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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 July to September 1999.

The case of *Keeley* deals with "accrued rights" in circumstances where a Statement of Principles has been amended or replaced since the primary decision. The AAT was bound to apply the SoP as in force at the time of the primary decision.

Binding and *Howard* both deal with aspects of post traumatic stress disorder and *Gosewinckel* is concerned with the standard of proof as to diagnosis. *Gibson* raises issues as to the conduct of a hearing in relation to osteoarthritis and *Brew* deals with "inability to obtain appropriate clinical management". *Grant* is concerned with the Special rate over 65 provisions.

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

Last edition reported on *VVAA(NSW) v SMRC*. The National Secretary of the Vietnam Veterans Association of Australia has asked that I make it clear that his Association has no connection whatsoever with the applicant in that court case.

Robert Kennedy
Editor

Selected decisions of the Administrative Appeals Tribunal

Date of effect - whether application lodged within 3 months after service - VRB decision sent to PO Box

Re L F Sexton and Repatriation Commission

Beddoe

D1997/15 2 July 1999

Mr Sexton applied to the Tribunal for review of a decision of the VRB that his lumbar spondylosis was not war-caused. The Repatriation Commission conceded at the Tribunal that his lumbar spondylosis was causally related to trauma to the lumbar spine arising from a helicopter crash landing and from the general nature of his service in Vietnam with a rifle platoon. The only remaining issue was the date of effect of the grant of pension relating to lumbar spondylosis because of an apparent delay on his part in lodging the application for review to the Tribunal.

Section 175 of the *VE Act* read in conjunction with s 29(2) of the *AAT Act* has the effect of providing for a prescribed time for lodgment of applications for review with the Tribunal. Section 29(2) provided, on the facts of this case, that the period for lodgment of the application for review commenced on the day the VRB made its decision and ended three months after the day on which the notification of the Board's decision was furnished to the applicant.

Background

The background to this matter was that on 10 December 1996, the VRB affirmed a decision that Mr Sexton's lumbar spondylosis was not war-caused. He was notified of the Board's decision by a letter addressed to a Post Office box at Winnellie Post Office dated 13 January 1997 which enclosed a copy of the Board's decision and reasons for decision. The usual practice of the Board's staff was to post copies of decisions and the covering letter on the day the covering letter was dated and signed but there was no evidence of the actual posting in this case.

Mr Sexton was unable to recall when he received the Board's decision but thought it was "late January, early February". His wife collected the mail from the private box at Winnellie Post Office and thought it more likely that he first saw the documents on or about 11 February 1997. The application for review was lodged with the Tribunal on 1 May 1997.

Mr Sexton submitted that the three month period of lodgment of the application for review by the Tribunal commenced on or after 11 February 1997 and therefore, his application for review was within time.

Service by post

The Tribunal said that the obligations of the Board to notify its decisions are set out in s 140 of the *VE Act* and include a requirement in paragraph 140(1)(d) to cause to be served on each of the relevant persons a copy of the decision and the statement of reasons. Nothing is said in the section about the procedure for service on the veteran. In particular, nothing is said about service by post. The Tribunal continued:

> "Section 28A of the *Acts Interpretation Act 1901* provides that for the purposes of any Act that requires or permits a document to be

served on a person, then, unless the contrary intention appears, the document may be served, *inter alia*, by sending it by prepaid post to the address of the place of residence of the person last known to the person serving the documents.

…

Section 29 of the *Acts Interpretation Act 1901* deems service by post where such service is authorised or required. Such a document sent by prepaid post is deemed to have been served at the time of delivery in the ordinary course of post unless the contrary is proved.

…

In the present case the Board addressed, and I infer posted, its notification of the decision and reasons for decision to the applicant at a private post office box and not his place of residence. It follows in my view that neither s 29 of the *Acts Interpretation Act 1901* nor s 3(4) of the *AAT Act* can apply to deem delivery in the ordinary course of the post because those provisions are restricted to a posting by prepaid post to the address of the place of residence last known to the person serving the document. Furthermore s 3(4) of the *AAT Act* appears to have no operation in relation to proceedings of the Veterans' Review Board."

The Tribunal was satisfied on the evidence that it was more likely than not that the Board's notification was delivered to Mr Sexton's private box in the first or second week of February 1997 but not before 1 February. Service was effected when the document was removed from the post office box. It followed that the application for review received on 1 May 1997 was lodged within three months of service of the Board's decision.

Formal decision

The Tribunal set aside the decision under review and substituted its decision that the veteran's lumbar spondylosis was war-caused with effect from 30 August 1995.

[Ed: It is not clear if the Tribunal was asked to consider whether there had been "substantial compliance" by the VRB with the requirement to serve a copy of its decision and reasons on the applicant. See *Fancourt v Mercantile Credits Ltd* (1983) 154 CLR 87 and *Macrae v St Margaret's Hospital* [1999] NSWCA 381 in which service was held to be validily made to a post office address.]

Lumbar spondylosis - repeated trauma - whether discrete injury

Re C Barrett and Repatriation Commission

R Handley & Thorpe

N98/475 13 July 1999

Mr Barrett applied to the Tribunal for review of a decision that his lumbar spondylosis was not war-caused. He served in the Army during World War 2 as a gun layer and claimed that heavy lifting had caused damage to his lower back. As he rendered operational service, the Tribunal was required to consider his application in terms of the "reasonable hypothesis" standard of proof in subsections 120(1) and (3) of the *VE Act.*

Mr Barrett gave evidence that he first experienced lower back pain after he enlisted in the Army. He underwent a hernia operation in Darwin in January 1943 and returned to normal duties as a gun layer after a period of

recuperation and light duties. From then on, he experienced pain in the lumbar region on each occasion that they performed gun drill and for at least seven to ten days after a drill. Because there was gun drill on at least three to four days a week, he had quite severe continuing pain almost daily during his time in Darwin, although it did not affect his walking. The pain would only ease after a period of performing light duties. He was regularly treated with massage and analgesics during this period. He later served in New Guinea.

Submissions

Mr Barrett's counsel submitted that the facts in this case satisfied factor 5(h) of the Statement of Principles for lumbar spondylosis (No 27 of 1999), that is:

> *"(h) suffering a trauma to the lumbar spine before the clinical onset of lumbar spondylosis;"*

The expression "trauma to the lumbar spine" is defined as follows:

> ***"trauma to the lumbar spine"*** *means a discrete injury to the lumbar spine that causes the development, within 24 hours of the injury being sustained, of acute symptoms and signs of pain and tenderness, and either altered mobility or range of movement of the lumbar spine. These acute symptoms and signs must last for a period of at least seven days following their onset save for where medical intervention for the trauma to the lumbar spine has occurred, where that medical intervention involves either:*
>
> *(a) immobilisation of the lumbar spine by splinting, or similar external agent; or*
>
> *(b) injection of corticosteroids or local anaesthetics into the lumbar spine; or*
>
> *(c) surgery to the lumbar spine.*

Counsel submitted that the term "discrete injury" could include a series of discrete injuries. In this case, there had been a series of discrete incidents over a period of about two and a half years when the veteran had undertaken gun laying duties. Each occasion of gun laying had caused trauma to his back. Acute symptoms had manifested within 24 hours and lasted for seven to ten days.

The Repatriation Commission submitted that no spinal abnormality was detected at the time of the veteran's discharge from the Army. Thus, it could not be demonstrated that during his Army service, he suffered trauma to his lumbar spine that led to his present degree of incapacity.

