76 (44%)	68 (40%)	103 (40%)

In respect of the VRB decisions that were set aside by the AAT during 2007-08, in the majority of these cases there appears to have been evidence before the AAT that was not before the VRB.

Review of MRCA Decisions

During 2007-08, there were 3 matters finalised in the AAT concerning appeals from the VRB under the MRCA. Two were withdrawn and the other one was set aside following a hearing.

Review of Dismissals

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

Table 19 – AAT review of dismissals

	2007-08	2006-07	2005-06
Withdrawn or dismissed	–	–	3
Conceded (varied or set aside)	–	–	2
Finalised by hearing	1*	–	–

* This case is the subject of a Federal Court appeal, which had not yet been finalised by the end of the financial year.

Appendix 3

Other Forms of External Scrutiny

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 2007-08, the Ombudsman did not formally 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 2007-08.

Privacy Commissioner

The VRB is subject to the *Privacy Act 1988*. The VRB continually assesses its compliance with the Information Privacy Principles, which determine the way the VRB deals with personal information.

The VRB provided information to the Privacy Commissioner for inclusion in the Personal Information Digest. The Commissioner did not issue any reports about the actions or practices of the office under s 30 of the *Privacy Act 1988* in 2007-08.

Human Rights and Equal Opportunity Commission

The VRB is subject to the jurisdiction of the Human Rights and Equal Opportunity Commission. The Commission did not notify the VRB of any complaints during 2007-08. (The Human Rights and Equal Opportunity Commission became the Australian Human Rights Commission on 4 September 2008.)

Auditor-General

The Auditor-General did not conduct any inquiries or make any reports in relation to the VRB during 2007-08.

Reports by Parliamentary Committees

There were no reports by a parliamentary committee relating to the VRB during 2007-08.

Appendix 4

Membership of the Veterans' Review Board – By Category

	Commencement of Appointment	Expiration of Appointment
PRINCIPAL MEMBER		
Mr Michael Griffin	26 June 2007	25 June 2012
FULL-TIME SENIOR MEMBER		
Mr Ivan Cahill	1 October 2007	30 September 2009
PART-TIME SENIOR MEMBERS		
Mr John Charles Cooke	1 January 1990	30 September 2009
Ms Julie Cowdroy	1 January 1993*	30 September 2009
Ms Jennifer D'Arcy	1 June 2001	30 September 2009
Ms Ann Frances Graham	31 March 2008	30 September 2009
Ms Andrea Marilyn Hall-Brown	30 July 1998*	30 September 2009
Mr Robert Walter George Hume	1 October 2006	30 September 2009
Mr Edward Bertram Mark Jolly	1 October 2007	30 September 2009
Mr Christopher Anthony Vincent Keher	31 March 2008	30 September 2009
Ms Hilary Lorraine Kramer	30 July 1998*	30 September 2009
Ms Amanda MacDonald	1 October 2007	30 September 2009
Ms Andrea Michelle Treble	1 June 2001	30 September 2009
Ms Sylvia Winters	1 October 2006*	30 September 2009
Mr Christopher Charles Hamilton Wray	1 October 2006	30 September 2009
Colonel Leslie James Young (Retd)	1 October 1997	30 September 2009

- * Ms Cowdroy – Resigned 12 July 1996, reappointed 30 July 1998
Ms Hall-Brown – Appointment expired 30 September 2006, reappointed 1 October 2007
Ms Kramer – Changed category: Member to Senior Member from 1 October 2006
Ms Winters – Changed category: Member to Senior Member from 31 March 2008

PART-TIME SERVICES MEMBERS

Brigadier Christopher George Appleton CSC	31 March 2008	30 September 2009
Mr Francis Harding Benfield	28 May 1999	30 September 2009
Dr Robert Barham Black AM RFD	1 October 2006	30 September 2009
Major General		
Murray Phillip Blake AO MC (Retd)	28 May 1999	30 September 2009
Lieutenant Colonel Francis Brown (Retd)	1 June 2001	30 September 2009
Wing Commander		
Stuart Alexander Bryce (Retd)	25 November 1991	30 September 2009
Air Commodore		
Frank Edward Burt OBE (Retd)	1 January 1998	30 September 2009
Rear Admiral		
Anthony Michael Carwardine AO (Retd)	1 January 1998	30 September 2009
Group Captain Collins Joseph Fagan (Retd)	1 January 1985	30 September 2009
Captain Allan John Farquhar RAN (Retd)	1 June 2001	30 September 2009
Brigadier Laurence John Lewis AM (Retd)	1 January 1998	30 September 2009
Lieutenant Colonel		
Alexander Richard Main (Retd)	1 October 2006	30 September 2009
Major Gregory Mawkes (Retd)	1 January 1993	30 September 2009
Brigadier Terrence John Nolan AM (Retd)	31 March 2008	30 September 2009
Colonel Robin Terence Regan CSC (Retd)	28 May 1999	30 September 2009
Colonel Roger Alfred Tiller AM CSC (Retd)	1 October 2006	30 September 2009
Air Commodore		
Bruce Robert Wood (Retd)	1 October 2006	30 September 2009
Major Warwick Anthony Young	31 March 2008	30 September 2009

