



Veterans' Review Board

Annual Report

2001-02

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Veterans' Review Board Principal Registry

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The Hon Danna Vale MP
Minister for Veterans' Affairs
Minister Assisting the Minister for Defence
Parliament House
CANBERRA ACT 2600

Dear Minister

In accordance with subsection 215(4) of the *Veterans' Entitlements Act 1986*, I present my report on the operations of the Veterans' Review Board for the year ending 30 June 2002.

Yours sincerely

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

W D ROLFE
Brigadier (Rtd)
Principal Member

14 October 2002

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2001-02 AND THE VRB – AN OVERVIEW

GENERAL

The Veterans' Review Board (VRB) has concluded another focused year reacting to applications for review of Repatriation Commission decisions on disability and war widow/ers' pensions. While the work of the VRB continues, this reporting year closes a period of several years committed work by members and staff to bring the workload to a manageable level and to improve on administrative processes.

In the calendar years 1997 and 1998 the VRB received 20 000 applications for review and by mid 1998 the number of outstanding applications had risen to 10 000. There were long delays as staff struggled with an antiquated case management system, typing of dictated decisions and reasons, and tracking of files. The system functioned but was under constant pressure with dramatic peaks and troughs. Ex-service organisation representatives equally felt the strain as they managed significant caseloads with limited (if any) administrative or technological support.

The threat of the 'Year 2000 Bug' offered an opportunity to the VRB in the form of redevelopment of the case management system. Staff exhibited initiative and vision in the design of a system to process and track applications. At the same time VRB members were introduced to computer technology and began typing decisions and reasons. Performance objectives were refined and priorities for development were settled. The first attempts were made to shift from a 'process' driven organisation to one of 'value adding'. Such measures have brought their own pressures but have contributed to development of an organisation which better understands its function, knows it has the capacity to innovate and implement new systems, and deliberately looks to improving performance. The results are reflected in the 'outcomes' in this report.

Outcome 1: Finalise high numbers of applications for review

The VRB continues to finalise high numbers of applications, finalisations again exceeding new applications and resulting in a further reduction in matters outstanding – to the lowest level since inception of the VRB. The new applications appear stable at present, numbering 6 840, 6 548 and 6 336 in successive years. There is clearly a slow and steady decline but the numbers remain high. The numbers outstanding reduced by about 500, a figure below that of the previous year (1 384) but significantly below the reduction by almost 2 000 in the year before that.

The VRB conducted 4 582 hearings, adjourned 547 to obtain further material, and published decisions on 7 120 issues. This is a positive result although there is some devil in the detail. The number of hearings was down on the previous year despite the availability of panels to conduct reviews. The issue is dealt with in Outcome 4 but the essential difficulty remains the lack of cases ready to proceed. The VRB will continue to work steadily and cooperatively with veteran representative groups to address this matter.

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

This remains a difficult area to measure, as indicated in earlier reports. The VRB continues to devote considerable effort to ensuring quality in its decision making. Processes and support systems are regularly reviewed to promote emphasis in quality in administration and decision making. Some emphasis is placed on deciding a matter at hearing, particularly driven by the fact that the application is about a year old by the time of decision, but members do not hesitate to adjourn and obtain further information if that appears to be the fair and proper course. The VRB holds considerable confidence in its practice of three member panels, the resources available for research, and the quality and experience of its personnel.

The VRB pays careful regard to both the numbers and results of Administrative Appeal Tribunal (AAT) decisions as a pointer to aspects of its own performance. The number of appeals to the AAT remains high although fractionally below the level of the previous year (see Appendix 2). It is noted that some 30% of such appeals are withdrawn (a figure not dissimilar to practice at the VRB) and that almost half the appeals are conceded by the Repatriation Commission. Anecdotal material strongly indicates that concessions are made on the basis of new material presented. In light of these figures the VRB continues to examine its hearing processes, including the question of the nature and extent of further investigations sought on adjournment, in order to satisfy applicants that all relevant aspects of their applications have been reviewed and fully assessed.

It is also appropriate to consider the results of VRB hearings although the VRB has consistently declined to identify success or failure rates as a specific performance or quality measure of its activities. These outcomes are at Table 6 at p 28.

In reflecting upon these figures for the current report an error has been identified in the 2000–01 Report. That report indicated a ‘set aside’ rate on entitlement decisions of 27% when it should have read 22.2%. The error resulted from counting all variations of diagnosis, as a ‘set aside’. The ‘set aside’ rate of entitlement decision for the current year, accurately counted, is 25.1%.

A similar type of error was identified in the count of ‘set aside’ assessment decisions. The figure given in the 2000–01 Report was 46.8% when it should have

indicated 49.2%. The figure for the current year, accurately counted, is 46.9% of assessment decisions 'set aside'. Both errors are explained in footnotes to Table 6. The error principally arose through lack of familiarity with the significantly enhanced case management system and the variety of reporting regimes. The VRB apologises for these errors and gives its assurance that the reported figures for this year are accurate.

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

Outcomes achieved in this area have continued to improve in successive years to the point where the issue is no longer one of improving performance but of sustaining the high level reached. The staff and members have shown considerable professional commitment in seeking the fine balance between quality effort and product and speed in delivery.

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

The total expenditure of the VRB reduced in the reporting year by 4.6% but the unit cost of applications finalised increased by 10.5%. This is a reasonable outcome in an environment where total numbers are steadily declining but fixed costs are stable or increasing.

In broad terms, efficient resource usage depends upon a balance between the needs of the veteran community, management of a high volume caseload and production of correct and preferable decisions. There is a variety of judgements to be made within each of these elements. At a minimum, an increasingly frail and aged veteran community seeks an accessible review tribunal, the caseload must be managed in a timely manner and decisions must be fair and consistent.

These types of issues are constantly borne in mind in the process of receipt, management, hearing and publication of decisions. In some areas the practice of five days of hearings has been varied to three days to ensure that veterans are not kept waiting for a hearing. In some regional centres this adds to unit cost as fewer cases are heard for the same fixed costs of travel of members and equipment. Measures such as inclusion of prepaid envelopes with correspondence and toll-free enquiry numbers appear to have assisted in reducing the time taken for applicants to response (down to 28 days from 43) but have increased the cost.

There is a steadily growing confidence in the use of video conferencing (double the number of the previous year) and this has the long term capacity to reduce travel costs for the VRB. In the short term unit costs will likely increase as appropriate equipment is installed.

During the year some 2 600 applications were withdrawn without proceeding to hearing, but each application required a degree of management in file creation, data input, correspondence and/or telephone calls. At the same time some 340 applications were postponed prior to hearing. In years past such postponements have been quickly substituted by other waiting applications. In the current reporting year there was a shortfall of almost 20% of substitute applications resulting in unfilled hearing periods. In the same period 659 applications reached two years of age requiring further correspondence (in addition to normal follow up letters) seeking an explanation why the applications should not be dismissed. These issues reveal the significant administrative function underlying the availability and process of review. The time and cost involved provide real challenges in cooperation with veterans and representatives to ensure continuing effective and sensitive utilisation of resources.

Outcome 5: Accessible and responsive to veteran community stakeholders

The VRB notes the increase in representation of applicants in every state to the point where 80% of all applicants were provided with assistance at hearings. As a matter of practice VRB staff draw to the attention of applicants the availability of representation from veteran organisations. As earlier indicated, video conferencing is slowly being introduced. Some representatives have readily taken to the measure. It offers an additional means of communication with the VRB, and a possible convenience for aged and frail applicants remote from normal hearing locations. In addition the number of regional hearing days were increased although, as earlier indicated, some regional hearings were for periods of less than a week. The intention in that measure was to ensure hearing within a reasonable time.

The VRB has paid careful regard to letters of complaint. In the reporting year it received 8 letters expressing appreciation and 23 indicating a matter of concern. The nature of the concerns are identified in the report and responses were provided. The VRB treats all concerns seriously and seeks to draw lessons from them.

The VRB continued to work closely with veteran organisations through the year. The Principal Member, Executive Officer and Registrars have maintained close communication with ex-service organisations, as well as attending workshops and seminars conducted by the Department of Veterans' Affairs and veteran organisations. The VRB promotes these links with the veteran community and generally enjoys good and cooperative working relationships. The relationship is seen as promoting an understanding of the function of the VRB thereby ensuring its continued effectiveness.

General Comment

The function of the VRB is aided by the general support of the veteran community and particularly by the efforts of a considerable number of men and women who

assist it with their careful, objective and reasoned representation of applicants. There are difficulties on occasions but few that are insurmountable. The VRB expresses its appreciation for the significant efforts of those men and women.

The VRB also enjoys a cooperative working relationship with the Department of Veterans' Affairs. The Department supports and protects the independence of the VRB and takes an interest in ensuring that it has the resources to effectively undertake its role. The interest in and support for the VRB's role is appreciated.

Finally I wish to personally acknowledge the dedication and commitment of the members and staff. I have mentioned the efforts at innovation and the constant pressure on both members and staff to meet objectives. Both groups have responded to the challenge in a very professional manner. I particularly mention the efforts of Mr Bruce Topperwien, the Executive Officer of the VRB, who was this year awarded the National Australia Day Council Achievement Medal for his efforts in implementing the system for application management (vrbSAM) and for his work in developing course materials for a Veterans' Law course at the Southern Cross University. A number of VRB staff have completed the course and more are considering taking it up as they work on the challenge of 'adding value' to the materials they carefully process. Measures and efforts such as these provide strong support to the work of members of the VRB in their demanding role. I am grateful for the commitment and dedication that members and staff have exhibited through the reporting year.

OBJECTIVES, FUNCTION AND POWERS

Objectives

The VRB was established to implement the Government's decision to adopt the recommendations of the Administrative Review Council that a statutory review body be established to review on the merits of the case primary decisions made by delegates of the Repatriation Commission on claims for pension. To this end the VRB aims to:

- (a) finalise high numbers of applications for review;
- (b) do so at a quality level that affords a high assurance that review decisions are correct;
- (c) complete all process stages subject to the VRB's control on a timely basis;
- (d) undertake reviews in a manner that is efficient to resource usage; and
- (e) be accessible and responsive to veteran community stakeholders;

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

Function

The VRB was established by the *Repatriation Legislation Amendment Act 1984* and began operations on 1 January 1985. It was continued in existence by the *Veterans' Entitlements Act 1986*, which came into effect on 22 May 1986. Since then the VRB's operations have been governed by the *Veterans' Entitlements Act 1986* and its companion legislation, the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*.

The VRB is a part of the governmental machinery for the delivery of Repatriation benefits to veterans and their dependants, the principal components of which are:

- the Department of Veterans' Affairs;
- the Repatriation Commission;

- the VRB; and
- the Administrative Appeals Tribunal.

Although the VRB comes within the Minister for Veterans' Affairs portfolio and for administrative purposes is included as a sub-program in the Department of Veterans' Affairs, it is an independent statutory authority. The Minister has no statutory power of direction over the VRB.

The VRB's function is to review decisions of the Repatriation Commission on such matters as:

- claims for the acceptance of injury or disease as war/defence-caused;
- claims for war widows'/widowers'/orphans' pensions;
- assessment of the rate of pension paid for incapacity from war/defence-caused injury or disease; and
- claims for the grant or assessment of attendant allowance.

Powers

The powers of the VRB are set out in Part IX of the *Veterans' Entitlements Act 1986*. Appendix 6 briefly describes each of the powers of the VRB, the Principal Member and presiding members. Decisions of the VRB must be made under and in accordance with the Act.

Claims for the grant of pension or allowance, or applications for increase in pension rate, are lodged with and investigated by the Department of Veterans' Affairs. They are then decided by the Repatriation Commission. In most cases, this decision is made by an officer of the Department of Veterans' Affairs to whom the Repatriation Commission has delegated its decision-making power.

In conducting a review of a decision, the VRB may, by section 139(3) of the *Veterans' Entitlements Act 1986*, exercise all the powers and discretions of the primary decision-maker to grant or assess pension or allowance. It may affirm, vary or set aside the decision under review and, where appropriate, substitute its own decision. Decisions of the VRB are, in turn, reviewable by the Administrative Appeals Tribunal upon application to that Tribunal. Appeals from decisions of the AAT may be made, but only on a question of law, to the Federal Court of Australia.

Upon its establishment, the VRB adopted the aim of doing all it could to ensure that those seeking a review receive quickly their proper entitlement under Repatriation law.

ORGANISATION

The VRB performs its adjudicative functions by the allocation of members to the hearing of particular cases. Details of membership during the year are provided under Outcome 4 and in Appendices 4 and 5.

Membership of the VRB is in a number of categories – the Principal Member, Senior Members, Services Members (selected from lists of candidates submitted to the Minister by ex-service and related organisations), and Members.

The Principal Member is responsible for the efficient operation of the VRB and the arrangement of its business, including its procedures and the constitution of its panels. The Principal Member cannot direct any member on the law or on the decision to be made in a particular case.

For the purpose of conducting a review, a VRB panel is usually constituted by:

- the Principal Member or a Senior Member, who presides;
- a Services Member; and
- a Member.

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

A quorum of two members may sit if one of the three members who was to constitute the panel becomes unavailable. As a matter of practice, every reasonable effort is made to replace an unavailable member to avoid the need for the remaining two members to sit as a quorum.

With the consent of the Minister for Veterans' Affairs, the VRB may be constituted by one member sitting alone.

