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Volume 14 No 1

Editor's notes

This edition of *VeRBosity* contains reports on three Federal Court decisions relating to veterans' matters, handed down in the period from 1 January to 31 March 1998. The case of *McMillan* deals with whether the Repatriation Commission is prevented from deciding claims while a medical condition is under formal investigation by the Repatriation Medical Authority. *Beale* is concerned with the Administrative Appeals Tribunal's power to decide a matter before a formal investigation by the RMA is finalised. *Hutton* deals with a decision of the AAT concerning attendant allowance.

This edition also includes reports on selected AAT decisions handed down in the period from January to March 1998. Information is also included about new Statements of Principles issued by the RMA during the period from March to May 1998 and matters currently under investigation.

The Board is increasing the number of editions of *VeRBosity* this year from three to four so that readers receive more up to date information about developments affecting veterans' entitlements.

Robert Kennedy
Editor

Vale

THOMAS VICTOR SHAW AM

Those who knew Tom were saddened to learn that he had passed away on 25 June 1998.

Tom was a Services Member of the VRB in Brisbane from 1 January 1985 to 27 May 1988. A returned serviceman, Tom devoted much of his considerable energies to assisting veterans and widows.

Friends and colleagues will readily recall his kind and pleasant nature, his sense of humour and the way he went about his work. Tom's generosity and hospitality as a host was unmatched. Above all, Tom was determined that veterans received every assistance that they needed and to which they were entitled.

Tom kept in touch with those at the VRB and we were wishing that his illness would be overcome. That was not to be.

Tom is survived by his wife Molly, and children Margaret and Michael.

Repatriation Medical Authority Consensus Conference:
Stress and Challenge, Health and Disease

Brisbane, 9-11 February 1998

Overview

A team of international and national medical experts on stress met earlier this year to examine sound medical-scientific evidence concerning both the positive and negative effects of stress, on behalf of the Repatriation Medical Authority (RMA).

The RMA is an independent body set up in 1994 to determine Statements of Principles (SoPs) on diseases and how they relate to war service.

It has received many requests under section 196E(1) of the *Veterans' Entitlements Act 1986* regarding the possible relationship between stress and/or post traumatic stress disorder and high blood pressure, heart attack and stroke. Stress and psoriasis has also been the subject of an informal investigation by the RMA. There are other areas where stress may be an actual or potential factor in the cause or aggravation of disease.

The RMA recognised that the literature examining the effects of stress needed review in a broad contextual process, as well as that related to specific diseases.

At the conference, consensus was reached that use of the science of epidemiology was appropriate and necessary in the process of examining potential causal associations between stressors, stress and disease.

Psychiatric and cardiovascular conditions were identified that could be causally associated with stressor exposure. A number of other psychiatric illnesses and specific cardiovascular end points were nominated for the RMA to investigate further. A monograph including the conference presentations is being prepared.

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Summary of outcomes

- A definition was developed for 'severe stressor applicable to military service'. This is that: *the person experienced, witnessed or was confronted with an event or events that involved actual or threat of death or serious injury, or a threat to the person's or other people's physical integrity that might evoke intense fear, helplessness or horror.*

In the setting of service in the Defence Forces, or other service where the Veterans' Entitlements Act 1986 applies, situations that qualify as stressors include:

(i) Engagement with the enemy; or

(ii) Witnessing casualties or participation in or observation of casualty clearance, atrocities or abusive violence; or

(iii) Acute or chronic threat of serious injury or death; or

(iv) Prolonged experience of malevolent environments.

- A process was agreed for the assessment of potential causal associations between stressor experiences and psychiatric and cardiovascular disorders using standard epidemiological practices.

- Consensus was reached on a number of psychiatric illnesses and cardiovascular diseases where associations between exposure to specified stressors and the illness were agreed to be causally related.

  Psychiatric illnesses that may be associated with exposure to stressors are: post traumatic stress disorder, acute stress disorder, panic disorder, major depressive disorder, dysthymic disorder and alcohol dependence.

  Cardiovascular diseases that may be associated with acute exposure to stressors are: sudden cardiac death and cardiac arrhythmias. The body of evidence regarding the association between hypertension and exposure to stressors was not considered indicative of a causal association.

  Panic disorder was considered to be potentially associated with certain ischaemic heart disease end points, most particularly sudden cardiac death.

- A number of other associations were considered. However, high levels of co-morbidity and the potential for confounding weakened the case for causality and necessitated further detailed and critical analysis.

- Post traumatic stress disorder was of particular interest to participants. However, the limited published data available and the frequent co-morbidity with substance use and other disorders precluded the attribution of any specific causal associations between PTSD and cardiovascular outcomes.

- The participants reached a consensus that a number of direct and indirect pathways may link acute stressors with certain psychiatric and cardiovascular outcomes. Overall, it was clear that the psychoneuro-endocrine responses associated with stressors are complex and are subject to considerable intra and inter-individual variability and are not fully elucidated at this time.

Professors Beverley Raphael and Philip Morris
[Conference Co-Chairs]

Specialist Medical Review Council

The Specialist Medical Review Council (SMRC) has completed its review of the Statement of Principles No 47 of 1996 concerning diabetes mellitus. The SMRC is of the view that there is no sound medical-scientific evidence that justifies any amendment to the existing Statement of Principles. The SMRC's reasons for decision can be obtained on request by writing to Specialist Medical Review Council Secretariat, PO Box 895, Woden ACT 2606 or telephoning (02) 6289 6658.

This is the fourth request for review to be decided by the SMRC. Previous decisions related to reviews of Statements of Principles concerning prostate cancer, motor neuron disease and osteoarthritis.

Eligibility - Service in Singapore, Japan and Ubon

The *Veterans' Entitlements Act 1986* was amended in 1997 to extend eligibility for disability pensions to certain classes of Australian Defence Force personnel who served overseas after World War 2. New section 6D(1) includes units or members assigned for service in the following areas:

(i) in **Singapore** at any time during the period from and including 29 June 1950 to and including 31 August 1957;

(ii) in **Japan** at any time during the period from and including 28 April 1952 to and including 19 April 1956; and

(iii) in **North East Thailand (including Ubon)** at any time during the period from and including 31 May 1962 to and including 31 August 1968.

The new areas of eligibility apply *"only if the member, or the unit of the member, is included in a written instrument issued by the Defence Force for use by the Commission in determining a person's eligibility for entitlements under this Act."* The Defence Force has now issued written instruments in relation to the units which were assigned for service in the above areas.

It is important to note that the commencement date of the new operational service eligibility was the date of the 1997 Budget announcement. This means that the earliest date that a pension based on the new eligibility can be paid is **13 May 1997**. Pensions granted solely on the basis of one of the new areas of eligibility cannot be backdated any earlier than 13 May 1997.

Selected Decisions of the Administrative Appeals Tribunal

Dependant - divorced couple living in different countries

Re R T Hayes and Repatriation Commission

Blow

T96/47 23 Jan 1998

The applicant was the former wife of a veteran, a Mr Hodges, who died on 12 April 1994. She lodged a claim for a widow's pension on the basis that she was a "dependant" of the deceased. Although she and the deceased were divorced, she contended that, for the purposes of the *Veterans' Entitlements Act 1986*, they were living together in a "marriage-like relationship" at the time he died.

