VeRBosity Volume 17 No. 1

Contents

January - March 2001

Editor's notes

This edition of *VeRBosity* contains reports on eight Federal Court decisions relating to veterans' matters handed down in the period from January to March 2001.

In *McLean*, *Leighton*, *Arnott* and *Gorton*, the Court examined whether the AAT adopted the correct approach in determining "reasonable hypothesis" cases.

Walters, *Arnott* and *Gorton* deal with "accrued rights" relating to Statements of Principles.

Budworth is primarily concerned with the standard of proof on diagnosis of disease.

Lamers and *Rose* relate to eligibility for Special rate pension.

This edition includes reports on selected AAT decisions handed down in the period from January to March 2001. 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

Dedication of New Zealand Memorial

Canberra, 24 April 2001

The New Zealand Memorial in Canberra is that country's gift to mark the centenary of Australian Federation. The design of the Memorial represents the two handles of a basket or *kete*. The words, "Each of us at one handle of the basket / *Mau tena Kiwai o te Kete, Maku tenei*", are displayed on a small wall at the edge of the paving on both handles.

The two handles are 11.5 metres high, and are constructed of bronze. Each handle has its own distinct character. Beneath each handle is a large circular paving. On the Australian side, the paving is in an Aboriginal design, the work of Daisy Nadjungdanga from Maningruda in Northern Territory. On the New Zealand side, the design is Maori, and is the work of Toi te Rito Maihi and Allen Wihongi from Northland.

At the recent dedication of the Memorial, the Prime Minister John Howard said that there were no two countries in the world which had formed such a strong bond as New Zealand and Australia.

> "That association of our histories, of the mingled blood of so many of our young people, led to the developing of our common values.
>
> We express our gratitude to those who have given so much … but also dedicate this Memorial to the future strength of that association."

New Zealand Prime Minister Helen Clark said:

> "The Memorial symbolises the longstanding New Zealand - Australian relationship through its pair of bronze structures representing the handles of a traditional Maori flax basket. In that symbolic basket are to be found our shared history, values and memories, and our common endeavours and sacrifices, in peace and in war.
>
> This New Zealand Memorial has been erected on an outstanding site, with its two handles framing the entry to Anzac Parade. The Parade itself is a solemn place. Lined by monuments leading to the imposing structure of the Australian War Memorial, Anzac Parade is where deeply felt memories of generations of Australians reside.
>
> The backdrop of Anzac Parade and the Australian War Memorial remind us that joint military endeavour has played a significant part in our histories. Indeed, convention has it that our independent national identities were forged on the beaches and hills of Gallipoli. Soil from Chunuk Bair and Lone Pine is interred beneath this Memorial, and recalls the sacrifice of those years.
>
> May the New Zealand Memorial in Canberra stand as a permanent symbol of the bonds of friendship and cooperation between our two nations, in the past and in the years ahead."

Administrative Appeals Tribunal

Re J Hilton and Repatriation Commission

Lewis & Campbell

N1998/19
18 January 2001

Obesity - whether a disease

Mrs Hilton appealed to the Tribunal against a decision that her late husband's death was not war-caused. The late veteran rendered operational service during World War 2. He died in 1985 at the age of 63 years. He had been seriously injured in a motor vehicle accident some months before his death.

It was submitted that the late veteran suffered from alcohol dependence and obesity which contributed to the development of hypertension and ischaemic heart disease, which ultimately caused his death. It was argued that all those medical conditions were causally related to his war service.

Legal status of Obesity statement

At the Tribunal, a preliminary issue arose concerning the legal status of the Repatriation Medical Authority's *Statement about the Causes of "Being Obese"* dated 16 August 1996 ("the Obesity Statement"). The RMA had taken the view that it was not able to determine a Statement of Principles in respect of obesity as "obesity" is not a "disease" or "injury" as defined in subsection 5D(1) of the *VE Act.*

Mrs Hilton's counsel submitted that the RMA only had power to issue Statements of Principles which were about *injuries* or *diseases*, and consequently the Statement about obesity had no statutory effect. Although it may have been intended to obviate the need for the separate statement to be included in every document to which reference was made to being "obese", it was submitted the RMA had no such power.

The Repatriation Commission submitted that the RMA was permitted by s 49A of the *Acts Interpretation Act 1901* to incorporate by reference the text of any document it wished, as long as it was in existence at the time it made the Statement of Principles. In those circumstances, the Obesity Statement carried statutory force as part of the Statement of Principles.

The Commission conceded that because no reference was made to the Obesity Statement in the Hypertension Statement of Principles No 83 of 1995, it had no legal standing in respect of that Instrument. However, as specific reference was made to the Obesity Statement in the Ischaemic Heart Disease Statement of Principles No 140 of 1996, the Tribunal was bound to apply the Obesity Statement in considering factor 5(c).

Mrs Hilton sought to rely on factor 5(c) which related to "being obese for a period of at least two years within the 15 years immediately before the clinical onset of ischaemic heart disease".

Tribunal's conclusion

The Tribunal accepted that the Obesity Statement was binding in relation to factor 5(c) of the SoP relating to Ischaemic Heart Disease. It said:

> "The Tribunal does not accept [Mrs Hilton's] submissions that the RMA has no power to make the Obesity Statement because it is not a

> statement about an injury or disease. The Tribunal considers that the RMA's Obesity Statement has the same function as many of the definitions incorporated in specific Statements of Principles, but because of its application to a number of diseases or injuries it is justifiable to have it as a 'stand alone' statement to which reference is made specifically in those Statements of Principles where it is to be applied. The Tribunal does not accept [Mrs Hilton's] submission that this in effect is *ultra vires.*"

The Tribunal concluded that although the evidence was uncertain, it was possible that the late veteran's drinking was related to his war service and this was not merely speculation or conjecture. On this basis, factor 5(c) of the SoP was met and a reasonable hypothesis was raised in terms of s 120(3) of the *VE Act*. The Tribunal concluded that the late veteran's death was war-caused.

Formal decision

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

[Ed: The Repatriation Medical Authority has given notice in the *Gazette* that it intends to carry out an investigation under the *VE Act* to find out whether a Statement of Principles may be determined in respect of obesity.]

Re H W Hawkins and Repatriation Commission

Bullock

N1999/1752
13 February 2001

Jaw fractures - whether arose out of defence service

Mr Hawkins applied to the Tribunal for review of a decision that his osteo-arthrosis of the right knee, multiple fractures of the lower jaw and fracture of the upper jaw were not defence-caused. He served in the Royal Australian Navy from 1971 to 1974. His eligible defence service was from 7 December 1972 to 27 July 1974.

Fall from window

Mr Hawkins was injured in a fall on 20 July 1973, during a submarine course in *HMS Dolphin* at Southport, England. He was staying in *HMS Dolphin* because the participants were encouraged to stay on the base. He told the Tribunal that he fell out of a second storey window at the naval accommodation. He had gone to bed at about 10 or 11 pm and the next thing he knew he was outside two floors down on the ground and bleeding. He recalled being given an injection and was put on a stretcher and taken to hospital where he underwent several operations to his jaw. He was later returned to Australia for further treatment.

Mr Hawkins told the Tribunal that he was not on duty on the night of the accident. He had had one or two pints of beer before going to bed but was certainly not inebriated. He had no memory of falling out of the window or any events which might have preceded it. He had not previously had any problems that he was aware of in terms of sleep walking and was not suicidal.