PART-TIME MEMBERS

Ms Zita Rose Antonios	1 June 2001	30 September 2009
Mr Gary Charles Barrow	1 October 2007	30 September 2009
Mr Graham Michael Barter	1 October 2007	30 September 2009
Mr Andrew Harding Braban	1 October 2007	30 September 2009
Ms Sharon Elizabeth Brennan	1 October 2006	30 September 2009
Mr Robert Anthony Brumm PSM	1 October 2006	30 September 2009
Ms Jackie Miriana Fristacky	1 October 1997	30 September 2009
Major Janet Ann Hartmann (Retd)	1 June 2001	30 September 2009
Ms Elayne Joyce Hayes	1 October 2006	30 September 2009
Ms Kerrie Ellen Laurence	1 June 2001	30 September 2009
Ms Morag Angus McColm	1 January 1998	30 September 2009
Mr Victor Kent Patrick RFD	1 October 2007	30 September 2009
Colonel Anthony James Wales (Retd)	1 October 1997	30 September 2009
Colonel David Symon Wilkins (Retd)	1 October 2006	30 September 2009

Appendix 5

Membership of the Veterans' Review Board – By State

AUSTRALIAN CAPITAL TERRITORY

Full-Time Senior Member

Mr Ivan Cahill

Part-Time Services Member

Rear Admiral Anthony Michael Carwardine AO (Retd)
Brigadier Christopher George Appleton CSC

NEW SOUTH WALES

Principal Member

Mr Michael Griffin

Part-Time Senior Members

Mr John Charles Cooke
Ms Jennifer D'Arcy
Mr Christopher Anthony Vincent Keher
Ms Hilary Lorraine Kramer
Ms Amanda MacDonald
Colonel Leslie James Young (Retd)

Part-Time Services Members

Lieutenant Colonel Francis Brown (Retd)
Air Commodore Frank Edward Burtt OBE (Retd)
Colonel Roger Alfred Tiller AM CSC (Retd)
Air Commodore Bruce Robert Wood (Retd)
Major Warwick Anthony Young

Part-Time Members

Ms Zita Rose Antonios
Graham Michael Barter
Major Janet Ann Hartmann (Retd)
Ms Elayne Joyce Hayes
Ms Kerrie Ellen Laurence
Colonel David Symon Wilkins (Retd)

VICTORIA

Part-Time Senior Members

Ms Ann Frances Graham
Ms Andrea Michelle Treble
Mr Christopher Charles Hamilton Wray

Part-Time Services Members

Group Captain Collins Joseph Fagan (Retd)
Brigadier Terrence John Nolan AM (Retd)
Colonel Robin Terence Regan CSC (Retd)

Part-Time Members

Ms Sharon Elizabeth Brennan
Ms Jackie Miriana Fristacky

QUEENSLAND

Part-Time Senior Members

Ms Julie Cowdroy
Ms Andrea Marilyn Hall-Brown
Mr Robert Walter George Hume
Ms Sylvia Winters

Part-Time Services Members

Mr Francis Harding Benfield
Major General Murray Phillip Blake AO MC (Retd)
Captain Allan John Farquhar RAN (Retd)
Lieutenant Colonel Alexander Richard Main (Retd)

Part-Time Members

Mr Andrew Harding Braban
Mr Robert Anthony Brumm PSM
Ms Morag Angus McColm

SOUTH AUSTRALIA

Part-Time Senior Member

Mr Edward Bertram Mark Jolly

Part-Time Services Member

Dr Robert Barham Black AM RFD
Brigadier Laurence John Lewis AM (Retd)

Part-Time Members

Mr Victor Kent Patrick RFD
Colonel Anthony James Wales (Retd)

WESTERN AUSTRALIA

Part-Time Services Members

Major Gregory Mawkes MBE (Retd)

Part-Time Member

Mr Gary Charles Barrow

TASMANIA

Part-Time Services Member

Wing Commander Stuart Alexander Bryce (Retd)

Appendix 6

Membership of the Veterans' Review Board – Biographical Details

Michael Griffin, LLB, LLM *Principal Member, NSW*

Michael Griffin is the Principal Member of the Veterans' Review Board.

Mr Griffin was appointed on 26 June 2007 for a five year term. Previously he was in private practice as a solicitor, specialising in the areas of federal administrative law and criminal law. Mr Griffin was also a part time Member of the Administrative Appeals Tribunal from 2001 until his appointment to the Board. He has been a Senior Member of the Migration Review Tribunal and a Member of the Refugee Review Tribunal. He has been a Judge Advocate/Defence Force Magistrate and a Member of the International Association of Refugee Law Judges. Mr Griffin served in the Australian Regular Army for 22 years until his transfer to the Army Reserve in 1997. He was a Section Commander in 3RAR, a recruiting Sergeant and a legal officer and saw active service in Somalia and Iraq. He currently holds the rank of Colonel on the Active List of the Army Reserve.

In 2004 Mr Griffin was appointed as the Subject Matter Expert in Administrative Law for the Australian Defence Force and in 2005 was engaged by the President of the Senate as legal adviser to the Senate Inquiry into the Military Justice System. In 2005 Mr Griffin was appointed as Foreign Attorney Consultant to Mr David Hicks, at Mr Hicks's request, before the United States Military Commission in Guantanamo Bay, Cuba. Mr Griffin has appeared as counsel assisting or counsel representing in numerous commissions of inquiry and boards of inquiry in Australia and overseas.

Ms Zita Antonios *Member, NSW*

Ms Antonios is a graduate in Social Studies. She is a current part time Member of the Administrative Decisions Tribunal and a former full time Member of Immigration Review Tribunal. Prior to that she was the Federal Race Discrimination Commissioner and Social Justice Commissioner at the Human Rights and Equal Opportunity Commission. Ms Antonios has an extensive employment history as a mediator and advisor in grievance management and conflict resolution. She was appointed a Member of the VRB in 2001.

