Contents
Volume 14 No 2

Editor's notes

This edition of *VeRBosity* contains reports on five Federal Court decisions relating to veterans' matters, handed down in the period from 1 April to 30 June 1998. The cases of *Simmons* and *McLean* deal with whether the AAT correctly applied the "reasonable hypothesis" standard of proof in section 120 of the *VE Act*. In *Deledio*, the Full Court considered the correct approach to applying Statements of Principles where a veteran has rendered operational service.

Proctor dealt with the issue of whether service in Queensland coastal waters during World War 2 constituted continuous full-time service outside Australia.

In *Anderson*, the applicant sought a declaration that she was entitled to a widow's pension on the basis of a preliminary review procedure conducted by the VRB.

This edition also includes reports on selected AAT decisions handed down in the period from April to June 1998. Information is also included about new Statements of Principles issued by the Repatriation Medical Authority during the period from June to September 1998 and matters currently under formal investigation.

Robert Kennedy
Editor

MINISTER ENDORSES RECOMMENDATIONS ON VETERANS' COMPENSATION CLAIMS PROCESS

1 July 1998

The Minister for Veterans' Affairs, Bruce Scott, has reaffirmed the Federal Government's commitment to the Australian repatriation system with the release of the Government's response to the review of the Repatriation Medical Authority (RMA) and the Specialist Medical Review Council (SMRC).

Mr Scott was speaking in Melbourne at the 83rd Annual State Congress of the Victorian Branch of the Returned & Services League.

The review found that the system of determining veterans' claims for compensation using Statements of Principles, established by the RMA, is generally more equitable, efficient and less adversarial than the former process.

"The Government has an ongoing commitment to the ex-service community and the repatriation system," Mr Scott said.

"The review should reassure veterans and Parliament that the system has been enhanced in terms of equity and consistency, while the full extent of its traditional beneficial nature has been retained."

After extensive consultation with the ex-service community, the Minister has accepted 18 of the 20 recommendations in the report, which are mainly of an internal administrative or operational nature.

Amongst those accepted are that:

- the RMA continue its regular meetings with Ex-service organisations,
- the operations of the RMA be made more transparent by preparing a publication that sets out, for example, how it goes about its business, and
- the membership of the RMA have differing periods of appointment to preserve continuity of expertise.

The two recommendations declined by the Minister would have changed the composition of the RMA's membership and the role of the SMRC. However, the Government has agreed to enhance the expertise of the RMA and the efficiency of the SMRC in other ways.

"The SMRC will definitely be retained as an independent review body to ensure the continuing fairness of the system," Mr Scott said.

The RMA, an independent body, was established in 1994 to identify medical-scientific factors linking particular kinds of disease, injury or death with war service. The SMRC is a review body appointed at the same time to provide an avenue of appeal against RMA decisions.

The review of the RMA and SMRC was conducted by Professor Dennis Pearce, Emeritus Professor of Law at the Australian National University, with the assistance of Professor D'Arcy Holman, Professor of Public Health at the University of Western Australia. An extensive consultation process was conducted with all interested parties, particularly the ex-service community and its representatives.

The Minister said that the outcome of the review had given the Government no reason to consider anything beyond a fine tuning of the current system.

"I congratulate the founding Chairman of the RMA, Professor Ken Donald, and his team for the substantial achievements over the past five years in establishing the Authority's operations while at the same time winning the confidence of the veteran community."

"The Pearce review has honoured the Government's election commitment to the veteran community to review the system of determining claims for compensation and to identify any improvements," Mr Scott said.

NEW APPOINTMENTS TO VETERANS' REVIEW BOARD

3 August, 1998

The Minister for Veterans' Affairs, Bruce Scott, has announced the appointment of additional part-time Senior Members and Members to the Veterans' Review Board in Sydney and Brisbane, following a detailed selection process.

He said the additional part-time appointments were necessary to ensure continued flexibility in the operations of the Board. The appointments include eight women drawn from a diverse background in management, delivery of social services, medicine and law.

"These new members will complement the range of skills and the extensive military experience presently existing in the Board", Mr Scott said.

The following people were appointed as part-time Senior Members:

Ms S M Bullock
Ms J Cowdroy
Ms A M Hall-Brown
Ms N Isenberg

The following people were appointed as part-time Members:

Ms P A Campbell
Dr J F Farmer
Ms H L Kramer
Mr H D Logue
Ms M F Podbereski
Mr C J Ward

The Veterans' Review Board is an independent statutory authority. Its function is to review decisions of the Repatriation Commission on such matters as claims for the acceptance of injury or disease as war/defence caused, claims for war widows'/widowers' pensions, assessment of the rate of pension paid for war/defence caused incapacity and claims for the grant of attendant allowance. It may affirm, vary or set aside the decision under review and, where appropriate, substitute its own decision.

"Earlier this year, the Government recognised the VRB's important role in providing rights of appeal for veterans, by deciding to maintain the Board as a separate body distinct from the consolidated Administrative Review Tribunal," Mr Scott said.

"The calibre of these new appointments will ensure the Board continues its tradition of independence, forthrightness and fairness in serving Australia's veteran community."

Selected Decisions of the Administrative Appeals Tribunal

Jurisdiction - reduction in pension under s 30D - whether decision or self-executing provision

Re D C Neil and Repatriation Commission
Mathews J

A97/163 6 May 1998

Mr Neil applied to the Tribunal for review of a VRB decision that it lacked jurisdiction to review a determination made by the Repatriation Commission on 12 July 1995. During his eligible service, the veteran had sustained a back injury diagnosed as "L5/S1 instability" which was determined to be war-caused under the *VE Act*. He was granted Special rate pension in 1993. He was also receiving periodic compensation payments under the *Safety, Rehabilitation and Compensation Act 1988* (*"SRC Act"*) for "L4-5 and L5/S1 discogenic disease of the lumbar spine".

In 1994, the *VE Act* was amended by inserting section 30D to prevent a veteran receiving compensation under the *SRC Act* and pension under the *VE Act* in relation to incapacity from the same injury or disease. On 12 July 1995, the Commission made a determination that apportioned 90% of his total pension to his back condition and proceeded to reduce the amount of his pension under the *VE Act* from 100% to 10% of the Special rate.

Mr Neil first sought review by the VRB of the Commission's determination. The VRB determined that the reduction in the veteran's pension was brought about by force of law, not as a result of any reviewable decision made by the Commission. Accordingly, it determined that it had no jurisdiction to deal with the matter. Mr Neil then sought review by the Tribunal.

Substantive issue

The substantive issue before the Tribunal was whether it had jurisdiction to review the Commission's determination which had the effect of reducing the amount of pension payable to Mr Neil. His counsel submitted that the Commission's "determination" and the consequent reduction of his pension, constituted a determination under s 31(6)(a) of the *VE Act* which was reviewable by the Tribunal. Section 31(6)(a) empowers the Commission to cancel, suspend or decrease the rate of a person's pension in certain circumstances.

