ADMINISTRATIVE REVIEW COUNCIL

REPORT TO THE ATTORNEY-GENERAL

REVIEW OF PENSION DECISIONS UNDER REPATRIATION LEGISLATION

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ADMINISTRATIVE REVIEW COUNCIL

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16 September 1983

Dear Attorney-General,

I have pleasure in submitting to you herewith a report by the Administrative Review Council on Review of Pension Decisions under Repatriation Legislation.

Yours sincerely,

E. J. L Tucker
Chairman

Senator the Hon. G. J. Evans
Attorney-General
Parliament House
Canberra, A.C.T. 2600

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LIST OF RECOMMENDATIONS

RECOMMENDATION 1
Repatriation Boards should be abolished and the *Repatriation Act* 1920 should be amended to provide that all entitlement claims and assessment applications be determined in the first instance by delegates of the Repatriation Commission.

RECOMMENDATION 2
The *Repatriation Act* 1920 should be amended to provide that:

(a) where a delegate of the Repatriation Commission has made a determination concerning a claim for a repatriation pension or an application for assessment of such a pension, the claimant or applicant has a right of appeal to the Veterans' Appeals Board (referred to in recommendation 8 below); and

(b) (i) where an entitlement claim is wholly rejected; or
(ii) where no increase is made to the rate of an existing pension on an application for assessment,

the claim or application shall be referred forthwith to the Veterans' Appeals Board and notice shall be given to the claimant or applicant accordingly.

Within 3 months of being notified that a claim or application has been referred to the Board, a claimant or applicant should advise the Board of his desire that the appeal should proceed. If no such advice is received by the Board within the 3 month period, it may in its discretion dismiss the claim or application. Where a claim or application is dismissed, the claimant or applicant should be able to initiate a fresh appeal on showing good cause.

RECOMMENDATION 3
Section 24AB of the *Repatriation Act* 1920 should be amended to provide that a copy of the report compiled by the Secretary of the Department pursuant to that section should be given to a claimant or applicant within 6 weeks of an appeal being lodged with or referred to the Veterans' Appeals Board. The claimant or applicant should be allowed 28 days or such further time as he requests in which to add to or comment upon the material in the report. In the event that the Department does not forward a copy of the report within 6 weeks or the claimant or applicant is allowed further time for comment, the 3 month time limit referred to in Recommendation 2 should be automatically extended by a period equivalent to that of the delay or extension of time.

RECOMMENDATION 4
A delegate of the Commission should be empowered to seek further material from the claimant or applicant and/or the Department where it appears to him that the evidence before him may not be the whole of the available evidence relevant to the claim or application to be decided.

RECOMMENDATION 5
The *Repatriation Act* 1920 should be amended to authorise the holding of an informal interview between a delegate of the Commission and a claimant or applicant where the claimant or applicant so requests or where the officer so requests and the claimant or applicant is willing to participate.

RECOMMENDATION 6
The *Repatriation Act* 1920 should require a delegate of the Commission to provide a claimant or applicant with a written statement of the reasons for a primary decision and the terms of that decision.

RECOMMENDATION 7
The *Repatriation Act* 1920 should be amended to provide claimants and applicants for Service Pensions with the same appeal rights as are available to claimants and applicants for other repatriation pensions.

RECOMMENDATION 8
A Veterans' Appeals Board should be established under the *Repatriation Act* 1920 as an intermediate review tribunal hearing appeals on the merits from primary decisions made by delegates of the Commission relating to claims and applications for repatriation pensions.

RECOMMENDATION 9
Existing provisions of the *Repatriation Act* 1920 concerning such matters as the composition and constitution of the Repatriation Review Tribunal, places of sitting, the appointment and qualifications of its members (including Services' Members) and their terms of appointment, should generally be used as models for the Veterans' Appeals Board.

RECOMMENDATION 10
Legislation should provide for the Veterans' Appeals Board to conduct oral hearings, summon witnesses, take evidence on oath, and require the production of documents. The Board should be required to provide a claimant with a hearing if the claimant so requests, and to offer the opportunity of a hearing before reaching a decision which is in any respect adverse to the claimant. Proceedings should be conducted with as little formality and technicality, and with as much expedition, as the requirements of all relevant enactments and a proper consideration of the matters before the Board permits.

RECOMMENDATION 11
The *Repatriation Act* 1920 should require the Veterans' Appeals Board to give its decisions in writing and to state the reasons for its decisions, including findings of fact. The Act should provide that reasons may be stated orally but the Board should be obliged, if requested by one of the parties, to give its reasons in writing within 28 days of such a request being made.

RECOMMENDATION 12
For the purposes of the Veterans' Appeals Board's jurisdiction, no restrictions should be placed on the claimant's or applicant's freedom to be represented, if he wishes, by a person of his own choice.

RECOMMENDATION 13
The *Repatriation Act* 1920 should be amended to empower the Repatriation Commission to reverse a primary decision of its delegate in relation to a claim or application for a Service Pension. The Veterans' Appeals Board should have jurisdiction to review the exercise of the Commission's power which produces a decision which is adverse to the claimant or applicant.

RECOMMENDATION 14
Section 28 and Division 4 of Part IIIA of the *Repatriation Act* 1920 should be repealed.

RECOMMENDATION 15
An appeal from a decision of the Veterans' Appeals Board should be initiated either by the applicant or claimant or, where the decision of the Board is contrary in any particular to the original primary decision, by the Commission, and the *Repatriation Act* 1920 should provide accordingly.

RECOMMENDATION 16
The *Repatriation Act* 1920 should be amended to provide that the jurisdiction presently exercised by the Repatriation Review Tribunal under Division 3 of Part IIIA of the Repatriation Act should be abolished and jurisdiction to review decisions of the Veterans' Appeals Board should be conferred on the Administrative Appeals Tribunal. Since the Repatriation Review Tribunal's jurisdiction would cease to exist, Parts IIIA and IIIC of the Repatriation Act should be repealed and the Repatriation Review Tribunal abolished.

RECOMMENDATION 17
Part IIIB of the *Repatriation Act* 1920 should be repealed.

RECOMMENDATION 18
The legislation conferring jurisdiction on the Administrative Appeals Tribunal should provide that, for the purposes of review of repatriation decisions, the Tribunal should be constituted by or include at least one member who is an ex-serviceman.

RECOMMENDATION 19
The legislation conferring jurisdiction on the Administrative Appeals Tribunal should provide that an application may be made for review only after the primary decision has been reviewed by the Veterans' Appeals Board which has either affirmed or varied that decision. The legislation should also provide that the Administrative Appeals Tribunal shall review the original decision, as affirmed or varied by the Veterans' Appeals Board. Where the claimant or applicant appeals, the respondent should be the Repatriation Commission. Where the Commission appeals, the respondent should be the claimant or applicant.

RECOMMENDATION 20
For the purposes of the Administrative Appeals Tribunal's repatriation jurisdiction, no restrictions should be placed on the parties' freedom to be represented, if they wish, by persons of their own choice.

RECOMMENDATION 21
For the purposes of the Administrative Appeals Tribunal's repatriation jurisdiction, provision should be made for payment of expenses and allowances to applicants in respect of attendance at Tribunal hearings. Section 107VZX of the *Repatriation Act* 1920 could be used as a model for such a provision.

INTRODUCTION

1. The *Repatriation Act* 1920 was first considered by the Council in 1978 when the Attorney-General advised it of the Government's decision to establish the Repatriation Review Tribunal (RRT). The Council at that time was invited to comment on a proposed scheme whereby matters coming before that Tribunal could be referred to the Administrative Appeals Tribunal (AAT). The recommendations of the Council on this question were communicated to the Attorney-General in February 1979 and are set forth in the Council's Third Annual Report at paras 55-63 (1979). A summary of these recommendations is attached as Appendix 1 to this Report.

2. It was resolved by the Council that the means of review as established should be kept under consideration and re-examined at the end of a 2 year period. Accordingly, at its meeting in July 1981, the Council resolved that a project should be commenced in relation to review of repatriation decisions. In determining the ambit of this project, the Council was mindful of two important factors. First, the wide range of repatriation benefits and services available to men and women who served in the Australian Forces; and, second, the number and complexity of the Acts dealing with repatriation.

Repatriation Benefits and Services

3. Repatriation benefits and services include a variety of pensions, payment of the cost of medical treatment, the advance of loans or other financial assistance, and an array of allowances covering such matters as funeral expenses, loss of earnings, temporary incapacity, recreational transport, employment, clothing, attendants, and education. Both the availability and extent of rights of review of decisions relating to repatriation benefits and services vary widely. Some decisions are entirely unreviewable, while others are subject to a number of review processes. Considerations of practicability led the Council to conclude that the ambit of its project should be restricted to an examination of decisions made under repatriation legislation which are currently subject to review by the RRT and it was decided to postpone consideration of other decisions taken under repatriation legislation which are not presently reviewable by the RRT. Accordingly, this Report concentrates on decisions relating to issues of entitlement to, and assessment of, repatriation pensions such as Disability, Dependants' and Service Pensions, which are reviewable to some extent by the RRT.

4. It was recognised that a proper consideration of means of review of pension decisions under repatriation legislation would require that some attention be given to primary decision making. Thus, to the extent necessary to deal adequately with matters affecting review processes, the Report examines and makes certain recommendations concerning primary decision making in the context of processing pension claims and applications.

Repatriation Legislation

5. The ambit of this project was also determined by the variety of repatriation legislation. Repatriation pensions are provided under a number of Acts: the *Repatriation Act* 1920, the *Repatriation (Far East Strategic Reserve) Act* 1956; the *Interim Forces Benefits Act* 1947, the *Repatriation (Special Overseas Service) Act* 1962; the *Papua New Guinea (Members of the Forces Benefits) Act* 1957 and the *Repatriation (Tomes Strait Islanders) Act* 1972. Those pensions are available in relation to service in the 1914-18 War, the 1939-45 War, the Korea-Malaya Operations, the Far East Strategic Reserve, the Defence Force on or after 7 December 1972, peacekeeping forces, Interim Forces, and special service in special areas overseas. Separate

provision is made under the *Seamen's War Pensions and Allowances Act* 1940 for veterans of the Merchant Marine who served during the 1939-45 War.

6. This Report concentrates on the *Repatriation Act* 1920. This Act not only gives rise to most claims for repatriation pensions, but it has also been used generally as a model for subsequent repatriation legislation. The recommendations made in this Report are intended to apply to all repatriation legislation where relevant. The Council has noted, however, that significant departures from the pattern of the *Repatriation Act* 1920 occur in both the *Seamen's War Pensions and Allowances Act* 1940 and the *Papua New Guinea (Members of the Forces Benefits) Act* 1957. Claims for pensions under the *Seamen's War Pensions and Allowances Act* 1940 are determined not by a Repatriation Board but by a Seamen's Pensions and Allowances Committee which has been established under the Act as the primary decision maker. The explanation for this particular arrangement appears to be largely historical, in as much as the legislation was sponsored not by the department responsible for veterans' affairs, but by the Department of Commerce. Decisions of the Pensions Committee are reviewable by the Repatriation Commission and then by the, RRT.

7. The structure of the *Papua New Guinea (Members of the Forces Benefits) Act* 1956 is also significantly different from that of the *Repatriation Act* 1920. This Act makes special provision for the granting of pensions and other benefits to certain indigenous inhabitants of Papua New Guinea who served in the Defence Forces, the Royal Papuan Constabulary and the New Guinea Police Force during the War and their dependants. The Act is administered by the Repatriation Commission which processes and determines claims for pensions or benefits. It is notable that Repatriation Boards play no role in decision making under the Act and there is no provision for review of the Commission's decisions by the RRT.

8. The apparent anomalies in these two Acts require detailed attention. Consideration needs to be given to the role of the Pensions Committee as the primary decision maker under the Seamen's War Pensions and Allowances Act, as well as to the absence of any means of external review on the merits of primary decisions taken by the Repatriation Commission under the; Papua New Guinea (Members of the Forces Benefits) Act. The Council considered dealing with these matters in this Report but ultimately decided against taking this course of action on the ground that the special problems they raised required separate detailed examination. However, the recommendations made in this Report regarding means of review are intended to apply to the existing system of review of decisions taken by the Seamen's Pensions and Allowances Committee since that system adopts the pattern of the Repatriation Act and does not present any anomalies.

9. In the course of preparing this Report, members of the committee appointed to oversee the project and the Council's then Director of Research attended hearings conducted by the RRT and held meetings with the President of that Tribunal, Mr F.J. Mahony, CB, OBE, and other Tribunal members. Discussions were also held with the Chairman of the Repatriation Commission and Secretary of the Department of Veterans' Affairs (Mr D. Volker), the Deputy (Chairman of the Commission (Mr R.G. Kelly, AM), and senior officers of the Department. Additional people consulted included delegates of the Commission, members of Repatriation Boards, advocates who appear before the RRT, and officers of such veterans' organisations as the Returned Services' League of Australia and Legacy. In an attempt to obtain the views of as many such organisations as possible, and of interested persons, a Discussion Paper was circulated to those persons listed in Appendix 2 of this Report. Persons who made submissions to the Council are also listed in Appendix 2.

Format of Report

10. This Report is divided into the following three parts:

Part 1: The Existing System

Part 2: Deficiencies in the Existing System: The Need for Reform

Part 3: The Proposed System

PART 1: THE EXISTING SYSTEM

11. It is proposed in this Part to describe the various pensions available under repatriation legislation, the existing arrangements for determining applications for those pensions, and the means by which such determinations may be reviewed. Certain features of the repatriation system should, however, be emphasised at the outset. They include:

- the large amount of expenditure involved and the financial importance of repatriation pensions to veterans and their dependants;
- the large number of decisions which are taken annually;
- the onus of proof which is particularly favourable to claimants; and
- the variety of means whereby an adverse decision may be reviewed or reconsidered.

Pensions and Services

12. It has been emphasised above that veterans and their families are entitled to receive an extensive range of pensions, benefits, services and allowances under repatriation legislation. Some indication of the value of the benefits and services being distributed can be gauged from the following table of expenditure for the financial years 1980-82.

Table 1 - Statement of Expenditure 1980-82

	1980-81 $	*1981-82* $
Pensions and allowances	1 182 796 205	1 318 212 056
Other benefits	10 384 520	11 659 360
Medical treatment	357 219 074	426 359 523

Source: Repatriation Commission's Annual Report, 1981-82, p. 41.

13. In terms of both the numbers of recipients and overall expenditure, Disability and Service Pensions are the most important forms of repatriation benefit. In 1981-82, Disability Pensions were received by more than 400 000 persons, involving an expenditure of more than $500 000 000. In the same year, almost 300 000 persons received Service Pensions at a total cost of more than $800 000 000.

14. There are several categories of repatriation pensions provided for in the *Repatriation Act* 1920, comprising Disability Pensions, Dependants' Pensions, pensions payable in respect of the death of a veteran, and Service Pensions. Entitlement to receive a pension is governed by the Act and the rates vary according to the Schedules of the Act. The criteria relating to eligibility and assessment of repatriation pensions are technical and complex and can give rise to difficult questions of fact and law. A brief description of those criteria will provide some indication of the potentially difficult issues that might arise in a claim. It will also serve to illustrate the value and importance of repatriation pensions to claimants.

DISABILITY AND DEPENDANTS' PENSIONS

15. Disability Pensions are payable for an incapacity or aggravation that has arisen out of, is attributable to, or results from an occurrence during war service (see, for example, *Repatriation Act* 1920, s.24). Such pensions are payable at varying rates depending on the degree of the veteran's incapacity. A veteran whose service-related disability does not prevent him from working receives a Disability Pension on a scale varying from 10% to 100% of the maximum General Rate which, from May 1983, was set at $119.00 per fortnight.

16. A Special Rate Pension is granted where a veteran is totally and permanently incapacitated because of service-related incapacity (i.e. is incapacitated for life to such an extent as to be precluded from earning other than a negligible percentage of a living wage). Veterans who have been blinded as a result of service are also entitled to receive a Special Rate Pension, the fortnightly value of which was $315.50 as from May 1983. An amount equivalent to the Special Rate Pension is also payable to certain double amputees as well as to veterans who are temporarily totally incapacitated by service-related incapacity and whose degree of incapacity prevents them from earning more than a negligible percentage of a living wage.

17. Disability Pensions are payable at an Intermediate Rate to a veteran who, because of the severity of his service-related incapacity, can work only part time or intermittently and, in consequence, is unable to earn a living wage. The Intermediate Rate was set at $217.30 per fortnight from May 1983.

18. Wives and certain children of veterans receiving Disability Pensions are entitled to receive pensions at rates ranging from 10% to 100% of the maximum General Rate for wives and children ($8.10 and $2.75 per fortnight respectively as from May 1983), depending upon the veteran's assessed degree of incapacity. The wife and children of an Intermediate Rate or Special Rate pensioner receive the respective maximum General Rate for dependants.

PENSIONS PAYABLE IN RESPECT OF A VETERAN'S DEATH

19. A pension is payable to the widow and certain children of a veteran:

- whose death has been accepted as service related; or
- who died from causes not service related but who was receiving at the time of his death or is subsequently adjudged to have been entitled to receive, a pension at the Special Rate.

20. The value of the pension payable to widows and children was, from May 1983, $164.70 and $33.20 per fortnight respectively. A widow may also receive a domestic allowance ($24.00 fortnightly as from May 1983) in respect of the death of her husband depending upon a number of factors including her age and those of her children, and her employability.

SERVICE PENSIONS

21. Service Pensions are broadly the equivalent of age and invalid pensions administered by the Department of Social Security. They are paid to certain classes of veterans and are subject to an income test except where the pensioner is a blinded veteran.

22. The grant of Service Pensions is regulated by sections 84 and 85 of the Repatriation Act. Section 84 provides that the Repatriation Commission or a Repatriation Board may grant a Service Pension to a member of the Forces who:

- in the case of a man, has served in a theatre of war and has reached the age of 60 years;
- in the case of a woman, has served in a theatre of war or served abroad or embarked for service abroad and has reached the age of 55 years.

The rate of the pension depends on an income test and is not to exceed the maximum rate of an age pension which the veteran is entitled to receive under the *Social Security Act* 1947. The rate of payment is also determined by the veteran's marital status and the number of children dependent upon him. The Government has announced its intention of introducing an assets test in determining eligibility to receive a Service Pension.

23. Unlike section 84, section 85 pensions are not restricted to veterans of a certain age and are only payable in respect of veterans who are permanently unemployable. Pensions in this category are payable to veterans themselves and their wives.

24. The maximum rates of Service Pensions are tied to the value of specified pensions under the *Social Security Act* 1947 and the maximum fortnightly rates as from May 1983 are $164.57 for a single veteran, while a married veteran and his wife are both entitled to receive up to $137.30 fortnightly. These rates are higher if the veteran has dependent children. It should be noted that from 1973 a person who is receiving an age or invalid pension from the Department of Social Security may not simultaneously receive a Service Pension but can transfer from one to the other if he is eligible.

25. Service Pensions were made available to Allied veterans from 7 February 1980 on a similar basis to that applying to British Commonwealth veterans. An Allied veteran is now eligible for the Service Pension if he or she:

- was a member of the Force of an Allied country (other than an irregular Force);
- at no time served in an enemy Force;
- served in a theatre of war;
- satisfies an income test;
- has either attained the age of 60 years (55 years for female veterans) or is permanently unemployable;
- has resided in Australia for at least 10 years.

The Means of Primary Decision Making and Review

26. The Council has noted that there is no single means of primary decision making in relation to claims for repatriation pensions. Different procedures apply depending on whether a claim is made for a Service Pension as opposed to other types of pension. In the case of a claim for a Disability Pension, for example, upon receipt of a claim the Department of Veterans' Affairs normally arranges for a medical examination of the veteran and his claim is investigated in the light of all available medical evidence and his service records. The claim is not, however, determined by the Department but is submitted to a Repatriation Board for determination. If the Board determines that there is a pensionable degree of incapacity, a pension is paid to the veteran and his eligible dependants according to the assessed degree of incapacity.

27. A claim for a Service Pension is received and also investigated by the Department of Veterans' Affairs. Where a claim is based on a veteran attaining a particular age (s.84), it is usually determined by a delegate of the Commission. A claim for a Service Pension based on a veteran's permanent unemployability (s.85) is determined either by a Commission delegate or a Repatriation Board. If a claimant is eligible to receive a Service Pension, the rate of payment is determined according to such factors as income, age, marital status and the number of dependants.

28. There is an array of means by which repatriation pension decisions may be reviewed or reconsidered. Again, however, a distinction has to be drawn between Service Pensions and other types of pensions. A claimant for a Service Pension who is dissatisfied with a determination only has a right of appeal to the RRT on whether the claimant is permanently unemployable. The RRT does not have jurisdiction to review other aspects of a claimant's eligibility to receive a Service Pension, nor does it have jurisdiction to review the rate of payment determined by a delegate or a Board.

29. In contrast, decisions relating to claims for disability and other pensions are subject to more extensive means of review. For example, if a veteran is not satisfied with a determination of a Repatriation Board in relation to a Disability Pension, he may:

(a) in the case of an entitlement issue, appeal to the Repatriation Commission and, if the appeal is unsuccessful, apply to the RRT for review of the Commission's decision; or

(b) in the case of a dispute concerning the assessment of an incapacity, apply to the RRT for a review of the decision of either the Board or the Commission on this issue.

30. The RRT is not the final means of reviewing repatriation pension decisions. The President of the RRT may refer decisions of the Commission which involve an important principle of general application to the AAT. In addition, it is possible to appeal on a question of law from a decision of either the RRT or the AAT to the Federal Court of Australia and ultimately, with special leave, to the High Court of Australia (see *Federal Court of Australia Act* 1976, s.33). Both the Federal Court and the High Court may also review the lawfulness of repatriation decisions in the exercise of judicial review powers. Repatriation decisions are also reviewable by the Ombudsman who may investigate complaints of defective administrative action in accordance with the provisions of the *Ombudsman Act* 1976.

31. The various means of primary decision making and review are now described in more detail.

Repatriation Boards

32. As already noted, apart from some claims for Service Pensions, all claims for repatriation pensions are determined by Repatriation Boards.