Brigadier Chris Appleton CSC *Services Member, ACT*

Brigadier Appleton will separate from the Australian Defence Force in July 2008. He has held the positions of Commandant of the Australian Command and Staff College, Commanding General of the Iraqi Joint Headquarters Transitions Team, Commandant of the Royal Military College, Duntroon and Commander of the Peace Monitoring Group, Bougainville. He was appointed Services Member of the VRB in 2008.

Commander Gary Barrow *Member, NSW*

Commander Barrow served as a permanent officer in the Royal Australian Navy for 26 years. In 1983 he graduated from the University of Sydney Law School, and also qualified

as a Legal Officer in the Royal Australian Navy. He has been in private practice as a solicitor since 1986 and has continued to serve as a Naval Reserve officer. He was appointed a Member of the VRB in 2007.

Mr Graham Barter
Member, NSW

Mr Barter is a Barrister in private practice and a member of the NSW Bar Association Alternative Dispute Resolution Committee. He is a Reserve Legal Officer with the Command Legal Office, Land Headquarters, Paddington and is studying for a Master of Military Law degree at ANU. He is a graduate of the University of New South Wales, and served in the Australian Army Legal Corps from 1981-1989, and again from 1999. He was appointed as a Member of the VRB in 2007.

Mr Frank Benfield
Services Member, Qld

Mr Benfield is a graduate of the Army Apprentices School and the University of Southern Queensland. He was appointed to the VRB in May 1999 from Queensland University of Technology where he was working as an academic. He served in the ADF for 20 years including one tour of duty in Vietnam, one in Papua New Guinea and several tours of duty in Indonesia. As a civilian advisor he was attached to the Royal Thai Navy Air Wing for 3 years on a Defence Co-Operation Project with the United Nations High Commissioner for Refugees. Mr Benfield is a Services Member based in Brisbane.

Group Captain Dr Robert Black AM RFD
Services Member, SA

Group Captain Black is a Doctor of Medicine and has a Master of Surgery. He is a fellow of the Royal Australian College of Surgeons. He served in the Royal Australian Air Force Reserve for 46 years including duty in Butterworth, Rwanda, Bougainville and East Timor. He was the Senior Visiting Specialist of the Daw Park Repatriation General Hospital for 23 years and has conducted a self employed private surgical practice. He was appointed a Services Member of the VRB in 2006.

Major General Murray Blake AO MC (Retd)
Services Member, Qld

Major General Blake (Retd) has been a Services Member of the Board since 1999. He has seen active service in Vietnam, Malaya and Borneo and has held positions including Commander of Land Command Australia, Commandant of the Royal Military College and Commander of the 3rd Brigade.

Mr Andrew Braban
Member, Qld

Mr Braban has a Masters in Law from the United States Army Judge Advocate Generals School. He served in the Australian Regular Army from 1980 to 2002 in a number of legal officer positions including Senior Legal Officer to the Commander of the International Forces East Timor. He continues to work for Defence Legal Services and is the Executive Legal Officer for the Queensland College of Teachers. He was appointed a Member of the VRB in 2007.

Ms Sharon Brennan
Member, Vic

Ms Brennan was appointed as a Member of the VRB in 2006. She has a Masters in Business and is a graduate in Arts and Education and works as a Conciliation Officer at the Accident

Compensation Conciliation Service. She has an extensive employment history in Human Resources in both the private and public sectors.

Frank Brown, LLB
Services Member, NSW

A former national serviceman, later promoted sergeant and then commissioned from OCS Portsea in 1971. Army service included Vietnam in 1968/69 and an exchange posting with the British Army in Germany 1976-1978. He left the Army in 1993 as a lieutenant colonel, following which he worked for the NSW Independent Commission Against Corruption. After graduating in law from the University of New South Wales in 1997, worked as a solicitor in private practice. Appointed to the Board in 2001, he also continues to practice law as a sole practitioner.

Mr Robert Brumm
Member, Qld

Mr Brumm has qualifications in Farm Management and Public Sector Management. He had operational service in Vietnam with the Australian Army. Post-service he worked for the Queensland Department of Primary Industries and Fisheries for 29 years in regulatory, technical and legislative support management. In 1998 he was awarded the Public Service Medal. He was appointed a Member of the VRB in 2006.

Wing Commander Stuart Bryce (Retd)
Services Member, Tas

Wing Commander Bryce (Retd) has been a Services Member of the Board since 1991. He served in the Royal Australian Air Force for 23 years initially as an aircraft instrument fitter and later as a pilot completing several tours with No 37 Squadron and over four years as a VIP captain with No 34 Squadron. He saw active service in Vietnam as an air support officer with the 1st Australian Task Force at Nui Dat. He retired from the RAAF in 1986 when he was serving in Hobart as the Senior Air Force Officer, Tasmania.

Air Commodore Frank Burt OBE (Retd)
Services Member, NSW

Air Commodore Burt (Retd) served in the Royal Australian Air Force for 33 years including operational service in Malaya and Vietnam. He is a graduate of both the Canadian Forces Command and Staff College and the Joint Services Staff College. He retired in the rank of Air Commodore and was appointed as an Officer of the Most Excellent Order of the British Empire in 1983. He was appointed a Services Member of the VRB in 1998.

Mr Ivan Cahill
Senior Member, ACT

Mr Cahill is a graduate of the University of Queensland, Macquarie University, the Royal Military College, Duntroon, the Joint Services Staff College and the Army's Command and Staff College. He served in the ADF for 27 years, including one year in the Army Reserve. He had operational service in South Vietnam (two tours) and in the Middle East, where he was Chief United Nations Military Observer in Southern Lebanon. He has also served in Papua New Guinea and Japan (Okinawa). He was previously employed as Director Litigation with the Department of Veterans' Affairs. He was appointed as a Senior Member of the VRB in 2007.

