

VeRBosity

Volume 16 No. 1

Contents

<u>General information</u>	2
<u>Administrative Appeals Tribunal</u>	
Budworth, R J	5
Baxter, R R	7
Whitford, L	8
Collins, J G (resp)	9
<u>Federal Court of Australia</u>	
Thomson	12
Forbes	13
Husband	15
<u>NSW Court of Appeal</u>	
Repatriation Commission v VVAA NSW Branch Inc & Ors	17
<u>High Court of Australia</u>	
Herijanto v Refugee Review Tribunal	20
<u>Statements of Principles</u>	22

Editor's notes

This edition of *VeRBosity* contains reports on three Federal Court decisions relating to veterans' matters handed down in the period from January to March 2000. The cases of *Thomson* and *Forbes* deal with issues relating to the Special rate. *Husband* also deals with assessment of intermittent conditions under the provisions of the *Guide to Assessment of Rates of Veterans' Pensions* (GARP).

There are also reports on a decision of the NSW Court of Appeal which examines the conduct of review of Statements of Principles by the Specialist Medical Review Council and a High Court decision on the immunity of tribunal members.

This edition includes reports on selected AAT decisions handed down in the period from January to March 2000. Information is also included about Statements of Principles issued recently by the Repatriation Medical Authority and matters currently under formal investigation.

Robert Kennedy
Editor

General Information

Mr Frank Mahony, CB OBE

The recent death of Mr Frank Mahony, CB, OBE was noted with sadness in the last edition. Mr Mahony served with distinction as the President of the Repatriation Review Tribunal from its establishment in 1979 until the Veterans' Review Board commenced operations in 1985.

The Principal Member of the Board wrote to Mr Brian Mahony, one of Frank's sons, expressing the Board's sympathy for the family's loss. Mr Brian Mahony responded:

"... I know that his period of service with the Veterans was an immensely satisfying period of his career. He had a great empathy for the ordinary Digger and I am sure he would be grateful to be held in such high esteem by you and your Board colleagues."

Federal Magistrates Service

A Federal Magistrates Service has been established in response to the increased volume of routine matters coming before the Federal and Family Courts. The new court is the first lower court to be established in the federal jurisdiction.

By dealing with the less complex matters in the federal jurisdiction, it is expected that the new court will ease the workload of the higher courts, and reduce the substantial delays that applicants in the Family Court have been experiencing.

The Government expects that the Magistrates Service will improve access to justice by reducing legal fees and by providing a more informal environment in which matters can be heard. Alternative dispute resolution mechanisms are to be introduced in the new court.

The jurisdiction of the Magistrates Service will be concurrent with the Federal and Family Courts, and matters will be able to be transferred between it and the higher federal courts.

Specifically, the Magistracy will have jurisdiction to hear the following matters, currently dealt with by the Federal Court:

- applications under the *Human Rights and Equal Opportunity Commission Act 1986* (pending the enactment of the Human Rights Amendment Bill 1998 (No. 1));
- matters under section 127 and Part XA of the *Workplace Relations Act 1996*;
- matters arising under the *Bankruptcy Act 1966*; and
- matters arising under the consumer protection provisions of the *Trade Practices Act 1974* (Division 1 and 1A of Part V).

In relation to administrative review, there will be:

- power to transfer appeals under section 44(1) and (2) of the *Administrative Appeals Tribunal Act 1975* ('AAT Act'), from the Federal Court to the Magistracy, but not in a case where the Administrative Appeals Tribunal's decision involved a presidential member, or a matter under the *Migration Act 1958* ('Migration Act'); and
- original jurisdiction to hear *Administrative Decisions (Judicial Review) Act 1977* matters – without the transfer process of AAT Act

appeals – but, similarly, not in relation to a matter under the Migration Act.

In its Family law jurisdiction, the Federal Magistrates Service will be able to hear:

- applications for nullity of marriage;
- family law property disputes where the disputed property is worth less than \$300,000, or where the parties consent to the matter being heard by a Federal Magistrate;
- parenting orders providing for the residence of a child, where the parties consent to the matter being heard by a Federal Magistrate; and
- parenting orders providing for other matters such as contact, maintenance and specific issues.

Magistrates will be invested with the full powers of federal judicial officers, and so, unlike the decisions of registrars or tribunals, their decisions will be final and only appealable on questions of law.

Ms Diana Bryant QC has been sworn in as the first Chief Federal Magistrate. Ms Bryant is a prominent Melbourne barrister who has specialised in federal law with an emphasis on family law.

It is anticipated that there will be six magistrates based in New South Wales (two in Parramatta, two in Sydney, and one each in Newcastle and Canberra), four in Victoria (based in Melbourne), two in Brisbane and one each in Launceston, Adelaide, and Townsville. All magistrates will conduct regular circuits to regional areas throughout their State and elsewhere. They will also hear cases using video and audio conferencing. This will ensure that many people in regional and remote areas will be able to access the new court.

It is expected that the Federal Magistrates Service will commence hearings in July 2000.

Clinical onset

It has been suggested that the case note at 15 *VeRBosity* 73 concerning *Repatriation Commission v Gosewinckel* did not accurately reflect the Federal Court's findings regarding the meaning of "clinical onset" for generalised anxiety disorder. Case notes in *VeRBosity* are provided for the information of veterans and their advocates and do not purport to reflect the views of the Board or its members as to the legal issues raised in individual cases.

In holding that all the symptoms of the disease, as defined by the RMA, had to be present for there to be a "clinical onset", the Court said:

"The SoP requires the presence of a number of distinct symptoms, of which 'clinically significant distress' and 'restlessness or feeling keyed up or on edge' are only part. Unless the symptoms referred to in cl 4(a)(i), at least three of (a)(ii)(A) to (F), and (a)(v) are all present, and the case does not fit within (a)(iii) and (iv), (b) and (c), it cannot be said, consistently with the medical-scientific standard prescribed by the SoP, that generalised anxiety was present."

The definition of the disease in the SoP (No 48 of 1994 as amended) refers to the symptoms "occurring more days than not for at least six months". Although the Court did not expressly deal with this issue, it may be implied that provided a veteran had all the prescribed symptoms and they lasted for the required 6 months, then the "clinical onset" dates from the *beginning* of that 6 month period during which all those symptoms appeared.

Book Review

Veterans' Entitlements Law **by Creyke and Sutherland**

The Federation Press and Softlaw Community Projects have just published the first comprehensive text book on veterans' entitlements law in Australia. The authors, Robin Creyke and Peter Sutherland, have produced a very readable, yet detailed, analysis of the *Veterans' Entitlements Act 1986* and how it has been interpreted and applied by Courts and Tribunals.

Robin Creyke is a senior academic at the Australian National University and a consultant to Phillips Fox solicitors, and has been the veterans law editor for Butterworths legal publishers since 1985.

Peter Sutherland is the editor and co-author of similar books relating to Social Security law and Commonwealth employees compensation law.

Each major section commences with a historical background, which neatly gives the subsequent explanation of the law its proper context. The application of the law is illustrated by numerous examples from AAT and Court cases. Indeed, there are over 1,200 different cases referred to throughout the book and listed in a useful table near the front of the book. There are also many references to *VeRBosity* case notes and articles.