ESTABLISHMENT AND COMPOSITION

33. Repatriation Boards are established under section 14 of the *Repatriation Act* 1920. Section 14(2) provides that each Board consists of a Chairman, a Services' Member, and a third member. Services' Members are selected exclusively from lists of names submitted to the Commission by organisations representing returned servicemen throughout Australia. All members are appointed by the Governor-General on the basis of advice obtained from the Repatriation Commission and members may be appointed for terms of up to three years. Section 14(6) of the Act provides that members are eligible for reappointment, but the practice has developed whereby Services' Members are not reappointed unless their names appear on a list submitted by ex-service organisations (see *Independent Enquiry into the Repatriation System* at para. 8.12 (Toose Report)).

34. The Chairman of a Board is normally the equivalent of a Clerk Class 10 in the Australian Public Service. The other two members are normally the equivalent of Clerks Class 9, one of them usually being drawn from the Department of Veterans' Affairs. Members of Boards at present seldom return to the Department upon the expiry of their appointments to a Board. Salaries received by Board members are fixed by the Remuneration Tribunal.

35. At present there are 15 Repatriation Boards throughout Australia. There are 7 Boards in Sydney; 3 in Melbourne; and 1 in Canberra and each of the other State capitals.

FUNCTIONS

36. The basic duties of a Board are described in detail in section 27 and cover the whole ambit of primary decision making, including the tasks of determining whether a veteran's

death or incapacity was service related, the nature and extent of any incapacity, the extent of any dependency on the veteran, whether a payment should be suspended or terminated, and assessing the rates of pensions.

37. The Boards are obliged under section 15 to consult and co-operate with the Commission in the performance of their functions. The Commission is empowered to issue statements of principle and other material to the Boards to assist them in the performance of their functions. In addition, the Minister may give directions to a Board for various purposes. However, neither the Commission nor the Minister is authorised to interfere with a Board's consideration or determination of a particular claim or application.

PROCEDURES

Material before a Board.

38. Section 24AB provides that, having received a claim for a pension, the Secretary of the Department shall investigate the claim before submitting it to a Board or the Commission for consideration and determination. Section 24AB(3) states that a claim submitted to a Board or to the Commission is to be accompanied by any evidence which has been furnished by the claimant and all records and other documents under the control of the Department, including a report of the results of the Secretary's investigation of the claim.

39. Accordingly, when presented with an application for entitlement to a pension or for an increase in the assessment of the rate of a pension, a Repatriation Board normally has before it:

- a written summary of the case prepared by the Department, including the service records of the veteran held by the Department;
- a written statement by the claimant (in a few cases only);
- a Departmental medical opinion; and
- whenever required, a specialist medical report.

40. As part of a general study of modifying procedures with the aim of ensuring that all relevant evidence is presented to a Repatriation Board for consideration, the Department has been conducting a pilot study in South Australia. That study involves the implementation of a new form of section 24AB reporting by expanding the Secretary's report to include a compilation of the evidence relevant to a particular claim. The claimant is provided with a copy of the report before it is submitted to a Board. The claimant has 21 days to provide any evidence in a written statement after he has received a copy of the report. A detailed report is prepared and forwarded to the claimant only in cases where the evidence suggests that an unfavourable determination could result. In cases where there are favourable medical opinions much shorter reports are prepared. The pilot study is designed to elicit relevant evidence at an early stage and to give the applicant an opportunity of responding.

41. The results of the pilot study have already been seen by the Commission as favourable in producing:

- a reduction in appeal rates;
- the provision by claimants of additional evidence in response to an invitation sent out with a copy of the report.

A possible effect noted by the Commission was the greater time invested in the initial stages with a consequential backlog of cases. On the other hand, the submission of Adelaide Legacy made favourable reference to the shorter time taken to process cases nowadays as

partly resulting from section 24AB reporting procedures operating before determination in South Australia.

Hearings:

42. The Repatriation Boards are authorised by legislation to summon witnesses; to take evidence on oath; and to require the production of documents (s.26(1)). In hearing, considering, determining, or deciding a claim or application, a Board is not bound by legal forms or rules of evidence and is directed to act according to substantial justice and the merits and all the circumstances of the case (s.47(1)).

43. Despite these provisions, it is understood that the Repatriation Boards do not normally hear an applicant in person and normally determine a case on the basis of the written file. The reasons advanced by those Repatriation Board members who were consulted for not wishing to see the applicant in person are:

- the usual availability of detailed written information provided by the Department;
- the usual availability of detailed medical opinions; and
- the feeling of possible intimidation which some claimants might experience if they were required to appear before a Repatriation Board.

Repatriation Board members consulted did not favour the adoption of a general practice of receiving an applicant's evidence orally.

44. An applicant may be seen by a Repatriation Board personally where, for example, there is an apparent inconsistency between statements made by him. On at least one occasion a consent order has been obtained from the Federal Court of Australia requiring a Repatriation Board to hear an application within 14 days and to hear the applicant's solicitor (*Fulton v. Gray*, 25 May 1981).

45. Repatriation Boards are obliged to give written reasons for their decisions. This obligation was imposed in 1975 by Reg. 3 of Statutory Rule No. 93 and was reaffirmed in 1979 by an amendment to the *Repatriation Act* (s.47A(1)) which now provides that Boards:

> . . . shall cause to be prepared a written record of the decision containing a statement of the reasons for the decision, so far as the decision relates to the prescribed matter, including any findings of fact in relation to the prescribed matter.

ONUS AND STANDARD OF PROOF: SECTION 47

46. Section 47 refers to the onus of proof to be applied by the Repatriation Commission and the Repatriation Boards. It is provided in section 47(2) that:

> The Commission or a Board shall grant a claim or application, and the Commission shall allow an appeal, unless it is satisfied, beyond reasonable doubt, that there are insufficient grounds for granting the claim or application or allowing the appeal, as the case may be.

47. The effect of this provision is to impose an onus of proof on the Commission and the Boards which is particularly favourable to a claimant or applicant for a repatriation benefit; a claim or application should be granted unless the Commission or a Board is satisfied beyond reasonable doubt of the negative proposition that there are insufficient grounds for granting the claim or application.

WORKLOADS AND DELAYS

48. The Annual Report of the Repatriation Commission 1981-82 does not include separate statistics for entitlement claims received and determined by Repatriation Boards alone. That Report does, however, provide statistical information regarding the number of entitlement claims for repatriation pensions which were received and determined by both Repatriation Boards and the Repatriation Commission. Of particular significance is the fact that the Boards and the Commission finalised approximately 55% of the 25 000 entitlement claims requiring action during the year. Almost 10 000 claims were outstanding as of 30 June 1982. It is also notable that, of all the claims determined by the Boards and the Commission (excluding those withdrawn by the claimant), 56% were accepted in whole or in part and 44% were rejected. These figures do not discriminate between types of pension, but the Council was informed by the Commission that the success rate was higher in relation to Disability Pensions, where approximately 75% of all entitlement claims were either totally or partly allowed by Repatriation Boards. Detailed statistics in relation to all types of pension are shown in the following table.

Table 2 Entitlement Claims Received and Determined By Repatriation Boards and the Repatriation Commission 1981-82

Outstanding at 30.6.81	9 481*
Lodged during year	15 189
Total for action	24 670
Number determined	
accepted (a)	6 952
disallowed	6 650
Withdrawn	1 222
Outstanding at 30.6.82	9 846

(a) Total or partial acceptance
*Revised.

Source: Repatriation Commission's Annual Report, 1981-82, p.49.

49. Separate statistics are available to show the number of applications for increase in Disability Pensions which were received and determined by Repatriation Boards during 1981-82. The Boards finalised approximately 55% of the 14 000 applications requiring action during the year, and more than 5 000 cases were outstanding at the end of the year. As far as the success rate is concerned, an increase was granted in 68% of the applications for increase determined by the Boards (excluding applications withdrawn by applicants). Detailed statistics are set out in the following table.

Table 3 Applications for Increase in Disability Pensions Received and Determined by Repatriation Boards 1981-82

Outstanding at 30.6.81	4 099
Lodged during year	9 987
Total for action	14 086
Number determined	
accepted	5 307
disallowed	2 529
Withdrawn	603
Outstanding at 30.6.82	5 647

Source: Repatriation Commission's Annual Report, 1981-82, p.49.

50. Considerable delays are being experienced in the processing of entitlement and assessment claims submitted to Repatriation Boards. The Repatriation Commission's Annual Report for 1981-82 (p. 21) reveals that the median time taken from the date of lodgment of an entitlement claim to the date of advice of a decision of a Repatriation Board was 233 days during the 4 weeks ended 25 June 1982. The corresponding figure in relation to assessment claims was 230 days.

Repatriation Commission

ESTABLISHMENT AND COMPOSITION

51. The Repatriation Commission is established under section 7 of the Act and is charged with the general administration of the Act. Section 8 provides that the Commission shall consist of not less than three and not more than five members who are appointed by the Governor-General. Members of the Commission hold office for a term of 3 years and are eligible for reappointment (s.10). Unlike the position with Repatriation Boards and the Repatriation Review Tribunal, there is no statutory requirement that ex-service organisations' nominees be appointed to the Commission, but ex-service organisations are entitled to nominate persons for possible selection as Commissioners. The Governor-General has a discretion to appoint as a Commissioner a person from a list submitted by such organisations (s.8(2)). One of the Commissioners is appointed by the Governor-General to be the Chairman of the Commission (s.8(3)). The Secretary of the Department of Veterans' Affairs may be appointed as Chairman while retaining his office as Secretary (s.8A), and this is the present arrangement.

FUNCTIONS

52. In addition to the responsibility of administering the Act, the Commission also has other responsibilities entrusted to it, including:

- determining whether a veteran is eligible to receive a Service Pension under sections 84 or 85 of the Act, and determining the rate of payment of such a pension;
- hearing appeals from any assessment or determination of a Board under Part III (s.28);
- reviewing any assessment, decision or determination in relation to a pension, whenever it appears that sufficient reason exists for so doing (s.31);
- determining whether to cancel or vary the rate of a Service Pension (s.98);
- reviewing a decision before a review by the RRT because of a lapse of time since an earlier decision of the Commission was made or for any other special circumstance (s.107VL(1);
- reviewing a decision in the light of further evidence at the request of the RRT (s.107VL(2));
- reconsidering a claim in the light of further evidence after an adverse decision of the RRT on an application under section 107VC (s.107VM(1));
- determining whether the *de facto* wife or widow of a veteran was dependent upon him (s.42); and
- determining whether the incapacity or death of a World War II veteran is due to venereal disease contracted during service or is due to an accident or disease that would not have occurred or been contracted but for his being on war service (s.101).

The source of the distinction between 'reviewing' a decision, 'reconsidering' a decision, and hearing an 'appeal' from a decision is to be found in the *Repatriation Act* 1920. A review or a 'reconsideration' may be carried out at the instance of the Commission, whereas 'an appeal' is brought at the instance of a dissatisfied claimant.

DELEGATION OF POWERS

53. Section 12 of the *Repatriation Act* 1920 authorises the Commission, by writing under its seal with the approval of the Minister, to delegate any of its powers and functions under the Act in relation to any matters or class of matters. Every such delegation is revocable in writing at will and no delegation prevents the exercise of any power by the Commission. The Commission's powers of review and reconsideration are normally exercised by Appeal

Delegates of whom there are 10 in Canberra and 2 in Melbourne. The primary responsibilities of the Appeal Delegates are to determine:

- section 28 appeals;
- section 31 reviews;
- section 107VL reviews; and
- section 107VM reconsiderations.

54. A section 28 appeal is regarded by the Commission and its Delegates as a complete review of the material contained in the file and is not limited to determining whether a Repatriation Board could have reached the decision it in fact reached.

PROCEDURES

55. Like the Repatriation Boards, the Repatriation Commission is authorised by the legislation to summon witnesses, to take evidence on oath, and to require the production of documents (s.26(1)). Similarly, in hearing, considering, determining or deciding a claim or application, the Commission is not bound by legal forms or rules of evidence and is directed to act according to substantial justice and the merits and all the circumstances of the case (s.47(1)). It is not the Commission's practice to hold oral hearings in discharging its review and reconsideration functions.

56. The obligation of the Repatriation Commission to provide reasons for its decisions is the same as that imposed upon a Repatriation Board (s.47A supra, para. 45).

ONUS AND STANDARD OF PROOF

57. Section 47(2) provides that the Commission is bound by the same onus of proof as applies to Repatriation Boards. This provision was considered by the AAT in Re *Foulger and Repatriation Commission*, (1980) 2 ALD 789. That case had been referred to the Tribunal by the RRT and involved an application to review a decision of the Repatriation Commission. The Tribunal ruled that in determining the review it stood in the shoes of the Repatriation Commission and, accordingly, the Tribunal was bound to apply the same onus of proof as the Commission itself. In the course of reaching its decision to remit the matter to the Commission for reconsideration, the Tribunal made the following observations with reference to section 47:

> The claimant is given the benefit of a reasonable doubt. This does not mean that the Tribunal may not weigh up the evidence accepting some and rejecting other parts of it and that it may not act upon its view of the credibility of witnesses. Rather the position is that, after considering the whole of the evidentiary material, the Tribunal should grant the claim unless it is satisfied beyond reasonable doubt that the claim should not be granted ((1980) 2 ALD at 797).

WORKLOAD AND DELAYS

58. An indication has already been given of the number of entitlement claims received and determined by Repatriation Boards and the Repatriation Commission during 1981-82 (see Table 2). Many of the claims determined by the Commission relate to Service Pensions.

59. It has been noted that an appeal may be lodged to the Commission under section 28 concerning any assessment or determination of a Board. A substantial amount of the Commission's workload is taken up with the hearing of section 28 appeals. The Council has noted that, of the 7 500 appeals requiring action by the Commission during 1981-82, approximately 60% were finalised by the end of the year which left almost 3 000 outstanding appeals. Of the total number of appeals determined by the Commission (excluding those

withdrawn by appellants), 30% were upheld either in full of in part, and 70% were dismissed. Detailed statistics are shown in the following table which deals with all types of appeals and reviews conducted by the Commission during 1981-82.

TABLE 4 Appeals to the Repatriation Commission 1981-82

Outstanding at 30.6.81	3 044*
Lodged during year	4 479
Total for action	7 523
Number determined	
accepted(a)	1 337
disallowed	3 087
Withdrawn	343
Outstanding at 30.6.82	2 756

(a) Total or partial acceptance.
* Revised.
Source: Repatriation Commission's Annual Report, 1981-82, p. 49.

60. Some indication of the time taken by the Repatriation Commission to process claims, appeals and applications for review can be gathered from statistical information provided by the Minister for Veterans' Affairs in the Parliament (*Parliamentary Debates*, Senate, 4 May 1982, p. 1805) in response to a question upon notice dated 17 March 1982 (Question No. 2069). These figures reveal that the median time taken by the Commission to process claims during the period October 1981 - March 1982 for acceptance of incapacity as being service related was 289 days. The median time taken by the Commission to determine appeals for increases in disability pensions was 161 days.

Repatriation Review Tribunal

61. The RRT was established under the *Repatriation Acts Amendment Act* 1979 and held its first sittings on 2 July 1979. It was established to hear and determine applications for review of decisions made by the Repatriation Commission, Repatriation Boards and Seamen's Pensions and Allowances Committees under:

- the *Repatriation Act* 1920;
- the *Seamen's War Pensions and Allowances Act* 1940;
- the *Interim Forces Benefits Act* 1947;
- the *Repatriation (Far East Strategic Reserve) Act* 1956; and
- the *Repatriation (Special Overseas Service) Act* 1962.

62. The RRT replaced the War Pensions Entitlement Appeal Tribunals and the Assessment Appeal Tribunals which had operated independently of each other under the *Repatriation Act* 1920. War Pensions Entitlement Appeal Tribunals dealt with appeals relating to entitlement to pensions for service-related death or incapacity; Assessment Appeal Tribunals dealt with appeals relating to th6 assessment of war pensions and entitlement to a Service Pension on the ground of permanent unemployability. 63. In his Second Reading Speech introducing the Repatriation Acts Amendment Bill 1979, the Minister for Veterans' Affairs (Mr Adermann) stated that the RRT was 'modelled in many respects on the AAT and will function in a somewhat similar manner (*Parliamentary Debates*, House of Representatives, vol. 113, p. 569). It will be seen, however, that several significant differences between the two tribunals have emerged relating to such matters as qualification for appointment, method and terms of appointment, remuneration, procedures, independence and status (*infra*, paras 240 et seq.).

ESTABLISHMENT AND CONSTITUTION

64. The RRT is constituted under section 107VB of the *Repatriation Act* 1920 by a President and such number of Deputy Presidents and other members as the Governor-General determines.

65. The Tribunal exercises its jurisdiction in panels of three. In reviewing entitlement decisions, it is normally constituted by a Presidential Member, a Services' Member and another Member. When reviewing assessment or Service Pension applications, the Tribunal is usually constituted by a Presidential Member, a Services' Member and a Medical Member. In proceedings of sufficient importance, the President may constitute the Tribunal by the President, a Deputy President and a Services' member. At all proceedings at which he is present, the President presides; if the President is not present, a Deputy President presides (s.107VT).

66. Apart from the present President of the Tribunal (Mr F.J. Mahony, CB, OBE), the Tribunal consists of 8 full-time Deputy Presidents; 3 part-time Deputy Presidents; 8 full-time Services' Members; 4 part-time Services' Members; 72 part-time Medical Members; 4 full-time Ordinary Members and 2 part-time Ordinary Members. Qualification for appointment as the President is enrolment as a legal practitioner of the High Court, or of another Federal Court, or of the Supreme Court of a State or Territory for not less than five years. A person is not to be appointed as a Deputy President unless he is enrolled as a legal practitioner of the High Court, of another Federal Court, or of the Supreme Court of a State or Territory; or has obtained a degree in law of a university (s.107VZJ). Services' Members are appointed by the Governor-General and are selected exclusively from lists submitted by ex-service organisations to the Minister in accordance with section 107VZH. The term of appointment to the Tribunal for all members is a period not exceeding seven years (s.107VZK).

67. Under Commonwealth administrative arrangements, the Minister for Veterans' Affairs is responsible for the RRT. The same Minister is also responsible for the Repatriation Commission. The Tribunal is serviced, in terms of staff and funds, by the Department of Veterans' Affairs. The Tribunal does not have a separate registry; applications to the Tribunal are lodged with the Secretary of the Department (s.107VF).

FUNCTIONS

68. The review functions of the RRT are set out in Division 3 of Part IIIA of the Act. These functions are four-fold. First, the Tribunal may review a decision of the Repatriation Commission refusing entitlement to a pension or benefit on the ground that an ex-serviceman's incapacity or death is not related to service on which eligibility is based (s.107VC of the *Repatriation Act* 1920) or a determination of the Commission refusing a claim for pension or benefit on the ground that a merchant mariners incapacity or death is not service related (s.34 of the *Seamen's War Pensions and Allowances Act* 1940). Second, the Tribunal may review a decision of the Commission, a Repatriation Board or a Seamen's Pensions and Allowances Committee assessing the rate of pension payable for incapacity for which the Commonwealth has been found liable (s.107VD of the *Repatriation Act* 1920 and s.35 of the *Seamen's War Pensions and Allowances Act* 1940). Third, the Tribunal may review decisions of the Repatriation Commission refusing to grant a Service Pension on the ground that the claimant is not permanently unemployable (s.107VE of the *Repatriation Act* 1920).

PROCEDURES

69. Division 6 of Part IIIA deals with the procedures before the RRT. That Division regulates such matters as the hearings generally being in private, the powers of the Tribunal, the production of documents and the provision of information to the applicant. A number of these and other issues deserve specific attention.

70. First, whilst the President is to give directions as to procedure (s.107W(1)), he is expressly directed to have regard to the need for proceedings to be conducted with as little formality and technicality, and with as much expedition, as a proper consideration of the matter before the Tribunal permits (s.107W(3)). Section 107VU provides that an applicant may appear in person or may be represented at his own expense by a person 'other than a legal practitioner. The Commission may also be represented at any hearing 'by a person other than a legal practitioner (s.107VU(2)). Advocates appearing for appellants are frequently officers of the RSL or Legacy. The capacity of such advocates varies greatly and in some cases they are not adequately prepared (paras 119-24). Usually advocates do not see an applicant until the very day of the case and thus the assistance received by the Tribunal at the hearing is variable and can sometimes be inadequate. Although a summary or precis of the applicant's case is circulated in advance of the hearing and is reviewed by the advocate, in many cases the advocate does not take advantage of the opportunity of examining the Departmental file before the hearing. These files are available at the hearing and members of the Tribunal usually examine them themselves and ask questions of the applicant.

71. Second, as has been noted, hearings before the Tribunal are normally held in private but the presiding member may give directions as to who may be present. If requested to do so by the applicant, the presiding member may permit a hearing or part of a hearing to take place in public (s.107VX).

72. Third, the Tribunal may summon a person to appear at any hearing to give evidence and to produce such documents as are referred to in the summons. Evidence may be taken on oath or affirmation (s.107VY) and proceedings may be adjourned.

73. Fourth, the presiding member may, at any time, request the Secretary of the Department to forward to the Tribunal such further documents as are in his custody; to obtain further documents and to forward them to the Tribunal; and to arrange for any investigation or medical examination that the presiding member thinks necessary (s.107VZ). During 1981-82, 710 cases were adjourned pursuant to section 107VZ(1).

74. The Tribunal is directed, so far as is consistent with the interests of an applicant, to make available to the applicant or to his representative any information relating to the claim that is under the control of the Tribunal (s.107VZA).

75. The RRT is obliged to give reasons for its decisions but, following an amendment in 1982 to the Repatriation Act, the Tribunal may give its reasons either orally or in writing (s.107VK). Where oral reasons are given, section 107VK(2) provides that a party may request the Tribunal to furnish within 28 days a written statement of its reasons. The Council understands that the current practice of the Tribunal is to give oral reasons in approximately 90% of its decisions concerning entitlement claims and in approximately 50% of its assessment decisions.

VENUE

76. Section 107VS provides that the RRT shall sit at such places in Australia or in an external Territory as may be convenient. As a matter of practice the Tribunal sits in all capital cities. In Tasmania the Tribunal also sits in Launceston, and in Queensland it goes on circuit to provincial towns. On one occasion a telephone conference has been used. An applicant who attends a hearing is entitled to receive both prescribed expenses in connection with his attendance and allowances in respect of loss of earnings (s.107VZX).