The Tribunal was required to make an assessment of the relationship that existed between the applicant and the deceased at the time of his death. They were married in England on 21 September 1974 and had a daughter who was born in England on 19 January 1976. The applicant was a social anthropologist. The deceased was researching Mediterranean household wine production and the French wine peasants' revolt of 1907. Because of the nature of their work, they spent substantial periods of time in separate places in England. After the birth of their daughter, the applicant spent substantial periods in Hong Kong and Swaziland pursuing her career.

The deceased suffered from a psychiatric condition which was accepted as war-caused and was suicidal from time to time. In 1979, they separated and executed a formal separation agreement which provided that their child was to remain in the custody, care and control of the applicant, but that the deceased might have access to her at all reasonable times. On 25 January 1980, the deceased took up residence at Perpignan in the south of France and lived there until 1988.

In 1985, the applicant and the deceased were divorced. Between the date of the decree absolute and the deceased's departure from France in 1988, the applicant and the deceased lived together in France during school vacations and for short periods in England during school terms. The deceased left France to visit Australia in 1988. He intended returning to France, but ill health prevented him from doing so.

In 1990, the applicant and her daughter visited Australia for a short period during the English summer vacation and stayed with the deceased until returning to the UK.

In 1992, the applicant and her daughter visited the deceased in Perth. They had not seen him since 1990. According to the applicant, she intended at that time to make her permanent home in Australia with the deceased. However she had to return to England due to family illness and was unable to return to Australia.

The deceased visited London in January 1993. He and the applicant lived together until 14 February 1993, when he left England for medical reasons. He returned to Australia, arriving on 16 February 1993. The applicant did not see him again. She made plans to leave London on

24 May 1993 to rejoin him, and gave up the tenancy of a council flat in which she had been living, but her health prevented her from leaving the UK. When the deceased died on 12 April 1994, the applicant was planning to rejoin him some months later at his home in Melbourne, and to travel extensively in China with him.

Marriage-like relationship

The Tribunal was required to decide whether the applicant and the deceased were living together in a "marriage-like relationship" on 12 April 1994, in terms of s 11A of the *VE Act*.

Under s 11A(a), concerning "the financial aspects of the relationship", the council flat in the UK had been in their joint names, but the tenancy was surrendered in 1993. They had a bank account in their joint names, into which the deceased occasionally paid money for the applicant's use. Otherwise they did not have any joint assets. They did not have any joint liabilities and kept their finances separate. Neither was under any legal obligation to pay maintenance to the other.

In relation to s 11A(b)(i), concerning "any joint responsibility for providing care or support of children", the Tribunal noted that although the daughter's permanent home was with the applicant, the deceased provided for her financially in several ways.

Under s 11A(b)(ii) in relation to "the living arrangements of the people", the Tribunal noted that from 1980 onwards, they lived in separate countries, but were in the habit of spending weeks at a time at one another's homes, behaving like husband and wife when they did so.

Under s 11A(c), relating to "the social aspects of the relationship", the applicant and the deceased corresponded frequently and spoke by telephone from time to time. Their joint social activities were confined to occasions when they were both in the same country. The applicant and the deceased generally held themselves out as married to one another. Their friends and associates were aware that they were very close emotionally.

In relation to s 11A(d), which relates to "any sexual relationship between the people", the Tribunal heard evidence that when they were together, the applicant and deceased normally slept together in a double bed and had sexual intercourse. The applicant did not have any sexual relationship with any other man after the divorce. To the best of her knowledge the deceased did not have any sexual relationship with any other woman after the divorce.

Under s 11A(e), concerning "the nature of the people's commitment to each other", the Tribunal accepted that the applicant regarded herself as married to the deceased until his death, despite having been legally divorced in 1985. The Tribunal said that it was clear that the applicant regarded the relationship as a marriage-like one but the evidence as to whether the deceased regarded the relationship as marriage-like was less clear. At times he referred to the applicant as his de facto wife or his common law wife, but at other times he filled in forms indicating that he did not have a wife or de facto wife.

Tribunal's conclusion

The Tribunal concluded that the relationship was not "marriage-like" in terms of section 11A. The Tribunal said:

"Although there are a great many factors that point towards the relationship being a marriage-like one, or would point in that direction in ordinary circumstances, I am reasonably satisfied that, as at 12 April 1994, the relationship was not marriage-like. I have reached that conclusion because for some 14 years the couple had maintained separate households in separate countries because of the difficulties they encountered if they lived together for any length of time. This was not a case where a couple, committed to their marriage, spent periods living at a distance from one another because of work commitments, military service, imprisonment, or some similar sort of obligation. They were apart because the deceased's mental condition made it dangerous for them to live together.

...

As the relationship was not marriage-like, s 5E(2)(b)(iii) of the Act is not satisfied, the applicant and the deceased were not members of a couple, the applicant was not his partner, and the applicant was not his dependant. She is therefore not entitled to a pension. The decision under review is affirmed."

Formal decision

The Tribunal affirmed the decision that the applicant was not a "dependant" of the deceased veteran.

[Ed: Ms Hayes has lodged an appeal to the Federal Court against the Tribunal's decision.]

Operational service - member of Interim Forces - standard of proof in determining whether a disease exists

Re C M Cooke and Repatriation Commission
Mathews J, Staer & Lloyd

W97/167 12 Feb 1998

This matter was remitted by the Full Federal Court for rehearing by the Tribunal in relation to Mr Cooke's claimed conditions of anxiety condition and back condition. (See 13 *VeRBosity* 34). As the original claim was lodged before 1 June 1994, Statements of Principles were not required to be applied by the Tribunal.

Mr Cooke served in the Australian Army from March 1946 to April 1953. Most of his service constituted operational service under the *Veterans' Entitlements Act 1986*. At this hearing before the Tribunal, the issues were:

- as to the duration of the applicant's operational service under the *VE Act*; and
- whether the applicant's anxiety state and his back condition constituted injuries or diseases under the *VE Act*, and if so, whether they were war-caused.

Duration of operational service

Mr Cooke enlisted in the Australian Army on 15 March 1946 for an initial period of two years. He was subsequently re-engaged for several two year periods until he was finally discharged from the Army in April 1953. He was posted to Japan in

January 1947. After his discharge from the Army, he lived in various Asian countries until 1974 when he returned to Australia.

In relation to the duration of Mr Cooke's operational service, the Commission contended that, by virtue of s 6(3)(c) of the *VE Act*, his operational service ceased on 3 January 1949, at least in relation to his pension entitlements before 13 May 1997 when the *VE Act* was amended. Mr Cooke contended that his operational service extended at least until 1 July 1951 and possibly until 28 April 1952. The issue was significant in this case because the attendance at funerals, which was said to have given rise to the applicant's anxiety state, occurred between July 1950 and May 1951 during the disputed period.

The Tribunal found that Mr Cooke was a person who "enlisted for war service in any part of the Defence Force that was raised during World War 2 for war service" within the terms of s 6(3)(a), in relation to considerations predating 13 May 1997 and his operational service extended from 15 March 1946 to 30 June 1951. In relation to the 1997 amendments to the *VE Act*, new section 6A is applicable. The Tribunal concluded that under the new provisions, his operational service also extended from 15 March 1946 to 30 June 1951. Therefore, the duration of his operational service was the same, whether calculated by reference to the pre-1997 provisions or the amending legislation.

Psychiatric condition

While in Japan, Mr Cooke was required to attend and play the Last Post at a number of funerals of veterans who had died of their war wounds. He claimed that the stress of having to attend funerals was one of the contributory causes of a generalised anxiety state which he was seeking to have treated as war-caused.