The book is 620 pages and covers nearly every area of veterans law, including, disability and war widow(er)s pensions, service pensions, income support supplement, income and assets tests, medical treatment, allowances and other benefits, standards of proof, intermediate and special rate, the VRB and AAT, Statements of Principles, the RMA and SMRC, and even the legal basis of eligibility for medals and war graves.

Issues are carefully discussed and analysed by reference to cases,

Parliamentary debates and other authoritative reference material. Where there have been different interpretations given by the AAT or the Courts, these are candidly noted by reference to the different approaches and outcomes in the different cases.

This book will be an invaluable reference for every serious veterans' adviser, whether they are a pensions or welfare officer in the local ex-service organisation or a senior lawyer in a big law firm.

It brings together the vast array of veterans' case law in a systematic fashion and places the cases in their proper context in a way that can be readily understood by both lawyers and non-lawyers.

Included in the book are wonderful sketches by Geoff Pryor, an official artist on pilgrimages to Gallipoli, the Western Front, and Papua New Guinea.

Veterans' Entitlements Law can be purchased from:

The Federation Press
PO Box 45
Annandale
NSW 2038

Ph (02) 9552 2200
Fax (02) 9552 1681
<http://www.fedpress.aust.com>

The price is \$82.50 (including postage, handling and GST). There is a reduced price for orders of multiple copies and orders from ex-service organisations.

Administrative Appeals Tribunal

Re R J Budworth and Repatriation Commission

McMahon

N95/965 & N97/69
23 February 2000

Post traumatic stress disorder – whether traumatic event

Mr Budworth lodged an application for review of a decision of the Repatriation Commission relating to post traumatic stress disorder. In 1989, the Commission had accepted PTSD as war-caused. In 1996, the Commission revoked its earlier decision under s 31 of the *VE Act*.

Mr Budworth served in the RAN and had operational service during 5 trips to Vietnam on board *HMAS Sydney* and *Melbourne* between 1965 and 1972. He spent a total of 8 days in Vung Tau harbour and the remainder of his operational service was in transit between Australia and Vietnamese waters. The claim was originally granted by the Commission based on his account of an alleged incident in which a body floating next to his ship had exploded. He later recalled other incidents including the crash of an aircraft involving loss of life, the explosion of a scare charge next to the ship and bombing and strafing of areas close to Vung Tau.

The veteran's recollection of Vietnam was that it was a frightening experience. He felt under constant threat of death. He

said that all service has this quality. Even leaving Sydney Harbour can be a frightening experience as one carries ammunitions and accidents can happen. There was also a general fear of going to a war zone. He remembered being particularly frightened about being on the upper deck after he had been warned of possible snipers.

Professor Grey, a military historian, provided a report to the Tribunal which cast doubt on some of Mr Budworth's recollections. According to Professor Grey, Vung Tau harbour was a "safe" port because there was little enemy mainforce activity around the town itself. Contrary to Mr Budworth's recollection about anchoring close to shore, the records show that the *Sydney* always anchored in the outer anchorage, a distance of between one and three kilometres from shore. The vessels did not enter the sub-port or negotiate the Long Tau shipping channel at any stage, as a precautionary measure.

Mr Budworth told the Tribunal that he suffers nightmares about his Vietnam service. He accepted that the "exploding body" incident did not actually occur, although he had earlier given an account of the incident to interviewing psychiatrists as if it had in fact occurred.

Issue of diagnosis

The main issue before the Tribunal was whether the applicant's claimed psychiatric condition, originally accepted as PTSD with chronic pain syndrome, existed and if so whether it was war or defence caused. The Tribunal was required to determine whether the disease exists on the balance of probabilities. (See *Repatriation Commission v Cooke* (1998) 14 *VeRBosity* 100)

For the purposes of diagnosis, the Tribunal referred to the *Diagnostic and Statistical Manual of Mental Disorders 4th Edition* published by the American

Administrative Appeals Tribunal

Psychiatric Association in 1994 (DSM IV). Mr Budworth's counsel submitted that the Tribunal should not attempt to apply DSM IV itself but should be guided by expert opinion. The Tribunal said:

"I agree with this submission to some extent. However, it is the function of the Tribunal to determine facts. As there are necessarily facts required to be identified in approaching a diagnosis of this disorder, I consider it legitimate to understand what those facts are and whether they are present in Mr Budworth's case."

The Tribunal examined the diagnostic criteria for PTSD. In summary, DSM IV indicates the following features:

- exposure to or witnessing an extreme traumatic stressor, involving direct personal experience of an event involving actual or threatened death or serious injury
- the person's response involves intense fear, helplessness or horror
- persistent re-experiencing of the traumatic event
- persistent avoidance of stimuli associated with the trauma
- persistent symptoms of increased arousal
- symptoms lasting more than one month
- chronically significant distress or impairment in social, occupational or other functioning.

The Tribunal noted that a traumatic stressor must be a grave or serious experience. Secondly, the stressors must have an objective existence. The types of incidents which could amount to such objective stressors include military combat, violent personal assault, being kidnapped, being taken hostage, terrorist attack, torture, incarceration as a

prisoner of war or in a concentration camp. The response to the stressor must not be merely a general apprehension or a relief to be out of a perceived dangerous situation. The response must be so intense as to cause symptoms.

Conclusions

The Tribunal said:

"Having regard to these standards, it appears to me that none of the traumatic events identified by Mr Budworth is in any way comparable with the events contemplated in DSM IV. The trauma suggested by him have changed from time to time. It was not until the hearing before this Tribunal that many of the details of Mr Budworth's alleged experience were recorded. Certainly from his evidence it would seem that much of the history given to the three examining psychiatrists upon whom he principally relies ... was incomplete or misleading. I did not form the impression that Mr Budworth has lied to his examiners or to this Tribunal. But I consider that his other psychological symptoms require that the accounts which he has given from time to time be treated with caution, however sympathetically one may approach them."

The Tribunal said that to the extent that the reporting psychiatrists had relied on the "exploding body" incident which the veteran now accepts did not occur, their reports had to be discounted. There was no visible enemy during his 8 days in Vung Tau harbour and nothing which could equate to military combat. There was also insufficient evidence that his reaction involved intense fear, helplessness or horror.

The Tribunal concluded that there was no extreme traumatic stressor in this case and the veteran's psychiatric condition did not meet the diagnostic criteria for PTSD.

Formal decision

The Tribunal affirmed the decision that Mr Budworth was not suffering from post traumatic stress disorder.

[Ed: The Tribunal proceeded in this case on the basis that a stressor must have an objective existence. This approach may be contrasted with other cases in which the Tribunal has emphasised the subjective nature of an individual's response to a stressor, e.g. *Re Howe and Repatriation Commission* (23 December 1999).

Mr Budworth has lodged an appeal to the Federal Court against this decision.]

