**Contents**
**Volume 15 No 4**



## Editor's notes

This edition of *VeRBosity* contains reports on seven Federal Court decisions relating to veterans' matters handed down in the period from October to December 1999.

In *Wheeldon*, the Full Court examines whether the AAT correctly applied the "reasonable hypothesis" standard of proof. The cases of *Smith* and *Wellington* deal with other entitlement issues.

In *Grant*, the Full Court considers the Special rate over 65 provisions. *Thomson* and *Woodward* also deal with aspects of the Special rate. *Tracy* is concerned with the application of the Vehicle Assistance Scheme.

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

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

Robert Kennedy
Editor

# *Vale*

## Frank Mahony, CB, OBE (1915 - 2000)

Former President of the Repatriation Review Tribunal

Frank Mahony died at his Sydney home in January 2000, aged 84. He had been the President of the Repatriation Review Tribunal (RRT) from its creation in 1979 until its replacement in 1985 by the VRB.

Previously he had a distinguished career as Deputy Secretary and acting Secretary of the Attorney-General's Department in Canberra, Director-General of ASIO and Chairman of the Australian Institute of Criminology. He had also conducted administrative reviews of sensitive areas of Commonwealth departments, and headed Australian delegations to international conferences and treaty negotiations.

Francis Joseph Mahony was born in Newcastle in 1915; his mother died the day after he was born and his father died at Passchendaele during World War 1. He was raised by relations, and went to school in Newcastle, then to De La Salle College in Armidale where he won a scholarship to Sydney University. After joining the Commonwealth Public Service in 1934, he studied law part-time and graduated in 1940. In 1941 he joined the Crown Solicitor's office. His career was interrupted by service in World War 2.

After the war, he rejoined the Crown Solicitor's Office and was involved in some very important inquiries—he appeared before the Petrov Royal Commission in 1954-55, arranged for the inquiry into the crash of a Viscount aircraft into Botany Bay, and prepared the legal work for the first Royal Commission into the sinking of HMAS *Voyager* by HMAS *Melbourne*. He became the Deputy Crown Solicitor in Sydney in 1963, a post he held until he went to Canberra as Deputy Secretary to the Attorney-General's Department in 1970.

The 1970s saw a great increase in Commonwealth legislation in many areas, including administrative law reform. Frank Mahony was closely involved in the implementation of these policies. He also led Australian delegations to negotiate improvements to the Geneva Conventions on prisoners of war. He was Director-General of ASIO for a year following the Hope report on the organisation, relinquishing the job when Justice Woodward was appointed to it in 1976, and retired from the Public Service after 45 years.

In 1979, Frank Mahony returned to government service, accepting an appointment as the first President of the Repatriation Review Tribunal. The RRT took over from the War Pensions Entitlement Appeal Tribunals and the Assessment Appeal Tribunals, which had been established in 1929. Under Mahony the RRT established its independence and became clearly associated with the newly emerging administrative law system beginning with the Administrative Appeals Tribunal established less than 4 years before.

Frank married Moya Sexton in 1939 and they were together for 56 years. Moya died five years ago. Frank is survived by his sons, John, Brian, Peter, Michael, Terry and Phillip and his daughter Mary Ann. A son, Francis, died before him. The Principal Member of the VRB has written to his son, Brian, conveying the Board's sympathy to the family.

**Selected Decisions of the Administrative Appeals Tribunal**

## Hallux valgus - clinical worsening - whether temporary or permanent

Re P A A'Bell and Repatriation Commission

McMahon

N98/1834 07 Oct 1999

Mr A'Bell applied to the AAT for review of a decision refusing his claim for pension for congenital hallux valgus (commonly known as bunions). He served in the Army from 1990 to 1994 and had operational service in Somalia from January to May 1993. He claimed that the congenital condition was aggravated by his service. He said that the condition did not cause any problems prior to enlistment. However, foot pain resulted from wearing Army boots and running which was a regular part of physical exercise. He was issued with larger boots but this did not alleviate the problem.

Mr A'Bell said that he was anxious to leave the Army after his experiences in Somalia and applied for a discharge in 1994. At the medical examination prior to discharge, he told the examining doctor that he was able to march and run without pain or other symptoms. This was untrue but he thought that if he complained about his feet, his discharge would be delayed. After discharge, he returned to farming and general labouring and his feet continued to get worse.

### Statement of Principles

Section 70 of the *VE Act* deals with eligibility for pension. Paragraph (5)(d) provides that if the disease causing incapacity was contracted before the commencement of service, a pension is nevertheless payable if the disease was *"contributed to in a material degree by, or was aggravated by, any defence service or peacekeeping service rendered by the member, being service rendered after the member suffered that injury or contracted that disease"*.

The Statement of Principles issued by the Repatriation Medical Authority in relation to congenital hallux valgus (No 300 of 1995) includes as a factor related to operational service:

> *"(a)wearing ill fitting footwear that causes lateral pressure on the great toe of the affected foot on a daily basis before the clinical worsening of congenital hallux valgus;"*

The Tribunal observed that the use of the phrase *"clinical worsening"* was to be regretted. By avoiding the concept of *"aggravation"*, the RMA had left open the question of whether any clinical worsening prescribed by the Statement may be temporary or must be permanent. The Tribunal said:

> "Nevertheless, the Statement of Principles cannot go beyond the terms of the statute. Whatever is included in these Statements, the fact is that an applicant must show (relevantly) aggravation in order to succeed. That term has been widely considered in both workers compensation and veterans' legislation. In all cases, distinctions have been drawn between temporary worsening of symptoms and aggravation as a compensable concept.
>
> …
>
> What the applicant seeks to show is an aggravation of the disease itself. As was pointed on in *Repatriation Commission v Yates* (1995) 38 ALD

80 at 88, this is not necessarily indicated by a temporary worsening of symptoms with consequential temporary incapacity. The question to be determined is whether the pre-existing condition itself has been worsened."

**Medical evidence**

Dr Benanzio, an orthopaedic specialist called on behalf of Mr A'Bell, agreed that it was not possible to stop the progress of the congenital condition. Although Dr Benanzio thought that unsuitable boots may have caused a thickening of tissues or bursitis at the time, the evidence on the whole indicated that these symptoms would have been temporary and that the conditions would have dissipated when the stressors were removed.

Professor Sambrook, a professor of rheumatology who gave evidence for the Commission, conceded the difficulty of distinguishing between temporary increases in symptoms and permanent residues accruing to the development of the condition. He agreed that unsuitable footwear could, in certain circumstances, lead to a permanent worsening. In Mr A'Bell's case, however, he did not consider that this was a correct analysis, having regard to what he observed on examination. The radiology did not show the presence of any osteoarthritis. The condition of Mr A'Bell's feet was consistent with what one would have expected at his age, having regard to the natural progression of the condition.

The Tribunal concluded on the evidence that the conditions of Mr A'Bell's service did not "aggravate" the pre-existing hallux valgus as that term had come to be understood in the Courts. That part of the decision under review was therefore affirmed. The Tribunal also reviewed the rate of pension payable to Mr A'Bell for a number of other disabilities and increased his pension to 60% of the General rate.

**Formal decision**

The AAT affirmed the decision that Mr A'Bell's congenital hallux valgus was not war-caused or defence-caused.