The Commission submitted that the reduction in the veteran's pension was brought about by force of law pursuant to section 30D, rather than as a result of a decision of the Commission, and thus there was no reviewable "decision". It was submitted that section 30D is a self-executing provision and its operation is not dependent on any decision or determination of the Commission. Accordingly the matter was not susceptible to review by the Board under s 135 or by the AAT under s 175(1).

Tribunal's conclusion

Mathews J accepted the Commission's submission that s 30D, in requiring that the person's pension is to be reduced in certain circumstances, is a self-executing provision which requires no decision of the Commission in order to implement it. The conditions under which s 30D operates are as follows:

(i) that the applicant is receiving periodic payments of compensation (s 30D(1)(a));

(ii) that the compensation payments are made in respect of incapacity from injury (s 30D(1)(b)); and

(iii) that he is receiving a pension in respect of incapacity from the same injury (s 30D(1)(c)).

The first two propositions were accepted in this case and only the third was in dispute.

As to whether there was a reviewable decision in this case, Mathews J said that the Commission's determination of 12 July 1995 was an essential prerequisite to the operation of s 30D and was appropriately challengeable by way of judicial review. However it was not reviewable by either the Board or the AAT unless it fell within the terms of s 135 or 175(1) of the *VE Act*. In the Tribunal's view it could not do so as it was not a determination which cancelled, suspended or decreased the rate of the veteran's pension under s 31(6)(a) of the *VE Act*.

The Tribunal said that the Commission's letter to Mr Neil informing him of its determination assumed that the back condition for which he was receiving weekly compensation payments was the same as that for which he was receiving his pension. To that extent, a decision that the conditions of s 30D applied must be taken to have been made by the Commission before the letter was sent. Such a decision was only reviewable by the Tribunal if it was a decision made under s 31(6)(a) of the *VE Act*. The Tribunal concluded that there was no "decision" of the Commission under s 31(6)(a). There was thus no reviewable decision under s 175(1) of the *VE Act*. The Tribunal said:

> "In order for there to be a decision under s 31(6)(a), there must be a determination in writing, cancelling or suspending or decreasing the rate of the veteran's pension. But there was no such determination in this case. Even if the Commission had reduced to writing the reasoning process by which it determined that the conditions of s 30D applied in the applicant's case, this would not of itself have 'cancelled suspended or decreased' the rate of his pension. It would merely have found that the applicant's pension entitlement and his compensation payments were referrable to the same injury. This is patently not a decision within the terms of s 31(6)(a)."

Formal decision

The Tribunal decided that it lacked jurisdiction to review the reduction in pension.

Entitlement - no relevant SoP when claim lodged - whether accrued right to have claim decided without reference to SoP

Re P Ogston and Repatriation Commission
Mathews J

N96/1025 18 May 1998

Mrs Ogston appealed to the Tribunal against a decision that the death of her late husband was not war-caused. The cause of the veteran's death was myocardial infarction due to ischaemic heart disease. As the veteran rendered operational service, the claim

for pension was required to be determined by reference to subsections 120(1) and (3) of the *VE Act*.

Mrs Ogston lodged her claim in September 1994 before a Statement of Principles was determined by the Repatriation Medical Authority in relation to ischaemic heart disease. When her claim was decided by the Repatriation Commission and the VRB, the relevant SoP had been determined. The claim was refused on the basis that there was no reasonable hypothesis in terms of the factors in the SoP.

A preliminary question of law was raised in the Tribunal that as there was no SoP in relation to ischaemic heart disease in force at the date of the claim for pension, should the matter be determined as if there was no relevant SoP, that is by reference to subsections 120(1) and (3) alone, or should it be determined by recourse to the relevant SoP?

Submissions

Mrs Ogston's counsel submitted that she had an "accrued right" under section 8 of the *Acts Interpretation Act 1901* to have her claim dealt with according to the law which applied at the time of its lodgement and that the SoP relating to ischaemic heart disease was not applicable in this case. It was also submitted that the effect of paragraph 48(2)(a) of the *Acts Interpretation Act* is that SoPs cannot be backdated if it would be disadvantageous to the rights of a person.

The Commission submitted that the legislative scheme makes it clear that a decision-maker is required to apply the law as it exists at the date of its decision and as there was a SoP relating to ischaemic heart disease, it must be applied in the proceedings.

Acts Interpretation Act

Section 8 provides:

*"**8.** Where an Act repeals in the whole or in part a former Act, then unless the contrary intention appears the repeal shall not:*

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any Act so repealed, or anything duly done or suffered under any Act so repealed; or

(c) affect any right privilege obligation or liability acquired accrued or incurred under any Act so repealed; or

(d) affect any penalty forfeiture or punishment incurred in respect of any offence committed against any Act so repealed; or

(e) affect any investigation legal proceeding or remedy in respect of any such right privilege obligation liability penalty forfeiture or punishment as aforesaid;

and any such investigation legal proceeding or remedy may be instituted continued or enforced, and any such penalty forfeiture or punishment may be imposed, as if the repealing Act had not been passed."

Section 48(2) provides:

> *"**48.** (2) A regulation, or a provision of regulations, has no effect if, apart from this subsection, it would take effect before the date of notification and as a result:*
>
> *(a) the rights of a person (other than the Commonwealth or an authority of the Commonwealth) as at the date of notification would be affected so as to disadvantage that person;"*

Tribunal's conclusions

In relation to the accrued rights argument, Mathews J said that section 8 is intended to protect substantive rights rather than procedural rights. The application of the SoP system does not, on its face, affect a claimant's substantive rights. Rather it regulates the manner by which those rights are to be ascertained. The SoP system removes from administrative decision-makers the task of determining medical issues as to the aetiology of injuries and diseases and confers it on members of the RMA who are taken to be experts in the field.

Mathews J was of the view that the SoP system had brought about procedural changes only and that no substantive rights were affected. It was unnecessary to reach a concluded view on this issue as there were other reasons why the claim could not succeed. First, the majority judgment in *Lee v Secretary, Department of Social Security* (1996) suggested that any "right" of an applicant before the AAT accrued, for the purposes of s 8 of the *Acts Interpretation Act*, only at the time when the primary decision is made. Secondly, at the time of the primary decision in this case, the SoP had already been determined in relation to ischaemic heart disease. Therefore the relevant "repeal" of the law, for the purposes of s 8, had already occurred. Thirdly, even if the applicant had an accrued right under s 8, the 1994 amendments to the Act evinced a clear intention to exclude the operation of the section.

Mathews J also rejected the argument in relation to paragraph 48(2)(a) on the basis that the SoPs did not have retrospective operation, but once determined, they are applied from then on in the decision-making process. Her Honour observed:

> "... from the moment that a SoP comes into effect, it constitutes the medical/scientific 'template' which, as a matter of law, any administrative decision-maker will be bound to apply. The SoP does not have retrospective effect. It becomes part of the legal framework which must thenceforth, in the ordinary course of events, be applied by administrative decision-makers."