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

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

The VRB has its Principal Registry in Canberra and a Registry in each State capital. The Executive Officer acts as chief legal counsel to the Principal Member and is responsible to the Principal Member for the direction and coordination of the activities of the staff. The Executive Officer is assisted by two Directors: one is responsible for the VRB's corporate services and the other for the VRB's legal and information services. A Registrar in each State is responsible to the Executive Officer for the administrative operations of the VRB in his or her State.

The Registry addresses and the names of VRB officers, including the information officer, who can provide further details about the VRB, are set out at Appendix 10.

Membership

All members of the VRB are appointed by the Governor-General and hold office for such period, not exceeding five years, as is specified in the instrument of appointment. They are eligible for reappointment. The statutory retiring age for full-time members is 65 years. *The Veterans' Affairs Legislation Amendment Act 1992* removed a similar statutory age limit for appointment and reappointment of part-time members to the VRB.

The only circumstances in which VRB members can be removed from office are those set out in section 164 of the *Veterans' Entitlements Act 1986*. This section is as follows:

164 Removal from office

- (1) The Governor-General may remove a member from office on the ground of proved misbehaviour or physical or mental incapacity.
- (2) The Minister may suspend a member from office on the ground of misbehaviour or physical or mental incapacity.
- (3) Where the Minister suspends a member from office, the Governor-General may, on the recommendation of the Minister:
 - (a) remove the member from office;
 - (b) direct that the suspension of the member continue for such further period as the Governor-General specifies; or
 - (c) direct that the suspension of the member terminate.
- (4) The suspension of a member from office under this section does not affect any entitlement of the member to be paid remuneration and allowances.
- (5) If:
 - (a) a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit;

- (b) a member, being a member who has been appointed as a full-time member:
 - (i) engages, except with the approval of the Minister, in paid employment outside the duties of the member's office; or
 - (ii) is absent from duty, except on leave of absence, for 14 consecutive days or 28 days in any 12 months; or
- (c) a member fails, without reasonable excuse, to comply with the member's obligations under section 165;

the Governor-General shall remove the member from office.

- (6) The Governor-General may, with the consent of a member who is:
 - (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
 - (b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*;

by notice in writing, retire the member on the ground of physical or mental incapacity.

(6A) The notice must specify the day on which the member is to be retired.

(6B) The day specified in the notice must not be a day earlier than the day on which the Governor-General signed the notice.

(7) A member shall not be suspended, removed or retired from office except as provided by this section.

- (8) In spite of anything contained in this section, a member who:
 - (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
 - (b) has not reached his or her maximum retiring age within the meaning of that Act;

is not capable of being retired from office on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under section 54C of that Act.

- (9) In spite of anything contained in this section, a member who:
 - (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (b) is under 60 years of age;

is not capable of being retired from office on the grounds of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 of that Act.

OPERATIONS

VRB Procedures

The *Veterans' Entitlements Act 1986* sets out the broad procedural requirements to be followed by the VRB in dealing with applications. In implementing these requirements, the VRB has supplemented and built upon them with additional procedures designed to meet the principles of procedural fairness and sound management practices.

In most cases, the procedures that govern the processing of an application are quite straightforward. The following paragraphs provide a brief outline in relation to the review of decisions regarding disability or war widows'/widowers'/orphans' pensions.

The parties to a review by the VRB are the applicant and the Repatriation Commission. Each may be represented at the hearing, but only by a person who does not have legal qualifications.

An application to the VRB has to be in writing and lodged at an office of the Department of Veterans' Affairs. An application concerning an entitlement matter must be received by the Department within 12 months of notice to the applicant of advice of the decision he or she wishes to challenge. An application concerning an assessment matter or an application concerning an attendant allowance must be lodged within three months of notice of the advice. The Department registers new applications, giving them sequential State-based registration numbers. That registration number is then used by the VRB as its reference number and is used as the VRB's file number for each application.

Within six weeks of receiving an application, the Department has to provide the applicant with a report prepared in accordance with section 137 of the *Veterans' Entitlements Act 1986*. That report contains a copy of those documents from the Department's files that Departmental staff have identified as relevant to the decision under review. The applicant then has 28 days, or such further period as he or she may request, to provide the Department with written comments on the report. At the end of that period the Department formally transmits the relevant documents to the VRB. The documents comprise:

- the Departmental Report;

- any comments or further evidence submitted by the applicant in response to the Departmental Report; and
- any further evidence obtained by the Department as a result of the applicant's response.

Under section 31 of the *Veterans' Entitlements Act 1986*, the Commission can review its initial decision in the light of the applicant's comments, or any further evidence submitted by the applicant or obtained by the Department.

On receiving these documents from the Department, the VRB, in accordance with section 148 of the *Veterans' Entitlements Act 1986*, writes to the applicant and the Commission requesting written advice about whether they intend to be represented at the hearing. In addition, the applicant is asked whether he or she wishes to:

- attend the hearing of the application;
- discuss the application with the VRB by telephone during the hearing; or
- have the VRB deal with the application in his or her absence.

If neither party wishes to be represented at or participate in a hearing ('in absentia' cases), the application is normally placed before a VRB panel for a decision without further correspondence with the parties. Such applications, where available, are also listed under the system of 'standby cases' in substitution for hearings postponed on notice too short to enable the hearing of another case to be arranged. Under subsection 148(4) of the *Veterans' Entitlements Act 1986*, cases can also be listed 'in absentia' if an applicant fails to respond to the VRB's request to advise whether the applicant wishes to appear at the hearing.

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

The general practice is to list cases for hearing in the chronological order in which they become available to list – that is, when the applicant and/or advocate certify that they have submitted all the documentary material on which they intend to rely and they are ready to proceed to hearing. This is done by the lodging with the VRB of a Certificate of Readiness for Hearing. Cases are generally listed for hearing in the chronological order in which the Certificates of Readiness for Hearing are lodged.

In the light of recommendations contained in the Veterans' Entitlements Act Monitoring Committee Reports, the VRB commenced an administrative screening process of applications in 1990. This process was enhanced in 1999 with the introduction of case managers.

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

- effective administrative processing of applications;
- relevant material has been provided to the VRB by the Department and the parties;
- maximum listings before each panel; and
- a maximum number of applications listed are ready for final determination.

The achievement of these aims is measured by:

- the increased finalisation rate of applications heard by panels; and
- administrative action leading to the dismissal of applications that are not being actively pursued.

As stated previously, the VRB's procedures provide for cases to be listed for hearing following the lodgement of a Certificate of Readiness for Hearing, by an applicant or representative. The cases are usually listed for hearing in the order in which certificates are received by the VRB. However, the late withdrawal of cases, or late requests for postponements often mean that substitution of another application is not possible. This means that available hearing slots are wasted. Administrative screening is therefore designed to monitor at various intervals the progress and preparedness for hearing of all cases with the VRB.

As part of the procedures to achieve effective case management:

- cases are examined by case managers with a view to clarifying the issues, ensuring jurisdiction and standing, and checking sufficiency of information;
- at certain intervals, case managers contact applicants or their representatives to discuss progress and the preparedness of their applications with a view to listing for hearing;
- in certain circumstances, Registrars, as delegates of the Principal Member, may ask the Department, under s148(6A), to conduct further investigations or obtain further information essential to the application being finalised but not necessarily supportive to either party;
- while the Certificate of Readiness for Hearing system still operates:
 - applications may be listed at the Registrar's direction in certain circumstances; and
 - the Registrar can dismiss an application in certain circumstances.

The VRB recognises that there may be circumstances in which some cases should be afforded an urgent listing priority. An early hearing may be arranged if medical

certification indicates that a delay in hearing may cause prejudice to an applicant's mental or physical health or that deterioration in an applicant's health over time may prejudice the effectiveness of a later hearing, or if an applicant is in severe financial distress that might be alleviated by a successful outcome to an application.

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

The VRB is not bound by technicalities or the rules of evidence. Hearings are informal and normally conducted in private. The presiding member determines who may be present and, if requested by the applicant, may permit a hearing to take place in public. Although not usual, witnesses may be summoned and evidence may be taken on oath or affirmation.

Apart from 'in absentia' cases, all hearings are recorded on audiotape to provide an accurate record of what is said. Copies of these tapes are made available free of charge to the parties on request, or the original tape recording may be listened to at the VRB's premises. The tape is retained for two years and then destroyed in accordance with the *Archives Act 1983*.

Issues are decided according to the opinion of the majority of members constituting the VRB panel. A copy of the decision and reasons of the VRB is mailed to each party, the applicant's representative and the Department of Veterans' Affairs.

The VRB decision may affirm, vary or set aside the decision under review. If the decision is to set aside, the VRB must substitute its own decision.

The VRB may adjourn the hearing of a review, either at the request of the parties or of its own volition. Upon an adjournment the VRB may also request the Secretary of the Department of Veterans' Affairs to seek additional information, reports or evidence for consideration by the VRB.

The above paragraphs reflect the procedures followed in most cases. In some cases, however, an application will raise different considerations – for example, questions may arise whether an application comes within the scope of VRB review as set out in section 135 of the *Veterans' Entitlements Act 1986*, or whether there is some statutory bar in that Act on the VRB reviewing the decision in question, or there may be information provided to the VRB which may cause physical or mental detriment to the applicant if directly disclosed. Procedures governing these limited circumstances are set out in the VRB's *Operations Manual*.

The VRB offers each applicant the choice of having his or her application heard in a variety of ways:

- an applicant may attend and be represented;

- an applicant may be represented but not attend;
- an applicant may attend but not be represented;
- an applicant may discuss the matter with the VRB members by telephone during the course of the hearing and, in doing so, may or may not be represented;
- an applicant may request the VRB to deal with the case in his or her absence ('in absentia'); or
- a hearing may be conducted by video link.

The applicant or the Repatriation Commission may apply to the Administrative Appeals Tribunal (AAT) for a review of a VRB decision affirming, varying or setting aside the decision under review. Applications can also be made to the AAT for review of decisions taken by the Principal Member or his delegate under the dismissal legislation (sections 155AA and 155AB of the *Veterans' Entitlements Act 1986*). From a decision of the AAT, a party may appeal to the Federal Court of Australia on a question of law.

Under the *Administrative Decisions (Judicial Review) Act 1977*, the Federal Court of Australia may review any VRB decision on the basis that the VRB has erred in law, on a ground set out in that Act, but the Court may exercise its discretion not to review on the basis that the person has an alternative review right to the AAT.

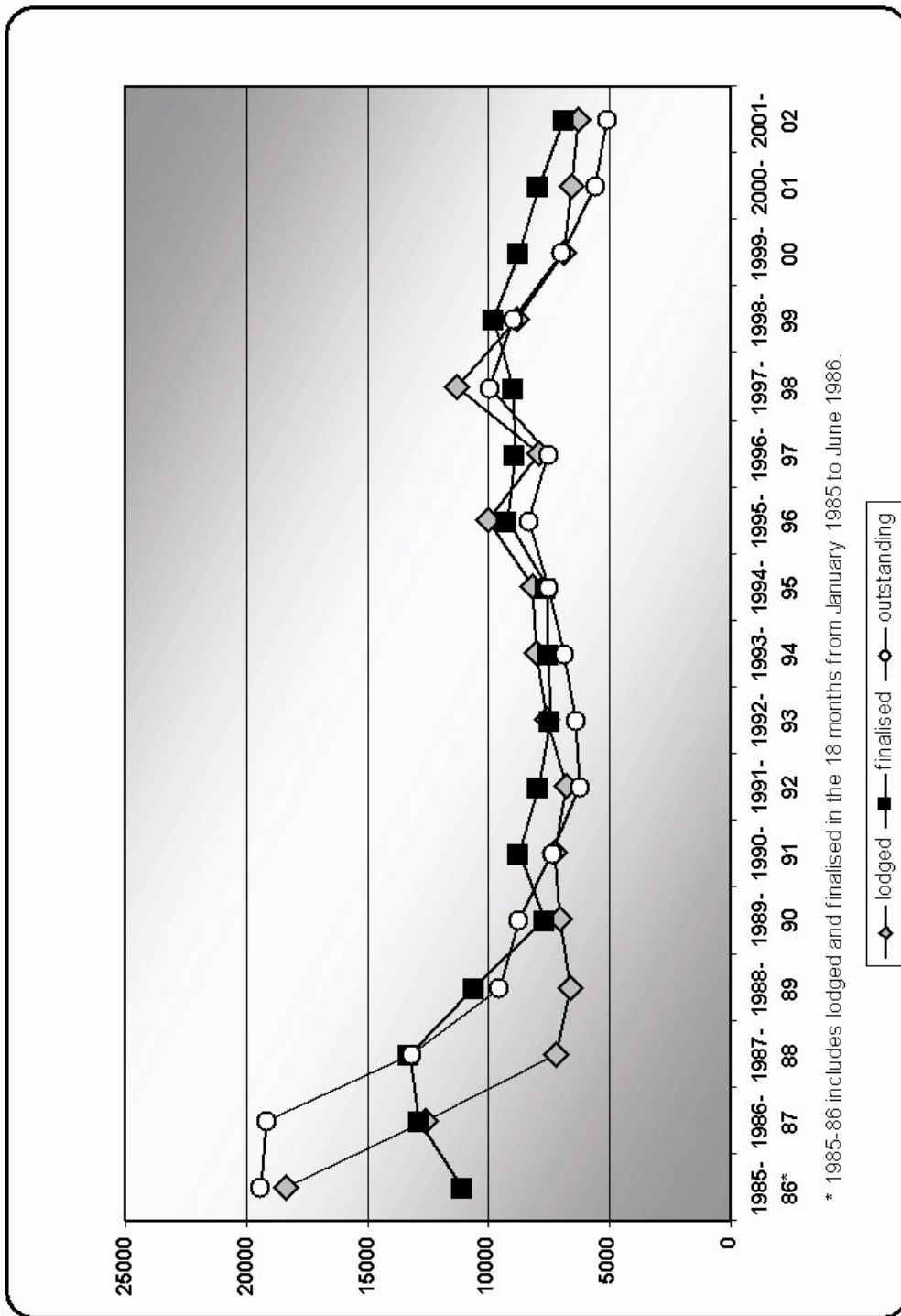
Outcome 1: Finalise high numbers of applications for review

In the course of the year 6 336 new applications were lodged and 6 837 applications were finalised. At year end 5 104 applications were outstanding, a reduction over the previous year of 492. The geographic distribution of applications lodged, applications finalised, applications finalised by decision and applications outstanding and the comparison with 2000-01 figures are shown in the following graphs and tables.