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**Eligibility - whether a veteran - war correspondent**

**Re D Pidgeon and**

**Repatriation Commission**

Horton

N1999/270 11 Oct 1999

Mrs Pidgeon lodged an application for review of a decision that her late husband was not a "veteran" as defined in section 5C of the *VE Act.* The background to this matter is that at various times during World War 2, the late Mr Pidgeon served as an officially accredited war correspondent in operational areas both in Australia and overseas (New Guinea, Morotai, Borneo, Philippines). He was a specialist artist, and his visual (and journalistic) works were featured on a regular basis in the *"Australian Women's Weekly"* and the Sydney *"Daily Telegraph".* He was entitled to the award of the Returned from Active Service (RAS) Badge and was eligible for the award of the Pacific Star, War Medal 1939-45 and the Australia Service Medal 1939-45. Throughout the period of the war, he was employed by Consolidated Press Limited, his accreditation and deployment to operational areas being arranged by the relevant authorities.

There was no evidence that he was ever employed by the Commonwealth of Australia.

**Submissions**

Mrs Pidgeon argued that in the light of the war service rendered by her husband, recognised in the eligibility for the RAS badge, campaign medals and the widespread publicity made available for the Defence Forces through his reports and drawings of war actions and defence personnel, his service should be treated in a manner entitling him to proper recognition. She stated "nobody could have given more service", and that he was disadvantaged by serving the nation in the manner he chose, which permitted him to best use his undoubted, and very widely recognised, talents. She also drew the attention of the Tribunal to applications he had made in the course of the war for recognition as an official war artist. The Tribunal noted that whilst he had been recommended for such recognition, he was not appointed due to a lack of vacancies for such an appointment.

**Ministerial determination**

Section 5C of the *VE Act* defines "veteran", as far as is relevant, as:

> *"(a) a person (including a deceased person) :*
> *(i) who is, because of section 7, taken to have rendered eligible war service; or*
> *(ii) in respect of whom a pension is, or pensions are, payable under subsection 13(6); and*
> *..."*

Section 5R of the *VE Act* provides that the Minister may make determinations in regard to "continuous full-time service". It relevantly states:

> *"(1) The Minister may, by notice in writing published in the* Gazette*, make, in respect of a person, or of persons included in a class of persons, specified in the notice, all or any of the following determinations:*
> *(a) a determination that this Act, or specified provisions of this Act, are to apply to and in relation to the person, or a person included in that class of persons, as if he or she was, while he or she was rendering service of a kind specified in the notice (in this subsection referred to as* ***relevant service****), a member of the Defence Force who was rendering continuous full-time service;*
> *(b) ...*
> *(c) ...*
> *and, if the Minister does so, this Act applies, or the specified provisions of this Act apply, as the case may be, accordingly."*

Such a Determination, pursuant to paragraph 5(13)(a) (now subsection 5R) of the *VE Act* was made by the Minister for Veterans' Affairs on the 18 December 1987 and remains in force. As far as is relevant, this Determination states that it shall:

> *"...apply to, and in relation to, a person included in the classes of persons, as if that person, while rendering service during World War 2 of a kind specified in this determination, was a member of the Defence Force rendering continuous full-time service for the purposes of this Act:*
> *(1) persons employed by the Commonwealth of Australia who were attached to the Defence Force, being:*
> *(a) persons who were so attached for continuous service, and who provided services as personnel belonging to field broadcasting units, as telegraphists, as camoufleurs, as war correspondents, as photographers or as cinematographers; or*

*(b) any other persons during any period when they provided service and assistance to the Defence Force; or*
..." (emphasis added)

**Tribunal's conclusions**

The Tribunal refused Mrs Pidgeon's application on the basis that her late husband was not "employed by the Commonwealth". It said that this qualification is essential before either sub-paragraph (a) or (b) of the ministerial determination can be considered. The Tribunal accepted that Mr Pidgeon made a significant contribution to the war effort through his journalism and artistic works. However, it was bound by the terms of the ministerial determination. From all the evidence, he could not be regarded as having been "employed by the Commonwealth".

**Formal decision**

The Tribunal affirmed the decision that the late Mr Pidgeon was not a "veteran" for the purposes of the *VE Act*.

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**Drug abuse or dependence - experiencing a severe stressor**

**Re T J Hay and**
**Repatriation Commission**
Beddoe, Brumfield & Lawrence

Q1998/510 22 Oct 1999

Mr Hay applied to the AAT for review of a decision that his drug dependence or drug abuse was not war-caused. He enlisted in the Australian Army on 9 April 1968, had operational service in Vietnam from 27 January 1970 to 21 February 1970 and was discharged on 22 June 1970.

Mr Hay told the AAT that on arrival in Vietnam he had sought out sources of supply of marijuana and at the end of the first week, heroin which he used throughout the time of his service in Vietnam. He said that he smoked heroin laced cigarettes. He claimed that he was not aware of routine orders relating to use of illicit drugs but knew that such use was illegal under Australian law. He continued to take heroin after his return to Australia.

In Vietnam, he served on the Army Vessel "*Clive Steele*" as a gunner operating a 40 mm bofor gun for protection of the craft. He said that he faced dangerous situations including observing fire fights while the vessel was plying river and coastal waters in the South China Sea, including one small arms fire attack on the vessel.

**Submissions**

Mr Hay's counsel submitted that paragraphs 5(a) and (b) of the relevant Statement of Principles (No 78 of 1998) were satisfied. It was alleged that there was an incident on board the "*Clive Steele"* when the bofor gun was fired in very close proximity to the applicant causing him to fall down and he was momentarily stunned or concussed.

The Repatriation Commission accepted that Mr Hay suffered from post traumatic stress disorder but submitted that he was not entitled to claim for drug dependence or drug abuse due to section 9(3) of the *VE Act* relating to a serious breach of discipline.

Under the terms of Instrument No 78 of 1998 the factors that must as a minimum exist before it can be said that a reasonable hypothesis has been

raised connecting drug dependence with the circumstances of the applicant's service in Vietnam were:

> *"(a) suffering from a psychiatric disorder at the time of the clinical onset of drug dependence or drug abuse; or*
> *(b) experiencing a severe stressor within the two years immediately before the clinical onset of drug dependence or drug abuse; or*
> *(c)-(f) …"*

**Tribunal's conclusions**

The Tribunal said that the evidence raised a reasonable hypothesis in terms of the Statement of Principles. However, it was satisfied, beyond reasonable doubt, that the applicant's drug dependence was caused by the fact of his presence in Vietnam but not because of the fact of his service in Vietnam. His evidence was that he started using heroin in the first week of his service in Vietnam because it was available without charge from American servicemen. The Tribunal said:

> "… While we do not doubt the evidence that the applicant was anxious about his service on the LMS '*Clive Steele*' we are not satisfied that the applicant was suffering from a psychiatric disorder at the time of his Vietnam service nor are we satisfied he suffered a severe stressor. In particular we do not regard the momentary concussion or stunning from the gun firing incident as a severe stressor.
>
> The material before the Tribunal satisfies us that by the time he left Vietnam the [applicant] had developed a heroin habit and he continued that habit on return to Australia. We are satisfied, beyond reasonable doubt, that the heroin habit and resulting drug dependence preceded in time any symptoms of a psychiatric disorder.
>
> The material before the Tribunal also satisfies us that the applicant did not suffer a severe stressor within two years immediately before the clinical onset of drug dependence because we are satisfied beyond reasonable doubt that the applicant did not suffer a relevant severe stressor.
>
> It follows that we are satisfied beyond reasonable doubt that the applicant's drug dependence was not caused by his service in Vietnam. His heroin habit commenced while he was in Vietnam but it did not arise out of his service there."