The Tribunal concluded that Mrs Ogston's claim was required to be considered in terms of the SoP relating to ischaemic heart disease.

Formal decision

The Tribunal's interim decision was that the Statement of Principles relating to ischaemic heart disease was applicable to the claim.

[Ed: The Tribunal subsequently affirmed the decision under review. Mrs Ogston has lodged an appeal to the Federal Court.]

Entitlement - Statements of Principles - whether bound to apply to diagnosis

Re T J Slattery and Repatriation Commission
Forgie, Brumfield & Way
Q96/1011 16 June 1998

Mr Slattery applied to the Tribunal for review of a decision that several conditions including personality disorder and psychoactive substance abuse were not war-caused. During the hearing, his counsel submitted that the veteran was suffering from post-traumatic stress disorder which was said to be causally related to his operational service in Vietnamese waters. He served in the Royal Australian Navy from 1965 to 1978 and was a sick bay attendant on *HMAS Sydney* when that vessel was engaged in carrying troops and supplies to Vietnam.

There was evidence before the Tribunal that during a voyage to Vietnam in 1971, an officer had died on board ship and Mr Slattery was required to accompany the body from the ship by helicopter and aircraft to a US military morgue in Saigon for the purposes of a post mortem examination. He observed a large number of mutilated bodies inside the morgue and had found it to be a horrendous experience. He was accompanied by an RAN doctor who substantially corroborated his evidence. He has since suffered from flashbacks and nightmares relating to his experiences on that occasion.

Statement of Principles

Mr Slattery's counsel submitted that his condition was covered by the Statement of Principles concerning post-traumatic stress disorder ("SoP 15") and that the relevant factor was:

"(a) experiencing a stressor prior to the clinical onset of post traumatic stress disorder;"

The expression ***"experiencing a stressor"*** is defined in SoP 15 as meaning the following (as derived from DSM-IV):

"(a) the person experienced, witnessed, or was confronted with an event that involved actual or threatened death or serious injury, or a threat to the person's, or other people's, physical integrity; and

(b) the person's response to that event involved intense fear, helplessness or horror;"

The "DSM-IV" means the fourth edition of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*.

Medical evidence

Dr Tucker, psychiatrist, has been treating Mr Slattery since 1996. He was of the opinion that the veteran is suffering from post-traumatic stress disorder with substance abuse. He said that the episode at the Saigon morgue was horrific and sickening and well outside the range of normal human experience. It involved actual death and was sufficient to have caused post-traumatic stress disorder in this veteran.

Dr Mulholland, psychiatrist, was of the opinion that Mr Slattery suffers from chronic anxiety depression with substance abuse. He was of the view that the experience in the morgue was not the sort of experience that could fulfil the criteria for a diagnosis of PTSD. Dr Mulholland interpreted the words "experienced, witnessed, or was confronted with an event that involved actual or threatened death or serious injury" in the Statement of Principles

concerning PTSD as meaning death that is happening at the time and not death that happened at some time in the past.

Issue of diagnosis

The Tribunal first considered whether the diagnosis of a disease was to be determined with or without reference to a Statement of Principles. It said that the SoP cannot be used to establish the particular disease or injury from which a person suffers. It is only once the condition has been diagnosed that the question arises as to whether that disease or injury was caused or contributed to by the relevant service. This meant that the description of "post-traumatic stress disorder" given by the Repatriation Medical Authority was not intended to be used to determine a veteran's condition in the first instance. It was used only in describing the particular condition to which SoP15 relates.

The Tribunal was satisfied that the events surrounding the visit to the Saigon morgue had occurred and that the veteran's experience of seeing a large number of mutilated bodies was beyond the range of normal human experience. Since that episode, the veteran had experienced recurring and intrusive thoughts and dreams, loss of interest and outbursts of anger and aggression.

The Tribunal noted that Dr Tucker and Dr Mulholland had varied in their interpretation of DSM-IV. The Tribunal said that it preferred the evidence of Dr Tucker as to diagnosis as he was the treating psychiatrist and was in the best position to assess the veteran's condition. It considered whether the hypothesis that the veteran's PTSD was causally related to events at the Saigon morgue was consistent with the SoP for that condition. This involved a matter of statutory interpretation. It concluded:

> "The word 'death' has the following meanings given in the *New Shorter Oxford English Dictionary*:
>
> *'**1**.(a) The act or fact of dying; the end of life; the final and irreversible cessation of the vital functions of an animal or plant. (b) An instance of a person's dying. (c) Cessation of life in a particular part or tissue*
>
> ***2**. The state of being dead; the state or condition of being without life, animation or activity ...'*
>
> A similar range of meanings is given in the *Macquarie Dictionary*.
>
> The word 'witnessed' suggests that the person was present at the event involving real or present (i.e. actual) or threatened death. The word 'experienced' suggests that the person observed or encountered such an event and the word 'confronted' that he or she was faced with such an event. While that is so, it does not lead us to conclude that one meaning of the word 'death' should be preferred over another. In particular, we are unable to conclude that the definition of PTSD in SoP 15 is referring to the act of dying rather than to the state of being dead. In our view, it may refer to both meanings of death.
>
> If we are correct in this interpretation, we must have regard to SoP 15 for we have found that he is suffering from PTSD as a result of his having experienced, witnessed or confronted an event that involved persons' being dead (i.e. actual death in one of its

meanings) and our findings are also consistent with the remaining components of the definition of PTSD as it appears in that SOP. That means that we must consider whether Mr Slattery experienced a stressor prior to the clinical onset of PTSD for [his counsel] relied on paragraph (a) of the causal circumstances set out in SoP 15. In this case, we are satisfied that Mr Slattery did suffer a stressor (i.e. his facing actual death at the Saigon morgue) before the clinical onset of his PTSD. The hypothesis is, therefore, upheld by SoP 15. It follows from our earlier conclusions that Mr Slattery's PTSD is a war-caused disease.

We have also considered what the outcome would be should we be incorrect in our interpretation of the word 'death' in SoP 15. If SoP 15 refers only to PTSD which has been diagnosed where a person has experienced, witnessed, or been confronted by an event involving, among other matters which are not relevant in this case, death or threatened death in the sense of a person's actually dying, it cannot apply where we are concerned with PTSD diagnosed where a different stressor has been experienced. That is so because the disease to which SoP 15 applies has been defined with great precision. That, however, is not the disease from which we have found Mr Slattery to be suffering. We have found that he is suffering from PTSD caused by his exposure to a traumatic event involved with his experiencing, witnessing and being confronted by an event involving the actual state of being dead but not that of a person's actually dying. It follows that SoP 15 does not apply to his condition and we need have no further regard to whether or not the facts point to the hypothesis's being consistent with SoP 15.