A preliminary question arose as to the standard of proof to be applied in determining whether a "disease" exists under the Act. The Commission submitted that s 120(1) and (3) of the Act are irrelevant to this issue, and that the matter is to be determined according to the standard set out in s 120(4), namely to the Tribunal's "reasonable satisfaction". The Commission relied on the judgment of Lee J in *Ferriday v Repatriation Commission* (1996) where the issue under consideration was whether the applicant was disentitled from receiving a pension because his injury or disease had resulted from his own serious default or wilful act. Lee J made the following observations:

> "The Commission submits that s 120(1) is directed at the question whether the injury which caused the veteran's incapacity resulted from an occurrence that happened while the veteran was rendering operational service and that other questions relevant to the determination of a claim for a pension, such as the claimant's status as a veteran or whether operational service had been rendered by the veteran, are not determined by reference to s 120(1), (3) but to the reasonable satisfaction of the Commission by application of s 120(4).
>
> The Commission submits that ancillary issues of like character, such as that arising under s 9(3), must be determined under s 120(4) in the same way.

The Commission's submission is correct. Section 120 is concerned with facilitating the demonstration of the existence of a war-caused injury or disease where the veteran has rendered operational service. In effect, the section provides that if the material before the Commission relating to a veteran's claim raises a reasonable hypothesis connecting the injury or disease with the particular circumstances of the veteran's operational service, the injury or disease is to be taken to be war-caused unless it is proved to the Commission, beyond reasonable doubt, that the injury or disease is not war-caused within the meaning of s 120(1). Facts which may be germane to establishing a right to a pension under the Act but not part of the question of causal connection between a morbid condition and a relevant circumstance of operational service addressed under s 120(1) are facts to be established to the reasonable satisfaction of the Commission."

The Tribunal observed that there is strong authority for the proposition that the existence or otherwise of a disease or injury, in relation to a veteran who has rendered operational service, is to be determined by the reverse criminal standard of proof as provided in s 120(3). In *Bushell v Repatriation Commission* (1992) Brennan J (as he then was), in the course of his exposition as to the effect of subs (1) and (3) of s 120, made the following observation:

"If the material before the decision-maker satisfies the decision-maker beyond reasonable doubt that a morbid condition which might attract a pension does not exist or that the circumstances of operational service that might have a causal connection with the morbid condition did not occur, there is no purpose in considering the operation of sub-s (3). But the decision-maker cannot be satisfied that the condition does not exist or that the circumstances did not occur unless the material establishes those negative conclusions beyond reasonable doubt."

The Tribunal also observed that in *Preston v Repatriation Commission* (1993) Beazley J, adopting the reasoning of Brennan J in *Bushell*, found that the existence of a disease or injury is to be determined according to the reverse criminal standard as provided in s 120(3).

The Tribunal concluded on this point:

"The respondent [Commission] says that we should prefer the judgment in *Ferriday* to that in *Preston*. However we do not think that is open to us to do so. The judgment in *Preston* involves precisely the issue which is raised here, namely the standard of proof to be applied in determining whether a disease or injury exists. As such it is directly applicable to this case. *Ferriday* involved the proof of an entirely different matter. Moreover to reject *Preston* would be to reject the analysis of Brennan J in *Bushell*.

It follows that the reverse criminal standard of proof applies. In order to find that the applicant is not suffering from an identifiable disease we must be satisfied beyond reasonable doubt of that matter. Given the difference of medical opinion on this issue, it would not be possible to reach such a finding."

Dr Oleh Kay, psychiatrist, was of the opinion that Mr Cooke has a generalised anxiety disorder which was contributed to by his service in Japan, particularly his attendance at funerals. The Tribunal granted the claim for anxiety state on the basis that there was a reasonable hypothesis connecting the anxiety disorder with his war service and it was not satisfied beyond reasonable doubt that there was no sufficient ground for making that determination.

Back condition

Mr Cooke claimed that his back condition was causally related to an episode that occurred when he was serving in Sydney in 1946. His duties involved various sorting, packing and lifting operations. He was assisting in the loading of a crate of rifles onto the back of a truck. It was a wooden crate, weighing approximately 120 lbs, with rope handles at each end. Two men were required for this operation, each one taking one of the handles, which they would use to swing the crate onto the back of the truck. On this occasion the other man lifted his end first, thus transferring much of the weight onto the applicant and forcing him into a twisting movement. He felt a sharp pain in his back which continued for the rest of the day, although he managed to maintain his activities. The pain persisted, and the next day he complained to the Regimental Aid Post. He was given two aspirins and told to return to normal duties. He did so, but the pain continued for several days. He claimed that this episode marked the beginning of ongoing back problems. While serving in Japan, he was a member of a military band. He was required to do various military drill movements, including one known as the "crash-halt". This involved the stamping down of the feet, particularly the left foot, when halting. According to the applicant this routine caused a jarring pain in his left foot, leg and spine and significantly aggravated his back problem.

There was no dispute at the Tribunal that Mr Cooke has a disability in his lumbar spine which constitutes a "disease" within the meaning of the *VE Act*. Dr Maguire, a rheumatologist, gave evidence in support of the claim. He expressed the view that the onset of the applicant's disc pathology might well have been caused by the lifting incident in 1946 when the applicant "ricked" his back. The weight bearing and twisting tasks which he was required to perform on a regular basis during that period would also have contributed to this process. Dr Peter Anderson, an orthopaedic specialist, also considered that the applicant's war service contributed to his present condition.

Medical witnesses for the Commission expressed the view that the 1946 incident would have caused soft tissue damage only, and would have had no lasting effect on the applicant's back condition. Similarly, they did not consider that any of his marching or drill activities would have contributed to his current disabilities.

The Tribunal allowed the claim for back condition on the basis that a reasonable hypothesis had been raised in the material and it was not satisfied beyond reasonable doubt that there was no sufficient ground for making that determination.

Formal decision

The Tribunal set aside the decision under review and determined that

Mr Cooke's anxiety state and back condition were war-caused.

[Ed: The Repatriation Commission has lodged a further appeal to the Federal Court against the Tribunal's decision.]

Entitlement - whether SoP in relation to intermediate cause of death should be applied

Re L E Etheridge and Repatriation Commission

Mathews J

N96/79 04 Mar 1998

Mrs Etheridge applied to the Tribunal for review of a decision that the death of her husband was not war-caused. Mr Etheridge served in the South-west Pacific during World War 2 and this constituted operational service. In 1945 he was in a foxhole in Borneo when a Japanese hand grenade exploded nearby, killing his two companions and seriously injuring him. The Tribunal observed that this was clearly a devastating experience which had a major impact on much of his later life.

There was evidence before the Tribunal that Mr Etheridge was a non-drinker when he first joined the Army. However by the time Mrs Etheridge first met him in 1947, he was already a habitual drinker who sometimes drank to excess. They were married in 1948.

Between 1948 and 1959 Mr Etheridge worked as a driver. His drinking gradually became worse and he changed from drinking beer to wine. At first he used to drink a bottle of Muscat a day and later a flagon of wine. Mrs Etheridge described her husband as almost always drunk and frequently very aggressive. He was unable to hold down jobs because of his drinking and was frequently out of work. In 1969 they separated because of his drinking. Not long afterwards he moved to the Northern Territory. On four occasions in 1972 and 1973 he was admitted to hospital and treated for alcohol dependence. He died in December 1977 and the death certificate specified the cause of death to be: (a) respiratory failure; and (b) pneumonia.