ONUS AND STANDARD OF PROOF

77. An application for a pension must be in an 'approved form' (s.24AA). It is specifically provided, however, that this requirement is not to be taken as imposing any onus of proof on a claimant (s.24AA(2)).

78. The 2 provisions in the Act which regulate the standard of proof are sections 47 and 107VH(2). Section 47 refers to the standard of proof to be applied by the Repatriation Commission and the Repatriation Boards (see paras 46-7); section 107VH(2) refers to the standard of proof before the RRT.

79. Section 107VH(2) was introduced in 1979 when the RRT itself was established and it imposes on that Tribunal a standard of proof similar to that imposed by section 47 on the Commission and the Repatriation Boards. Section 107VH(2) received consideration by the Full Court of the Federal Court of Australia in *Repatriation Commission v. Law* (1980) 31 ALR 140 and later on appeal by the High Court of Australia, (1981) 36 ALR 411. In the High Court, Aickin J (with whose judgment the majority of the Court agreed) commented on the standard of proof imposed by section 107VH in the following terms:

> . . . [T]he submission that s. 107VH is not an 'evidentiary provision' should be rejected. I am satisfied that the operation of that section does not involve a two-stage process and that it requires that, in relation to any fact necessary to establish entitlement, the Review Tribunal must be satisfied beyond reasonable doubt that the fact does not or did not exist before it can refuse an application or dismiss an appeal by a claimant. The reference in sub-s.(2) to the 'completion of its consideration in a proceeding of a review' is to the entire process of examining the evidence and determining whether the Review Tribunal is satisfied beyond reasonable doubt that each of the factual requirements has not been established. Sub-s.(2) then directs the Review Tribunal as to what it must do in the light of its determination, i.e. to set aside the decision if it is not so satisfied, and to uphold the decision if it is so satisfied.

Earlier in his judgement, Aickin J also commented upon the provisions prior to 1979 and stated in respect of the present section 107VH and the onus of proof in cases of the present kind:

> The significant difference between the old and the new provision is that the standard of proof is specified. The new provision provided that the Commission, Board or Tribunal must be satisfied beyond reasonable doubt of the negative proposition that there were insufficient grounds for allowing the claim or appeal. The new section did not use the expression 'onus of proof' but the fact that the Tribunal was placed under a duty to grant a claim or allow an appeal unless so satisfied is enough to place the onus of proof to the specified standard on the Commission.

Section 107VH was also recently considered by the Federal Court of Australia in *Rose v. The Repatriation Commission* (1983) 44 ALR 504, in which that Court allowed an appeal from a

decision of the RRT on the ground that the Tribunal had misdirected itself in point of law and applied an incorrect onus of proof upon the applicant.

REFERRALS TO COMMISSION FOR REVIEW: SECTION 107VL(2)

80. Before May 1981, if further evidence was produced before the Tribunal which had not been available to the Commission or Board which made the primary decision, the Tribunal was obliged by section 107VL(2) to adjourn the hearing and request the Commission to reconsider the decision in the light of that further evidence. This arrangement was originally justified on the ground of the need for the Commission to consider evidence which was not before it when the primary decision was reached (see *Parliamentary Debates*, House of Representatives, vol. 113, p. 728 (1979)).

81. In its Annual Report for 1979-80, the RRT stated that this section caused considerable delay (Report at p. 7). The Tribunal reported that up to 30 June 1980, 630 entitlement claims, 341 assessment applications and 1 application for a Service Pension were referred to the Commission for reconsideration.

82. The Annual Report of the Tribunal for 1979-80 went on to record that adjournments under section 107VL(2), combined with interventions by the Commission under section 107VL(1) (which authorises the Commission in some circumstances to review cases before the Tribunal commences any consideration of an application), led to a backlog of applications which could not be finalised by the Tribunal until the Commission had completed its review and published its decision. (There is no provision in the Act which limits the time within which the Commission's review is required to be completed.)

83. The *Repatriation Act* 1920 was amended in May 1981 and section 107VL(2) was repealed and replaced by a new section 107VL(2) and (3). The effect of these provisions is to confer on the President of the Tribunal and on the Tribunal itself a discretionary power to consider further evidence in a hearing or to refer the matter back to the Commission for review in the light of the additional evidence. According to the Second Reading Speech, the purpose of this amendment was 'to reduce delays occurring in certain cases that are the subject of an application for review by the RRT (*Parliamentary Debates*, House of Representatives, vol. 122, pp. 1732-33).

84. The Tribunal has adopted a policy of proceeding with and deciding applications unless there is some compelling reason to refer new evidence to the Commission. The combined effect of the amendment and the Tribunal's policy has been to reduce significantly the number of adjournments under section 107VL, as demonstrated by the following table extracted from the RRT's Annual Report for 1981-82:

Table 5 Adjournment of RRT Hearings 1980-82

	Entitlement Applications		Assessment and Service Pension Applications	
	1980-81	1981-82	1980-81	1981-82
Hearings arranged	3 401	2 083	3 968	1 988
S. 107VL adjournments	680	50	790	29
Applications finalised	1 277	1 361	1 776	1 562

Source: Repatriation Review Tribunal Annual Report, 1981-82, p. 6.

WORKLOAD

85. During 1981-82, almost 4 000 appeals were lodged with the Tribunal taking the total number of appeals requiring action to a figure in excess of 10 000. The Tribunal finalised almost 3 000 appeals during this period, leaving approximately 7 500 appeals outstanding as of 30 June 1982. Detailed statistics of the Tribunal's workload are shown in the following table.

Table 6 RRT Workload 1981-82

	Entitlement (s.07VC)	Assessment (s.107VD)	Service Pension (s.107VE)	Total
Outstanding on 30.6.81	3 880	2 690	7	6 577
Lodged during 1981-82	2 247	1 570	4	3 821
Total action for 1981-82	6 127	4 260	11	10 398
Completed during 1981-82	1 361	1 556	6	2 923
Outstanding on 30.6.82	4 766	2 704	5	7 475

Source: Repatriation Review Tribunal Annual Report, 1981-82, p. 21.

86. It is apparent that a high percentage of primary decisions are appealed to the RRT. During 1981-82, for example, a total of 25 176 entitlement claims and assessment applications were received by the Repatriation Commission and Repatriation Boards. During the same period, 3 821 appeals were lodged with the RRT which constitutes 15% of the total number of claims and applications lodged with primary decision makers in that year. In addition to noting the high percentage of primary decisions that are appealed to the RRT, the Council has noted the high success rate in RRT appeals. During 1981-82, the Tribunal set aside more than 65% of the decisions it reviewed. The Council has also noted that many additional appellants were successful in the large number of applications which lapsed as a result of favourable Commission decisions taken before the Tribunal had concluded its review. The following table shows the outcome of the appeals finalised by the Tribunal during 1980-82.

Table 7 Outcome of RRT Decisions 1980-82

	Entitlement Decisions		Assessment Decisions		Service Pension Decisions	
	1980-81	1981-82	1980-81	1981-82	1980-81	1981-82
Decision under review set aside	279	742	612	654	3	1
Lapsed-allowed by Commission (s.107VL)	366	255	192	263	1	1
Decision under review affirmed	532	372	534	308	1	2
Lapsed - no issue	43	65	38	33	1	1
Withdrawn	259	230	394	298	-	1
Total	1 479	1 664	1 770	1 556	6	6

Source: Repatriation Review Tribunal Annual Report, 1981-82, p. 23.

ADJOURNMENTS AND DELAYS

87. During the year, 4 071 hearings were arranged. Of these, 772 were postponed at the request of applicants or their representatives. Of the 3 299 hearings which commenced, 40% were adjourned. The particulars are shown in the following table.

Table 8 Nature of RRT Adjournments 1981-82

	Entitlement	Assessment and Service Pension	Total
To Commission, with further evidence (former s.107VL(2) and new s.107VL(3)	50	29	79
To Secretary of Department for further information (s.107VZ(1))	321	389	710
Other adjournments (usually at applicant's request) (s.107VY(1)(b))	357	165	522
Total	728	583	1 311

Source: Repatriation Review Tribunal.

88. Before 1981, applications were set down for hearing after the Department's records on a particular application had been received and forwarded to the applicant. This often resulted in the hearing date arriving before the applicant was adequately prepared to present his case to the Tribunal. During 1980-81, for example, 37% of hearings arranged were adjourned or postponed at the applicant's request to enable him further time to prepare his case.

89. To overcome this problem, the Tribunal introduced a procedure in 1981 whereby an application is not listed for hearing until the applicant or his representative advises that the case is ready for presentation. This resulted in a 44% reduction in the number of hearings arranged during 1981-82, but the number of applications finalised was only 5% fewer than in 1980-81 (see Table 5).

90. The Tribunal's new procedure has contributed to a reduction in the number of hearings, but it also seems to have exacerbated the problems of delay. In its Annual Report for 1981-82, the Repatriation Commission stated (at p. 22) that the median time taken by the RRT to finalise an entitlement review was 600 days. The corresponding figure for assessment reviews was 458 days. Approximately 33% of undetermined applications during 1981-82 were awaiting advice from the applicant or his representative that his case was ready to proceed. The Tribunal has attributed the delays to the inability of some ex-service representatives to deal with the case loads for which they are responsible (see RRT's Annual Report for 1981-82, p. 3).

91. The President of the Tribunal has advised that at any one time there are approximately 6 500 outstanding appeals, of which approximately 600 would be ready for hearing. The President has also made available the following figures which disclose the average number of hearings for each appeal and the average number of calendar days taken for each step in the process of dealing with an appeal before the RRT. These figures were taken from a sample of those applications finalised in each State between 1 July and 31 December 1981.

Table 9 Average Number of Hearings and Average Days taken in RRT Appeals: July-December 1981

	N.S.W.	Vic.	Old	S.A.	W.A.	Tas.
Average number of hearings	2.3	2.2	2.1	1.9	1.7	1.9
Lodgment to transmission (days)	182	160	147	159	135	85
Transmission to first hearing (days)	74	151	170	201	174	118
Final hearing to decision (days)	19	18	25	*	20	*
Total number of days	275	329	342	*	329	*

*not available.

Source: Repatriation Review Tribunal.

The Administrative Appeals Tribunal

JURISDICTION

92. Part IIIB of the *Repatriation Act* 1920 provides for a limited jurisdiction in repatriation matters to be conferred upon the AAT. This jurisdiction arises in 2 ways. First, the AAT has jurisdiction to hear cases which may be referred to it by the President of the RRT on his own initiative. The President may consider that a case should be determined by the AAT on the basis that 'an important principle of general application' is involved (s.107VZZB(1)). Second, at any time during the hearing of a proceeding before the RRT, either the applicant or the Commission may make an application to the Tribunal requesting that, where the decision to which the proceeding relates is a decision of the Commission, the decision be referred to the AAT (s.107VZZB(3)). When a request is made to the RRT, the Tribunal is directed to adjourn the hearing of the proceeding and to refer the application to the President of the RRT (s.107VZZB(4)). Section 107VZZB(7) provides that the President of the RRT is to consider the application and, if he considers that it involves an important principle of general application, he shall refer that application to the President of the AAT requesting a review thereof by the AAT. That request is to be accompanied by a statement of his reasons for concluding that an important principle of general application is involved together with particulars of any submission made in support of the application. Section 107VZZB(8) provides that, where the President of the AAT receives such a request, he shall direct the review of the subject decision by that Tribunal in accordance with the AAT Act 1975.

CONSTITUTION

93. For the purpose of exercising its review function under the *Repatriation Act* 1920, the AAT is to be constituted by:

- a presidential member and two non-presidential members; or
- a presidential member alone (s.107VZZC).

The President of the AAT may indicate his intention to nominate the President of the RRT as one of the persons to constitute the AAT for the purposes of the review (s.107VZZB(9)).

WORKLOAD

94. During the year ended 30 June 1980, 10 applicants exercised their right to request that a decision of the Commission be referred to the AAT. During the year 1980-81, 4 references were made by the President of the RRT to the AAT and 9 applications were dealt with by the latter Tribunal. At the end of the year, 4 remained undecided. During 1981-82, only one reference to the AAT was made and it was subsequently withdrawn. Seven applications were determined by the AAT and 1 remained undecided at the end of the year. To date, it

has been the practice of the President of the AAT to nominate the President of the RRT under section 107VZZB(9) to sit on the AAT for the purpose of hearing the referred decision.

The Federal Court of Australia

95. The principal means whereby repatriation issues may come before the Federal Court of Australia are:

(a) Part IIIC of the *Repatriation Act* 1920;
(b) sections 44 and 45 of the *Administrative Appeals Tribunal Act* 1975; and
(c) applications under the *Administrative Decisions (Judicial Review) Act* 1977.

***REPATRIATION ACT* 1920, PART IIIC**

96. Part IIIC of the *Repatriation Act* 1920 provides that the Federal Court of Australia has jurisdiction in the following situations:

- The RRT may, of its own motion or at the request of the applicant or the Commission, refer a question of law arising in a proceeding before the Tribunal to the Federal Court for determination. A question is not to be referred without the concurrence of the President of the Tribunal (s.107VZZG).
- Either the applicant or the Commission may appeal to the Federal Court on a question of law from any decision of the Tribunal (s.107VZZH) (e.g. *Law's* case, supra; *Repatriation Commission v. Kupfer* (6 August 1982)).

97. Where a question of law is referred to the Federal Court in accordance with section 107VZZG, the 'approved costs' of the applicant in connection with that reference are to be borne by the Commission (s. 107VZZK(1)). Where an appeal is instituted in accordance with section 107VZZH, the Federal Court may in its discretion make such order as to costs as it considers just (s. 107VZZK(3)). Where an applicant has instituted, or proposes to institute, an appeal to the Federal Court in accordance with section 107VZZH, he may apply to the Attorney-General for legal and financial assistance (s.107VZZL).

98. These cost considerations would presumably be taken into account by applicants or their representatives in deciding whether to request the referral of a question of law from the RRT to the Federal Court, as opposed to requesting a referral to the AAT. Indeed, the RRT's Annual Report for 1981-82 (at p. 4) noted the increasing number of appeals to the Federal Court and the fewer requests for referrals to the AAT during that year. The Report attributed this trend to the fact that no costs can be awarded to a successful party before the AAT in a repatriation matter.

***ADMINISTRATIVE APPEALS TRIBUNAL ACT* 1975**

99. Section 44 of the *Administrative Appeals Tribunal Act* 1975 provides for an appeal on a question of law to the Federal Court of Australia from a decision of the Tribunal. Section 45 allows for questions of law to be referred to that Court for decision (e.g. *Repatriation Commission v. Byrne* (1981) 40 ALR 296; *Lennell v. Repatriation Commission* (3 February 1982); *Repatriation Commission v. Moss* (22 April 1982)).

***ADMINISTRATIVE DECISIONS (JUDICIAL REVIEW) ACT* 1977**

100. One of the purposes sought to be achieved by the 1977 legislation was the introduction of a simplified means of attaining judicial review of the legality of a decision of an administrative character made under an enactment. The Act also imposes an obligation upon request to give reasons for decisions which are subject to judicial review under the Act. The particular remedy created by this legislation is an order of review which is obtainable only from the Federal Court. Judicial review may also be sought in the High Court or in a

Territory Supreme Court but Commonwealth administrative action is unreviewable in State Supreme Courts.

101. An example of the application of the Administrative Decisions (Judicial Review) Act to the administration of the *Repatriation Act* 1920 is provided by *Thornton v. The Repatriation Commission* (1981) 3 ALD 281. In that case an application was made for an order of review directed to the Repatriation Commission for an alleged unreasonable delay in the making of a decision. The application was dismissed.

102. Another example is provided by *Kelly v. Coates* (1981) 3 ALD 264, in which an order of review was sought against a Repatriation Board for an alleged error of law. In holding that an order of review would lie, Toohey J rejected an argument that there should be 'exceptional circumstances' before the Federal Court would embark upon the hearing of an application. The existence of a range of appellate procedures within the *Repatriation Act* 1920 did not lead to such a conclusion.

103. Decisions of the RRT are also subject to judicial review by the Federal Court and the High Court but the Council is not aware of any instance where this has occurred.

The Ombudsman

JURISDICTION

104. Section 5 of the *Ombudsman Act* 1976 empowers the Ombudsman to investigate either of his own initiative or upon receipt of a complaint - a matter of administration by a Department or prescribed authority. The Ombudsman is not entitled to investigate action taken by a Minister (s.5(2)(a)) but advice given to a Minister may be investigated. The Ombudsman's jurisdiction to investigate matters is conferred by the Ombudsman Act and is in no way dependent upon the *Repatriation Act* 1920.

105. The Ombudsman's function is to establish whether there has been defective administrative action as defined in the Ombudsman Act on the part of a Department or prescribed authority.

POWERS AND PROCEDURES

106. In carrying out his functions under section 5, the Ombudsman has a number of significant powers available to him. He may require persons to answer questions and produce documents (s.9), he may examine witnesses (s.13), and enter premises (s.14). He can make reports to the department or prescribed authority the subject of his investigation (s.15), and to the Prime Minister (s.16), and he may make a Special Report to Parliament (s.17). The Ombudsman's powers to report to the Prime Minister and to the Parliament are available as last resort sanctions. In practice, his recommendations have proved to be very influential, in spite of the absence of a power to substitute his own decision for that of the primary decision maker.

107. The Ombudsman's investigations are conducted privately and often in an informal manner. These features of privacy and informality which characterise the Ombudsman's investigations would appear to be particularly relevant to complaints in the repatriation area.

108. The Ombudsman has certain discretions under section 6 not to investigate complaints on specific grounds. Of particular relevance to repatriation are his powers not to investigate where he is of the opinion that it was either unreasonable for the complainant not to pursue

an alternative remedy or, if such a remedy was pursued, no special reasons justify investigation by the Ombudsman.

WORKLOAD

109. The Ombudsman's Annual Reports reveal the extent to which he has been involved in complaints of defective administration in the repatriation area (see Table 10). The Ombudsman's statistics relate to the Department of Veterans' Affairs as a whole.

Table 10 Ombudsman Review of the Department of Veterans' Affairs, 1980-82

Year ending 30 June	1980		1981		1982	
	Written	Oral	Written	Oral	Written	Oral
Complaints received	97	166*	95	222*	89	234*
Complaints finalised:						
Outside jurisdiction	8	12	8	16	9	21
Discretion exercised	17	26	10	24	13	29
Withdrawn/lapsed	6	-	4	-	1	-
Resolved substantially in ; complainant's favour	11	24	17	44	7	70
Resolved partially in complainant's favour	9	15	8	21	4	28
Resolved in Department/ Authority's favour	40	46	40	59	41	86

* Includes some complaints against the Defence Service Homes Corporation.

Source: Annual Reports of the Ombudsman for 1979-80, 1980-81, and 1981-82.

PART 2: DEFICIENCIES IN THE EXISTING SYSTEM: THE NEED FOR REFORM

110. No person or organisation making a submission to the Council expressed satisfaction with all aspects of the existing systems of primary decision making and review. Though causes of dissatisfaction varied, many points of consensus emerged which have assisted the Council in its identification of several deficiencies in the existing system and their consequences.

111. The deficiencies identified by the Council may be summarised at the outset as follows:

- Primary decisions are often made on the basis of incomplete evidence.
- Claimants are frequently not given adequate explanations of the reasons for decisions.
- Claimants are often inadequately represented.
- There are a large number of appeal and review avenues.

The consequences of these deficiencies may be summarised as follows:

- Not enough claims and applications are allowed by primary decision makers.
- An unnecessarily large number of cases proceed to hearing before the RRT and that Tribunal is finding it increasingly difficult to cope with its workload while maintaining an appropriate standard of decision making.
- Hearings before the RRT are often in substance primary consideration of (at least some) evidence rather than in the nature of a review.
- Undue delays occur in the final disposition of cases.

112. The deficiencies which have been identified above and which are discussed below are such that, in the opinion of the Council, reform is necessary. These reforms are discussed in Part 3.

Identified Deficiencies

PRIMARY DECISION MAKING BASED ON INCOMPLETE EVIDENCE

113. At present there is insufficient encouragement to a claimant to bring forward all available evidence as part of an initial application, nor is there a statutory obligation to do so. Several reasons for not adducing evidence at the outset of a claim were given in submissions to the Council including the following:

- It was difficult for claimants to know precisely what evidence may be required at the time of making a claim, and relevant evidence was often not then obtainable or within their knowledge. Examples were given of widows who would be unaware of the details of their husbands' war service or the whereabouts of relevant records.
- The RRT was looked on as a more satisfactory forum, the Boards being seen as too closely connected with the Department.
- The Boards and the Commission had a tendency to prefer the opinions of their own medical consultants, and additional medical opinions were often not sought until a claim went to the Tribunal.

114. It is understandable that some material is not presented because of a lack of awareness of what may be required, but the deliberate withholding of evidence in the belief that some tactical advantage is obtained undermines the effectiveness of primary decision making. In the Council's opinion, it is highly desirable that a primary decision maker has

access to all relevant available evidence and this opinion was shared by many of those persons or organisations who addressed this issue in their submissions.

115. The failure to produce relevant material at the outset of a claim gives rise to several undesirable consequences. First, dissatisfaction with a primary decision which has been reached on the basis of incomplete facts will often induce a claimant to appeal to the RRT where the material may be produced for the first time. This situation contributes significantly to the large number of decisions which ultimately proceed to the RRT. Second, since the RRT will often be considering the material for the first time, a large percentage of claims will be granted on appeal. During 1981-82, the RRT set aside over 65% of the decisions it reviewed. Third, there is a risk that the RRT's function as a review body is distorted by it having to perform tasks which should be performed by a primary decision maker. Resources are wasted since the time taken by the Tribunal in receiving and reviewing evidence duplicates time expended in reaching the primary decision. It also denies the Tribunal sufficient opportunity to discharge its proper functions as a review authority. The Tribunal is unable to give adequate consideration to more complex cases and to general principles of wide application and, consequently, less guidance is given to primary decision makers than a better structured system could provide. Finally, the time taken by the Tribunal in considering evidence for the first time adds considerably to the problem of delay in disposing of claims for repatriation pensions.