Having regard to all of the evidence, we also find on this basis that the facts pointed to in that evidence support the hypothesis that Mr Slattery's PTSD arose out of or was contributed to in a material degree by his experiences at the Saigon morgue. None of the facts necessary to support that hypothesis has been disproved beyond reasonable doubt and nor has any fact inconsistent with the hypothesis been proved beyond reasonable doubt. For these reasons, we find that Mr Slattery is suffering from PTSD which is a war-caused disease."

Formal decision

The Tribunal set aside the decision under review and substituted its decision that the veteran's post-traumatic stress disorder was war-caused.

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

Guide to Assessment - assessment of sequelae

Re A G Applebee and Repatriation Commission
Dwyer & Brassil

V97/1125 & V97/1126 29 Jun 1998

There were two issues before the Tribunal in this matter. The first was

whether Mr Applebee's condition of bilateral open angle glaucoma should be accepted as a war-caused disease. The second issue concerned the assessment of the appropriate rate of pension.

Mr Applebee served in the Australian Army from 1941 to 1945. His service constituted eligible war service as defined in section 7 of the *VE Act* and the appropriate standard of proof was that of reasonable satisfaction is set out in s 120(4) of the Act. Because his claim in respect of glaucoma was lodged after 1 June 1994, it was required to be determined in accordance with Statements of Principles.

Mr Applebee previously had the conditions of cerebrovascular disease, osteoarthrosis of the left knee and bilateral sensori-neural hearing loss accepted as war-caused diseases. The Tribunal said that it had to decide whether his glaucoma could be treated as a sequela of the previously accepted cerebrovascular disease or whether it first had to satisfy the relevant Statement of Principles for glaucoma.

Medical evidence

Dr Gillies, an opthamologist expressed the opinion that Mr Applebee's glaucoma was secondary to his accepted disability of cerebrovascular disease. Mr Applebee had suffered a mini-stroke in 1993.

Although Dr Gillies raised a question as to whether Mr Applebee actually has glaucoma, the Tribunal received further evidence showing that the treating opthamologist, Dr Chia, had diagnosed Mr Applebee as suffering from glaucoma.

The Tribunal found that Mr Applebee suffers from both glaucoma and inferior left sided quadratic hemianopia and that both of those visual impairments are secondary to his accepted disability of cerebrovascular disease.

Submissions

The Repatriation Commission did not challenge the evidence that Mr Applebee suffers from impairments of vision, nor that they are secondary to the accepted cerebrovascular disease. However the Commission relied on a passage at pages 8-9 of the introduction to *Guide to the Assessment of Rates of Veterans' Pensions* (GARP 5) which reads as follows:

> ***"Conditions and their sequelae***
>
> *Only the clinical features of an accepted condition may be taken into account in making an assessment. If the accepted condition causes some other distinct and diagnosable condition (sequela), the symptoms of the sequela cannot be taken into account when assessing the original accepted condition. Sequelae can only be assessed when they have themselves been separately determined to be war-caused or defence-caused.*
>
> *As a general guide, a condition that is the subject of a Statement of Principles in force on 18 April 1998 should be taken as a separate disease entity. For the purposes of the preceding sentence, 'Statement*

of Principles' has the meaning given to it on page 2 of this Guide."

The Tribunal noted the following paragraph in GARP 5 at page 9:

*"**Applying the instructions***

To the extent of any inconsistency between an instruction in 'How to Use this Guide' and a specific instruction concerning a particular matter in another chapter of this Guide, the specific instruction in that other chapter is to apply to that particular matter."

The Tribunal then referred to Chapter 5 of GARP 5 which deals with neurological impairment and said it was apparent that there is an inconsistency between the specific instructions in Chapter 5 dealing with Neurological Impairment and the passage headed "Conditions and Their Sequelae" on pages 8-9.

The Commission submitted that Mr Applebee was not entitled to have glaucoma accepted as a sequela of his cerebrovascular disease unless the glaucoma satisfied the relevant SoP for glaucoma, namely Instrument No 242 of 1995. The Tribunal noted that his glaucoma would not satisfy that SoP because the only factor which is regarded as satisfying the reasonable satisfaction test is "inability to obtain clinical management" for open angle glaucoma where the open angle glaucoma developed before a period of service to which the factor related. However there was no dispute that his glaucoma resulted from the accepted war-caused cerebrovascular disease. The Tribunal said that in those circumstances, the instructions in the Introduction to the Guide and in Chapter 5 of the Guide made it clear that loss of visual function resulting from war-caused cerebrovascular disease was assessable as a sequela of his cerebrovascular disease.

The Tribunal proceeded to assess Mr Applebee's loss of visual function as a sequela of his cerebrovascular disease.

Formal decision

The Tribunal varied the decision under review and substituted its decision that bilateral open angle glaucoma was a sequela of war-caused cerebrovascular disease. Pension was assessed at 70% of the General rate from 11 April 1996 and at 80% of the General rate from 23 April 1998.

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

Decisions of the Federal Court of Australia

RAN diver in Vietnamese waters - whether reasonable hypothesis

Simmons v Repatriation Commission
Foster J

8 April 1998

Mr Simmons appealed to the Federal Court against a decision that chronic airflow limitation and heart condition were not war-caused. He served in the Royal Australian Navy from 1965 to 1971 but only the period of service in Vietnam from 15 September 1969 to 11 April 1970 was operational service under the *VE Act*. He sought to relate his claimed conditions to a smoking habit and the aspiration of salt water while diving in August 1970.

As the veteran's claim was lodged after 1 June 1994, the Tribunal was required to determine his claim in accordance with Statements of Principles determined by the Repatriation Medical Authority. In relation to chronic airflow limitation, the relevant SoP included as a factor, "smoking at least ten pack-years of cigarettes before the clinical onset of chronic airflow limitation", and the smoking habit had to be related to eligible service rendered by the person. The Tribunal refused the claim on the basis that his smoking habit was established prior to his eligible service. In relation to his claimed heart condition, specialist examination had revealed no diagnosable heart condition. This claim was also refused by the Tribunal.

The Court said that Mr Simmons faced the insurmountable difficulty that the current medical evidence was that he had no relevant heart problem. Accordingly, there was no basis for any claim under the *VE Act* and no error of law could be demonstrated in the Tribunal's refusal of his claim.

In relation to chronic airways obstruction, the question for the Tribunal was whether a reasonable hypothesis had been raised of a connection between the bronchitis and his period of operational service. The Tribunal, in this regard, referred to "the Statement of Principles that we have to be guided by". It was sufficiently clear, in the Court's view, that the Tribunal, without expressly referring to the provisions of section 120A of the *VE Act*, had them in mind when making the decision in question.