Relationship to defence service

A threshold issue was whether or not, pursuant to subsections 70(5)(a) and (c) and subsection 70(7) of the *VE Act*, the injuries arose out of defence service.

It was submitted for Mr Hawkins that his fall from the mess window occurred on defence service. His attendance at the submarine course in England was a requirement of his defence service and he was required to live in the naval accommodation. The fact that he was not on duty on the night of the accident was irrelevant given that he was required to live in naval accommodation whilst the course was conducted.

The Repatriation Commission referred to the case of *Holthouse v Repatriation Commission* (1982) 1 RPD 287 in which the veteran was not on duty and had moved a pot plant resulting in his incapacity. In *Holthouse*, Davies J referred to *Wedderspoon v Minister of Pensions* (1947) 1 KB 562 at 563-4. In that case, Denning J concluded:

> "The cases show that when the cause of the death or disablement lies in the man's own personal or domestic sphere, and the war service does no more than provide the circumstances in which the cause operated, it is not attributable to war service."

The Commission submitted that the circumstances of Mr Hawkins' injuries were not in the course of, nor arose out of, his defence service. There was no nexus between service and the accident. He was not on duty at the time of the accident and could not be said to have been carrying out his duties.

Tribunal's conclusions

The Tribunal found that Mr Hawkins was in the United Kingdom in *HMS Dolphin* because of a requirement of his naval service that he undertake a submarine training course. Mr Hawkins was living at a British naval base and was not on duty at the time of the accident. Although there was evidence that he had up to two pints of beer before retiring, there was no evidence that he was inebriated or that the fall from the window was occasioned by excessive consumption of alcohol.

The Tribunal concluded that a substantial cause of the injuries suffered by Mr Hawkins was the fact that he was required to attend the submarine course in naval accommodation in the United Kingdom. Accordingly, his accident arose out of or was attributable to his defence service in terms of subsection 70(5)(a). Further, pursuant to subsection 70(7) of the *VE Act*, the incapacity arose out of an accident which would not have occurred but for Mr Hawkins rendering defence service.

The Tribunal then proceeded to consider the claimed conditions in terms of the relevant Statements of Principles. The Tribunal found that the material raised a connection between defence service and his jaw fractures. There was clear evidence of injury to this area as a result of the fall. However, in relation to the right knee, there was no indication that this was injured as a result of the accident.

Formal decision

The Tribunal set aside the decision under review and substituted its decision that Mr Hawkins' multiple fractures of the lower jaw and fracture of the upper jaw were defence-caused. It affirmed the decision that osteoarthrosis of the right knee was not defence-caused.

Re J J Roncevich and Repatriation Commission

Beddoe

D1999/14
16 March 2001

Lumbar spondylosis and knee injury - fall from window following mess function

Mr Roncevich served in the Army from 1974 to 1998. He appealed to the Tribunal against a decision that his lumbar spondylosis and internal derangement of the left knee were not defence-caused.

The background to this matter is that in February 1986, Mr Roncevich was a sergeant in 3RAR and living in barracks. He had his own room upstairs in the same building as the sergeants' mess which was located on the ground floor.

On 27 February 1986, he was required to attend a function at the sergeants' mess after stand down. He attended the function, participated in the proceedings, consumed alcohol and by the time he left the mess he was intoxicated.

He returned to his room upstairs and proceeded to prepare his uniform for the next day. He found it necessary to clear his throat and for this purpose went to the window of his room. In the action of spitting, he overbalanced through the open window and fell to the ground below. He sought medical treatment the following day.

He told the Tribunal that he exacerbated his back condition when doing medicine ball situps in 1995. He also said that parachute jumping and route marches with full equipment exacerbated the back condition.

Submissions

Mr Roncevich sought to rely on paragraph 70(5)(a) of the *VE Act* and submitted that the incident of falling out of the window resulted in injuries which either "arose out of, or was attributable to" his defence service. In the alternative he submitted that his injuries fell within paragraph 70(5)(c) as they would not have occurred "but for" his rendering defence service. He submitted that attendance at the function in the sergeants' mess was an integral part of the system of management in the battalion.

The Repatriation Commission submitted that the applicant could not satisfy the requirements of the Statements of Principles. He was not on duty at the time of the accident so there was no relationship between the injuries caused by the fall and his defence service.

Tribunal's conclusions

The Tribunal concluded that although the applicant had clearly sustained "trauma" to his back and knee when he fell out of the window, his injuries were not attributable to or otherwise relevantly connected to his defence service. The Tribunal said:

> "In essence the injuries were caused by the applicant falling out of a window in his room located in the sergeants' mess. He went to the window while stood down, while performing work of a domestic nature in the preparation of his uniform and in circumstances where he was probably affected by alcohol consequent upon attendance at the function in the mess earlier that night.
>
> While I accept that attendance at the mess function can clearly be attributable to the applicant's defence service I do not accept that his conduct at the function can be so attributable. I accept that it was seen as the done thing to drink alcohol at such functions but I do not accept that the decision by the applicant to drink alcohol to the point of

intoxication is anything other than a personal decision on his part. To choose to drink alcohol at such a function is not a matter of military discipline but a matter of personal choice not attributable to the defence service.

I am not satisfied that the applicant's injuries arose in the course of his defence service nor am I satisfied that the injuries were attributable or should be deemed to have resulted from the defence service. When the applicant left the mess function and went to his room he was on a frolic of his own with no relevant causative connection to his defence service. That he fell out of the window has no relevant connection to his defence service."

Formal decision

The Tribunal affirmed the decision that Mr Roncevich's lumbar spondylosis and internal derangement of the left knee were not defence-caused.

[Ed: Mr Roncevich has lodged an appeal to the Federal Court.]

Re D W Hunt and Veterans' Review Board (1st Respondent); Repatriation Commission (2nd Respondent)

Bullock

N2000/633
22 March 2001

Dismissal of VRB application - failure to respond to notice

Mr Hunt applied to the Tribunal for review of the dismissal of his applications by the Veterans' Review Board. The back-ground to this matter was that in 1996 and 1997, Mr Hunt lodged applications for review with the VRB concerning his claim for a number of medical conditions. The Registrar of the VRB wrote to him on several occasions about the failure to progress his applications to hearing. Finally, on 8 March 2000, the Registrar wrote to him in terms of s 155AB(4) of the *VE Act* requesting that he provide within 28 days a written statement that he was ready to proceed at a hearing or reasons why he was not ready. As no response was received from the veteran or representative within the required 28 days, the Registrar, as delegate of the Principal Member, dismissed the applications pursuant to s 155AB(5) of the *VE Act.*

Legislation

Section 155AB(4) of the *VE Act* provides as relevant as follows:

"**155AB.** (4) If this section applies to an application for review at the end of the extended review period, the Principal Member must give a written notice to the applicant requesting the applicant to provide to the Principal Member, within 28 days after receiving the notice:

(a) a written statement indicating that the applicant is ready to proceed at a hearing; or

(b) a written statement explaining why the applicant is not ready to proceed at a hearing.

(5) If the applicant does not provide a written statement under paragraph (4)(a) or (b) within the 28 days, the Principal Member must dismiss the application and must notify the applicant and the Commission of the dismissal."