Rear Admiral A.M. Carwardine AO RAN (Retd)
Services Member, ACT

Gerry Carwardine has been a part time service member of the VRB since January 1998. He served in the RAN for over 41 years as a seaman warfare officer. He had four sea commands and a squadron command. He had active service in Malaya and Malaysia.

Professional training and education has included gunnery and missile courses in the UK and the USA and management at the USN Post Graduate School, Monterey, California. He is a graduate of the Joint Services Staff College, Canberra and the USN War College, Newport, Rhode Island. His last three service postings, prior to retiring in 1995, were Chief of Naval Personnel, Head of the Australian Defence Staff in North America, including Defence Attache to the USA, Canada and the United Nations, and Commandant of the Australian Defence Force Academy. He bred Murray Greys on a small holding at Bungendore from 1995 to 2002 and was a journalist for the Queanbeyan Age in the late 1990s. He has been involved in a number of professional, charitable and voluntary organisations, including Chairman of the Defence Attaches Association in Washington, DC, Chairman of the ACT Support Group to the Australian War Memorial and the lay member of the Human Ethics Committee of the University of Canberra.

Mr John Cooke
Senior Member, NSW

Mr Cooke qualified in Law in 1968 through the Barristers' Admission Board, NSW. Prior to his appointment as Senior Member of the VRB in 1990 he was Director of the Legal Aid Commission in NSW and, before that, Chairman of the Corporate Affairs Commission NSW. He has acted as Principal Member of the Board on several occasions. He served in the Army as a National Serviceman (12 NS Trg Bn and HQ I Armd Bde) 1953-55.

Ms Julie Cowdroy
Senior Member, Qld

Ms Cowdroy is a graduate in Law. She is a former part time Legal Member of the Social Security Appeals Tribunal; a part time Deputy Chair Person of the Drug Aid Assessment Panel Adelaide; Deputy President of Guardianship Board Adelaide; a member of the Residential Tenancy Tribunal; a part time Member of the Police Disciplinary Tribunal QLD; a part time Member of the Administrative Appeals Tribunal and is currently a part time Member of the Guardianship and Administration Tribunal and the Children's Services Tribunal. She was an Assistant Crown Prosecutor Officer of the Director of Prosecutions South Australia and Senior Solicitor Commercial Division in the Crown Solicitor Office Adelaide. She is a Senior Member of the VRB, having held the position from 1993-1996 and again from 1998.

Ms Jennifer D'Arcy
Senior Member, NSW

Ms D'Arcy has been a part-time Senior Member of the board since 2001 and also is a part-time legal member of the Mental Health Review Tribunal and the Social Security Appeals Tribunal, as well as being a part-time presiding member of the Guardianship Tribunal.

Captain Allan Farquhar RAN (Retd)
Services Member, Qld

Captain Farquhar (Retd) served in the Royal Australian Navy for 28 years, including operational service in the Far East Strategic Reserve during 1962. He is a graduate of the Royal Australian Naval College and the Australian Joint Services Staff College. He is qualified in Accountancy and Business Management and has worked as a Senior Consultant and Human Resources Manager in the private sector. He was appointed Services Member of the VRB in 2001.

Group Captain Collins Fagan (Retd)
Services Member, Vic

Group Captain Fagan (Retd) served briefly in the CMF before joining the Royal Australian Air Force for 30 years after the outbreak of the Korean War. He resigned from the RAAF and while awaiting discharge he was appointed a part-time Services Member of the Repatriation Review Tribunal (RRT) in 1980 just after that body was formed but was employed full time.

He then was appointed as a full time member on the Veterans' Review Board in 1985. He is the only member in the jurisdiction to have served on the RRT and the only original member of the Board from when it was formed.

Ms Jackie Fristacky
Member, Vic

Ms Fristacky has Master of Public Policy, Master of Public Policy and Management and Master of Laws degrees. She has been a senior member of the WorkCare Appeals Board, an industrial advocate for the Australian Public Service Board and held senior roles in the Victorian Public Service and in industrial relations and management consulting. She was appointed as a Member of the VRB in 1997. Since 2002, she has held this role concurrently with her role as a municipal councillor of the City of Yarra where she was Mayor in 2006.

Ms Ann Graham
Senior Member, NSW

Ms Graham holds Bachelor degrees in Arts and Laws as well as a Master of Laws from Monash University. Between 2001 and 2007 she held an appointment as a Member of the Migration Review Tribunal and the Refugee Review Tribunal. Ms Graham also served for four years as an Australian Federal Police Officer. Ms Graham was appointed as a Senior Member of the VRB in 2008.

Ms Andrea Marilyn Hall-Brown
Senior Member, Qld

Ms Hall-Brown is a graduate in Laws and Science, and is currently a Barrister. She is senior member of the VRB, having held the position from 1998-2006 and presently from 2007.

Mrs Jan Hartmann
Member, NSW

Jan Hartmann served in the Australian Army for 22 years, retiring with the rank of Major. She is a former Veterans' Advocate for the Returned and Services League (NSW Branch) and assessor for Veterans' Home Care program. She was appointed a Member of the VRB in 2001.