Court's conclusions

Foster J concluded as follows:

> "At all relevant times in respect of the applicant's application there was in existence a Statement of Principles concerning chronic airflow limitation. The Statement lists 'factors that must as a minimum exist before it can be said that a reasonable hypothesis has been raised connecting chronic airflow limitation ... with the circumstances of a person's relevant service'. These factors do not include the aspiration of salt water. Accordingly, it was unnecessary for the Tribunal or the other decision-makers to have had regard to the applicant's claims that he had suffered bronchitis as a result of breathing in sea water during diving operations. This was not a factor capable of raising a relevant hypothesis. In any event, however, the decision-makers, including the Tribunal, did consider this matter and found that any sea water aspiration

had taken place after the period of operational service had elapsed. I have considered the evidence bearing upon this. It fully supports this conclusion. Accordingly, there could have been no relevant hypothesis relating to the aspiration of sea water having a causal connection with the applicant's bronchitis. I am satisfied that no error of law has been demonstrated in this regard.

Insofar as any claim could have been based upon the applicant's smoking, the Statement of Principles required that, for this to be a factor in the raising of a reasonable hypothesis, the applicant must have been engaged in 'smoking at least 10 pack-years of cigarettes before the clinical onset of chronic airflow limitation'. A pack year is 7,300 cigarettes. The Tribunal found as a fact, as had previous decision-makers, that 'Mr Simmons took up smoking and was a heavy smoker long before the period of his eligible service, 15 September 1969 to 11 April 1970'. In these circumstances there was no basis upon which the required reasonable hypothesis could be raised. It is, in my view, quite reasonable, in all the circumstances of this case, to treat the Tribunal's finding, although not expressed as such, as being one of absence of the required reasonable hypothesis."

The Court was satisfied that no relevant error of law had been demonstrated in the Tribunal's decision.

Formal decision

The appeal was dismissed with costs.

Death caused by falling rock - reasonable hypothesis - whether Tribunal failure to accord procedural fairness

Repatriation Commission v McLean
Davies J

17 April 1998

The Repatriation Commission appealed to the Federal Court against a decision of the Tribunal that Mr McLean's death was war-caused. The Commission submitted that the Tribunal had failed to accord procedural fairness to it, that the Tribunal's decision was not open to it on the evidence and that it had applied the wrong Statement of Principles under section 120A of the *VE Act*.

Mr McLean served overseas during World War 2 as an aircraft mechanic and fitter. His work involved him in bending and twisting, working in confined spaces and carrying heavy boxes of tools and ammunition. He had a congenital condition involving the partial sacralisation on the right side of the fifth lumbar vertebra. There was evidence that he injured his back during service and had chronic back pain after the war.

In 1953, when aged 39, Mr McLean was in charge of a group of persons who were felling trees. He was somewhere down the slope from a tree which was being felled. The tree fell, hitting a large half tonne rock which fell down the hillside, striking and killing Mr McLean. The hypothesis was that war service gave rise to Mr McLean's chronic back problem, that this limited his mobility and that it was likely that, because of limited mobility, he failed to

move to a place of safety and thereby avoid the falling rock.

Dr Seaton, orthopaedic surgeon, gave evidence at the Tribunal in support of Mrs McLean's case. Dr Seaton assumed that the late veteran had lumbar spondylosis although there was no objective evidence. He nominated four factors in the Statement of Principles relating to lumbar spondylosis as providing a possible link with war service. However, in its decision accepting Mrs McLean's claim, the Tribunal relied on another factor, that is:

> *"**1.(b)** contracting significant inflammatory joint disease in the lumbar spine before the clinical onset of lumbar spondylosis;"*

Court's conclusion

Davies J concluded that the Tribunal has failed to accord procedural fairness to the Commission on the basis that it had failed to indicate that it was considering the application of clause 1(b). As a result, the Tribunal based its decision on a point which was not raised as an issue in the proceedings before it and the Commission was not given a fair opportunity to present its case.

In relation to the Commission's submission that the Tribunal's decision was not open to it on the evidence, it was submitted that the hypothesis with respect to the falling rock was not a reasonable hypothesis connecting the death with Mr McLean's lack of mobility. It was only one amongst a range of possibilities that Mr McLean's lack of mobility played any part in the incident and that other possibilities were just as likely, that Mr McLean may have thought he was in a safe position or may not have been aware of the rock or not until it was too late for him to move out of its way.

Davies J said that the Tribunal's decision on this point was reasonably open to it on the evidence. His Honour noted that s 120(3) of the *VE Act* does not require anything more than that the material raise a reasonable hypothesis connecting the injury, disease or death with the circumstances of the particular service. A reasonable hypothesis may be one hypothesis amongst others. It is sufficient that the hypothesis is reasonable. Whether or not that is so is a matter of judgment for the decision-maker of fact.

The case was remitted to the Tribunal for rehearing due to a failure to accord procedural fairness to the Commission.

Formal decision

The Court set aside the Tribunal's decision and remitted the matter to the Tribunal for rehearing.

Preliminary review by Veterans' Review Board - whether binding on Commonwealth

Anderson v
Commonwealth of Australia
Spender J

21 April 1998

Mrs Anderson took legal proceedings in the Federal Court against the Commonwealth of Australia to enforce a preliminary decision of the Veterans' Review Board. Her late husband had died in 1980 and her claim that his death was war-caused was refused by

a Repatriation Board in 1981. She then appealed against the decision to the former Repatriation Review Tribunal. Her application was transferred to the Veterans' Review Board in January 1985.

Background

In 1985, the Veterans' Review Board adopted procedures for conducting "preliminary reviews" which were designed to enable the Board, in certain limited circumstances, to deal with applications for review without requiring the attendance of applicants or their representatives at formal hearings of the Board. The procedures involved:

- the screening of applications to identify those that might, on fuller consideration, result in a decision favourable to the applicant;
- the listing of such cases before a panel of the Board;
- the preparation of a draft decision by that panel where it believed that a favourable decision could eventually be so reached;
- the dispatch of that draft decision to the applicant (and their representative) for their consideration;
- the making of a final decision in favour of the applicant (either in terms of the draft or as amended following consultation with the applicant) where the applicant so consented; and
- the dispatch of that final decision to the applicant and the Repatriation Commission.

Final decisions favourable to the applicant were not made without the process of consultation on a draft decision for a number of reasons and in particular in case the draft was not as favourable to the applicant (whether as to date of effect or otherwise) as he or she believed it could lawfully be.

In accordance with the above procedures, on 3 April 1985, a panel of the Board conducted a preliminary review of Mrs Anderson's application and prepared draft reasons for a proposed decision that Mr Anderson's death was war-caused. On 4 April 1985, a letter was sent by the Board to her former address asking her to contact the Board. A telegram was sent to her on 24 May 1985. She did not receive a copy of the Board's letter or the telegram until she returned from overseas on 8 June 1985. In the meantime, the *Repatriation Legislation Amendment Act 1984* which altered the operation of s 107VG of the *Repatriation Act 1920*, had come into effect on 6 June 1985. As a result of the amendment, the Board was unable to confirm the proposed favourable decision without proceeding to a formal hearing.