Letters sent to Department

Mr Hunt told the Tribunal that after receiving the Registrar's letter dated 8 March 2000, he arranged to meet his representative Mr W Murphy in the car park of the Coles New World

Supermarket. Mr Murphy dictated a letter to him which he then signed. He recalled that the letter requested a delay in the hearing of his applications for review until a medical report from Dr Smith had been received. On Mr Murphy's advice, the letter was addressed to the Department of Veterans' Affairs.

Mr Murphy told the Tribunal that he had an address stamp for the Department of Veterans' Affairs and having included the Board's reference in the letter, he expected that it would then have been forwarded to the Board.

Tribunal's conclusions

The Tribunal found that letters were received by the Department of Veterans' Affairs on 16 March 2000 which contained a request for reimbursement of an account for Mr Hunt, an authorisation for Mr Murphy to act as Mr Hunt's representative in relation to the Board's notice of 8 March 2000 and a report of Dr Smith. This correspondence was addressed to the Department of Veterans' Affairs. No letter was received by either the Department of Veterans' Affairs or the Board in the form of a written explanation for Mr Hunt's failure to progress his applications to hearing as required by the Registrar's notice of 8 March 2000.

The Tribunal was unable to make any findings as to whether or not an explanatory statement was written in the car park as claimed. It said that even if a written explanation was prepared, it was not provided to the Board as required. The Tribunal concluded on this point:

> "Even if there had been a letter sent in the terms required, it is not sufficient, the Tribunal finds, for Mr Murphy to rely on the good will of the Department of Veterans' Affairs to forward on letters sent to it which are meant to have been addressed to the Board. Clearly, the Department is neither the agent nor an office for the Board. They are separate statutory and independent authorities. Administratively, there may be occasions when either body will readdress incorrectly addressed correspondence but there is no requirement to do so and as the Tribunal notes, section 155AB is strictly construed that the written advice must be to the Board."

Formal decision

The Tribunal affirmed the decision dismissing Mr Hunt's applications.

Federal Court of Australia

Lamers v Repatriation Commission

Goldberg J

FCA 24
24 January 2001

Special rate - taxi owner-driver - whether AAT erred in law

Mr John Flentjar died on 2 December 1998 and his application for pension at the Special rate was continued by the executor of his estate. On 29 October 1999, the Tribunal determined that the late veteran was not entitled to pension at the Special rate. The executor lodged an appeal to the Federal Court.

An earlier decision of the Tribunal had allowed the late veteran's application for pension at the Special rate but that decision was set aside by Spender J and remitted to the Tribunal for further hearing: (see 13 *VeRBosity* 52). An appeal against that decision was dismissed by a Full Court: (see 13 *VeRBosity* 111). An application to the High Court for special leave to appeal was refused.

Mr Flentjar formerly held a taxi licence which he sold in 1970, due to war-caused irritable bowel syndrome. When he lodged his application for Special rate in 1991, he was aged 74 years 11 months. Until 1994, the Victorian authorities had a firm policy of not permitting taxi drivers to drive beyond the age of 70 years. However, persons over 70 were permitted to own a taxi licence and employ other persons to drive the taxi.

In the decision under appeal, the Tribunal considered whether the veteran might have recommenced driving a taxi after February 1994 when the policy was changed. The Tribunal concluded that it was improbable, ignoring his war-caused disabilities, that he would have been likely to have re-established himself as a taxi driver between February 1994 and the date of his death in December 1998.

The Tribunal concluded that the type of work undertaken by the veteran was that of a taxi owner-driver. While he had the option of leasing his taxi or employing a driver, he did not undertake this form of remunerative work. Accordingly, the issue of whether leasing his taxi or employing a driver constituted "remunerative work" as defined in s 5Q(1) of the *VE Act* did not arise for consideration.

Appeal grounds

The applicant submitted that the ability to lease a taxi or employ a driver was part of the "remunerative work" that the veteran had engaged in before he was required by his war-caused disease to give up his licence. It was submitted that the Tribunal had erred in law in finding that it was unlikely that he would have recommenced driving a taxi in February 1994. As the Tribunal had found that an owner/driver could lease or employ another driver under appropriate circumstances, the veteran was entitled to a pension at the Special rate. It was also submitted that the Tribunal had disregarded s 119(1)(g) in failing to consider the effect of his war-caused disease on his ability to lease his taxi licence.

Court's conclusions

Goldberg J said that the critical issue before the Tribunal was the nature of the remunerative work that the veteran had undertaken. Section 24(1)(c) required the Tribunal to make a finding as to the nature of the remunerative work which

the veteran was undertaking at the relevant time. He had only ever undertaken the work of an owner/driver of a taxi and had never leased his taxi licence or employed another person to drive the taxi. Section 119(1)(g) did not allow the Tribunal to disregard section 24(1)(c). Further, s 119(1)(g) did not allow the Tribunal to blur or eliminate the distinction between the work of owning and driving a taxi on the one hand, and leasing the taxi licence or employing a person to drive the taxi on the other hand.

The Tribunal was correct in law in drawing a distinction between the remunerative work of a taxi owner-driver and that of leasing a taxi licence or employing a person to drive a taxi. The Tribunal was also correct in law in concluding that, although leasing the taxi licence or employing a driver were options open to the veteran, they did not constitute a form of remunerative work he had undertaken or in which he had been engaged as he did not take up either of those options at any time.

Formal decision

The Court dismissed the appeal.

Repatriation Commission v Walters

Cooper J

FCA 228
13 March 2001

War Widow's pension - death from multiple myeloma - wrong SoP applied by agreement between parties - whether decision could be reviewed

The Repatriation Commission lodged an appeal to the Federal Court against a decision of the Tribunal that the death of Mr Walters from multiple myeloma was war-caused.

Mr Walters served in the RAAF from 1944 to 1948 and this period constituted operational service. There was evidence before the Tribunal that during his service in the RAAF, his duties included painting. After discharge, he worked as a cabinet maker/carpenter which included work as a painter. The Tribunal found that his death was the result of a disease contracted because of changes in his environment "following logically upon" his having rendered eligible war service.

Statements of Principles

By agreement between the parties, the Tribunal determined the application in terms of Statement of Principles No 134 of 1996 in respect of multiple myeloma which was then in force. The SoP in force when the Commission refused the claim was No 1 of 1995.

SoP No 1 of 1995 included as a factor:

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

SoP No 134 of 1996 included as a factor:

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

Wrong SoP applied

Cooper J said that the effect of the Full Court's decision in *Repatriation Commission v Keeley* (2000) 16 *VeRBosity* 40 was that the review of

the decision refusing pension fell to be determined in accordance with SoP No 1 of 1995, and not the later SoP Instrument No 134 of 1996 which revoked and replaced the earlier 1995 SoP.

In this instance, the difference between the two SoPs was significant and failure by the Tribunal to apply the correct SoP was an error of law which could have affected the outcome of the case.

Formal decision

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

[Ed: The Tribunal's decision to apply the later SoP was made prior to several Federal Court decisions including *Keeley* as to the correct SoP to be applied in review proceedings.]

McLean v Repatriation Commission

Tamberlin J

FCA 243
13 March 2001

War Widow's pension - tree felling accident - whether reasonable hypothesis that death war-caused

Mrs McLean lodged an appeal to the Federal Court against the decision of the Tribunal that her late husband's death in 1953 was not war-caused. (See 16 *VeRBosity* 37)

Mr McLean was killed after being struck by a large rock which became dislodged by a falling tree and rolled down the hillside to where he was standing. At the time of the accident, he was in charge of a group of men felling trees near Mullumbimby in northern NSW.

