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Editor's notes

This edition of *VeRBosity* contains reports on seven Federal Court decisions relating to veterans' matters handed down in the period from 1 January to 31 March 1999. In *McKenna*, the Full Court deals with the correct application of Statements of Principles where an hypothesis includes several sub-hypotheses. *Shelton* is concerned with the construction of the Statements of Principles relating to psychoactive substance abuse.

The case of *Jenkins* deals with whether the applicant was a dependant of a deceased veteran. *Morris* relates to the Extreme Disablement Adjustment.

Proctor relates to operational service in Australian coastal waters during World War 2. *Graham* and *Nolan* are concerned with provisions relating to the determination of qualifying service for service pension purposes.

This edition includes reports on selected AAT decisions handed down in the period from January to March 1999. Information is also included about new Statements of Principles issued by the Repatriation Medical Authority and matters currently under formal investigation.

Robert Kennedy
Editor

Veterans' Review Board Principal Member re-appointed

The Principal Member of the Veterans' Review Board, Brigadier William (Bill) Rolfe, has been re-appointed for a further three years, the Minister for Veterans' Affairs, Bruce Scott announced recently.

The Governor-General has approved the re-appointment, effective from 8 April 1999.

Mr Scott said he welcomed Brigadier Rolfe's re-appointment.

"Brigadier Rolfe will continue to offer the Board extensive military experience and legal and administrative skills," Mr Scott said.

"His re-appointment will ensure the Board continues its tradition of independence, forthrightness and fairness in serving Australia's veteran community," he said.

Brigadier Rolfe has been the Board's Principal Member since 1997, following a distinguished career in the army and public service. A graduate of Duntroon, he served in Vietnam before undertaking a law degree at the Australian National University. He is also a graduate of both the Australian Army Command and Staff College and the United States Army Judge Advocate General's School.

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

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

Media Release - 22 March 1999

Anzac Day 1999

[Extracts from addresses by the Governor-General, Sir William Deane, at the Dawn Service at Anzac Cove and the service at the Lone Pine Memorial on 25 April 1999.]

Just before dawn, on that first Anzac Day 84 years ago, the boats carrying the 1,500 men who would make the first landing were moving through darkness towards the shore. All was silent, save for whispers of apprehension and the splash of oars.

Ahead of them, two searchlights briefly pencilled the sky, then disappeared. Still silence. The leading boats touched the beach. The first Anzacs leapt out. A yellow beacon flared to the south and a single shot was heard. Then several more. And as the boats further out came in, the fire broke upon them from the heights above. The silence and the waiting were over. And the key, as one of the Anzacs was later to say, "was being turned in the lock of hell".

All the demons of war were let loose as the day wore on. Some men died in the boats and on the beaches, many more in the bitter fighting up on the ridges, through scrub and ravines, towards the third ridge. There were the sounds of gunfire and of bombs. And of the screams of combat, of suffering and of death. By the evening, 16,000 men of the Australian and New Zealand Army Corps had landed. Some 2,000 were dead or seriously wounded. And the Turkish defenders had forced the advance back to the second ridge - from which position, despite some small gains at huge cost, nothing essentially changed over the next eight months.

There are now no living Anzacs who were at Gallipoli on that first day. The last survivor, Ted Matthews, an Australian signaller, died in December 1997. There are only a few remaining of the Anzacs who subsequently served during the Gallipoli campaign. The last New Zealander, Doug Dibley, a stretcher-bearer, died a little more than 15 months ago. The fourth-last Australian, Frank Isaacs, died in Perth only this month. Those who remain are all centenarians.

So, few are left who experienced the long months of stalemate, of attack and counter-attack on pieces of hillside that were given soldiers' names - Plugge's Plateau, Quinn's Post, MacLagan's Ridge, Johnston's Jolly. Yet the story of those months, and of all that they involve, lives in our national histories and collective memories.

For Anzac is not merely about loss. It is about courage, and endurance, and duty, and love of country, and mateship, and good humour and the survival of a sense of self-worth and decency in the face of dreadful odds.

These were qualities and values the pioneers had discovered in themselves in what were, for Europeans, the new lands of Australasia. They were tested at Gallipoli and

on the ancient battlefields of Europe for the first time in the Great War. They were not found wanting.

Gallipoli was not the Anzacs' bloodiest campaign of that war. The casualties in France overwhelmed those of Gallipoli. But it was the **first**. And it was heroic even in failure. And what makes it unique is that it was where the people of Australia and New Zealand found their nationhood. "Before the war who ever heard of Anzac?" said their commander-in-chief, the British general, Sir Ian Hamilton. "Hereafter, who will ever forget it?"

The campaign failed, but the men were not defeated. There is a crucial difference. In a triumph of daring and initiative, more than 35,000 Anzacs were evacuated during 11 December nights, with barely a casualty. With their boots muffled, the last of the Anzacs came down from the heights to the beaches on December 20, and into the boats that took them in darkness and silence back to the waiting ships.

But their dead - our dead - remained behind on the other side of the world: more than 8,100 Australians and 2,700 New Zealanders. For many who were leaving that was the unbearable tragedy. One of them wrote:

Not only muffled is our tread
To cheat the foe,
We fear to rouse our honoured dead
To hear us go.
Sleep sound, old friends - the keenest smart
Which, more than failure, wounds the heart,
Is thus to leave you - thus to part.

Yet we are **not** apart. While Gallipoli is Turkish land, it has become a sacred site of our nations. And we are united with those young Anzacs who were at Gallipoli so long ago. They are constantly with us in their and our homelands so far away. There, their spirit walks abroad. To challenge, to guide and to inspire. For as long as we remember. For as long as our nations endure.

No-one can express all that this day means to Australians and New Zealanders. It is, said Australia's great historian Manning Clark, "about something too deep for words". But in the stillness of the early dawn, and in the silence that has settled once more along the shoreline, we feel it in the quiet of our hearts. The sense of great sadness. Of loss. Of gratitude. Of honour. Of national identity. Of our past. Of the spirit, the depth, the meaning, the very essence of our nations. And of the human values which those first Anzacs - and those who came after them - embodied and which we, their heirs, must cherish and pass to the future.

Outside the Australian War Memorial in Canberra is the Ataturk Memorial Garden, named after the Commander of the Turkish forces on Gallipoli and the father of modern Turkey. It is the only memorial to a former enemy on Anzac Parade. It carries the immortal words of Kemal Ataturk that are inscribed at Anzac Cove.

Words addressed to the mothers, urging them to wipe away the tears for their dead sons. "After having lost their lives on this land, they have become our sons as well."

From the Ataturk Memorial Garden in Canberra, you look across Anzac Parade to an Aleppo Pine, planted in 1934 from a cone taken by a soldier from the logs above the Turkish trenches at Gallipoli and sent home to his mother in memory of another dead son. Seedlings from that tree now flourish in many places - including in its native soil at the Lone Pine Memorial and Cemetery.

Let us all, as we walk among the graves on this 84th Anzac Day, listening to the wind in the pine trees, looking across the scarlet-poppied slopes to the "heights of thyme and rosemary", remember the extent of our debt to our fellow countrymen who died so many years ago.