**Formal decision**

The Tribunal affirmed the decision that Mr Hay's drug dependence or drug abuse was not war-caused.

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**Hypertension - salt ingestion**

**Re R J Nolan and Repatriation Commission**

J Handley & Re

V1998/612 12 Nov 1999

Mrs Nolan applied to the AAT for review of a decision that the death of her late husband was not war-caused. The late veteran served in the South West Pacific during World War 2 and died in 1995 from a cardiac arrest and the effects of stroke. Mrs Nolan submitted that hypertension which was recorded on the death certificate was related to the veteran's operational service.

There was evidence before the AAT that Australian servicemen were issued with salt tablets to counter the effects of excessive sweating. Mrs Nolan's

counsel relied on Statements of Principles relating to hypertension and in particular, the factor relating to salt consumption.

**Statements of Principles**

The relevant factor in Instrument No 83 of 1995, which was in force at the time of the Commission's decision, was factor 1(c), which reads:

> *"ingesting an additional 12 grams per day of salt for a continuous period of at least 6 months immediately before the accurate determination of hypertension."*

Two later Statements of Principles (Nos 64 of 1998 and 25 of 1999) contain the following factor (5(c)):

> *"ingesting at least 12 grams (200mmol) of salt supplements per day on average for a continuous period of at least 6 months immediately before the accurate determination of hypertension."*

The words *"salt supplement"* are defined within the Statements of Principles as meaning *"salt added to food when cooking or eating, or salt contained in salt tablets"*.

**Salt ingestion**

Mrs Nolan was uncertain when her late husband's hypertension was first diagnosed. They were married in 1988 and she told the Tribunal that he was "heavy handed" when applying salt to food that she had cooked.

The Tribunal was unable to find on the material that the late veteran had ingested 12 grams of salt supplements per day. The Tribunal noted that this was a large quantity. It said:

> "… we received vials of salt into evidence which had been weighed by a pharmacy. The vial containing 12 grams of salt is of a quantity which we are satisfied exceeds the amount that would have been consumed by the deceased daily either during the period of time referred to in the Statements of Principles (at least six months immediately before the accurate determination of hypertension) or at all. Twelve grams of salt is a very large quantity. It occupies a vial with an internal diameter of 19mm to a height of 34mm."

The Tribunal concluded that the material did not raise a hypothesis connecting death with the circumstances of the late Mr Nolan's service. In the alternative, the hypothesis was not reasonable in terms of the Statements of Principles. The Tribunal said that the hypothesis relied on, that is ingesting an additional 12 grams of salt or salt supplements daily, had not been 'raised' and did not exist as a minimum.

**Formal decision**

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

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**Death - cryptococcosis - exposure to pigeon droppings**

**Re A E Bell and Repatriation Commission**

Forgie & Cull

Q1998/235 23 Nov 1999

Mrs Bell applied to the AAT for review of a decision that the death of her late husband was not war-caused. He died in 1951 and the cause of death as recorded on the death certificate was cerebellar neoplasm.

Mr Bell served in the RAN from September 1940 to December 1945

and had operational service outside Australia. After the war, he worked as an electroplater and later as a floor polisher. Mrs Bell told the AAT that her late husband started to get headaches 12 months after his discharge. She recalled that he had injured his leg in 1941 when he fell through a wharf in Singapore.

Mr Bell's service records confirm that he suffered from a contusion of the right hip on 14 November 1941. Later, on 22 September 1942, he suffered from glandular swelling in his right groin as well as abdominal pain and vomiting. He also had rheumatic pain and cellulitis in his left thigh. On 16 October 1942, he was admitted to hospital in Brisbane with:

> "*Pain in outer side L. thigh for last 2 weeks, has not become any worse. Pain is spasmodic and seems to come on whilst resting. Injury to L. leg in Singapore Dec. 1941, muscles of leg injured. O.E.: Deep seated tender hard swelling middle $^{1}/_{3}$ L. femur? attached to bone. ...*"

## Medical evidence

Professor Eadie, a neurologist, referred to post mortem findings and concluded that there was no evidence of a cerebral neoplasm. He was of the opinion that a more probable diagnosis was chronic (probably cryptococcal) meningitis or sarcoidosis. He said that cryptococcosis is a fungal infection, which could have been acquired (possibly from birds or bird droppings) many months or years before it produced overt manifestations, whilst sarcoid can be present in the body for a long time, and can lie dormant, and then be reactivated.

Professor Eadie suggested that raised intracranial pressure as a result of cryptococcosis may have been present since war service. A known source of the infection is pigeon droppings. It was possible that the infection had entered his blood stream through the skin when he fell through the wharf in Singapore. The formation of a lump on his leg was also consistent with cryptococcosis.

## Tribunal's conclusions

The AAT accepted the evidence from Professor Eadie that the cause of death was cryptococcosis. As there was no Statement of Principles with respect to cryptococcosis, the AAT was required to determine the application in accordance with the principles outlined by the High Court in the cases of *Bushell v Repatriation Commission* (1992) and *Byrnes v Repatriation Commission* (1993). The hypothesis was that cryptococcosis arose out of, or was attributable to, an infection when the late veteran fell through the wharf in 1941. The AAT concluded:

> "We are … satisfied that the material points to cryptococcosis being well established by 1946. The first part of that material comprises Mr Bell's headaches. Mrs Bell's evidence is that her late husband was suffering from them about twelve months after he had started work as an electroplater. Mr Bell started that work after the conclusion of the war. Those headaches point to intracranial pressure already building up in Mr Bell's skull and that, in turn, points to cryptococcosis already being well established at that time.
>
> The second part of that material comprises the evidence relating to Mr Bell's skull provided in the post mortem as explained by Professor Eadie. The post mortem found and X-rays at the time showed that his skull

was thin. He also had eroded posterior clinoids and his enlarged pituitary fossa. These factors point to Mr Bell's having suffered raised intracranial pressure for a lengthy period. They point to his cryptococcosis being well established at the time of his death.

The method of transmission of cryptococcosis to Mr Bell is unknown and the method of its transmission generally is unknown. Professor Eadie's evidence was that it either enters the blood stream through a break in the skin or enters the lung through the airways. There is no evidence that the cryptococcosis entered through Mr Bell's lungs as the post mortem found his lungs to be clear of lesions. The chest X-ray on his discharge from the RAN was clear. The material, then, points to cryptococcosis having entered Mr Bell's body through a break in the skin.

That leads to when that break in the skin occurred. Mr Bell did fall from the wharf in Singapore in December 1941. That is referred to not only by Mrs Bell in correspondence in 1952 but by the subsequent entry on 16 October 1942 in Mr Bell's medical records. The hypothesis assumes that he broke his skin in that fall and that the infection was present on the wharf. He would seem to have injured himself in that fall for his medical records refer to it, albeit at a later time when he suffered from a lump in his left leg in October 1942.