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

For the last four financial years the VRB has finalised significantly more applications than new lodgements, resulting in a reducing number of outstanding applications. However, the rate of decline in the number of new lodgements appears to be levelling out. A limiting factor on the VRB's capacity to continue to finalise cases at the current rate is the time it takes applicants and their representatives to prepare their cases for hearing. As noted in Tables 2 and 3 (at pp 22, 23), only 21% of applications are in the VRB's hands and in some States over 80% of applications are less than a year old (average of 70% Australia-wide). As the number of applications outstanding decreases, fewer cases will be available for the VRB to list and an even smaller proportion will be in the VRB's hands.

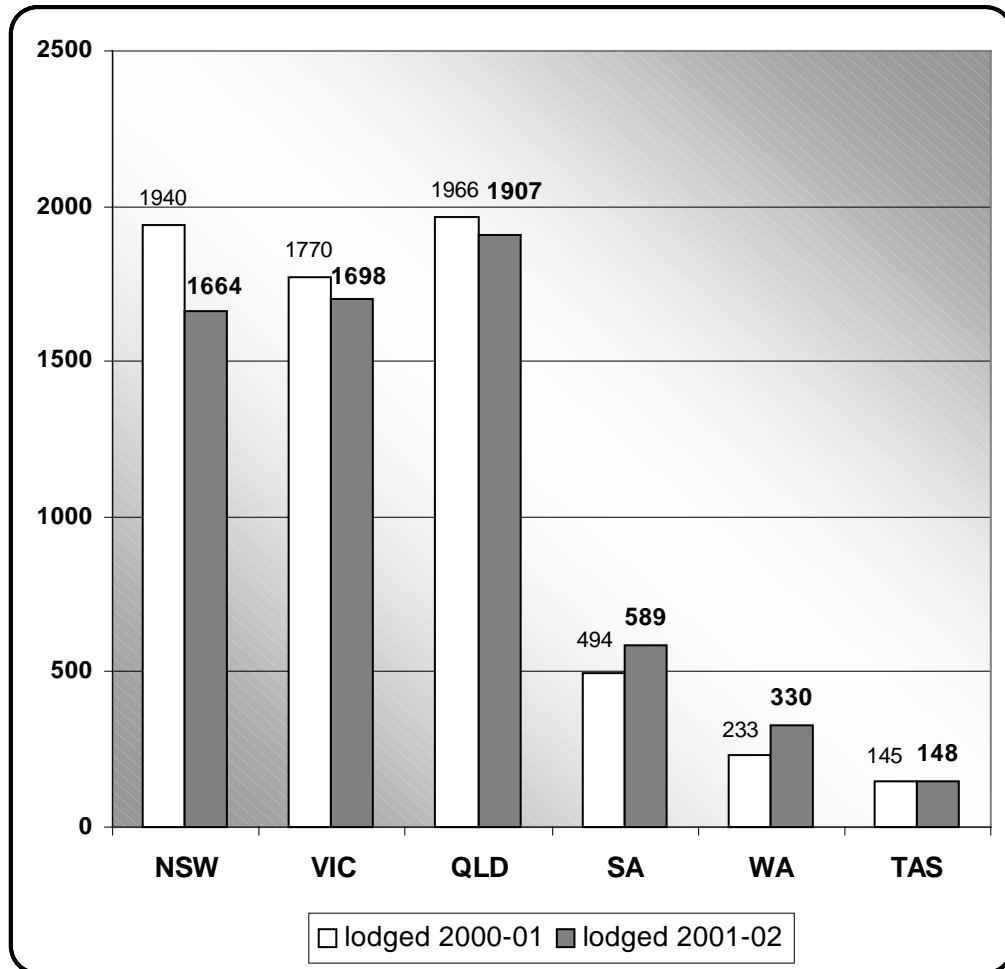
Graph 1 – Applications Lodged, Finalised and Outstanding, 1985-2002



Applications Lodged

During 2001-02, a total of 6 336 new applications were notified to the VRB compared to a total of 6 548 new applications during 2000-01.

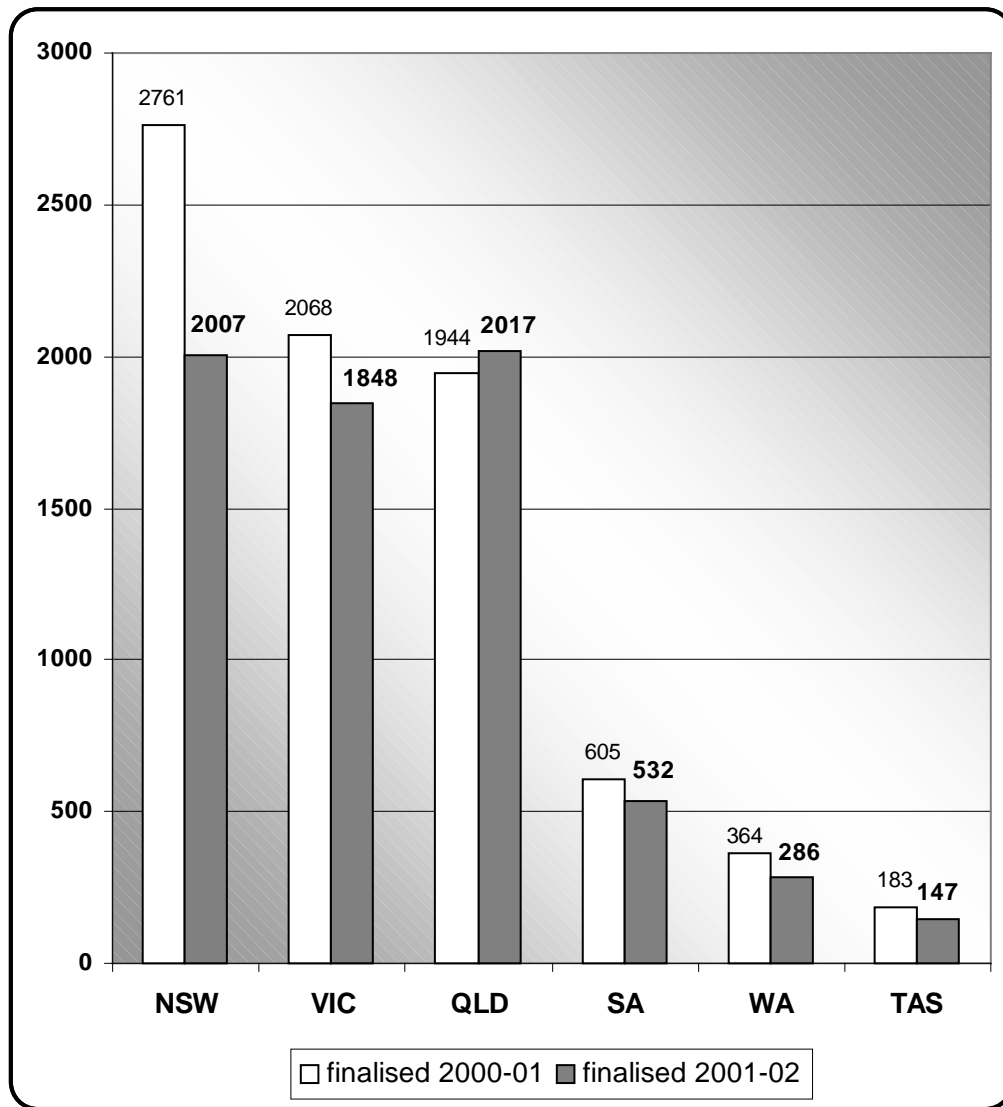
Graph 2 – Applications Lodged



Applications Finalised

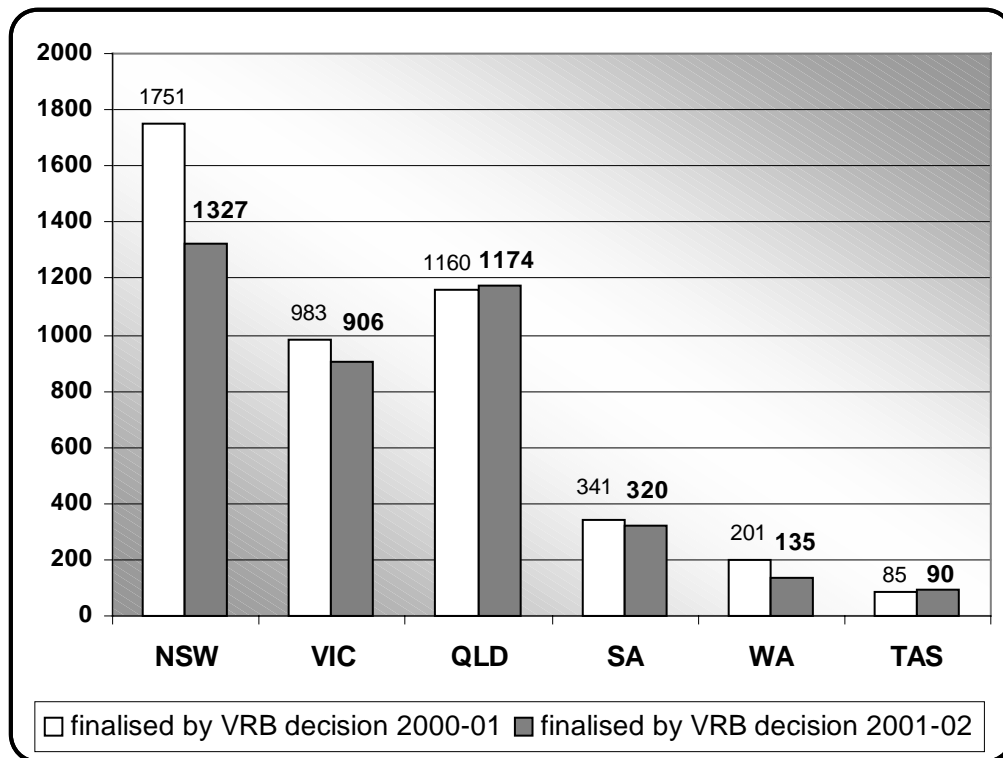
During 2001-02, a total of 6 837 applications to the VRB were finalised compared to a total of 7 925 applications during 2000-01. Applications may be finalised by dismissal (see p 37), lapsing (see p 37), withdrawal (see p 38), and by decision of the VRB following a hearing (see p 27).

Graph 3 – Applications Finalised



During 2001-02, a total of 3 952 applications were finalised by VRB decision following a hearing compared to a total of 4 521 in 2000-01.

Graph 4 – Applications Finalised by Decision of the VRB



The following table sets out the numbers of matters decided in applications finalised by VRB decision (see also Table 6 at p 28).

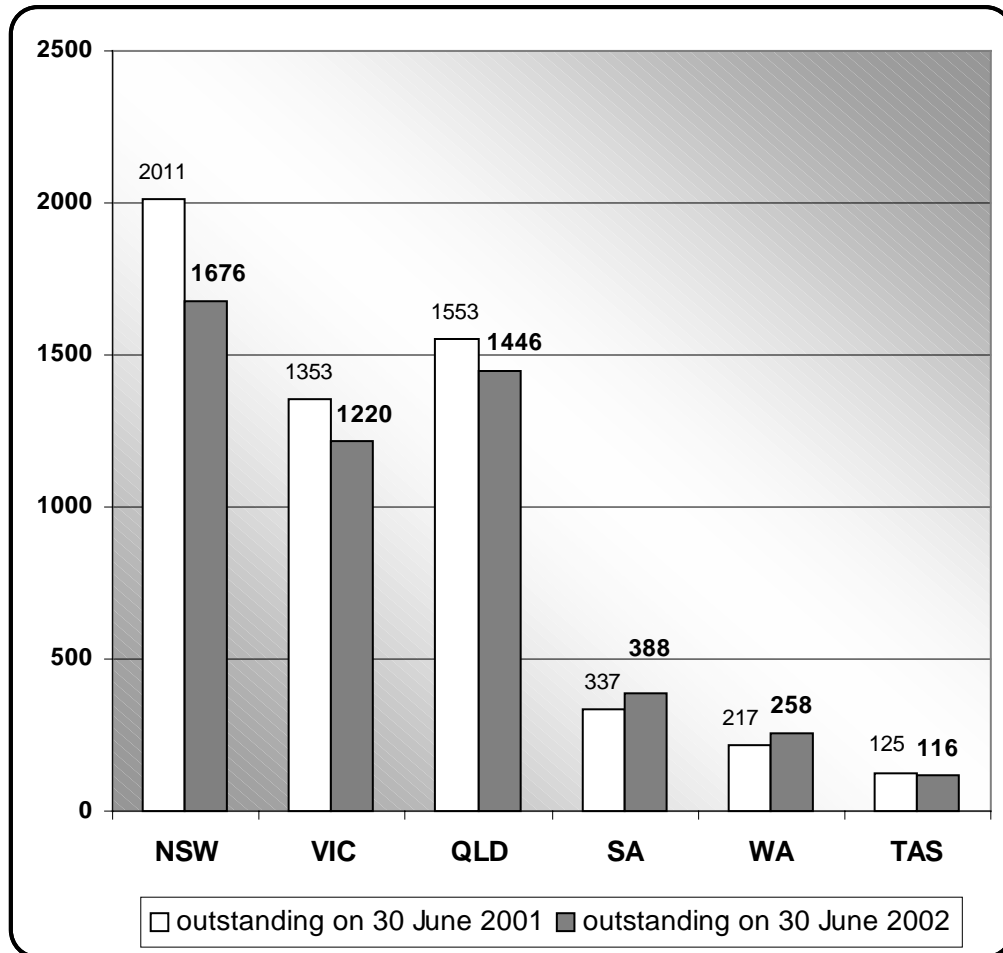
Table 1 – Matters Finalised by Decision of the VRB

| | Entitlement | | Assessment | | Attendant Allowance | |
|-------------|-------------|--------------|------------|--------------|---------------------|----------|
| | 2000-01 | 2001-02 | 2000-01 | 2001-02 | 2000-01 | 2001-02 |
| NSW | 2 314 | 1 676 | 600 | 459 | 9 | 3 |
| VIC | 1 424 | 1 284 | 262 | 287 | 6 | 1 |
| QLD | 1 623 | 1 656 | 450 | 478 | 2 | 1 |
| SA | 358 | 382 | 107 | 89 | 1 | – |
| WA | 255 | 192 | 61 | 30 | 2 | – |
| TAS | 111 | 100 | 28 | 35 | – | 1 |
| Aust | 6 085 | 5 290 | 1 508 | 1 378 | 20 | 6 |

Applications Outstanding

At the end of 2001-02, a total of 5 104 applications were outstanding at the VRB compared to a total of 5 596 applications at the end of 2000-01.