EXPLANATION OF THE BASIS OF DECISIONS

116. Repatriation Boards and the Commission are obliged under section 47A of the *Repatriation Act* 1920 to provide a statement of reasons for a decision, including any findings of fact. However, the length and content of those reasons vary considerably and, in the Council's opinion, are in some instances so perfunctory as to provide little guidance or assistance to either claimants or a review body.

117. It is the Council's view that the formulation of adequate reasons can be expected both to improve the quality of decisions and to provide a claimant with an explanation from which he and his representatives can make a sensible judgment whether to pursue the matter further. Where an appeal is lodged, a statement of reasons can materially assist not only the parties but also the reviewing body in sorting the evidence and identifying the issues.

118. All submissions received by the Council which referred to the matter of reasons endorsed the principle that adequate reasons should be given at each stage of the decision making process. Many submissions, however, emphasised the need to reduce workloads as far as possible and some suggested that reasons should only be prepared for adverse decisions. The Commission did not share this view, arguing that it would be equally important to know in the future the reasons for a favourable decision when a further claim was being considered. The Commission stated, however, that only short statements of reasons were provided for decisions on successful claims.

INADEQUATE REPRESENTATION OF CLAIMANTS

119. Despite the statutory powers conferred upon both the Commission and Boards by section 26 of the *Repatriation Act* 1920, those bodies do not normally conduct an oral hearing at which an applicant is invited to be present and contribute to the decision making process.

120. It is normally at the review stage before the RRT that an applicant first appears in person. There is, however, no obligation to appear and the applicant is entitled to make submissions in writing to the Tribunal. He may also be represented by a person other than a

legal practitioner (see s.107VU of the Act). The Act also prohibits the Commission being represented before the Tribunal by a legal practitioner.

121. In a significant percentage of cases coming before the RRT, an applicant is at present represented by an advocate employed by an ex-service organisation such as the RSL or Legacy. Some advocates have accumulated considerable practical expertise over the years, but advocates do not normally possess formal qualifications in either law or medicine. The capacity of advocates to assist the Tribunal varies greatly.

122. In the submissions received by the Council, considerable support was received for the propositions that the standard of advocacy before the final review authority should be improved and that it is desirable for persons who do appear before this authority to be adequately trained. The Legacy Co-ordination Council maintained that the standard of advocacy 'could be improved' and Mr I.H. Davies, an advocate for more than twelve years, referred to 'the known incompetency of some paid advocates and the consequent disadvantage to the claimant'. The desirability of a training scheme for advocates was referred to by both the President of the RRT and Mr LJ. Hogan, a repatriation advocate. The Council was informed by Brisbane Legacy that 2 courses of instruction have been conducted in Queensland with a view to raising the standard of advocacy.

123. The existing process whereby advocates acquire expertise by way of training 'on the job' is manifestly inadequate. Nor is it appropriate that the RRT be used as a means of instructing advocates in those skills which they should already possess. The Council believes that claimants should be adequately represented and that representatives should not only assist their client but also render all possible assistance to the reviewing authority. A case which is adequately prepared and presented is of benefit to both a claimant and a decision maker. An adequate standard of advocacy should also contribute to a reduction in the number of appeals.

124. It is the Council's view that a claimant should be free to choose his own representative - including the right to choose a legal practitioner. The Returned Services League of Australia stated in its submission to the Council that, while it had opposed in the past the idea of legal practitioners acting as advocates, it is now 'apparent that with the increased legalisation of the system advocates with legal training who could act in an honorary capacity would improve the quality of advocacy before the determining authority'.

125. The importance of the law in the repatriation field has become evident from the series of recent cases dealing with the proper construction and application of the provisions of the Act relating to onus of proof.

MULTIPLICITY OF AVENUES OF APPEAL

126. One issue which is very much associated with the problem of delay in disposing of claims for repatriation pensions is the multiplicity of means by which primary decisions can be appealed or reviewed. The *Repatriation Act* 1920 itself provides for a number of means whereby a decision may be reviewed, reconsidered, or appealed from, both on the merits and on questions of law. These means were discussed above at paras 28 et seq. and, in summary, are as follows:

Appeals

- section 28 (to Repatriation Commission);
- section 107VZZH (Appeal from RRT to Federal Court on questions of law).

Review
- section 31 (by Repatriation Commission);
- section 98 (by Repatriation Commission);
- section 107VL(1) (by Repatriation Commission);
- section 107VL(2) (by Repatriation Commission at the request of President of the RRT);
- section 107VC (by RRT of entitlement decisions other than Service Pensions);
- section 107VD (by RRT of assessment decisions other than Service Pensions);
- section 107VE (by RRT of certain decisions relating to Service Pensions).

Reconsideration
- section 107VM(1) (by Repatriation Commission where further evidence becomes available after an adverse Tribunal decision).

References
- section 107VZZB (reference from RRT to AAT);
- section 107YZZG (reference by RRT to Federal Court on questions of law).

127. Further appeals are possible from the AAT to the Federal Court and from that Court to the High Court of Australia. Such appeals, however, are not provided for in the *Repatriation Act* 1920 but in such legislation as the *Administrative Appeals Tribunal Act* 1975 (see para. 99). Other review procedures are also available in addition to those provided for in the Repatriation Act itself; judicial review is available in either the Federal Court or the High Court, and the Ombudsman may investigate matters of administration.

128. Submissions have been made to the Council concerning the variety of review processes. Thus, in its submission the Repatriation Commission stated:

> Several judges have drawn attention to the multi-tiered appeals system. Although the Repatriation Commission believes that considerable progress has been made in clearing appeals at the Commission level, it does not see a need for a general appeal to the Commission if satisfactory changes are made to the system for handling claims.

After setting forth its comments on proposed changes to the existing system of adjudication, the Commission also stated:

> If these changes are introduced, the Commission sees no need for an automatic right of appeal to the Repatriation Commission. However, it is firmly of the view that it should continue to have a power of review of decisions of individual determining officers or Repatriation Boards under section 31 of the Repatriation Act.

129. The Repatriation Review Tribunal has also commented adversely on the multiplicity of avenues of appeal. In its Annual Report for 1981-82 (at p. 5), attention was drawn to the high level of successful appeals taken to the Tribunal and the comment was made that the existing system was expensive to maintain 'and with the determination of claims protracted over three levels, claimants are prone to feel aggrieved by the necessity to pursue a claim at such lengths to obtain justice'. The Council endorses the view that the existing system is cumbersome, inefficient, and constitutes an uneconomic use of resources which does not best serve the interests of veterans and their families.'

Consequences of Identified Deficiencies

130. As noted above, several consequences flow from the deficiencies in the present means of primary decision making and the processes of review. Each of these consequences is discussed briefly below but it should be emphasised at the outset that the overall effect of

these deficiencies is that unacceptable delays occur in reaching a final determination on the merits.

LOW ACCEPTANCE RATE AT THE PRIMARY LEVELS OF DECISION MAKING

131. It was noted above that the RRT set aside 65% of the decisions it reviewed during 1981-82 (para. 86). It was also noted that approximately 56% of all entitlement claims determined by Boards and the Commission during 1981-82 were allowed (para. 48), and 68% of assessment applications determined by the Boards during that period resulted in some increase being granted (para. 49). The Council has concluded that such an unusually high success rate at the level of final review indicates that too few claims and applications are being allowed at the levels of primary decision making. The unduly low acceptance rate may reflect the fact that primary decisions are often made on the basis of inadequate evidence. The low rate may also be attributable in part to the failure of some primary decision makers to understand and correctly apply repatriation legislation.

LARGE NUMBER OF CASES FOR REVIEW BY THE R.R.T.

132. One of the primary purposes and functions served by a review tribunal is to provide a forum in which a person who is dissatisfied with a primary decision may seek to have that decision re-examined. A final review tribunal not only exerts an influence upon an individual case, but also by its reasons provides guidance for primary decision makers. To fulfil such functions, however, a final review tribunal should ideally have an opportunity not only to consider the facts of individual cases in an appropriate degree of detail, but also to consider carefully the general principles applicable to those, facts. Particularly where there are a large number of primary decisions to be made annually, the laying down of guiding principles assumes primary importance. The functions entrusted to primary decision makers and a review authority are, therefore, to be clearly distinguished.

133. In the present context, the RRT is not able to fulfil its role adequately as a final review authority because of the number of cases it is called upon to determine. In 1981-82 some 3 821 applications for review were lodged with the Tribunal. This figure represents approximately 15% of all applications lodged with Repatriation Boards in that year, and more than one-third of all adverse decisions made by the Repatriation Boards in the same year. During 1981-82, 4 479 appeals were lodged with the Repatriation Commission, but it is not known how many of these might eventually come before the RRT. The Tribunal is finding it increasingly difficult to cope with its large caseload and a substantial backlog of cases is accumulating. Almost 7 000 applications were lodged with the Tribunal during 1981-82 and 3 000 were finalised. At the end of the year, there were approximately 7 500 applications awaiting determination (see para. 85). The Tribunal's Annual Report for 1981-82 (at p. 4) attributed the backlog of cases to the Tribunal's attempts to maintain its standards of review in the face of the large number of cases proceeding to it.

134. An indication of the unusually high percentage of claims proceeding to the RRT under the existing system (15%) can be gained by comparing figures under the Commonwealth employees' compensation system. In 1981-82, a total number of 35 146 claims for compensation were made. During the same period, 363 applications for review of primary decisions were lodged with the AAT, which constitutes 1% of the total number of claims made in that year.

135. There is no reason to believe that issues raised in assessment and entitlement matters are generally so complex that such a high proportion of cases should require the review

afforded by the RRT. Rather, the Council considers that there are several reasons why such a large number of cases reach the Tribunal:

- a lack of full explanation of the basis of an earlier adverse decision which, if made available, could possibly satisfy the applicant;
- the availability of evidence the relevance of which was not appreciated previously;
- the opportunity to appear personally before the decision maker being openly afforded for the first time;
- a claimant has nothing to lose financially; and
- in most cases he can expect assistance from ex-service organisations in the presentation of the matter.

136. The problem presents itself as circular, in that the more cases which reach the Tribunal the less likely are guiding principles to emerge from the multiplicity of Tribunal decisions. This lack of guidance affects both the Boards in making their determinations and claimants in making reasoned judgments as to the correctness of Board decisions.

137. Claimants have enjoyed considerable success in recent years in challenging RRT decisions. As at 19 August 1983, RRT decisions have been set aside by the High Court, Full Federal Court or Federal Court in at least 13 cases, and have been upheld in only 3 instances. Many of the successful challenges have related to the RRT's incorrect understanding or application of the onus of proof provisions of the *Repatriation Act*. While the number of successful appeals from RRT decisions is very small relative to the total number of cases disposed of by the RRT the high success rate does raise questions about the record of the Tribunal in construing and applying fundamental aspects of the repatriation legislation such as the onus of proof provisions.

138. The problem of the standard of some of the RRT's decisions is illustrated by the history of the litigation in *Kingsford Smith v. The Repatriation Commission*. The issue was whether the appellant's earnings from a farming partnership amounted to more than a negligible percentage of a living wage such as to preclude him from being entitled to receive a Disability Pension at the Special Rate. In March 1981 the RRT affirmed a decision of the Repatriation Board assessing the appellant's pension at the Intermediate Rate because of his partnership earnings. An appeal was taken to the Federal Court where Davies J held (18 March 1982) that the Tribunal had erred in law by taking a purely theoretical assessment of the appellant's ability to earn, and not the actualities of the partnership arrangement. The matter was remitted to the RRT which affirmed its original decision. A second appeal was taken to the Federal Court and the Tribunal's decision was set aside (29 March 1983). While sympathising with the Tribunal that this was an 'awkward case' involving the interpretation of 'unsatisfactorily drafted legislation', Fitzgerald J concluded that the Tribunal had failed to comply with its duties under the legislation. His Honour stated that the Tribunal's 'reasons are too broadly expressed, and omit essential findings of primary fact. It cannot be said that it has substantially complied with the sub-section when it is not possible to follow its process of reasoning sufficiently to test its validity. I am satisfied that this breach of its statutory duty by the Tribunal involved error of law. Regretfully, therefore, the matter must again go back to the Tribunal'.

DISTORTION OF R.R.T'S ROLE

139. Attention has already been drawn to the undesirable consequences of refraining from presenting evidence to a Repatriation Board and adducing it for the first time before the RRT (para. 115). This practice tends to distort the Tribunal's function as a review body. In the Council's opinion, whilst it should be possible for fresh evidence to be considered by the

Tribunal, it is not appropriate that it should occur as a matter of course and in respect of evidence which was previously available but was not presented.

DELAYS

140. The most acute problem confronting the existing system for determining claims and appeals is delay. It is an issue which concerns individuals, ex-service organisations, the Department, and the Government. The House of Representatives was informed on 17 November 1981 that in the preceding 10 months the Minister for Veterans' Affairs had received 50 formal representations expressing disquiet at the delays in the repatriation determining system (*Parliamentary Debates*, House of Representatives, vol. 125, p. 2946). The issue was also highlighted in the submissions made to the Council.

141. Some indication of the magnitude of the problem of delay in dealing with claims by Repatriation Boards, the Repatriation Commission, and the RRT can be gained from figures supplied in the Repatriation Commission's Annual Report for 1981-82 (pp. 21-2), which show that the median times taken to process entitlement claims and appeals for the four weeks ended 25 June 1982 were 223 days in respect of Repatriation Boards, 149 days at the Commission's appeal level, and 600 days at the level of final review by the RRT.

Reasons for delay

142. The Repatriation Commission in its Annual Report for 1981-82 (pp. 22-3) identified the following reasons for the lengthy delays being experienced in the repatriation determination system:

- the legislative requirements for determining authorities to give reasons for their decisions;
- the giving of more detailed and carefully considered reasons in view of the possibility of appeals being taken to the Federal Court or the AAT;
- an increase in the number of claims;
- a shortage of suitable medical staff to conduct medical examinations;
- as the time since the wars lengthens, it is becoming more complex and time consuming to investigate a claim;
- factors beyond the Department's control, such as the presentation of new evidence at a late date or a request by the claimant for deferment; and
- a shortage of experienced clerical staff.

143. It is the Council's view that some delay is unavoidable if claims are to be adequately investigated and properly processed. Decisions will frequently involve an examination of complex or conflicting medical evidence and the application of difficult legislative provisions. On the other hand, the Council also considers that the problem of delay is exacerbated by such factors as the withholding of evidence from primary decision makers and the multiplicity of avenues of appeal and review.

Attempts to solve the problem of delay

144. The Council has noted that several steps have been taken in an endeavour to reduce the problem of delay. These steps are described in the Repatriation Commission's Annual Report for 1981-82 (pp. 23-1) and include:

- The number of determining authorities has been increased. Since 1970, the number of full-time Repatriation Boards has been increased from 4 to 14; Repatriation Commission delegates have grown in number from 3 to 18; and the number of members of the RRT has also been added to significantly.
- Increasing use has been made of non-Departmental medical officers in medical examinations.
- Medical reports have been streamlined.

- Certain administrative changes have been introduced to speed up finalisation of appeals and claims.
- The *Repatriation Act* 1920 was amended to provide the RRT with a discretion whether or not to refer to the Commission cases in which additional evidence is presented (see para. 83).
- The RRT has adopted the practice of not listing a case for hearing until the Tribunal is informed of the applicant's readiness to proceed (see para. 89).

145. The Commission itself has reported that, whilst these above steps have 'in some measure improved the situation' they have not yet in themselves solved all problems (Annual Report for 1981-82, p.24). Indeed, in its submission to the Council, the Commission expressed the view that more needs to be done to overcome the problem of delay than simply allocating resources. The Commission stated:

> The Repatriation Commission is firmly of the view that the determining system has become too complicated. There are excessive delays in reaching many decisions, particularly at the Repatriation Review Tribunal level. There is not much that could be done administratively within the present system to overcome the obvious problems. While the Commission itself has acted to provide more resources for determining appeals at the Commission level and considerable improvement has been' made in reducing times taken and the backlog of Commission appeals to be determined, the fundamental problems are at the level where the greatest volume of cases is to be determined, the Repatriation Boards.

146. It is the Council's view that the problem of delay is indicative of several fundamental deficiencies in the systems of determining claims and appeal for repatriation pensions. These deficiencies highlight the need for substantial reform, the details of which are described in Part 3.

PART 3: THE PROPOSED SYSTEM

147. The deficiencies identified in Part 2 of this Report have led the Council to conclude that the existing means of determining and reviewing pension decisions taken under the *Repatriation Act* 1920 are in need of substantial reform. In the Council's opinion, the existing structure of multiple tiers of primary and review decision making procedures substantial delays, and is both unnecessary and wasteful of resources. Decisions are not always adequately considered at either the primary or review stages of decision making. It is the Council's view that the deficiencies of the existing system prevent it from best serving the interests of veterans and their families.

148. The Repatriation Committee of the Council set out the following tentative objectives for reform in its Discussion Paper circulated to interested parties (at para. 11):

- to avoid as far as possible unnecessary delays in the making of a decision and to have a final decision reached as quickly as possible;
- to establish a situation in which the Commission may accept those claims which should be granted without Repatriation Boards and the RRT becoming unnecessarily involved in clear-cut issues; and
- to impose a requirement upon applicants to present all relevant evidence to primary decision makers and for such decision makers to take all reasonable steps to resolve those claims where doubts arise.

The Council has noted that these objectives received general, if not in all cases specific, endorsement in submissions which it received. It has, accordingly, structured its reforms with these objectives in mind, and in the light of the many other comments made and matters raised in submissions.

149. The Council has been particularly conscious of the fact that the present area of decision making is one which directly affects the day-to-day lives of a significant percentage of the Australian community. In formulating its recommendations the Council has also been conscious of the fact that the efficacy of a system largely depends on the support it has from the persons it serves. This is particularly true of the repatriation system. It has thus been considered important to attempt to ensure that the reforms recommended are such as to be seen by the repatriation community as leading to the correct or preferable decision being taken in as efficient a manner as possible. In addition, the new system proposed by the Council has been devised with a view to reducing the delays that are presently being experienced.

150. The Council believes that its recommendations are consistent with, and in fact reinforce the underlying philosophy of the Act, but it is aware that some of its recommendations may be seen by some as being counter to that philosophy. The Council is confident, however, that the recommendations, if implemented, would, at least in the long term, gain the support of veterans. This would be engendered in part by improvements in efficiency and the reduction of delays.

151. In the opinion of the Council, the reforms which should be implemented involve a three-tiered framework for decision and review consisting of:

- primary decision making;
- intermediate review; and

- final review on the merits.

152. For the reasons detailed below, the Council sees individual delegates of the Commission as the appropriate persons to make primary decisions in relation to both pension entitlement and assessment. The Council is recommending ways to maximise the amount of evidence available to primary decision makers and to increase the involvement of the claimant and his understanding of the issues at an early stage in the decision making process.

153. The Council recommends that a two-tiered review system should be established to hear appeals on the merits. It is the Council's view that a Veterans' Appeals Board (VAB) should be established as an intermediate review body. That Board will offer an expeditious, economical and informal level of review. While the Council recommends that the traditional primary decision-making role of the Repatriation Boards should be given to individual delegates of the Commission, the Council considers that it is most desirable that the expertise and experience developed in the Repatriation Boards should be retained as part of an intermediate review system. Furthermore, it is desirable that persons representative of the ex-service community should constitute a significant part of that system. With these considerations in mind the Council examined the suggestion that the Repatriation Boards as currently constituted might be re-established as intermediate review bodies. But to enhance the concept that it is *review* rather than primary decision making that should occur at the intermediate level, the Council concluded that it would be best to create a new body to perform the intermediate review function.

154. It is recommended that entitlement claims which are rejected in full will automatically be referred to the VAB, as will assessment applications in which no increase is granted. In other cases the veteran will be required to instigate an appeal to the VAB. In carrying out its review functions, the Board will act independently of the Commission subject to the Commission's powers under section 15 to issue statements of principle for the guidance of the Board. Again, means are recommended to enable a claimant to participate in the deliberations of the Board to the extent necessary to present his or her case adequately. It is envisaged that the Board will incorporate some of the existing features of the Repatriation Boards and the RRT but new features are also recommended to enable the Board to discharge its function as an intermediate review body. The Council is recommending the abolition of the Repatriation Boards and the RRT but it is expected that members of those bodies will be considered for appointment to the VAB.

155. In further rationalising the existing system of appeals and review, it is recommended that the Repatriation Commission's present appellate functions be repealed but that the Commission retain its powers of review under sections 31 and 98 of the *Repatriation Act* 1920.

156. It is the Council's view that decisions of the VAB should be reviewable on their merits by a final review tribunal. It is envisaged that the final review tribunal's function will not only be to determine individual cases, but also to develop and enunciate general principles for the guidance of primary decision makers and the VAB. The Council is recommending that the AAT should be vested with jurisdiction as the final review tribunal in the repatriation system. It is the Council's view that the AAT offers the high standard of justice which veterans are entitled to receive from the final review tribunal. Foremost amongst the considerations which have led the Council to this conclusion is the independence of the AAT from the Repatriation Commission, the Department of Veterans' Affairs, and ex-service organisations. In making this recommendation, the Council also recognises that the AAT is

becoming more and more the general administrative tribunal of the Commonwealth as envisaged by both the Kerr and Bland Committees. Separate specialist tribunals should only exist if specialisation can be justified.

Primary Decision Making

157. As intimated above, the process of primary decision making should reasonably be expected to reach the correct decision in all but a small proportion of cases and do so expeditiously.

THE PRIMARY DECISION MAKER

158. At present many primary decisions concerning repatriation pensions are made by three-member Repatriation Boards. The Council has noted, however, that some decisions are taken by single delegates. Single delegates of the Commission determine many claims for Service Pensions. The Commission has also conducted trials using single delegates to determine claims and applications by delegating to individual members of Repatriation Boards the powers under section 27(2) to accept claims. These trials, which have been largely confined to New South Wales, have contributed to some reduction in the time taken to determine claims.