There was no evidence given about the types of bird droppings present on the wharf. That, however, is not fatal to the hypothesis's being reasonable. Mason, Deane and McHugh JJ in *Bushell* said that, in some cases, the hypothesis may assume the occurrence or existence of a fact. This is such a case for, in a case in which the cause of a condition is not known and is only hypothesised upon in the medical profession, it is not unreasonable to assume that pigeon droppings or soil were present on the wharf where Mr Bell fell. The hypothesis is not obviously fanciful or untenable. It is not contrary to known scientific facts.

As we are satisfied that the hypothesis is reasonable, we have next considered whether one or more of the facts necessary to support the hypothesis has been disproved beyond reasonable doubt or whether the truth of another fact in the material, which is inconsistent with the hypothesis has been proved beyond reasonable doubt. We are satisfied that no such facts have been either disproved or proved, as the case may be."

Formal decision

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

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## Decisions of the Federal Court of Australia

### Cancer of oesophagus - exposure to DDT

## Wheeldon v Repatriation Commission

Burchett, Branson & Nicholson JJ

12 October 1999

Mrs Wheeldon lodged an appeal to the Full Court of the Federal Court against the decision of Whitlam J dismissing her earlier appeal to the Federal Court. (See 14 *VeRBosity* 69). Her late husband rendered operational service in New Guinea during World War 2. He died in 1994 as a result of carcinoma of the oesophagus and two medical specialists postulated that his condition was caused by exposure to DDT during his service. As the claim was lodged before the 1994 amendments to the *VE Act*, it was not subject to the Statements of Principles.

Whitlam J had concluded that it was open to the Tribunal on the material before it to find, as a matter of fact, that the hypothesis advanced by Dr McCullagh was not "reasonable" in the sense explained by the majority of the High Court in *Bushell v Repatriation Commission* (1992).

### Submissions

Mrs Wheeldon's counsel submitted on appeal that Whitlam J had erred in not holding that the evidence of exposure to DDT was a fact pointing to a reasonable hypothesis and should have held that the Tribunal erred in preferring the evidence of one medical expert to others in determining whether a reasonable hypothesis was raised.

Counsel submitted that in a case such as this, where two eminent medical practitioners give opposing evidence, it is not open to the Tribunal to choose between them, in the sense of preferring the evidence of one to that of the other. The role of the Tribunal, it was argued, was rather to assess whether or not there is a reasonable hypothesis and it will be almost impossible to suggest that a hypothesis advanced by an eminently qualified person is not reasonable simply because another person similarly qualified does not accept it.

### Full Court's conclusions

Branson J (with whom R D Nicholson J agreed) examined the expert medical evidence which was before the Tribunal and held that the Tribunal was entitled to conclude that the hypothesis was not reasonable in the sense explained by the majority of the High Court in *Bushell's* case. In reaching its conclusion, the Tribunal did not choose between competing medical theories. Branson J said:

> "Having regard to the evidence … it was, in my view, open to the Tribunal to reach the conclusion that it did. In doing so it did not, in my view, form its own view of "competing medical theories" in the sense in which that expression was used by Brennan J in *Bushell's* case at 430. I understand Brennan J to be there referring to theories of medical science asserting or denying 'a connexion between a particular morbid condition and a postulated cause'. … It may be assumed, it seems to me, that Brennan J did not intend to refer to a theory asserting, or denying, a connection between a morbid condition and a postulated cause which was not a reasonable theory. His Honour, as I understand the relevant passage from his judgment, was concerned to stress that a theory

or hypothesis does not cease to be reasonable in the statutory sense merely because it is not the only hypothesis concerning the aetiology of the morbid condition which may in the circumstance sensibly be postulated, or indeed, may not even be the hypothesis found by the decision-maker to be the most compelling.

The Tribunal was not in this case faced with competing medical theories in the above sense. It was faced with one hypothesis only: the hypothesis being that which was most fully developed in the oral evidence of Dr McCullagh. The Tribunal was required to determine as a matter of fact whether that hypothesis was a reasonable one in the sense that it was not 'obviously fanciful, impossible, incredible or not tenable or too remote or too tenuous.' In my view, there was evidence before the Tribunal, namely that given by Professor Levi, upon which the Tribunal was entitled to conclude that the hypothesis advanced on behalf of the appellant was not a reasonable hypothesis. I agree with Whitlam J that the decision of the Tribunal evinces no error of law."

Burchett J (dissenting) would have allowed the appeal. His Honour was of the opinion that the Tribunal had erred in its approach to the competing medical evidence in that it had decided the validity of the conclusion each hypothesis suggested. This approach overlooked the nature of a hypothesis which is by definition speculative. The question is not whether it is true but whether it is a reasonable hypothesis raised by the facts. His Honour concluded that in its approach, the Tribunal had deprived the appellant of the benefit of the statutory onus in her favour.

***Formal decision***

The Full Court (Burchett J dissenting) dismissed Mrs Wheeldon's appeal.

**[Ed: Mrs Wheeldon has applied for special leave to appeal to the High Court.]**

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**Death from pulmonary embolus - commencement of smoking**

**Smith v**
**Repatriation Commission**

Heerey J

29 October 1999

Mrs Smith appealed to the Federal Court against a decision of the Tribunal that the death of her late husband was not war-caused. The late veteran died from a massive pulmonary embolus following a hernia operation. It was postulated that the veteran's smoking resulted in coughing which had caused the hernia through increased intra-abdominal pressure. The Tribunal found that there was insufficient evidence to connect the veteran's smoking habit with his operational service and therefore affirmed the decision that his death was not war-caused.

Mrs Smith gave evidence at the Tribunal that she first met the veteran in Launceston at which time he was already serving with the Army. She confirmed that he was a smoker at the time she met him, but also said that he did not smoke before he joined the Army. She understood that he had started smoking when he was in the Army but was unable to confirm how she became aware of this fact. No other evidence was presented in relation to how or when he commenced smoking.

The Tribunal concluded on the evidence that there was insufficient material before it to establish a connection between service and the veteran's smoking. It said that the only "concrete" evidence was that he was smoking when Mrs Smith met him, and that he was in the Army at that time. Although Mrs Smith was adamant that the deceased had not smoked before he joined the Army, she was unable to provide any material evidence as to the reasons why he commenced smoking. It said that her evidence in relation to the cause of her late husband's smoking was deficient. In particular, there was no evidence about stress, peer pressure, or other influencing factors that may have caused him to take up smoking as had occurred in other cases.

**Court's conclusions**

Heerey J referred to the Full Court's decision in *Repatriation Commission v Bey* (1997) (13 *VeRBosity* 117) which held that a hypothesis, to be "reasonable" for the purposes of s 120(3), must be pointed to by the facts before the decision-maker and not merely left open as a possibility. In the earlier decision in *Repatriation Commission v Stares* (1996) (12 *VeRBosity* 47), the Full Court stated that it was not necessary that each element of an hypothesis must be supported by evidence tending to establish it. Citing the High Court in *Byrnes v Repatriation Commission*, the Full Court said that in some circumstances, it is permissible to assume the existence of a "fact" for the purposes of the hypothesis.