Graph 5 – Applications Outstanding



Distribution of Applications Outstanding

Not all of the 5 104 applications outstanding are in the hands of the VRB, the following table shows the distribution of responsibility as at the end of 2001-02. The outstanding applications can be either in the hands of the applicants and/or their representative (and not ready to proceed), or in the hands of the Department (awaiting action under section 31, section 137, subsection 148(5A), section 152 or other administrative action) and the remainder are in the hands of the VRB.

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

Table 2 – Distribution of Applications Outstanding

| | NSW | VIC | QLD | SA | WA | TAS | AUST |
|------------------|--------------|--------------|--------------|------------|------------|------------|--------------|
| Department | 78* | 58 | 121 | 10* | 57 | 19 | 343 |
| Applicant | 1 257 | 949 | 952 | 321 | 159 | 59 | 3 697 |
| VRB | 341 | 213 | 373 | 57 | 42 | 38 | 1 064 |
| Total | 1 676 | 1 220 | 1 446 | 388 | 258 | 116 | 5 104 |
| % in VRB control | 20% | 17% | 26% | 15% | 16% | 33% | 21% |

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

Age of Applications Outstanding

In 2001-02, the average times to process each of the stages of an application totalled 368 days. This compares with 398 in 2000-01. (See Table 8 at p 33 for further detail.) Table 3 shows that at 30 June 2002 only 7% of outstanding applications were more than 2 years old compared with 9% at 30 June 2001. As noted above, these cases are regularly followed-up and nearly all of them are either with the Department for further investigation, or with applicants who are actively seeking further evidence, or are in the process of being listed for hearing, or dismissal action is being taken by the VRB. The VRB has an active program in place to seek to bring older cases to hearing as soon as possible.

Table 3 – Age and Distribution of Outstanding Applications

| | NSW | VIC | QLD | SA | WA | TAS | AUST 2001-02 | June 2001 |
|---------------|----------------|--------------|----------------|--------------|--------------|-------------|------------------------------|----------------|
| < 1 year old | 1 017 (61%) | 867 (71%) | 1 084 (75%) | 321 (83%) | 212 (82%) | 89 (77%) | 3 590 (70%) | 3 700 (66%) |
| 1-2 years old | 467 (28%) | 282 (23%) | 293 (20%) | 54 (14%) | 32 (12%) | 20 (17%) | 1 148 (22%) | 1 406 (25%) |
| 2-3 years old | 156 (9%) | 64 (5%) | 60 (4%) | 12 (3%) | 14 (6%) | 7 (6%) | 313 (6%) | 423 (8%) |
| 3-4 years old | 30 | 5 | 9 | 1 | - | - | 45 (1%) | 61 (1%) |
| > 4 years old | 6 | 2 | - | - | - | - | 8 | 6 |
| Total | 1 676 | 1 220 | 1 446 | 388 | 258 | 116 | 5 104 | 5 596 |

Statistical Summary

The following table summarises the VRB's major actions in processing applications during 2001-02:

Table 4 – Summary

| | NSW | VIC | QLD | SA | WA | TAS | AUST |
|---|--------------|--------------|--------------|------------|------------|------------|--------------|
| Outstanding Year End 2000-01 | 2 011 | 1 353 | 1 553 | 337 | 217 | 125 | 5 596 |
| Lodged 2001-02 | 1 664 | 1 698 | 1 907 | 589 | 330 | 148 | 6 336 |
| Heard 2001-02 | 1 595 | 995 | 1 367 | 368 | 157 | 100 | 4 582 |
| Adjourned 2001-02 | 211 | 86 | 174 | 37 | 26 | 13 | 547 |
| Finalised 2001-02 | 2 007 | 1 848 | 2 017 | 532 | 286 | 147 | 6 837 |
| Withdrawn 2001-02 | 551 | 919 | 792 | 196 | 144 | 55 | 2 657 |
| Dismissed 2001-02 | 111 | 19 | 27 | 15 | 3 | 1 | 176 |
| Lapsed 2001-02 | 18 | 4 | 24 | 1 | 4 | 1 | 52 |
| Outstanding Year End 2001-02 | 1 676 | 1 220 | 1 446 | 388 | 258 | 116 | 5 104 |

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

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

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

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

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

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

Adjournments

The *Veterans' Entitlements Act 1986* confers two powers of adjournment. The first (section 151) is a general power exercisable at the VRB's discretion; the second (section 152) must be exercised if the VRB decides to seek further information from the Secretary of the Department. Broadly speaking, the VRB will adjourn a hearing in either of two situations – if it believes in the interests of procedural fairness that either or both of the parties to the hearing should have an opportunity to obtain further evidence in relation to issues or material before the VRB (section 151 cases); or if it considers that there is or may be other evidence not then available to it which is relevant to and necessary for a proper determination of the points in issue (section 152 cases).

It is accepted that some adjournments will inevitably occur. On occasions, issues previously not recognised by the parties will only become apparent during the course of a hearing, or a witness may cast his or her evidence in a way that places quite a different complexion on the probative nature of the material.

But the aim of the VRB, and equally of the parties to the hearings, must be to confine adjournments to those that are inevitable – that is, the only hearings that should be adjourned are those where, with adequate case preparation, the advocate could not reasonably have foreseen the eventual necessity for such an adjournment. This is particularly important where an advocate has signed a Certificate of Readiness for Hearing or where a case is certified as ready for hearing following correspondence pursuant to the dismissal legislation. A request for hearing should only be made if a party is genuinely ready to proceed to a hearing. Any subsequent request for an adjournment may suggest in some circumstances that the certification of readiness for a hearing was not genuine. This would be an unacceptable practice.

The VRB has adopted procedures designed to address unnecessary adjournments that result from the above circumstances, including the non-attendance of applicants at a scheduled hearing without adequate explanation.

The geographic distribution of adjournments during the year is shown in Table 5:

Table 5 – Section 151 and 152 Adjournments

| | NSW | VIC | QLD | SA | WA | TAS | AUST |
|-------------------------|-------------|------------|-------------|-------------|-------------|-------------|-------------|
| Applications Heard | 1 595 | 995 | 1 367 | 368 | 157 | 100 | 4 582 |
| Adjourned s151 | 91 | 41 | 64 | 16 | 7 | 4 | 223 |
| s151 as % of Heard | 5.7 | 4.1 | 4.7 | 4.3 | 4.5 | 4.0 | 4.9 |
| Adjourned s152 | 120 | 45 | 110 | 21 | 19 | 9 | 324 |
| s152 as % of Heard | 7.5 | 4.5 | 8.0 | 5.7 | 12.1 | 9.0 | 7.1 |
| Total Adj% 01-02 | 13.2 | 8.6 | 12.7 | 10.0 | 16.6 | 13.0 | 11.9 |
| Total Adj % 2000-01 | 12.5 | 9.5 | 11.7 | 8.5 | 17.3 | 14.6 | 11.7 |

Outcome of VRB Decisions

The review of a Repatriation Commission decision may involve deciding more than one substantive matter of entitlement and/or assessment. On average, there were 1.7 matters decided by the VRB for each application heard. During 2001-02, 7 120 decisions were published relating to 3 952 applications. The outcome of the published decisions was as follows:

Table 6 – Outcome of Published Decisions

| ENTITLEMENT | |
|--|--------------|
| Veteran's death accepted as war/defence-caused and a war widows'/widowers' pension granted | 246 |
| Injury or disease accepted as war/defence-caused and remitted to the Repatriation Commission to assess applicable pension rate | 848 |
| Injury or disease accepted as war/defence-caused and VRB assessed the rate of pension to be paid | 236 |
| Total Set Aside | 1 330 |
| Veteran's death NOT war/defence-caused | 567 |
| Injury or disease NOT war/defence-caused | 3 392 |
| No power to review | 1 |
| Total Affirmed | 3 960 |
| TOTAL ENTITLEMENT | 5 290 |
| ASSESSMENT | |
| Set aside and rate of pension increased | 638 |
| Set aside and rate of pension reduced | 8 |
| Total Set Aside | 646 |
| Assessment decisions affirmed | 731 |
| No power to review | 1 |
| Total Affirmed | 732 |
| TOTAL ASSESSMENT | 1 378 |
| ATTENDANT ALLOWANCE | |
| Total Set Aside | 1 |
| Total Affirmed | 5 |
| TOTAL ATTENDANT ALLOWANCE | 6 |
| Entitlement – description of injury or disease varied[†] | 363 |
| Assessment – remitted[‡] | 83 |
| TOTAL DECISIONS PUBLISHED | 7 120 |

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

might vary the description of a disease from post traumatic stress disorder to post traumatic stress disorder with depressive features. If so, it will then go on to determine whether or not that differently described injury or disease is war-caused or defence-caused by setting aside or affirming the decision 'as varied'. In previous years these variations of diagnosis were added to the number of 'set aside' matters which added to the overall number of matters determined. This enhanced the proportion of set aside matters and gave a distorted picture of the number of matters actually decided.

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

In summary:

- 25.1% of entitlement decisions reviewed by the VRB were set aside; this figure was 22.2% for 2000-01. (In the 2000-01 Annual Report, this figure was given as 27.0%, but see the first explanatory note to Table 6, above).
- 46.9% of assessment decisions reviewed by the VRB were set aside; this figure was 49.2% for 2000-01. (In the 2000-01 Annual Report, this figure was given as 46.8%, but see the second explanatory note to Table 6, above).

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

Table 7 – Decisions Reviewed and Set Aside

| | NSW | VIC | QLD | SA | WA | TAS | AUST |
|--------------------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|
| Total Entitlement | 1 676 | 1 284 | 1 656 | 382 | 192 | 100 | 5 290 |
| Set Aside | 498 | 264 | 395 | 104 | 59 | 10 | 1 330 |
| % Set Aside 01-02 | 29.7 | 20.6 | 23.9 | 27.2 | 30.7 | 10.0 | 25.1 |
| % Set Aside 2000-01 | 23.6 | 18.1 | 24.0 | 19.3 | 28.6 | 12.6 | 22.2 |
| Total Assessment | 459 | 287 | 478 | 89 | 30 | 35 | 1 378 |
| Set Aside | 230 | 107 | 235 | 41 | 17 | 16 | 646 |
| % Set Aside 01-02 | 50.1 | 37.3 | 49.2 | 46.1 | 56.7 | 45.7 | 46.9 |
| % Set Aside 2000-01 | 55.0 | 33.2 | 50.9 | 50.5 | 55.7 | 28.6 | 49.2 |

Set aside and affirmation rates may vary for a wide variety of reasons. Some of the factors which may have influenced these results would include:

- the approach taken by applicants and representatives as to the matters on which review will be sought;
- the extent to which intervention occurs by the Repatriation Commission under section 31;
- the adequacy of information presented to primary decision-makers; and
- the nature and extent of 'new' material presented on review.

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

Processing Times

There are three processing stages over which the VRB has primary control:

- from receipt of the s137 report from the Department until a s148 notice is sent to the applicant;
- from receipt of a Certificate of Readiness until the hearing; and
- from the hearing until publication of the decision and reasons.

From Receipt of s137 Report to s148 Notice

When the s137 Report is received, a VRB Case Manager examines the documents in the report for completeness and accuracy. If it appears that relevant documents are missing or incomplete, the Report is returned to the Department for rectification. Following this preliminary check, a s148 Notice is sent to the applicant seeking advice about whether the applicant wishes to attend the hearing, whether the applicant wishes to be represented, and whether the applicant is ready to proceed at a hearing.

The average time for the VRB to undertake this stage was 6 days in 2001-02. This was a significant time reduction from the previous year (14 days), and was largely brought about through enhanced procedures and greater focus on this process.