And, on this our national day of honour, let us recall not only those young Australians who gave their lives in our nation's service at Gallipoli, but also all who have died for our country on other battlefields of the First World War, in the Second World War, in Korea, in Vietnam and in other places.

Let us be mindful of so many young lives unlived and unfulfilled; of so many dreams unrealised; of so many of the next generation unborn; of so much that our nation lost; and yet, regardless of victory or defeat, of so much that it and we, their heirs, gained. And let us all be conscious of the whisper of things "too deep for words" that can be heard at Gallipoli by all who have true love of our people and our country in their hearts.

May they rest with God.

Review of Defence Service in South East Asia in the period 1955-1975

An independent review is being held into veterans' entitlements to repatriation benefits and medals for Australian Defence Force service in South East Asia between 1955 and 1975.

The Minister for Veterans' Affairs and Assisting the Minister for Defence, Mr Bruce Scott, announced the review during the 26th Federal Conference of the Naval Association of Australia in Canberra.

The Minister said the review will result in a written report covering areas of service including:

- RAN service with the naval component of the Far East Strategic Reserve (comparing the conditions prescribed for the naval contingent with those personnel of the other two services);
- RAAF Ubon in Thailand;
- RAAF Butterworth in Malaysia;
- ADF service in Malaysia during the period of the Confrontation with Indonesia; and
- Other ADF service in South East Asia during the period 1955 to 1975 where *prima facie* evidence is presented to the review of possible anomalies.

The review will be undertaken by the Honourable Mr Robert Mohr, formerly of the Supreme Court of South Australia, who will be assisted by a former senior RAN officer, Rear Admiral Philip Kennedy.

Mr Scott said that the review would involve consultation with ex-service organisations and receive submissions from interested groups.

> "My intention is that the review provide robust, independent advice to the Government on the appropriate treatment of Australian Defence Force service in South East Asia over the two decades between 1955 and 1975," he said.
>
> "The report will be made public on completion, which I expect to be at the end of October."

Submissions to the review should be sent to:

> **The Secretariat,**
> **Review of Service Entitlement**
> **Anomalies in South-East Asian**
> **Service 1955-75**
> **Russell Offices**
> **CANBERRA ACT 2600**

Selected Decisions of the Administrative Appeals Tribunal

Spinal injury while in training for Vietnam service

Re A J Kopacz and Repatriation Commission
Breen

Q96/650 12 January 1999

Mr Kopacz applied to the Tribunal for review of a decision that his back condition, diagnosed as thoracic spondylosis, was not war-caused in terms of section 9 of the *VE Act*. He served in Vietnam in 1971 with the Catering Corps.

Prior to going to Vietnam, Mr Kopacz underwent a jungle training course at Canungra. He claimed that his thoracic spondylosis was caused during this period of training and not by his actual service in Vietnam. The training required participation in intensive exercises and manoeuvres to improve fitness. He was required to carry a backpack weighing approximately 30 kilograms plus an ammunition box for long periods.

Submission

Mr Kopacz's counsel referred to the case of *Repatriation Commission v Hawkins* (1993) (9 *VeRBosity* 70) in which the Full Federal Court determined that the applicant's smoking habit, which commenced on his journey to Vietnam, arose out of his service because the voyage to Vietnam was inseparably bound to the operational service rendered in Vietnam. Similarly, in this case, it was submitted that the applicant's training for Vietnam, in particular the jungle training at Canungra, was an inevitable and therefore related part of his operational service in Vietnam.

Statement of Principles

In terms of the Statement of Principles for thoracic spondylosis, factor (k) required that the person suffered a trauma to the thoracic spine before the clinical worsening of thoracic spondylosis. As a result of the operation of Clause 6 of the Statement of Principles, factor (k) applied only to material contribution to or aggravation of thoracic spondylosis where the person's thoracic spondylosis was suffered or contracted before or during (but not arising out of) the person's relevant service.

The Statement of Principles referred to subsection 9(1)(e) of the *VE Act* which provides that an injury or disease is war-caused if:

> "(e) the injury suffered, or disease contracted, by the veteran:
>
> (i) was suffered or contracted while the veteran was rendering eligible war service, but did not arise out of that service; or
>
> (ii) was suffered or contracted before the commencement of the period, or last period, of eligible war service rendered by the veteran, but not while the veteran was rendering eligible war service;
>
> and, in the opinion of the Commission, the injury or disease was contributed to in a material degree by, or was aggravated by, any eligible war service rendered by the veteran, being service rendered after the veteran suffered that injury or contracted that disease;"

The Tribunal noted that as a result of this provision, the applicant's condition could only be war-caused if it was

aggravated by his eligible war service regardless of whether it was contracted before or during that service.

The Tribunal said that although the applicant's thoracic spondylosis was undoubtedly contributed to by his training at Canungra, his eligible war service did not commence until he was deployed to Vietnam. This is governed by subsection 6C(3) of the *VE Act* which provides:

"(3) For the purposes of subsection (1), a member of the Defence Force is, subject to subsection (4), taken to have rendered continuous full-time service in an operational area during the period commencing on:

(a) if the member was in Australia on the day (relevant day) from which the member, or the unit of the member, was allotted for duty in that area - on the day on which the member left the last port of call in Australia for that service; or

(b) if the member was outside Australia on the relevant day - on that day;"

Tribunal's conclusion

The Tribunal said that while the applicant's submission accorded with commonsense, it was prevented by the amendments to the *VE Act* since the decision in *Hawkins'* case, in particular by the provision of section 6C(3), from applying a more liberal approach to the case. In this case, the applicant's injury, according to his own evidence, was not referrable to events during operational service but rather during preparation for that service while he was still in Australia. The Tribunal therefore concluded that the veteran's condition was not war-caused.

Formal decision

The Tribunal affirmed the decision that the veteran's thoracic spondylosis was not war-caused.

[ED: Periods of service with the Australian Defence Force that are not covered by the VE Act are covered by other Commonwealth Compensation Legislation]

Prostate cancer - animal fat consumption

Re D A Rhodes and Repatriation Commission

McDonald

V96/891 5 February 1999

Mrs Rhodes lodged an application to the Tribunal for review of a decision that the death of her late husband from prostate cancer was not war-caused. The veteran served in the Army in Australia during World War 2 and this constituted eligible war service in terms of the *VE Act*. Mrs Rhodes claimed that during his Army service, he developed a dietary habit involving a high fat intake, which continued in the post-war period until the diagnosis of the cancer which led to his death.

The Tribunal was required to consider the application in terms of the Statement of Principles (No 96 of 1995 as amended) which contains the following factors relating to eligible war service:

"(a) increasing animal fat consumption by at least 40%, and to at least 70gm/day for at least 25 years before the clinical onset of malignant neoplasm of the prostate; or

(b) inability to obtain appropriate clinical management for malignant neoplasm of the prostate."

Mrs Rhodes told the Tribunal that her husband came from a large family and did not have access to rich foods. During the war, he acquired a taste for large quantities of dairy products, including milk, cream and cheese. He also began to eat bacon, eggs and fried bread for breakfast.

Medical evidence

Dr K Byrne, clinical and forensic psychologist, was of the opinion that the late veteran's dietary habits after the war could not be related to his Army service. Dr D Sime, consultant psychiatrist, was of the view that the veteran's post-war diet was related to his service.