Heerey J concluded that the Tribunal had fallen into error by requiring "evidence" connecting the veteran's service with the acquisition of his smoking habit. His Honour concluded:

"The hypothesis sought to be raised was not merely an abstract one. It was accepted by counsel for the Commission in argument in this Court that the temporal element was sufficiently raised. Nor was it contested that peer pressure can lead to the acquisition of a smoking habit, or that if such peer pressure came from the veteran's fellow soldiers there would be the necessary connection with his service. Thus the only remaining element needed to complete the hypothesis was that peer pressure in fact caused the veteran to commence smoking. The authorities already referred to show that such an element can, in appropriate circumstances, be raised by assumption. It does not have to be proved (at the s 120(3) stage) by evidence.

The Tribunal was not bound by the rules of evidence but could inform itself in such manner as it thought appropriate: *Administrative Appeals Tribunal Act 1975*, s 33(1)(c). It would be open to the Tribunal to take into account its ordinary experience of human nature. As Dixon CJ, Kitto and Taylor JJ said in *Transport Publishing Co Pty Ltd v The Literature Board of Review* (1956) 99 CLR 111 at 119:
'... ordinary human nature, that of people at large, is not a subject of proof by evidence, whether supposedly expert or not.'

*Mrs Smith's own comment that young men 'sort of copy each other, don't they?' seems a valid observation on the human condition. The veteran at the relevant time was about 19 or 20, placed in an army camp in close proximity to other young men in an era when smoking was widespread and its dangers not appreciated even by medical experts. These were*

*circumstances bearing on the instant case and not matters of theory, abstraction or speculation.*

The Tribunal erred in holding in effect that the causative element of the hypothesis was not raised because there was no direct evidence establishing it."

**Formal decision**

Heerey J set aside the Tribunal's decision and remitted the matter to the Tribunal for redetermination according to law.

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**Special rate - medical practitioner - locum engagements**

**Thomson v Repatriation Commission**

Heerey J

29 October 1999

Mr Thomson appealed to the Federal Court against a decision of the Tribunal that he failed to qualify for Special rate of pension. He was a partner in a medical practice until 1994 when he retired on reaching the age of 70 years as required under the partnership agreement. He then worked as a locum in various practices in Tasmania until July 1996 when he was diagnosed with bipolar disorder. This was accepted as a war-caused disease.

The question before the Tribunal was whether Mr Thomson had been working on his own account in the profession of medical practitioner for a continuous period of at least 10 years up to July 1996. As he was over the age of 65 when he lodged his claim for pension, he was required to satisfy paragraph (g) of section 24(2A) of the *VE Act* which provides:

*"(g)when the veteran stopped undertaking his or her last paid work, the veteran:*

*(i)if he or she was then working as an employee of another person—had been working for that person, or for that person and any predecessor or predecessors of that person; or*

*(ii)if he or she was then working on his or her own account in any profession, trade, employment, vocation or calling—had been so working in that profession, trade, employment, vocation or calling;*

*for a continuous period of at least 10 years that began before the veteran turned 65;"*

**Tribunal's decision**

Evidence before the Tribunal was that Mr Thomson had worked about 180 days in the 18 month period from the beginning of 1995 to mid July 1996. The Tribunal accepted that it was not necessary that he work for each day of the 10 year period. For example, in *Re Melocco* (1997) 25 AAR 451, the veteran had worked for one day in each week and was still found to be continuously self-employed for a ten year period. However, the Tribunal said that there must be continuity of employment. In this case, it was not possible to conclude that Mr Thomson was working on his own behalf for a continuous period for the whole of the period in question. There were significant periods when he was not working at all. Accordingly, he did not satisfy s 24(2A)(g) in relation to the Special rate.

**Submissions**

On the appeal to the Court, Mr Thomson's counsel argued that s 24(2A)(g)(ii) did not require a person to be working for a continuous period of ten years for the whole of that period. He argued that the Tribunal

had misconstrued the provision by reading it as though it said:

> "had been so continuously working in that profession ... for a continuous period of at least 10 years."

Heerey J rejected this submission, saying:

> "… if a veteran carrying on a profession simply stopped working for a period of, say, a year, there would not be the continuous period required by the Act. At the other end of the spectrum, interruptions caused by holidays or sickness for a week or so would not prevent the period being continuous. It is all a matter of fact and degree. An eighteen month period contains about 390 weekdays. Even allowing for public holidays and personal holidays, if the veteran worked for only 180 days, it was open to the Tribunal to find that there were sufficiently long periods in which the veteran was not working to prevent the period up to July 1996 being continuous."

**Formal decision**

The Court dismissed Mr Thomson's appeal.

**[Ed: The Full Court allowed Mr Thomson's appeal against this decision and remitted the matter to the AAT for rehearing. The Full Court's decision will be noted in the next edition.]**

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**Vehicle Assistance Scheme - severe pulmonary emphysema**

**Tracy v**

**Repatriation Commission**

Lee J

4 November 1999

Mr Tracy applied to the Federal Court under the *AD(JR) Act* for review of a decision of the Repatriation Commission refusing the grant of assistance under the Vehicle Assistance Scheme in terms of s 105 of the *VE Act.* He suffered from severe pulmonary emphysema which was war-caused. The Commission refused the claim on the basis that there was insufficient evidence that he was "unable to move [his] legs at all or stand without oxygen support and therefore meet the restrictive criteria under s 105(5)(d)."

Section 105(5) of the *VE Act* provides as follows:

> *"(5) A veteran is, subject to subsection (7), eligible to participate in the Vehicle Assistance Scheme if the veteran is incapacitated from war-caused injury or war-caused disease by reason of:*
> *(a) amputation of both legs above the knee;*
> *(b) amputation of one leg above the knee and, in addition:*
> *(i) amputation of the other leg at or above the ankle and amputation of one arm at or above the wrist; or*
> *(ii) amputation of both arms at or above the wrists;*
> *(c) complete paraplegia resulting in the total loss of voluntary power in both legs to the extent that there is insufficient power for purposeful use for stance or locomotion; or*
> *(d) a condition that, in the opinion of the Commission, is similar in effect or severity to a condition described in paragraph (a) or (b)."*

The Commission concluded that a person who could walk some steps without the use of oxygen was not suffering an equivalent condition to a multiple amputee since the latter could not walk at all without the aid of prostheses. However, the Commission failed to take account of evidence of

two consultant physicians that Mr Tracy was severely and permanently disabled by reason of impaired lung function and had to be assisted by oxygen and could not walk more than fifty metres. The Commission also did not take account of a more recent affidavit sworn by Mr Tracy that his condition had deteriorated and he now had to use oxygen while at rest and could not perform any activity without being assisted by oxygen.

**Error of law**

The Court held that the failure of the Commission to consider the further material provided by the applicant was a failure to take account of the most current material available to the decision-maker. This was a failure to give "genuine or proper consideration" to the application and constituted an error of law.

The Court also noted that in the context of the *VE Act*, s 105 should be given a beneficial construction. It was not to be construed narrowly so as to deprive an incapacitated veteran of a benefit to which that person would otherwise be entitled.