Submissions

Mrs Anderson contended that the Board's draft reasons of 3 April 1985 constituted a "decision" in terms of s 107VJ of the *Repatriation Act 1920* which was binding on the Commonwealth of Australia. The Commonwealth submitted that the Board had not made a decision and that there was no basis on which it could be asserted that the Commonwealth was estopped from denying that fact.

Court's conclusion

Spender J rejected Mrs Anderson's submission that the Board's draft reasons constituted a decision, observing:

"The provisions of the Act ... indicate that the Board's 'decision' in relation to a review application is the determination of the Board either to set aside the Commission's decision and substitute its own; or to affirm the Commission's decision. This is consistent with the accepted meaning of a 'decision', namely, 'some announced or published ruling or adjudication': *Director-General of Social Services v Chaney* (1980) 31 ALR 571; per Deane J at 590, and with the observation of Mason CJ in *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 337, directing attention to the 'final' or 'operative' or 'determinative' character of what is a 'decision'.

I do not accept that the Board's draft reasons constituted a decision to set aside the Commission's decision and to substitute therefor a decision that the applicant was entitled to a widow's pension. The statutory duty of the Board required the Board to have completed considering the review of the Commission's decision and to have reached a conclusion as to how to dispose of it. In my judgment, the reaching of a preliminary or provisional, tentative, or qualified view on that question does not amount to a decision in relation to it."

Spender J said it was clear from the evidence that there was only a proposed decision and that the preliminary review procedure resulted in a decision conferring entitlement only after an applicant's response to the proposed decision had been received by the Board. Also, there was no representation which could give rise to an estoppel against the Commonwealth, preventing it from denying that on 3 April 1985, the Board had made a final decision.

Formal decision

The Court dismissed Mrs Anderson's application.

Entitlement - whether death of veteran was war-caused - onus of proof

Repatriation Commission v Deledio
Beaumont, Hill & O'Connor JJ

22 April 1998

The Repatriation Commission appealed to the Full Federal Court against the decision of Heerey J, allowing Mrs Deledio's appeal from a decision of the Tribunal that her late husband's death due to metastatic carcinoma of the prostate was not war-caused. Mrs Deledio claimed that his death was a consequence of a high fat diet which he commenced during war service and continued for the rest of his life.

Mrs Deledio's claim was required to be decided in accordance with Statements of Principles determined by the Repatriation Medical Authority. The Statement of Principles in relation to prostate cancer determined under subsection 196B(2) of the *VE Act* includes as a factor raising a reasonable hypothesis:

> "(b) increasing animal fat consumption by at least 40%, and to at least 70gm/day for at least 20 years before the clinical onset of malignant neoplasm of the prostate;"

The Tribunal had accepted a submission by the Repatriation Commission, in relation to claims to which subsections 120(1) and (3) applied, that for the claim to succeed, at least one of the factors contained in any applicable SoPs must be found to exist and be related to service, to the Tribunal's reasonable satisfaction, that is on the balance of probabilities, and that the effect of the provisions of section 120A(3) is that if the injury, disease or death is of a kind that is the subject of an SoP, then for any hypothesis to be reasonable, the SoP must "uphold" that hypothesis. The Tribunal also accepted the Commission's submission that:

> "If a particular factor is not found to exist, or is not found to be related to the veteran's service, on the balance of probabilities, then the SoP does not uphold the hypothesis and, according to sub-section 120A(3) of the Act, the hypothesis cannot be reasonable."

The Tribunal concluded that although it was prepared to find that the late veteran's post-service diet satisfied the consumption of fat criteria as set out in the relevant SoP, there was no causal relationship between the post-service diet and the late veteran's service.

On appeal, Heerey J held that the Tribunal erred in law in its approach to the matter. His Honour set aside the Tribunal's decision and remitted the matter to it for determination in accordance with his reasons. (See 13 *VeRBosity* 108).

Commission's submissions

Before the Full Court, the Commission sought to amend the terms of the order remitting the matter to the Tribunal. Instead of a re-determination in accordance with the trial Judge's reasons, the Commission applied for an order for a re-hearing "according to law" (i.e. in accordance with its submissions on the legal position).

The Commission's submissions dealt with two main points:

- onus of proof; and
- correct method of applying s 120(3).

Onus of proof

The Commission submitted that Heerey J erred in assuming that any "burden" or "onus of proof" to show that the veteran's diet while in the Army resulted in him partaking in a high fat diet for the rest of his life rested on the Commission.

The Full Court noted that Heerey J had used the phrase "onus of proof" on a number of occasions. If it purported to impose a legal onus on either party, then Heerey J would be in error. The Full Court concluded, however, that Heerey J did not impose an onus on the Commission. The Full Court observed:

> "We do not consider that a full reading of his Honour's reasons, although using terminology more appropriate to the legal process, show him to be doing anything other than analysing the correct approach to the decision-maker's task under s 120(1). References to parties and burdens placed on them in this context amount to no more than

accepting the practical situation which occurs in proceedings before the Tribunal where parties present, often in a legal adversarial way, material relevant to the decision-maker's task under s 120(1). They also frequently take pro and contra positions on all the relevant issues.

It is preferable that the use of legal terminology relating to legal rules should be used with caution in dealing with administrative decision making. This is particularly the case where the Commonwealth Parliament has seen fit to prevent particular legal evidentiary rules applying to matters arising under legislation as we have in this case."

Method of applying s 120(3)

The Commission submitted that in the light of the Full Court's decision in *Repatriation Commission v Bey* (1997) (13 *VeRBosity* 117), Heerey J erred by holding that, where an hypothesis is proposed by a claimant and is merely consistent with the SoP, the existence and relationship to service of the nominated factor must be accepted unless the Commission can disprove those facts beyond reasonable doubt. The Full Court rejected the Commission's detailed submissions in this regard, concluding as follows:

"At the risk of being repetitious we would restate the course which the Tribunal is to take in a case, such as the present, (i.e. one involving a claim to be decided after the 1994 amendments) in respect of the incapacity of a person from injury or disease, or in respect of the death of a person related to service rendered by that person as follows:

1. The Tribunal must consider all the material which is before it and determine whether that material points to a hypothesis connecting the injury, disease or death with the circumstances of the particular service rendered by the person. No question of fact finding arises at this stage. If no such hypothesis arises, the application must fail.

2. If the material does raise such a hypothesis, the Tribunal must then ascertain whether there is in force an SoP determined by the Authority under s 196B(2) or (11). If no such SoP is in force, the hypothesis will be taken not to be reasonable and, in consequence, the application must fail.

3. If an SoP is in force, the Tribunal must then form the opinion whether the hypothesis raised is a reasonable one. It will do so if the hypothesis fits, that is to say, is consistent with the 'template' to be found in the SoP. The hypothesis raised before it must thus contain one or more of the factors which the Authority has determined to be the minimum which must exist, and be related to the person's service (as required by ss 196B(2)(d) and (e)). If the hypothesis does contain these factors, it could neither be said to be contrary to proved or known scientific facts, nor otherwise fanciful. If the hypothesis fails to fit within the template, it will be deemed not to be 'reasonable' and the claim will fail.