Mrs Elayne Hayes
Member, NSW

Ms Hayes is a graduate in Arts and Social Work. She is a former Member and Executive Member of the Social Security Appeals Tribunal (1983-1989, 1999) and a part time Member of the NSW Administrative Decisions Tribunal (1997 – present). She has worked as a Human Resources and Communications Manager at the Department of Health and Aged Care; a Consultant to Federal Health Insurance Commission Sofia, Bulgaria; Consultant at the Australia Japan Foundation; Manager at Centrelink and Department of Social Security. Ms Hayes has also undertaken HR consultancy work in South Africa and Switzerland. She was appointed a Member of the VRB in 2006.

Major Edward Bertram Mark Jolly
Senior Member, SA

Major Jolly has a Masters in Law from Melbourne University, and is currently a Barrister in private practice. He served as a Legal Officer in the Australian Regular Army from 1993-1998 and continues to serve in the Army Reserve. He was appointed a Senior Member of the VRB in 2007.

Mr Christopher Keher
Senior Member, NSW

Mr Keher is a solicitor in private practice and is a part-time Member of the Consumer Trader and Tenancy Tribunal. He has previously been a part-time advocate for the Department of Veterans' Affairs and was a member of the Refugee Review Tribunal from 1997 to 2004. He was appointed a Senior Member of the VRB in 2008.

Ms Hilary Kramer
Senior Member, NSW

Ms Kramer is a graduate in Arts and Law. She is a part time member of the NSW Mental Health Review Tribunal and a former part time Legal Member of the Social Security Appeals Tribunal and the Guardianship Tribunal of NSW. She has practised as a Solicitor in private practice and for the Legal Aid Commission representing clients in criminal, prison and mental health law. She has conducted research with the New South Wales Bureau of Crime Statistics and Research and compiled the final report of the 26-member Women in Prison Task Force to the Minister for Corrective Services. She was appointed Member of the VRB in 1998 and Senior Member in 2006.

Kerrie Laurence
Member, NSW

Ms Laurence is a graduate in Arts and Disability Education. She is a member of the Guardianship Tribunal and a former part time Member of the Social Security Appeals Tribunal. She has previously worked as an aged care quality assessor for the Aged Care Standards and Accreditation Agency, NSW TAFE Commission, and the NSW Department of Community Services. She was appointed a Member of the VRB in 2001.

Brigadier Laurie Lewis (Retd)
Services Member, SA

Brigadier Lewis (Retd) served in the Australian Army for 32 years including operational service in Malaya and Vietnam. He graduated from the Australian Staff College and the Joint Services Staff College. He was appointed Services Member of the VRB in 1998.

Ms Amanda MacDonald
Senior Member, NSW

Ms MacDonald has a Masters of Administrative Law and Policy and a Bachelor of Science from the University of Sydney. She is currently a Member of the Migration Review and Refugee Review Tribunals, after acting as a Senior Member of those Tribunals from 2005-2006 and a Member of the Social Security Appeals Tribunal. She was appointed a Senior Member of the VRB in 2007.

Lieutenant Colonel Rick Main (Retd)
Services Member, Qld

Lieutenant Colonel Main (Retd) served for 23 years in the Australian Army including operational service in Vietnam. He graduated from the Army Staff College Queenscliff and the Officer Training Unit Scheyville. His service also included instructional postings at the Royal Military College Duntroon and as an exchange officer at the British Royal Military Academy Sandhurst. Following eight years as an advocate with the RSL Queensland State Branch he was appointed as a Services Member of the VRB in 2006.

Major Gregory Mawkes MBE
Services Member, WA

Major Mawkes served in the Regular Army for 22½ years including two tours of Vietnam with 1 SAS Squadron. He was appointed as a Member of the Order of the British Empire for services to SAS in the 1982 New Years Honours list, specifically for establishing Australia's military counter-terrorist capability. He was appointed Services Member of the VRB in 1993.

Ms Morag McColm
Member, Qld

Ms McColm is a graduate in Social Studies and Adult Education. She is a former Member of the Social Security Appeals Tribunal and was a member of the Legal Aid panel of chair people, Brisbane. She has an extensive history of employment in a wide range of medical, mental health and family work areas. She was appointed Member of the VRB in 1997.

Brigadier Terrence Nolan AM (Retd)
Services Member, Vic

Brigadier Terry Nolan retired from the Australian Army in 1996 after a career spanning 34 years. His Army service commenced in 1962 when he enlisted as a soldier in the CMF, but in 1965 he transferred to the Regular Army where he served for the remainder of his career. He saw active service in South Vietnam as a junior officer. He left the Army in 1996 to join Royal Dutch Shell as the Regional Security Manager for South-East Asia /Pacific. He retired from that position in March 2008 to take up the appointment as a Services Member of the VRB.

Mr Victor Kent Patrick RFD
Member, SA

Mr Patrick was a solicitor/barrister from 1967 to 1986 and a Stipendiary Magistrate and Deputy Coroner of South Australia from 1986-2007. He also served as a Legal officer in the Australian Army from 1974 - 1977 and in the Army Reserve from 1977 - 1997. On reaching retirement age he held the rank of Lieutenant Colonel and was also a Defence Force Magistrate. He was appointed a Member of the VRB in 2007.

Colonel Robin Regan CSC (Retd)
Services Member, Vic

Colonel Regan (Retd) served in the Australian Army for 34 years including active service in South Vietnam. He was awarded the Conspicuous Service Cross and Deputy Chief of Army Commendation. He has previously been an advocate for the Returned and Services League of Victoria. Colonel Regan (Rtd) was appointed a Services Member of the VRB in 1999.