159. It is considered by the Council that a multi-member body is not desirable at the first stage of the decision-making process and that it would be more desirable for primary decisions to be taken by individual delegates of the Repatriation Commission. There are several reasons for this view:

- The involvement of multi-member Boards in the making of a single primary decision is, in the Council's view, an unnecessary expenditure of resources. Single decision makers could deal with more cases and with greater expedition.
- Decisions by single officers have been successfully employed when delegates of the Commission have made such decisions in the past. For example, in its submission to the Council the Limbless Soldiers' Association of Australia recalled the fact that delegated powers were effectively used in the busy years of 1945 and 1946. The Legacy Club of Australia also referred to the appointment of Commission delegates in 1945 to assist in the determination of the large volume of claims emanating from Final Medical Boards of the three armed services during the general demobilisation on cessation of hostilities.
- The use of delegates of the Commission, rather than, for example, single members of the present Boards, enables the attitude of the Commission to be injected into the process at an early stage.

RECOMMENDATION 1

Repatriation Boards should be abolished and the *Repatriation Act* 1920 should be amended to provide that all entitlement claims and assessment applications be determined in the first instance by delegates of the Repatriation Commission.

160. The Council recognises that this proposal would affect the allocation of staff. The Repatriation Commission has calculated that under the proposed system 63 officers would have been required to cope with the intake of claims and applications in 1982-83. This estimate assumes a daily disposal rate per officer of 4 entitlement cases or 6 assessment cases. It should be noted, however, that the Council's proposals involve the abolition of Repatriation Boards whose membership currently numbers forty-two. Allowance also needs to be made for the fact that at present there are 19 full-time and 3 part-time delegates of the Commission who act as primary decision makers in relation to Service Pensions.

POWERS OF THE PRIMARY DECISION MAKER

161. The proposal that primary decisions should be made by a single person, rather than a 3 member Board, was supported by many of the submissions received. Some ex-service organisations submitted, however, that a primary decision maker should only be empowered to accept a claim in its entirety and should not be empowered to reject a claim in whole or in part. It was suggested that, where a claim was to be rejected in whole or in part, the officer should refer such cases to the Repatriation Boards or similar body for a primary determination to be made. The Council understands the reasoning underlying this view as being related to ex-service representation on the existing Boards.

162. It is a major concern of the Council, however, to minimise the number of cases proceeding unnecessarily beyond the primary stage. It can be expected that many claimants, when properly advised of the reasons for rejection of their claims, would not wish to pursue the matter further. To provide for consideration by both a single officer and a multi-member tribunal in all such cases is simply wasteful of administrative resources and may detract from the significance of the review functions exercised by such a tribunal.

163. There is in the Council's opinion little if any difference between, on the one hand, a single officer being empowered to determine an application, with adverse determinations automatically being referred to a tribunal, and, on the other hand, an officer only being empowered to approve a claim with applications in which no determination has as yet been made being referred to a tribunal. The absence of a determination is, in reality, a decision by the officer that he cannot approve it.

164. Considering the lack of any substantial difference between the two viewpoints, the Council believes that the view of ex-service organisations can be accommodated while still achieving the aims outlined above. Accordingly, it has been considered desirable to confer upon delegated officers of the Commission full power of decision making not restricted in the manner suggested. But where an entitlement claim is wholly rejected by an officer, it is envisaged that the claim will automatically be referred to the VAB for further consideration and the claimant advised accordingly. The Council also considers that an automatic referral system should operate in relation to adverse decisions on applications for assessment where the applicant receives no increase in the rate of existing pension.

165. It is not proposed that the automatic referral system should apply to decisions which are partly in the veteran's favour. Automatic referral would not operate, for example, where an entitlement claim based on multiple disabilities is allowed in respect of some incapacities but not all. Nor would automatic referral apply to assessment decisions where some increase is granted on an existing rate. If a claimant is dissatisfied with either the decision to disallow part of his entitlement claim or the amount of an increase he receives, he should be entitled to initiate an appeal to the VAB of his own accord. The Commission should inform him of his rights of appeal in the letter communicating the primary decision. The veteran should indicate on a form accompanying the decision letter whether he wishes to appeal to the VAB.

166. Further recommendations are designed to safeguard the interests of a claimant in having his case properly heard by the VAB. Automatic referral of an adverse decision to the Board will ensure that a claim or application does not fail simply because the claimant does not understand his rights fully. It would defeat this intention, however, if the review were then to proceed before the claimant was fully prepared. The Council has considered ways to safeguard against this possibility and has concluded that the ultimate control over the

progress of the claim should be in the hands of the claimant. The Council accordingly envisages that, on being notified of the primary decision and being given a copy of the reasons for the decision, the claimant should be informed that the claim has already been referred to the VAB and that he is entitled either to appear or be represented before the Board and to present further evidence or material if he so wishes. A form could be provided with the letter of notification on which the claimant can indicate his desire for the VAB to proceed and whether he either wishes to participate in the review or consents to the Board proceeding in his absence. It is not proposed that this arrangement would prevent the Board from dealing with interlocutory matters in accordance with its relevant procedures.

167. The Repatriation Commission has expressed its general approval of the concept of this arrangement but has raised the question of inserting a time limit in the legislation within which the claimant or applicant must notify the VAB of his or her wish for the Board to conduct a review. The Council agrees that a reasonable time limit should be fixed to avoid the unnecessary continuation in the system of claims and applications that are not pursued. It considers that the Board should have a discretion either to determine or dismiss a claim or application if the claimant or applicant has not notified the Board of his desire to proceed within 3 months of the date of notification to him of automatic referral of his or her claim or application. The Council considers, however, that such a provision might cause hardship in some cases where, for example, a veteran was unaware that his claim or application had automatically been referred and the VAB dismisses it in his absence. To provide for cases of genuine hardship, the Council considers that, where good cause is shown to exist, a claimant or applicant should be able to initiate a fresh appeal notwithstanding that an automatically referred appeal has been dismissed by the Board.

RECOMMENDATION 2

The *Repatriation Act* 1920 should be amended to provide that:

(a) where a delegate of the Repatriation Commission has made a determination concerning a claim for a repatriation pension or an application for assessment of such a pension, the claimant or applicant has a right of appeal to the Veterans' Appeals Board (referred to in recommendation 8 below); and

(b) (i) where an entitlement claim is wholly rejected; or

(ii) where no increase is made to the rate of an existing pension on an application for assessment;

the claim or application shall be referred forthwith to the Veterans' Appeals Board and notice shall be given to the claimant or applicant accordingly.

Within 3 months of being notified that a claim or application has been referred to the appeal being either lodged or automatically referred, and that the claimant be allowed 28 days or such further time as he requests in which to examine and comment on the report. It further suggests that delay beyond six weeks on the part of the Department, or an extension of the time available to the applicant for comment, should automatically extend the three month period by a further period equivalent to the delay or extension of time.

EVIDENCE BEFORE THE PRIMARY DECISION MAKER

168. It was emphasised in Part 1 of this report, that the availability of evidence to the primary decision maker is of great importance to the efficiency of a decision making system.

169. Several reasons have been recorded above for the failure of some claimants at present to produce evidence at the earliest opportunity (see para. 113). In the Council's view, what is required is a means of informing claimants of the nature of the evidence in the possession of

the Commission so that the relevance of other evidence or the need to produce such evidence to avoid an adverse decision becomes apparent.

170. The Council notes the success of the pilot study on section 24AB procedures under taken in South Australia which is discussed above at paras 40-1. In particular, the practise of providing the claimant with the comprehensive report of the evidence in relation to a claim together with an invitation to add or comment upon such evidence produced positive responses from some claimants who made available evidence which might otherwise not have been produced until a later stage.

171. In considering whether this practice should be extended the Council has been guided by three primary objectives:

- the desirability of reducing the number of cases requiring reconsideration or review;
- the need to provide more efficient use of time and resources at the intermediate and final review stages; and
- the need to avoid imposing impracticable burdens on the Department or the Commission.

172. The Council has concluded for the following reasons that it is neither desirable nor necessary to require the Department to prepare a formal section 24AB repatriation report in respect of every claim or application. First, such a requirement would place an undue burden on the Department's resources. Second, the preparation of a full report would be unnecessary in the many cases where the primary decision maker is of the opinion that a favourable decision is likely on the basis of the available medical evidence, the information supplied by the claimant or applicant, and information contained in the claimant's service records. Third, preparation of a full report in a case where a favourable determination is likely would produce the undesirable effect of delaying that favourable determination. Finally, there is no need to elicit the views of claimants or applicants in circumstances where a favourable determination is likely.

17.3 The Council would propose that a full section 24AB report be prepared and made available to claimants or applicants in respect of all appeals to the VAB. This would include an appeal brought by the claimant or applicant himself, and also appeals instigated as a result of an automatic referral in accordance with Recommendation 2(b) above. The Council envisages that a full section 24AB report would be automatically prepared on either the lodgement or referral of an appeal. The report would be forwarded to the claimant or applicant with an invitation to provide any amendment, comment or additional evidence. The Commission has indicated that this proposed arrangement would not impose an unacceptable burden on its resources.

174. The Council has considered whether the proposed arrangement concerning the preparation and disclosure of section 24AB reports would conflict with its earlier proposal that there should be a time limit of 3 months within which an applicant or claimant must contact the VAB to whom a claim or application has automatically been referred. To avoid a conflict and to ensure that the arrangement promotes early clarification to the issues before the Board hears an appeal, it will be necessary for the Department to prepare and forward a report and for the claimant to make any response to that report, within the 3 month period. The Council would suggest that the report should be prepared and forwarded within 6 weeks of the appeal being either lodged or automatically referred, and that the claimant be allowed 28 days or such further time as he requests in which to examine and comment on the report. It further suggest that delay beyond six weeks on the part of the Department, or an

extension of the time available to the applicant for comment, should automatically extend the three month period by a further period equivalent to the delay or extension of time.

175. The Council envisages that any response the claimant might wish to make within the allowed period would be considered by the Commission in accordance with appropriate internal administrative arrangements. The claimant's response might adduce new evidence or changed circumstances which, in the Commission's opinion, warrant a favourable decision. In these circumstances, the Commission could substitute a new determination in accordance with its powers under sections 31 or 98 (see paras 226-8) thereby obviating the need for the Board to determine the appeal.

RECOMMENDATION 3
Section 24AB of the *Repatriation Act* 1920 should be amended to provide that a copy of the report compiled by the Secretary of the Department pursuant to that section should be given to a claimant or applicant within 6 weeks of an appeal being lodged with or referred to the Veterans' Appeals Board. The claimant or applicant should be allowed 28 days or such further time as he requests in which to add to or comment upon the material in the report. In the event that the Department does not forward a copy of the report within 6 weeks or the claimant or applicant is allowed further time for comment, the 3 month time limit referred to in Recommendation 2 should be automatically extended by a period equivalent to that of the delay or extension of time.

176. It is to be hoped that the evidence brought together in the report and the contributions of the claimant will be the whole of the evidence necessary to determine a claim. Nevertheless, it can be expected that gaps may be evident to the officer making the primary decision. Much time and inconvenience to the parties could be saved if this officer were then able to call for further evidence and material to be provided. The Council therefore sees advantage in empowering primary decision makers, where it appears to them that the material before them may not be the whole of the evidence relevant to the claim to be determined, to seek further evidence and material from either or both the claimant and the Department. It is not appropriate that there should be any sanction upon the claimant for a failure to provide such evidence. In the repatriation context, it is sufficient that there be the prospect of an adverse decision if the evidence is not provided.

RECOMMENDATION 4
A delegate of the Commission should be empowered to seek further material from the claimant or applicant and/or the Department where it appears to him that the evidence before him may not be the whole of the available evidence relevant to the claim or application to be decided.

INFORMAL INTERVIEWS
177. The Council considers that it would assist in clarifying issues and in speeding up the determination of claims if legislative provision were made for an informal interview to be held between the determining officer and the claimant where the claimant so requests or where a determining officer considers that an interview would assist him in reaching a decision and the claimant is willing to participate. The Council envisages that a determining officer may wish to invite the claimant to attend an informal interview where, for example, the officer is minded to make an adverse decision but considers that the claimant should be given an opportunity to comment on or add to any aspect of his claim.

RECOMMENDATION 5

The *Repatriation Act* 1920 should be amended to authorise the holding of an informal interview between a delegate of the Commission and a claimant or applicant where the claimant or applicant so requests or where the officer so requests and the claimant or applicant is willing to participate.

REASONS FOR DECISIONS

178. A written statement of reasons for a decision serves the dual purpose of assisting in the making of a sound decision and informing the claimant of the basis of that decision. Where the claimant has an opportunity to hear the reasons for the decision he is better able to make a sensible judgment as to the prospects of success if he pursues the claim.

179. Although an aid to decision making, the writing of reasons is time consuming. Where, as in the repatriation context, large numbers of decisions must be made, there is a danger that an additional requirement to provide reasons for each decision may cause delays. It was for this reason that many submissions to the Council preferred that reasons be given only for adverse decisions. On the other hand, the Commission stressed the importance of knowing the reasoning of a determining authority in accepting a claim or appeal. This was considered desirable for a variety of reasons, including the possibility that a future decision might be taken in relation to the same claimant for a condition which is regarded as a sequela.

180. The Council accepts the Commission's submission and adds that reasons for favourable decisions would also serve to educate claimants about the system and, particularly, assist their advisers to be better informed. Such benefits would, in the longer term promote the smooth running of the system and help to reduce delays. The Council does not, however, envisage that primary decision makers should provide a formal statement of reasons such as would be appropriate to a review tribunal. Rather, a short statement setting out the reasons for a decision and the terms of that decision would suffice.

RECOMMENDATION 6

The *Repatriation Act* 1920 should require a delegate of the Commission to provide a claimant or applicant with a written statement of the reasons for a primary decision and the terms of that decision.

Appeal Rights Relating to Service Pensions

181. Provisions relating to entitlement to, and assessment of, Service Pensions have already been outlined (see paras 21-5). It has been explained that the value of these pensions is tied to the value of specified pensions under the Social *SecurityAct* 1947. Although there is a close relationship between Service Pensions on the one hand and age and invalid pensions under the Social Security Act on the other hand, it is not possible to receive an age or invalid pension in addition to, a Service Pension. Arrangements can, however, be made for a pensioner to transfer from one form of pension to the other.

182. The Council has observed that an inconsistency currently exists in relation to the appeal rights of social security claimants compared with those of applicants for Service Pensions. Under the provisions of the *Social Security Act* 1947, a person dissatisfied with a decision of an officer of the Department of Social Security may appeal to the Director-General (s.15). In practice, the appeal is made to a Social Security Appeals Tribunal who may make a recommendation to the Director-General. If either the recommendation or the Director-General's response to it is unfavourable to the claimant, he may apply to the AAT for a review of the decision (s.15A).

183. It must be emphasised that the appeal rights of social security claimants relate to any 'determination, direction, decision or approval of an officer' under the Social Security Act. Thus a claimant for an age or invalid pension, for example, has a right of appeal in relation to

such questions as his assessed level of income, a pension rate determination, or a decision concerning payments owed where an incorrect payment has occurred.

184. It is notable that claimants and applicants for Service Pensions under repatriation legislation do not have such extensive appeal rights as those enjoyed by social security claimants. Under section 107VE of the *Repatriation Act* 1920, an applicant for a Service Pension has a right of appeal to the RRT but only where the Commission has refused an application for a Service Pension under section 85 solely on the ground that the applicant is not permanently unemployable.

185. Even more significantly, it appears that the existing scope of review of Service Pension decisions is considerably narrower than that which applies to other repatriation pensions. Since review by the RRT is limited to the single issue of the applicant's permanent unemployability, the RRT lacks jurisdiction to review other aspects of primary decisions concerning Service Pensions involving such matters as assessment, the application of an income test, or whether the applicant served in a theatre of war.

186. Review of Service Pension decisions by the Repatriation Commission does not, in the Council's opinion, provide an adequate solution. The Commission's appellate jurisdiction to review determinations of Repatriation Boards under section 28 would appear in principle to encompass most issues relating to entitlement to, and assessment of, Service Pensions but in practice such appeals deal exclusively with the issue of permanent unemployability. The Council was informed by the Commission that the reason why such appeals are so confined is that permanent unemployability is the only issue which is determined by Repatriation Boards concerning Service Pension applications. Other issues are determined by delegates of the Commission and section 28 is inapplicable to those decisions.

187. The Council has also noted that the Commission or a Board is empowered by section 98 of the *Repatriation Act* 1920 to cancel or vary the rate of a Service Pension if the Commission or Board is satisfied that the pension should be cancelled or that the rate is greater or less than it should be. There is, however, no right of appeal to the RRT from a decision taken under section 98.

188. The Council considers that the inconsistencies which exist between the scope of review of Service Pension decisions and other repatriation decisions are anomalous and unjust. In the Council's view, the scope of review should be similar in respect of all repatriation pension decisions. The Council has concluded that primary decisions in relation to applications for Service Pensions should be reviewable by the VAB and, ultimately, by the AAT in accordance with recommendations made elsewhere in this Report in relation to other repatriation pensions.

189. The Council does not consider, however, that the automatic referral system (see paras 164-7) should apply to Service Pensions. The extended rights of review recommended by the Council in relation to Service Pension decisions constitute new entitlements and the workload likely to be generated by this recommendation is uncertain, particularly in view of the Government's announced intention to introduce an assets test in determining entitlement to Service Pensions. The Council has concluded that a veteran who is dissatisfied with a Service Pension decision should himself initiate an appeal to the VAB.

190. The Council has emphasised that at this stage it is difficult to assess the practical ramifications for the caseloads of the Commission, the VAB and the AAT of the Council's

recommendation that the ambit of review of Service Pensions be extended. Current statistics relating to the number of appeals taken from Service Pension decisions to the Commission (s.28) and the RRT (s.107VE) provide little guidance in this matter since the existing ambit of review is confined to the issue of 'permanent unemployability'. The Council is recommending that the ambit of review be considerably widened to encompass any decision or determination relating to a Service Pension application. In view of the difficulties of assessing the likely practical impact of the Council's recommendation, it may be necessary to consider the question of the appropriate timing in implementing this particular recommendation.

191. In recommending that the ambit of review be extended, the Council has noted that its proposal may increase expenditure on Service Pensions. This expectation is based not only on the likelihood of more primary decisions being set aside than occurs under the existing review system, but also on the fact that the 'reverse' onus of proof provisions of the Act (paras 46-7) apply to Service Pensions.

RECOMMENDATION 7
The *Repatriation Act* 1920 should be amended to provide claimants and applicants for Service Pensions with the same appeal rights as are available to claimants and applicants for other repatriation pensions.

Intermediate Review
192. It is the Council's view that a two tier system of external review is desirable in a large volume jurisdiction such as repatriation. It is envisaged that many appeals will be resolved at an intermediate level of review, thereby obviating the need for further review by the ultimate review authority. The Council envisages, however, that the roles of the two review tribunals will be complementary. The intermediate review tribunal should be designed to achieve a relatively expeditious, economical and informal means of review. The final review tribunal should provide an opportunity not only for individual cases to be considered in greater depth, but also for consideration to be given to the development and enunciation of principles of general application for the future guidance of primary decision makers and the intermediate review body.

193. The Council anticipates that an intermediate level of review will limit substantially the number of cases proceeding to the final review tribunal thereby allowing it to discharge its proper functions. Not only should this occur as a direct consequence of incorrect primary decisions being revised by the intermediate review tribunal, but it is also expected that an intermediate level of review would provide an opportunity for the Commission to reconsider its own position and rectify any errors in its delegates' decision by exercising its review powers under sections 31 and 98 of the Act. The effect of more correct decisions being taken at an earlier stage of the decision making process should be to mitigate the existing problem of delay in disposing of claims.

OPTIONS FOR REFORM
194. Having concluded that an intermediate level of review should be established, the Council has considered which body should perform those review functions. The following options were considered:

- rely exclusively on the Repatriation Commission's existing power of review under section 31 of the Act;
- convert the Repatriation Boards into an intermediate review tribunal;
- modify the RRT; or

- establish a new tribunal.

These four options are now discussed in more detail.

Repatriation Commission

195. The Council concluded for the following reasons that the Commission's existing power of review under section 31 of the Act would not provide an adequate means of intermediate review of primary decisions. First, in view of the Council's earlier recommendation that primary decisions should be taken by delegates of the Commission, it would be inappropriate for the Commission to constitute an intermediate level of review. It is the Council's view that an independent tribunal is necessary at this level if the flow of the cases to the final review tribunal is to be checked and the problem of delay in the final disposition of claims reduced. Second, the Council has noted that the Commission's existing power of review would be ineffective in controlling the number of Service Pension claims proceeding to the final review tribunal because such pensions are currently exempt from the section 31 power.

Repatriation Boards

196. The Council considers that the arguments are finely balanced on the question whether the Repatriation Boards should become the intermediate review tribunal. In favour of this option are factors such as the familiarity with which the Boards are known by claimants and ex-service organisations; the knowledge and experience of Board members in repatriation matters; and the existing powers, procedures, and 3 member constitution of the Boards which make them readily suited to perform review functions. On the other hand, the Council considers that several difficulties would arise if the existing Boards were to undertake the proposed review function. In the Council's view, the envisaged role of the intermediate review tribunal in the repatriation system is so fundamentally different from the Boards' current and traditional function as primary decision makers, that it would be undesirable for the Boards to assume that new role while retaining their existing structure and appearance. If the new system of decision making proposed by the Council is to be successful, it is important that the role of the intermediate review tribunal be clearly understood. In the Council's opinion, it would be a potential source of confusion and misunderstanding if the Boards were to be retained yet adopt a fundamentally different function from that which they have traditionally performed.

Repatriation Review Tribunal

197. The Council has given careful consideration to the question whether the RRT should discharge the proposed intermediate review function. Many of its features would appear to be well suited to the role envisaged for the intermediate review body. The Council has concluded, however, that it would be undesirable to modify the RRT to undertake the proposed intermediate review function. The Council is concerned that the new system of decision making it proposes should be perceived to be a fundamental reform of the existing system. In particular, the Council has sought to devise a system which will avoid or reduce the identified deficiencies in the existing system. It has already been suggested that the existing problem of delay in the final disposition of claims is attributable in part to the unnecessarily large number of cases proceeding to the RRT (paras 132-8). There are several reasons why so many claims proceed to the RRT (para. 135) and the Council has concluded that a philosophy appears to have developed within the framework of the present repatriation system which favours recourse to the RRT almost as a matter of course where an adverse decision is obtained. In the Council's view it is more likely that this philosophy would be carried over to the proposed new system if the RRT were to be retained as an

intermediate review tribunal. The Council is concerned that the primary objective of reducing the current major problem of delay would be defeated if this philosophy were to persist.