4. The Tribunal must then proceed to consider under s 120(1) whether it is satisfied beyond reasonable

doubt that the death was not war-caused, or in the case of a claim for incapacity, that the incapacity did not arise from a war-caused injury. If not so satisfied, the claim must succeed. If the Tribunal is so satisfied, the claim must fail. It is only at this stage of the process that the Tribunal will be required to find facts from the material before it. In so doing, no question of onus of proof or the application of any presumption will be involved."

[Ed: At paragraph 2 above (as underlined), the Court omits reference to s 120A(4), which provides that s 120A(3) is not to apply if there is no SoP in force.]

Formal decision

The Full Court varied the order made at first instance by substituting the word "law" for the words "these reasons" but otherwise dismissed the appeal.

Service in Queensland coastal waters - whether continuous full-time service outside Australia

Repatriation Commission v Proctor
Branson J

5 June 1998

The Repatriation Commission appealed to the Federal Court against the Tribunal's decision that Mr Proctor's adenocarcinoma of the prostate was war-caused. The Tribunal found that he had rendered "operational service" within the meaning of section 6 of the *Veterans' Entitlements Act 1986*. This finding led to the application of the "reasonable hypothesis" standard of proof in s 120(1) of the *VE Act* instead of the less favourable standard of proof in s 120(4).

Service history

Mr Proctor served in the Australian Army from 1942 to 1946. He was a member of the 2/7th Australian Armoured Regiment Ordnance Field Park and received training in driving cars, trucks and bren gun carriers. In 1943, his unit was stationed near Caboolture in Queensland. On 14 June 1943, he boarded US Navy Landing Ship Tank ("LST") 458 which departed Caloundra on that day and arrived in Townsville on 18 June 1943. The purpose of the voyage was to transport armoured tanks, trucks, ammunition and spare parts to Townsville. During the voyage, LST 458 passed to the north of Lady Elliott Island and would have been at that time approximately eighty kilometres off the coast. In June 1943 there was a risk of attack by Japanese submarines in Australian coastal waters.

The Tribunal found that although the period of time spent by Mr Proctor at sea was limited to a few days, his service during the voyage to Townsville could "properly be characterised as service in a vessel which was, on the balance of probabilities, likely to become engaged in combat with the enemy. It is our view, and we find, that Mr Proctor therefore rendered operational service within the meaning of section 6(1)(a) of the Act."

Section 6(1)(a) of the *VE Act* (since amended) provides:

"6. (1) For the purposes of this Act:

(a) ... a person who has rendered, as a member of the Defence Force, continuous full-time service outside Australia during a war to which this Act applies shall be taken to have been rendering operational service while the person was so rendering continuous full-time service; ..."

Issue

Branson J said that the issue in this case was whether Mr Proctor, by reason of his having undertaken the voyage on LST 458 from Caloundra to Townsville, was to be regarded as having rendered "continuous full-time service outside Australia". If he was to be so regarded, the whole of his service in the Australian Army was to be taken as continuous service outside Australia and thus operational service (s 6(1)(d)). The AAT acted on the basis that "outside Australia" meant "outside the three mile limit", that is, outside the three nautical mile limit of Australian territorial waters as derived from customary international law.

Branson J noted that the Tribunal in its reasons did not refer to provisions in the *Acts Interpretation Act 1901* and the *Seas and Submerged Lands Act 1973* which could have a bearing on the meaning of the expression "outside Australia". However, the correct approach in cases of this type was enunciated by Hill J in the case of *Repatriation Commission v Kohn* (1989) 87 ALR 511. In that case, Hill J examined the legislative history of the relevant provisions of the *VE Act* and concluded that the continuous policy of the legislation had been to provide preferential treatment in pension claims to persons whose service was in a real sense outside Australia. There was no suggestion that the legislature intended to give preferential treatment to persons stationed in Australia who proceeded outside the three mile limit during a transit from one place in Australia to another and whose service was always in reality in Australia.

In *Kohn*, Hill J observed:

"The legislative policy behind the *Veterans' Entitlements Act* is that a person who has rendered operational service in the sense defined in s 6(1) should more readily be able to obtain a pension than a person who has not rendered such service. It was the intention of the legislature that it was only members of the armed forces who, in truth, were on service outside Australia during World War 2 who should receive this preferential treatment as to pensions. It cannot be conceived that Parliament intended that veterans who were at all times stationed in Australia but who travelled from one place in Australia to another and thereby were for short periods of time outside Australia, should be treated in the same way as veterans who fought in a theatre of war, sailors who served continuously on a ship engaged in or likely to become engaged in combat or members of the Air Force engaged in flying missions outside Australia."

It was necessary to consider the "essential character" of a veteran's service in order to determine whether it constituted continuous full-time service outside Australia.

Branson J agreed with Hill J's analysis and said:

"... notwithstanding the guidance provided by Hill J in *Kohn's* case as to the meaning of the expression 'continuous full-time service outside

> Australia' in s 6(1)(a) of the Act, the AAT appears to have acted on the premise that its finding that Mr Proctor's 'service during passage [on LST 458] can properly be characterised as service in a vessel which was, on the balance of probabilities, likely to become engaged in combat with the enemy' led necessarily to the conclusion that he rendered 'operational service' within the meaning of s 6(1)(a) of the Act. Nothing in the analysis of s 6(1)(a) by Hill J in *Kohn's* case lends any support to this approach. Unlike s 6(1)(n) of the Act, s 6(1)(a) is not directly concerned with whether particular service involved risk of 'combat against the enemy'."

Branson J said that the Tribunal was required to determine the "essential character" of Mr Proctor's service. Section 6(1)(a) was to be construed so as to exclude mere transitory passages outside Australia. In this case, the Tribunal had misconstrued s 6(1)(a) and had erred in law in that it had failed to determine the essential character of his service.

Formal decision

The Court set aside the Tribunal's decision and remitted the matter to the Tribunal to be heard and decided again.