Tribunal's conclusions

The Tribunal accepted Mr Barrett's submission that the term "discrete injury" can include a series of discrete injuries. The Tribunal said:

> "… In the Tribunal's view, as a general proposition, if the applicant can establish a number of 'discrete' injuries which meet the other components of the definition, then the definition will be satisfied. The Tribunal notes two other components of the definition: first, that the discrete injury must cause the development, within 24 hours of the injury being sustained, of acute symptoms and signs of pain and tenderness, and either altered mobility or range of movement of the lumbar spine; and second, these acute symptoms and signs must last for a period of at least seven days following their onset."

The Tribunal accepted the veteran's evidence that his duties as a gun layer involved continual heavy lifting - specifically lifting each side of the gun carriage off the ground while the gun loader removed the wheels, so that the legs of the gun carriage could rest on the ground in readiness for the firing of the gun. The gun weighed about 17 cwt, and, while only one side of the gun carriage was lifted off the ground at a time, the Tribunal accepted that this was a significant weight for the veteran, a slightly built man, to handle. The gun carriage was taken off and put back on its wheels about 20 to 30 times a day, on a minimum of three to four days a week while the gun crew were training in Darwin. In addition to gun laying, the veteran was required to perform other heavy work including digging gun emplacements and slit trenches, sometimes using a jack hammer.

The Tribunal concluded that the veteran had suffered a "discrete injury to the lumbar spine" while carrying out his duties as a gun layer. He had experienced symptoms which had lasted for seven to ten days before easing. As a result, he satisfied factor 5(h) of the Statement of Principles for lumbar spondylosis.

Formal decision

The Tribunal set aside the decision and substituted its decision that the veteran's lumbar spondylosis was war-caused.

Obesity - whether a disease

Re R E Cook and Repatriation Commission

J Handley, Re & Argent

V97/1373 & V97/1374

16 July 1999

Mr Cook applied to the Tribunal for review of decisions that his obesity and osteoarthrosis of both knees were not war-caused. He had several conditions which were previously accepted as war-caused including post traumatic stress disorder and psychoactive substance abuse. He served as a sapper in Vietnam from 18 March 1971 to 28 October 1971.

In relation to obesity, there was evidence before the Tribunal that on enlistment in the Army, Mr Cook weighed 77.56 kilograms and he was 81.36kg on discharge. In November 1981 he weighed 91.5kg increasing to 99kg at June 1982. In November 1989 and July 1990 his weight was 93kg, and in September 1992 it was 97kg. His weight dropped to 90kg at November 1995, however, by June 1996 it was 95kg, but by July 1996 it was down to 90kg. At the time of the hearing, Mr Cook thought that his weight was between 95-97kg.

Mr Cook claimed that exposure to stressful circumstances in service and a pattern of alcohol and food commencing in service had led to a lifelong habit of excessive alcohol and food consumption.

RMA's statement about obesity

The Tribunal noted that the Repatriation Medical Authority had not issued a Statement of Principles with respect to obesity. In a statement dated 16 August 1996 about the causes of "being obese", the RMA said that it was not able to determine a Statement of Principles in respect of obesity as it was of the view that "obesity" is not a "disease" or "injury" as defined in subsection 5D(1) of the *VE Act*.

Contrary to the RMA's statement about obesity, the Tribunal found that obesity is a "disease" as defined in subsection 5D(1). The Tribunal said:

"The issue of whether obesity is a disease has been the subject of much debate within the Tribunal. In a hearing in 1998 evidence was heard from Dr Walquist who was the referee of a report published by the World Health Organisation ('WHO') in June 1997 entitled 'Obesity - Preventing and Managing the Global Epidemic'. In the proceedings before the Tribunal Dr Walquist was of no doubt that obesity is a disease. The report - which we obtained for the purposes of that hearing - records in part 'obesity is a chronic disease prevalent in both developed and developing countries and affecting children as well as adults. Indeed it is now so common that it is replacing the more traditional public health concerns, including under nutrition and infectious disease, as one of the most significant contributors to ill health.....' (refer WHO report page 1).

Whilst the RMA was of the opinion that obesity does not fit within the definition of 'disease' at section 5D of the Act, we have no doubt that it does."

The Tribunal concluded that the material before it raised a reasonable hypothesis connecting the veteran's obesity with the circumstances of his service, based on an association between stress and the consumption of excessive food and alcohol. The Tribunal set aside the decision under review and substituted its decision that obesity was war-caused.

In relation to osteoarthrosis both knees, the Tribunal was satisfied that there was no reasonable hypothesis in terms of the relevant Statement of Principles. The veteran had contended that he satisfied the definition of "trauma to a joint" in the SoP. The Tribunal rejected this contention on the basis that there was no evidence of pain or tenderness in his knees during service as required in the definition of trauma.

Formal decision

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

[Ed: Mr Cook has lodged an appeal to the Federal Court against the refusal of his claim in respect of osteoarthrosis both knees. A differently constituted Tribunal in the case of *Re Steel* (27 May 1999) decided that "obesity" is not a disease in terms of section 5D of the *VE Act.*]

Jurisdiction - whether two conditions withdrawn before VRB

Re D Allister and Repatriation Commission

J Handley

V1998/1038 28 July 1999

In this case, the Administrative Appeals Tribunal considered as a preliminary issue whether it had jurisdiction to review a decision with respect to lumbar spondylosis and chronic solar skin damage. On 4 August 1998, the VRB consented to the withdrawal of Mrs Allister's application relating to those two conditions. At the same time, the VRB had affirmed a decision with respect to asthma and assessed pension at 20% of the general rate.

Mrs Allister subsequently applied to the Tribunal for review of the Board's

decision. At a directions hearing on 1 March 1999, her counsel submitted that lumbar spondylosis and chronic solar skin damage were subject to review by the AAT. He submitted that there was no "clear, unambiguous withdrawal" of those two conditions from the scope of the review, in terms of the standard laid down by the Full Federal Court in *Repatriation Commission v Stafford* (1995) (11 *VeRBosity* 51). He submitted further that the VRB was under a duty to satisfy itself that the nature and effect of a withdrawal was understood by a veteran.

The Repatriation Commission submitted that Mrs Allister's advocate at the VRB, Mr Richards of the RSL, had requested the withdrawal of both of those conditions and they were not reviewed by the VRB. Accordingly, they could not be reviewed at the Tribunal. It was submitted that the VRB was entitled to rely on the representations of Mr Richards having regard to his prior experience at the VRB. The Commission submitted that it was obvious from the evidence that Mr Richards always obtained instructions prior to appearing and in the present case he did obtain instructions to withdraw the conditions of lumbar spondylosis and chronic solar skin damage.

Tribunal's conclusions

The Tribunal was satisfied that Mr Richards did obtain instructions from Mrs Allister prior to the commencement of the hearing before the VRB and consistent with those instructions made application to withdraw from the appeal to the VRB the conditions of lumbar spondylosis and chronic solar skin damage.

The Tribunal noted that s 139(2) of the *VE Act* provides:

> *"(2) It is the duty of the Board, in reviewing a decision of the Commission, to satisfy itself with respect to, or to determine, as the case requires, all matters relevant to the review."*

The Tribunal said that an explanation by the VRB to a veteran of the nature and the effect of a withdrawal would be conduct consistent with the duty of the VRB imposed by the sub-section. If the VRB, having given such an explanation, is then satisfied by the response made by a veteran that the withdrawal is intended and understood the duty would be fully exercised. However, the absence of an explanation would not amount to a failure to exercise the duty prescribed by the sub-section.

The Tribunal was satisfied in the circumstances of this case that the advocate had obtained the consent of Mrs Allister to withdraw the conditions of lumbar spondylosis and chronic solar skin damage. The Tribunal was satisfied that the VRB had exercised its duty and that it was Mrs Allister's intention to withdraw the two conditions from the review by the VRB. There was a "clear unambiguous withdrawal" of those two conditions from the review by the VRB. It followed that the Tribunal had no jurisdiction to review those two conditions.