Colonel Roger Tiller AM CSC (Retd)
Services Member, NSW

Roger Tiller was appointed to the VRB as a part-time services member in 2006. Conscripted in 1972 he was commissioned into the Royal Australian Infantry Corps and served in the Australian Regular Army for 33 years. He commanded ADF's Parachute Battalion Group as the Commanding Officer of 3 RAR and was the Commander of the Liverpool Military Area during the period coinciding with the initial deployments into East Timor, the operation in support of Kosovo refugees and the Sydney Olympics. Colonel Tiller has served as a military observer with the United Nations Truce Supervision Organisation (UNTSO) in the Middle East. His last appointment from 2002 to 2005 was as the first Australian Defence Attaché in the Gulf - based in Riyadh, Saudi Arabia. He was cross accredited to Kuwait, Jordan, Bahrain, Oman (and initially Qatar and the UAE) and spent time with ADF elements in Afghanistan, Kyrgyzstan and Iraq. Colonel Tiller was appointed a Member of Order of Australia (AM) in 1999 and awarded the Conspicuous Service Cross (CSC) in 2005. He now

has a one-man consulting company facilitating opportunities between Australian industry and business entities including governments of the Gulf region.

Dr Andrea Treble
Senior Member, Vic

Dr Treble has been a part time Senior Member of the Board since 2001. She has recently completed doctoral studies in social policy and administrative law. She has past experience as a solicitor in private practice, as well as in the government and community sector, and formerly taught administrative and community law in the tertiary sector. She is a member of the Teachers' Disciplinary Proceedings Committee and the Accreditation Decisions Review Committee, a legal member of the Mental Health Review Board and the Social Security Appeals Tribunal along with being an independent reviewer for Victoria Legal Aid.

Colonel Anthony Wales (Retd)
Member, SA

Colonel Wales (Retd) is a graduate in Law. During his 27 year military career he had operational service in Borneo and Vietnam and attained the rank of colonel in the position of Deputy Director Army Legal Services. After retiring from the Army he entered private legal practice. Colonel Wales was elected Mayor of Mt Barker Council in 2003. He was appointed a Member of the VRB in 1997 and has acted as a Senior Member on a number of occasions.

Colonel David Wilkins (Retd)
Member, NSW

Colonel Wilkins (Retd) is an honours graduate in Law and Arts. He served for 26 years in the Australian Army which included infantry operational service in South Vietnam. Since then he has worked as a Barrister, Defence Force Magistrate and Judge Advocate, Army Reserve. He was appointed a Member of the VRB in 2006.

Ms Sylvia Winters
Senior Member, Qld

Ms Winters has been a Member of the Board since 2006, and was appointed a Senior Member in 2008. She previously served as an officer in the Australian Army and was a barrister at the New South Wales Bar.

Air Commodore Bruce Wood (Retd)
Services Member, NSW

Air Commodore Wood (Retd) served in the Royal Australian Air Force for 35 years which included a posting in Ubon, Thailand during the Vietnam War flying Sabre aircraft, and later a tour in South Vietnam as a Forward Air Controller working with the US Army 25th Infantry Division. Towards the latter part of his Air Force career he was the Air Attaché in Washington DC and his last posting before retirement was as Combined Air Component Commander INTERFET and Commander of the Australian Contingent, in East Timor. He is still a member of the RAAF Reserve Staff Group and was appointed a Services Member of the VRB in 2006.

Mr Christopher Wray
Senior Member, Vic

Mr Wray is a graduate in Law with a post graduate diploma in Art History. He is a self-employed solicitor and has an extensive history of employment as a senior associate, partner and sole principle in law firms in Melbourne and Perth. He has lectured in legal studies and has authored publications relating to Australian Military History.

Colonel Leslie Young (Retd)
Senior Member, NSW

Colonel Young (Retd) has a Diploma in Law and a Diploma in Criminology. He served in the Australian Army for 22 years holding appointments as Judge Advocate Administrator, Judge Advocate, Defence Force Magistrate and Chief Legal Officer. In his capacity as a Judge Advocate he sat on military trials in Somalia and Cambodia. Prior to his appointment as a Senior Member of the VRB in 1997 he worked as a solicitor advocate which he continues to do on a part time basis as a sole practitioner.

Major Warwick Young
Services Member, NSW

Major Young is an Army Officer in the Australian Defence Force and has been since 1992. Major Young saw active service in Iraq in 2006. He was appointed Services Member of the VRB in 2008.

Appendix 7

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, Appendix 4 and Appendix 5. Details of the function of the VRB are set out under Objectives, Function, Powers and Jurisdiction at p 3.

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 VEA, and are modified by s353 of the MRCA when the VRB conducts reviews under that Act or the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*. In conducting a review of a decision, the VRB may, by s139(3) of the VEA, 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 VEA:

- subsection 139(3) – the VRB may affirm, vary or set aside a decision or determination and, if it sets aside the decision or determination under review, it may substitute its own decision or determination;
- subsection 139(4) – if the VRB sets aside a decision and substitutes its own decision to grant a pension, it can assess the rate at which pension is to be paid or remit the matter to the Repatriation Commission
- subsection 139(4) – if the VRB sets aside a determination and substitutes its own determination to grant compensation, 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 determination 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 and 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 conduct an investigation, arrange a medical examination, or provide additional documents 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 conduct an investigation, arrange a medical examination, or provide additional documents 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;
- section 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, the service chiefs, 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' Handbook

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

vrbSAM User Manual

This 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.

Practice Notes

These are prepared by the Principal Registrar and the Director (Legal 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 Principal Registrar 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 14.

Appendix 8

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. A customer satisfaction survey mail-out will be conducted quarterly.