Issues

The primary issue before the Tribunal was whether intermediate steps in the causation process should be subject to the Statements of Principles regime, notwithstanding that there is no SoP covering the immediate cause of a veteran's death. In this case there was no SoP relating to respiratory failure or pneumonia.

Mrs Etheridge submitted that there was no SoP in respect of "the kind of death" met by her late husband and that, in accordance with subs 120A(4), subs 120A(3) did not apply. Accordingly, the "reasonable hypothesis" test under subs 120(3) should be applied. She sought to establish a reasonable hypothesis that in the light of the history of her husband's alcohol abuse there was a reasonable supposition that his normal white cell count was suppressed by his alcohol intake, thereby impeding his system from resisting the pneumonia infection. It was also submitted that the ingestion of large quantities of alcohol could cause the aspiration of gastric acid content into the lung, predisposing to the development of pneumonia.

At issue was whether there was a SoP in respect of "the kind of death" met by Mr Etheridge within the terms of subs 120A(4).

The Repatriation Commission submitted that SoP No 5 of 1994, relating to "psychoactive substance abuse or dependence" applied in this case. The Commission conceded that the veteran's circumstances fell within the terms of SoP No 5 of 1994, and that Mrs Etheridge would therefore succeed whichever path was taken by the Tribunal.

The Tribunal observed that the answer to the issue in this case depended on the meaning of the phrase "the kind of death" in subs 120A(4). Did this include only the immediate cause of death, as argued by Mrs Etheridge, or did it potentially encompass other causal factors leading to death, as argued by the Commission?

The Commission submitted that in the absence of a SoP relating to pneumonia, then one must consider the contributory cause which is relied upon as providing the link between the veteran's war service and his fatal disease. In this case the veteran's alcohol abuse provided that link. If there is a SoP in relation to that contributory cause, then the hypothesis advanced as connecting the veteran's death with the circumstances of his service must be measured against that SoP.

The Tribunal said that two questions arose in relation to the Commission's submissions in this case: **first**, how did the construction urged by the Commission stand with the provisions of the Act, particularly subss 120A(4) and 196B(2), and **second**, what were its practical consequences?

Section 196B(2) provides (as relevant) as follows:

> **"196B.** (2) If the Authority is of the view that there is sound medical-scientific evidence that indicates that **a particular kind of ... death** can be related to:
>
> (a) operational service rendered by veterans; or
>
> (b) ...
>
> (c) ...
>
> the Authority must determine a Statement of Principles in respect of **that kind of ... death** setting out:
>
> (d) the factors that must as a minimum exist; ...
>
> (e) ...
>
> before it can be said that a reasonable hypothesis has been raised connecting ... death of that kind with the circumstances of that service." (emphasis added).

The Tribunal commented:

> "One would expect the phrases 'a particular kind of death' and 'that kind of death' in subs 196B(2) to be congruous with the phrase 'the kind of death' in subs 120A(4). Indeed the terms of the latter provision make it clear that this must be the case. But if this be so, how does s 196B(2) sit with the respondent's present submission? If 'the kind of death' in subs 120A(4) were to mean a death caused by pneumonia which is precipitated by alcohol abuse, then would it not be incumbent upon the RMA, under subs 196B(2), to determine a SoP in relation to a death of that kind? This it patently has not done. Accordingly, if this classification of 'the type of death' is

adopted, the situation would fall within subs 120A(4), and one would go direct to s 120(3), without recourse to any SoP."

The Commission argued that it would be contrary to the spirit of the 1994 amendments if, in the absence of a SoP relating to pneumonia, the applicant could revert to the pre-1994 position and rely upon a reasonable hypothesis under subs 120(3), notwithstanding that there is a SoP relating to the contributory cause which is relied upon as providing the link between the applicant's pneumonia and his war service.

Tribunal's conclusions

The Tribunal said:

"The difficulty with this submission is that it is not supported by the terms of the legislation. Subsection 120A(4) refers to 'the kind of death met by the person'. This focuses attention upon the condition which caused the veteran's death, not upon any hypothesis linking death with war service. If, as here, there is no SoP in relation to that condition, then in my view subs 120A(4) applies, and the matter falls to be considered under subs 120(3) in accordance with the principles enunciated in *Bushell v Repatriation Commission* (1992), *Byrnes v Repatriation Commission* (1993) and *East v Repatriation Commission* (1987). I do not see this as circumventing the purpose of the 1994 amendments. To the contrary, it involves a literal application of the statutory provisions."

The Tribunal said that a further difficulty with the Commission's submissions arose from the necessity of establishing a causal relationship between the veteran's terminal illness (in this case pneumonia) and the condition which is said to provide the link with his war service (i.e. alcohol abuse). If there is a SoP in relation to the terminal condition, then one clearly decides the matter by reference to its terms. Unless the SoP upholds the causal connection, then there can be no reasonable hypothesis under subs 120A(3) or 120(3). But if there is no SoP in relation to that terminal condition, then the decision-maker has no choice but to turn to subs 120(3), without the assistance of subs 120A(3), and determine whether the material before it raises a reasonable hypothesis connecting the death with the veteran's war service in terms of that section.

The Tribunal concluded:

"I am thus of the view that 'the kind of death' referred to in subs 120A(4) requires consideration of **the ultimate or proximate cause of death** met by the veteran. If there is no SoP relating to that ultimate or proximate cause, then one reverts to the pre-1994 situation and goes direct to subss 120(3) and (1). It may be, as in this case, that there is a SoP in relation to one of the intermediate causative conditions. In that event an applicant might choose to use it in order to support a hypothesis connecting that condition with the veteran's war service. But it will not be necessary to do so. The failure of the SoP to support the hypothesis will not be fatal to the applicant's case if the hypothesis is otherwise reasonable under subs 120(3). ... In the circumstances of this case, as I have already indicated, the applicant is entitled to succeed no matter which path is traversed." (emphasis added)

Formal decision

The Tribunal set aside the decision under review and substituted its decision that Mr Etheridge's death was war-caused.

Breast cancer - excessive alcohol consumption

Re E H Holley and Repatriation Commission
Mathews J

Q96/440 11 Mar 1998

Mrs Holley applied to the Tribunal for review of a decision that the death of her husband was not war-caused. Mr Holley died in 1984 due to:

(a) respiratory failure;
(b) lung secondaries; and
(c) breast carcinoma.

The primary cause of his death was malignant neoplasm of the breast and any lung involvement was secondary to that cancer. He served with the Royal Australian Air Force during World War 2 and his service constituted operational service. The claim was required to be determined in accordance with s 120(1) and (3) of the *VE Act*.

Mrs Holley met her late husband after the war. Little was known about his war experiences as he refused to talk about them, apart from one or two brief allusions. In June 1945 he went to Morotai, and later to Borneo. According to his diary, when he was at Morotai he witnessed the kicking to death of a Japanese soldier. He told his daughter that whilst he was on sentry duty in Morotai he was constantly frightened of killing one of his own men in the dark as it was impossible to tell friend from enemy. Mrs Holley persuaded him to destroy a photograph showing the stacked bodies of Japanese soldiers.

Mr Holley was first introduced to alcohol during his war service. There was evidence that before the war he was an outgoing, active, sociable man who was interested in his work and enjoyed sport but after the war he was introverted and withdrawn. He went back to his pre-war employment as a clerk with Mt Isa Mines, but apparently derived no enjoyment from his work and was not interested in promotion. He had lost all interest in social or sporting activities.