Lee J said:

> "Section 105 appears in Division 2 of Part 6 of the Act, (s 97-110), which provides for allowances and other benefits to be paid to veterans in prescribed circumstances. That context, and the purpose of the Act, provide guidance in determining the construction to be applied. If there is ambiguity in the meaning of such legislation a beneficial construction is to be preferred and the Act is to be construed 'to give the fullest relief which the fair meaning of its language will allow'. (See: *Bull v Attorney-General (NSW)* (1913) 17 CLR 370 per Isaacs J at 384; *Holmes v Permanent Trustee Co of NSW Ltd* (1932) 47 CLR 113 per Rich J at 119.) Section 105(5) sets out specific circumstances in which an incapacitated veteran may receive a grant of financial assistance, but includes provision for a grant to be made in undefined circumstances limited only by reference to the specific provisions. According to the foregoing principle of construction such a provision is not to be construed narrowly so as to deprive an incapacitated veteran of a benefit to which that person would otherwise be entitled. (See: *Repatriation Commission v Hawkins* (1993) 117 ALR 225 at 231; *Repatriation Commission v Law* (1981) 147 CLR 635 per Aickin J at 652; *Repatriation Commission v Hayes* (1982) 43 ALR 216 per Keely J at 219; *Secretary, Department of Social Security v Cooper* (1990) 97 ALR 364 at 370.)"

Lee J observed that the underlying object of sections 104 and 105 was to recognise that a veteran who suffers from a war-caused injury or disease from which incapacity has resulted may require the payment of an allowance or other financial assistance to improve his or her enjoyment of life. In s 104 an allowance is payable in respect of costs incurred for travel for recreational purposes. Under s 105, a vehicle and an allowance in respect of the running costs may be provided to such a veteran.

Lee J said that the degree of incapacity required by s 105(5)(a) is not specified. However, the incapacity would normally preclude the use of public transport, whether for recreational or any other purpose. The provision also required incapacity in similar degree to the multiple amputations described in s 105(5)(a) or (b). Such impairment

would cause substantial incapacity in carrying out the normal activities of life and involve dependence on mechanical aids or other equipment to alleviate such incapacity. However, the degree of incapacity caused by a condition must be "similar in effect or severity" (emphasis added), not whether that condition replicated the actual physical impairment described in paragraphs (a) or (b). This interpretation meant that the extent of the applicant's disability could fall within s 105 when the matter was reconsidered by the Commission.

## Formal decision

The Court set aside the decision and remitted the matter to the Repatriation Commission for determination according to law.

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**Diverticular disease of the colon - appropriate clinical management**

**Repatriation Commission v Wellington**

Marshall J

11 November 1999

The Repatriation Commission appealed to the Federal Court against the Tribunal's decision that Mr Wellington's diverticular disease of the colon was war-caused. He rendered operational service in the RAN during World War 2 and spent extended periods at sea with inadequate supplies of fresh fruit and vegetables.

Mr Wellington's claim was required to be considered in terms of the relevant Statement of Principles (No 67 of 1994 as amended). The factor identified by the Tribunal as relevant to his claim was in paragraph 1(c) as follows:

> "[an] inability to obtain appropriate clinical management for diverticular disease of the colon."

Mr Marshall, a specialist gastroenterologist, gave evidence that in his opinion, the veteran's condition developed as a direct consequence of a low fibre diet during war service. He told the Tribunal that appropriate clinical management for the condition would have required a high fibre diet. However, in the 1940's doctors were not aware of the dangers of a low fibre diet.

The Tribunal concluded that the veteran was unable to obtain "appropriate clinical management" in part due to the fact that the state of medical knowledge was not then generally aware of the significance of a high fibre diet. The Tribunal decided on this basis that his diverticular disease of the colon was war-caused.

## Submissions

Counsel for the Repatriation Commission submitted that the Tribunal had made two errors of law. The first was to regard "appropriate clinical management" as referable to current medical standards and not to those that obtained during the time of war service. It was submitted that a person's "inability to obtain appropriate clinical management" for a condition must be measured by the standards of clinical management available at the relevant time and then regarded by the medical profession as appropriate. Any other approach would ignore the requirement that the inability be "related to service", and would render the Commonwealth liable to compensate a veteran because the Commonwealth provided a form of treatment then regarded as appropriate - because it had not anticipated advances in the clinical management of a disease or injury.

Marshall J agreed with the Commission's submission that the Tribunal had erred in law in failing to consider that par 1(c) of the SoP is made out by reference to medical standards which applied at the relevant time. He observed that had the AAT considered the concept of appropriate clinical management by the standards of the 1940s it would have been bound to hold, on the evidence, that the SoP was not satisfied.

The Commission also submitted that the Tribunal had erred in law by failing to have regard to paragraph 3(b) of the SoP, which referred to s 9(1)(e) of the *VE Act.* This paragraph relates to contribution to a material degree or aggravation of a condition by war service.

Marshall J agreed with the Commission's submission there was no evidence on which the AAT could have found that Mr Wellington's service aggravated his disease or contributed to it in a material way. Consequently the second legal error identified by the Commission was also established.

**Formal decision**

The Court set aside the Tribunal's decision and affirmed the primary decision that Mr Wellington's diverticular disease of the colon was not war-caused.

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**Special rate - over 65 years of age - economic slump in wool industry**

**Grant v**

**Repatriation Commission**

Merkel, Goldberg & Weinberg JJ

23 November 1999

Mr Grant lodged an appeal to the Full Court of the Federal Court against the decision of Sundberg J, dismissing an earlier appeal to the Federal Court. (See 15 *VeRBosity* 68).

After his discharge from the Army in 1946, Mr Grant worked mainly in farming. In 1976 he purchased a sheep farming property. He found it increasingly difficult to carry out the physical work required in running the farm due to back pain from several war-caused disabilities. Between 1986 and 1993 he supervised 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.

He lodged his application for Special rate pension in 1996 at the age of 72 years. The Tribunal refused his application on the basis that the "alone" test in s 24(2A)(d) of the *VE Act* was not satisfied. The Tribunal decided that he had ceased remunerative work in 1986 due to a combination of war-caused disabilities and an economic slump which resulted in low wool prices.

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

> *"(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 ground**

On appeal to the Full Court, Mr Grant submitted that the AAT had failed to direct itself to the question of whether, *after* making the claim for a pension under the Act and during the assessment period under the Act

(being from 27 February 1996 to 30 April 1998), he was prevented because of incapacity from war-caused injury alone from continuing to undertake the last paid work that he had been undertaking before he made the claim for pension.

The Full Court observed that in order for a decision maker to be satisfied that the criterion in s 24(2A)(d) has been met, the decision maker must determine:

- the "remunerative work" that the veteran was last undertaking before he or she made the claim or application; and
- whether the veteran is, at any time during the assessment period, because of incapacity from war-caused injury or war-caused disease or both, alone, prevented from continuing to undertake *that* remunerative work.

The Court said that determination of the "remunerative work" referred to in s 24(2A)(d) requires the characterisation of the specific remunerative activity or activities that the veteran was last undertaking before making the claim or application rather than of the capacity in which that work was undertaken. The reason why the veteran may have ceased to undertake the last paid work *prior* to the date of the claim is relevant to, but not determinative of, the inquiry required by s 24(2A)(d).

**Tribunal's decision**

The Full Court observed that the Tribunal had addressed the issue of why Mr Grant had ceased his last paid work but did not address whether war-caused incapacity alone prevented him from continuing to undertake that work during the assessment period. S 24(2A)(d) required the Tribunal to make a determination as to whether he was prevented from continuing to engage in his last paid work during the assessment period solely because of incapacity from war-caused injury or disease. The Tribunal failed to address that issue and thereby erred in law.

**Formal decision**

The Full Court allowed Mr Grant's appeal and remitted the matter to the Tribunal for rehearing.