Re R R Baxter and Repatriation Commission

Allen

N1998/1694
13 March 2000

Special rate – whether capable of working 8 hours per week

Mr Baxter applied for review of a decision that he was not eligible for pension at the Special rate. He lodged an application for increase in pension in July 1997, when he was aged 72 years. He was receiving pension at the Intermediate rate following the acceptance of Meniere's disease as war-caused. This condition resulted in attacks of vertigo and he claimed that due to deterioration in his Meniere's disease, he was forced to cease work in 1998.

Occupational background

Mr Baxter was employed after World War 2 as a salesman in a furniture store. In 1961, he purchased a dairy farm which was later converted to beef cattle. He continued working at the furniture store until 1973 and then from 1975 to 1988

and attended the farm in his spare time. In 1986-87, he sold the farm property and purchased a macadamia nut farm which was operated in partnership with his wife and son, with profits shared equally.

The veteran was also involved in a partnership selling rural real estate. However, he found it increasingly difficult to continue this work because of his Meniere's disease. He was involved with rural land sales and had to drive to distant properties and became increasingly concerned about having a motor vehicle accident due to Meniere's disease or an attack of vertigo. Hearing loss and tinnitus associated with Meniere's disease also meant that he was unable to converse with clients while driving. He therefore decided to sell the real estate agency.

Following the sale of the real estate agency in 1988, the veteran worked at the macadamia farm. In 1998, he had an attack of vertigo while working in the processing shed and was saved from falling on to a conveyer belt by his son. After that incident his son decided that it was too dangerous for him to work in the processing shed, so he ceased involvement with the farm. The veteran had previously found that he could not undertake outside work on the farm as bending down induced attacks of vertigo. The property has since been transferred to his son.

In October 1999, the veteran was elected as a councillor with Lismore Municipal Council. Council meetings are held every three weeks and the veteran is also a member of three sub-committees, each of which meets for two hours a month. In addition, he has to attend to calls from constituents and make site inspections.

The Tribunal was satisfied that Mr Baxter, although over the age of 65 at the time he made his application for a Special Rate pension, was engaged in remunerative work as a primary producer

on his own account for a continuous period before he turned 65, exceeding 10 years and that, as a result of his Meniere's disease, he suffered a loss of earnings from the macadamia farm which he would not have suffered had he not been affected by that disease. He therefore satisfied s 24(2A) of the *VE Act*.

Residual work capacity

The remaining issue before the Tribunal was whether the veteran was incapable of undertaking remunerative work for periods aggregating more than 8 hours per week, in terms of s 24(1)(b) of the *VE Act*.

Dr M Baz, consultant in rehabilitation medicine, was of the opinion that the veteran was incapable of working 8 hours per week because of war-caused disease alone. When cross-examined, she accepted that he was not prevented from working 8 hours per week in a clerical capacity. The Repatriation Commission submitted on this basis that the veteran was capable of undertaking remunerative work in excess of 8 hours per week.

The Tribunal did not accept a submission by Mr Baxter's representative that before the Tribunal could be reasonably satisfied that he could not work 8 hours per week, a particular category of employment had to be demonstrated by the evidence adduced. The Tribunal referred to s 28 of the *VE Act* which was considered by the Full Federal Court in *Chambers v Repatriation Commission* (1995) (11 *VeRBosity* 24). The Tribunal concluded that the veteran had a residual ability to engage in some form of employment as evidenced by his ongoing activities as a local government councillor.

Formal decision

The Tribunal affirmed the decision that Mr Baxter was not eligible for pension at the Special rate.

Re L Whitford and Repatriation Commission

J Handley

V1999/248

16 March 2000

Whether to apply SoP as at date of primary decision or at date of AAT review

Mrs Whitford applied to the Tribunal for review of a decision that the death of her late husband was not war-caused. Mr Whitford died in 1997 from "disseminated carcinoma of the prostate and ischaemic heart disease". It was contended that his ischaemic heart disease was related to smoking which commenced during war service.

At the date of the Commission's decision on Mrs Whitford's claim, the relevant Statement of Principles (No 140 of 1996) included as a factor related to service:

"(e) smoking at least five cigarettes per day or the equivalent thereof, in other tobacco products, for at least three years before the clinical onset of ischaemic heart disease and, where smoking has ceased, the clinical onset has occurred **within 15 years** of cessation;"

When the Tribunal heard the application for review, the above SoP had been revoked and replaced by No 38 of 1999 which included as a factor related to service:

"(e) (iii) smoking at least 20 pack years of cigarettes or the equivalent thereof, in other tobacco products, and the clinical onset of ischaemic heart disease has occurred **within 20 years** of cessation;" (emphasis added)

Mrs Whitford's evidence was that her late husband took up smoking during war service and ceased in 1968. He suffered

a myocardial infarction in 1991. The question of which SoP was to be applied by the Tribunal was critical to the outcome of the application. The first SoP required "clinical onset" within 15 years of cessation of smoking, whereas the second SoP required "clinical onset" within 20 years.

In *Keeley v Repatriation Commission* (1999) (15 *VeRBosity* 70) the Federal Court (Heerey J) held that in a situation where a SoP in force at the time of the Commission's decision has been revoked and replaced by another SoP, there was an "accrued right" to have the application reviewed by the Tribunal in accordance with the earlier SoP.

Submissions

Mrs Whitford's counsel submitted that despite the decision of Heerey J in *Keeley*, it was open to the Tribunal to apply either the SoP in force at the date of the primary decision or the SoP in force at the date of the review by the Tribunal. It was clearly in Mrs Whitford's interests to apply SoP No 38 of 1999 as the Tribunal could find on the evidence that clinical onset had occurred in 1988 (that is, 20 years after 1968).

The Repatriation Commission submitted that although it was seeking to have the decision of Heerey J reversed on appeal to the Full Court, the present law required the Tribunal to apply the SoP which existed at the date of the primary decision, even though this worked to Mrs Whitford's disadvantage. In this case, the Tribunal should apply No 140 of 1996 which required clinical onset within 15 years of cessation of smoking.

[Ed: The Repatriation Commission's appeal to the Full Court in *Keeley's* case was dismissed and will be reported in the next edition.]

Tribunal's conclusions

The Tribunal rejected the submission by Mrs Whitford's counsel that it was open

to it to apply the later (more favourable) SoP. It followed that Instrument No 140 of 1996 applied in this case. This provides that a reasonable hypothesis will be raised connecting ischaemic heart disease with service if the clinical onset occurred within 15 years of cessation of smoking.

The Tribunal was satisfied that the late Mr Whitford ceased smoking in 1968. Therefore, the claim could only succeed if there was material pointing to the presence of ischaemic heart disease at or before 1983 – that is, 15 years subsequent to 1968. On the basis of the medical opinions before the Tribunal, there was no such material.

Formal decision

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

Re Repatriation Commission and J G Collins

Muller, Brumfield and Kennedy

Q1999/789
21 March 2000

Jurisdiction – new claim while original claim not finally determined

The Repatriation Commission lodged an application to the Tribunal for review of a decision of the Veterans' Review Board on 5 March 1999 that Mr Collins' polycythemia vera (PV) was war-caused with effect from and including 23 July 1996.