Alcohol consumption

Mr and Mrs Holley were married in 1948. After their marriage she realised that her husband was a heavy drinker who went to the hotel regularly and brought beer home for consumption on other days and at weekends. Over the years his drinking increased. By the time of his final illness, he was regularly drinking at least three bottles of beer each day.

The Tribunal was required to apply Statement of Principles No 53 of 1997 concerning malignant neoplasm of the breast. One of the factors which supports a reasonable hypothesis connecting this condition with the circumstances of a person's war service is:

> *"**5(d).** consuming at least 80 kg of alcohol (contained within alcoholic drinks) over a period of 15 years within the 20 years before the clinical onset of malignant neoplasm of the breast;"*

The Tribunal said it was clear from the evidence that Mr Holley's alcohol consumption over the last 15 years of his life was well in excess of the amount specified in para 5(d). Accordingly, the applicable Statement of Principles upheld the hypothesis connecting the fatal condition with his alcohol abuse. The remaining question was whether his alcohol consumption itself was related to war service in the sense that it arose out of or was attributable to his service (s 196B(14)(b)). The Tribunal said this was a factual question to be determined under s 120(3) and (1) of the Act in accordance with the principles enunciated in *Bushell v Repatriation Commission* (1992), *Byrnes v Repatriation Commission* (1993) and *East v Repatriation Commission* (1987).

Medical evidence

Counsel for the Repatriation Commission submitted that Mrs Holley could not succeed unless the veteran's circumstances fitted within the SoP concerning Post Traumatic Stress Disorder (Instrument No 15 of 1994 as amended by Instrument No 225 of 1995). The Tribunal said that in light of its findings it was unnecessary to consider this issue.

Dr Knox and Dr Troup, psychiatrists who gave evidence for Mrs Holley, considered that Mr Holley was probably suffering from PTSD as a result of his war experiences, and that this was responsible for his alcohol dependence. They acknowledged the difficulty in making this diagnosis given the paucity of background facts. Similarly, they acknowledged that PTSD was not the only possible link between Mr Holley's war service and his alcohol dependence, but thought it the most likely one. Dr Nothling, for the Commission, considered that Mr Holley was not suffering from PTSD or from any other psychiatric condition and that there was no causal link between his war service and his alcohol dependence. Dr Lawrence, also for the Commission, disputed that Mr Holley was suffering from PTSD but was prepared to link his alcohol consumption with war service in the sense that his war experiences provided the opportunity for his first exposure to alcohol, both financially and in terms of social acceptability, and that this proved to be a means learnt by him for relieving his social anxiety.

The question before the Tribunal was whether, in terms of *East* (as recently reaffirmed in *Repatriation Commission v Bey* (1997) 149 ALR 721), there was a reasonable hypothesis connecting Mr Holley's alcohol dependence with his war service.

Tribunal's conclusion

The Tribunal concluded as follows:

"In my opinion the evidence overwhelmingly points to the hypothesis that Mr Holley's alcohol dependence arose out of or was attributable to his war service. Whether or not this occurred through the medium of PTSD is unnecessary to determine in this case. It may be that he suffered from some lesser form of psychiatric condition, such as depression or anxiety as a result of his war experiences. In this regard, I find very compelling the evidence that points to the fact that Mr Holley's war experiences caused in him a complete change of personality. It

would appear that whereas before the war he was outgoing, sociable and interested in working and sporting activities, he came back as a withdrawn, reclusive, uncommunicative man, who had little interest in life.

...

A reasonable hypothesis having been raised connecting Mr Holley's alcohol dependence with the circumstances of his war service, the only remaining question is whether, under s 120(1), there is any basis for finding beyond reasonable doubt that Mr Holley's condition was not war-caused. It is not suggested on behalf of the respondent that there is any material upon which such a finding could be made. ... It follows from all I have said that I would find, on the evidence, that Mr Holley's terminal illness was war-caused within the meaning of the Act."

Formal decision

The Tribunal set aside the decision under review and substituted its decision that Mr Holley's death was war-caused.

Carcinoma - exposure to radiation in Japan

Re T Connolly & J V Flynn and Repatriation Commission

Breen, Morley, & Smithurst

Q94/743 & Q95/675 26 Mar 1998

Mrs Connolly and Mrs Flynn appealed to the Tribunal against decisions that the death of their late husbands was not war-caused. Mr Connolly died from cancer of the pancreas and Mr Flynn died from non-Hodgkin's lymphoma. The two cases were heard together as they raised similar issues. As both claims were lodged before 1 June 1994, Statements of Principles as determined by the Repatriation Medical Authority were not applicable. The Tribunal was required to determine the claims in accordance with the principles enunciated by the High Court in *Bushell v Repatriation Commission* (1992) and *Byrnes v Repatriation Commission* (1993) relating to subsections 120(1) and (3) of the *VE Act.*

Mr Connolly and Mr Flynn both served in the British Commonwealth Occupation Forces (BCOF) in the Hiroshima region of Japan following the Japanese surrender after the atomic bombs were dropped on Hiroshima and Nagasaki in August 1945. Mr Flynn was based at Kure from April 1946 to January 1947. Mr Connolly was based at Kure in the Hiroshima area from March 1948 to November 1949 and for short periods at Iwakuni during the Korean War. There was evidence before the Tribunal that both veterans had visited Hiroshima. The applicants put forward the hypothesis that exposure of their husbands to radiation at Hiroshima had played a part in their subsequent death from cancer.

Medical evidence

The Tribunal examined the medical evidence supporting the two widows' claims according to the following questions:

1. To what doses of radiation were the veterans exposed?

2. Could such radiation exposure have induced the veterans' cancers?

The Tribunal considered reports of scientific evidence concerning the health effects of exposure to low levels of ionising radiation, in particular the results of a long term epidemiological project by the Radiation Effects Research Foundation (RERF), a life span study of survivors of the atomic bombings of Hiroshima and Nagasaki. The study has examined the excess cancer deaths of such survivors since 1950.

There was general agreement that the two veterans were exposed to only low radiation doses. Professor Ilbery who gave evidence for the Commission accepted that the veterans' radiation exposure was more than normal "background radiation" that they would have received in Australia.

In relation to Mr Connolly's death, Professor Ilbery referred to the RERF studies as having shown increased risks for the more common cancers but said "no significant radiation effect was found for pancreas. ... At present, the total body of data seems equivocal and a link between radiation and pancreatic cancer has not been established". In relation to Mr Flynn, Professor Ilbery stated "Even if NHL (non-Hodgkin's lymphoma) was radiogenic ... the risk from exposure at the level attributable to this veteran is minuscule".

Dr Wiseman, who gave evidence for the applicants, regarded it as being "... a reasonable case that [Mr Connolly's] carcinoma of the pancreas was service related". She regarded it as "a small but definite chance" that Mr Flynn's non-Hodgkin's lymphoma could have been "associated with internal contamination from radioactive elements" in the Hiroshima area during his BCOF service.

Dr Higson, who also gave evidence for the applicants, stated in relation to both veterans:

> "It is possible that small doses of ionising radiation, such as those presumed to have been incurred by Mr Connolly and Mr Flynn during their military service, can cause pancreatic cancer or non-Hodgkin's lymphoma".