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**Special rate - solicitor - consultant to former firm**

**Woodward v Repatriation Commission**

Kiefel J

26 November 1999

Mr Woodward appealed to the Federal Court against a Tribunal decision that he did not qualify for Special rate pension. He had been a solicitor and sold his practice in 1982 to his son and two other solicitors when he turned 60 and became entitled to receive a service pension. He continued as a consultant to the firm and was paid $65 per week. This was calculated as the maximum amount that he was entitled to receive without his service pension being reduced.

Mr Woodward ceased as a consultant to the firm in December 1996 when he had an operation for the replacement of his left hip. He did not return to the consultancy after that time and stopped receiving the $65 per week. He applied for an increase in disability pension in 1996 at the age of 75 years. He claimed that he ceased work as a solicitor in 1996 due to war-caused disabilities alone, namely seborrhoeic

dermatitis, solar skin damage with malignant change and duodenal ulcer. The evidence before the Tribunal was that Mr Woodward's mobility was quite impaired at work by December 1996. He gave evidence that he was given a downstairs office because of the difficulty he had in moving about the two level office and this occurred on 6 December 1996. He ceased his association with the firm six days later and at that time was due to undergo the replacement hip surgery. He claimed that the hip played no part in his ability to pursue his work and that it was embarrassment or discomfort associated with his skin condition and his ulcer that caused him to decide to terminate the consultancy.

The Tribunal decided that he failed to qualify for the Special rate for two reasons:

1. he was not prevented from undertaking remunerative work because the arrangement he had entered into as a consultant was not remunerative work; and
2. he was not prevented from undertaking remunerative work by war-caused disabilities alone but also by non-accepted orthopaedic problems and his age when he ceased his association with the firm in 1996.

**Remunerative work**

The matter at issue on appeal to the Federal Court was whether Mr Woodward qualified in terms of s 24(2A)(d) of the *VE Act* which provides as follows:

> *"(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;"*

Kiefel J observed that the question posed by s 24(2A)(d) was whether the skin condition and ulcer were the only factors which prevented Mr Woodward from continuing to undertake the consultancy. The question was not one which looked to loss of, or impairment to, earning capacity. Whilst appearing to be a different question, an inquiry as to what caused him to cease his association with the firm was logically capable of providing the answer to the s 24(2A)(d) question. The Tribunal considered that he had made a decision to retire and not simply that he was physically unable to continue.

Kiefel J dismissed the appeal, saying:

> *"In determining, as a fact, the reason why Mr Woodward terminated his consultancy, the Tribunal could not be said to have been legally in error. To overcome this finding requires a different view to be taken of the evidence and that is not a function for this Court. Indeed, the only possible legal error identified in argument was that to which the majority of argument was addressed, namely whether the Tribunal understood the meaning to be given to the words 'remunerative work'. The insurmountable difficulty for Mr Woodward however was that even if submissions on his behalf on that question were accepted, the findings of the Tribunal as to the lack of a sole causal connexion between loss of that remuneration and war-related injuries necessarily concludes the matter against him.*
>
> …
>
> *The applicant's principal submission was that there was no evidence to support the finding that the amount of*

*$65 per week was not remuneration paid for work. The amount of work undertaken varied between one and three days over the period in question. It was, clearly, a small amount of money paid to a senior solicitor. Looking at the question whether it could be said to be some recompense or reward for services, it seems to me to have been open to the Tribunal to infer that it was not, and in drawing that inference it does not appear to have been guided by any incorrect appreciation of what remunerative work meant. There were two additional aspects of the evidence which the Tribunal, as it was entitled, took into account. The effect of the evidence was that the sum was calculated, not by reference to any work undertaken, but by the amount Mr Woodward was able to earn without affecting his pension; and Mr Woodward himself said that it did reflect the use of his established name while at the same time providing him with an activity or interest."*

**Costs**

The applicant submitted that the Court should not award costs against him. Following receipt of written submissions on this point from the parties, Keifel J, on 6 December, delivered the following judgment:

"The applicant, who was unsuccessful, submits that there are special circumstances which justify my not making an order for costs against him. Whilst I accept that there are, in some cases, factors which militate against a successful party having an order for costs made in his or her favour, this is not such a case. The appeal was from a Tribunal decision which was based upon findings of fact and a view of the evidence put forward by the applicant. The only point of law raised, which was said to require the Court interpreting the relevant legislation, could not have resulted in success given the findings of fact on the relationship between the loss of remuneration and injuries which were war-related. There will be an order that the applicant pay the respondent's costs of the appeal."

**Formal decision**

The Court dismissed Mr Woodward's appeal and ordered that he pay the Commission's costs in the proceedings.

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## REPATRIATION MEDICAL AUTHORITY

CONDITIONS UNDER INVESTIGATION AS AT 1 MARCH 2000

| 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 35/97 & 36/97 | - - - | 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 pancreatitis** [Instrument Nos 47/97 & 48/97] | - - - | 01-03-00 |
| **Chronic ulcerative colitis** [Instrument Nos 144/96 & 145/96 as amended by Nos 179/96 & 180/96] | Stress | 04-08-99 |

| | | |
|---|---|---|
| **Dementia pugilistica**<br>[Instrument Nos 21/97 & 22/97] | - - - | 03-11-99 |
| **Dengue fever**<br>[Instrument Nos 139/95 & 140/95] | - - - | 01-03-00 |
| **Goitre**<br>[Instrument Nos 29/98 & 30/98] | Exposure to radiation in Hiroshima | 05-05-99 |
| **Gout**<br>[Instrument Nos 88/97 & 89/97] | Alcohol consumption | 23-06-99 |
| **Gulf War syndrome**<br>**[NOTE**: As there is no SoP concerning Gulf War syndrome, **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*.**]** | - - - | 17-11-99 |
| **Gunshot wounds**<br>[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**<br>[Instrument Nos 73/94 & 74/94] | Service activities | 23-06-99 |
| **Hypertension**<br>[Instrument Nos 25/99 & 26/99 | Sleep apnoea | 18-08-99 |
| **Malignant melanoma of the skin**<br>[Instrument Nos 97/95 & 98/95 as amended by Nos 189/96 & 190/96 | - - - | 18-08-99 |
| **Malignant neoplasm of the bile duct**<br>[Instrument Nos 34/99 & 35/99] | - - - | 03-11-99 |
| **Malignant neoplasm of the bladder**<br>[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**<br>**[NOTE**: As there is no SoP concerning Mesangial IGA glomurelonephritis, **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*.**]** | - - - | 17-11-99 |
| **Motor neurone disease**<br>[Instrument Nos 245/95 & 246/95 | - - - | 18-08-99 |
| **Neuropathy**<br>**[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**<br>[Instrument Nos 41/98 & 42/98 as amended by Nos 19/99 & 20/99 | - - - | 18-08-99 |