Mr McLean had rendered operational service during World War 2 and the claim was required to be considered in terms of the "reasonable hypothesis" standard of proof in ss 120(1) and (3) of the *VE Act.*

The hypothesis put forward at the Tribunal was that Mr McLean suffered from a congenital condition of sacralisation of the fifth lumbar segment on the right side; he had reported incidents involving a bad back whilst on service; before his service, he had not suffered any restriction of movement because of back pain but, after service, he did; his restriction of movement meant that he was unable to move away from the path of the falling rock and died as a result of being struck by the rock.

The Tribunal concluded that the hypothesis put forward was too tenuous and was therefore not reasonable.

Appeal grounds

Mrs McLean's counsel submitted that the Tribunal had erred in law in deciding that the hypothesis was not reasonable. Counsel submitted that the Tribunal had failed to follow the four step process referred to in *Repatriation Commission v Deledio* (1998) 27 AAR 144. The Tribunal had also wrongly questioned whether there was **evidence** in support of every single part of the sequence of events that had been hypothesised.

Counsel referred to the decision of the High Court in *Byrnes v Repatriation Commission* (1993) 177 CLR 564 that a hypothesis may be reasonable even though each element is not supported by material before the Tribunal.

Counsel also submitted that when considering whether a hypothesis had been raised, the Tribunal had wrongly embarked on a fact finding exercise. It had also improperly placed a burden of proof on the applicant.

Court's conclusions

Tamberlin J said that to the extent that the Tribunal decided that no hypothesis was raised, it had applied too high a standard. However, its conclusion that

the hypothesis was too tenuous, and so was unreasonable, was open to it. He said:

> "There are critical gaps in the material before the AAT, in the form of the observations of the parties present as to the circumstances of the veteran in relation to the dislodgment of the rock and path taken by it and in respect of the position of the veteran at the time of the impact which caused his death. There were no observations as to the restrictions in his movement, or as to his lack of movement at the time immediately before he was struck by the rock. In particular there is no indication that he was aware of the dislodgment of the rock or as to what course of action he adopted. No one observed him at the critical time. There is nothing to point to the fact that the mobility or lack of mobility of the veteran played any role in the death. The position might be otherwise if there had been some material as to impaired mobility of the deceased at the time, but there is no such material. The situation was one of great urgency and immediately impending danger which was perceived to be the felling of the tree. The dislodgment of the rock was a very random act and there is no indication that it was or could have been anticipated or as to what pattern of movement might have flowed if a warning was given as to the path of the rock. There is simply a lack of material on this central element on the hypothesis."

Tamberlin J held that the Tribunal had not erred in law in concluding that the hypothesis was not reasonable. Further, the Tribunal had not engaged in a fact finding exercise nor placed any onus on the applicant.

Formal decision

The Court dismissed Mrs McLean's appeal.

[Ed: Mrs McLean has lodged an appeal to the Full Federal Court.]

Rose v Repatriation Commission

Weinberg J

FCA 245
15 March 2001

Special rate - claim for lumbar spondylosis - whether 1994 amendments applicable - whether AAT gave adequate reasons for decision

Mr Rose appealed to the Federal Court against a decision of the Tribunal that he was not eligible for Special rate pension in respect of his war-caused disabilities. The essential issue before the Court was whether he was required to satisfy the more stringent criteria for Intermediate and Special rate introduced in 1994 for veterans over the age of 65 years. If he had to satisfy those requirements, he could not qualify in terms of s 24(2A) as he had ceased his "last paid work" before the age of 65 years.

The background to this matter was that Mr Rose lodged a claim for acceptance of lumbar spondylosis as war-caused on 29 May 1995. He was then aged 73 years. The Tribunal decided that his lumbar spondylosis was war-caused and proceeded to assess the rate of pension payable for this and other war-caused conditions. The Tribunal decided that he was not eligible for the Intermediate and Special rate of pension. He continued to receive the Extreme Disablement Adjustment.

There was evidence before the Tribunal that Mr Rose had worked selling fruit and vegetables until 1982 when he ceased work aged 60 years. He was forced to cease work because of a painful back, hip and knee. These conditions were all subsequently accepted as war-caused.

Submissions

Mr Rose's counsel submitted that the Tribunal was wrong in law in determining that he was not eligible for the Special rate. Counsel contended that it was open to the AAT to find that Mr Rose may have been eligible for the Special rate of pension up to 1 June 1994, without taking into account lumbar spondylosis, under the previous s 24, which, he contended, was the applicable provision. He conceded that the evidence indicated that the major factor in preventing Mr Rose from continuing his employment was the lumbar spondylosis. Consequently, it would have been difficult for him to satisfy the requirements, even under the previous s 24, without the acceptance of lumbar spondylosis as war-caused.

Counsel also submitted that the amended s 24 was not applicable to Mr Rose's claim because there had been an earlier challenge brought by him in 1991 in respect of the claim for aortic stenosis which was ongoing. The fact that this claim remained in contention after 1994 meant that the claim must be assessed in the light of the old s 24 of the *VE Act*. The only matter that did not predate 1 June 1994 was the claim for lumbar spondylosis which was lodged on 29 May 1995. That condition had been claimed before, prior to 1 June 1994, but had been rejected. Counsel submitted that once a claim has been brought, and whether or not the claim had been determined adversely prior to that date, it still relevantly counts as a claim for the purpose of considering the cut-off date.

Counsel submitted that the Tribunal had failed to take account of s 119 of the *VE Act* which provides that the Commission is not bound to act in a formal manner and must act "according to substantial justice and the substantial merits of the case, without regard to legal form and technicalities". Finally, it was submitted that the Tribunal had failed to provide adequate reasons for its decision.

The Repatriation Commission submitted that the Tribunal was bound to apply the 1994 amendments relating to veterans over the age of 65 years and that Mr Rose could not succeed in terms of s 24(2A) as he had ceased working at the age of 60. Also, he could not meet either s 23(1) or s 24(1) as they stood before 1 June 1994, unless lumbar spondylosis was a war-caused injury. Mr Rose said that lumbar spondylosis was a recurring problem and "the major thing" apart from age, which caused him to stop work. Sections 24(1)(c) and 24(2)(a)(i) and (ii) of the *VE Act* would prevent Mr Rose qualifying for the Special rate of pension until lumbar spondylosis was accepted as war-caused. Once lumbar spondylosis became an accepted disability (by reason of the AAT's decision), it could be taken into account. However, lumbar spondylosis was accepted only because of the claim lodged on 29 May 1995. Consequently, ss 23(2A) and 24(2A) controlled Mr Rose's application for the Special rate and he could not qualify as he ceased undertaking his last paid work before he turned 65.

No error of law

Weinberg J rejected Mr Rose's submission that the Tribunal had erred in law in finding that he was ineligible for the Intermediate and Special rate. Weinberg J said:

> "It is clear that the intention of the 1994 amendments was to restrict the

> number of veterans eligible for the intermediate or special rate of pension. It seems to me that the construction for which [Mr Rose's counsel] contended in the present case does not accord with that intention. He submitted that Mr Rose's prior claim for lumbar spondylosis created a continuum with the later, post-June 1994, claim, despite the fact that the earlier claim had been rejected, and no application had been brought to review that decision. He contended that having lodged this earlier claim, the legislation to be applied when assessing his application for the special rate was the pre-June 1994 version of s 24. In my view this contention cannot be sustained. In order to do so one would need to read into the legislation words which simply are not there, and which would be at odds with the intention of the 1994 amendments."