The Tribunal concluded that the numbers of deaths recorded in the RERF study from pancreatic cancer and non-Hodgkin's lymphoma were too small to allow any conclusions about their possible induction by residual radiation from the atomic bomb explosions.

Linear no-threshold hypothesis

The Tribunal's decision was based on the concept of low dose initiated radiation-induced cancer. It is argued that, for the majority of tumour types, a single mutational event in a critical gene in a single target cell in vivo can create the potential for neoplastic development. On this basis, a single radiation track (lowest dose and dose rate possible) traversing the nucleus of an appropriate target cell has a finite probability, albeit low, of generating the specific damage that results in a tumour initiating mutation. Thus, at the level of DNA damage there is no basis for the assumption that there is likely to be a dose threshold below which the risk of tumour induction will be zero.

This has led to the formulation of the so-called "linear no-threshold hypothesis", summarised by Dr Higson as follows:

> "The estimation of risks at low levels of radiation ... involves an assumption

that all doses of radiation, even extremely low doses, have an associated risk which increases with increase in dose. It follows from this assumption that there is a risk of cancer even from the natural background radiation to which everyone is exposed continuously, and an additional risk from any additional exposure."

The Tribunal concluded that:

1. the applicants' claims were based on an hypothesis which was not fanciful, because it was derived from the linear no-threshold hypothesis invoking so-called "stochastic effects" of low dose radiation which is currently accepted universally by all members of the scientific community working in this field;

2. the hypothesis was not contrary to known scientific fact, as agreed by all medical witnesses; and

3. there was an apparent "pointing toward" the hypothesis by the findings to date of the long-term RERF Study of Japanese atomic bomb survivors, that by now there have been excess deaths apparently caused by radiation of the more common cancers, notably lung, liver and stomach.

The Tribunal noted that there was no actual scientific fact produced in evidence to support the hypothesis; rather, the supporting evidence was itself an hypothesis, i.e., the linear no-threshold hypothesis. In *Byrnes v Repatriation Commission*, the High Court stated that in some cases, the hypothesis may assume the occurrence or existence of a "fact" without that making the hypothesis unreasonable.

The Tribunal also referred to the decision of the Full Court of the Federal Court in *East v Repatriation Commission* (1987), that for an hypothesis to be reasonable, as well as possessing some degree of acceptability or credibility, and as well as not being obviously fanciful, impossible, incredible or untenable, it must not be "... too remote or too tenuous". In this respect, the Tribunal found that the linear no-threshold hypothesis, as it applied to the low radiation doses involved in these veterans' cases, left the applicants' hypothesis remote and/or tenuous to an extent but not to a point that justified a finding that the applicants' hypothesis was too remote and/or too tenuous.

Accordingly, the Tribunal decided that the applicants' cases should succeed, while acknowledging that its decision "explores to its limits the reasonable hypothesis test".

Formal decision

The Tribunal set aside the decisions under review and substituted its decision that the death of the veterans was war-caused.

[Ed: The Repatriation Commission has lodged an appeal to the Federal Court against the Tribunal's decision.]

Decisions of the Federal Court of Australia

Tribunal proceedings - attendant allowance - breach of natural justice

Hutton v Repatriation Commission
Davies J

4 February 1998

This was an appeal to the Federal Court against a decision of the Tribunal that Mr Hutton did not qualify for an attendant allowance in terms of s 98 of the *VE Act*. The late veteran died in 1995. His war-caused disabilities included asthma, anxiety state, thoracic kypho-scoliosis, lumbar spondylitis, chronic bronchitis with emphysema and atherosclerosis. The Tribunal formed the view that the veteran's two arms had become permanently and wholly useless within the meaning of that term in s 98(3). However, the Tribunal rejected the claim on the basis that it had not been shown that the late veteran's incapacity in the arms resulted from his war-caused disabilities.

Davies J noted that there was medical evidence before the Tribunal which suggested that the veteran's incapacity was related to his war-caused disabilities. His Honour said:

> "In my opinion, the position was such that the Tribunal was bound by the principles of natural justice to give to the applicant notice if the Tribunal had it in mind that it would decide the case on a lack of evidence connecting the veteran's condition with his accepted disabilities. That is because, on the face of it, that matter was proved by the evidence of Dr Egan and no challenge on that ground was made during the hearing on behalf of the respondent.
>
> Counsel for the respondent has submitted that this was a straightforward case of a lack of appropriate medical evidence, that it was for the applicant to prove the necessary connection and that such connection was not proven as Dr Egan's reports did not in terms specifically state that the veteran's conditions were war-caused disabilities. In my opinion, in taking administrative decisions under the *Veterans' Entitlements Act*, it is inappropriate to take such a technical approach to decision-making. An administrative decision-maker is bound to deal with the substance of the matter in a sensible, efficient, administrative manner. Generally, if any problems arise as to proof, the administrative decision-maker should raise a query and call for further evidence."

Conclusion

Davies J concluded that in the light of the provisions of section 119 of the *VE Act* relating to substantial justice, it was inappropriate for the Tribunal to take the view that the claim should be dismissed simply because no medical practitioner had given specific evidence that the conditions referred to by Dr Egan were war-caused disabilities. Davies J said that there was a duty on the part of the Tribunal to raise the issue with the applicant's representative and to give him a fair opportunity to adduce additional evidence if the Tribunal thought that such evidence was required. For those reasons, there was a breach of the principles of natural justice.

Formal decision

The Court set aside the Tribunal's decision and remitted the matter to the Tribunal for determination according to law.

Review of Statement of Principles - refusal to grant adjournment

McMillan v Repatriation Commission

Marshall J

27 February 1998

This was an appeal from decisions of the Tribunal refusing to grant adjournments pending the outcome of reviews of certain Statements of Principles. As their claims could not succeed under the current SoPs, the applicants had requested the Tribunal to adjourn their applications pending review of those SoPs by the Repatriation Medical Authority or the Specialist Medical Review Council. The Tribunal refused to grant adjournments and affirmed the decisions under review.

Legislation

The issue of whether the Tribunal was obliged to grant adjournments to the applicants turned on the proper interpretation of subsection 120A(2) of the *VE Act* which provides:

> *"**120A** (2) If the Repatriation Medical Authority has given notice under section 196G that it intends to carry out an investigation in respect of a particular kind of injury, disease or death, the Commission is not to determine a claim in respect of the incapacity of a person from an injury or disease of that kind, or in respect of a death of that kind, unless or until the Authority:*
>
> *(a) has determined a Statement of Principles under subsection 196B(2) in respect of that kind of injury, disease or death; or*
>
> *(b) has declared that it does not propose to make such a Statement of Principles."* (emphasis added)

Submissions

The applicants submitted that the Repatriation Commission is prevented by s 120A(2) of the Act from determining a claim which relates to SoPs under review until the RMA has completed its review. It was submitted that the words "unless or until" in s 120A(2) govern the words in paragraphs (a) and (b) of the subsection. Any other construction would be unjust because the relevant SoPs may be amended in a way which assists the applicants and new claims by them would have far less retrospectivity than the current applications.

The Repatriation Commission submitted that s 120A(2) of the Act does not prevent it from determining a claim until the RMA had completed its review. S 120A(2) of the Act does not mention a review by the RMA of an existing SoP and the subsection does not prevent determinations when a review is being conducted by the SMRC. The effect of the applicants' submission was that the Commission would not be able to deal with claims in circumstances where the particular injury or disease was affected by a SoP that was under review.