198. The RRT currently performs a review function which differs from that proposed for the intermediate review authority. Despite its large caseload, the RRT is attempting to provide a standard of review which is higher than that to be expected of an intermediate review body. Although the AAT may review decisions referred to it by the President of the RRT the limited scope of the referral power and the infrequency of its exercise prevent the RRT from being accurately described as an intermediate review tribunal. The Tribunal has only been in existence since 1979, but the review functions it performs have a much longer history and are deeply entrenched since it replaced the War Pension Entitlement Appeal Tribunals and the Assessment Appeal Tribunals.

A New Tribunal

199. The Council has concluded that the option of establishing a new tribunal to perform the intermediate review function is to be preferred. The establishment of a new tribunal would emphasise the fact that the Council's proposed system of repatriation decision making is different to the present system. In particular, its establishment would underline the significant role to be performed by the intermediate review tribunal under the proposed new system. It is the Council's view that in the context of the repatriation system, it is preferable to create a new tribunal with appropriate powers and procedures to conduct an intermediate review rather than adapt an existing tribunal or board whose traditional and established functions differ from the role envisaged for the intermediate review body.

200. For convenience, the new tribunal recommended to be established as an intermediate review body is referred to as the Veterans' Appeals Board.

RECOMMENDATION 8

A Veterans' Appeals Board should be established under the *Repatriation Act* 1920 as an intermediate review tribunal hearing appeals on the merits from primary decisions made by delegates of the Commission relating to claims and applications for repatriation pensions.

VETERANS' APPEALS BOARD

201. Having recommended the establishment of a VAB to perform the functions described above, the Council has considered practical matters concerning the structure and operation of the VAB. The Council is particularly concerned to ensure that the Board will be of an appropriately high status and calibre to enable it properly to perform its important intermediate review functions. In the Council's view, the Board should be modelled to some extent on the RRT but consideration has also been given to ensuring that the Board is endowed with powers and procedures which will enable it to discharge its novel functions.

Composition and Constitution

202. In the Council's opinion, following the model of the RRT, the VAB should consist of Presidential Members - the President and a number of Deputy Presidents - Medical Members, Services' Members and other Members appointed by the Governor-General.

203. The Council considers that, like the RRT, the VAB should exercise its jurisdiction in panels of three. In non-medical cases, the Board should normally be constituted by a Presidential Member, a Services' Member and another member. In cases involving medical issues, the Board should be constituted by a Presidential Member, a Services' Member and a

Medical Member. In cases of sufficient importance the President should be empowered in his discretion to constitute the Board as the President, a Deputy President and a Services' Member. The President should preside at all proceedings at which he is present and, in his absence, a Deputy President should preside.

204. The Council considers that flexibility is essential in locating the Board's hearings. It has been noted that the RRT is entitled to sit at such places in Australia or in an external Territory as may be convenient (para. 76) and it is the Council's view that a similar provision should apply to the VAB.

205. The Council has attempted to calculate how many Board panels are likely to be required if its recommendations concerning primary decision making and intermediate review are implemented. The Repatriation Commission has estimated that approximately 17 such panels would be required if an automatic referral system were to operate as recommended by the Council. The Council would emphasise, however, that this figure should only be used as a general guide. The figure is based on the broad assumptions that a panel could dispose of 4 cases per day and that present trends in relation to the percentage of unfavourable primary decisions being taken will continue. The Commission has accordingly assumed that 50% of all first claims and claims for acceptance of additional disabilities, and 25% of applications for increase, would be referred to the VAB. However the Commission's calculation does not take account of the fact that the Council's earlier proposals are expected to increase the current percentage of favourable primary decisions and hence reduce the number of appeals. Nor does it take into account the Council's recommendation that the ambit of review of Service Pensions should be extended.

206. The Council has noted that the number of VAB panels likely to be required under its proposals might generate difficulties in terms of uniformity of procedures and consistency of decision making. It is the Council's view that these potential problems could be combated by organising the VAB on a national basis and providing a central administration. The Council would oppose the Board being organised on a State basis as currently applies to Social Security Appeals Tribunals.

Membership

207. In the Council's view, appointment as President should be restricted to a person who has been enrolled as a legal practitioner of the High Court, the Federal Court, or of the Supreme Court of a State or Territory for not less than five years. A person should be eligible for appointment as a Deputy President if he is enrolled as a legal practitioner of any of the above courts, has obtained a degree in law of a university, or has in the Governor-General's opinion special knowledge or skill which is of substantial relevance to the duties of a Deputy President. Other members should be appointed on the basis of the Governor-General's opinion that they have special qualifications or skill.

208. The Council has assumed that present members of Repatriation Boards and the RRT would be considered for appointment at appropriate levels to the VAB.

- Tenure

209. It is the Council's view that all members of the VAB should be eligible for appointment to the Board for a period not exceeding seven years, and should be eligible for reappointment. Similar provisions apply at present in relation to the terms of appointment of members of the RRT.

- Services' Members

210. Since the VAB will be a new review authority, the Council has given careful consideration to the question whether its membership should include Services' Members. At present, both Repatriation Boards and the RRT include Services' Members who are selected exclusively from lists submitted to the Commission by ex-service organisations.

211. The Council has considered this requirement from two points of view:

- the strong feeling amongst ex-service organisations that the position of a claimant cannot be fully appreciated by persons without a service background; and
- the need to maintain a high quality of decision making which is, and is seen to be, independent.

212. Several submissions dealt with the position of the Services' Members. It is apparent that the presence of such a person enhances the confidence which a claimant may have in a primary decision-making or review authority. The principal reason advanced for this is the ability of the Services' Member to comprehend the experiences of ex-servicemen.

213. In the Council's view, a service background is appropriate in the making of decisions in the repatriation system. The Council notes the view of the Kerr Committee that members of tribunals 'should be chosen for their expertise in a particular field' (Commonwealth Administrative Review Committee, Parlt. Paper No. 144, para. 321). A knowledge of the defence forces and their structure and of service conditions and hazards may assist a decision maker in properly appreciating the merits of a claim.

214. The Council would add, however, that knowledge of service conditions is only one of the qualities desirably possessed by Services' Members of the VAB. Factors such as the complexity of the Act, the importance to claimants of decisions made under the Act, and the difficult tasks required of the Board in fact finding and evaluating conflicting opinions indicate that decision-making ability is the primary quality to be possessed by Board members. The Council believes that proper weight must be given to these various qualities in both nominating and selecting members of the Board.

215. The Council considered whether the existing requirement that Services' Members be appointed exclusively from lists submitted by ex-service organisations should be discontinued to safeguard both the reality and appearance of independence of the Board. The requirement that Services' Members be appointed from such lists would detract from the appearance of the Board's independence. While the Council attaches great weight to this consideration, it has concluded for the following reasons that it should not recommend any change in the existing requirement that the initial appointment of Services' Members of the VAB should be confined to persons named on lists submitted by ex-service organisations. First, ex-service bodies have long possessed the power to control appointment of Services' Members to Repatriation Boards and the RRT, and the Council considers that such a well established power should continue in relation to appointments to the VAB. Second, it is the Council's view that the ramifications of such a power for the perceived independence of the VAB are acceptable in relation to an intermediate review body as long as the final review tribunal is independent.

216. The Council is aware of the current practice whereby the reappointment of Services' Members to the Boards and the RRT is dependent upon renomination by an ex-service organisation. The Act itself does not expressly require renomination as a condition of reappointment, but simply provides that members are eligible for reappointment. As the

current practice may be seen as subjecting Services' Members to inappropriate pressure in fulfilment of their adjudicative responsibilities, the Council considered whether to recommend that the legislation should be amended, if necessary, to ensure that the reappointment of such Members should not be dependent upon renomination by ex-service organisations. While it would not wish to be taken as supporting the existing practice the Council concluded that legislation aimed at is discontinuance would inappropriately fetter the Government's exercise of its discretion in this area. Again its attitude was based upon the assumption that the tribunal finally responsible for review on the merits would be fully independent.

RECOMMENDATION 9
Existing provisions of the *Repatriation Act* 1920 concerning such matters as the composition and constitution of the Repatriation Review Tribunal, places of sitting, the appointment and qualifications of its members (including Services' Members) and their terms of appointment, should generally be used as models for the Veterans' Appeals Board.

Relationship with the Repatriation Commission
217. Repatriation Boards are currently administered by the Commission but in discharging their functions the Boards act independently of the Commission subject to the Commission's power to issue statements of principle under section 15 (para. 37). The Council considers that similar arrangements should apply to the VAB. Consideration was given to the desirability of establishing the Board as wholly independent of the Commission, but the Council has concluded that is not necessary provided that the final review authority is independent.

Powers and Procedures
218. The present powers of Repatriation Boards are set out in section 26 of the Act (para. 42) and, in the Council's opinion, could be used as a model for the VAB. Provision should be made for the Board to conduct oral hearings, summon witnesses, take evidence on oath, and require the production of evidence.

219. A primary objective in recommending the establishment of an intermediate tier of review is to mitigate the present problem of delay caused in part by the large number of cases which proceed to the final review tribunal. If the intermediate review process is to achieve this desired result, it is in the Council's opinion essential that claimants be given the opportunity to participate in the Board's proceedings where such participation is either thought desirable by the Board or is sought by the claimant. It is not envisaged, however, that an unwilling claimant should be compelled to participate in the Board's proceedings.

220. The Council does not consider that formal hearings should be regularly conducted by the VAB with evidence being given on oath or cross-examination of witnesses as standard procedures. Rather, proceedings should be conducted with as little formality and technicality, and with as much expedition, as all the circumstances of the case permit. The opportunity of presenting a case orally and informally will not only help some claimants to present their cases effectively and assist the Board in reaching a decision, but will also reduce the prospect of adverse cases unnecessarily proceeding to a higher review tribunal. Attendance in person by a claimant should facilitate the introduction of evidence by him immediately it is appreciated that it is relevant. This, together with the ability of the Board to assess the claimant in person, will help to achieve a greater likelihood of the correct decision being made. It is the Council's view that an interview should be provided if the claimant so

requests, and the opportunity of an interview should be offered to a claimant before the Board reaches a decision which is in any respect adverse to him.

RECOMMENDATION 10
Legislation should provide for the Veterans' Appeals Board to conduct oral hearings, summon witnesses, take evidence on oath, and require the production of documents. The Veteran's Appeals Board should be required to provide a claimant with a hearing if the claimant so requests, and to offer the opportunity of a hearing before reaching a decision which is in any respect adverse to the claimant. Proceedings should be conducted with as little formality and technicality, and with as much expedition, as the requirements of all relevant enactments and a proper consideration of the matters before the Board permits.

Reasons for Decisions
221. The Council considers that the VAB should be obliged to give reasons for its decisions which should include its findings of fact. The Council has already stated its attitude to the giving of reasons by delegates of the Commission who will be responsible for primary determinations (paras 178-80). Although the Council considers that the Board should not be required to meet the standards expected of a final review authority, it is of the opinion that the explanations of the Board's decisions should be more detailed than those provided by primary decision makers. Under the scheme as envisaged, the VAB would normally conduct oral interviews with claimants in appropriate cases, as proposed in Recommendation 10. Such procedures should often assist the Board to provide a clear statement of the reasons for a decision. An adequate statement of reasons will provide further guidance to both claimants and the Commission.

222. The Council considers that the VAB should state its decisions in writing but greater flexibility should exist in the giving of reasons. In order to avoid delay, the Board should be able to give its reasons orally, but should be obliged, if requested by one of the parties, to state its reasons in writing within 28 days of receiving such a request.

RECOMMENDATION 11
The *Repatriation Act* 1920 should require the Veterans' Appeals Board to give its decisions in writing and to state the reasons for its decisions, including findings of fact. The Act should provide that reasons may be stated orally but the Board should be obliged, if requested by one of the parties, to give is reasons in writing within 28 days of such a request being made.

Legal Representation
223. The Council has emphasised the important role to be performed by the VAB as an intermediate review authority in reducing the number of claims proceeding to the final review tribunal. Just as the holding of interviews and hearings will assist in disposing finally of many claims at this level of review, so too will be the ability of the claimant to be represented at such an interview by a person of his own choosing, whether legally qualified or not. It has already been emphasised that it is not envisaged that the Board will generally conduct formal hearings. The presence in appropriate cases of a representative - whether legally qualified or not - may assist the Board to reaching speedier determinations by clarifying certain aspects of a claim. Moreover, the presence of an experienced representative may assist the Board in applying difficult provisions of the repatriation legislation, such as those provisions dealing with the onus of proof which have been the subject of considerable litigation in the past.

RECOMMENDATION 12
For the purposes of the Veterans' Appeals Board's jurisdiction, no restrictions should be placed on the claimant's or applicant's freedom to be represented, if he wishes, by a person of his own choice.

REPATRIATION COMMISSION
224. As stated above, there is a need in the opinion of the Council for a rationalisation of the existing means whereby a decision may be reviewed or reconsidered (paras 126-9). One area in which such a rationalisation is appropriate is in the functions now entrusted to the Repatriation Commission.

225. Of these functions, it is the conclusion of the Council that there should be a repeal of the appellate role of the Commission conferred by section 28 of the *Repatriation Act* 1920. The Council regards it as more appropriate that the Commission, as the authority administering the *Repatriation Act*, should have the role of assisting the VAB by explaining the basis of primary decisions being reviewed by the Board and, where necessary, defending those decisions before the final review authority as a party to those proceedings. It has already been recorded that the Commission is not necessarily opposed to the repeal of its present appellate function (para. 128).

226. The ability of the Commission to review decisions at any time is, however, a positive means of reducing delays. It is of obvious benefit to permit the Commission to concede a claim whether before or after an application for further review, or before or after the hearing to which it relates. The Council understands the provisions of section 31 to operate in this way at present, and accordingly favours the retention of that section. It notes that the Commission itself also favours this more limited role.

227. The Council has noted that section 31 does not currently apply to Service Pensions. Under section 98, the Commission may, upon investigation, cancel or vary the rate of an existing Service Pension, but this section would not empower the Commission to concede a claim or application where a Service Pension had not been granted initially. The Council has concluded that either section 31 or section 98 should be amended to empower the Commissioner to concede a claim or application for a Service Pension without the Commission having to resort to external review to have its delegate's decision set aside.

228. The Council envisages, therefore, that the Commission could rely on its powers under either section 31 or 98 (as amended) to reverse a primary decision of its delegate without having to appeal that decision to an external review authority. The Council foresees no difficulty in the Commission exercising its powers to vary or revoke a primary decision which is unfavourable to a claimant. But where the power is used to vary or revoke a primary decision which is favourable to a claimant, the Council believes that the claimant should be able to have the Commission's action reviewed by the VAB.

RECOMMENDATION 13
The *Repatriation Act* 1920 should be amended to empower the Repatriation Commission to reverse a primary decision of its delegate in relation to a claim or application for a Service Pension. The Veterans' Appeals Board should have jurisdiction to review the exercise of the Commissions power which produces a decision which is adverse to the claimant or applicant.

229. A review by the Commission would be undertaken within the Commission and should not suspend or otherwise delay any review hearing then pending or under way. For this reason, the Council has further concluded that the provisions made for review or reconsideration by the Commission under section 28 and Division 4 of Part IIIA (which deal with appeals to, and reviews and reconsiderations by, the Commission) are not appropriate and would not add to the Commission's powers under sections 31 and 98.

RECOMMENDATION 14
Section 28 and Division 4 of Part III of the *Repatriation Act* 1920 should be repealed.

230. As the Commission will have the status of a party seeking to uphold a primary decision before the ultimate review body, the Council sees it as proper for the Commission itself to have the right to appeal to that ultimate review authority from a decision of the Board which is contrary to the primary decision. As the authority administering the Act, the Commission will be concerned to see that important principles of general application are settled authoritatively after the greatest possible examination. It is for this reason that the present system provides for reference of cases from the RRT to the AAT at the request of the applicant or the Commission.

231. The Council has noted the view expressed in some submissions that it should not be open to the Commission to appeal from decisions favourable to claimants. The Council recognises that it may be appropriate for the Commission, as a matter of policy, to give consideration to paying the reasonable costs of claimants when it makes such an appeal.

RECOMMENDATION 15
An appeal from a decision of the Veterans' Appeals Board should be initiated either by the applicant or claimant or, where the decision of the Board is contrary in any particular to the original primary decision, by the Commission, and the *Repatriation Act* 1920 should provide accordingly.

Final Review on the Merits
232. In considering the question of final review 'on the merits in the context of repatriation decisions, the Council has been influenced by several factors.

233. First, the Council has noted that the present system is characterised by the large number of cases reaching the RRT to the detriment of that Tribunal's ability to consider those cases adequately and expeditiously and to provide guidelines for decision making in future cases. The Council's purpose has accordingly been to devise a system in which the great majority of cases will be determined at the stage of either primary decision making or intermediate review. It is intended that the final review tribunal will not be required to deal with a large number of cases. The envisaged role for the final review tribunal is to hear and determine those matters which, by reason of their complexity, have not been capable of determination at an earlier stage. Such cases would include those in which the task of fact finding, the evaluation of opinion, or the ascertainment of the law, raise particular difficulty. The final review tribunal should also be available to hear and determine those matters which may involve important principles of wide application. The decisions of the final review tribunal should not only be soundly based and authoritative for the individual application under consideration, but the reasoning should provide clear guidance for future decision making at all levels.

234. Second, the Council firmly believes that the final review tribunal in the repatriation system must be of sufficient status and authority to command the respect of repatriation claimants, veterans generally, ex-service organisations, persons responsible for administering and enforcing repatriation legislation, review courts, and ultimately, the community as a whole. While that desirable status may be difficult to define in precise terms, the Council believes that its indicia are to be found in such factors as the tribunal's independence, its powers and procedures, the qualifications of its members, the methods of their appointment, their tenure and remuneration.

235. Third, the Council has been concerned to devise a system of final review that best serves the interests of veterans and their dependants. The Council can see no justification for accepting a lower standard of justice for repatriation claimants than applies to other social security claimants. The benefits sought by repatriation claimants may represent the whole or a major part of their means of subsistence. Decisions which may have such a significant impact on the livelihoods of repatriation claimants should be subject to ultimate review on the merits by an independent tribunal which offers a high standard of procedural fairness and a quality of substantive decision making that is both clear and authoritative.

236. In addition, the Council has sought to give effect to the special debt owed to veterans and their families by the community. This debt is recognised in provisions of the *Repatriation Act* 1920 such as section 47 dealing with the 'reverse onus of proof'. The debt owed to veterans also justifies the Council's primary objective of devising a system of final review that guarantees an appropriately high standard of justice for all veterans and their dependants.

237. Fourth, in devising a system of external review of repatriation decisions on their merits, the Council has given close consideration to the likely effects and costs of such a system. The Council has been guided in its consideration of these matters by the *Report on Review of Commonwealth Administration* (AGPS, January 1983 (see paras 5.10-5.40)). That Report placed heavy emphasis on the need to consider the effects and costs of systems of review in administrative law generally. The Report recommended that an independent assessment of the effects and costs of those systems of review be carried out to ensure that those systems:

(1) provide the optimum means of recognising the rights of individual citizens in dealings with government and the bureaucracy, having regard particularly to the overall public interest in economical and efficient administration;
(2) are kept as simple as possible from the point of view of the citizen, particularly by avoiding undue legal formality in situations where the general run of uncontested cases is dealt with by normal official processes;
(3) avoid any unnecessary duplication because of recourse to a range of avenues of redress; and
(4) justify their cost to the taxpayer.

The Council has carefully considered these matters in the specific context of final review of repatriation decisions.

238. The Council has earlier recommended the establishment of the VAB as an intermediate level of review. If the Council's proposals concerning that Board's organisation and structure are implemented, the effect will be to amalgamate many features of the Repatriation Boards and the RRT in the VAB. In adopting this approach, the Council recognised that an effect would be that the RRT (at least as currently established) could no

longer continue to be responsible for the final review of repatriation decisions on their merits. Before settling on its recommendations relating to intermediate review, the Council gave a good deal of consideration to the question whether the RRT should continue to be the final review body or whether those functions should be allotted to the AAT. In addressing this question, consideration was given to such factors as:

- the need to provide veterans with a final review tribunal of an appropriately high standard capable of delivering high quality decisions;
- the status, independence, constitution, powers and procedures of the AAT and the RRT;
- the manner in which the final review authority is viewed by the ex-service organisations and ex-servicemen generally; and
- the comparison between a specialist tribunal and a general administrative appeals tribunal.

Those arguments which may be cited in support of the RRT as the most appropriate final review authority are as follows. First, this Tribunal has a specialised expertise in matters affecting veterans, such expertise having been accumulated since its establishment in 1979. Although it is a Tribunal of recent origin, it has in the past 3 years determined a great number of applications for review and this number has itself dictated an awareness of issues in need of examination. Second, the Tribunal has since its inception received the support of ex-service organisations. To some extent this is because the fact that some of its members are drawn from a list compiled by those organisations. It has been felt desirable by ex-service organisations to have a tribunal which can be specifically identified with matters affecting veterans, rather than to have such claims determined by a tribunal with a more broadly ranging charter.

239. The Council has carefully considered these arguments but has concluded that the more appropriate final review authority is the AAT. Several reasons have led the Council to favour the AAT as the final review tribunal. First, the AAT assures the high standard of decision making which is required of the final review tribunal in the repatriation area. It is the Council's opinion that the RRT as presently constituted does not meet that high standard. Second, it is the Council's view that, in the absence of special reasons to the contrary, a review jurisdiction should normally be vested in the AAT rather than in a specialist tribunal. These reasons are now elaborated in more detail.

THE AAT AND RRT COMPARED

240. It is the Council's view that the AAT will assure the high standard of procedural fairness, authority, independence and clarity of decision making demanded of the final repatriation review tribunal which veterans clearly deserve. The higher standard of decision making offered by the AAT as opposed to the RRT can be demonstrated by a brief comparison between the two tribunals of such matters as independence, qualifications for membership and remuneration, the ways in which the tribunals may be constituted, and their powers and procedures.