From Certificate of Readiness to Hearing

When the VRB receives a Certificate of Readiness from an applicant or representative, the s137 Report is again checked for completeness and DVA records are examined to determine whether there is further material that should be added to the Report. Depending on the availability of the applicant and his or her representative, the application is listed for hearing in the next available hearing slot, based on order of receipt of the Certificate of Readiness. In a significant number of cases there are restrictions on the availability of representatives, with the result that

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

The average time for the VRB to undertake this stage was 72 days in 2001-02. This compares with 75 days in 2000-01.

From Hearing to Publication of Decision and Reasons

The VRB aims to publish its decisions and reasons as soon as possible, and at least within 28 days, after the hearing. Each VRB panel usually hears three cases each day. After each hearing the panel discusses the merits of the case and allocates one member to draft the reasons. Most members type their own drafts. When the reasons have been drafted they are circulated to the other two members for comment and discussion. After each member is satisfied with the decision and reasons, the document is signed and given to the VRB staff for publication.

In finalising an application, the VRB seeks to ensure not only that the applicant receives his or her proper Repatriation entitlement, but also that the decision is advised as soon as possible after the VRB hearing. VRB records are examined each week for all cases heard for which a decision has not been published. Each case more than three weeks old is then followed-up by the Principal Member to effect early publication of the decision and reasons.

During 2001-02 the average time from the date of hearing to the publication of the decision was 12 days, this compares with 14 days in 2000-01.

This very satisfactory result in time taken to publish reasons is largely due to members doing their own typing, follow-up through the computer case management system (vrbSAM), and by a continuing commitment on the part of members and staff to complete and publish decisions at the earliest opportunity.

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

| STAGE | Primarily under DVA control | Primarily under applicants' control | Primarily under VRB control |
|---|------------------------------------|--|------------------------------------|
| Lodgement to Receipt of s137 Report | 41 (46) | | |
| Receipt of s137 Report to s148 Notice sent | | | 6 (14) |
| s148 Notice sent to s148 Reply received | | 28 (43) | |
| s148 Reply to Certificate of Readiness received | | 209 (206) | |
| Certificate of Readiness to Hearing | | | 72 (75) |
| Hearing to Publication of decision & reasons | | | 12 (14) |
| Total Average Time with DVA, applicants or VRB | 41 (46) | 237 (249) | 90 (103) |
| Average % of Time with DVA, applicants or VRB | 11.1% (11.6) | 64.4% (62.6) | 24.5% (25.9) |

Figures in (brackets) represent figures for 2000-01

The reduction from 43 to 28 days for the receipt of a reply to section 148 notices appears to have been the result of a practice commenced during the year of providing applicants with prepaid envelopes.

Not included in Table 8 are those times when applications are referred to the Department for further investigation or development of the material. Because of the individual nature of such referrals it is not meaningful to provide an average time taken.

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

During 2001-02, 6 336 new applications were lodged, 4 582 hearings were held, and 6 837 applications were finalised.

At 1 July 2001, 22% of outstanding applications were with the VRB, 69% were with applicants or their representatives and not ready to be heard, and 9% were with the Department for action under sections 137, 148(6A), 152 or 31 (ie for the preparation of a Departmental Report, obtaining further evidence at the request of the Principal Member or a panel of the VRB, or review by the Repatriation Commission).

This distribution of applications did not change markedly throughout the year. The total number of applications outstanding as at the 30 June 2002 was 5 104. A total of 1 064 applications (21%) were with the VRB, 3 697 applications (72%) were with the applicant or their representatives and not ready to be heard, 343 applications (7%) were with the Department for action under sections 137, 148(6A), 152 or 31 (this figure, as previously explained, is probably understated in NSW and SA because of the Department's working practice in those states of not advising the VRB of new applications until the s137 report is forwarded to the VRB).

Listing

During the year, the VRB aimed to list 15 hearing times per panel per week and those applications thought to be particularly complex or lengthy were allocated two or more hearing times. If an applicant had more than one application they were 'merged' and heard, where possible, during the one hearing time slot.

In Western Australia, the VRB has begun arranging three days of hearings (9 hearing slots) rather than wait until 15 hearing slots can be filled for a full week of hearings. This has meant a reduction in waiting times in that State. A similar arrangement has been in place for hearings in Hobart and Launceston, where either two or three days of hearings are arranged for each city.

Of the 1 064 (21%) applications outstanding with the VRB, 347 had already been allocated a hearing date and time. Although a further 503 were ready to proceed to

hearing a proportion of these applications were in the hands of a relatively small number of advocates who maintain their own listing queues. Such advocates may only present one or two cases each week. This places limits on the capacity of the VRB to list such cases for hearing.

Postponements

A vital factor in the VRB's capacity to finalise applications is the effectiveness of its listing operations. If the VRB lists applications for hearing at times that subsequently become unsuitable to applicants or their representatives and the VRB does not receive timely advice of that unsuitability, the allocated hearing time may be wasted. Obviously there will always be some postponements – a sudden illness or other mishap cannot be avoided. However, it must be the aim of the VRB and those who regularly deal with it to ensure that the adverse effect of postponements is offset wherever possible by the substitution of another application. To this end, the VRB's procedures provide that requests for postponement on the day of a scheduled hearing will not be granted. In such cases, the hearing will commence as scheduled and the VRB panel will determine, after considering all the circumstances and the material before it, whether it will proceed with the hearing or adjourn the matter to a date to be fixed by the Registrar.

During the year, 340 applications listed for hearing were postponed prior to the commencement of the hearing. Substitute applications were found for 283 postponements. This resulted in 57 hearing slots not being able to be used (the equivalent of nearly four weeks of hearings for a VRB panel). The VRB continues to seek the cooperation of all parties in ensuring the effectiveness of its listing procedures – the lower the effective postponement rate, the higher the finalisation rate and, obviously, the shorter the waiting time for other applications in the system. In particular, advocacy organisations should realise that, where they have signed a Certificate of Readiness for Hearing, or have certified that a case is ready for hearing as a result of letters sent pursuant to the dismissal legislation, a subsequent request for a postponement would, apart from exceptional circumstances, be unlikely to be granted.

The following table shows the geographic distribution of postponements during the year and the number and percentages of cases substituted for such postponements:

Table 9 – Hearings Postponed

| | NSW | VIC | QLD | SA | WA | TAS | AUST |
|----------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Applications Heard | 1 595 | 995 | 1 367 | 368 | 157 | 100 | 4 582 |
| Postponed | 138 | 74 | 104 | 9 | 8 | 7 | 340 |
| Substituted | 97 | 70 | 95 | 8 | 7 | 6 | 283 |
| % substituted 2001-02 | 70.3 | 94.6 | 91.3 | 88.9 | 87.5 | 85.7 | 83.2 |
| % substituted 2000-01 | 83.6 | 97.4 | 87.8 | 106 | 61.5 | 100 | 87.8 |

Applications Dismissed

During 2001-02, the VRB sent out a total of 659 letters asking for a written statement from applicants as to why they were not ready to proceed at a hearing. These letters resulted in a total of 176 applications being dismissed, 106 being withdrawn and 150 requests for a hearing. The remainder provided reasonable explanations or were still being followed up in accordance with the legislation. There were 7 appeals concerning dismissals lodged with the AAT.

For more information concerning AAT appeals see Appendix 2.

Table 10 – Dismissal Action

| | NSW | VIC | QLD | SA | WA | TAS | AUST |
|--------------------------|------------|-----------|-----------|-----------|----------|----------|------------|
| Letters Sent | 444 | 69 | 87 | 47 | 6 | 6 | 659 |
| Reasonable Answer | 151 | 18 | 14 | 13 | 2 | 2 | 200 |
| Withdrawn | 65 | 19 | 14 | 6 | 1 | 1 | 106 |
| Hearing Requested | 94 | 15 | 25 | 12 | 1 | 3 | 150 |
| Dismissed 2001-02 | 111 | 19 | 27 | 15 | 3 | 1 | 176 |
| Dismissed 2000-01 | 152 | 50 | 67 | 29 | 8 | 7 | 313 |

Applications Lapsed

Most applications lapse because an applicant dies and the legal personal representative does not wish to pursue the matter. An application, once registered, might also be disposed of if it is found to be a duplicate registration, or more properly regarded as a new claim for pension or an application for increase. During 2001-02, a total of 52 applications were lapsed. The figure for 2000-01 was 84.

Applications Withdrawn

During 2001-02, 2 657 applications were withdrawn by applicants; this represents 38.9% of applications finalised during the year. This compares with 3 007 withdrawals (37.9%) for the previous year.

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

Table 11 – Applications Withdrawn

| | NSW | VIC | QLD | SA | WA | TAS | AUST |
|------------------------|------------|------------|------------|------------|------------|-----------|--------------|
| Finalised | 2 007 | 1 848 | 2 017 | 532 | 286 | 147 | 6 837 |
| Withdrawn | 551 | 919 | 792 | 196 | 144 | 55 | 2 657 |
| % Withdrawn 2001-02 | 27.5 | 49.7 | 39.3 | 36.8 | 50.3 | 37.4 | 38.9 |
| % Withdrawn 2000-01 | 29.9 | 49.3 | 35.6 | 38.8 | 42.0 | 44.8 | 37.9 |

Members

As at 1 July 2001, the membership of the VRB was 51.

From 1 July 2001 to 30 June 2002 the following changes in membership occurred:

- The Principal Member, William Douglas Rolfe, was reappointed from 8 April 2002 to 7 April 2005.
- On 29 May 2002, Collins Joseph Fagan, part-time Services Member, Melbourne was reappointed from 1 October 2002 to 30 September 2004.

At 30 June 2002, there were 51 members of the VRB: the Principal Member, 16 Senior Members, 17 Services Members and 17 Members. Of these, only the Principal Member was a full-time appointee and all others were part-time. The number of women holding appointments was 17.

The breakup of membership as at 30 June 2002 is set out in the following table:

Table 12 – Members

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

Full details of the VRB membership as at 30 June 2002 are set out in Appendices 4 and 5.

Staff

Under the *Veterans' Entitlements Act 1986*, the Secretary of the Department is required to make available any staff required to assist the VRB in the performance of its statutory functions.

At 1 July 2001, there were 44 staff employed by the VRB. That figure was 41 at the end of the financial year. There are no Senior Executive Service staff positions at the VRB.

The break-up of staff as at 30 June 2002 is set out in the following table:

Table 13 – Staff

| | EL 2 | EL 1 | APS 6 | APS 5 | APS 4 | APS 3 | Total June 2002 | Total June 1992 |
|--------------|----------|----------|----------|----------|----------|-----------|-----------------------|-----------------------|
| ACT | 1 | 2 | 1 | 1 | 1 | | 6 | 10 |
| NSW | | 1 | 1 | | 2 | 6 | 10 | 12 |
| VIC | | 1 | 1 | | 2 | 6* | 10 | 14 |
| QLD | | 1 | | | 2† | 6‡ | 9 | 12 |
| SA | | | 1 | | 1 | 1 | 3 | 4 |
| WA | | | | 1 | | 1 | 2 | 4 |
| TAS | | | 1 | | | | 1 | 4 |
| TOTAL | 1 | 5 | 5 | 2 | 8 | 20 | 41 | 60 |

* 2 part-time, † 1 part-time, ‡ 2 part-time

In 1991-92, the VRB had a similar workload to that in 2001-02, yet it employed 60 full-time staff. The VRB gradually, but steadily, reduced its staff numbers over those 10 years while improving efficiency and timeliness, mainly through improved computer systems and procedures, and by members doing their own typing of reasons for decision. Staff reductions were carefully managed over those 10 years through natural attrition and voluntary redundancies. There were no voluntary redundancies in 2001-02.

Resources

Table 14 outlines estimated expenditure for the VRB for the 2000-01 and 2001-02 financial years. Expenditure is said to be estimated rather than actual because some corporate costs directly attributable to the VRB are in fact borne by the Department of Veterans' Affairs.

Total estimated expenditure for the VRB in the financial year 2001-02 was \$6 811 000 compared to \$7 142 000 in 2000-01. Actual average expenditure on each application finalised by the VRB during the year was \$996. In 2000-01 the figure was \$901.

The most significant factors in the increased cost per case were the increased cost of accommodation, increases in staff salaries under the DVA Enterprise Agreement, increased cost of airfares, an increase in postponed hearings that could not be replaced with other cases on short notice, and an increase in members' sitting fees.

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

| | 1 July 00 – 30 June 01 | | 1 July 01 – 30 June 02 | |
|---|------------------------|--------------|------------------------|--------------|
| Salaries (includes superannuation) | | | | |
| Members | 2 565 | | 2 449 | |
| Staff (includes o/time & temps) | 2 364 | 4 929 | 2 197 | 4 646 |
| Rental of Premises (includes outgoings) | 752 | 752 | 991 | 991 |
| Applicants’ expenses | 41 | 41 | 21 | 21 |
| Fares | | | | |
| Members | 146 | | 140 | |
| Staff | 53 | | 36 | |
| Cars (includes parking) | 50 | 249 | 40 | 216 |
| Travelling Allowance | | | | |
| Members | 302 | | 284 | |
| Staff | 50 | 352 | 43 | 327 |
| Office Requisites | | | | |
| Stationery and office requisites | 29 | | 30 | |
| Library | 71 | | 74 | |
| Printing | 24 | | 14 | |
| Equipment | 20 | 144 | 16 | 134 |
| Postage and Telephones | | | | |
| Postage | 26 | | 27 | |
| Telephones/fax | 53 | 79 | 60 | 87 |
| Office Services | | | | |
| Plant hire | 7 | 7 | 7 | 7 |
| Furniture and Fittings | – | – | 4 | 4 |
| Computer equipment (includes services) | 276 | | 261 | |
| vrbsAM (System for Application Management) planning & development | 167 | 443 | – | 261 |
| Incidental Expenditure | | | | |
| Freight & cartage | 34 | | 26 | |
| Advertising | 26 | | – | |
| Training | 14 | | 19 | |
| Miscellaneous | 23 | 97 | 8 | 53 |
| Comcare Premium | 38 | 38 | 40 | 40 |
| Archiving | 11 | 11 | 11 | 11 |
| Legal | – | – | 13 | 13 |
| TOTAL | | 7 142 | | 6 811 |

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. During the year there was an increase in the proportion of represented applications at hearings in every State, but most significantly in Queensland.