Weinberg J followed the approach adopted by Mathews J in *Re Clements and Repatriation Commission* (1997) (13 *VeRBosity* 49) and found that the 1994 amendments applied to the claim made by Mr Rose in May 1995. His Honour also rejected the submission that the Tribunal had failed to provide adequate reasons for its decision.

Formal decision

The Court dismissed Mr Rose's appeal.

Repatriation Commission v Leighton

Weinberg J

FCA 246
15 March 2001

War Widow's pension - death from myelofibrosis - whether AAT assessed application by reference to all material before it

The Repatriation Commission appealed to the Federal Court against a decision of the Tribunal that the death of Dr Leighton was war-caused. He died on 21 February 1997, at age 74. The cause of his death was myelofibrosis, a condition in which the bone marrow is replaced with fibrous tissue, and is a precursor to leukaemia.

Dr Leighton rendered operational service with the Australian Army in New Guinea and the South West Pacific during World War 2. His service included 12 months as a member of the crew of an ambulance boat in 1945. Mrs Leighton gave evidence that her husband commenced smoking cigarettes during his war service and that he was smoking about 20 cigarettes a day in 1949 when she first met him. As a member of the ambulance boat crew, he was exposed to exhaust fumes from the boat's engines and those fumes contained benzene.

As there was no Statement of Principles issued by the RMA in respect of myelofibrosis, the question of whether a reasonable hypothesis was raised was to be determined solely by reference to ss 120(1) and (3) of the *VE Act*. Those provisions have been the subject of extensive consideration by the Courts, in particular in *East, Bushell, Byrnes* and *Bey.*

Benzene inhalation

The hypothesis relied on by Mrs Leighton was that during war service, her late husband was exposed to inhalation of

benzene which was a causal factor in the development of myelofibrosis. It was claimed that benzene inhalation resulted from cigarette smoking and also from inhalation of petrol fumes while he was serving on the ambulance boat in 1945.

In relation to the smoking hypothesis, the Tribunal found that the medical evidence did not raise a reasonable hypothesis. In relation to inhalation of benzene, three of the expert witnesses said that "significant" or "substantial" levels of exposure were required to raise a reasonable hypothesis between benzene and myelofibrosis. Only Dr Parkin advanced the opinion that a low exposure to benzene (such as that involved in Dr Leighton's circumstances) could be significant. This evidence was not supported by any studies or other medical or scientific material.

The Tribunal concluded, by majority, that notwithstanding that Dr Parkin's hypothesis "lacked credibility" in terms of the other medical evidence, it was obliged to find that his hypothesis was reasonable within s 120(3). It then proceeded to s 120(1) and found that it could not be satisfied beyond reasonable doubt that the necessary factual foundation for the hypothesis did not exist. The Tribunal therefore decided that the veteran's death was war-caused.

Commission's submissions

The Commission contended that the AAT erred in law in failing to determine whether the hypothesis advanced to support Mrs Leighton's claim was reasonable, in light of the opposing material before the AAT, and in assuming that the evidence of a medical witness supporting a hypothesis must be accepted for the purposes of s 120(3) of the *VE Act* unless the AAT could find that the medical witness was not an appropriately qualified specialist eminent in his field.

The Commission contended that the AAT erred in law in failing to evaluate the reasoning advanced in support of the hypothesis by reference to the opposing material. It could not presume a medical witness to be appropriately qualified, let alone eminent, in the relevant field.

Court's conclusions

Weinberg J generally accepted the Commission's submission as to the correct approach to be followed by the Tribunal. His Honour did not accept, however, that the Tribunal erred in law in finding that the late veteran's death was war-caused. In the Court's view, the Tribunal correctly applied the general principles derived from previous Court decisions in *East, Bushell, Byrnes* and *Bey.* The majority of the Tribunal clearly had some reservations about Dr Parkin's evidence. However, upon a fair reading of the reasons for decision, it was not prepared to characterise that evidence as being "obviously fanciful, impossible, incredible or not tenable or too remote or too tenuous" in terms of *East's* case. It considered that the evidence gave rise to a reasonable hypothesis which could not be excluded beyond reasonable doubt. This conclusion was reasonably open to the Tribunal on the material before it.

Formal decision

The Court dismissed the Commission's appeal.

Arnott v Repatriation Commission

Spender, Marshall & Merkel JJ

FCA 262
16 March 2001

Lumbar spondylosis - Statement of Principles - acute symptoms and signs of pain

Mr Arnott appealed to the Full Court against the decision of Sundberg J, dismissing his earlier appeal against a decision of the Tribunal that his lumbar spondylosis was not war-caused. (See 16 *VeRBosity* 84).

Mr Arnott claimed that his back condition was related to three incidents during his operational service in Vietnam. The first was when he tripped over a wire while wearing a heavy pack. The second was when he stepped into a hole while on patrol which caused severe ankle injury. The third was when he was pulled out of a swampy area which caused his back to be wrenched.

Sundberg J at first instance held that although the Tribunal had not applied the correct SoP in accordance with the Full Court's decision in *Repatriation Commission v Keeley*, the Tribunal's decision would have been the same even if it had been directed to the correct SoP. It was therefore pointless to remit the matter to the Tribunal for rehearing.

Sundberg J also rejected a submission that the Tribunal had erred in law in interpreting "acute" pain as meaning "sudden and severe".

Which SoP to apply?

The SoP in force at the date of the Commission's decision was Instrument No 105 of 1995. The SoP in force at the date of the decision of the Tribunal was No 27 of 1999.

At the Tribunal hearing, both parties agreed that the Tribunal was bound to apply the 1999 SoP. Subsequently, the Full Court in *Repatriation Commission v Keeley* (2000) held that, subject to a contrary intention, it is to be presumed that the SoP to be applied upon review is that in force at the time of the Commission's determination which, in this case, was the 1995 SoP. The Full Court concluded that, as rights accrue under an SoP, where the SoP applicable at the date of the Commission's decision is more beneficial than the SoP that replaces it, the earlier SoP is to be applied unless a contrary intention is clearly disclosed. (See 16 *VeRBosity* 40)

In the present case, Merkel J (with whom Spender and Marshall JJ agreed) said:

> "It seems to be implicit, if not explicit, in the approach of the Full Court in *Keeley* that a contrary intention *might* be found if the terms of a later SoP are more beneficial to a claimant than the terms of the SoP which it replaced. Of course, the contrary intention must be discerned from all of the terms of the later SoP and not just particular aspects of it."

Merkel J examined the terms of the 1995 SoP and the 1999 SoP and said that if required to determine which SoP was to be applied by the Tribunal in this case, he "would have some difficulty in doing so". However, in this case it was unnecessary to make such a determination as the critical issue was whether the AAT had erred in law in determining that Mr Arnott had not suffered "acute symptoms and signs of pain" for at least seven days, which had to be satisfied under both SoPs.