The Commission submitted that if the RMA has announced an investigation into a relevant kind of injury or disease, claims in relation to that injury are not

to be determined unless there is already a SoP in respect of that injury. This is the effect of s 120A(2)(a) of the Act. Section 120A(2)(b) of the Act has the effect that if an investigation has been announced and there is no relevant SoP in existence, claims are not to be determined until that investigation is concluded either by a SoP being issued or a declaration that no SoP will be made.

Court's conclusion

The Court held that the Commission (and the Tribunal) is not prevented by s 120A(2) from determining claims until the RMA has completed its review of relevant SoPs. The Court said:

> "The subsection provides for a bar on the respondent [Repatriation Commission] determining certain claims made to it if the RMA has given notice of its intention to carry out a relevant investigation. The subsection then provides two exceptions to that bar. The first exception is where the RMA has determined a SoP in respect of the relevant injury, disease or death. The second exception is where the RMA has made a declaration stating that it does not propose to make a SoP in respect of the relevant injury, disease or death.
>
> In the circumstances of each claim before the AAT there was in existence a relevant SoP. Therefore, there was no bar on the respondent and the AAT determining the relevant claims, because the matters fell within the first exception provided in the subsection."

The Court said that the correct position is that:

1. where there is a SoP, the claim is to be determined by reference to the template expressed in that SoP;

2. where there is no SoP, but the RMA has announced an investigation that could lead to a SoP, the claim is to be deferred; and

3. where there is no SoP and no investigation has been announced, the claim is to be determined by applying the pre-1994 law: ss 120A(4), 120B(4).

Accordingly, the Tribunal was correct to refuse the requests for adjournments in each case.

Formal decision

The Court dismissed the appeals.

Review of Statement of Principles - whether prevented from deciding application

Beale v Administrative Appeals Tribunal and Repatriation Commission

Lindgren J

16 March 1998

Mr Beale applied to the Federal Court under s 6 of the *AD(JR) Act* in respect of "conduct" in which the Tribunal was proposing to engage. The conduct was the proposed hearing of his application concerning osteoarthrosis, despite the fact that the Repatriation Medical Authority had not completed a review of the relevant Statement of Principles. His application before the Tribunal could succeed only if the RMA's review of the SoP resulted in an amendment in his favour.

Appeal grounds

The grounds of Mr Beale's application to the Court were:

- first, that a breach of the rules of natural justice was likely to occur in connection with the proposed conduct of the Tribunal for the purpose of its making its decision on his application; and

- second, that the making of that decision would involve a failure by the Tribunal to take a relevant consideration into account in the exercise of the power conferred by the *VE Act* to determine pension claims.

Background

Mr Beale rendered operational service during World War 2. Accordingly, his claim depended on whether there was a "reasonable hypothesis" connecting his osteoarthrosis of the left knee and right foot with the circumstances of his war service. His claim was based on the hypothesis that chronic loadings on those joints during his army service contributed to the onset or severity of those problems.

On 4 January 1996, Mr Beale had asked the Specialist Medical Review Council, pursuant to s 196Y of the *VE Act*, to review the contents of the SoP concerning osteoarthrosis. On 24 March 1997, the SMRC had recommended that the RMA reconsider the effects of repetitive micro trauma on osteoarthrosis. On 14 May 1997, the SMRC asked the Tribunal to delay any consideration of Mr Beale's matter until the RMA had completed its reconsideration. His application before the Tribunal was adjourned several times. However, on 12 November 1997, the Tribunal had refused to adjourn the matter further on the basis that failure to proceed would constitute "unreasonable delay" within the meaning of that term as explained by Fisher J in *Thornton v Repatriation Commission* (1981) 52 FLR 285.

Submissions

Mr Beale submitted that his rights to have the SoP reviewed would be rendered ineffective if his claim was determined before the pending investigation by the RMA was completed. Lindgren J rejected this submission, saying that the right to lodge a claim for pension and the right to request a review of a SoP are independent of each other. He observed:

> "The legislative nature of an SoP and the express provisions of ss 120A (2) and 120B (2) go far to confirm that those rights are not intended to lead to the general result that a claim for a pension is not to be determined by the Commission or those standing in its shoes until a pending request for review of the contents of an SoP has been resolved. By providing that once the RMA has given notice under s 196G of its intention to carry out an investigation in respect of a particular kind of injury, disease or death, the Commission must not determine a relevant claim until either the RMA has determined an SoP in respect of an injury, disease or death of the relevant kind or declared that it does not propose to do so, ss 120A (2) and 120B (2) recognise that where an initial SoP has already been determined, the Commission and those who stand in its shoes are not

to refrain from determining a relevant claim merely because an investigation by way of review of the contents of an already existing SoP has been requested by a claimant or is otherwise pending."

Lindgren J continued:

"In these circumstances, it will not be procedural unfairness or a failure to take into account a relevant consideration, for the AAT to determine Mr Beale's application before it ... on the footing of the three existing SoPs. ... It cannot be a procedural unfairness or a failure to take into account a relevant consideration for a decision maker to decide a matter by reference to the legislation incorporating the relevant SoP as it stands at the time."

Formal decision

The Court dismissed Mr Beale's application.

Statements of Principles issued by the Repatriation Medical Authority
March-May 1998

Number of Instrument	Description of Instrument
13 of 1998	Determination of Statement of Principles under subsection 196B(2) concerning cardiac myxoma and death from cardiac myxoma
14 of 1998	Determination of Statement of Principles under subsection 196B(3) concerning cardiac myxoma and death from cardiac myxoma
15 of 1998	Determination of Statement of Principles under subsection 196B(2) concerning idiopathic fibrosing alveolitis and death from idiopathic fibrosing alveolitis
16 of 1998	Determination of Statement of Principles under subsection 196B(3) concerning idiopathic fibrosing alveolitis and death from idiopathic fibrosing alveolitis
17 of 1998	Revocation of Statements of Principles (Instrument No.31 of 1994), and Determination of Statement of Principles under subsection 196B(2) concerning Reiter's syndrome and death from Reiter's syndrome
18 of 1998	Revocation of Statements of Principles (Instrument No.32 of 1994), and Determination of Statement of Principles under subsection 196B(3) concerning Reiter's syndrome and death from Reiter's syndrome
19 of 1998	Revocation of Statements of Principles (Instrument No.93 of 1996), and Determination of Statement of Principles under subsection 196B(2) concerning cardiomyopathy and death from cardiomyopathy
20 of 1998	Revocation of Statements of Principles (Instrument No.94 of 1996), and Determination of Statement of Principles under subsection 196B(3) concerning cardiomyopathy and death from cardiomyopathy
21 of 1998	Revocation of Statements of Principles (Instrument No.7 of 1996), and Determination of Statement of Principles under subsection 196B(2) concerning psoriasis and death from psoriasis
22 of 1998	Revocation of Statements of Principles (Instrument No.8 of 1996), and Determination of Statement of Principles under subsection 196B(3) concerning psoriasis and death from psoriasis
23 of 1998	Revocation of Statements of Principles (Instrument No.142 of 1996, Instrument No.195 of 1996, and Instrument No.85 of 1997), and Determination of Statement of Principles under subsection 196B(2) concerning cerebrovascular accident and death from cerebrovascular accident
24 of 1998	Revocation of Statements of Principles (Instrument No.143 of 1996, Instrument No.196 of 1996, and Instrument No.86 of 1997), and Determination of Statement of Principles under subsection 196B(3) concerning cerebrovascular accident and death from cerebrovascular accident