The geographic distribution and numbers of applications heard where the applicants were represented, compared with 2000-01 figures, are shown in the following table:

Table 15 – Representation at VRB Hearings

| | NSW | VIC | QLD | SA | WA | TAS | AUST |
|----------------------------------|--------------|-------------|--------------|-------------|-------------|-------------|--------------|
| Unrepresented | 171 | 75 | 87 | 25 | 10 | 7 | 375 |
| In absentia | 250 | 58 | 195 | 23 | 11 | 4 | 541 |
| Represented | 1 174 | 862 | 1 085 | 320 | 136 | 89 | 3 666 |
| Total | 1 595 | 995 | 1 367 | 368 | 157 | 100 | 4 582 |
| % Represented 2001-02 | 73.6 | 86.6 | 79.3 | 86.9 | 86.6 | 89.0 | 80.0 |
| % Represented 2000-01 | 71.0 | 84.5 | 71.1 | 86.1 | 85.0 | 87.5 | 76.1 |

A proportion of applicants who have ‘in absentia’ hearings are represented, but both the applicant and the representative have chosen not to appear at the hearing. The representatives in those cases sometimes provide written submissions to the VRB.

Regional Hearings

During 2001-02 regional hearings were again arranged in Bundaberg, Cairns, Canberra, Gold Coast / Palm Beach / Surfers Paradise, Launceston, Mackay, Rockhampton and Townsville.

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

Table 16 – Number of Days Hearings Held in Regional Locations

| Location | 2000-01 | 2001-02 |
|---|------------|------------------|
| Bundaberg, Qld | 10 | 20 (60) |
| Cairns, Qld | 10 | 11 (32) |
| Canberra, ACT | 64 | 45 (133) |
| Gold Coast/Palm Beach/Surfers Paradise, Qld | 89 | 103 (276) |
| Launceston, Tas | 14 | 12 (36) |
| Mackay, Qld | – | 13 (40) |
| Rockhampton, Qld | 5 | 9 (26) |
| Townsville, Qld | 15 | 24 (73) |
| Total days of hearings | 207 | 237 (676) |

In 2000-01, the VRB trialed video hearings to enhance its service to applicants in regional areas. During 2001-02, the number of video hearings increased and has become a popular method of hearing cases with some representatives. The provision of video hearings is a useful *additional* means of providing hearings on a timely basis for applicants in regional areas. The VRB remains committed to conducting regional hearings while there are sufficient cases available in those areas. However, video conferencing enables some applications to be heard sooner as the VRB does not have to wait for other applications in that region to be ready for hearing. During 2001-02, the VRB held video hearings in the following sites:

Table 17 – Video Hearings

| Remote location | VRB location | Hearings 2000-01 | Hearings 2001-02 |
|------------------------|---------------------|-----------------------------|-----------------------------|
| Ararat, Vic | Melbourne | – | 1 |
| Bairnsdale, Vic | Melbourne | – | 2 |
| Bundaberg, Qld | Brisbane | 2 | – |
| Canberra, ACT | Melbourne | 1 | – |
| Hobart, Tas | Melbourne | – | 1 |
| Korumburra, Vic | Melbourne | – | 4 |
| Mackay, Qld | Brisbane | 4 | – |
| Mildura, Vic | Melbourne | 4 | 2 |
| Perth, WA | Melbourne | 1 | – |
| Rockhampton, Qld | Brisbane | 2 | – |
| Rockhampton, Qld | Melbourne | – | 1 |
| Rosebud, Vic | Melbourne | – | 3 |
| Sale, Vic | Melbourne | – | 5 |
| Sea Lake, Vic | Melbourne | – | 4 |
| Seymour, Vic | Melbourne | – | 7 |
| Swan Hill, Vic | Melbourne | – | 1 |
| Wangaratta, Vic | Melbourne | 4 | 3 |
| Wonthaggi, Vic | Melbourne | – | 1 |
| Total hearings | | 18 | 35 |

Commission Representation at VRB Hearings

The Repatriation Commission is formally a party to all proceedings before the VRB. As a matter of practice, however, it has seldom attended VRB hearings. During 2001-02 the Commission was not represented at any hearings.

Other Activities

The VRB worked closely during the year with ex-service and related organisations and the parties to its hearings with a view to ensuring that its procedures worked effectively. Senior VRB staff participated in various workshops and seminars conducted by both ex-service organisations and the Department of Veterans' Affairs.

The Principal Member and other members and staff attended a number of administrative law conferences and contributed to the Training and Information Program (TIP) managed by the Department and ex-service organisations for the training of pension and welfare officers and advocates. The Principal Member attended and addressed a number of state and national ex-service organisation pension and welfare committee meetings and maintained close contact with the larger advocacy organisations within the veteran community.

The Principal Member visited Australian units in East Timor in October 2001 in company with Professor Ken Donald, Chairman of the Repatriation Medical Authority (RMA), Major General Paul Stevens, Repatriation Commissioner, Dr Alex Bordujenko, Principal Medical Officer RMA and Mr Mark Johnson, Branch Head Compensation Department of Veterans' Affairs. The purpose in the Principal Member's visit was to gain a general understanding of the circumstances of service for personnel in East Timor. The travel over three days involved meetings and discussions with headquarters, hospital and logistics staff in Dili. It included travel to and briefings at Headquarters 4th Battalion Royal Australian Regiment at Balibo, two Company locations, and Junction Point Alpha, a border crossing point. The group also travelled to Port Hera and held discussions with Australian Army Psychology Corps personnel tasked with debriefing troops departing East Timor.

Research and information services

The VRB's intermediate role and high-volume jurisdiction mean that members have to deal with their caseload as expeditiously as possible. At the same time, both parties expect the VRB to consistently reach the correct decision in accordance with the facts and relevant law. In order to accommodate these competing requirements, the VRB has developed research and information services to provide members with a research service on particular problems that arise from time to time, and to speedily provide them with:

- the relevant law as interpreted by the courts and the Administrative Appeals Tribunal;

- legislative amendments;
- relevant research papers; and
- details of significant or interesting VRB decisions.

An internal legal and information bulletin and a comprehensive Intranet assists in providing members with this material.

The VRB publishes a booklet called *VeRBosity*. This booklet includes information about Statements of Principles, legislative amendments, and decisions by the Administrative Appeals Tribunal and courts in the Repatriation field together with other items of interest. It is distributed on request to people involved in the Repatriation jurisdiction. During the year, four editions of *VeRBosity* were produced.

The VRB also publishes:

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

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

Veterans' law course

In 2001-02, the VRB continued its association with the School of Law and Justice at Southern Cross University. The VRB's Executive Officer, Mr Bruce Topperwien updated the course materials for the Veterans Law units and the Law & Government Decision-Making unit of the University's Short Course in Veterans' Law. Mr Topperwien is the unit assessor for the Veterans' Law units and runs workshops for students in those subjects. The Course has proved very successful, and a number of VRB staff, ex-service representatives, and DVA staff have now successfully completed the course.

The VRB sees this association with the University as an opportunity to develop the knowledge and skills of veterans' representatives beyond the basic level provided

by the Training and Information Program funded by the Department. It is also an opportunity to update and enhance the in-house training materials for VRB members and provide a well structured, university accredited, training program for VRB staff.

This short external course, completion of which can count as credit for degree and diploma courses in legal studies at the university, consists of the following four units: Veterans' Law 1, Veterans' Law 2, Legal Research and Writing, and Law & Government Decision-Making. These units are given over two semesters. The course will be offered again in 2003.

Access and equity

In conjunction with the Department of Veterans' Affairs strategy to comply with the Government's social justice policy, the VRB observes the requirements of access, equity, equality and participation.

The VRB serves an identifiable segment of the community. The VRB is aware of its obligations in dealing with elderly persons, people with non-English speaking backgrounds and persons with disabilities. The VRB holds hearings and video hearings in some regional areas to ensure easier access for applicants. All applicants are advised of their right of appeal to the AAT on receiving advice of a VRB decision. Senior VRB staff speak on a regular basis at pensions seminars run by ex-service organisations and the Department of Veterans' Affairs, and visit regional areas to discuss the VRB's operations with ex-service organisation representatives.

In recognition of the fact that its staff are made available by the Department of Veterans' Affairs and operate in a comparable environment, the VRB acts consistently with Departmental policies and initiatives in such matters as occupational health and safety, enterprise bargaining, industrial democracy and equal employment opportunity.

Complaints

In the course of the year the VRB received 8 letters of appreciation and 23 letters of complaint. The former were particularly welcomed by staff and members who are genuinely concerned to place all veterans and widows at ease, to protect their dignity and to ensure a fair and comprehensive hearing. Such letters are not solicited.

Seven of the 23 complaints were referred for comment from the Minister's office and involved the following issues: concern at the decision or aspects of the decision (3); concern over conduct of a hearing (2); concern over selection procedures for

membership of the VRB or the composition of the membership (1); concern over past VRB procedures (1). The Executive Officer or the Principal Member investigated each of these matters and responses were provided.

Other complaints sent to the VRB were: concern at the decision or aspects of the decision (5); concern over the composition of the panel (1); concern over the travelling allowance for attending the VRB (1); incorrect detail regarding status of veteran in decision and reasons (1); concern over follow-up letters issued to applicants by VRB (1); concern at delay in arranging a hearing (1); concern over dismissal procedures (1); concern over conduct of the hearing (5).

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

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

APPENDIX 1

Court Decisions

Under the *Veterans' Entitlements Act 1986* and the *Administrative Appeals Tribunal Act 1975*, decisions of the VRB are subject to review on the merits by the Administrative Appeals Tribunal (AAT). Parties to proceedings before the AAT may appeal to the Federal Court on questions of law from decisions of the AAT. There is no direct right of appeal to the Federal Court against VRB decisions under the *Veterans' Entitlements Act 1986*. However, decisions of the VRB or conduct relating to the making of decisions are subject to review by the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977* (the AD(JR) Act), on the grounds set out in that Act, or alternatively by way of judicial review under the *Judiciary Act 1903*.

Certain matters may also be heard in the Federal Magistrates Court, either in its original jurisdiction under the AD(JR) Act or upon transfer from the Federal Court.

High Court of Australia

During the year, there were two applications for special leave to appeal to the High Court in matters arising under the *Veterans' Entitlements Act 1986*. In the cases of *Budworth* and *Benjamin*, the Full Court of the Federal Court had held that the kind of injury or disease, the subject of the claim, must be decided in terms of the 'reasonable satisfaction' standard of proof in subsection 120(4) and not under subsections 120(1) and (3) of the Act. The High Court refused the applications for special leave in both cases.

Federal Court of Australia

Administrative Decisions (Judicial Review) Act 1977

During the year, there were no applications to the Federal Court under the AD(JR) Act in respect of VRB decisions. However, there was one application in respect of action by the Department under the *Veterans' Entitlements Act 1986*. The case of

Hobbs v Repatriation Commission was concerned with whether lump sum compensation payable under the *Safety, Rehabilitation and Compensation Act 1988* was properly deducted from disability pension assessed at the special rate under the *Veterans' Entitlements Act 1986*. The application was dismissed on the basis that no legal error was found in applying the deduction.

Judiciary Act 1903

The case of *Vietnam Veterans' Association of Australia (NSW Branch) Inc v Specialist Medical Review Council* involved an application under s 39B(1A)(c) of the *Judiciary Act 1903*. VVAA (NSW) Inc sought to challenge declarations made by the SMRC that there was insufficient evidence of a causal connection between smoking and prostate cancer. The Court held that the SMRC had failed to complete the review of an application lodged by VVAA (NSW) Inc in respect of the Statements of Principles for prostate cancer.

Administrative Appeals Tribunal Act 1975

During the year, the Federal Court handed down 41 decisions, including 9 decisions of the Full Court, on matters that were appealed from decisions of the AAT. Decisions were set aside in 15 cases and the matters were remitted to the AAT for re-hearing. The Federal Court decisions were as follows (in chronological order):

Grundman v Repatriation Commission
Rickaby v Repatriation Commission
Carter v Repatriation Commission
Counsel v Repatriation Commission
Byrne v Repatriation Commission
Repatriation Commission v Swinden
Repatriation Commission v Gorton (Full Court)
Repatriation Commission v Williams (Full Court)
O'Neil v Repatriation Commission
Roncevich v Repatriation Commission
Whitbourne v Repatriation Commission
Repatriation Commission v Budworth (Full Court)
Repatriation Commission v Broadbent
McLean v Repatriation Commission (Full Court)
Fuss v Repatriation Commission
White v Repatriation Commission
Repatriation Commission v Richardson
Spargo v Repatriation Commission (Full Court)
Parker v Repatriation Commission
Hill v Repatriation Commission
Bull v Repatriation Commission (Full Court)
Benjamin v Repatriation Commission (Full Court)
Rendell v Repatriation Commission

Repatriation Commission v Brown
Repatriation Commission v Olsen
Elliott v Repatriation Commission
Knight v Repatriation Commission
Spencer v Repatriation Commission
Farmer v Repatriation Commission
Stewart v Repatriation Commission
Verth v Repatriation Commission
Kattenberg v Repatriation Commission
Guy v Repatriation Commission
Freeman v Repatriation Commission
Hendy v Repatriation Commission
Repatriation Commission v Burge
Magill v Repatriation Commission
Repatriation Commission v Cornelius
Repatriation Commission v Hill (Full Court)
Counsel v Repatriation Commission (Full Court)
Graham v Repatriation Commission

Causation issues

In *McLean's* case, the veteran had died from injuries received when he was felling trees on a hillside and a tree dislodged a large boulder. His widow claimed that he was unable to move quickly enough to avoid the boulder because of his back condition and that his back condition was caused by his war service. The AAT found that the hypothesis was not reasonable and refused the claim. On appeal, the Full Court held that the AAT's finding was reasonably open to it and dismissed the appeal.