Formal decision

The Tribunal decided that it lacked jurisdiction to review the conditions of lumbar spondylosis and chronic solar skin damage.

Decisions of the

Federal Court of Australia

Entitlement - defence service in RAAF - osteoarthritis

Gibson v
Repatriation Commission

French J

2 July 1999

Mr Gibson lodged an appeal to the Federal Court following a decision by the Tribunal which determined that his conditions of multiple osteochondro-matosis and osteoarthritis of the right hip were defence-caused in terms of section 70 of the *VE Act.* The congenital condition of multiple osteo-chondromatosis is characterised by the presence of multiple bony growths on the bones. Mr Gibson served in the RAAF from January 1991 to November 1995 when he was discharged as medically unfit for further service. He contended that the Airfield Defence Guard training in the RAAF aggravated his disabilities. He told the Tribunal that he had started having problems after he had completed a fifteen kilometre battle run during a course in 1991.

The Tribunal found that Mr Gibson did not receive appropriate clinical management for his multiple osteochondromatosis of the right hip in that the treating medical officer had not arranged x-rays when problems developed. As a consequence, his right hip condition was aggravated by defence service and was therefore defence-caused. The Tribunal also found that the development of his osteoarthritis of the right hip was accelerated by the multiple osteochondromatosis and was also defence-caused.

Appeal grounds

Mr Gibson submitted on appeal to the Court that he was entitled to disability pension not only in respect of his right hip but also in relation to his knees and right leg. The main grounds argued were:

1. the Tribunal failed to consider all the factors referred to in the Statement of Principles for osteoarthritis;

2. **the Tribunal incorrectly placed the burden of proof on Mr Gibson to show a connection between his osteoarthritis and his service; and**

3. **the Tribunal failed to observe the rules of natural justice in not providing him with an opportunity to be heard by way of closing submissions at the end of the evidence.**

In relation to the first ground, there was no evidence before the Tribunal that Mr Gibson suffered from osteoarthritis in his knees. French J said that there was no basis for applying the SoP in relation to the knees and the Tribunal had made no error in this regard.

French J also rejected the submission in relation to the burden of proof, saying:

"In relation to the claim that Mr Gibson suffered multiple osteo-chondromatosis in his knees which entitled him to a pension, the Tribunal identified the relevant fact under the Statement of Principles to be 'inability to obtain appropriate clinical management' for multiple osteo-chondromatosis. The Tribunal

decided positively that there had been appropriate clinical management for multiple osteo-chondromatosis in relation to Mr Gibson's knees during his defence service. That determination did not rely in any way upon the application of a burden of proof against Mr Gibson. As to the claim of osteoarthritis in the knees the Tribunal had positive evidence which it relied upon, including CT and X-ray reports and the oral evidence of Dr Owen that Mr Gibson had not previously suffered from and did not suffer from osteoarthritis in either of his knees. Again, this finding was not based on any burden of proof but simply upon the evidence before the Tribunal."

Finally, in relation to the third ground, Mr Gibson contended that he was wrongly deprived of the opportunity to make closing submissions to the Tribunal on the wider issue than multiple osteo-chondromatosis in relation to his hips. French J observed that Mr Gibson was unable to point to any evidence or cogent argument that would have led the Tribunal to a different outcome in relation to the condition of his knees. He was satisfied that Mr Gibson was not unfairly denied the opportunity to present his case to the Tribunal.

Formal decision

The Court dismissed Mr Gibson's appeal.

[Ed: Mr Gibson has lodged an appeal to the Full Court against this decision.]

Entitlement - PTSD - on board *HMAS Sydney* in Vung Tau - experiencing a stressor

Repatriation Commission v

Binding

Marshall J

23 July 1999

The Repatriation Commission appealed to the Federal Court against a decision of the Tribunal that Mr Binding's post traumatic stress disorder was war-caused. He served in the RAN on board *HMAS Sydney* and spent 3 days in Vung Tau harbour in Vietnam in June 1965. He served in the boiler room and his evidence was that he was frightened of being trapped if the *Sydney* was hit by enemy fire.

The AAT was required to apply the Statement of Principles (No 15 of 1994) in respect of post traumatic stress disorder which included as a factor related to operational service:

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

The term *"experiencing a stressor"* was defined as follows:

"experiencing a stressor" means the following (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;"

[Ed: The SoP in relation to post traumatic stress disorder has been revoked and replaced by No 3 of 1999 as amended]

In its decision, the AAT said:

"The raised facts point to Mr Binding experiencing rather than witnessing, or being confronted with threatened death or serious injury. No actual death or serious injury occurred. He was below deck and the Tribunal accepts that he perceived a threat to his physical integrity. However, the hypothesis raised by Mr Binding did not contain evidence pointing to his response to his service on the* Sydney *as having involved 'intense fear, helplessness, or horror' (DSM-IV 'experiencing a stressor' (b)).

The AAT noted that two psychiatrists Dr Cooper and Dr Cook had diagnosed PTSD and found that in light of their opinions, the hypothesis raised by Mr Binding fitted within the SoP "template" and was therefore reasonable. The AAT said that some doubts were raised but it was not satisfied beyond reasonable doubt in terms of s 120(1) and therefore allowed the application.

Submissions

The Repatriation Commission submitted that the AAT had made an error of law in its approach to the definition of *"experiencing a stressor"*. It submitted that having found that Mr Binding's response to that event did not involve intense fear, helplessness or horror, the AAT was not able to form the view that the definition of *"experiencing a stressor"* was satisfied in his case. Counsel submitted further that having made such a finding of fact, the AAT was unable to come to any contrary view by reference to medical opinions once the consequence of its findings was that the hypothesis did not fit the template provided by the SoP.

Mr Binding's counsel submitted that the AAT had not made a finding of fact about his response. The reference was no more than a discussion about Mr Binding's oral evidence as distinct from a formal finding.

Court's conclusion

Marshall J accepted the submission by Mr Binding's counsel that the reference to "intense fear, helplessness or horror" was not a finding of fact – it was merely a commentary on Mr Binding's oral evidence before the AAT. Marshall J concluded:

"In my view the AAT was attempting to say, albeit slightly inelegantly, that Mr Binding's oral evidence did not show that he had experienced '*intense fear, helplessness or terror*' but that when one considered the evidence of Dr Cooper and Dr Cole it could be seen that Mr Binding did in fact experience such '*intense fear, helplessness or terror*' when serving on *HMAS Sydney* in Vietnamese waters."

Formal decision

The Court dismissed the Repatriation Commission's appeal.

Entitlement - PTSD - hypertension - experiencing a stressful event

Howard v Repatriation Commission

Sundberg J

30 July 1999

Mr Howard lodged an appeal to the Federal Court against a decision of the Tribunal, affirming a decision that his generalised anxiety disorder and hypertension were not war-caused. At the AAT hearing, the diagnosis of "generalised anxiety disorder" was amended to "post traumatic stress disorder".

Mr Howard served on *HMAS Sydney* during two visits to Vietnam in 1965 and gave evidence that he was in fear of Viet Cong attack while the ship was unloading at Vung Tau. His wife gave evidence that his mood deteriorated after his trips to Vietnam. He was involved in a motor vehicle accident in Sydney in May 1966 which resulted in severe facial lacerations. However, he denied that the accident amounted to a major traumatic event which could have contributed to his PTSD. There was evidence from Mr T Corran, clinical psychologist, that the sounds of shelling and strafing onshore by US helicopters in Vietnam as described by the veteran would have been enough to create a perception of fear and threat and precipitate the onset of PTSD.