Two medical reports on service diet during World War 2 were also before the Tribunal. A report by Dr Davidson dated May 1988 concluded that the mean content of fat and energy was slightly greater in the Defence Force diets than in the civilian diet. A report by Dr R English dated August 1998 concluded that service rations for personnel serving in Australia contained an animal fat content of 78.5 to 88.8 per cent of the civilian diet for the same period. The English report concluded that, while there was some evidence to support exposure to service rations inducing a food behavioural change to a diet high in animal fats, this was but one among many complex factors affecting an individual's food patterns and that it would be:

> "... considered speculative to place much weight on a period of military service as responsible for food consumption patterns maintained for a minimum period of 20 years. It is proposed that such a link can only be described as tenuous, and unsupported by a reasonable level of evidence."

Ms Wailes, a dietician, prepared a report showing the late veteran's saturated (being equivalent of animal) fat intake increased during and after the war. She concluded that, since he gained weight during the war and remained a solid build thereafter:

> "These figures indicate that during the period of the war a significant increase in animal fat intake occurred. This doubled and continued increasing over the years, an increase of 69% to the period of diagnosis."

In cross-examination, Ms Wailes agreed that other factors would also have influenced the veteran's post-war dietary habits, e.g. his wife's pattern of food preparation and consumption. Dr English's report was put to Ms Wailes who agreed that the report demonstrated a pattern inconsistent with her findings with respect to the veteran. Ms Wailes pointed out that Dr English's report was based on a statistical conclusion and, while she did not disagree with its conclusions, she maintained it was clear that the contents did not reflect the information provided in the case of this particular veteran.

Submissions

The Repatriation Commission submitted that there was no causal relationship between the veteran's war service and his post-war diet. It was submitted that it could not be said that, on the balance of probabilities, the veteran had a 40 per cent increase to at least 70 grams per day over a period of at least 25 years and that that increase was contributed to in a

material degree by the veteran's war service.

Mrs Rhodes's counsel submitted that while other factors such as post-war prosperity and his wife's cooking habits had affected the veteran's diet, those factors did not displace the dietary change to a fat rich diet which first occurred during war service.

Tribunal's conclusion

The Tribunal said that while reports such as those by Drs Davidson and English provided useful comparative statistical information, they did not provide any conclusive answers in the case of a particular individual. That evidence had to be assessed on a case by case basis.

The Tribunal was satisfied that, during and after the war, until the diagnosis of his prostate condition, the veteran developed and maintained a diet high in animal fat. It was satisfied based on Ms Wailes's calculations that factor 1(a) of the Statement of Principles had been met, i.e. that the veteran experienced an increase in animal fat consumption by at least 40 per cent to at least 70 grams per day for at least 25 years before the clinical onset of the condition. The Tribunal concluded:

> "Given the Tribunal's finding that, prior to World War 2, the veteran did not enjoy a high animal fat diet and there was an increase in his animal fat consumption during the war, that the veteran continued to eat fatty foods after the war and did not return to his pre-war dietary pattern, the Tribunal is satisfied that the increase in fat intake is, at least, one of the factors related to the development of the veteran's disease. A factor contributing to the disease to be related to the war service does not need to be solely, or exclusively, related. It may be one of a number of factors. Certainly the evidence leaves the Tribunal satisfied that the veteran's first exposure to foods high in animal fat on a consistent and habit forming basis arose out of his war service. It did not arise as the result of his post-war dietary habits because by that time it was an established pattern. Accordingly, the Tribunal is satisfied that s 196B(14)(d) is satisfied.
>
> If the Tribunal is wrong about that, then the Tribunal is satisfied that the dietary habits developed by the veteran during his period of war service contributed in a material degree to the development of his disease. Again, that contribution does not need to be the sole or exclusive contribution, it just needs to be a contribution in a material degree. The reference to the adjectival 'material' is, as Davies J pointed out in *Repatriation Commission v Bendy* (1989) 18 ALD 144 at 146, a reference to materiality in the sense of being pertinent or likely to influence. The Tribunal is satisfied that the change in the veteran's diet arising from the increased fat intake during the period of his war service so that a pattern of high fat intake was established is one of the pertinent factors which has influenced subsequent development of his prostate cancer condition. To that extent, it is, in the opinion of the Tribunal, a contribution in a material degree to the development of that condition."

Formal decision

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

Hypertension - inability to obtain appropriate clinical management

Re M Crowe and Repatriation Commission
Gerber & Kennedy

Q1997/776 5 March 1999

Mrs Crowe applied to the Tribunal for review of a decision that the death of her husband was not war-caused. The late veteran served in the Army in Australia from 1942 to 1944 and died in 1968 as a result of a cerebral haemorrhage. Mrs Crowe's evidence was that her husband suffered from chest pains during war service and afterwards which he attributed to indigestion and had used Quickeze for relief. The veteran had a heart attack and was admitted to hospital in 1960. He suffered his first cerebrovascular accident in 1964 and a second and fatal cerebrovascular accident in 1968.

Medical evidence

Dr R Goodwin, specialist physician, gave evidence in support of Mrs Crowe's application. Dr Goodwin was of the opinion that the late veteran had borderline hypertension (140/90) during war service which led to ischaemic heart disease. He was of the view that although the veteran had been treated during service according to the medical standards of the time, he did not receive the appropriate treatment as measured by today's standards. He accepted that no effective medication for the treatment of hypertension was available in 1942-44.

Dr J Douglas, specialist physician, gave evidence for the Repatriation Commission. He did not accept that ischaemic heart disease could have caused chest pain throughout the period since the veteran's war service without resulting in an earlier heart attack. Both doctors told the Tribunal that a patient today with borderline hypertension of 140/90 would not necessarily be treated with medication.

Statements of Principles

The Tribunal considered the application in terms of the Statement of Principles relating to the primary cause of death, cerebrovascular accident (formerly No 24 of 1998). One of the factors that must as a minimum exist for a cerebrovascular accident to be connected with a person's service is that the person was suffering from hypertension before the clinical onset of the cerebrovascular accident. In this case, it was agreed by both parties that a blood pressure of 140/90 did indicate hypertension as defined in the SoP. The SoP relating to hypertension includes as a factor related to service:

"**5(x)** *inability to obtain appropriate clinical management for hypertension.*"

Submissions

Mrs Crowe's counsel submitted that the late veteran's hypertension was due to an "inability to obtain appropriate clinical management" during war service. It was submitted that an inability to obtain appropriate treatment in the 1940's should be judged according to the current state of medical knowledge.

Tribunal's conclusion

The Tribunal rejected the submission by Mrs Crowe's counsel. The Tribunal said:

"We are unable to accede to so anachronistic an interpretation of 5(x), applying modern medical practice

and/or knowledge as though it existed in 1942, it being conceded that the veteran was treated according to accepted medical practice at the time, that management would be regarded as inappropriate by the standards of today. The Tribunal finds it impossible to accept that the term 'appropriate clinical management' should not relate to what is considered appropriate at the point in time that the clinical management is being applied. We could not accept for example that a person whose life might have been saved in 1940 if heart transplantation had then been available could be said to have received 'inappropriate treatment' in 1940 because he or she did not receive a heart transplant. In short, if one were to adopt such a basis for inappropriate management, then one would have to say almost every person being treated today is receiving inappropriate treatment because they are being denied future developments.