Mr Collins served in the Australian Army in Japan with BCOF from 25 July 1947 to 9 March 1948. He was stationed at Kure and was engaged in clearing bomb sites. He also visited Hiroshima on a number of occasions. There was a specialist opinion before the VRB that his PV could be

Administrative Appeals Tribunal

causally related to exposure to radioactive material in the area of the atomic blast.

The VRB accepted that there was a reasonable hypothesis that the veteran's PV was causally related to his operational service in Japan. The VRB noted that although the Repatriation Medical Authority had issued a Statement of Principles in respect of PV, it purported to deal only with aggravation of pre-existing PV and not with claims that PV was caused by operational service. Accordingly, the VRB found that it was not bound to apply the SoP in the circumstances of this case. It concluded that the veteran's PV was war-caused on the basis of exposure to radioactive material in Japan.

History

An issue was raised at the Tribunal as to the validity of the claim which was ultimately granted by the VRB. The chronology of this matter was as follows:

28 August 1995

Mr Collins lodged a claim for disability pension for PV.

25 September 1995

The first claim was refused by the Repatriation Commission.

12 October 1995

Mr Collins applied for review of this decision by the VRB.

5 March 1996

The VRB affirmed the decision refusing the claim.

29 March 1996

Mr Collins applied to the Tribunal for review of the VRB decision.

18 December 1996

Mr Collins lodged a new claim for disability pension for "*skin diseases and allergies*". At that time it was known by both the applicant and the Commission that Mr Collins did not suffer from any skin diseases or allergies but that the itch which he experienced was due to PV.

21 April 1997

The claim for skin diseases and allergies was diagnosed as PV and refused by the Commission. The application to the AAT lodged on 29 March 1996 was dismissed by consent.

15 July 1997

Mr Collins applied for review by the VRB of the Commission's decision dated 21 April 1997, of the claim that had been made on 18 December 1996.

5 March 1999

The VRB set aside the decision of the Commission and found that Mr. Collins' PV was war-caused. The Commission applied to the AAT for review of this decision of the VRB.

Claims for pension

The Tribunal noted that claims for disability pension are made under the provisions of s 14 of the *Veterans' Entitlements Act* 1986. Subsection 14(5) of the Act prevents a veteran from making a new claim for pension in respect of a particular injury or disease if the veteran already has a claim on foot for the same injury or disease, which has not been finally determined. Section 14 provides, as relevant:

"14(5) Where:

(a) a veteran has made a claim for a pension under this section in respect of incapacity from a particular injury or disease; and

(b) the claim has not been finally determined;

the veteran is not empowered to make another claim for a pension under this section in respect of incapacity from that injury or disease.

...

(7) For the purposes of this section, a claim is **finally determined** when either:

(a) a decision that has been made in respect of the claim is not subject to any form of appeal or review; or

(b) a decision that has been made in respect of the claim was subject to some form of appeal or review, but the period within which such an appeal or review could be instituted has ended without an appeal or review having been instituted.”
(emphasis added)

Claim not finally determined

The Tribunal concluded that when Mr Collins made his new claim on 18 December 1996, his first claim of 28 August 1995 had not been finally determined. Although the second claim was couched in the terms “skin diseases and allergies”, it was in fact for exactly the same incapacity and disease as the claim made on 28 August 1995, namely PV. Mr Collins was not empowered to make his claim on 18 December 1996. It was a nullity and there was therefore no claim nor a decision for the VRB to review in relation to the claim of 18 December 1996. On this basis, the Tribunal set aside the decision of the VRB dated 5 March 1999.

Formal decision

The Tribunal set aside the VRB’s decision relating to polycythemia vera and determined that the claim made by Mr Collins was not a valid claim due to the provisions of s 14(5) of the *VE Act*.

Federal Court of Australia

Thomson v Repatriation Commission

Ryan, North and Merkel JJ

7 March 2000

Special rate – medical practitioner – locum engagements

Dr Thomson lodged an appeal to the Full Court of the Federal Court against the decision of Heerey J dismissing his earlier appeal to the Federal Court. (See 15 *VeRBosity* 95).

Dr Thomson was seeking pension at the Special rate. At issue before the Tribunal was whether he had been working on his own account as a 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, 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

Dr Thomson retired from full-time medical practice in 1994 at the age of 70 years. He then worked part-time as a locum at various practices until July 1996. The Tribunal concluded that he was not working on his own behalf for a continuous period of 10 years up to July 1996. It noted that 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 Full Court, the main issue was whether the Tribunal had erred in law in treating s 24(2A)(g)(ii) as requiring that there be continuity of “work” by the veteran throughout the relevant 10 year period, rather than that there be continuity of the veteran working in his professional practice on his own account during that period.

Full Court’s conclusions

The Full Court referred to an earlier decision of the Full Court in *Grant v Repatriation Commission* (1999) (15 *VeRBosity* 99) and said that s 24(2A)(g) is concerned with the capacity in which the last paid work was undertaken. A veteran meets the requirements of the sub-section if the last paid work has been undertaken in the relevant capacity for a continuous period of at least 10 years. If the veteran is self-employed, the last paid work must have been undertaken in that capacity continuously for the 10 year period. When sub-clause (ii) refers to the requirement that a self-employed veteran must have been “so working” continuously for the 10 year period, the

reference is to the capacity in which the veteran worked.

The Full Court said that in this case, the Tribunal was required to determine whether the veteran had been working as a medical practitioner on his own account for a continuous period of at least 10 years prior to his cessation of work during July 1996. Continuity of his medical work throughout the period was relevant to, but not determinative of, that matter. It would also, usually, involve consideration of whether indemnity insurance, medical registration, AMA membership, journal subscriptions and medical equipment were maintained throughout the relevant period.

The Full Court continued that if there were gaps in the continuity of work during the relevant period, the reason for the gaps would be relevant. For example, if the gaps occurred solely as a result of a temporary unavailability of work, that would not, properly, lead to a conclusion of lack of continuity under s 24(2A)(g)(ii). This is particularly the case if the doctor had been actively, but unsuccessfully, seeking work during the relevant period. However, if the gaps occurred because the doctor had decided to retire, or the unavailability of work was more permanent, that would support a conclusion that he or she had ceased to continue working as a medical practitioner on his or her own account. Questions of fact and degree were involved.

The Full Court concluded that on the facts, it appeared that there had been continuity in the veteran's working as a medical practitioner on his own account during the relevant period. By treating s 24(2)(g)(ii) as only requiring consideration of the continuity of the work undertaken by a self-employed person, the Tribunal erred in law in its construction of the sub-section and, as a result, failed to apply the test required by it.

Further, although the Tribunal had properly considered recent gaps in the work undertaken by Dr Thomson, it appeared to approach that issue mainly by reference to the last 18 months of the 10 year period, rather than to the whole of that period. Recent intermittent gaps in work were likely to take on less significance when continuity was viewed over a 10 year period, rather than the last 18 months. It followed that the veteran was entitled to succeed in his appeal.

Formal decision

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

Forbes v Repatriation Commission

R D Nicholson J

24 March 2000

Special rate – whether prevented from continuing to undertake remunerative work

Mr Forbes appealed to the Federal Court against a decision of the AAT that he did not qualify for Special rate pension. He was aged 64 years and his lumbar spondylosis and sensori-neural hearing loss with tinnitus were accepted as war-caused.