Independence

241. Independence is generally regarded as being an essential feature of an adjudicative body where that body is exercising judicial functions in the sense of determining rights and obligations. The influential Franks Committee's *Report on Administrative Tribunals and Enquiries* (Cmnd. 218 of 1957) identified three prime desirable characteristics of administrative review tribunals: openness, fairness and impartiality. By impartiality, the Committee meant 'impartiality to require the freedom from the influence, real or apparent, of Departments concerned with the subject matter of their decisions' (para. 42). The Committee

drew attention to the interrelationship between independence and such factors as methods of appointment and qualifications for membership.

242. The importance of independence and impartiality in administrative review was also given full recognition in the Parliamentary Debates preceding the establishment of the AAT Under section 13 of the Act, members of the Tribunal may be removed from office only upon an address by each House of Parliament. In his second reading speech, the Attorney-General referred to this provision as being designed 'to give the members of the Tribunal a proper independence from the executive Government' (*Parliamentary Debates*, House of Representatives, vol. 93, p. 1187). The Attorney emphasised that the Tribunal was not to be 'an appendage of Government departments'. He stated that the Tribunal 'is to be regarded as machinery provided by Parliament for adjudication rather than as part of the machinery of departmental administration'; and he concluded that, while the Tribunal was not an ordinary court, 'nothing less than a tribunal of full judicial status would be satisfactory for these purposes'. To ensure that the Tribunal 'should enjoy a high standing in the Australian community', the Attorney explained that the President and presidential members of the Tribunal were accorded the status of judges.

243. Both the Franks Committee's Report and the legislative history of the AAT Act indicate that a primary concern was to guarantee independence of administrative tribunals from government departments whose decisions they reviewed. But it is no less important that, as a matter of general policy, final review tribunals should be independent from all parties that appear before them, not just government departments. In the repatriation context, it is of considerable importance that the final review body should be seen to be independent of the Repatriation Commission, the Department of Veterans' Affairs, ex-service organisations, claimants and their representatives.

244. The AAT best fulfils the objectives of the reality and appearance of independence. Its members are appointed by the Governor-General under section 6(1) of the *Administrative Appeals Tribunal Act* 1975. In making appointments, the Governor-General normally acts on advice prepared by the Attorney-General. The Tribunal's independence is further underlined by the fact that it has its own Registries and is funded, both in terms of staff and facilities, through the Attorney-General's Department.

245. The provisions of the Administrative Appeals Tribunal Act relating to terms of appointment are designed to safeguard security of tenure and to assure the independence of its members. A presidential member of the AAT who is a Judge, or a Deputy President who is appointed as a full-time member of the Tribunal, holds office until the age of 70 years. A senior member who is appointed as a full-time member holds office until the age of 65 years. Other members, including part-time members, hold office for terms not exceeding seven years. Finally, it is significant that AAT members are required by the enabling Act (s.10B) to take an oath or affirmation of office which includes an undertaking that the member will 'faithfully and impartially perform the duties of that office'.

246. The Council has emphasised that in its view the final review tribunal in the repatriation area should not only be independent, but should also be seen to be independent. The Council has concluded that for a number of reasons it cannot be said that the RRT has the desired appearance of independence. This view is not unique to the Council. The Acting President of the RRT, Mr Basil Virtue, has himself drawn attention to a number of factors that derogate from the appearance of that Tribunal's autonomy and impartiality (see RRT's Annual Report for 1981-82, p. 8). He identified those factors as:

- Under the administrative arrangements of the Commonwealth, the Minister for the Department of Veterans' Affairs is responsible for the Repatriation Review Tribunal. The same Minister is also responsible for the Repatriation Commission, a party to all Tribunal proceedings. Furthermore, the Tribunal is serviced, in terms of staff and funds, by the Department of Veterans' Affairs. These arrangements cause some applicants to see the Tribunal as a mere extension of the system which produced the decisions they seek to challenge.
- Recommendations for the appointment and reappointment of Members to the Tribunal are usually made to the Minister through the Department or the Commission.
- Applications to the Tribunal are required to be lodged with the Secretary of the Department and, in practice, the Department determines the validity of applications without consulting the Tribunal.
- The reappointment of Services Members may be subject to renomination by organisations representing returned servicemen or their dependants.

247. The question of the RRT's apparent lack of independence was also raised by the Acting President at the Tribunal's Third Annual Conference (1982). He was particularly concerned with the arrangement whereby ex-service organisations could affect Services' Members' reappointments. Mr Virtue referred to the 'conflict of interests' faced by Services' Members whose 'continued livelihood is made dependent, in part, on retaining the patronage of an ex-service organisation'. The Acting President remarked that the question of independence was not merely a 'hypothetical' one and he added that 'attempts have been made through private correspondence to bring pressure to bear on members which will influence their decision making'.

248. The problem of lack of perceived independence on the part of Repatriation Tribunals is not new. The problem was adverted to at some length in the 1956 Annual Report of the No. 2 War Pensions Entitlement Appeal Tribunal (pp. 37-43). The problems then (as today) were the Tribunal's relationship with the Department and the Repatriation Commission, and the power of ex-service organisations to influence appointments and reappointments.

249. The Council would add that the Repatriation Review Tribunal's present image of independence is also tarnished to some extent by the provisions of the Repatriation Act dealing with terms of appointment. In contrast with the security of tenure enjoyed by full-time presidential and senior members of the Administrative Appeals Tribunal which safeguards their independence, all members of the Repatriation Review Tribunal are appointed for periods not exceeding seven years. Members cannot simply be appointed until retiring age (unless, of course, their retiring age is less than seven years away when they are appointed). Members are eligible for reappointment but it is believed that reappointments are influenced to some degree by both the Repatriation Commission and ex-service organisations.

Qualifications for membership

250. The status and authority of a tribunal can depend upon a number of factors including the quality and calibre of its members. Section 7A of the *Administrative Appeals Tribunal Act* 1975 sets forth the qualifications for appointment of a person to that Tribunal. These qualifications vary depending upon whether or not the appointment is to be at the level of a presidential member, a senior member, or a non-presidential member (other than a senior member). At the more senior levels, legal qualifications are necessary. For example, only Judges of the Federal Court are eligible for appointment as President, and appointment to the position of Deputy President is restricted to persons who have been enrolled as legal

practitioners for not less than five years. Senior members are appointed either on the basis of enrolment as a legal practitioner for not less than five years or by virtue of their special knowledge or skill.

251. Recent judicial decisions in the repatriation area have demonstrated the advantage of having available to the ultimate review tribunal persons with the status, skills and experience of Judges of the Federal Court of Australia so that an opinion may be expressed on difficult points of law and so that these points can be considered at the same time as the merits of a case. In its submission the Limbless Soldiers' Association of Australia saw as an advantage the 'uniformity and legal oversight' which would be gained by bringing the RRT under 'the wing of the AAT'.

252. Qualifications for appointment to the AAT are very different from those which apply to membership of the RRT. Sections 107VZH and 107VZJ of the *Repatriation Act* 1920 regulate qualification for appointment to the RRT. A person is not to be appointed to the position of President unless he has been enrolled as a legal practitioner for not less than five years. Appointment as a Deputy President is open to persons who are enrolled as legal practitioners or have obtained a degree in law of a university. Provision is also made for the appointment of legally qualified medical practitioners. No qualifications are prescribed for members who do not fall within one of the above categories.

253. The qualifications for tribunal membership are not, of course, the only factor that has a bearing on the authority and status of that tribunal. As the Acting President of the RRT has remarked in the Tribunal's Annual Report for 1981-82 (p. 8):

> If the Tribunal is to be a tribunal of real authority, it must be in a position to attract and hold suitable persons as Members. That, to a large extent, is dependent on a level of remuneration comparable to bodies of similar status.

It is significant that the Acting President drew attention to the unfavourable comparison between remuneration of RRT members and AAT members.

254. The status of the AAT is further enhanced by the variety of jurisdictions it offers. It is considered that a tribunal with a diversity of jurisdictions is more likely to attract and hold members of appropriate calibre than a tribunal with more limited jurisdiction.

Constitution

255. Flexibility in the manner of constituting the final review tribunal in repatriation is particularly important given the fact that cases in this jurisdiction vary widely in the degree of complexity and range of issues they raise.

256. There is considerable flexibility in the way in which the AAT may be constituted in the exercise of its review functions. In the absence of an express statutory provision to the contrary, section 21 of the *Administrative Appeals Tribunal Act* 1975 enables the Tribunal to be constituted in a manner ranging from a non-presidential member alone, to a presidential member who is a Judge and two other members. This flexibility not only allows a Judge to sit on cases raising legal issues, but also enables the Tribunal to be constituted in a way which would assist it in disposing of large numbers of cases should they arise.

257. The provisions relating to the constitution of the RRT do not permit such flexibility. The Tribunal is normally constituted by the President or a Deputy President, a Services' Member and one other Member (who must in some cases be a Medical Member – see

s.107VN(3)). If the President considers an entitlement matter to be of sufficient importance, he may constitute the Tribunal as: the President, a Deputy President, and a Services' Member. There is no provision in the Repatriation Act for the RRT to be constituted by one member alone.

Powers and procedures

258. The powers and procedures of the AAT and RRT are similar in some respects. Both tribunals, for example, are expected to operate in an appropriately informal manner. The AAT is not bound by the rules of evidence (s.33(1)(c) of the AAT Act) and is directed to conduct its proceedings 'with as little formality and technicality, and with as much expedition, as the requirements of the Act and of every other relevant enactment and proper consideration of the matters before the Tribunal permit' (s.33(1)(b)). Likewise, the RRT 'is not bound by technicalities, legal forms or rules of evidence' (s.107VG of the *Repatriation Act* 1920), and section 107W obliges the President to give directions as to procedure having regard to the need for proceedings 'to be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the Tribunal permit'.

259. In other respects, the powers and procedures of the two tribunals differ and the overall result is that the AAT has greater flexibility. First, express provision is made in the AAT Act 1975 for the holding of preliminary conferences (s.34) which provide an opportunity for disputed issues to be clarified, or possibly conceded, without the need for holding a full hearing. No such provision exists in relation to the RRT

260. Second, the AAT's powers in relation to an appealed decision are wider than those vested in the RRT. The AAT is empowered to affirm, vary or set aside the decision under review (s.43). In setting a decision aside, the Tribunal may substitute its own decision or remit the matter for reconsideration by the primary decision maker in accordance with any directions from the Tribunal. By contrast, the RRT is directed to set aside a decision under review and substitute its own decision (s.107VH) or to affirm that decision. The President of the Tribunal has a discretion to postpone a hearing and request the Commission to review a decision in the light of new evidence (s.107VL) but there is no general power to remit a matter for reconsideration in accordance with any recommendation or direction of the Tribunal.

A GENERAL OR SPECIALIST TRIBUNAL

261. It is the Council's view that, in the absence of special reasons to the contrary, a review jurisdiction in an area of Commonwealth administration should normally be vested in the AAT rather than in a specialist tribunal. This view is consistent with the conclusions of the Kerr and Bland Committees which both envisaged that a general appeals tribunal would be developed at the federal level. The Kerr Committee declared that a general appeals tribunal was to be preferred 'to the proliferation, as occasion requires, of specialised tribunals to cover all cases . . .' (Parlt. Paper No. 144 at para. 233). The Committee did not go so far as to say that a general tribunal should replace all existing specialist tribunals or that no new specialist tribunals would be established in the future. Rather, the Committee enunciated a broad policy of vesting jurisdiction in the general tribunal where 'no real case exists for a specialist tribunal' (ibid.).

262. The Bland Committee was also generally committed to the notion of a central federal administrative tribunal. The Committee disapproved of the *ad hoc* growth of specialist tribunals in particular fields. In the Committee's view, 'the proliferation of tribunals was

wasteful of resources, uneconomical to the efficient functioning of government and calculated to cause public dissatisfaction' (Parlt. Paper No. 316 at para. 123). The Committee lamented the fact that 'no one had seen it as his role to effect any co-ordination in the area' (para. 119), and went on to express the opinion that 'the fewer the tribunals there are the more likely will be the most economic use of resources and a better and more even resolution of individual issues because the members of the tribunals will not be narrowly circumscribed in their jurisdictional range' (para. 125). The Committee recommended the establishment of a General Administrative Tribunal and it was clearly envisaged that, not only would this Tribunal be vested with jurisdiction to determine appeals from primary decisions that were currently unreviewable, but also that many existing tribunals would be integrated into it.

263. It is apparent from the Parliamentary Debates preceding the enactment of the AAT Act 1975 that the legislators envisaged that the AAT would perform a co-ordinating role in administrative review. In his second reading speech, the Attorney-General, Mr K.E. Enderby, QC., described the intention of the Bill as to establish 'a single independent tribunal with the purpose of dealing with appeals against administrative decisions on as wide a basis as possible' (*Parliamentary Debates*, House of Representatives, vol. 93, p. 1187). With the establishment of the AAT the Government's policy was stated to be that no *ad hoc* appeal tribunal would be established under future legislation except where 'special circumstances make it desirable that there should be special tribunals' (ibid. at p. 1188). Moreover, the Attorney added that a review would be undertaken to determine whether 'existing provisions for appeal would be brought within the framework of the new Tribunal' (ibid. at p. 1187).

264. The Council has considered whether there are special reasons for the RRT continuing as a specialist tribunal and has concluded that, rather than there being special reasons justifying its retention, there are persuasive reasons for incorporating its jurisdiction into that of the AAT. The Council further considers that it is not without significance that the Toose Report of 1975 in recommending that the functions of the then Repatriation Entitlement and Assessment Appeal Tribunals should be incorporated under a single tribunal stated that:

> . . . Such a Tribunal should have the independence, powers and status proposed for the projected Administrative Appeals Tribunal and, ideally, shall be constituted as a Repatriation and Defence Division within the Tribunal (Independent Enquiry into the Repatriation System at 8.12).

265. The Council carefully considered whether the manner in which the RRT is viewed by the ex-service organisations is in itself a sufficient reason to continue the Tribunal's separate existence but concluded that it is not. The Council is also aware that it is an essential ingredient to the success of any review system that that system has the support and respect of participating groups. But it is the Council's view that that consideration must be balanced with other factors.

266. First, for the reasons given above (paras 132-8) the quality of decision making offered by the RRT does not meet the high standards demanded of the ultimate review tribunal in this area. The Council would add that it doubts whether the RRT has served the interests of all veterans to the extent that some ex-service organisations claim. The significant number of decisions successfully appealed from the RRT to other review bodies such as the AAT, the Federal Court and the High Court would suggest that the RRT has not provided a satisfactory quality of decision making for some veterans.

267. Second, the Council believes that the higher quality of decision making assured by the AAT would, in time, gain the support of veterans and ex-service organisations. Many of the arguments made in submissions to the Council opposing the transfer of jurisdiction to the AAT were based on serious misconceptions. Opposition was based on the following arguments: the AAT introduces too legalistic an approach and consequential delays occur; a desire that the RRT should not lose its identity; a fear (although a misconceived one) that the AAT may review a decision on its own initiative; the separateness of the repatriation system from the other judicial and administrative systems which has led to public acceptance of the total repatriation system; the relative ease of bringing applications for review at present and the possible need to act through a solicitor if the AAT were given jurisdiction (again a misconception); past experience with the AAT having demonstrated the involvement, on occasions, of both junior and senior counsel; and the view that the work within the veterans' area is of such a dimension and of such a specialised nature that a special purpose tribunal with a high degree of independence is required.

268. Some of these arguments are based on AAT review of repatriation decisions in recent years, but the Council would suggest that it would be misleading to rely on that experience since the AAT's past involvement in the repatriation system is quite different to that which is now proposed. Past involvement has been limited and sporadic and may have created an impression of excessive legalism and formalism in view of the nature of the cases referred to it from the RRT. If the AAT were to become the ultimate tribunal reviewing repatriation decisions on their merits, a greater opportunity would arise to take advantage of the flexible character of that Tribunal's constitution, powers and procedures without detracting from the overall high standard of decision making offered by that Tribunal.

269. Third, the Council does not accept the claim that if the repatriation jurisdiction were to be absorbed into that of the AAT which has a variety of jurisdictions, then there would be erosion of the special considerations that have been extended to veterans in the past. A similar argument was firmly rejected in the Toose Report:

> The task of the Tribunal would be to administer justice to all, and there should be no cause to believe that such a Tribunal would be lacking in sympathy and understanding for all who appears before it. Indeed, broadening of the base of the Tribunals should contribute greatly to a deeper appreciation of the problems confronting people seeking to establish their entitlement to benefit particularly if they have various alternative rights to compensation.
>
> In answer to the League's submission it has been claimed that in the past members of Repatriation determining authorities who have been good soldiers, at times have adopted a harder attitude than a layman would have adopted, particularly in cases where claimants did not have a good service record (Independent Enquiry into the Repatration System at 8.12).

270. The Council agrees with these observations. Furthermore, the Council envisages that ex-servicemen with the requisite qualifications would be eligible for appointment to the AAT. The Council also proposes that present members of the RRT be considered for appointment to the AAT at appropriate levels.

271. Part IIIC of the *Repatriation Act* 1920 deals with the present relationship between the RRT and the Federal Court and its detailed provisions have been outlined above in paras 96-8. If the Council's primary recommendation that the jurisdiction of the RRT be conferred on the AAT is adopted, Part IIIC would be unnecessary. The Federal Court would

be available to hear appeals on questions of law from repatriation decisions of the AAT in accordance with sections 44 and 45 of the *Administrative Appeals Tribunal Act* 1975.

RECOMMENDATION 16
The *Repatriation Act* 1920 should be amended to provide that the jurisdiction presently exercised by the Repatriation Review Tribunal under Division 3 of Part IIIA of the Repatriation Act should be abolished and jurisdiction to review decisions of the Veterans' Appeals Board should be conferred on the Administrative Appeals Tribunal. Since the Repatriation Review Tribunal's jurisdiction would cease to exist, Parts IIIA and IIIC of the Repatriation Act should be repealed and the Repatriation Review Tribunal abolished.

COSTS AND EFFECTS OF AAT REVIEW
272. In making its primary recommendation that the repatriation jurisdiction currently vested in the RRT be absorbed into the AAT's jurisdiction, the Council has considered the likely costs and effects. The Council would emphasise that the costs of administrative review should not be looked at in isolation, but must be balanced by a consideration of the benefits likely to accrue from such review. The Council observed in its Second Annual Report at para. 9 that an improved review system may involve some increased costs but those costs 'may be set off to an extent by savings achieved by improved procedures'.

273. The Council has commented elsewhere (see, for example, its *Report to the Attorney-General on Social Security Appeals* (1981), Appendix 5) on the difficulties of estimating with any precision the costs and benefits of administrative review. Most benefits are of an intangible nature, are incapable of being reduced to monetary terms and are diffused among members of the community. The benefits of review on the merits of repatriation decisions by the AAT have been outlined above. The costs of administrative review are mainly concentrated in the administration and review authorities themselves and would appear to be more tangible and capable of more precise financial measurement, but even the accuracy of that measurement can be affected by imponderables such as the number of cases likely to be reviewed and the time likely to be needed to dispose of them.

274. The Council considers that if the transfer of repatriation jurisdiction to the AAT involves additional costs, these costs have to be balanced against the benefits likely to emerge if the Council's recommendations are implemented. These recommendations are designed to achieve an improvement in the quality of decision making at all levels and to lead to fewer and more expeditious appeals. It is the Council's view, moreover, that the achievement of better decision making in the repatriation system and the economies which would flow therefrom depend to a large extent upon having a final review tribunal of a high standard.

275. Attention has already been drawn to the RRT's sizeable caseload (approximately 4 000 applications were lodged in 1981-82). Such a caseload would place heavy strains on the AAT if the repatriation jurisdiction were to be transferred to that body in accordance with the Council's primary recommendation but it is doubtful that the AAT would be called upon to decide such a large number of cases. The Council anticipates that there would be a reduction in the number of cases going on appeal to the final review tribunal if its recommendations relating to improving primary decision making and establishing an intermediate level of review were implemented.

276. It is impossible to predict precisely how many cases are likely to proceed to the AAT under the proposed system. One estimate is that, if the system had been operating in

1981-82, approximately 2 000 appeals would have been lodged with the AAT. This estimate is based on the number of entitlement claims and assessment applications made in 1981-82 (15 000 and 10 000 respectively) and it assumes that the success rates before Repatriation Boards (para. 48) and the RRT (para. 86) during that year would have been carried over to the primary and intermediate levels of decision making under the proposed system. The Council would doubt, however, that the estimate of 2 000 cases is reliable. The estimate does not take account of the improvements in primary decision making and intermediate review proposed by the Council which are expected to increase the success rates at those levels. It is anticipated that substantially fewer cases will proceed to the final review body than occurs at present. The Council considers that the number of appeals likely to proceed to the AAT from the VAB will be measured in hundreds rather than thousands.

277. The Repatriation jurisdiction would, nevertheless, constitute a major part of the AAT's workload under the Council's proposed system. The Council has noted, however, that the AAT's procedures assist it in coping with large case load jurisdictions. In the social security jurisdiction, for example, the extensive practice of holding preliminary conferences presided over by a non-presidential member alone, has resulted in approximately 80% of applications so far disposed of being either conceded by the Department or withdrawn by the applicant. The Council also anticipates that AAT involvement in the repatriation system will enable general principles and guidelines to be formulated which should eventually produce a decline in the number of applications for both intermediate and final review. This expectation is based on AAT involvement in other jurisdictions such as A.C.T rates and social security appeals where the experience has revealed an initial rise in applications from the time when jurisdiction is conferred after which the number of applications falls away. There is no reason to believe that the repatriation jurisdiction would not conform to this pattern.

278. The Council believes that the question of the cost of AAT involvement in repatriation decision making has also to be considered in the light of the RRT's present and past involvement. The RRT's Annual Report for 1981-82 reveals that the cost of servicing that Tribunal during the year amounted to $2 702 797. In view of the deficiencies that exist in the Tribunal's jurisdiction (see paras 113-46) the Council doubts that this expenditure is the most favourable use of the taxpayers' money. Since the Council's recommendations would involve replacement of the RRT, its service costs could be used to fund the higher standard of decision making assured by AAT involvement.