Appendix 9

Ecologically Sustainable Development and Environmental Performance

The VRB remains committed to minimising the impact of its workplaces on the environment and promoting environmentally supportive work practices. The VRB continues to increase purchases of 'green' energy, recycle waste paper and materials and to implement measures to reduce the amount of energy and resources used. The VRB also ensures it is compliant with relevant environment regulations and that suppliers are aware of our environmental commitments and arrangements. The VRB will continue to improve its awareness of environmental issues and promote awareness in its business practices in all its Registries.

The Department of Veterans' Affairs monitors and reports on energy consumption in the buildings occupied by the VRB, and information regarding this is included in the Annual Report of the Department.

Appendix 10

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, the Military Rehabilitation and Compensation Commission and the Department of Veterans' Affairs.

The VRB is a tribunal created by Parliament to review:

- decisions about pensions (other than service pensions) and attendant allowance under the *Veterans' Entitlements Act 1986* (the VEA); and
- determinations about liability, compensation, rehabilitation and other benefits under the *Military Rehabilitation and Compensation Act 2004* (the MRCA). 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 that will help you to prepare your case.

We will provide, on request, a *Handbook* designed to assist representatives appearing at the VRB.

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

We have a VRB web site which provides details of our processes, contacts and general information to assist you. The address is www.vrb.gov.au. You can also email the VRB at 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 11

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;
 - claims for the grant or assessment of attendant allowance;
- 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;
 - treatment;
 - allowances and other benefits;
- 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 (s 158);
- responsible for its efficient operation (s 142); and
- required to report annually to the Minister on operations (s 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 Sydney through Registries in Melbourne, Brisbane, Adelaide, Perth and Canberra;
- 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;
- reference to cases reviewed in AAT and Federal and High Courts.

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 2008-09

- Assess number and categories of members in Registries in light of changing workloads.
- Trial and evaluate Member Case Appraisal method.
- Review Operations Manual.

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 2008-09

- Continue enhancement of vrbSAM.
- Continue project to incorporate decision writing with vrbSAM.
- Review vrbSAM capacity to adapt and process MRCA.

Strategy 3 – Continuous Training

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

Priorities 2008-09

- Maintain register of staff training and relate to performance assessments.
- Implement standard documentation for decision writing in relation to the VEA and MRCA.
- Promote 'workshops' for all staff.
- Conduct workshops for members on the MRCA.
- Deliver standardised training for ESO representatives.

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 2008-09

- 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 the MRCA.
- Implement member development and performance appraisal system.

Appendix 12

Compliance Index

This Annual Report has been prepared in accordance with the Requirements for Annual Reports approved by the Joint Committee of Public Accounts and Audit (updated June 2008). The index below refers to mandatory and suggested reporting items.

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Appendix 13

Glossary

AAT	Administrative Appeals Tribunal.
ADF	Australian Defence Force.
AD(JR) Act	<i>Administrative Decisions (Judicial Review) Act 1977</i>
Adjournment	Suspension of a hearing.
Applicant	A person or body that has applied for a review (to the VRB or AAT), or applied for an allowance or increase in pension (to DVA).
Applied provisions	Provisions of the VEA that set out the VRB's powers and functions, which are applied by s 353 of the MRCA for the purpose of the VRB's review of an original determination under Part 4 of Chapter 8 of the MRCA.
Assessment matter	A case under the VEA concerning the assessment of the rate of disability pension.
Assessment period	Period over which the decision-maker must assess the rate or rates of pension that were payable. It begins on the day the claim or AFI was lodged (the 'application day') and ends on the day the decision-maker determines the claim or AFI, or determines the review.
Attendant allowance	A fortnightly allowance paid towards the cost of an attendant for a person needing such assistance and who has accepted disabilities involving one of a number of types of amputations or severe types of disability, or an injury or disease similar in effect or severity to a disease of the cerebro-spinal system.
Case Manager	VRB staff member who looks after the administrative matters concerning an application for review.
Case appraisal	Examination of applications with a view to clarifying the issues, checking that the VRB has jurisdiction and that the applicant has standing, checking sufficiency of information, and readiness for hearing.
Certificate of readiness for hearing	A notice to the VRB that all the material on which the applicant wishes to rely has been lodged and the applicant is ready to proceed to a hearing.
Claimant	A person who has made a claim for a pension (to DVA) or claim for acceptance of liability and/or compensation (to the MRCC).
CLIK	Consolidated Library of Information & Knowledge: a computer research tool for decision-makers and pension officers and representatives produced by DVA.
<i>Deledio</i>	<i>Repatriation Commission v Deledio</i> (1998) 83 FCR 82. A Federal Court case that established a four step process by which the beyond reasonable doubt and reasonable hypothesis standard of satisfaction is to be applied in the context of cases to which the Statements of Principles regime applies.
DVA	Department of Veterans' Affairs.
Entitlement matter	A case under the VEA concerning whether an injury, disease, or death is war- or defence-caused.
ESO	Ex-service organisation.
FOI	Freedom of Information: the right to obtain documents from a Commonwealth Department or agency under the <i>Freedom of Information Act 1982</i> .