After leaving the RAN, Mr Forbes worked in the transport industry. From 1987 to 1994, he operated his own coach company. He worked full-time as a coach driver in the business, driving mainly from Melbourne to the Murray River area. He also employed other drivers. After giving up driving, he worked for a period in the office but this proved unsuccessful and he sold the business in 1994. He then worked for short periods for other companies. He applied for a service pension later in 1994.

Mr Forbes told the AAT that the only reason he ceased driving coaches was because his back problems were interfering with his duties. He stated that he could not get up and down the stairs in the coach, could not change the tyres of the coach as required and was unable to sit behind a wheel for more than 30 to 40 minutes at a time. In addition to this, he was experiencing shortness of breath, fatigue and an inability to walk for more than 500 metres without pain.

Tribunal's decision

The AAT concluded that Mr Forbes did not satisfy the "alone" test in s 24(1)(c) of the *VE Act*. It said that in order to satisfy s 24(1)(c), he needed to demonstrate that not only was his war-caused incapacity sufficient by itself to render him incapable of working but also that it actually was the war-caused injury or disease alone that stopped him from engaging in remunerative employment.

The AAT found that he was prevented from continuing to undertake remunerative work by a combination of his war-caused lumbar spondylosis and non war-caused thoracic neck spinal conditions and not lumbar spondylosis alone. Neck pain from the latter condition made it difficult for him to read for long periods, to work at a computer and to drive vehicles. The AAT also found that he was not "genuinely seeking to engage in remunerative work" in terms of the ameliorating provisions in s 24(2)(b).

Submission

It was submitted for Mr Forbes that the AAT had erred in law when it determined that he did not satisfy the "alone" test in s 24(1)(c). It was argued that the error of law occurred because the AAT applied s 24(1)(c) so as to consider a combination of the war-caused condition and the non war-caused condition. It was contended that the proper understanding of the paragraph is that non war-caused conditions cannot be taken into account

in the application of the paragraph unless by themselves they are capable of preventing the veteran from continuing to undertake the remunerative work that the veteran was undertaking.

Court's conclusion

Nicholson J noted that the correct approach to applying s 24(1)(c) had been previously considered by the Full Court. In *Flentjar v Repatriation Commission* (1998) 48 ALD 1, Branson J (with whom Beaumont and Merkel JJ agreed) said that the issues to be considered were as follows:

1. What was the relevant "remunerative work that the veteran was undertaking" within the meaning of s 24(1)(c) of the Act?
2. Is the veteran, by reason of war-caused injury or war-caused disease, or both, prevented from continuing to undertake that work?
3. If the answer to question 2 is yes, is the war-caused injury or war-caused disease, or both, the only factor or factors preventing the veteran from continuing to undertake that work?
4. If the answers to questions 2 and 3 are, in each case, yes, is the veteran by reason of being prevented from continuing to undertake that work, suffering a loss of salary, wages or earnings on his own account that he would not be suffering if he were free of that incapacity?

Mr Forbes's counsel submitted that the AAT had erred in relation to the third question in *Flentjar*. It was submitted that the AAT should not have had regard to the non war-caused thoracic spondylosis once it had found that it alone did not prevent the veteran from undertaking work.

Nicholson J rejected the submission on behalf of Mr Forbes, saying:

“The question whether the veteran by reason of the war-caused condition ‘alone’ has been prevented from continuing to undertake remunerative work can only be answered by reference to all the circumstances in which the war-caused condition exists. The fact that a non war-caused condition is not alone causative of such preventative effect does not prevent it having that effect in combination with the war-caused condition.

...

As in the case of the present applicant, it is possible that the war-caused condition will be by far and away the more dominant of the causes of the preventative effect where there is also present a non war-caused condition having such effect in combination. The result is that the presence of the latter will deny to a veteran qualification for the Special rate of pension. Parliament has sought to ameliorate this position by the provisions in s 24(2)(b), to which reference has been made. To date, the applicant has been unable to qualify pursuant to that provision. Whether he can qualify pursuant to that provision in the future remains a question for consideration.”

Formal decision

The Court dismissed Mr Forbes’s appeal.

**Husband v Repatriation
Commission**

French J

24 March 2000

***GARP assessment – intermittent
impairment – Special rate –
condition not claimed***

Mr Husband appealed to the Federal Court against a decision of the AAT assessing his pension at 80% of the General rate with effect from 17 September 1993. The AAT refused his claim for Special rate pension on the basis that he was not prevented from undertaking remunerative work by defence-caused injury or disease alone, in terms of s 24(1)(c) of the *VE Act*.

Mr Husband served in the Australian Army from 1978 to 1995. The AAT concluded that in the earlier part of the assessment period, he was not prevented from working but decided, of his own accord, not to seek employment until he had fully recovered from defence-caused leptospirosis. In relation to the latter part of the assessment period, the AAT found that his inability to work was due to a non defence-caused disability, diagnosed as chronic fatigue syndrome. Accordingly, he was not eligible for the Special rate.

Appeal grounds

On appeal to the Federal Court, Mr Husband sought to challenge the AAT’s decision on a number of grounds. He submitted that the AAT had erred in the allocation of impairment ratings in terms of the approved *Guide to the Assessment of Rates of Veterans’ Pensions* (GARP). He also sought to challenge the AAT’s decision that he did not qualify for the Special rate.

No errors of law

French J dismissed Mr Husband's appeal on the basis that the grounds raised by him did not show any errors of law in the AAT's decision. French J noted that s 44 of the *AAT Act* limits the rights of appeal to the Federal Court against decisions of the AAT to questions of law. The ambit of the appeal is confined to questions of law – *Brown v Repatriation Commission* (1985) 60 ALR 289 at 291. It is a corollary of that limitation that a finding by the AAT on a matter of fact cannot be reviewed on appeal unless vitiated by an error of law – *Waterford v Commonwealth of Australia* (1987) 71 ALR 673 at 689 (Brennan J).

French J said that numerical assessments under GARP are judgments of fact and are not able to be challenged in the Court. He continued:

“Contentions that a higher rating should have been applied or that the Tribunal should not have relied on the evidence of any particular witness or that the evidence of a witness relied upon was ‘insubstantial’ are not able to be entertained in these proceedings. Nor can criticism that the Tribunal should have given more weight to the evidence of another witness be entertained. The weight which the Tribunal gives to the evidence of witnesses before it is a matter of fact for it.

Assertions that a decision is against the evidence or the weight of the evidence will be given short shrift. They are arguments that may apply on appeals from courts of law but have no place where the appeal is from an administrative tribunal that is not bound by the rules of evidence – *Collins v Minister for Immigration and Ethnic Affairs* (1981) 36 ALR 598. There is, of course, always the possibility of an extreme case in which so little weight is attributed to a

matter which is deserving of much that it amounts to a failure by the Tribunal to have regard to a relevant consideration which it is bound to take into account – *Federal Commissioner of Taxation v Swift* (1989) 18 ALD 679 at 693.”