**Statements of Principles issued by the Repatriation Medical Authority**
**January - February 2000**

| Number of Instrument | Description of Instrument |
|---|---|
| 1 of 2000 | Revocation of Statements of Principles (Instrument No.48 of 1994 and Instrument No.275 of 1995 concerning generalised anxiety disorder and death from generalised anxiety disorder) and revocation of Statement of Principles (Instrument No.380 of 1995 concerning anxiety disorder due to a general medical condition and death from anxiety disorder due to a general medical condition) and Determination of Statement of Principles under subsection 196B(2) concerning anxiety disorder and death from anxiety disorder |
| 2 of 2000 | Revocation of Statements of Principles (Instrument No.49 of 1994 and Instrument No.276 of 1995 concerning generalised anxiety disorder and death from generalised anxiety disorder) and revocation of Statement of Principles (Instrument No.381 of 1995 concerning anxiety disorder due to a general medical condition and death from anxiety disorder due to a general medical condition) and Determination of Statement of Principles under subsection 196B(3) concerning anxiety disorder and death from anxiety disorder |
| 3 of 2000 | Revocation of Statement of Principles (Instrument No.37 of 1996) concerning plantar fasciitis and death from plantar fasciitis and Determination of Statement of Principles under subsection 196B(2) concerning plantar fasciitis and death from plantar fasciitis |
| 4 of 2000 | Revocation of Statement of Principles (Instrument No.38 of 1996) concerning plantar fasciitis and death from plantar fasciitis and Determination of Statement of Principles under subsection 196B(3) concerning plantar fasciitis and death from plantar fasciitis |

**Copies of these instruments can be obtained from:**

- **Repatriation Medical Authority, GPO Box 1014, Brisbane Qld 4001**
- **Repatriation Medical Authority, 127 Creek Street, Brisbane Qld 4000**
- **Department of Veterans' Affairs, PO Box 21, Woden ACT 2606**
- **Department of Veterans' Affairs, 13 Keltie Street, Phillip, ACT 2606**
- **DVA Website: *http://www.dva.gov.au/pensions/mainpe.htm***

## Application

dismissal by Veterans' Review Board

*- application for extension of time at AAT*

**Johnson, K D**08 Oct 1999

## Carcinoma

*colorectal adenomatous polyp*
- tobacco & alcohol

**Greene, N J** 15 Dec 1999

small intestine

**Creffield, C M** 09 Dec 1999

**Cardiovascular disease**

*aortic stenosis & hypertension*
- dengue fever

**Brooks, W** 15 Nov 1999

hypertension

*- alcohol dependence or alcohol abuse*

**Franks, G** 15 Dec 1999

- inability to obtain appropriate clinical management

**Chanter, H** 07 Dec 1999

ischaemic heart disease
smoking

**Allan, D** 25 Oct 1999

*ischaemic heart disease & atherosclerotic PVD*
- inability to obtain appropriate clinical management

**Sterling, F** 20 Dec 1999

## Congenital anomolies

congenital hallux valgus
- clinical worsening
- whether temporary or permanent

**A'Bell, P A**07 Oct 1999

**Death**

cerebrovascular accident & ischaemic heart disease

*- whether smoking war-caused*

**Betts, T**19 Oct 1999

cryptococcosis
- exposure to pigeon droppings

**Bell, A E** 23 Nov 1999

germ cell carcinoma

**Mahlook, L** 16 Dec 1999

hypertension
- salt ingestion

**Nolan, R J** 12 Nov 1999

myocardial infarction & chronic renal failure
- hypertension

**Callanan, C A** 02 Dec 1999

## Dependant

member of a couple
- special reason not to be treated

**Whippey, D P** 10 Dec 1999

Disability pension

gastro-oesophageal reflux & psychiatric problems

**Woods, J** 19 Nov 1999

**Eligibility**

whether a veteran
- Militia service on Rottnest Island

**Edwards, S L W** 13 Dec 1999
- war correspondent

**Pidgeon, D**11 Oct 1999

**Extreme disablement adjustment**

whether lifestyle ratings sufficient

**Edwards, A C** 17 Dec 1999

**Heap, A** 18 Nov 1999

**Gastrointestinal disorder**

*diverticular disease of the colon*
- low fibre diet

**Swinden, L B**12 Oct 1999

- no diagnosis

**Greene, N J** 15 Dec 1999

General rate pension

100% of the general rate
- claim for higher rate & second pension

**Hall, K S**11 Oct 1999

lifestyle ratings

**Bramich, R E** 17 Dec 1999

*Osteoarthrosis*

knee
- trauma

**Schnaars, J C F** 01 Oct 1999

knee & elbow
- trauma

**Waterton, A**27 Oct 1999

Procedural fairness

Administrative Appeals Tribunal
- Commission review under s 31

**Berry, J**19 Oct 1999

**Procedure**

medical articles concerning fat consumption
- use subject to availability of authors for cross-examination

**Thomas, J W** 10 Nov 1999

Psychiatric disorder

*chronic anxiety & depression*

*- failure to transfer to home base*

**Wyers, G P** 18 Nov 1999

drug abuse or dependence (SoP case)
- experiencing a severe stressor

**Hay, T J** 22 Oct 1999

generalised anxiety disorder

*- experiencing a stressful event*

**Pillios, S**19 Oct 1999

- no diagnosis

**Franks, G** 15 Dec 1999

*post traumatic stress disorder*
- experiencing a stressor
- subjective element

**Howe, W E** 23 Dec 1999

*Qualifying service*

whether incurred danger from hostile forces of the enemy
- Cowra breakout

**Richmond, K W** 16 Dec 1999

- enemy minefields

**Farnsworth, W R** 02 Dec 1999

**Hannon, R A** 02 Dec 1999

**Remunerative work**

temporary special rate
- casual bus driver

**Tratt, A** 02 Dec 1999

- tertiary student

**Dawson, D L** 29 Nov 1999

whether prevented by war-caused disabilities alone
- discharged from Regular Army at own request
- not real reason for discharge

**West, R** 23 Nov 1999

- genuinely seeking work

**Rudge, M J** 01 Dec 1999

- loss of earnings

**Maloney, P W** 24 Nov 1999

- part-time attendant at AAT

**Shiels, R**15 Oct 1999

- plant operator

**Scott, P**08 Oct 1999

- prison officer

**Campain, T H** 05 Nov 1999

*- retrenched from previous work*

**Lamond, R** 09 Dec 1999

- service station attendant

**McKean, A D** 15 Dec 1999

- security business

**Day, C J**15 Oct 1999

- storeman

**Renfrey, R M** 01 Dec 1999

- taxi owner/driver

**Flentjar, J (dec'd)** 29 Oct 1999
- voluntary redundancy from CPS

**Bourke, B F** 10 Dec 1999

*whether unable to work 8 hours a week*
- Qantas flight engineer under 65

**Bell, J R O** 16 Nov 1999

*Spinal disorder*

cervical spondylosis
- trauma
- jerry can incident

**Smith, T D** 01 Dec 1999

lumbar spondylosis
- trauma

**Schnaars, J C F** 01 Oct 1999

- fall down ship's ladder

**Huszczo, J** 21 Dec 1999

**Spring, R G**13 Oct 1999

- fall from rope ladder

**Neville, L W**27 Oct 1999

*lumbar & cervical spondylosis*
- trauma from mortar shell

**Allan, D**25 Oct 1999

**Words and phrases**

*at least 12 grams of salt supplements per day*

**Nolan, R J** 12 Nov 1999

**Callanan, C A** 02 Dec 1999

experiencing a stressor

**Howe, W E** 23 Dec 1999

inability to obtain appropriate clinical management

**Sterling, F** 20 Dec 1999

- medical knowledge during service applied

**Chanter, H** 07 Dec 1999

member of a couple

**Whippey, D P** 10 Dec 1999