Acute symptoms of pain

Mr Arnott submitted that the Tribunal, in finding that the hypothesis did not fit the template laid down in the 1999 SoP, had erred in law. The Tribunal had dealt with proof and disproof of facts when

considering whether the hypothesis was reasonable, contrary to the approach outlined by the Full Court in *Repatriation Commission v Deledio*. (1998) (14 *VeRBosity* 45)

The Full Court found that the Tribunal had erred in law in considering Mr Arnott's application. It appeared to engage in a fact finding task in relation to the three incidents, in order to determine whether a reasonable hypothesis was raised by the material. However, in applying the third step in *Deledio*, namely of forming an opinion as to whether the hypothesis raised was reasonable, the AAT was required to determine whether the "particular claim" fits the "template" laid down in the SoP. As was stated by the Full Court in *Deledio*, the question at that stage is whether the *facts raised by the claimant* give rise to a reasonable hypothesis, with proof of the relevant facts not being in issue at that stage. Thus, in evaluating the material before it and making findings of fact on the basis of that material, the AAT was not confining itself to the facts raised by the claimant but, rather, was putting proof of facts in issue at that stage rather than at the next stage, the fourth step in *Deledio*. The AAT erred in law in doing so.

Mr Arnott also submitted that the Tribunal had erred in interpreting "acute" pain as meaning "sudden and severe".

The Full Court agreed that as the AAT had only addressed the question of whether the veteran's pain was "sudden" and "severe", it had failed to address the question of whether the pain was "acute", as defined by Finn J in *Harris v Repatriation Commission* (2000) (16 *VeRBosity* 75). Also, the AAT erred in law in incorrectly requiring that, for a pain to be "acute" it must be "severe".

Formal decision

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

Gorton v Repatriation Commission

Stone J

FCA 286
21 March 2001

Hypertension - whether to apply SoP in force at time of AAT's decision - Keeley distinguished

Mr Gorton appealed to the Federal Court against a decision of the Tribunal that his hypertension with left ventricular hypertrophy was not war-caused. He had operational service in Korean waters in 1954 in *HMAS Arunta.* He claimed that his hypertension resulted from alcohol abuse, which in turn was caused by stress experienced during his Navy service.

Mr Gorton told the Tribunal that when the *Arunta* was in the war zone, he heard noises that he thought were bullets hitting the ship. He was told that the ship was being attacked and that he should be at his action station. He panicked and was later abused by a leading seaman and was accused of being a coward. He started drinking heavily to cope with stress and continued drinking after his discharge from the RAN.

It was agreed between the parties at the AAT that the application was to be determined in accordance with SoP No 83 of 1995 concerning hypertension. The AAT found that the hypothesis relating to stress on service was not reasonable as there was no objective stressor. It also found that the veteran did not satisfy the requirement for "daily" consumption of alcohol prior to developing hypertension. His evidence was that after leaving the RAN, he drank "just about daily" until he was drunk.

Appeal grounds

Mr Gorton's counsel submitted that the AAT had erred in finding that the

hypothesis raised was not reasonable, in particular by finding that:

1. the only Instrument that could be applied was SoP No 83 of 1995, and
2. clause 1(b) of SoP No 83 of 1995 required consumption of alcohol literally every day for an unspecified period.

Errors of law

Stone J was referred to the decision in *Repatriation Commission v Keeley* (16 *VeRBosity* 40) in which the Full Court held that in circumstances where the SoP in force at the time of the Commission's decision was revoked and replaced by a less favourable SoP, the applicant before the AAT had an "accrued right" to have her claim determined under the former SoP.

Stone J assumed for the purposes of the present case that the situation here was the opposite of that considered by the Court in *Keeley* - that is, that the later Statement of Principles was more favourable. Her Honour held that in applying the former SoP in this case, the AAT had erred in law.

Stone J distinguished *Keeley* as not governing the situation where the current SoP is more favourable than the former SoP. Her Honour said that the correct approach is to apply the SoP in force at the time of the review unless the former SoP is more favourable to the applicant:

> "In my opinion, it is not necessary where the later Statement of Principles is more beneficial, to rely on the reasoning that led the Court in *Keeley* to lean towards applying the earlier (and more beneficial) Statement of Principles. In particular, the decision in *Keeley* was based, in part, on the view that, with beneficial legislation such as the Act, a construction of substantive provisions least likely to cause unfairness is to be preferred. **The decision in *Keeley* is not authority for the principle that, when choosing among current or revoked statements, the revoked statement is the one that applies.** The Act provides in s 196B(7) and (8) for the continual updating of Statements of Principle so that current statements embody sound medical-scientific evidence against which claims are assessed. In providing for the Board to review decisions of the Repatriation Commission on the merits taking into account not only material considered by the Commission but also additional evidence, the Act evinces an intention for the claim to be assessed in the light of all available evidence, including medico-legal evidence as embodied in the most recent Statement of Principles; ss 138 and 139. The AAT also has the duty to review decisions of the Board on the merits and conduct a complete rehearing of the claim. As Bowen CJ and Deane J commented in *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577 at 589 in relation to appeals to the AAT:
>
> > 'The question for the determination of the Tribunal is not whether the decision which the decision-maker made was the correct or preferable one on the material before him. The question for the determination of the Tribunal is whether that decision was the correct or preferable one on the material before the Tribunal.'

The decision of the Court in *Keeley* can thus be seen as an exception to this position, dictated by the beneficial nature of the legislature to which the Court referred. The exception applies to preserve the benefit of an existing entitlement to be assessed in the context of a more

> favourable Statement of Principles. **In my opinion, the AAT is obliged to consider the applicant's claim in the context of the Statement of Principles No 25 of 1999 unless Instrument 83 [the earlier SoP] is more favourable.** If the latter position is the case, then the applicant's claim must be considered in the context of Instrument 83." [emphasis added]

In relation to the second main ground of appeal concerning the meaning of "daily consumption of alcohol" in SoP No 83, Stone J held that the AAT had also erred in interpreting the word "daily" as meaning "every day". She said:

> "I do not accept that the phrase, 'daily consumption of alcohol' in Instrument 83 could only apply to a veteran who drank every day without exception. Even if that meaning were to be accepted, there would still be the problem of the period over which the 'daily' consumption had to be proved. It is neither necessary nor possible to give here a precise meaning to the term. However, for the purposes of formulating a hypothesis to be tested against the Statement of Principles in Instrument 83, I am satisfied that the qualification, 'just about daily', is sufficient for the hypothetical facts to fit the description of daily consumption in clause 1(b) of Instrument 83."

Formal decision

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

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

Budworth v Repatriation Commission

Madgwick J

FCA 317
29 March 2001

Standard of proof as to diagnosis and causation - merits review proceedings - duty of AAT to consider whole case

Mr Budworth appealed to the Federal Court against a decision of the Tribunal which affirmed a decision of the Repatriation Commission that he was not suffering from post traumatic stress disorder. In 1989, the Commission had determined that his PTSD with chronic pain syndrome was war-caused. In 1996, the Commission exercised its review powers under s 31(6) and (7) of the *VE Act* and revoked its decision concerning PTSD. This was affirmed on review by the VRB and the Tribunal. (See 16 *VeRBosity* 5)

The background to this matter is that Mr Budworth served in the RAN and visited Vietnam on five occasions 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 Vietnam waters. The claim was originally granted by the Commission based on his account of an incident in which a body floating next to his ship had exploded. He 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 remembered being particularly frightened about being on the upper deck as he had been warned of possible snipers. He

accepted that the "exploding body" incident did not actually occur, although he had earlier described the incident to interviewing psychiatrists as if it had in fact occurred.