French J examined the AAT's findings in detail and concluded that no errors of law had been demonstrated in relation to the General rate. Mr Husband was seeking, in effect, to challenge findings of fact by the AAT as to the appropriate impairment ratings in terms of GARP.

French J also concluded that there were no errors of law in the AAT's decision in relation to the Special rate. The AAT was bound by the decision of the Court in *Owen v Repatriation Commission* (1995) 22 AAR 1. That was a case involving rejection of Special rate on the basis that the relevant incapacity resulted from a shoulder injury that had not been claimed as war-caused by the applicant. In this case, as Mr Husband's chronic fatigue syndrome was not claimed as a service-related disease, it could not be taken into account in assessing pension payable to Mr Husband.

Formal decision

French J dismissed Mr Husband's appeal with costs.

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

NSW Court of Appeal

**Repatriation Commission v
Vietnam Veterans' Association
of Australia NSW Branch Inc &
Ors**

Spigelman CJ, Meagher JA and
Handley JA

31 March 2000

***Statements of Principles – review
by the Specialist Medical Review
Council – sound medical-scientific
evidence – procedural fairness***

The Repatriation Commission appealed to the NSW Court of Appeal against a decision of the Supreme Court, setting aside two declarations made by the Specialist Medical Review Council. (See 15 *VeRBosity* 48).

The background to this matter is that the SMRC had reviewed the contents of Statements of Principles relating to:

- **Malignant neoplasm of the prostate** (Nos 95 and 96 of 1995); and
- **Motor neuron disease** (Nos 245 and 246 of 1995).

In conducting both reviews, the SMRC proceeded on the basis that a review of a Statement of Principles must encompass the whole of the SoP, even though only particular aspects had been asked to be reviewed. It also said that it was restricted to considering the material available to the Repatriation Medical Authority at the time of the making of the

SoP and could not consider new material.

In relation to the SoPs concerning prostate cancer, the SMRC recommended that the RMA reconsider the inclusion of “being exposed to herbicides in Vietnam” as a factor in the SoPs. The SMRC was of the view that there was insufficient “sound medical-scientific evidence” for this to be included as a factor. It also rejected smoking as a possible factor for prostate cancer.

In relation to the SoPs concerning motor neuron disease, the SMRC rejected a submission from the VVAA(NSW) that exposure to solvents should be included in the SoPs. The SMRC was of the view that there was also insufficient “sound medical-scientific evidence” for this to be included as a factor. However, it recommended that the RMA further investigate exposure to solvents as a possible factor.

In the Supreme Court, Greg James J found that the SMRC’s declarations in relation to the four SoPs under review were invalidly made. His Honour also found that the VVAA(NSW) was denied procedural fairness in relation to the SMRC’s recommendation concerning exposure to herbicides.

Information available to SMRC

The first issue considered by the Court of Appeal was whether the SMRC, in conducting a review, can consider only the material that was actually before the RMA when it made the SoPs, or whether it can take account of all possible information that the RMA might have been able to obtain. The Court was unanimous in deciding that s 196W(2) of the *VE Act* required the SMRC to restrict its consideration to information that was in fact before the RMA.

Sound medical-scientific evidence

The main issue raised on appeal was the nature and quality of the medical

evidence required before a factor is included in a Statement of Principles. The RMA is required by s 196B of the *VE Act* to determine SoPs based on “sound medical-scientific evidence” as defined in s 5AB as follows:

“5AB (1) In this Act, unless the contrary intention appears:

...

sound medical-scientific evidence, in relation to a particular kind of injury, disease or death, has the meaning given by subsection (2).

(2) Information about a particular kind of injury, disease or death is taken to be **sound medical-scientific evidence** if:

(a) the information:

- (i) is consistent with material relating to medical science that has been published in a medical or scientific publication and has been, in the opinion of the Repatriation Medical Authority, subjected to a peer review process; or
- (ii) in accordance with generally accepted medical practice, would serve as the basis for the diagnosis and management of a medical condition; and

(b) in the case of information about how that kind of injury, disease or death may be caused – meets the applicable criteria for assessing causation currently applied in the field of epidemiology.”

The Repatriation Commission submitted on appeal that the definition of “sound medical-scientific evidence” in s 5AB(2), requiring that the information “[meet] the applicable criteria for assessing causation currently applied in the field of epidemiology”, means that a causal relationship must be established. It was submitted in effect that a SoP may only

contain factors which are “proved” or “known” in the sense of established to the satisfaction of a particular body of medical scientists.

The Court rejected the Commission’s submission. The Court held by majority (Spigelman CJ and Handley JA with Meagher JA dissenting) that it is not necessary that a causal relationship be established in accordance with the science of epidemiology before a factor may be included in a SoP.

Spigelman CJ observed in relation to s 196B(2) that:

“A requirement that information as to how a particular kind of injury, disease or death ‘*may be caused*’ (s 5AB(2)(b)), should *establish* a causal relationship, appears to exclude every hypothesis with respect to causation which would be regarded as ‘reasonable’, but not established. Although Parliament intended to restrict the operation of the reasonable hypothesis test as that term had been construed by the courts, it did not intend to deprive the test of practical operation. To a substantial extent, that appears to me to be the effect of the Appellant’s contentions.

...

In view of the purposes to be served in the legislative scheme by the definition in s 5AB(2), the Appellant’s construction should, in my opinion, be rejected. A requirement that epidemiological evidence must establish that a particular exposure *will* increase the incidence of a particular injury or disease or of death, is too high a standard for purposes of deciding whether such a consequence ‘can be related to’ the exposure, at least in the case to which a ‘reasonable hypothesis’ test applies. A requirement that causation be established in the sense

contended for by the Appellant, would mean that the decision-maker could only find that a factor *can be related* if, in effect, it found that it *was related*. In my opinion, the Parliament did not intend such a result.”

The Court held that the SMRC had failed to perform its statutory function in relation to its review of SoP No 95 of 1995. The Commission’s appeal with respect to the review of SoP No 95 was dismissed. Although the legal error also applied to the process in relation to SoP No 96, since the error made no substantive difference to the decision, the Commission’s appeal with respect to the review of SoP No 96 was allowed.

The SMRC did not make the same error in relation to SoP Nos 245 and 246 and the Court held that it was not an error of law for the SMRC to reject certain medical-scientific studies on the basis that they were “not sufficiently sound scientifically”. The Commission’s appeal with respect to the review of those SoPs was also allowed.

Procedural fairness

The SMRC did not notify the VVAA(NSW) that the inquiry would include exposure to herbicides in Vietnam until the day of the oral hearing. The Court was unanimous in deciding that the VVAA(NSW) was denied procedural fairness in relation to the recommendation by the SMRC concerning prostate cancer. The SMRC had fallen into error by failing to give proper notice to the VVAA(NSW) that it intended to examine the issue of exposure to herbicides in Vietnam and by failing to provide an opportunity for VVAA(NSW) to make submissions on this matter.

Power to recommend

The final issue raised was whether the SMRC has the power to make a recommendation to the RMA when it

concludes that a factor should not have been included in the SoPs. The Court was unanimous in finding that this power exists, under s 196W(5), and that the SMRC had not erred in this regard.