AAT'S REPATRIATION JURISDICTION

279. Given the conclusion of the Council that the most appropriate authority to conduct the final review on the merits is the AAT attention has been given to a number of questions concerning the constitution, appointment and qualification of its members, and the powers and procedures of that Tribunal.

Constitution

280. In the absence of an express statutory provision to the contrary, section 21 of the *Administrative Appeals Tribunal Act* 1975 provides that the Tribunal may be constituted by a membership ranging from a non-presidential member alone to a presidential member and two other members. Specific statutory provisions expressly dictating how the Tribunal is to be constituted may be found in a number of its jurisdictions. These provisions fall into two categories. First, in some jurisdictions the constitution of the Tribunal is rigidly defined in terms of the number of members to constitute the panel and their status. Second, in other jurisdictions there is a requirement that one or more of the Tribunal's panel have a special

affinity to either the problems which are likely to arise or the parties before the Tribunal in a particular class of case.

281. Examples of the first category include the requirement in the *Broadcasting and Television Act* 1942 (s.119A(e)), the *Migration Act* 1958 (s.66E(4)) and the *Marriage Act* 1961 (s.34(2)) that for the purposes of a review the Tribunal shall be constituted by a presidential member alone. Examples of the second category include the *Insurance Act* 1973, section 63(11) of which provides that the President must ensure that the two non-presidential members who are required to sit on such cases (see s.63(10)) have 'special knowledge and skill in relation to insurance business'. Similarly, section 154(6) of the *Superannuation Act* 1976 provides that, for the purposes of AAT review under that legislation, at least one of the non-presidential members constituting the Tribunal shall be an eligible employee or pensioner. Such provisions ensure the presence on the Tribunal of persons with a particular expertise or supposed affinity with one of the parties or with the problems which arise, but it should be emphasised that they do not involve members either sitting in a representative capacity or being appointed on nomination by an outside body.

282. The Council has considered whether a provision of either character should exist in the repatriation jurisdiction recommended for the AAT. Concerning provisions of the first category, the Council has noted that a similar provision already exists in the AAT's present limited jurisdiction to review repatriation decisions under Part IIIB of the *Repatriation Act* 1920. Section 107VZZC of the *Repatriation Act* 1920 provides that when the AAT exercises its jurisdiction under that legislation it is to be constituted by a presidential member and two non-presidential members, or a presidential member alone. The consequence of a provision such as section 107VZZC is that the Tribunal may not be constituted without the presence of a presidential member. The Council is of the opinion that such a restriction unnecessarily restricts the flexibility of the President of the AAT to constitute the Tribunal to meet with expedition the needs of particular cases. Persons may be appointed to the Tribunal by virtue of their expertise in particular fields and a provision such as section 107VZZC should only exist when there are clearly identified reasons. In the Council's view there are no such reasons justifying retention of a provision such as section 107ZZC in relation to the AAT's jurisdiction to review decisions of the VAB.

283. Where the President of the RRT refers an application for review to the AAT, section 107VZZB(9) provides that the President of the AAT may indicate his intention to nominate the President of the RRT as one of the persons to constitute the Tribunal for the purposes of the review. In all of the cases so far referred to the AAT for consideration, the President of the RRT has participated in this manner. Should the principal recommendations in this Report be accepted, the functions of the RRT would be transferred to the AAT with the consequence that a provision such as section 107VZZB(9) would be unnecessary. Likewise, the remaining provisions of Part IIIB which deal with the reference by the RRT of Commission decisions would be unnecessary if the RRT were to be abolished.

RECOMMENDATION 17
Part IIIB of the *Repatriation Act* 1920 should be repealed.

284. The Council has also considered whether there should be a statutory requirement that at least one member of the AAT in repatriation cases be an ex-serviceman and has concluded that such a requirement should exist for a number of reasons. First, it is the Council's view that such a requirement would assist in ensuring that the Tribunal comprises

members with the requisite expertise and knowledge to enable it to deal adequately with issues likely to arise in the repatriation jurisdiction.

285. Second, the Council is aware of the widely held view that veterans' confidence in the repatriation review system is enhanced by the presence of tribunal members with ex-service experience. In the Council's view, that confidence is more likely to be assured if legislation conferring repatriation jurisdiction on the AAT includes a specific requirement that at least one member of each Tribunal be an ex-serviceman.

286. Third, such a requirement is entirely consistent with the Council's statement of general principles concerning the appointment of non-presidential members of the AAT which are set out in its Second Annual Report (paras 57-63). The Council recommended to the Attorney-General that statutory provisions for the constitution of the Tribunal should be made in accordance with the following set of principles:

(a) as a general rule, except as hereinafter stated, there should be no prescription of special conditions or qualifications of appointment for non-presidential members of f the Tribunal;
(b) any such special conditions or qualifications should not in general go further than to state that members possess a particular expertise;
(c) in an appropriate class of case membership may be drawn from those who have an affinity to the problems which arise and to the parties before the Tribunal in that class of case, but, as a general principle, no power of nomination to membership of the AAT should be vested in outside bodies;
(d) the mode of appointment established by section 6 of the *Administrative Appeals Tribunal Act* should not be altered or modified for particular jurisdictions;
(e) provisions should generally not be made for the appointment of public servants serving in the department whose decisions will be reviewed under the jurisdiction in question; and
(f) any proposed exception to the general principles stated above should be submitted to the Administrative Review Council for its consideration.

This statement of principles can be seen as an attempt by the Council to strike a balance between the perceived need on the one hand to preserve the independence of the Tribunal and, on the other hand, the desirability of ensuring that proper expertise is available to enable the Tribunal's membership to determine a wide range of decisions on their merits.

287. Fourth, the Council has noted that a requirement that each Tribunal include one ex-serviceman in repatriation cases does not preclude the possibility of the AAT being constituted by one member alone in accordance with section 21 of the AAT Act. This is a particularly important consideration given the fact that the repatriation jurisdiction is likely to involve a large volume of cases and flexibility in constituting the Tribunal will be most desirable.

RECOMMENDATION 18
The legislation conferring jurisdiction on the Administrative Appeals Tribunal should provide that for the purposes of review of repatriation decisions, the Tribunal should be constituted by or include at least one member who is an ex-serviceman.

288. The Council's recommendation relating to the constitution of the AAT in repatriation cases requires that consideration be given to the question of defining who is an 'ex-serviceman'. Eligibility for membership of the Returned Services League provides a useful

guide in formulating such a definition. The Council has noted that eligibility for membership of the RSL has recently been widened to include all those persons who served at any time in any place in Australian or Allied Forces in World Wars I or II, or those who served for at least six months in Australian or Allied Forces when serving in any other period, in any place. A similar definition could be adopted for the purpose of constituting the AAT in its repatriation jurisdiction.

Appointment of members

289. Provisions relating to appointment of members to the AAT and the RRT have been discussed above (paras 241-9).

290. The Council is of the opinion that if the ultimate review authority on the merits is to be the AAT no amendment need be made to the enabling legislation for that Tribunal in these respects. The Council has assumed that in selecting a person for appointment to the Tribunal, the Attorney-General would take into account any ex-service experience along with other qualities relevant to that person's suitability for membership. It has also been assumed that in selecting individuals for appointment, the Attorney-General would wish, in accordance with general convention, to consult with interested bodies, including ex-service organisations. Consideration was given by the Council to the question whether it should recommend the introduction of a statutory duty of consultation in making such appointments. The Council noted its earlier recommendation to the Attorney-General that 'the mode of appointment established by section 6 of the *Administrative Appeals Tribunal Act* should not be altered or modified for particular jurisdictions' (see Second Annual Report, para. 63). It was concluded that in the context of repatriation a formal obligation to consult was not appropriate.

Qualifications for tribunal membership

291. Qualifications required for appointment to the AAT and the RRT have been discussed above (paras 250-4).

292. Of particular concern to the Council is section 107VZH(2)(a) of the *Repatriation Act* 1920, which provides that such number of members as the Governor-General may from time to time determine shall be persons selected from lists of persons drawn up by organisations representing returned servicemen throughout Australia. This provision assumes significance if the ultimate review authority is to be the AAT rather than the RRT. The Council is aware of the great importance attached by ex-service organisations to this power. The Australian Veterans and Defence Service Council stated in its submission to the Council:

> . . . that the practice of making nominations from Service organisations is absolutely necessary and irrevocable. This long standing practice presumes some element of trial by one's peers and certainly assumes that at least one member of a Board or Tribunal is familiar with actual service operating conditions in the field.

293. The Council has given detailed consideration to the question whether ex-service organisations should possess an exclusive power to submit to the Attorney-General a panel of names to which he would be restricted in selecting ex-servicemen for appointment to the AAT. The Council has concluded that such a power must be rejected for the following reasons: first, it is the Council's view that a power of nomination vested in outside bodies would constitute an unacceptable weakening of the independence of the AAT. The role of persons appointed pursuant to such a power would inevitably be perceived as being in some sense representative rather than strictly and impartially adjudicatory. The importance of maintaining both the reality and appearance of the independence of the AAT has already

been emphasised (see paras 241-3) and attention has been drawn to the Council's earlier statement of general principle that no power of nomination to membership of the AAT should be vested in outside bodies (see para. 286).

294. Second, the Council regards the ramifications such a restriction would have for the constitution of the Tribunal as unacceptable. The presence of persons selected exclusively from lists submitted by ex-service organisations would effectively restrict the President's current discretion to constitute the Tribunal by a non-presidential member sitting alone (s.21(1)(d)) as it could scarcely be suggested that such nominees could sit alone in view of their quasi-representative role. The practical necessity of constituting 3 member panels in repatriation cases would create considerable difficulties in a jurisdiction which is likely to generate a substantial volume of cases.

295. Third, if the primary basis of such a power is to assure the presence of at least one member who has some affinity with veterans and some understanding of the conditions under which they served, this basis is equally satisfied by the Council's recommendation that there be a statutory requirement that in repatriation cases the Tribunal should include at least one ex-serviceman. It is the Council's view that such a requirement serves the interests of ex-servicemen more effectively because membership would be open to all ex-servicemen, not just those who command the support of ex-service organisations which represent approximately 60% of veterans.

296. Fourth, the Council has noted that ex-service organisations do not currently possess such a power in relation to the AAT's present jurisdiction to hear repatriation cases on referral from the RRT under Part IIIB of the *Repatriation Act* 1920 and no suggestion has been made that AAT decisions have been less acceptable in the absence of a power to control appointments to the Tribunal.

297. The Council would emphasise that its rejection of a power to nominate in relation to the AAT does not affect the views it expressed earlier in this Report (paras 210-16) concerning the role of ex-service organisations in the appointment of Services' Members to the VAB. It has already been stated that such a power is acceptable as long as the final review tribunal is independent (see para 216).

The Jurisdiction of the AAT

298. The Council has recommended that the primary decisions as to entitlement to, or assessment of, benefits be taken by a delegate of the Commission, with those decisions being reviewable by the VAB. It has also recommended that an opportunity be given for review of such decisions by the AAT after the VAB's review.

299. The Council has considered three issues in relation to AAT jurisdiction: whether review by the VAB should be a precondition of AAT review; whether the primary decision itself or the VAB's decision is the appropriate decision to be reviewed by the AAT; and who is the proper respondent to an application to the AAT.

300. The first issue concerns whether, and in what circumstances, an applicant should be able to seek review by the AAT without first seeking intermediate review. The benefits of such review have been discussed at paras 192-3. Of particular importance in the present context is the filtering function which could be performed by the VAB, reducing both the numbers of cases reaching the AAT and the amount of information gathering to be done by that Tribunal. If review by the VAB were to be simply one of the options available to

claimants, these benefits may be lost where applications were then made direct to the AAT from a primary decision.

301. Section 26 of the *Administrative Appeals Tribunal Act* 1975 enables regulations to be made prescribing reconsideration as a precondition of AAT review. The Council believes that the legislation conferring jurisdiction should make such provision. It should be the position if that the decision to be reviewed by the AAT, pursuant to the regulations made under that section, is the primary decision, as varied or affirmed following review by the VAB.

302. The question of who is the proper respondent to an application before the AAT must be considered in light of a number of factors, including the provision in section 30 of the AAT Act 1975 that the parties to a proceeding shall include the person who made the decision under review; the Council's previous recommendation that both the claimant and the Commission should have a right of appeal from decisions of the VAB and the Council's recommendation that the decision to be reviewed by the AAT should be the primary decision, as varied or affirmed following reconsideration. After considering these factors, the Council has concluded that, where the claimant appeals to the AAT, the Repatriation Commission is the proper respondent. Where the Commission appeals, the proper respondent is the claimant.

RECOMMENDATION 19
The legislation conferring jurisdiction on the Administrative Appeals Tribunal should provide that an application may be made for review only after the primary decision has been reviewed by the Veterans Appeals Board which has either affirmed or varied that decision. The legislation should also provide that the Administrative Appeals Tribunal shall review the original decision, as affirmed or varied by the Veterans' Appeals Board. Where the claimant or applicant appeals, the respondent should be the Repatriation Commission. Where the Commission appeals, the respondent should be the claimant or applicant.

Procedures of the AAT

- Hearings

303. The *Administrative Appeals Tribunal Act* 1975 provides that hearings should in general be public (s.35). This contrasts with the current position regarding tile RRT since section 107VX of the *Repatriation Act* 1920 provides that hearings shall be in private except in special circumstances.

304. The Council has considered whether repatriation hearings before the AAT should generally be conducted in private. It is the Council's view that, consistent with section 35 of the AAT Act, hearings should be held in public unless there are special circumstances. The Council notes that its view is also consistent with Article 14 of the International Covenant on Civil and Political Rights (1966), to which Australia is a signatory. That Article includes the following:

> 1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice . . .

305. The Council has concluded that adequate provisions exist in the AAT Act to enable the Tribunal in its discretion to conduct hearings in private in appropriate circumstances. Section 35 of the Act provides that hearings are to be in public subject to the Tribunal's powers to give directions on such matters as the presence of persons and the publication or disclosure of evidence given before the Tribunal. The Council considers that such powers should be exercisable at the Tribunal's sole discretion; however, a veteran or his representative would be entitled to request the Tribunal to exercise its powers under section 35.

- Legal Representation

306. The Council has noted that representation by legal practitioners is presently prohibited before the RRT. For the reasons set out above (para 223) the Council is of the opinion that parties in the proposed repatriation jurisdiction of the AAT should be free to choose their representatives, including legal representatives.

RECOMMENDATION 20
For the purposes of the Administrative Appeals Tribunal's repatriation jurisdiction, no restrictions should be placed on the parties' freedom to be represented, if they wish, by persons of their own choice.

- Expenses

307. The Council has noted that the provisions of the *Repatriation Act* 1920 governing payment of expenses and allowances in respect of attendance at RRT hearings are more generous to claimants than is the case under the *Administrative Appeals Tribunal Act* 1975. Under the latter Act, there is provision for payment of fees for witnesses (s.67), whereas the Repatriation Act not only has a similar provision relating to witnesses' fees (s.107VZY), but in addition provides for payment of expenses incurred by claimants attending hearings, including allowances for loss of salary or wages.

308. It is the Council's view that claimants should be entitled to the same financial allowances in attending AAT hearings as apply at present to RRT hearings.

RECOMMENDATION 21
For the purposes of the Administrative Appeals Tribunal's repatriation jurisdiction, provision should be made for payment of expenses and allowances to applicants in respect of attendance at Tribunal hearings. Section 107VZX of the *Repatriation Act* 1920 could be used as a model for such a provision.

Transitional Arrangements
309. The Council is aware that the substantial backlog of cases that has accumulated under the existing systems of primary and review decision making in repatriation may give rise to certain practical difficulties in the implementation of the reforms proposed by the Council it this Report. The Council considers that the Department of Veterans' Affairs may wish to explore the feasibility of retaining the RRT for such time as is necessary to clear the backlog of unfinalised applications for review which have been lodged with that Tribunal.

APPENDIX 1

Repatriation Acts Amendment Bill 1979

This Bill proposed the establishment of the RRT and a scheme of reference of matters from that Tribunal to the AAT. The Attorney-General wrote to the Council in December 1978 informing it of what was proposed in the Bill and inviting the Council to comment on the details of the scheme of reference of matters from the RRT to the AAT. The Council's comments on this matter were forwarded to the Attorney-General on 26 February 1979 and are summarised at paras 55 of the Council's Third Annual Report (1979).

2. The Council was of the opinion that there should be a link between the two Tribunals and, in addition to the proposed right to refer a case from the RRT to the AAT, it was recommended that there should be a limited jurisdiction conferred upon the latter Tribunal to review decisions of the RRT. The right to seek review was to be available to both the veteran and the Repatriation Commission but was to be limited by the criterion that 'a matter involves an important principle of general application'. The right of review recommended by the Council was not accepted but the Council's suggested criterion was adopted in relation to referrals from the RRT to the AAT.

3. The Council also recommended that, when a case was referred to the AAT, there should be no requirement that the latter Tribunal be constituted by three members and include among them a presidential member. The Council's recommendation was not adopted in full in the *Repatriation Acts Amendments Act* 1979 and the legislation provides for constitution by a presidential member alone or a presidential member and two other members.

4. Other recommendations by the Council were adopted in full, including a recommendation that the President of the RRT might of his own motion refer proceedings to the AAT, and a recommendation that the provision relating to legal representation before the AAT should not be varied in respect of hearings under the *Repatriation Act* 1920.

APPENDIX 2

Recipients of Discussion Paper
Copies of the Discussion Paper were sent to the following persons. Those who subsequently made a submission to the Council are marked with an asterisk.

Mr P.C. Alexander, CMG, OBE*
Secretary
Federal Branch
Air Force Association; &
The Hon. Secretary, Australian Veterans & Defence Services Council

Mr H.E.Y. Bell, M.C*
Federal President
Limbless Soldiers' Association of Australia

Capt. S.J. Benson, C.B.E., R.D., O.StJ.*
Chairman
Combined Ex-Service Associations Committee

Mr M. Boland*
National Secretary
Vietnam Veteran's Association of Australia

Mr J.C. Broadley
Chairman
Advisory Council of Ex-Servicemen

Mr Neil Brock
Federal President
Thirtyniners' Association of Australia

Chairman
Repatriation Board No. 1

Chairman
Repatriation Board No. 2

Chairman
Repatriation Board No. 3

Chairman
Repatriation Board No. 4

Chairman
Repatriation Board No. 5

Mr W.R. Davison, ED
Federal President
Ex-prisoners of War Association of Australia

The Hon. Mr Justice H.C. Emery

Surgeon Capt. A.S. Ferguson, VRD, RAN (Ret)
Federal President
Naval Association of Australia

Mr R. Gill
Assistant Federal Secretary
The Naval Association of Australia

Professor J.R. Goldring*
Professor of Law
Macquarie University

Rear Admiral G.R. Griffiths,* AO, DSO, DSC
Chairman
Australian Veterans & Defence Services Council

Mr D. Heydon
Barrister at Law

Mr L.J. Hogan*

Mrs B. Hughes, MBE
Federal President
War Widows' Guild of Australia

Mr J.R. Hunt
Legal Affairs Manager
The Law Society of N.S.W.

Mr D.F. Jackson, Q.C.*
Vice President
Bar Association of Qld

Sir William Keys, OBE, MC*
National President
Returned Services' League of Australia

Chairman
Repatriation Board No. 11

Captain W.F. Cook*
Registrar
The N.S.W. Bar Association

Mr I.H. Davies*
(Ex-Chairman of Pensions Committee)

Mrs V. Lemke*
Hon. Federal Secretary
Royal Australian Air Force Women's Association

Mrs P. Liddiard
Federal President
Royal Australian Air Force Women's Association

General Sir Arthur MacDonald, KBE, CB
C/- National Secretary
Royal Australian Regiment Association

Mr F.W. Mackay
Federal President
Royal Australian Armoured Corps Association

Mr Richard Mackey*
Auditor-General's Office

Mr F.J. Mahony, CB, OBE*
President
Repatriation Review Tribunal

Mr P.G. Maley, J.P.
Secretary-Treasurer
Federal Branch
Australian Federation of Totally & Permanently Incapacitated Ex-Servicemen & Women

Mr J. Menzies*
Federal President
Federated T.B. Sailors, Soldiers & Airmen's Association of Australia

Mr R.C. Langdon, OBE*
National President
Australian Legion of Ex-Servicemen & Women

Legacy Club of Adelaide*

Mr H.M. Leggo*
Federal Secretary
Blinded Soldiers of St Dunstans, Australia

Mr N.F. Read*
The Legacy Club of Canberra Incorporated

Mr J. Richards*
President
Perth Legacy

Mr A.G. Robertson*
Chairman
Legacy Federal Co-ordinating Council

Mr A.C. Sayer*
President
Brisbane Legacy

Mr R.G. Scott

Mr R.W. Shepherd, J.P.

Federal President
Partially Blinded Soldier's Association of Australia

The Hon. State Secretary
T.P.I. Association, Queensland
The Hon. State Secretary
T.P.I. Association, New South Wales

The Hon. State Secretary
T.P.I. Association, Victoria

The Hon. State Secretary
T.P.I. Association, Tasmania

Mr T.J. Studdert*
Secretary
N.S.W. Bar Association

Mr R. Milton
Federal Secretary
Rats of Tobruk Association

Mr R. Oakley*
Law Institute of Victoria

Mr W. Osmond*
State Secretary
R.S.L. of Australia, N.S.W. Branch

Wg Cmdr T.B. Paget, A.E. (Ret)*
Secretary
Federal Branch
Regular Defence Forces Welfare Association

Mr K. Peck
National President
Australian Nuclear Veterans Association

Mr F.J. Purnell*
Barrister at Law

Major P.V.M. Rawlings (R.L)
Federal President
W.R.A.A.C. Association (Aust.)

Mr D. Volker*
Chairman
Repatriation Commission

Mr J.W. Von Doussa, Q.C.*
President
Law Society of South Australia

Maj. Gen. J. Whitelaw, AO, CBE, (RL)
Federal President
Regular Defence Forces Welfare Association

Mr Peter Young*
National Secretary
The Returned Services League of Australia

Submissions were also received from:

Mr D.M. Cruden, D.F.C
Dr R. Edgley
Mr F. Callagher