At the AAT, the Repatriation Commission accepted that Mr Howard suffered from PTSD, but contended that he had not experienced a stressor within the meaning of the Statement of Principles for PTSD. The Commission also argued that he had not experienced a "stressful event" within clause 1(a) of the Psychoactive Substance Abuse or Dependence SoP. It conceded that he suffered from hypertension, but claimed that it had not been shown that he suffered from "psychoactive substance abuse or dependence" as defined in the hypertension SoP. The AAT said that the parties had agreed that his case depended entirely on whether he satisfied factor (a) in clause 1 of the PTSD SoP and that the hearing was limited to that issue.

The AAT refused the claim on the basis that the applicant did not satisfy the definition of "experiencing a stressor" in the PTSD SoP. It concluded that the hypothesis did not fit the template in the SoP and was therefore not reasonable. (See 14 *VeRBosity* 61)

Correct approach

In *Repatriation Commission v Deledio* (1998) 27 AAR 144 at 159-160 the Full Federal Court set out the steps that ss 120 and 120A of the *VE Act* require in relation to a claim lodged under Part II for a pension arising out of operational service rendered by a veteran. The first three steps are 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) ....

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 .... 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."

Appeal grounds

Mr Howard submitted on appeal that the AAT had made several errors of law, as follows:

1. In saying that his case depended entirely on whether he satisfied factor (a), the AAT misunderstood the way his case was put. It was true that if factor (a) was satisfied, the relevant factor in the hypertension SoP would also be met. If factor (a) was not met, the AAT would need to consider whether the hypertension factor was met. Since it was not satisfied about factor (a), it was obliged to consider the hypertension factor, but had failed to do so;
2. In rejecting his hypothesis, the AAT ignored the evidence of Mr Corran. The question was whether there was some credible medical evidence which supported the hypothesis; and
3. The Tribunal failed to apply ss 120 and 120A in accordance with the approach outlined in *Deledio*.

Court's conclusions

Sundberg J noted that the Repatriation Commission conceded that the AAT had made an error of law by failing to consider whether the veteran had experienced a "stressful event" as defined in the Psychoactive Substance Abuse or Dependence SoP.

Sundberg J held that the AAT had made an error of law in applying the first step in *Deledio* in that it had required the hypothesis to be a reasonable one. In doing so, it had failed to mention Mr Corran's evidence which supported the hypothesis.

Sundberg J held that the AAT had made a further error of law in that it had not applied the third step in *Deledio* in the correct manner. It had not adopted the correct approach of comparing the hypothesis and the template in the SoP.

Formal decision

The Court allowed Mr Howard's appeal and remitted the matter to the AAT for rehearing.

Special rate - economic slump in wool industry

Grant v
Repatriation Commission

Sundberg J

4 August 1999

Mr Grant appealed to the Federal Court against a decision of the Tribunal that he did not qualify for the Special rate of pension. The Tribunal refused

his application on the basis that the "alone" test in s 24(2A)(d) of the *VE Act* was not satisfied, in that he had ceased remunerative work in 1986 due to a combination of war-caused disabilities and the economic slump in the wool industry which resulted in low wool prices.

Background

Mr Grant lodged his application in 1996 at the age of 72 years. He had several war-caused disabilities including lumbar disc lesion and osteoarthritis of the left hip and suffered from low back pain. After his discharge from the Army in 1946, he worked mainly in the farming industry. He found that back pain interfered with his ability to work effectively. In 1976 he purchased a sheep farming property. Over time he found it increasingly difficult to carry out the physical labour required in running a sheep farm, and in 1986 his son returned to assist him. Between 1986 and 1993 he was able to supervise the operation of the farm, but his inability to perform physical work meant that he had to employ labour and the farm was no longer viable. He stated that in 1993 he was so debilitated he had to give up farming altogether.

S 24(2A)(d) of the *VE Act* provides:

> *"(d) the veteran is, because of incapacity from war-caused injury or war-caused disease or both, alone, prevented from continuing to undertake the remunerative work (**last paid work**) that the veteran was last undertaking before he or she made the claim or application;"*

Appeal grounds

Mr Grant submitted on appeal that the Tribunal had failed to apply section 24 in the correct manner. It was submitted that the Tribunal should not have concluded simply that the "alone" test was not satisfied and should have examined whether section 24 had been satisfied. Sundberg J rejected this, saying that the Tribunal was entitled to find on the evidence that the applicant did not satisfy para (d) and was not entitled to a pension at the Special rate.

Sundberg J also rejected submissions that the AAT had failed to properly identify the type of remunerative work undertaken by Mr Grant and had failed to take into account that he had continued in a supervisory role on the farm after he was incapable of doing physical work. His Honour observed that the applicant's own evidence was that he ceased remunerative work after the shearing in 1986, when he ceased to perform physical work on the farm. It was irrelevant that he stayed on in a supervisory capacity after that date if he did not receive any remuneration for it.

Sundberg J rejected a submission that the Tribunal had wrongly regarded the "alone" test as meaning that the war-caused disability must be the "unique and absolute cause" of the applicant's decision to cease remunerative work. In the light of the applicant's evidence, it could not be said that the Tribunal required his war-caused disabilities to be the "sole, unique and absolute cause" of him ceasing remunerative work.

Sundberg J rejected a further submission that the Tribunal had placed an onus on the applicant to satisfy s 24(2A)(d). His Honour said that on a fair reading of the Tribunal's reasons, it was not requiring the applicant to satisfy it, but rather that he had to satisfy the "alone" test. This was merely a statement of what is required by the legislation - to be

eligible for a pension at the Special rate, the applicant must satisfy the "alone" test. It did not impose an onus on the applicant to satisfy the Tribunal that the requirements of the "alone" test were met. His Honour also rejected a submission that the Tribunal had failed to give adequate reasons for its decision.

Formal decision

The Court dismissed Mr Grant's appeal.

[Ed: The Full Court allowed Mr Grant's appeal against this decision on a point of law not argued before this Court and remitted the matter to the AAT for rehearing. The Full Court's decision will be noted in the next issue of *VeRBosity.*]

Entitlement - whether first or second SoP applicable - accrued rights

Keeley v
Repatriation Commission

Heerey J

13 August 1999

Mrs Keeley appealed to the Federal Court against a decision of the AAT affirming a decision that the death of her late husband was not war-caused. The appeal raised the following question of law. Is an AAT review of a decision of the Repatriation Commission to be determined by reference to the Statement of Principles in force when the Commission's decision was made, or by reference to the SoP in force at the time of the AAT review?

Background

Mr Keeley died in 1986 as a result of multiple myeloma. On 14 December 1994, Mrs Keeley lodged a claim for a widow's pension. As her claim was lodged after 1 June 1994, it was required to be determined in accordance with Statements of Principles determined by the Repatriation Medical Authority. The first SoP in respect of multiple myeloma (No 1 of 1995) was made by the RMA on 18 January 1995. This included as a factor related to war service:

"(b) being occupationally exposed to paints and/or lacquers before the clinical onset of multiple myeloma;"

Before the matter was heard by the AAT, the RMA revoked the first SoP and determined a second SoP (No 134 of 1996) which included as a factor:

"(b) being occupationally required to work as a painter for an average of three or more days per week over any two year period, (or working as a painter for a period or periods of time totalling at least 312 days) before the clinical onset of multiple myeloma, and where that occupational exposure has ceased, the clinical onset of multiple myeloma has occurred within 20 years of cessation;"

The AAT held that the second SoP was to be applied. Mrs Keeley conceded that if the second SoP was applied, then she could not succeed with her claim.