In any event, even if one were to regard treatment in 1942-1944 as being inappropriate based on today's knowledge, that inappropriateness was in no way related to his service - it was the standard generally applicable to service personnel and the civilian population alike. For good measure, since we find on the evidence indicated that there had been no aggravation of his hypertension during his period in the service, the veteran's hypertension could not be regarded as service related.

...

In the result, we have concluded that only contemporary medical standards, technology and knowledge can be considered when applying the test of 'inability to obtain appropriate clinical management' of any medical condition. It follows that the existence in the 1990's of medical knowledge regarding the diagnosis and treatment of hypertension and its subsequent effects has no application when considering whether there was an inability to obtain appropriate clinical management in the 1940's. Applying the mischief rule, we find that the inability to obtain appropriate clinical management must be solely due to the exigencies of service in the armed forces. It follows that the late veteran did not suffer any inability to obtain appropriate clinical management solely by reason of serving as a member of the Armed Forces between 1942 and 1944. He was regularly examined by doctors whilst he was a member of the armed forces and there is nothing to indicate that his clinical management within the service was anything other than what was appropriate at the time."

Formal decision

The Tribunal affirmed the decision that the veteran's death was not war-caused.

[Ed: In some other cases, the Tribunal has applied current medical standards in determining the meaning of "appropriate clinical management" - e.g. *Re Wellington* (2 February 1999) and *Re Lucas* (12 March 1999) which are both on appeal to the Federal Court on this point]

Decisions of the Federal Court of Australia

Queensland coastal waters - whether operational service outside Australia

Proctor v Repatriation Commission
Einfeld, Carr & Lehane JJ

28 January 1999

Mr Proctor lodged an appeal to the Full Federal Court against the decision of Branson J setting aside the Tribunal's decision and remitting the matter for redetermination. (See 14 *VeRBosity* 48) The Tribunal had found that he had rendered "operational service" within the meaning of section 6 of the *VE Act* and had accepted that his adenocarcinoma of the prostate was war-caused. In June 1943, while serving in Queensland, he travelled by sea on board an LST from Caloundra to Townsville. The ship sailed outside the three mile territorial limit. The purpose of the voyage was to transport armoured tanks, trucks, ammunition and spare parts to Townsville.

Branson J held that the Tribunal had misconstrued paragraph 6(1)(a) concerning "continuous full-time service outside Australia" and had erred in law in that it had failed to determine the "essential character" of his service. (See *Repatriation Commission v Kohn* (1989) 87 ALR 511). Paragraph 6(1)(a) was to be construed so as to exclude mere transitory passages outside Australia. According to her Honour, the Tribunal had mistakenly proceeded on the premise that its finding that Mr Proctor's "service during passage 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 had rendered operational service within the meaning of paragraph 6(1)(a).

Appeal grounds

The main grounds argued on appeal to the Full Court were that:

1. there was evidence before the AAT from which it could be found that the service rendered was operational service; and

2. it was outside the power of the Court to interfere with that finding of fact by the AAT.

Mr Proctor sought to contrast his position with that of Mr Kohn whose time spent outside Australia was merely during transit from one place in Australia to another.

Full Court's conclusions

The Full Court disagreed with Branson J's conclusion that the Tribunal fell into error by referring to the likelihood of the vessel becoming engaged in combat with the enemy as leading necessarily to the conclusion that Mr Proctor had rendered operational service within the meaning of s 6(1)(a). Einfeld and Carr JJ (with whom Lehane J substantially agreed) said:

> "We think that the Tribunal was entitled to refer to that very real circumstance as part of the process of characterising Mr Proctor's service during the voyage. The Tribunal was recognising, as a relevant part of that characterisation, his exposure to risk of enemy contact. The Tribunal identified the purpose of the voyage, acknowledged that the period of time

at sea was limited to a few days, referred to s 6(1)(a) as the relevant paragraph for the meaning of 'operational service' as 'continuous full-time service outside Australia during a war to which this Act applies', and characterised Mr Proctor's service as included within that meaning."

The Full Court concluded that the case raised essentially factual issues which were for the Tribunal to determine. A fair reading of the Tribunal's reasons showed that it had understood all the material facts and relevant law. It had then made a factual assessment, which involved giving consideration to the length of Mr Proctor's service overall, the length of the voyage, the purpose of the voyage, and the purpose of Mr Proctor's service on the vessel. Accordingly, the Court should not interfere with the Tribunal's conclusions.

Formal decision

The Full Court allowed Mr Proctor's appeal and set aside the orders made by Branson J.

Qualifying service - whether "allotted for duty" with Far East Strategic Reserve

Graham v Repatriation Commission
Sackville J

5 February 1999

Mr Graham lodged an appeal to the Federal Court against a decision of the Tribunal affirming a decision of the Repatriation Commission which determined that he was not eligible for a service pension, as he had not rendered "qualifying service" as defined by s 7A(1) of the *Veterans' Entitlements Act 1986*.

Mr Graham served on *HMAS Tobruk* in Malayan waters during the period 2 July 1955 to 8 July 1955. The AAT rejected his claim, because it formed the view that he had not been "allotted for duty" in the relevant area and thus had not rendered "qualifying service" as defined in s 7A(1)(a)(iii) of the *VE Act*.

Legislation

The definition of "allotted for duty" had been amended by Schedule 2 of the *Veterans' Affairs Legislation Amendment Act 1990* ("*VALA Act*"), subsequent to the decisions of the Federal Court in *Repatriation Commission v Doessel* (1990) 95 ALR 704 and *Repatriation Commission v Davis* (1990) 94 ALR 621. Those decisions held that the phrase "allotted for duty" (then contained in s 5(12) of the *VE Act*) was to be determined by reference to the "ordinary meaning" of the words, so that any person who was posted for service in an operational area could be regarded as "allotted for duty" in that area. The amendments introduced by the *VALA Act* restricted the definition of "allotted for duty" to veterans covered by a written instrument issued by the Defence Force, stating that they or their unit had been allotted for duty in an operational area.

Subsequent to the enactment of the *VALA Act*, the *Veterans' Entitlements Amendment Act 1991* and the *Veterans' Entitlements (Rewrite) Transition Act 1991* were enacted. As a result, the definition of "allotted for duty" is now included in s 5B(2) of the *VE Act* and is in the same form as the

restricted definition introduced by the *VALA Act*.

In Mr Graham's case, the AAT held that, as he had lodged his application in 1996 (after the *VALA Act* and the *Transition Act* came into force), his claim was to be determined under the restrictive definition of "allotted for duty" contained in s 5B(2) of the *VE Act*. The AAT held that, as the applicant was not covered by a written instrument issued by the Defence Force, he was unable to satisfy the definition.