Liability matter	A case under the MRCA concerning whether an injury, disease, or death is service-related.
Member	A member of the VRB appointed by the Governor-General.
MRCA	<i>Military Rehabilitation and Compensation Act 2004.</i>
MRCC	Military Rehabilitation and Compensation Commission.
Original determination	A determination of the MRCC or a service chief under the MRCA that is capable of being reviewed by the VRB or being reconsidered by another delegate of the MRCC or a service chief.
Principal Member	The member of the VRB appointed by the Governor-General who is responsible for the national management of the VRB, and who must have legal qualifications.
Reconsideration	A new consideration or review of an original determination under s 347 or s 349 of the MRCA.
Registrar	VRB staff member who manages a State Registry of the VRB.
Registry	An office of a court, tribunal, or the VRB.
Respondent	A person or body against whom a claim, application, or appeal is brought; the party that responds to an application brought by an applicant.
s 31 review	Review by a delegate of the Repatriation Commission.
s 37 documents	Documents prepared by the decision-maker for the purpose of an AAT review (also called 'T-documents').
s 137 report	Documents prepared by DVA for the purpose of a VRB review.
s 148(1) letter	Letter sent to an applicant by the VRB seeking advice concerning how or if the applicant will appear or be represented at the VRB hearing.
s 148(6A) request	Request sent by VRB Registrar as delegate of Principal Member to the Secretary of DVA or MRCC seeking further investigation or documents.
s 151 adjournment	Adjournment of a hearing by VRB usually at the applicant's request, but can be for any reason.
s 152 adjournment	Adjournment of a VRB hearing in order that the presiding member can ask the Secretary of DVA or the MRCC for further investigation or further documents.
s 152 request	The request made to the Secretary of DVA or the MRCC by the presiding member of the VRB panel for further investigation or documents.
s 155AA notice	Notice sent to an applicant asking whether the case is ready for a hearing, and if not, why not. Failure to respond or failure to provide adequate reasons will result in dismissal of the VRB application.
s 155AB notice	Notice sent to an applicant following on from a 'reasonable explanation' response to an earlier s 155AA notice or a previous s 155AB notice asking whether the case is yet ready for a hearing, and if not, why not. Failure to respond or failure to provide adequate reasons will result in dismissal of the VRB application.
s 155AC authorisation	Authority to allow someone to represent an applicant for the purpose of responding to a particular s 155AA or s 155AB notice. A fresh authorisation to represent must be given after each such notice.
s 347 reconsideration	Reconsideration of an original determination by a delegate of the MRCC or a service chief at their own discretion.
s 349 reconsideration	Reconsideration of an original determination by a delegate of the MRCC or a service chief at the request of a claimant. If such a request is made, the person cannot also seek review of the same determination by the VRB.
Senior Member	A member of the VRB appointed by the Governor-General who usually presides at VRB hearings, and who usually has legal qualifications.
Service chief	The Chief of the Army, the Chief of the Air Force, or the Chief of the Navy.

Services Member	A member of the VRB appointed by the Governor-General who was nominated by an organisation representing veterans throughout Australia, and who usually has broad and extensive military experience.
SoP	Statement of Principles determined by the Repatriation Medical Authority.
Special rate	The highest rate of disability pension (also called the 'TPI' rate). It is paid if the person is blind due to accepted disabilities, or if the person meets certain tests concerning incapacity for work. One of these tests involves being unable to do more than 8 hours remunerative work a week due to accepted disabilities.
SRCA	<i>Safety, Rehabilitation and Compensation Act 1988.</i>
Telephone hearing	A VRB hearing conducted by telephone between a VRB hearing room and another location.
TIP	Training and Information Program funded by DVA for training pension and welfare officers and representatives, conducted by ESO, DVA and VRB trainers.
VEA	<i>Veterans' Entitlements Act 1986.</i>
Veteran	A person who has rendered eligible war service under Part II of the VEA.
Video hearing	A VRB hearing conducted by video-link between a VRB hearing room and another location.
VRB	Veterans' Review Board.
War-caused death	A death for which liability has been accepted under Part II of the VEA as related to eligible war service.
War-caused disease	A disease for which liability has been accepted under Part II of the VEA as related to eligible war service.
War-caused injury	An injury for which liability has been accepted under Part II of the VEA as related to eligible war service.

Appendix 14

VRB Contact Information

The Principal Member is responsible for the VRB's operations. The Registrar in each State is responsible to the Principal Registrar 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

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

Principal Registrar
Trina McConnell

Acting Director (Legal Services)
Katrina Harry

Information Officer
Lynley Gardner

Phone: (02) 9213 8600 Fax: (02) 9211 3074

Information about the VRB is available on the Internet. The VRB's Internet address is: www.vrb.gov.au.

This annual report can be found on-line at www.vrb.gov.au/publications.html#_annrep.

VRB email: contact@vrb.gov.au

New South Wales and Australian Capital Territory Registry

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

Registrar
Peter Godwin

Phone: Local: (02) 9211 3090
Phone: City: 1300 550 460
Phone: Country: 1800 550 460
Fax: (02) 9211 3074

Victorian & Tasmanian Registry

14th Floor
300 La Trobe Street
Melbourne VIC 3000

Registrar
Ian Hunt

Phone: Melbourne: (03) 9602 8000
Phone: Hobart: (03) 6221 6646
Phone: City: 1300 550 460
Phone: Country: 1800 550 460
Fax: (03) 9602 1496

Queensland, South Australian & Northern Territory Registry

Level 8, Bank of Queensland Building
259 Queen Street
Brisbane QLD 4000

Registrar
Bob Loftus

Phone: Local: (07) 3221 3772
Phone: City: 1300 550 460
Phone: Country: 1800 550 460
Fax: (07) 3220 0041

Western Australian Registry

7th Floor, AMP Building
140 St Georges Terrace
Perth WA 6000

Registrar
Robyn Davis

Phone: Local: (08) 9366 8580
Phone: City: 1300 550 460
Phone: Country: 1800 550 460
Fax: (08) 9366 8583

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