In *Bull*, the Full Court examined an AAT decision in which the hypothesis was that the late veteran's post-service consumption of alcohol was related to war service. The Full Court held that there was no error of law in the approach adopted. The Court restated the principle established in earlier cases that for an hypothesis to be reasonable, the material must 'point to' the hypothesis said to connect an injury or disease with the circumstances of service in the particular case. This is a question of fact for the decision-maker in each case.

In *Hill's* case, the Repatriation Commission appealed to the Full Court against a decision of the Court at first instance that the AAT had erred in its consideration of a claim in respect of post traumatic stress disorder. It was agreed that the AAT had erred by failing to consider the claim in terms of an alternative diagnosis. The Full Court, in dismissing the appeal, stated that an hypothesis is 'reasonable' in terms of subsections 120(3) and 120A(3) only if it is supported by material pointing to each element of the hypothesis prescribed in a Statement of Principles.

Rickaby, Swinden, O'Neil, Whitbourne, Fuss, Elliott, Knight, Kattenberg, Freeman, Burge, Cornelius and Graham all involved consideration by the Court of whether the AAT had followed the correct approach in applying the relevant Statement of Principles. The cases of *Roncevich, Parker* and *Spencer* dealt with other issues relating to entitlement to pension.

Standard of proof as to diagnosis

In *Budworth*, the Full Court reversed the decision of the Court at first instance as to the standard of proof to be applied on issues of diagnosis. The Full Court held that when a decision-maker is determining whether a veteran is suffering from a particular kind of injury or disease, this must be decided to the 'reasonable satisfaction' of the decision-maker in terms of subsection 120(4) and not subsections 120(1) and (3).

Similarly, in *Benjamin's* case, the Full Court held that questions of diagnosis must be decided in terms of s 120(4). The Court also held that the determination of whether or not there is a Statement of Principles in force in respect of the claimed condition is to be determined in accordance with subsection 120(4).

Special leave to appeal to the High Court was refused in both *Budworth* and *Benjamin's* case.

Accrued rights

In *Gorton's* case, the Full Court settled the issue of which Statement of Principles is to be applied when the Statement in force as at the date of the Repatriation Commission's decision has been amended or replaced by a more beneficial Statement during the appeal process. The Full Court held that the correct approach in those circumstances is for the AAT to apply the Statement in force at the time of the review unless the earlier Statement is more beneficial to the applicant. Consistent with the decision in *Repatriation Commission v Keeley* (2000) 31 AAR 150, the AAT is first required to apply the Statement in force at the time of the review. If the claim cannot succeed under the current Statement, the applicant is then entitled to rely on any 'accrued right' in terms the earlier Statement. The cases of *Brown* and *Olsen* also dealt with this issue.

Special rate of pension

In *Counsel*, the Full Court upheld an appeal against a decision of the Court at first instance concerning the special rate of pension. At issue was whether a veteran had suffered a loss of earnings on his own account in circumstances where the business partnership in which he was involved had operated at a loss for a number of years. The Full Court held that 'earnings' in this context meant gross earnings to which the partners had access from time to time.

Other cases which dealt with special rate issues were *Grundman*, *Carter*, *Byrne*, *White*, *Rendell*, *Hendy* and *Magill*. The cases of *Carter* and *White* dealt with the 'last paid work' provisions for veterans over the age of 65 years and the remainder were concerned with whether the veterans were prevented from working by war-caused disabilities alone in terms of s 24(1)(c).

Operational service

In *Spargo*, the Full Court dismissed an appeal from the decision of a single judge. The case concerned a crew member of *HMAS Sydney* who was seriously injured while en route to Korea. He returned to Australia from Japan without entering the Korean operational area. The Full Court held that section 6C of the Act must be construed as providing that operational service was rendered only by a person who actually rendered service in an operational area and not by someone injured in the course of a journey towards the operational area who did not reach that area. *Guy*'s case involved a failure by the AAT to take account of the full extent of a veteran's operational service.

Qualifying service

The cases of *Broadbent*, *Farmer* and *Verth* all dealt with aspects of qualifying service for service pension or Gold Card purposes.

Review powers

In *Richardson*, the Court dealt with the scope of the Repatriation Commission's powers to review an entitlement under subsection 31(6), upholding the power of the Commission to revoke a previously granted entitlement and reducing the rate of a pension. In *Stewart*, the Court considered the extent of the AAT's powers upon review.

Federal Magistrates Court

During the year, the Federal Magistrates Court handed down 5 decisions on matters that were appealed from decisions of the AAT. The decision was set aside in one case and the matter was remitted to the AAT for re-hearing. The Federal Magistrates Court decisions were as follows (in chronological order):

Hill v Repatriation Commission
Burge v Repatriation Commission
Repatriation Commission v Linton
Ingram v Repatriation Commission
Dunkley v Repatriation Commission

Dunkley's case was concerned with a claim for loss of earnings allowance in terms of s 108. The other cases involved consideration by the Magistrates Court of whether the AAT had followed the correct approach in applying the Statements of Principles.

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

APPENDIX 2

The Administrative Appeals Tribunal

Review of VRB Decisions

Both the applicant and the Repatriation Commission are entitled to apply to the Administrative Appeals Tribunal (AAT) for review of a VRB decision to affirm, vary or set aside a decision reviewed by the VRB. However, the VRB is not a party to these subsequent proceedings before the AAT.

Following notification of the lodgement of an application for review by the AAT, the decision-maker must lodge with the AAT, within 28 days, a statement and associated documentation pursuant to section 37 of the *Administrative Appeals Tribunal Act 1975*. Where the decision of the VRB was to set aside the decision reviewed by it, the section 37 statement is prepared by the VRB. Where the VRB has reviewed and affirmed or varied a decision, the section 37 statement is prepared by the Department of Veterans' Affairs on behalf of the Repatriation Commission. During 2001-02, the VRB was notified of the lodgement of 1 106 applications for review by the AAT of matters involving VRB decisions. During the same period, the VRB lodged 84 section 37 statements with the AAT. The average time taken for preparation and lodgement of those statements was 15 days.

While it is not possible to determine the appeal rate accurately, it can be estimated by comparing the number of applications lodged with the AAT with the number of applications finalised by VRB decisions. This is not an accurate measure because applicants have up to 12 months from notice of the VRB decision to apply to the AAT. Nevertheless this method of estimation is the best available. During 2001-02, there were 1 106 AAT applications and the VRB finalised 3 952 applications by decisions made at hearings. This represents an estimated appeal rate of 28.0%. The estimated appeal rate for 2000-01 was 29.4%.

The Repatriation Commission lodged no appeals in relation to a VRB decision during 2001-02.

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

- 30% were withdrawn by the applicants; and
- 46% were conceded by the Repatriation Commission.

Of the remaining 24% that were finalised by decisions formally published with reasons:

- 108 (39.3%) involved an affirmation of the decision under review; and
- 167 (60.7%) led to the decision under review being varied or set aside.

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

Review of Dismissals

Applications can also be made to the AAT for review of decisions taken under the dismissal provisions of the *Veterans' Entitlements Act 1986*. Unlike the position with other appeals, the Principal Member of the VRB is a party to those proceedings.

During 2001-02, there were 7 new appeals relating to dismissal decisions lodged with the AAT. There were 7 dismissal cases finalised at the AAT:

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

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

APPENDIX 3

Other Forms of Administrative Review

Decisions and actions of the VRB may be the subject of complaints to the Ombudsman. In addition, access to documents held by the VRB may be sought under the *Freedom of Information Act 1982*.

Ombudsman

During 2001-02, the Ombudsman formally contacted the VRB in relation to one matter. This concerned a claim for payment under the Scheme for Compensation for Detriment caused by Defective Administration, which had been rejected by the Executive Officer of the VRB. The Ombudsman was satisfied that the Executive Officer's decision was appropriate.

Freedom of Information Act 1982

There were 2 requests to the VRB for access to documents under the *FOI Act* during the year. Full access was granted in one case and partial access was granted in the other case. An application was made to the Administrative Appeals Tribunal in respect of the latter case.

APPENDIX 4

Membership of the Veterans' Review Board – By Category

| | Commencement of Appointment | Expiration of Appointment |
|--|--------------------------------|------------------------------|
| PRINCIPAL MEMBER | | |
| Brigadier William Douglas Rolfe (Rtd) | 8 April 1997 | 7 April 2005 |
| PART-TIME SENIOR MEMBERS | | |
| Mr John Charles Cooke | 1 January 1990 | 30 September 2002 |
| Ms Julie Cowdroy | 1 January 1993* | 30 September 2002 |
| Ms Jennifer D'Arcy | 1 June 2001 | 30 September 2004 |
| Mr Robert Eadie | 1 October 1997 | 30 September 2002 |
| Ms Deirdre Ann FitzGerald | 1 January 1985* | 30 September 2002 |
| Hon John Ward Greenwood RFD QC | 1 January 1998 | 30 September 2002 |
| Ms Andrea Marilyn Hall-Brown | 1 October 1997* | 30 September 2002 |
| Ms Naida Isenberg | 30 July 1998 | 30 September 2002 |
| Mr Robert Graham Kenny | 21 April 1988* | 30 September 2004 |
| Mr William Bennett Lane | 29 May 1990* | 30 September 2004 |
| Mr Robert David Park | 1 January 1993* | 30 September 2004 |
| Ms Denyse Christina Phillips | 1 January 1993 | 30 September 2004 |
| Ms Julie Ann Shead | 1 October 1997 | 30 September 2004 |
| Commodore Alan Leslie Thompson AM (Rtd) | 1 January 1998 | 30 September 2002 |
| Ms Andrea Michelle Treble | 1 June 2001 | 30 September 2004 |
| Colonel Leslie James Young (Rtd) | 1 October 1997 | 30 September 2002 |

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

PART-TIME SERVICES MEMBERS

| | | |
|--|------------------|-------------------|
| Mr Francis Harding Benfield | 28 May 1999 | 30 September 2004 |
| Major General | | |
| Murray Phillip Blake AO MC (Rtd) | 28 May 1999 | 30 September 2004 |
| Lieutenant Colonel Francis Brown (Rtd) | 1 June 2001 | 30 September 2004 |
| Wing Commander | | |
| Stuart Alexander Bryce (Rtd) | 25 November 1991 | 30 September 2004 |
| Air Commodore | | |
| Frank Edward Burt OBE (Rtd) | 1 January 1998 | 30 September 2002 |
| Rear Admiral | | |
| Anthony Michael Carwardine AO (Rtd) | 1 January 1998 | 30 September 2002 |
| Lieutenant Colonel | | |
| Graeme Kingsley Chapman (Rtd) | 1 January 1995 | 30 September 2004 |
| Commodore | | |
| James Stewart Dickson AM MBE (Rtd) | 1 January 1998 | 30 September 2002 |
| Group Captain Collins Joseph Fagan (Rtd) | 1 January 1985 | 30 September 2004 |
| Captain Allan John Farquhar RAN (Rtd) | 1 June 2001 | 30 September 2004 |
| Brigadier | | |
| Patrick Thomas Francis Gowans (Rtd) | 1 January 1998 | 30 September 2002 |
| Group Captain | | |
| Jonathon Scott Hamwood AM (Rtd) | 1 January 1998 | 30 September 2002 |
| Lieutenant Colonel Geoffrey Hourn (Rtd) | 1 January 1998 | 30 September 2002 |
| Brigadier Laurence John Lewis (Rtd) | 1 January 1998 | 30 September 2002 |
| Major Gregory Mawkes (Rtd) | 1 January 1993 | 30 September 2004 |
| Colonel Robin Terence Regan CSC (Rtd) | 28 May 1999 | 30 September 2004 |
| Squadron Leader Charles White (Rtd) | 1 January 1995 | 30 September 2004 |