Submissions

The principal argument put on Mr Graham's behalf was that the definition of "allotted for duty" in s 5B(2) of the *VE Act* did not apply to him. This was said to be because he had the benefit of a transitional provision now contained in s 93(1) of the *VALA Act* (as amended by Schedule 4 to the *Transition Act*). Section 93(1), as amended, provides as follows:

> "**93(1)** If:
>
> (a) a person has made a claim under the *Veterans' Entitlements Act 1986* or an application under the *Defence Service Homes Act 1918*; and
>
> (b) the claim or application was granted on or before 8 November 1990 on the basis that the person was allotted for duty in an operational area or was a member of a unit of the Defence Force that was allotted for duty in an operational area;
>
> subsection 5B(2) of the *Veterans' Entitlements Act 1986* applies in relation to the person as if the amendments made by section 19 of the *Veterans' Entitlements (Rewrite) Transition Act 1991* (as it relates to subsection 5B(2)) had not been made."

It was submitted that the applicant had applied for and received benefits under the *Defence Service Homes Act 1918* ("*DSH Act*") in 1959 and that his application under the *DSH Act* had been granted on the basis that he had been allotted for duty in an operational area. Under the *DSH Act*, the question of whether a person was "allotted for duty" was determined in accordance with the ordinary meaning of those words and not according to a more restrictive definition such as that contained in s 5B(2) of the *VE Act*.

The Commission accepted that the AAT had not adverted in its reasons to the terms of s 93(1) of the *VALA Act*. The Commission also accepted that the AAT had erred in law by failing to consider whether the applicant was relieved from satisfying the restrictive definition of "allotted for duty", by virtue of the transitional provisions in s 93(1) of the *VALA Act*. It also conceded that, although the AAT had not made any factual findings relevant to the application of s 93(1), there was material that might have led the AAT to conclude that the applicant had satisfied the terms of s 93(1).

Remittal to AAT

Sackville J decided that the whole matter should be remitted to the AAT for hearing and determination according to law. This would enable the AAT to consider whether Mr Graham satisfied the terms of s 93(1) of the *VALA Act* and any alternative arguments that might be put in support of his claim to a service pension.

Formal decision

The Court set aside the Tribunal's decision and remitted the whole matter

to the AAT for hearing and determination according to law.

Qualifying service - whether "allied veteran" - employed as a civilian non-combatant

Nolan v Repatriation Commission
O'Loughlin J

24 February 1999

Ms Nolan, an Australian national, was employed in Vietnam with the US Army and Air Force Exchange Service ("AAFES") from 31 December 1968 to 21 April 1970. In 1996, she applied for a determination that she had rendered qualifying service for service pension purposes. This was refused on the basis that she was not an "allied veteran" as defined in s 5C(1) of the *VE Act* as she was not a member of a defence force established by an allied country.

The AAFES provided retail services to members of the US armed forces in Vietnam, selling food, clothing and other basic comforts. While employed with the AAFES, Ms Nolan worked under the supervision of US service personnel and civilians and was paid by the US Department of Defence. She was not required to wear a uniform and did not carry a military weapon.

Qualifying service

Section 7A of the *VE Act* provides as relevant:

"**7A.** (1) For the purposes of Part III, a person has rendered qualifying service:

(a) ...

(b) ...

(c) if the person is an allied veteran who, during a period of hostilities, has, as a member of the defence force established by an allied country, rendered, in connection with a war, or war-like operations, in which the Naval, Military or Air Forces of Australia were engaged, service in an area within or outside the country in which the person enlisted in those forces, being service in respect of which the person incurred danger from hostile forces of the enemy;"

An "allied veteran" is defined in s 5C(1) as a person:

"(a) who has been appointed or enlisted as a member of the defence force established by an allied country; and

(b) who has rendered continuous full-time service as such a member during a period of hostilities; ..."

The definition of "allied veteran" is modified by s 5R(2) in circumstances where it would have been unreasonable to require the person to wear a uniform, for example, service with allied partisan forces during World War 2.

Issue

The essential issue before the Tribunal was whether Ms Nolan was a person who had been appointed as a member of a "defence force established by an allied country". That expression is defined in s 5C(1) as meaning:

"(a) the regular naval, military or air forces; and

(b) the nursing or auxiliary services of the regular naval, military or air forces; and

(c) the women's branch of the regular naval, military or air forces;

raised by an allied country and operated by the country with regular military-like lines of command, that is to say, raised and operated in such a manner that the members of those forces and services:

(d) were formally appointed to, or enlisted in, those forces or services; and

(e) were required to wear uniforms or insignia distinguishing them as members of those forces or services; and

(f) were required to carry arms openly; and

(g) were subject to the rules and conventions of warfare."

Submissions

Ms Nolan submitted as follows:

1. the AAFES was an "auxiliary service" of the US defence force and she was therefore a member of a "defence force established by an allied country";
2. she was formally appointed to the AAFES;
3. she was subject to the rules and conventions of warfare; and
4. as a member of the AAFES, she was not required to wear a uniform and was not required to carry arms and it would have been unreasonable for her to have been required to wear a uniform or to carry arms.

Court's conclusion

O'Loughlin J said that in order for Ms Nolan to succeed with her application, she had to satisfy the Repatriation Commission that she was not required to wear a uniform or insignia and was not required to carry arms and also that it would have been unreasonable for her to have been required to wear a uniform or insignia or to carry arms. She had failed in this regard. His Honour held that there were no errors of law in the decision of the Tribunal that she was not an "allied veteran" as defined. The appeal was therefore dismissed.

Formal decision

The Court dismissed the appeal.

Statement of Principles - psychoactive substance abuse

Shelton v Repatriation Commission
Burchett, Nicholson & Finkelstein JJ

26 February 1999

Mrs Shelton appealed to the Full Federal Court against a decision of Emmett J dismissing her appeal against a decision that the death of her late husband was not war-caused. (See 14 *VeRBosity* 70)

The Tribunal had found that there was a reasonable hypothesis linking death from ischaemic heart disease to war service by way of hypertension caused by excessive consumption of alcohol, itself caused by the psychological effects of war service. That hypothesis was upheld by a Statement of Principles in respect of hypertension, based on the factor of "psychoactive substance abuse". However, the Tribunal was satisfied beyond reasonable doubt in terms of s 120(1) of the *VE Act* that the veteran did not suffer from psychoactive substance abuse as defined in the Statement of Principles or in the *Diagnostic and*

Statistical Manual of Mental Disorders ("DSM-IV").

In reaching its decision, the Tribunal relied on evidence that the deceased, whose drinking of alcohol had been heavy at one stage, and was generally, over a substantial period, somewhat above a moderate level, had reduced his intake of alcohol in the 1970s as a result of medical advice; that he had further reduced his alcohol intake in about 1985 to "two beers and two wines per day"; that he never took time off work because of drinking; was never violent; never had a serious car accident; was never charged with a driving offence; and had a good relationship with his children. It found no evidence that the deceased's drinking was at a level he could not control.

Submissions

Mrs Shelton's counsel submitted that the Tribunal had erred in its construction of the Statement of Principles. It was argued that the definition in the Statement of Principles referred to "continued use of the substance despite knowledge of having a persistent ... physical problem that is caused or exacerbated by use of the substance." Reading this literally, counsel said the reduction in use which occurred was not to the point; the use continued, albeit at a lower level, despite knowledge of the persistent physical problem of hypertension.