Accrued rights

The appeal to the Court turned on whether section 50 of the *Acts Interpretation Act 1901* conferred on Mrs Keeley an "accrued right" to have her claim determined under the more

favourable provisions of the first SoP. The AAT said that the *VE Act* "expressly and by implication displaces the effect of the common law presumption against retrospectivity" as expressed in section 50 of the *Acts Interpretation Act.*

Section 50 of the *Acts Interpretation Act* provides:

> *"50. Where an Act confers power to make regulations, the repeal of any regulations which have been made under the Act shall not, unless the contrary intention appears in the Act or regulations effecting the repeal:*
>
> *(a) affect any right, privilege, obligation or liability acquired, accrued or incurred under any regulations so repealed; or*
> *(b) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any regulations so repealed; or*
> *(c) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;*
>
> *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 or regulations had not been passed or made."*

Heerey J said that section 50 was applicable to the present circumstances where the first SoP had been repealed by the second SoP. His Honour referred to decisions of the High Court in *Esber v Commonwealth* (1992) and of the Full Federal Court in *Lee v Secretary, Department of Social Security* (1996) and held that section 50 was applicable to the revocation of SoPs unless the contrary intention appeared in the Act or regulations. Mrs Keeley had acquired a right to a pension conditional or contingent upon, amongst other things, there being raised (in the sense discussed in the authorities) the fact that Mr Keeley in the course of his service had been occupationally exposed to paints or lacquers, over whatever period of time.

Contrary intention

The Repatriation Commission submitted that a contrary intention to the application of section 50 was not manifested expressly but rather appeared by necessary implication. Counsel argued that if an SoP is to be applied, even though none existed at the time of the claim, why should not a new SoP apply when an old one existed at the time of claim? Counsel said that the purpose of the RMA and the SoP system was to present the current "sound medical-scientific evidence" of connection between a particular injury or death and relevant operational service. An intention should not be imputed to Parliament that more current medical scientific views expressed in the most recent SoP would not prevail. Further, it was not to be assumed that subsequent SoPs would be less favourable to claimants.

Heerey J rejected the Commission's submissions and referred to "an ancient principle of the common law, enshrined in the *Acts Interpretation Act*, that generally the legal consequences of events ought to be governed by the law in force when those events occur." He said that consistency in decision-making could be achieved by applying the SoP that existed at the time of the primary decision. He continued:

> "As already noted, counsel for the Commission pointed out that it is purely fortuitous that this legal issue is raised in the context of the present case where the repealed SoP happens to be more favourable to a claimant than to the Commission. The reverse could equally well be the position in other cases. Indeed in the last half century science has discovered that some substances previously considered harmless are extremely damaging to human health. Tobacco, asbestos and Agent Orange are but some well known examples. There is no reason to impute to Parliament an assumption that similar discoveries would not be made after 1994."

Heerey J said that the Full Court's decision in *Ogston v Repatriation Commission* (1999) (29 AAR 89) (15 *VeRBosity* 36) could be distinguished from the present case and concluded that there was no contrary intention to the operation of section 50 of the *Acts Interpretation Act.* It followed that Mrs Keeley had an "accrued right" to have her claim determined in accordance with the more favourable first SoP.

Formal decision

The Court allowed Mrs Keeley's appeal and remitted the matter to the AAT for rehearing.

[Ed: The Repatriation Commission has lodged an appeal to the Full Court against this decision.]

Entitlement - varicose veins - inability to obtain appropriate clinical management

Brew v
Repatriation Commission

Heerey, Merkel & Mansfield JJ

10 September 1999

Mrs Brew lodged an appeal to the Full Court of the Federal Court against the decision of Sundberg J, dismissing her earlier appeal to the Federal Court. (See 15 *VeRBosity* 41) She contended that her varicose veins were war-caused due to an "inability to obtain appropriate clinical management" during her service as a ward orderly at Bonegilla. Her evidence before the Tribunal was that she experienced leg pains during service but chose not to seek medical treatment because she may have been subjected to ridicule from colleagues if she was treated for a condition that was not regarded as serious.

Submissions on appeal

Mrs Brew submitted that the AAT and Sundberg J had misconstrued clause 1(e) of the Statement of Principles relating to varicose veins by focusing on "objective barriers" to obtaining appropriate clinical treatment and failed to have regard to "subjective barriers" to obtaining treatment. It was contended that in this case, subjective barriers believed by her to exist were capable of constituting or resulting in an "inability" to obtain appropriate clinical management for her varicose veins.

The Repatriation Commission did not dispute that subjective factors may, in an appropriate case, constitute or result in an inability to obtain appropriate clinical management but submitted that it was open to the AAT, as the arbiter of fact, to conclude from the material that the matters relied on by Mrs Brew did not fall within clause 1(e).

Full Court's conclusions

Merkel J (with whom Mansfield J agreed) concluded that Sundberg J was correct in treating the meaning of "inability" in clause (1)(e) as "lack of ability; lack of power, capacity, means" (*Macquarie Dictionary* (2nd ed 1991)) or "the condition of being unable; lack of ability, power or means" (*New Shorter Oxford Dictionary* (1993)). The dictionary definitions embrace what may fairly be described as objective barriers such as lack of power, capacity or means *or* a subjective barrier such as the "condition of being unable". Whether the objective or subjective barrier to obtaining treatment is made out in a particular case depends on the facts of that case.

Merkel J said that in context, Sundberg J was referring to circumstances the effect of which resulted in a claimant being unable to obtain treatment in the sense of any of the dictionary meanings of "inability" referred to. Thus, the absence of medical officers would constitute a barrier in that sense but not a mere "lack of willingness to obtain treatment". Sundberg J ought not to be taken as having concluded that external factors, such as a threat of sanctions by superior officers if treatment is sought, cannot constitute or result in an inability to obtain treatment within the meaning clause 1(e) where, by reason of such factors, the claimant concludes that she is unable to obtain appropriate treatment.

Merkel J said that the AAT's reasons for decision, read as a whole, showed that it had concluded that Mrs Brew was inhibited from seeking rather than unable to seek appropriate clinical management for her varicose veins. The AAT had referred to other factors which suggested that, notwithstanding the workplace culture, she could have obtained appropriate clinical management but had elected not to do so. The AAT formed a view on the material before it that the circumstances were not such, whether approached objectively or subjectively, as to constitute an "inability to obtain appropriate clinical management" for varicose veins within the meaning of clause 1(e). Merkel J was satisfied that this conclusion was reasonably open to the AAT on the whole of the material before it. It had not erred in law in construing or applying clause 1(e) of the SoP in reaching its conclusion.

Heerey J (dissenting) observed that the AAT had appeared to proceed on the basis that if a person chooses not to have medical treatment by reason of apprehension of some particular consequence there can be no "inability". His Honour said that "inability" can, according to context, be used in the sense that a person is physically capable of performing some act but chooses not to do so, either because of apprehension of likely adverse consequences, or because of some powerful persuasive force. For someone like Mrs Brew, a member of the Armed Services working in a military establishment in wartime, a group culture against seeking medical treatment could operate as a powerful disincentive. Whether that amounted to "inability" was something she was entitled to have considered on the merits. He would have allowed the appeal and remitted the matter to the AAT.

Formal decision

The Full Court (Heerey J dissenting) dismissed Mrs Brew's appeal.