On appeal, Madgwick J held that the Tribunal had made several errors of law in reviewing the cancellation of the veteran's entitlement in respect of PTSD.

Discretion not to backdate reduction

Mr Budworth submitted that having affirmed the decision cancelling his entitlement in respect of PTSD, the Tribunal had failed to exercise its discretion as to whether to backdate the reduction in the rate of his pension.

Madgwick J agreed that the failure of the Tribunal to consider this issue involved an error of law.

Standard of proof

Mr Budworth submitted that the Tribunal had applied an incorrect standard of proof in determining whether or not he had a disease for which he was entitled to receive a pension. He contended that the Tribunal erroneously applied the civil standard of proof prescribed in s 120(4) of the *VE Act*, rather than the "reverse criminal" standard in s 120(1).

Mr Budworth submitted that the issue which must be determined according to the civil standard is whether or not *a* disease exists. However, if any issue relating to diagnosis is dependant on the hypothesis as to its causation, then following *Repatriation Commission v Cooke*, that must be determined on the reverse criminal standard.

The Commission submitted that *Cooke* does not stand for the proposition that the balance of probabilities test should apply merely to the determination of whether the applicant suffers a disease generally. What must be determined according to the civil standard is the initial question of whether a disease exists and this question properly is whether *the* disease claimed exists, not whether there is at large *a* disease of the kind claimed.

Madgwick J agreed that the Tribunal had applied an incorrect standard of proof and said:

> "The definition in s 5D of the Act of 'disease' refers to *any* physical or mental ailment, disorder, defect or morbid condition, and it is clear that the first question that the AAT needs to ask is whether or not the applicant suffers from a disease. It is trite that the Act is beneficial legislation and should be construed accordingly. When the threshold requirement is that the veteran be suffering from a disease, this should not be interpreted to mean necessarily a disease having a particular medical description which may be claimed to exist. Claimant veterans are not necessarily insightful, articulate, legally advised, medically advised or, in either respect, well advised. Veterans are not to be defeated because they or their advisors inadequately or incorrectly describe their diseases, whether or not they or their advisors resort to medical labels. A claimant whose advisors offer one diagnosis is not to be defeated if the decision-maker prefers another, provided that there is a disease and there is some reasonable basis for thinking that it is war-caused."

Madgwick J noted that it is sometimes difficult to determine whether a matter is one of diagnosis or of causation. Where questions of causation are themselves bound up in the question of diagnosis of a particular disease, the reverse criminal standard should be applied if on the balance of probabilities the decision-maker finds that *a* disease exists. In this case, the Tribunal accepted that the veteran had some sort of mental

disorder. Having found that he suffered some sort of mental ailment, it should have determined issues of causation on the "reverse criminal" standard in s 120(1).

Duty to consider other diseases

Mr Budworth submitted that having found that he did not suffer from PTSD, the Tribunal was under a duty to consider an alternative diagnosis for his symptoms.

Madgwick J agreed that the failure of the Tribunal to address an alternative diagnosis for the applicant's symptoms was legally erroneous. There was ample evidence in this case that the veteran had some kind of mental disorder that could be regarded as a disease. If there is material before a decision-maker which positively suggests that a veteran may be suffering from a disease, then the decision-maker has a duty to determine whether the veteran does have a disease. The manner in which the parties conduct their cases does not relieve the Tribunal of its duty in this regard.

Use of DSM-IV

Madgwick J rejected a submission by Mr Budworth that the Tribunal had erred in its use of the *Diagnostic and Statistical Manual of Mental Disorders 4th Edition* (DSM-IV). Madgwick J said that the Tribunal did not apply DSM-IV in a mechanical fashion as alleged. It took the view that it was an authoritative manual but was not a legal instrument. Also, the Tribunal had not adopted an interpretation of DSM-IV which it was incapable of bearing.

Madgwick J concluded on this point:

> "The AAT noted that the type of stressors that the DSM-IV had in mind included '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 AAT noted that Dr Spragg had referred to the trauma of the Holocaust, that of prisoners of war working on the Burma-Thailand Railway and prisoners of war in captivity in Changi as examples of extreme traumatic stressors, with which the AAT agreed. Dr Dent had also cited such events as examples of events that could give rise to PTSD. However, read fairly and as a whole, it cannot, in my view, be said that the AAT interpreted DSM-IV as providing that only such extremely traumatic events could give rise to PTSD. In my opinion, it was open for the AAT to interpret an 'intense fear' as requiring a high level of reaction and the AAT did no more than this."

Formal decision

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

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

Statements of Principles issued by the Repatriation Medical Authority

March – May 2001

Number of Instrument	Description of Instrument
17 of 2001	Revocation of Statements of Principles (Instrument No 378 of 1995 concerning Alzheimer's disease and death Alzheimer's disease), and Determination of Statement of Principles under subsection 196B(2) concerning Alzheimer's disease and death from Alzheimer's disease.
18 of 2001	Revocation of Statements of Principles (Instrument No 379 of 1995 concerning Alzheimer's disease and death Alzheimer's disease), and Determination of Statement of Principles under subsection 196B(3) concerning Alzheimer's disease and death from Alzheimer's disease.
19 of 2001	Revocation of Statement of Principles (Instrument No 71 of 1994 concerning porphyria cutanea tarda and death from porphyria cutanea tarda), and Determination of Statement of Principles under subsection 196B(2) concerning porphyria cutanea tarda and death from porphyria cutanea tarda.
20 of 2001	Revocation of Statement of Principles (Instrument No 72 of 1994 concerning porphyria cutanea tarda and death from porphyria cutanea tarda), and Determination of Statement of Principles under subsection 196B(3) concerning porphyria cutanea tarda and death from porphyria cutanea tarda.
21 of 2001	Revocation of Statement of Principles (Instrument No 144 of 1996 and Instrument No 179 of 1996 concerning inflammatory bowel disease and death from concerning inflammatory bowel disease), and Determination of Statement of Principles under subsection 196B(2) concerning inflammatory bowel disease and death from concerning inflammatory bowel disease.
22 of 2001	Revocation of Statement of Principles (Instrument No 145 of 1996 and Instrument No 180 of 1996 concerning inflammatory bowel disease and death from concerning inflammatory bowel disease), and Determination of Statement of Principles under subsection 196B(3) concerning inflammatory bowel disease and death from concerning inflammatory bowel disease.
23 of 2001	Revocation of Statements of Principles (Instrument No 49 of 1998 concerning soft tissue sarcoma and death from soft tissue sarcoma), and Determination of Statement of Principles under subsection 196B(2) concerning soft tissue sarcoma and death from soft tissue sarcoma

24 of 2001	Revocation of Statements of Principles (Instrument No 50 of 1998 concerning soft tissue sarcoma and death from soft tissue sarcoma), and Determination of Statement of Principles under subsection 196B(3) concerning soft tissue sarcoma and death from soft tissue sarcoma
25 of 2001	Revocation of Statements of Principles (Instrument No 7 of 2001 concerning tinnitus and death from tinnitus), and Determination of Statement of Principles under subsection 196B(2) concerning tinnitus and death from tinnitus
26 of 2001	Revocation of Statements of Principles (Instrument No 8 of 2001 concerning tinnitus and death from tinnitus), and Determination of Statement of Principles under subsection 196B(3) concerning tinnitus and death from tinnitus