Formal decision

The Court of Appeal dismissed the Commission’s appeal with respect to the review of SoP No 95 of 1995 concerning prostate cancer but allowed the appeal in relation to the review of the other three SoPs by the SMRC.

[Ed: A point apparently not raised by any party in this appeal is whether, upon remittal of the matter to the SMRC, the SMRC can, in fact, review SoP No 95 given that the SoP was revoked by the RMA before the appeal was heard. As no party had sought to obtain an injunction to prevent the RMA taking such action, it was open for the RMA to take any actions consistent with its statutory functions in the course of its proceedings.]

Where there is no legislation to the contrary, revocation of the decision under review has been held to remove the entire matter from the reviewing body, even from the Federal Court: see for example, *Warren v Repatriation Commission* (1995) 39 ALD 513, in which the decision sought to be reviewed by the Court under the AD(JR) Act had been revoked by the time the case came on for hearing. In that case, the Court held that it could not review the revoked decision, or the Commission’s conduct in revoking that decision, or the new decision made in its place.]

High Court of Australia

Herijanto v Refugee Review Tribunal

Gaudron J

31 March 2000

Courts and tribunals – immunities of members

In this case, the High Court considered the nature and extent of immunity of tribunal members in relation to certain Court proceedings. The plaintiffs had applied unsuccessfully for refugee status in Australia and claimed that the Refugee Review Tribunal had failed to take account of certain documents in reaching decisions that they did not qualify for refugee status. The plaintiffs served interrogatories (a set of questions in legal proceedings) on individual members of the RRT seeking disclosure of aspects of the decision-making process.

The defendant RRT claimed that the interrogatories were unreasonable or vexatious by reason that they infringed the protection and immunity which individual members of the RRT have pursuant to s 435(1) of the *Migration Act* 1958.

Immunity

Section 435(1) of the *Migration Act* provides that a member of the RRT “has, in the performance of his or her duties as a member, the same protection and immunity as a member of the Administrative Appeals Tribunal”. By s 60(1) of the *Administrative Appeals Tribunal Act* 1975, a member of the

Administrative Appeals Tribunal has, in the performance of his or her duties, “the same protection and immunity as a Justice of the High Court”.

[Ed: The equivalent provision of the *VE Act* in relation to VRB members is s 167(1), which provides, “A member has, in the performance of his or her duties as a member, the same protection and immunity as a Justice of the High Court.”]

The plaintiffs argued that the only protection or immunity conferred by s 435(1) was protection or immunity from civil suit.

Gaudron J observed that the protection and immunity of Justices of the High Court was derived from the common law. Her Honour continued:

“It has been settled law since *Knowles’ Trial* (1692) 12 Howell’s State Trials 1167 that judges cannot be compelled to answer as to the manner in which they have exercised their judicial powers. In *Hennessy v Broken Hill Pty Co Ltd* (1926) 38 CLR 342 at 349, the immunity was said to be such that judges cannot be compelled ‘to testify as to matters in which they have been judicially engaged’. However, it was also pointed out in that case that ‘their evidence has been received upon matters which did not involve the exercise of their judicial discretions and powers’.

In *MacKeigan v Hickman* [1989] 2 SCR 796, the Supreme Court of Canada held that judges could not be compelled to disclose what affidavit evidence had been received when that did not clearly appear from the record. However, Wilson J, in dissent on this point, would have held that they might be asked ‘what as a factual matter comprised the final record for purposes of their decision’.

In *MacKeigan*, the immunity of judges from compulsory disclosure was rested on the principle of judicial independence. In *Sirros v Moore* [1975] QB 118 at 136, a case concerned with immunity from civil suit, Lord Denning MR suggested that the reason underlying that immunity was to ensure that judges 'may be free in thought and independent in judgment'. That, in my view, is also the true basis of the immunity from compulsory disclosure. And on that basis, I see no reason why a judge might not be compelled to disclose the record upon which he or she has acted. However, that is subject to the qualification that disclosure of the record cannot be compelled if it would also reveal some aspect of the decision-making process, as may well have been the case in *MacKeigan*.

There is no difficulty in saying that, in an appropriate case, judges may be compelled to disclose the record on which they have acted. In the context of the judicial process, 'the record' bears a clear meaning. (See *Craig v South Australia* (1995) 184 CLR 163.) The same is not necessarily true in the context of administrative decisions. Thus, it is preferable to identify what is within the immunity, rather than that which is outside it. And in my view, the immunity is immunity from disclosing any aspect of the decision-making process. That is what is required to ensure freedom of thought and independence of judgment. And that approach is entirely consistent with what was said in *Hennessy*."

Formal decision

Gaudron J rejected the plaintiff's submission that the protection or immunity of RRT members was limited to immunity from civil suit. Her Honour

decided that most of the interrogatories sought information with respect to the decision-making process and were therefore set aside by the Court.

Statements of Principles issued by the Repatriation Medical Authority

March – May 2000

Number of Instrument	Description of Instrument
5 of 2000	Revocation of Statement of Principles (Instrument No.95 of 1996 concerning aortic stenosis and death from aortic stenosis) and Determination of Statement of Principles under subsection 196B(2) concerning aortic stenosis and death from aortic stenosis
6 of 2000	Revocation of Statement of Principles (Instrument No.96 of 1996 concerning aortic stenosis and death from aortic stenosis) and Determination of Statement of Principles under subsection 196B(3) concerning aortic stenosis and death from aortic stenosis
7 of 2000	Revocation of Statement of Principles (Instrument No.21 of 1997 concerning dementia pugilistica and death from dementia pugilistica) and Determination of Statement of Principles under subsection 196B(2) concerning dementia pugilistica and death from dementia pugilistica
8 of 2000	Revocation of Statement of Principles (Instrument No.22 of 1997 concerning dementia pugilistica and death from dementia pugilistica) and Determination of Statement of Principles under subsection 196B(3) concerning dementia pugilistica and death from dementia pugilistica
9 of 2000	Revocation of Statements of Principles (Instrument No.39 of 1994 and Instrument No.229 of 1995 concerning gunshot wounds and death from gunshot wounds) and Determination of Statement of Principles under subsection 196B(2) concerning physical injury due to munitions discharge and death from physical injury due to munitions discharge
10 of 2000	Revocation of Statements of Principles (Instrument No.40 of 1994 and Instrument No.230 of 1995 concerning gunshot wounds and death from gunshot wounds) and Determination of Statement of Principles under subsection 196B(3) concerning physical injury due to munitions discharge and death from physical injury due to munitions discharge
11 of 2000	Revocation of Statement of Principles (Instrument No.88 of 1997 concerning gout and death from gout) and Determination of Statement of Principles under subsection 196B(2) concerning gout and death from gout
12 of 2000	Revocation of Statement of Principles (Instrument No.89 of 1997 concerning gout and death from gout) and Determination of Statement of Principles under subsection 196B(3) concerning gout and death from gout

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
- RMA Website: <http://www.rma.gov.au/>

Repatriation Medical Authority
CONDITIONS UNDER INVESTIGATION AS AT 10 MAY 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