Entitlement - standard of proof in deciding whether veteran suffered from disease

Repatriation Commission v Gosewinckel

Weinberg J

14 September 1999

The Repatriation Commission appealed to the Federal Court against the decision of the Tribunal that Mr Gosewinckel's generalised anxiety disorder was war-caused. The veteran rendered operational service during World War 2 and his claim was required to be decided in accordance with Statements of Principles determined under sub-s 196B(2) of the *VE Act*.

Grounds of appeal

The Commission submitted that the Tribunal had made several errors of law in relation to the diagnosis and causation of the veteran's condition. These were:

Diagnosis

(a) First, the AAT applied the wrong standard of proof in resolving the question of whether the veteran was suffering from the disease of generalised anxiety disorder.

(b) Second, the AAT misconstrued Statement of Principles No 48 of 1994 as amended by Instrument No 275 of 1995, and failed to consider whether all of the necessary indicia for generalised anxiety disorder were present in the veteran's case.

Causation

(c) Third, in resolving the question whether the veteran's generalised anxiety disorder was war-caused, the AAT misconstrued the SoP so that the AAT failed to determine whether the hypothesis raised by the material before the AAT was upheld by the SoP (as required by sub-s 120A(3) of the *VE Act*).

Medical evidence

Two psychiatrists gave evidence before the AAT. They disagreed as to whether the veteran suffered from generalised anxiety disorder. Dr Wahr was of the opinion that the veteran suffered from a chronic anxiety state which was related to his war service. Dr Strauss considered that the veteran had two mild phobias as a result of his war service but did not suffer from an anxiety state.

The AAT found that the material before it pointed to a hypothesis connecting the veteran's wartime service with his anxiety state. The AAT referred to *Preston v Repatriation Commission* (1993) in which Beazley J held that in a matter where a veteran had rendered operational service, a conflict as to diagnosis was to be determined in accordance with the "reasonable hypothesis" standard of proof in ss 120(1) and (3).

In dealing with the conflict between Dr Wahr and Dr Strauss, the AAT concluded that it was required to accept the diagnosis of anxiety state made by Dr Wahr unless satisfied beyond reasonable doubt that there was no sufficient ground for making that diagnosis.

Following the AAT's decision in Mr Gosewinckel's case, the Full Federal Court in *Cooke's* case overruled the decision in *Preston*. (See 14 *VeRBosity* 100) The Full Court concluded that the history of the legislation indicated that the reasonable hypothesis standard had been introduced when the *VE Act* was enacted solely for the purpose of determining whether an injury, disease or death was war-caused. All other matters, including questions of diagnosis, were to be dealt with by the

reasonable satisfaction standard in s 120(4).

The Full Court observed in *Cooke* that it made good sense to apply the reasonable satisfaction standard to the question of whether a disease or injury existed given that evidence concerning that issue was far more likely to be readily available than evidence relevant to causation. The Court observed that the language of ss 120(1) and (3) assumed the existence of a relevant disease or injury. The function of those sub-sections was to specify the standard of proof to be used when determining whether the disease or injury related to the operational service rendered by the veteran, and not whether the veteran was presently suffering from any such disease or injury.

Submissions

The Repatriation Commission submitted that the AAT had erred in law in applying the wrong standard of proof to the determination of whether the veteran was suffering from generalised anxiety disorder.

Mr Gosewinckel's counsel submitted that the decision of the Full Court in *Cooke* was erroneous and that the High Court in *Byrnes* had determined that the appropriate standard of proof in matters of diagnosis was the reasonable hypothesis standard.

Weinberg J rejected Mr Gosewinckel's submission and held that following *Cooke's* case, which was binding on this issue, the reasonable satisfaction standard is to be applied in determining whether a veteran is injured or suffering from a disease. Accordingly, the AAT had erred in law on the first ground of appeal.

> *In relation to the second ground concerning diagnosis, the Commission submitted that the AAT had misconstrued the relevant SoP by failing to consider whether the indicia for generalised anxiety disorder were present in the veteran's case. It was submitted that the AAT should have asked itself whether it was reasonably satisfied that the veteran was suffering from generalised anxiety disorder, as defined in clause 4 of the SoP - that is, it should have asked itself: "Are we reasonably satisfied that the diagnostic criteria prescribed by the SoP as essential for a diagnosis of generalised anxiety disorder have occurred more days than not for at least six months?"*

Weinberg J accepted that the AAT was required to approach the issue of diagnosis in this manner but said it was implicit that the AAT had done so in this case.

> *In relation to the third ground concerning causation, the Commission argued that the AAT had erred in determining that there could be "clinical onset" of a disease before the condition satisfied all of the requirements of the disease in the SoP, and before the symptoms had been present for six months.*

Weinberg J accepted that the AAT had erred in law in this regard. His Honour concluded on this point:

> "The AAT cannot use the evidence of an expert to contradict or provide an alternative to the requirements of the SoP. Section 120A, and the associated provisions in Pt XIA of the *VE Act* were introduced in order to take the determination of 'purely medical ... issues' out of the hands of

bodies such as the AAT - Explanatory Memorandum to *Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Bill 1994* at p 3. Evidence which contradicts an SoP, or which proposes that a reasonable hypothesis may be raised by some factor not identified in the SoP, cannot alter the operation of the SoP in relation to any matter to which it is applicable - see *Deledio v Repatriation Commission*. An hypothesis that fails to fit within the template will be deemed not to be 'reasonable', and the claim will fail.

> *The hypothesis which the AAT found to be reasonable, namely, that the veteran experienced the clinical onset of generalised anxiety disorder within two years of experiencing a stressful event (i.e. within two years of the conclusion of the war) was not upheld by the relevant SoP. The AAT could not, therefore, have found that the hypothesis was reasonable, and was bound, on the material before it, to find that the veteran's generalised anxiety disorder was not war-caused.*

Because the AAT failed to apply the prescribed standard of proof to resolve the conflicting medical evidence and determine whether the veteran is suffering from generalised anxiety disorder, this application must be allowed. The matter must be remitted to the AAT to determine that issue by applying s 120(4) of the *VE Act* by reference to the diagnostic criteria prescribed in the SoP."

Formal decision

The Court allowed the Commission's appeal and remitted the matter to the Tribunal for rehearing.

Statements of Principles issued by the Repatriation Medical Authority
September-December 1999

Number of Instrument	Description of Instrument
60 of 1999	Determination of Statement of Principles under subsection 196B(2) concerning chronic gastritis and death from chronic gastritis
61 of 1999	Determination of Statement of Principles under subsection 196B(3) concerning chronic gastritis and death from chronic gastritis
62 of 1999	Revocation of Statement of Principles (Instrument No.121 of 1995), and Determination of Statement of Principles under subsection 196B(2) concerning gastro-oesophageal reflux disease and death from gastro-oesophageal reflux disease
63 of 1999	Revocation of Statement of Principles (Instrument No.122 of 1995 and Instrument No.123 of 1995), and Determination of Statement of Principles under subsection 196B(3) concerning gastro-oesophageal reflux disease and death from gastro-oesophageal reflux disease
64 of 1999	Determination of Statement of Principles under subsection 196B(2) concerning malignant neoplasm of the eye and death from malignant neoplasm of the eye
65 of 1999	Determination of Statement of Principles under subsection 196B(3) concerning malignant neoplasm of the eye and death from malignant neoplasm of the eye
66 of 1999	Determination of Statement of Principles under subsection 196B(2) concerning cluster headache syndrome and death from cluster headache syndrome
67 of 1999	Determination of Statement of Principles under subsection 196B(3) concerning cluster headache syndrome and death from cluster headache syndrome
68 of 1999	Revocation of Statements of Principles (Instrument No.122 of 1996) concerning Parkinson's disease and Parkinson's syndrome and death from Parkinson's disease and Parkinson's syndrome, and Determination of Statement of Principles under subsection 196B(2) concerning Parkinson's disease and death from Parkinson's disease
69 of 1999	Revocation of Statements of Principles (Instrument No.123 of 1996) concerning Parkinson's disease and Parkinson's syndrome and death from Parkinson's disease and Parkinson's syndrome, and Determination of Statement of Principles under subsection 196B(3) concerning Parkinson's disease and death from Parkinson's disease