Full Court's conclusion

The Full Court said that the word "indicated" in the expression "means a maladaptive pattern of use indicated by either ..." is equivalent to "pointed to by". The definition still requires that there be the disease entity to which the named symptoms point. That disease entity is a "maladaptive pattern of use". If the level of drinking does not constitute a maladaptive pattern of use, the fact that some use of alcohol continues cannot indicate a condition which does not exist.

The Court referred to the definition of "psychoactive substance abuse" in DSM-IV in support of its conclusion. It said that a definition framed to reflect the Manual is looking at a disease manifested by certain behaviour which is symptomatic of the disease, not merely at any level of behaviour of that kind, whether or not it is symptomatic of the disease.

The Court also held that there was no evidence in this case of psychoactive substance abuse continuing until the accurate determination of hypertension. The Court therefore dismissed the appeal.

Formal decision

The Full Court dismissed Mrs Shelton's appeal.

Extreme Disablement Adjustment - lifestyle rating insufficient

Morris v Repatriation Commission
Spender J

2 March 1999

Mr Morris lodged an appeal to the Federal Court against a decision of the Tribunal on remittal, affirming a decision concerning his degree of incapacity which was assessed at 100% of the General rate. A previous interim decision of the Tribunal, which continued pension at 100% and stood the matter down for 12 months, had

been set aside by the Court. (See 13 *VeRBosity* 116)

Spender J said that in this appeal to the Court, Mr Morris had failed to identify any legal errors in the most recent decision of the Tribunal. In his submissions to the Court, Mr Morris made several submissions alleging that errors had been made in his diagnosis and treatment. He also referred to the conditions of his service on board *HMAS Sydney*, which he said included sleeping on the mess deck in the company of rats, and subject to variations in temperature.

When the matter was before Deputy President Forgie at the Tribunal, submissions were made on Mr Morris's behalf concerning the possible application of s 31(4) of the *Veterans' Entitlements Act 1986* to events which occurred in 1984 to 1987. It was contended that a statement by a medical officer that Mr Morris did not suffer from emphysema was to be contrasted with a statement by Dr Francis in the course of the Tribunal's earlier deliberations in 1987, that it was clear that Mr Morris suffered from emphysema and from partial or complete bundle branch block. Spender J said that the assessment by the Tribunal in 1987 had fairly canvassed the question of his entitlement which he now claimed he should have been awarded at that time. No error of law had been shown in the approach taken by Deputy President Forgie to the possible application of s 31(4) to decisions made in 1987.

Spender J concluded that no legal error had been made by the Tribunal. He said:

> "It seems to me that Mr Morris fails to appreciate the requirements of provisions of ss 23 and 24 of the *Veterans' Entitlements Act*. The decision of the Administrative Appeals Tribunal in 1987 did not appear to Deputy President Forgie to be erroneous, and no error has been shown in the making of that conclusion. Indeed, a close reading of the reasons for the decision of the Administrative Appeals Tribunal and a knowledge of the members of that Tribunal would satisfy me, if it were necessary so to do, that Mr Morris received the benefit of a very careful and experienced adjudication of his claim in 1987 by members of the Tribunal who were both experienced and extremely sensitive to the genuine claims of veterans and to their entitlements under the Repatriation legislation.
>
> When the matter was before Deputy President Forgie, the question was 'is there some way in which the decision made in 1996 by the delegate of the Repatriation Commission, that there was an insufficient average lifestyle rating to require or permit the payment of the Extreme Disability Adjustment was incorrect?'. Quite simply, the material before Deputy President Forgie did not entitle the Tribunal to be satisfied that Mr Morris should be granted the Extreme Disablement Adjustment."

Formal decision

The Court dismissed Mr Morris's appeal.

War Widows' pension - whether marriage-like relationship

Jenkins v Repatriation Commission
Hely J

22 March 1999

Mrs Jenkins lodged an appeal to the Federal Court against a decision of the

Tribunal that she was not a "dependant" of the late veteran at the time of his death. She married the late veteran in 1942 and they were divorced in 1979. The Tribunal found that Mrs Jenkins was not living with the late veteran at the time of his death and was also not in a "marriage-like relationship" with him.

Legislation

The definition of "dependant" in s 11 of the *VE Act* relevantly includes the "partner" (s 11(1)(a)) or "widow" (s 11(1)(c)) of a veteran. Mrs Jenkins was not legally married to the veteran at the time of his death. The relevant part of the s 5E(1) definition of "widow" is:

> "(a) a woman who was the partner of a man immediately before he died."

The term "partner" is defined in s 5E(1) as the other member of a couple.

The expression "member of a couple" is defined in s 5E(2). The relevant part of the subsection in this case is s 5E(2)(b) which provides that a person is a member of a couple if:

> "all of the following conditions are met:
>
> (i) the person is living with a person of the opposite sex (in this paragraph called the **partner**);
>
> (ii) the person is not legally married to the partner;
>
> (iii) the person and the partner are, in the Commission's opinion (formed as mentioned in section 11A), in a marriage-like relationship;
>
> (iv) the person and the partner are not within a prohibited relationship for the purposes of section 23B of the *Marriage Act 1961*."

The expression "living with" is qualified by s 5E(3):

> "For the purposes of subparagraph (2)(b)(i), a person is to be treated as **living with** another person during:
>
> (a) any temporary absence of one of those persons;
>
> (b) an absence of one of those persons resulting from illness or infirmity;
>
> if the Commission is of the opinion that they would, but for the absence, have been living together during that period."

Section 11A specifies the matters to which regard is to be had in the formation of an opinion as to whether persons are living together in a marriage-like relationship.

Living together

Mrs Jenkins submitted that she had separated from the veteran because he was seriously affected by Huntington's disease and was violent towards her. She said that she was advised to obtain a divorce in order to secure a property settlement. There was minimal contact between her and the veteran after the separation although she and her family continued to care for the veteran. She visited him several times in a nursing home shortly before his death in 1982.

Hely J said that the Tribunal correctly found that the condition set out in s 5E(2)(b)(i) was not met as the late veteran died in a nursing home when he and the applicant would not otherwise have been living together. In applying s 5E(3), the Tribunal was required to decide:

(a) whether the applicant and the veteran were once living together;

(b) whether the absence of the applicant from that joint relationship resulted from the illness or infirmity of the veteran; and

(c) whether, in the opinion of AAT the parties would have been living together in the period in which they were apart, were it not for (b).

Hely J said that the reality of the divorce and its impact on the relationship in this case could not be ignored. Section 5E(3) did not allow one to go back into history, and to reconstruct what might have been the fortunes of the applicant and the veteran had the veteran not been inflicted with Huntington's disease.

His Honour observed that the basis of the Tribunal's conclusion that the parties would not otherwise have been living together was unclear. Its failure to give adequate reasons for its decision in this regard was an error of law.

Marriage-like relationship

Mrs Jenkins submitted that the Tribunal had proceeded on the basis that reciprocity was a mandatory requirement of s 11A, which specifies the criteria for a "marriage-like relationship".

Hely J said that there was no error in treating reciprocity as an important element of a marriage-like relationship. The Tribunal was merely pointing out that the general conception of a marriage-like relationship is one involving mutuality of commitment, and that many of the specific matters listed in s 11A require consideration of whether or not the particular relationship has mutual or reciprocal elements which are regarded by the legislature as characteristics of a marriage-like relationship. The Tribunal was doing no more than indicating its conclusion as a matter of fact; no matter how creditable the applicant's treatment of the veteran may have been, it was not of the opinion that the applicant and the veteran were in a marriage-like relationship immediately prior to his death. This conclusion was open to it on the evidence.