<p>Chloracne [Instrument Nos 69/94 & 70/94 as amended by Nos 279/95 & 280/95]</p> <p>Hodgkin's disease [Instrument Nos 77/94 & 78/94]</p> <p>Malignant neoplasm of the lung [Instrument Nos 29/96 & 30/96 as amended by Nos 149/96 & 150/96]</p> <p>Porphyria cutanea tarda [Instrument Nos 71/94 & 72/94]</p> <p>Soft tissue sarcoma [Instrument Nos 49/98 & 50/98]</p>	Exposure to herbicides used in Vietnam, namely 2,4-D, 2,4,5-T, cacodylic acid or picloram	23-06-99
<p>Chronic pancreatitis [Instrument Nos 47/97 & 48/97]</p>	---	01-03-00
<p>Chronic ulcerative colitis [Instrument Nos 144/96 & 145/96 as amended by Nos 179/96 & 180/96]</p>	Stress	04-08-99
<p>Deep vein thrombosis [Instrument Nos 43/98 & 44/98]</p>	---	10-05-00
<p>Dengue fever [Instrument Nos 139/95 & 140/95]</p>	---	01-03-00
<p>Giant cell arteritis [Instrument Nos 85/96 & 86/96]</p>	---	22-03-00
<p>Goitre [Instrument Nos 29/98 & 30/98]</p>	Exposure to radiation in Hiroshima	05-05-99
<p>Gulf War syndrome [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) <i>VE Act</i>.]</p>	---	17-11-99
<p>Haemorrhoids [Instrument Nos 73/94 & 74/94]</p>	Service activities	23-06-99
<p>Hypertension [Instrument Nos 25/99 & 26/99]</p>	Sleep apnoea	18-08-99
<p>Hypertension [Instrument Nos 25/99 & 26/99]</p>	---	10-05-00

Malignant melanoma of the skin [Instrument Nos 97/95 & 98/95 as amended by Nos 189/96 & 190/96]	---	18-08-99
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
Meniere's disease [Instrument Nos 27/97 & 28/97]	---	10-05-00
Mesangial IGA glomurelonephritis [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) <i>VE Act.</i>]	---	17-11-99
Motor neurone disease [Instrument Nos 245/95 & 246/95]	---	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) <i>VE Act.</i>]	---	03-11-99
Osteoarthritis [Instrument Nos 41/98 & 42/98 as amended by Nos 19/99 & 20/99]	---	18-08-99
Psoriasis [Instrument Nos 21/98 & 22/98]	---	22-03-00
Tinnitus [Instrument Nos 43/96 & 44/96]	---	10-05-00

Administrative Appeals Tribunal decisions – January to March 2000

Carcinoma

pancreas

Spitty, M, 31 Jan 2000

primary site unknown

- smoking & solar exposure

Ingram, M D, 02 Feb 2000

Cardiovascular disease

hypertension

- salt ingestion

Buckham, G 08 Mar 2000

ischaemic heart disease

- whether smoking war-caused

French, E G, 17 Jan 2000

Magdalinski, S C, 03 Feb 2000

ischaemic heart disease & hypertension

- alcohol consumption

Hodgson, H, 15 Mar 2000

Claim for pension

original claim not finally determined

Collins, J G (resp), 21 Mar 2000

Death

analgesic nephropathy

- chronic analgesic abuse

Walton, I L, 18 Feb 2000

cerebrovascular accident

- whether smoking war-caused

Neilsen, B J, 10 Feb 2000

fractures & osteoporosis

- smoking

Simmonds, M K, 03 Feb 2000

hypertensive heart disease

- salt ingestion

Ovenden, B J, 09 Feb 2000

ischaemic heart disease

- smoking cessation

Whitford, L, 16 Mar 2000

myelofibrosis

- benzene fumes

Leighton, R L, 28 Feb 2000

prostate cancer

- whether death hastened by chest infection

Rogers, L, 08 Feb 2000

Dependant

married couple

- whether living separately and apart

Poulos, P, 24 Mar 2000

Dermatological disorder

chronic solar skin damage

- solar UV damage

Potts, M B, 09 Mar 2000

Diabetes

obesity

- excess caloric intake

O'Neill, C, 15 Mar 2000

Disability pension

chronic sinusitis & Meniere's disease

- inability to obtain appropriate clinical management

Carroll, J R, 08 Mar 2000

Extreme disablement adjustment

whether lifestyle ratings sufficient

McNeany, V J, 10 Feb 2000

Arthur, J, 13 Mar 2000

whether impairment ratings sufficient

Connolly, T M, 15 Mar 2000

Jurisdiction

new claim reviewed by VRB

- original claim not finally determined

Collins, J G (resp), 21 Mar 2000

sarcoidosis

- whether withdrawn before VRB

Linton, G, 14 Jan 2000

Meniere's disease

inability to obtain appropriate clinical management

Bourke, S F, 28 Jan 2000

Psychiatric disorder

post traumatic stress disorder

- whether traumatic event

Budworth, R J, 23 Feb 2000

Hamilton, J R, 24 Mar 2000

Weyling, C H G, 31 Mar 2000

psychoactive substance abuse

- stressful event

Weyling, C H G, 31 Mar 2000

Remunerative work

whether ceased work for other reasons

- work-related injury & retrenchment from cleaning job

Earle, B G, 28 Jan 2000

whether prevented by war-caused disabilities alone

- cleaner/supervisor

Hamilton, J R, 24 Mar 2000

- dairy farmer aged 56

Aitken, H, 22 Feb 2000

- effects of PTSD & alcohol abuse

Willett, B R, 31 Mar 2000

- electricity worker

McGuinness, K J, 22 Feb 2000

- flat owner – no loss of income

Williamson, B E, 16 Mar 2000

- farmer aged 77

Diprose, R, 28 Jan 2000

- maintenance electrician aged 52

Picken, B, 14 Jan 2000

- over 65 provisions applied

Tracy, D H, 16 Mar 2000

- security officer – hip replacements

Vickery, R A, 17 Feb 2000

- sheep farmer – falling wool prices

Archer, J F, 28 Jan 2000

- substantial cause of inability

Vacchiano, P, 17 Jan 2000

- voluntary redundancy

Templeman, R H, 28 Jan 2000

Hill, A C, 03 Feb 2000

whether unable to work 8 hours per week

- real estate/farmer

Baxter, R R, 13 Mar 2000

- school cook

Norman, R A, 07 Feb 2000

Spinal disorder

cervical & lumbar spondylosis

- trauma

Rennie, J C, 22 Feb 2000

intervertebral disc lesion

- fall from helicopter

Picken, B, 14 Jan 2000

lumbar spondylosis

- malalignment of lumbar spine – pes planus

Fall, G J, 24 Jan 2000

lumbar spondylosis/intervertebral disc prolapse

Higham, J F, 23 Mar 2000

Bignell, M R, 31 Mar 2000

lumbosacral disc profusion

- trauma

Simpson, G R, 29 Mar 2000

Words and phrases

clinical onset

Whitford, L, 16 Mar 2000

inability to obtain appropriate clinical management

Bourke, S F, 28 Jan 2000