70 of 1999	Determination of Statement of Principles under subsection 196B(2) concerning secondary parkinsonism and death from secondary parkinsonism
71 of 1999	Determination of Statement of Principles under subsection 196B(3) concerning secondary parkinsonism and death from secondary parkinsonism
72 of 1999	Revocation of Statements of Principles (Instrument No.134 of 1996) concerning multiple myeloma and death from multiple myeloma, and Determination of Statement of Principles under subsection 196B(2) concerning myeloma and death from myeloma
73 of 1999	Revocation of Statements of Principles (Instrument No.135 of 1996) concerning multiple myeloma and death from multiple myeloma, and Determination of Statement of Principles under subsection 196B(3) concerning myeloma and death from myeloma
74 of 1999	Revocation of Statements of Principles (Instrument No.3 of 1996) concerning migraine and death from migraine, and Determination of Statement of Principles under subsection 196B(2) concerning migraine and death from migraine
75 of 1999	Revocation of Statements of Principles (Instrument No.4 of 1996) concerning migraine and death from migraine, and Determination of Statement of Principles under subsection 196B(3) concerning migraine and death from migraine
76 of 1999	Revocation of Statements of Principles (Instrument No.259 of 1995) concerning tension headache and death from tension headache, and Determination of Statement of Principles under subsection 196B(2) concerning tension-type headache and death from tension-type headache
77 of 1999	Revocation of Statements of Principles (Instrument No.260 of 1995) concerning tension headache and death from tension headache, and Determination of Statement of Principles under subsection 196B(3) concerning tension-type headache and death from tension-type headache
78 of 1999	Revocation of Statements of Principles (Instrument No.67 of 1995) concerning polycythaemia vera and death from polycythaemia vera, and Determination of Statement of Principles under subsection 196B(2) concerning polycythaemia vera and death from polycythaemia vera
79 of 1999	Revocation of Statements of Principles (Instrument No.68 of 1995) concerning polycythaemia vera and death from polycythaemia vera, and Determination of Statement of Principles under subsection 196B(3) concerning polycythaemia vera and death from polycythaemia vera

80 of 1999	Revocation of Statements of Principles (Instrument No.44 of 1999) concerning non-Hodgkin's lymphoma and death from non-Hodgkin's lymphoma, and Determination of Statement of Principles under subsection 196B(2) concerning non-Hodgkin's lymphoma and death from non-Hodgkin's lymphoma
81 of 1999	Revocation of Statements of Principles (Instrument No.45 of 1999) concerning non-Hodgkin's lymphoma and death from non-Hodgkin's lymphoma, and Determination of Statement of Principles under subsection 196B(3) concerning non-Hodgkin's lymphoma and death from non-Hodgkin's lymphoma
82 of 1999	Revocation of Statements of Principles (Instrument No.46 of 1999) concerning diabetes mellitus and death from diabetes mellitus, and Determination of Statement of Principles under subsection 196B(2) concerning diabetes mellitus and death from diabetes mellitus
83 of 1999	Revocation of Statements of Principles (Instrument No.47 of 1999) concerning diabetes mellitus and death from diabetes mellitus, and Determination of Statement of Principles under subsection 196B(3) concerning diabetes mellitus and death from diabetes mellitus
84 of 1999	Revocation of Statements of Principles (Instrument No.95 of 1995 and Instrument No.191 of 1996) concerning malignant neoplasm of the prostate and death from malignant neoplasm of the prostate and Determination of Statement of Principles under subsection 196B(2) concerning malignant neoplasm of the prostate and death from malignant neoplasm of the prostate
85 of 1999	Revocation of Statements of Principles (Instrument No.96 of 1995 and Instrument No.192 of 1996) concerning malignant neoplasm of the prostate and death from malignant neoplasm of the prostate and Determination of Statement of Principles under subsection 196B(3) concerning malignant neoplasm of the prostate and death from malignant neoplasm of the prostate

Copies of these instruments can be obtained from:

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

REPATRIATION MEDICAL AUTHORITY

FORMAL INVESTIGATIONS AS AT 17 NOVEMBER 1999

Description of disease or injury	Factors under investigation	Date gazetted
Acquired cataract [Instrument Nos 146/96 & 147/96] **Chronic solar skin damage** [Instrument Nos 33/96 & 34/96] **Malignant neoplasm of the lip epithelium** [Instrument Nos 105/96 & 106/96] **Non-melanotic malignant neoplasm of the skin** [Instrument Nos 45/98 & 46/98] **Pterygium** [Instrument Nos 60/98 & 61/98]	Required level of exposure to solar radiation	23-06-99
Alzheimer's disease [Instrument Nos 378/95 & 379/95]	- - -	03-11-99
Aplastic anaemia **[NOTE**: As there is no SoP concerning aplastic anaemia, no decision can 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*.**]**	- - -	03-11-99
Asthma [Instrument Nos 59/96 & 60/96 as amended by Nos 75/97 & 76/97]	- - -	03-11-99
Bronchiectasis [Instrument Nos 35 & 36 of 1997]	- - -	17-11-99
Carpal tunnel syndrome [Instrument Nos 71/97 & 72/97]	- - -	03-11-99
Chloracne [Instrument Nos 69/94 & 70/94 as amended by Nos 279/95 & 280/95] **Hodgkin's disease** [Instrument Nos 77/94 & 78/94] **Malignant neoplasm of the lung** [Instrument Nos 29/96 & 30/96 as amended by Nos 149/96 & 150/96] **Porphyria cutanea tarda** [Instrument Nos 71/94 & 72/94] **Soft tissue sarcoma** [Instrument Nos 49/98 & 50/98]	Exposure to herbicides used in Vietnam, namely 2,4-D, 2,4,5-T, cacodylic acid or picloram	23-06-99
Chronic ulcerative colitis [Instrument Nos 144/96 & 145/96 as amended by Nos 179/96 & 180/96]	Stress	04-08-99

Dementia pugilistica [Instrument Nos 21/97 & 22/97]	- - -	03-11-99
Goitre [Instrument Nos 29/98 & 30/98]	Exposure to radiation in Hiroshima	05-05-99
Gout [Instrument Nos 88/97 & 89/97]	Alcohol consumption	23-06-99
Gulf War syndrome	- - -	17-11-99
Gunshot wounds [Instrument Nos 39/94 & 40/94 as amended by Nos 229/95 & 230/95]	Definition & coverage of the term 'gunshot wounds'	23-06-99
Haemorrhoids [Instrument Nos 73/94 & 74/94]	Service activities	23-06-99
Hypertension [Instrument Nos 25 & 26 of 1999]	Sleep apnoea	18-08-99
Malignant melanoma of the skin [Instrument Nos 97 & 98 of 1995 as amended by Nos 189 & 190 of 1996]	- - -	18-08-99
Malignant neoplasm of the bile duct [Instrument Nos 34/99 & 35/99]	- - -	03-11-99
Malignant neoplasm of the bladder [Instrument Nos 231/95 & 232/95 as amended by Nos 362/95 & 363/95 and Nos 94/97 and 95/97]	Occupational exposure to aromatic amines	23-06-99
Mesangial IGA glomurelonephritis	- - -	17-11-99
Motor neurone disease [Instrument Nos 245 & 246 of 1995]	- - -	18-08-99
Neuropathy **[NOTE**: As there is no SoP concerning neuropathy, no decision can 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*.**]**	- - -	03-11-99
Osteoarthrosis [Instrument Nos 41 & 42 of 1998 as amended by Nos 19 & 20 of 1999]	- - -	18-08-99

Vietnam Veterans Validation Study

The Validation Study of the Vietnam Veterans Morbidity (Health) Study was released recently by the Minister for Veterans' Affairs, Bruce Scott. The study found that Vietnam veterans and their children are more likely to have some adverse health conditions than the general population. Mr Scott said that the Government was now seeking to establish the most effective additional measures it could take to provide suitable health care for veterans and their families.