Conclusion

Hely J concluded as follows:

"Whilst I have found that the failure of AAT to give adequate reasons for its decision on the issue posed by s 5E(2)(b)(i) is an error of law, the requirements of s 5E(2)(b) are cumulative. The applicant has to satisfy both ss 5E(2)(b)(i) and 5E(2)(b)(iii). The applicant failed to satisfy the AAT of the matter referred to in s 5E(2)(b)(iii), and no error of law was committed by AAT in that respect. There is no interdependency between the two conditions such that failure to give adequate reasons in relation to one can infect the other.

That being so, it would not be appropriate to set aside the decision of the AAT, as its conclusion as to the non-satisfaction of the s 5E(2)(b)(iii) condition is sufficient to sustain the result. In other words [the] AAT correctly held that the applicant and the veteran were not partners at the relevant time. Consequentially the applicant could not have been the widow of the veteran."

Formal decision

The Court dismissed Mrs Jenkins's appeal.

Statements of Principles - chain of causation - sub-hypothesis

McKenna v Repatriation Commission
Branson, Sundberg & Nicholson JJ

29 March 1999

Mr McKenna lodged an appeal to the Full Court against the decision of Goldberg J setting aside a decision of the Tribunal that his ischaemic heart disease and atherosclerotic peripheral vascular disease were war-caused. (See 14 *VeRBosity* 65)

The Tribunal was required to consider the application in terms of Statements of Principles (SoPs) as determined by the Repatriation Medical Authority. The SoPs concerning atherosclerotic peripheral vascular disease and ischaemic heart disease each identify as a factor, suffering from hypertension before the clinical onset of the disease with which the particular statement is concerned.

Mr McKenna suffered from hypertension which was accepted as war-caused in 1985 under s 101 of the *Repatriation Act 1920*. The Repatriation Commission submitted at the Tribunal that the claimed link between the veteran's hypertension and war service based on stress/anxiety was not upheld by the SoP relating to hypertension. The Tribunal rejected the submission on the basis that the Commission had not disproved beyond reasonable doubt that the veteran's hypertension was related to service.

Goldberg J held that the Tribunal had erred in law in that it had failed to consider whether the connection between the veteran's hypertension and his war service was upheld by the SoP on hypertension. His Honour noted that in Mr McKenna's case, the connection between the two claimed disabilities and service involved a number of links or factors, each of which was required to be upheld by a Statement of Principles and, if need be, by more than one Statement of Principles. The link between ischaemic heart disease and atherosclerotic peripheral vascular disease and hypertension was upheld by the SoPs but the link between hypertension and operational service based on stress/anxiety was not upheld by the SoP on hypertension. The Tribunal had therefore failed to apply s 120A(3) in the correct manner.

Full Court's consideration

The Full Court referred to *Repatriation Commission v Deledio* (1998) 27 AAR 144 in which the Court outlined the correct approach to applying ss 120 and 120A of the *VE Act*. The Full Court said:

> "The first step that the Tribunal was required to take was to consider all of the material before it and determine whether that material pointed to a hypothesis or hypotheses connecting Mr McKenna's ischaemic heart disease and his atherosclerotic peripheral vascular disease with the circumstances of the particular service rendered by him (see ss 120(3) and 120A(3)). As Goldberg J pointed out, a relevant hypothesis had to consist of a link or links which connected, at the one end, the disease which was the basis of Mr McKenna's claim under Part II of the Act with, at the other end, the circumstances of the particular service rendered by Mr McKenna. The fact that in 1985 Mr McKenna's hypertension was accepted as service-related under s 101 of the

> *Repatriation Act 1920* thus had no direct relevance so far as the identification of a relevant hypothesis for the purposes of s 120(3) of the Act was concerned."

The Full Court said that in Mr McKenna's case, the hypotheses linking ischaemic heart disease and atherosclerotic peripheral vascular disease with the circumstances of his service each comprised two sub-hypotheses: one which linked his ischaemic heart disease or atherosclerotic peripheral vascular disease with his disease of hypertension, and the other which linked his hypertension with the circumstances of the particular service rendered by him via the factors of stress or anxiety. In order for his claim to succeed, each of the sub-hypotheses had to be upheld by a Statement of Principles. The Full Court saw no difficulty in interpreting s 120A(3) so as to require a hypothesis to be upheld by more than one Statement of Principles.

The Full Court concluded as follows:

> "In the circumstances it was, in our view, not open to the Tribunal to form the opinion that the sub-hypotheses linking Mr McKenna's hypertension with the service rendered by him was reasonable. For the reasons given above, if it was not open to the Tribunal to form the opinion that the sub-hypothesis linking Mr McKenna's hypertension with stress and anxiety were reasonable, it was not open to it to conclude that the hypotheses raised by the material before it were reasonable."

Formal decision

The Full Court dismissed Mr McKenna's appeal.

Statements of Principles issued by the Repatriation Medical Authority
February - May 1999

Number of Instrument	Description of Instrument
21 of 1999	Revocation of Statements of Principles (Instrument No.9 of 1994 and Instrument No.217 of 1995), and Determination of Statement of Principles under subsection 196B(2) concerning peptic ulcer disease and death from peptic ulcer disease
22 of 1999	Revocation of Statements of Principles (Instrument No.10 of 1994 and Instrument No.218 of 1995), and Determination of Statement of Principles under subsection 196B(3) concerning peptic ulcer disease and death from peptic ulcer disease
23 of 1999	Revocation of Statement of Principles (Instrument No.62 of 1998), and Determination of Statement of Principles under subsection 196B(2) concerning myopia, hypermetropia and astigmatism and death from myopia, hypermetropia and astigmatism
24 of 1999	Revocation of Statement of Principles (Instrument No.63 of 1998), and Determination of Statement of Principles under subsection 196B(3) concerning myopia, hypermetropia and astigmatism and death from myopia, hypermetropia and astigmatism
25 of 1999	Revocation of Statement of Principles (Instrument No.64 of 1998), and Determination of Statement of Principles under subsection 196B(2) concerning hypertension and death from hypertension
26 of 1999	Revocation of Statement of Principles (Instrument No.65 of 1998), and Determination of Statement of Principles under subsection 196B(3) concerning hypertension and death from hypertension
27 of 1999	Revocation of Statement of Principles (Instrument No.52 of 1998), and Determination of Statement of Principles under subsection 196B(2) concerning lumbar spondylosis and death from lumbar spondylosis
28 of 1999	Revocation of Statement of Principles (Instrument No.53 of 1998), and Determination of Statement of Principles under subsection 196B(3) concerning lumbar spondylosis and death from lumbar spondylosis
29 of 1999	Revocation of Statement of Principles (Instrument No.54 of 1998), and Determination of Statement of Principles under subsection 196B(2) concerning thoracic spondylosis and death from thoracic spondylosis

Statements of Principles issued by the Repatriation Medical Authority
February - May 1999