PART-TIME MEMBERS

| | | |
|-----------------------------------|----------------|-------------------|
| Ms Zita Rose Antonios | 1 June 2001 | 30 September 2004 |
| Dr David Caryl Blaikie | 1 October 1997 | 30 September 2002 |
| Mr Peter John Cappe | 28 May 1999 | 30 September 2002 |
| Dr Marella Louise Denovan | 1 June 2001 | 30 September 2004 |
| Ms Jackie Miriana Fristacky | 1 October 1997 | 30 September 2004 |
| Ms Janet Ann Hartmann | 1 June 2001 | 30 September 2004 |
| Ms Hilary Lorraine Kramer | 30 July 1998 | 30 September 2002 |
| Ms Kerrie Ellen Laurence | 1 June 2001 | 30 September 2004 |
| Mr Hugh Duncan Logue | 30 July 1998 | 30 September 2002 |
| Ms Morag Angus McColm | 1 January 1998 | 30 September 2002 |
| Mr Dennis Isaac Meadows | 1 October 1997 | 30 September 2004 |
| Ms Mina France Podbereski | 30 July 1998 | 30 September 2002 |
| Dr Derek Alan Purcell | 1 January 1998 | 30 September 2002 |
| Mr Gavin William Robins | 1 June 2001 | 30 September 2004 |
| Ms Kathleen Adair Sanders | 1 October 1997 | 30 September 2002 |
| Colonel Anthony James Wales (Rtd) | 1 October 1997 | 30 September 2002 |
| Mr Charles Jeremy Ward | 30 July 1998 | 30 September 2002 |

APPENDIX 5

Membership of the Veterans' Review Board – By State

AUSTRALIAN CAPITAL TERRITORY

Principal Member

Brigadier William Douglas Rolfe (Rtd)

Part-Time Services Member

Rear Admiral Anthony Michael Carwardine AO (Rtd)

NEW SOUTH WALES

Part-Time Senior Members

Mr John Charles Cooke

Ms Jennifer D'Arcy

Ms Naida Isenberg

Ms Julie Ann Shead

Colonel Leslie James Young (Rtd)

Part-Time Services Members

Lieutenant Colonel Francis Brown (Rtd)

Air Commodore Frank Edward Burt OBE (Rtd)

Brigadier Patrick Thomas Francis Gowans (Rtd)

Squadron Leader Charles White (Rtd)

Part-Time Members

Ms Zita Rose Antonios

Mr Peter John Cappe

Ms Janet Ann Hartmann

Ms Hilary Lorraine Kramer

Mr Kerrie Ellen Laurence

Ms Mina France Podbereski

VICTORIA

Part-Time Senior Members

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

Part-Time Services Members

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

Part-Time Members

Ms Jackie Miriana Fristacky
Mr Dennis Isaac Meadows
Mr Gavin William Robins
Ms Kathleen Adair Sanders

QUEENSLAND

Part-Time Senior Members

Ms Julie Cowdroy
Hon John Ward Greenwood RFD QC
Ms Andrea Marilyn Hall-Brown
Mr Robert Graham Kenny
Mr William Bennett Lane

Part-Time Services Members

Mr Francis Harding Benfield
Major General Murray Phillip Blake AO MC (Rtd)
Captain Allan John Farquhar RAN (Rtd)
Group Captain Jonathon Scott Hamwood AM (Rtd)

Part-Time Members

Dr Marella Louise Denovan
Mr Hugh Duncan Logue
Ms Morag Angus McColm
Mr Charles Jeremy Ward

SOUTH AUSTRALIA

Part-Time Senior Member

Mr Robert David Park

Part-Time Services Members

Brigadier Laurence John Lewis (Rtd)

Part-Time Members

Dr David Caryl Blaikie

Colonel Anthony James Wales (Rtd)

WESTERN AUSTRALIA

Part-Time Senior Members

Ms Denyse Christina Phillips

Part-Time Services Members

Lieutenant Colonel Geoffrey Hourn (Rtd)

Major Gregory Mawkes (Rtd)

Part-Time Member

Dr Derek Alan Purcell

TASMANIA

Part-Time Services Member

Wing Commander Stuart Alexander Bryce (Rtd)

APPENDIX 6

FOI Statement

Section 8 of the *Freedom of Information Act 1982* requires the VRB to include within its Annual Report certain information relating to its organisation and function, powers, document holdings and procedures for access thereto, and any arrangements which may exist for persons outside the Commonwealth to participate in policy making or administration of the VRB.

Details of the organisation of the VRB are set out in the body of this Report – see under Outcome 4 and Appendices 4 and 5.

Details of the function of the VRB are set out under Objectives, Function and Powers.

The following provides the additional details required by section 8.

Powers of the VRB

The powers of the VRB are set out in the *Veterans' Entitlements Act 1986*. In conducting a review of a decision, the VRB may, by section 139(3) of the *Veterans' Entitlements Act 1986*, exercise all the powers and discretions of the primary decision-maker to grant or assess pension or allowance. For the purpose of the conduct of a review, the VRB also has the following specific powers conferred on it by the *Veterans' Entitlements Act 1986*:

- subsection 139(3) – the VRB may affirm, vary or set aside a decision reviewed by it and, where it sets aside the decision under review, may substitute its own decision;
- subsection 139(4) – if the VRB sets aside a decision and substitutes its own decision, it can assess the rate at which pension is to be paid or remit the matter to the Repatriation Commission;
- subsection 140A(1) – the VRB may give directions to a Registrar or Deputy Registrar to alter the text of a decision or statement of reasons if it is satisfied that there has been an obvious error in the text;
- subsection 140A(4) – the Principal Member or a presiding member may exercise the powers of the VRB in subsection 140A(1);

- subsection 142(2) – the Principal Member may give directions for the purpose of increasing the efficiency of the operations of the VRB and as to the arrangement of its business;
- sections 143 & 144 – the Principal Member may give directions in writing as to the members who are to constitute the VRB for the purposes of reviews to be conducted by it;
- subsection 148(3) – the Principal Member may defer the hearing of a review until the parties advise that they are ready to proceed;
- subsection 148(4) – where a party fails to advise, within the time specified in the notice served on the party, whether they wish to appear at the hearing of a review, the VRB may determine the application in the absence of that party;
- subsection 148(5) – the Principal Member may give general directions as to the procedure of the VRB with respect to reviews, including reviews the hearings of which have not been commenced;
- subsection 148(6) – the presiding member may give directions as to the procedure of the VRB with respect to a particular review, whether or not the hearing of that review has commenced;
- subsection 148(6A) – the Principal Member may request the Secretary of the Department of Veterans' Affairs to provide additional evidence in relation to a review;
- subsection 150(2) – the presiding member may give directions as to the persons who may be present at any hearing of a review;
- subsection 150(3) – the presiding member may permit a hearing, or part of a hearing, of a review to take place in public;
- subsection 151(1) – the VRB may take evidence on oath or affirmation and may adjourn the hearing of a review from time to time;
- subsection 151(2) – the presiding member may summon a person to appear at the hearing of a review, to give evidence or produce documents, and to take an oath or make an affirmation;
- subsection 151(5) – the VRB may take evidence by a person authorised by the presiding member, and may do so within or outside Australia;
- section 152 – the VRB may request the Secretary of the Department of Veterans' Affairs to provide it with additional evidence that the VRB thinks necessary for the conduct of a review;
- section 153 – the VRB may make additional evidence in its possession available to the parties to the hearing of a review;

- subsection 155(1) – the VRB may consent to the withdrawal of an application the hearing of which has commenced but has not been completed;
- subsection 155AA(5) – the Principal Member must dismiss an application if a written statement has not been provided within 28 days;
- subsection 155AA(7) – the Principal Member must dismiss an application if he considers that no reasonable explanation has been provided;
- subsection 155AB(5) – the Principal Member must dismiss an application if a written statement has not been provided within 28 days;
- subsection 155AB(7) – the Principal Member must dismiss an application if he considers that no reasonable explanation has been provided;
- subsection 157 – the VRB may set the date from which its decision is to operate;
- subsection 165(2) – if the Principal Member becomes aware that a member has a pecuniary or other interest in relation to a particular review, the Principal Member can direct that the member not take part in the review or disclose the interest of the member to both parties; and
- subsection 171(3) – the VRB may order that the Commonwealth shall pay the fees and allowances of a witness summoned to appear at a hearing before the VRB.

Arrangements for Outside Participation

The only statutory arrangement for external participation exists in the right of organisations representing ex-servicemen and women throughout Australia to submit, when requested to do so by the Minister, lists of names of candidates they recommend be considered for appointment as Services Members. Once appointed, members so selected have the same obligations and take the same oath or affirmation of office as other members.

The Principal Member seeks, through meetings and correspondence, the views of the Department of Veterans' Affairs, the Repatriation Commission, and ex-service and related organisations on administrative matters of concern to the VRB.

Categories of Documents

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

The following are the categories of documents maintained by the VRB in its Principal Registry and in Registries in each State:

Operations Manual

This is issued by the Principal Member and includes directions and guidelines from the Principal Member for members and staff concerning the processing of applications to the VRB. The Manual is supplemented from time to time by memoranda issued by the Principal Member or senior staff of the VRB.

Members' Manual

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

vrbsAM User Manual

This is issued by the VRB's National Training Officer and concerns the procedures for the use and operation of vrbSAM the computerised System for Application Management used by VRB staff to track and manage applications for review.

Files

Individual VRB files are held for each application for review by the VRB. Policy and operational files are held for various areas of the VRB's administration and include files on staffing, procedures, accommodation and furniture, stores, publications, meetings, etc.

Discussion Papers and Legal and Information Bulletins

These are prepared by the Executive Officer and the Director (Legal and Information Services) to inform and to promote discussion among members and staff concerning topical legal and operational issues.

Facilities for FOI Access and Initial Contact Points

Requests under the *Freedom of Information Act 1982* for access to or copies of documents held by the VRB may be made to the Executive Officer or a Registrar of the VRB. General information about freedom of information matters and facilities for physical access are available at any VRB Registry.

Registry addresses and the names of those who can assist with enquiries or requests for information, including the name of the information officer, are listed in Appendix 10 to this Report.

APPENDIX 7

Commonwealth Disability Strategy

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

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

Our commitment to people with a disability

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

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

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

Performance measure

Evidence of quality improvement and assurance systems in operation

Current level of performance

The VRB liaises with veterans' representatives in relation to access issues. We are able to provide hearings for all applicants. The VRB endeavours to provide a better service by reviewing complaints as they arise to identify priority areas for improvement in meeting the needs of the veteran community. In 2001-02 the VRB provided video hearings, which give easier access for disabled remote locality veterans.

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

Performance measure

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

Current level of performance

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

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

Performance measure

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

Current level of performance

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

APPENDIX 8

Service Charter

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

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

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

ABOUT THE VRB

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

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

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

OUR COMMITMENTS

The VRB will:

1. Treat you with courtesy and respect

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

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

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

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

2. Provide equitable access

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

Wheelchair access is available to all our offices.

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

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

3. Provide appropriate explanatory material

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

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

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

4. Give you an opportunity to be heard

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

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

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

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

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

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

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

5. Provide confidentiality, where appropriate

VRB hearings are held in private.

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

6. Allow representation

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

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

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

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

7. Provide reasons for our decision

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

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

8. Listen to any comments or complaints

We welcome your comments or suggestions about our operations.

We will respond quickly to complaints.

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

9. Cooperation and Independence

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

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

YOUR RESPONSIBILITIES

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

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

APPENDIX 9

Business Plan

ROLE

The Veterans' Review Board (VRB) is an independent statutory tribunal established under the *Veterans' Entitlements Act 1986* to provide merits review of decisions made by delegates of the Repatriation Commission on matters such as:

- claims for the acceptance of injury or disease as war/defence-caused;
- claims for war widows'/widowers'/orphans' pensions;
- assessment of the rate of pension; and
- claims for the grant or assessment of attendant allowance.

FUNCTION

On application for review the VRB is to:

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

METHOD OF OPERATION

The VRB

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

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

AIM

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

VALUES

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

OUTCOMES SOUGHT

Outcome 1 – Finalise high numbers of applications for review

Achieved by:

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

Performance assessed by:

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

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

Achieved by:

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

Performance assessed by:

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

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

Achieved by:

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

Performance assessed by:

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

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

Achieved by:

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

Performance assessed by:

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

Outcome 5 – Accessible and responsive to the veteran community stakeholders.

Achieved by:

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

Performance assessed by:

- general level of satisfaction among veteran community stakeholders.

STRATEGIES

Strategy 1 – Management

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

Priorities 2001-02

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

Strategy 2 – Utilise Information Technology

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

Priorities 2001-02

- Implement enhancements of system for application management (vrbSAM).
- Evaluate vrbSAM.
- Assess capacity to effectively employ video hearings.
- Evaluate adequacy of VRB Intranet site.
- Develop VRB Internet site.

Strategy 3 – Continuous Training

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

Priorities 2001-02

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

Strategy 4 – Communication

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

Priorities 2001-02

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

APPENDIX 10

VRB Addresses

The Principal Member is responsible for the VRB's operations. The Registrar in each State is responsible to the Executive Officer for arranging the VRB's day to day business. Registry addresses and the names of those who can assist with enquiries or requests for information are:

Principal Registry

10th Floor
13 Keltie Street
Woden ACT 2606

Executive Officer
Bruce Topperwien

Director (Corporate Services)
Narelle Peck

Director (Legal and Information Services)
Robert Kennedy

National Training Officer
Ian Hunt

Research & Administrative Officer
Nicky Langhorne

Information Officer
Narelle Peck

Phone: (02) 6285 1911 Fax: (02) 6289 4848

Information about the VRB is available on the Internet.

The VRB Internet address is: < <http://www.vrb.gov.au> >

New South Wales Registry

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

Registrar
Peter Studman

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

Victorian Registry

12th Floor
300 La Trobe Street
Melbourne VIC 3000

Registrar
Ray Hoelzinger

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

Queensland Registry

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

Registrar
Joedy Bauer

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

South Australian Registry

7th Floor
44 Waymouth Street
Adelaide SA 5000

Registrar
David Smith

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

Western Australian Registry

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

Registrar
Robyn Davis

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

Tasmanian Registry

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

Registrar
Ian Hunt

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

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