The validation study was carried out by the Australian Institute of Health and Welfare (AIHW) on behalf of the Department of Veterans' Affairs. The aim of the study was to medically confirm a range of selected conditions reported by veterans about themselves and their children, and to compare their prevalence to the levels estimated for the Australian community.

The results of the Validation Study for veterans were as follows:

- Melanoma of the skin and prostate cancer show significantly higher prevalence in veterans than in the Australian community standard.
- Colorectal, breast and eye cancer, non-Hodgkin's lymphoma and leukaemia show no significant difference in prevalence between veterans and the Australian community standard.
- Lung cancer, soft tissue sarcoma and testis cancer show significantly lower prevalence in veterans than the Australian community standard.

Motor neurone disease and multiple sclerosis were not addressed in the study and a separate study will be undertaken by the AIHW to validate these conditions. There was no corresponding community standard in relation to cancer of the head and neck, other cancers and total cancers so no assessment of their significance could be made.

The results of the Validation Study for veterans' children were as follows:

- Spina bifida maxima and cleft lip/palate show significantly higher prevalence in veterans' children than in the Australian community standard.
- Deaths due to accidents and deaths due to illnesses show significantly higher prevalence in veterans' children than in the Australian community standard.
- Suicides are three times more prevalent in veterans' children than the Australian community standard.
- Wilm's tumour and anencephaly show no significant difference in prevalence between veterans' children and the Australian community standard.
- Leukaemia, cancer of the nervous system, other cancers, Down syndrome, tracheo-eosophageal fistula and absent body parts all show significantly lower prevalence in veterans' children than the Australian community standard.

The Government has established telephone hotline numbers to counsel any veterans wanting further information about the study. The *Freecall* numbers are:

North Queensland	**1800 019 332**
New South Wales	**1800 043 503**
Elsewhere in Australia	**1800 011 046**

Copies of the Report are available from the AIHW or at its Website at: *http://www.aihw.gov.au/*

Administrative Appeals Tribunal decisions - July to September 1999

Carcinoma

transitional cell carcinoma
- smoking increase due to service

Okley, J R 09 Aug 1999

Cardiovascular disease

cardiomyopathy
- alcohol consumption

Youd, M F 27 Aug 1999

carotid artery disease
- smoking increase not war-caused

Sayer, M 20 Jul 1999

hypertension & atrial fibrillation
- alcohol consumption

Elliott, C J 26 Aug 1999

hypertension
- alcohol dependence

Thomas, E 13 Jul 1999

Date of effect

Administrative Appeals Tribunal
- whether application lodged within 3 months after service
- VRB decision sent to PO Box

Sexton, L F 02 Jul 1999

Death

carcinoma of pancreas
- whether chronic pancreatitis

Guiney, P E 31 Aug 1999

cerebrovascular accident
- therapeutic radiation to the head

Boston, A 24 Aug 1999

deep vein thrombosis
- immobility & continuous external pressure

Anderson, L M 08 Sep 1999

ischaemic heart disease
- obesity

Fogg, R J 23 Aug 1999

motor vehicle accident
- reduced mobility

Pearse, E M 12 Aug 1999

Dental condition

loss of teeth
- inability to obtain appropriate clinical management

O'Neil, H 20 Sep 1999

Disability pension

bipolar disorder, hypertension, ischaemic heart disease, lumbar spondylosis, osteoarthrosis & diabetes
- remitted for reconsideration

Robinson-Watterston, J H 05 Aug 1999

lumbar spondylitis & pes cavus

Hourn, S M 03 Sep 1999

obesity
- whether a disease

Cook, R E 16 Jul 1999

osteoarthritis right ankle, chronic pain disorder & depressive state
- whether aggravated by defence service

Dennis, C R 10 Sep 1999

Entitlement

Statements of Principles
- question of which SoP applies

Ginniff, G 06 Sep 1999

Extreme disablement adjustment

whether impairment ratings sufficient

Allison, D R 31 Aug 1999

whether lifestyle ratings sufficient

Henryon, F L 23 Aug 1999

Gastrointestinal disorder

gastro-oesophageal reflux disease
- smoking increase not war-caused

Sayer, M 20 Jul 1999

Genitourinary disorder

benign prostatic hypertrophy
- inability to obtain appropriate clinical management

O'Neil, H 20 Sep 1999

Jurisdiction

lumbar spondylosis & chronic solar skin damage
- whether withdrawn before VRB

Allister, D 28 Jul 1999

Gold Card eligibility
- no jurisdiction

Stewart-Moore, J 05 Aug 1999

Osteoarthritis

knees
- trauma from plane crash

Henryon, F L 23 Aug 1999

- trauma in Vietnam

Cook, R E 16 Jul 1999

shoulder
- trauma from motor vehicle accident

McIntyre, J G F 05 Aug 1999

spine & hips
- falls from trains

Ward, R E 30 Sep 1999

Psychiatric disorder

generalised anxiety disorder
- defence service

Ralph, C J 02 Jul 1999

- experiencing a stressful event

Booth, N 20 Sep 1999

Qualifying service

Malayan service
- Butterworth

Matthew, A W 20 Aug 1999

whether incurred danger from hostile forces
- Cowra breakout

Maguire, M N 09 Sep 1999

- anti-aircraft battery

Hirsh, J 16 Sep 1999

Remunerative work

ceased work as accountant beyond age 65
- whether employee or independent contractor

Hill, R 27 Jul 1999

Intermediate rate
- substantial cause

Byrne, R W 23 Aug 1999

whether incapable of working more than 8 hours per week
- retired psychologist

Webber, P F 20 Sep 1999

- transport operator

Forbes, R M 06 Aug 1999

whether prevented by war-caused disabilities alone
- discharged from RAAF aged 55

Pearce, D T V 12 Aug 1999

- non war-caused hip condition

Weiley, C R 26 Aug 1999

- redundancy aged 60

Currie, J G 06 Aug 1999

- telephone operator

Smoothy, A 14 Sep 1999

- voluntary redundancy from CPS

Hall, L N 13 Jul 1999

Respiratory disorder

asthma
- exposure to occupational antigen

Henryon, F L 23 Aug 1999

- exposure to petrol

Elliott, C J 26 Aug 1999

Spinal disorder

cervical spondylosis
- motor vehicle accident

Curtis, R 30 Jul 1999

lumbar disc injury with back pain

Okley, J R 09 Aug 1999

lumbar spondylosis
- trauma

Mitchell, B J 12 Jul 1999

- repeated trauma
- discrete injury

Barrett, C 13 Jul 1999

lumbar & cervical spondylosis
- whether trauma in Vietnam
- no discrete injury

Jones, R J 13 Jul 1999

Words and phrases

discrete injury to the lumbar spine

Barrett, C 13 Jul 1999

inability to obtain appropriate clinical management

O'Neil, H 20 Sep 1999

obesity

Cook, R E 16 Jul 1999

trauma

Jones, R J 13 Jul 1999