Statements of Principles issued by the Repatriation Medical Authority
March-May 1998

Number of Instrument	Description of Instrument
25 of 1998	Determination of Statement of Principles under subsection 196B(2) concerning symptomatic Epstein-Barr virus infection and death from symptomatic Epstein-Barr virus infection
26 of 1998	Determination of Statement of Principles under subsection 196B(3) concerning symptomatic Epstein-Barr virus infection and death from symptomatic Epstein-Barr virus infection
27 of 1998	Determination of Statement of Principles under subsection 196B(2) concerning psoriatic arthropathy and death from psoriatic arthropathy
28 of 1998	Determination of Statement of Principles under subsection 196B(3) concerning psoriatic arthropathy and death from psoriatic arthropathy
29 of 1998	Determination of Statement of Principles under subsection 196B(2) concerning goitre and death from goitre
30 of 1998	Determination of Statement of Principles under subsection 196B(3) concerning goitre and death from goitre
31 of 1998	Determination of Statement of Principles under subsection 196B(2) concerning panic disorder and death from panic disorder
32 of 1998	Determination of Statement of Principles under subsection 196B(3) concerning panic disorder and death from panic disorder
33 of 1998	Revocation of Statements of Principles (Instrument No.23 of 1997), and Determination of Statement of Principles under subsection 196B(2) concerning malignant neoplasm of the thyroid gland and death from malignant neoplasm of the thyroid gland
34 of 1998	Revocation of Statements of Principles (Instrument No.24 of 1997), and Determination of Statement of Principles under subsection 196B(3) concerning malignant neoplasm of the thyroid gland and death from malignant neoplasm of the thyroid gland
35 of 1998	Revocation of Statements of Principles (Instrument No.75 of 1996), and Determination of Statement of Principles under subsection 196B(2) concerning cirrhosis of the liver and death from cirrhosis of the liver
36 of 1998	Revocation of Statements of Principles (Instrument No.76 of 1996), and Determination of Statement of Principles under subsection 196B(3) concerning cirrhosis of the liver and death from cirrhosis of the liver

Conditions under investigation by the Repatriation Medical Authority as at 13 May 1998

Description of disease or injury	Factors under investigation	Date gazetted
Asthma [Instrument Nos 59/96 & 60/96]	Smoking	10-09-97
Cervical spondylosis [Instrument Nos 161/96 & 162/96]	- - -	15-10-97
Diabetes mellitus [Instrument Nos 47/96 & 48/96 as amended by Nos 187/96 & 188/96]	Excessive microwave radiation exposure	13-05-98
Helicobacter pylori infection	- - -	10-09-97
Hypertension [Instrument Nos 83/95 & 84/95]	Post traumatic stress disorder	23-04-97
Hypertension [Instrument Nos 83/95 & 84/95]	Psychosocial stress (particularly war or service related stressors)	22-01-97
Ischaemic heart disease [Instrument Nos 140/96 & 141/96]	Cessation of smoking	10-09-97
Ischaemic heart disease [Instrument Nos 140/96 & 141/96]	Post traumatic stress disorder	23-04-97
Ischaemic heart disease [Instrument Nos 140/96 & 141/96]	Psychosocial stress (particularly war or service related stressors)	22-01-97
Lumbar spondylosis [Instrument Nos 165/96 & 166/96]	- - -	15-10-97
Malignant neoplasm of the small intestine [Instrument Nos 153/96 & 154/96 as amended by Nos 7/98 & 8/98]	- - -	13-05-98
Non-Hodgkin's lymphoma [Instrument Nos 69/97 & 70/97]	- - -	14-01-98
Open-angle glaucoma [Instrument No 241 of 1995]	Stress and malignant melanoma of the choroid	25-03-98
Osteoarthrosis [Instrument No 71/95 as amended by Nos 336/95 & 352/95 & No 72/95 as amended by Nos 337/95 & 353/95]	Trauma to the relevant joint	26-02-97
Pterygium [Instrument No 253/95]	Exposure to ultra violet rays and environmental irritation	14-01-98
Refractive error [Instrument No 294/95]	Exposure to ultra violet rays, environmental irritation, and pterygium	14-01-98
Spondylolisthesis [Instrument No 15/97]	Aggravation of spondylolisthesis	14-01-98
Thoracic spondylosis [Instrument Nos 163/96 & 164/96]	- - -	15-10-97
Varicose veins [Instrument No 3/95]	Prolonged standing and straining while standing	11-02-98

Administrative Appeals Tribunal decisions - January to March 1998

Cardiovascular disease

atherosclerotic PVD and ischaemic heart disease
- whether smoking war-caused

Appleby, A 09 Feb 1998

hypertension (SOP case)
- salt intake

Kelly, T 11 Mar 1998

Teese, G E 30 Mar 1998

- renal artery stenosis

Moylan, F 27 Mar 1998

ischaemic heart disease (SOP case)
- whether clinical onset within 15 years of smoking cessation

Atkin, M B 05 Feb 1998

Cresp, M T 26 Feb 1998

Robertson, K 02 Mar 1998

Claim for pension

whether to be determined using SOPs
- claim lodged on AFI form

Feben, H S 23 Jan 1998

Death

breast cancer (SOP case)
- alcohol consumption

Holley, E H 11 Mar 1998

chronic airflow limitation & ischaemic heart disease
- whether smoking war-caused

Flynn, G A 25 Feb 1998

colon cancer (SOP case)
- whether smoking war-caused

Rogers, W J 17 Mar 1998

glioblastoma multiforme & COAD
- smoking

May, D M 29 Jan 1998

hypertension
- whether alcohol consumption war-caused

Jeffries, J 25 Feb 1998

ischaemic heart disease
- passive smoking

McGuigan, M T 30 Mar 1998

- smoking

Cottee, I A 29 Jan 1998

Bridgeman, M 29 Jan 1998

Robertson, K 2 Mar 1998

- smoking and high fat diet

Cresp, M T 26 Feb 1998

ischaemic heart disease & myocardial infarction
- whether hypertension related to service

Shelton, J H 13 Mar 1998

non-Hodgkin's lymphoma
- exposure to radiation in Japan

Flynn, J V 26 Mar 1998

pancreas
- exposure to radiation in Japan

Connolly, T 26 Mar 1998

Parkinson's disease (SOP case)
- hypoxic-ischaemic cerebral insult

Burgoyne, D I 20 Mar 1998

Dependant

divorced from veteran
- whether marriage-like relationship

Hayes, R T 23 Jan 1998

Entitlement

Statements of Principles
- chain of causation
- whether bound to apply SOP concerning causal factor

Etheridge, L E 04 Mar 1998

Shelton, J H 13 Mar 1998

Gastrointestinal disorder

gastro-oesophageal reflux disease (SOP case)
- smoking

Kelly, T 11 Mar 1998

gastro-oesophageal reflux disease
- aggravation by oesophagitis

Neilson, G P 13 Mar 1998

General rate pension

hearing loss and tinnitus

Pym, R E 30 Jan 1998

Hearing loss

sensori neural hearing loss (SOP case)
- dental technician

Webb, L K 23 Jan 1998

Musculoskeletal

rotator cuff syndrome
- trauma to the shoulder

McNabb, E N S 03 Feb 1998

Operational service

member of Interim Forces

Cooke, C M 12 Feb 1998