Number of Instrument	Description of Instrument
30 of 1999	Revocation of Statement of Principles (Instrument No.55 of 1998), and Determination of Statement of Principles under subsection 196B(3) concerning thoracic spondylosis and death from thoracic spondylosis
31 of 1999	Revocation of Statement of Principles (Instrument No.56 of 1998), and Determination of Statement of Principles under subsection 196B(2) concerning cervical spondylosis and death from cervical spondylosis
32 of 1999	Revocation of Statement of Principles (Instrument No.57 of 1998), and Determination of Statement of Principles under subsection 196B(3) concerning cervical spondylosis and death from cervical spondylosis
33 of 1999	Revocation of Statements of Principles (Instrument No.40 of 1998 and Instrument No.51 of 1998), and Determination of Statement of Principles under subsection 196B(3) concerning renal artery atherosclerotic disease and death from renal artery atherosclerotic disease
34 of 1999	Revocation of Statement of Principles (Instrument No.39 of 1995 concerning cholangiocarcinoma and death from cholangiocarcinoma), and Determination of Statement of Principles under subsection 196B(2) concerning malignant neoplasm of the bile duct and death from malignant neoplasm of the bile duct
35 of 1999	Revocation of Statement of Principles (Instrument No.40 of 1995 concerning cholangiocarcinoma and death from cholangiocarcinoma), and Determination of Statement of Principles under subsection 196B(3) concerning malignant neoplasm of the bile duct and death from malignant neoplasm of the bile duct
36 of 1999	Revocation of Statement of Principles (Instrument No.31 of 1995), and Determination of Statement of Principles under subsection 196B(2) concerning malignant neoplasm of the gallbladder and death from malignant neoplasm of the gallbladder
37 of 1999	Revocation of Statement of Principles (Instrument No.32 of 1995), and Determination of Statement of Principles under subsection 196B(3) concerning malignant neoplasm of the gallbladder and death from malignant neoplasm of the gallbladder

Statements of Principles issued by the Repatriation Medical Authority
February - May 1999

Number of Instrument	Description of Instrument
38 of 1999	Revocation of Statement of Principles (Instrument No.80 of 1998), and Determination of Statement of Principles under subsection 196B(2) concerning ischaemic heart disease and death from ischaemic heart disease
39 of 1999	Revocation of Statement of Principles (Instrument No.81 of 1998), and Determination of Statement of Principles under subsection 196B(3) concerning ischaemic heart disease and death from ischaemic heart disease
40 of 1999	Revocation of Statement of Principles (Instrument No.203 of 1995), and Determination of Statement of Principles under subsection 196B(2) concerning malignant neoplasm of the brain and death from malignant neoplasm of the brain
41 of 1999	Revocation of Statement of Principles (Instrument No.204 of 1995), and Determination of Statement of Principles under subsection 196B(3) concerning malignant neoplasm of the brain and death from malignant neoplasm of the brain

Copies of these instruments can be obtained from:

- **the Repatriation Medical Authority, GPO Box 1014, Brisbane Qld 4001; or**
- **the Repatriation Medical Authority, 127 Creek Street, Brisbane Qld 4000; or**
- **the Department of Veterans' Affairs, PO Box 21, Woden ACT 2606; or**
- **the Department of Veterans' Affairs, 13 Keltie Street, Phillip, ACT 2606.**

REPATRIATION MEDICAL AUTHORITY

CONDITIONS UNDER INVESTIGATION AS AT 5 MAY 1999

Description of disease or injury	Factors under investigation	Date gazetted
Cluster headache **[NOTE**: As there is no SoP concerning cluster headache, no decisions should be made in relation to a claim for this condition until the RMA makes a SoP or a determination not to make a SoP: see subsections 120A(2) and 120B(2) *VE Act*.]	Physical trauma to the head or neck	02-12-98
Diabetes mellitus [Instrument Nos 47/96 & 48/96 as amended by Nos 187/96 & 188/96]	Excessive microwave radiation exposure	13-05-98
Goitre [Instrument Nos 29/98 & 30/98]	Exposure to radiation in Hiroshima	05-05-99
Malignant neoplasm of the prostate [Instrument Nos 95/95 & 96/95 as amended by Nos 191/96 & 192/96]	Analgesic consumption, arsenic injections & exposure to herbicides, pesticides & solvents	21-10-98
Migraine or tension type headache [Instrument Nos 3/96, 4/96, 259/95 & 260/95]	Physical trauma to the head or neck	02-12-98
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
Parkinson's disease & Parkinson's syndrome [Instrument Nos 122/96 & 123/96]	Exposure to carbon tetrachloride & trauma to the head	18-11-98
Polycythemia vera [Instrument No 67/95]	- - -	08-07-98
Subarachnoid haemorrhage [Instrument Nos 384/95 & 385/95]	Exposure to electro-magnetic radiation	18-11-98

Administrative Appeals Tribunal decisions - January to March 1999

Carcinoma

colon
- whether alcohol consumption war-caused

Gore, M C 12 Mar 1999

rectum
- radiation therapy

Ambler, R G 09 Mar 1999

Death

adenocarcinoma of kidney
- smoking

Latham, B B 18 Mar 1999

cerebral haemorrhage
- hypertension
- inability to obtain appropriate clinical management

Crowe, M 05 Mar 1999

cerebrovascular accident & hypertension
- alcohol consumption

Demnar, E M 29 Jan 1999

hypertension
- inability to obtain appropriate clinical management

Lucas, B E 12 Mar 1999

- salt ingestion

Oakman, E M 23 Feb 1999

prostate cancer
- animal fat consumption

Rhodes, D A 05 Feb 1999

prostate cancer & coronary atherosclerosis
- smoking

McErvale, A 09 Mar 1999

pulmonary embolism
- whether related to surgery for BCC

McDonald, I P 29 Jan 1999

suicide
- whether post traumatic stress disorder

Jeffery, M 22 Jan 1999

Dependant

divorced from veteran

Jenkins, J E 17 Dec 1998

Trainor, L M 15 Jan 1999

Dermatological disorder

psoriasis
- stress disorder
- submarine service

Kelly, R 04 Feb 1999

Entitlement

Statements of Principles
- whether accrued rights

Keeley, T 19 Mar 1999

Gastrointestinal disorder

diverticular disease of colon (SoP case)
- low fibre diet

Wellington, G H 02 Feb 1999

General rate pension

cardio-respiratory impairment
- whether contribution by asthma

Sutherland, K A 20 Jan 1999

Musculoskeletal

multiple osteochondromatosis
- inability to obtain appropriate clinical management
- failure to diagnose and treat

Gibson, P A 12 Feb 1999

Osteoarthrosis

hands
- trauma

Picker, R H 16 Feb 1999

hip
- malalignment

Gibson, P A 12 Feb 1999

Psychiatric disorder

post traumatic stress disorder
- experiencing a stressor
- submarine service

Kelly, R 04 Feb 1999

Remunerative work

solicitor
- disposal of practice
- non war-caused conditions & age

Woodward, J W 12 Feb 1999

prevented from continuing to undertake

Dusci, T 16 Mar 1999

whether prevented by war-caused disabilities alone
- kidney condition requiring dialysis

Moorcroft, B K 05 Jan 1999

- storeman aged 55
- effects of non-accepted elbow condition

Cave, S M 12 Jan 1999