Statements of Principles issued by the Repatriation Medical Authority
June-September 1998

Number of Instrument	Description of Instrument
37 of 1998	Amendment of Statement of Principles, Instrument No.140 of 1996 as amended by Instrument No.77 of 1997, under subsection 196B(2) concerning ischaemic heart disease and death from ischaemic heart disease
38 of 1998	Amendment of Statement of Principles, Instrument No.141 of 1996 as amended by Instrument No.78 of 1997, under subsection 196B(3) concerning ischaemic heart disease and death from ischaemic heart disease
39 of 1998	Determination of Statement of Principles under subsection 196B(2) concerning renal artery atherosclerotic disease and death from renal artery atherosclerotic disease
40 of 1998	Determination of Statement of Principles under subsection 196B(3) concerning renal artery atherosclerotic disease and death from renal artery atherosclerotic disease
41 of 1998	Revocation of Statements of Principles (Instrument No.71 of 1995; Instrument No.336 of 1995 and Instrument No.352 of 1995), and Determination of Statement of Principles under subsection 196B(2) concerning osteoarthrosis and death from osteoarthrosis
42 of 1998	Revocation of Statements of Principles (Instrument No.72 of 1995; Instrument No.337 of 1995 and Instrument No.353 of 1995), and Determination of Statement of Principles under subsection 196B(3) concerning osteoarthrosis and death from osteoarthrosis
43 of 1998	Revocation of Statements of Principles (Instrument No.31 of 1997), and Determination of Statement of Principles under subsection 196B(2) concerning deep vein thrombosis and death from deep vein thrombosis
44 of 1998	Revocation of Statements of Principles (Instrument No.32 of 1997), and Determination of Statement of Principles under subsection 196B(3) concerning deep vein thrombosis and death from deep vein thrombosis
45 of 1998	Revocation of Statements of Principles (Instrument No.31 of 1996), and Determination of Statement of Principles under subsection 196B(2) concerning non melanotic malignant neoplasm of the skin and death from non melanotic malignant neoplasm of the skin
46 of 1998	Revocation of Statements of Principles (Instrument No.32 of 1996), and Determination of Statement of Principles under subsection 196B(3) concerning non melanotic malignant neoplasm of the skin and death from non melanotic malignant neoplasm of the skin

Statements of Principles issued by the Repatriation Medical Authority June-September 1998

Number of Instrument	Description of Instrument
47 of 1998	Revocation of Statements of Principles (Instrument No.298 of 1995), and Determination of Statement of Principles under subsection 196B(2) concerning acquired hallux valgus and death from acquired hallux valgus
48 of 1998	Revocation of Statements of Principles (Instrument No.299 of 1995), and Determination of Statement of Principles under subsection 196B(3) concerning acquired hallux valgus and death from acquired hallux valgus
49 of 1998	Revocation of Statements of Principles (Instrument No.173 of 1996), and Determination of Statement of Principles under subsection 196B(2) concerning soft tissue sarcoma and death from soft tissue sarcoma
50 of 1998	Revocation of Statements of Principles (Instrument No.174 of 1996), and Determination of Statement of Principles under subsection 196B(3) concerning soft tissue sarcoma and death from soft tissue sarcoma
51 of 1998	Amendment of Statement of Principles, Instrument No.40 of 1998, under subsection 196B(3) concerning renal artery atherosclerotic disease and death from renal artery atherosclerotic disease
52 of 1998	Revocation of Statements of Principles (Instrument No.165 of 1996), and Determination of Statement of Principles under subsection 196B(2) concerning lumbar spondylosis and death from lumbar spondylosis
53 of 1998	Revocation of Statements of Principles (Instrument No.166 of 1996), and Determination of Statement of Principles under subsection 196B(3) concerning lumbar spondylosis and death from lumbar spondylosis
54 of 1998	Revocation of Statements of Principles (Instrument No.163 of 1996), and Determination of Statement of Principles under subsection 196B(2) concerning thoracic spondylosis and death from thoracic spondylosis
55 of 1998	Revocation of Statements of Principles (Instrument No.164 of 1996), and Determination of Statement of Principles under subsection 196B(3) concerning thoracic spondylosis and death from thoracic spondylosis
56 of 1998	Revocation of Statements of Principles (Instrument No.161 of 1996), and Determination of Statement of Principles under subsection 196B(2) concerning cervical spondylosis and death from cervical spondylosis
57 of 1998	Revocation of Statements of Principles (Instrument No.162 of 1996), and Determination of Statement of Principles under subsection 196B(3) concerning cervical spondylosis and death from cervical spondylosis

Statements of Principles issued by the Repatriation Medical Authority
June-September 1998

Number of Instrument	Description of Instrument
58 of 1998	Revocation of Statements of Principles (Instrument No.65 of 1996 and Instrument No.181 of 1996), and Determination of Statement of Principles under subsection 196B(2) concerning depressive disorder and death from depressive disorder
59 of 1998	Revocation of Statements of Principles (Instrument No.66 of 1996 and Instrument No.182 of 1996), and Determination of Statement of Principles under subsection 196B(3) concerning depressive disorder and death from depressive disorder
60 of 1998	Revocation of Statements of Principles (Instrument No.253 of 1995), and Determination of Statement of Principles under subsection 196B(2) concerning pterygium and death from pterygium
61 of 1998	Revocation of Statements of Principles (Instrument No.254 of 1995), and Determination of Statement of Principles under subsection 196B(3) concerning pterygium and death from pterygium
62 of 1998	Revocation of Statements of Principles (Instrument No.294 of 1995) concerning refractive error and death from refractive error, and Determination of Statement of Principles under subsection 196B(2) concerning myopia, hypermetropia and astigmatism and death from myopia, hypermetropia and astigmatism
63 of 1998	Revocation of Statements of Principles (Instrument No.295 of 1995) concerning refractive error and death from refractive error, and Determination of Statement of Principles under subsection 196B(3) concerning myopia, hypermetropia and astigmatism and death from myopia, hypermetropia and astigmatism
64 of 1998	Revocation of Statements of Principles (Instrument No.83 of 1995), and Determination of Statement of Principles under subsection 196B(2) concerning hypertension and death from hypertension
65 of 1998	Revocation of Statements of Principles (Instrument No.84 of 1996), and Determination of Statement of Principles under subsection 196B(3) concerning hypertension and death from hypertension

Conditions under formal investigation by the Repatriation Medical Authority as at 9 September 1998

Description of disease or injury	Factors under investigation	Date gazetted
Diabetes mellitus [Instrument Nos 47/96 & 48/96 as amended by Nos 187/96 & 188/96]	Excessive microwave radiation exposure	13-05-98
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
Malignant neoplasm of the small intestine [Instrument Nos 153/96 & 154/96 as amended by Nos 7/98 & 8/98]	- - -	13-05-98
Multiple myeloma [Instrument No 134/96]	Exposure to benzene	08-07-98
Non-Hodgkin's lymphoma [Instrument Nos 69/97 & 70/97]	- - -	14-01-98
Open-angle glaucoma [Instrument No 241/95]	Stress and malignant melanoma of the choroid	25-03-98
Paget's disease of bone [Instrument Nos 15/96 & 16/96]	Exposure to viral infection	26-08-98
Polycythemia vera [Instrument No 67/95]	- - -	08-07-98
Primary malignant neoplasm of the brain [Instrument No 203/95]	- - -	08-07-98
Spondylolisthesis [Instrument No 15/97]	Aggravation of spondylolisthesis	14-01-98
Varicose veins [Instrument No 3/95]	Prolonged standing and straining while standing	11-02-98

Administrative Appeals Tribunal decisions - April to June 1998

Words and phrases