Copies of these instruments can be obtained from:

- **Repatriation Medical Authority, GPO Box 1014, Brisbane Qld 4001**
- **Repatriation Medical Authority, 4th Floor 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 9 MAY 2001

Description of disease or injury	Factors under investigation	Date gazetted
Acquired cataract [Instrument Nos 146/96 & 147/96]	Required level of exposure to solar radiation	23-06-99
Acquired pes planus [Instrument Nos 302/95 & 303/95]	- - -	04-10-00
Acute lymphoid leukaemia [Instrument Nos 77/95 & 78/95]	- - -	16-08-00
Adenocarcinoma of the kidney [Instrument Nos 107/96 & 108/96]	- - -	10-01-01
Asthma [Instrument Nos 59/96 & 60/96 as amended by Nos 75/97 & 76/97]	- - -	03-11-99
Atherosclerotic peripheral vascular disease [Instrument Nos 87/95 & 88/95]	- - -	25-10-00
Bronchiectasis [Instrument Nos 35/97 & 36/97]	- - -	17-11-99
Carotid artery disease [Instrument Nos 346/97 & 347/97]	- - -	28-02-01
Carpal tunnel syndrome [Instrument Nos 71/97 & 72/97]	- - -	03-11-99
Chondromalacia patellae [Instrument Nos 320/95 & 321/95]	- - -	21-06-00
Chronic gastritis [Instrument Nos 60/99 & 61/99]	- - -	04-10-00
Chronic lymphoid leukaemia [Instrument Nos 79/95 & 80/95]	- - -	19-07-00
Chronic pancreatitis [Instrument Nos 47/97 & 48/97]	- - -	01-03-00
Chronic solar skin damage [Instrument Nos 33/96 & 34/96]	Required level of exposure to solar radiation	23-06-99
Congenital pes planus [Instrument Nos 304/95 & 305/95]	- - -	04-10-00

Dengue fever [Instrument Nos 139/95 & 140/95]	- - -	01-03-00
Giant cell arteritis [Instrument Nos 85/96 & 86/96]	- - -	22-03-00
Gulf War syndrome	- - -	17-11-99
Hypertension [Instrument Nos 25/99 & 26/99]	Sleep apnoea	18-08-99
Hypertension [Instrument Nos 25/99 & 26/99]	- - -	10-05-00
Inflammatory periodontal disease [Instrument Nos 368/95 & 369/95]	- - -	25-10-00
Lumbar spondylosis [Instrument Nos 27/99 & 28/99]	- - -	04-10-00
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 anus	- - -	09-05-01
Malignant neoplasm of the brain [Instrument Nos 40/99 & 41/99]	- - -	10-01-01
Malignant neoplasm of the colon [Instrument Nos 23/96 & 24/96 as amended by Nos 5/98 & 6/98]	- - -	10-01-01
Malignant neoplasm of the lip epithelium [Instrument Nos 105/96 & 106/96]	Required level of exposure to solar radiation	23-06-99
Malignant neoplasm of the lung [Instrument Nos 29/96 & 30/96 as amended by Nos 149/96 & 150/96]	Exposure to herbicides used in Vietnam, namely 2,4-D, 2,4,5-T, cacodylic acid or picloram	23-06-99
Meniere's disease [Instrument Nos 27/97 & 28/97]	- - -	10-05-00
Mesangial IGA glomerulonephritis	- - -	17-11-99
Motor neurone disease [Instrument Nos 245/95 & 246/95]	- - -	18-08-99
Multiple chemical sensitivity	- - -	21-06-00
Multiple sclerosis [Instrument Nos 170/95 & 171/95]	- - -	22-11-00

Neuropathy	- - -	03-11-99
Non-melanotic malignant neoplasm of the skin [Instrument Nos 45/98 & 46/98]	Required level of exposure to solar radiation	23-06-99
Obesity	- - -	28-02-01
Open-angle glaucoma [Instrument Nos 13/99 & 14/99]	- - -	09-05-01
Osteoarthrosis [Instrument Nos 41/98 & 42/98 as amended by Nos 19/99 & 20/99]	- - -	18-08-99
Osteoporosis [Instrument Nos 61/97 & 62/97]	- - -	25-10-00
Otitic barotrauma [Instrument Nos 17/96 & 18/96]	- - -	10-01-01
Otitis externa [Instrument Nos 292/95 & 293/95]	- - -	04-10-00
Psoriasis [Instrument Nos 21/98 & 22/98]	- - -	22-03-00
Pterygium [Instrument Nos 60/98 & 61/98]	Required level of exposure to solar radiation	23-06-99
Sensorineural hearing loss [Instrument Nos 45/96 & 46/96 as amended by Nos 1/98 & 2/98]	- - -	25-10-00

Administrative Appeals Tribunal decisions – January to March 2001

Application

dismissal by Veterans' Review Board
- no response
  Hunt, D W 22 Mar 2001

Attendant allowance

Campbell, N 08 Feb 2001

Cardiovascular disease

atherosclerotic peripheral vascular disease
- smoking
  King, B T 24 Jan 2001

cardiomyopathy
- alcohol consumption
  Somerfield, F T 31 Jan 2001

hypertension
- alcohol dependence
  Robson, D 23 Feb 2001
  Kamp, W J 12 Mar 2001
- obesity
  Gosbee, F G 26 Feb 2001
- psychoactive substance abuse
  Davies, P 30 Mar 2001

ischaemic heart disease
- obesity
  Devlin, B K 02 Mar 2001
- smoking
  Duckworth, A G 01 Mar 2001
- smoking cessation
  Dodd, A H 23 Jan 2001

ischaemic heart disease & hypertension
- alcohol consumption
  Hehir, E 18 Jan 2001
- salt ingestion
  Lucas, B 29 Jan 2001
  Bradley, V 27 Mar 2001

ventricular extrasystole
- congenital
  Mason, J 19 Mar 2001

Death

alcohol dependence or abuse
- experiencing a severe stressor
  Molyneux, F 08 Jan 2001

carcinoma of colon
- exposure to herbicides & dapsone
  Cornish, R 23 Feb 2001

cardiomyopathy
- alcohol consumption
  Gaulton, J E 28 Mar 2001

cerebrovascular accident
- alcohol consumption
  Bull, J 02 Feb 2001
  Blake, N A 15 Jan 2001

chronic airways limitation
- smoking
  Perrin, M 22 Jan 2001

fall from water tower
- psychoactive substance abuse - stressful event
  Peters, F A 06 Feb 2001

hairy cell leukaemia
- exposure to electromagnetic radiation
  Haire, B 22 Jan 2001

heart failure
- exposure to volcanic fumes
  Hornibrook, B M 02 Mar 2001

hypertension & ischaemic heart disease
- obesity & alcohol abuse
  Hilton, J 18 Jan 2001

ischaemic heart disease
- hypertension - alcohol consumption
  Doust, J H 08 Feb 2001
- hypertension - stress
  Tinkler, G I 29 Mar 2001
- smoking
  Seward, P I 02 Feb 2001
- whether smoking war-caused
  O'Connor, M I 11 Jan 2001

malignant neoplasm of pancreas
- spraying or decanting DDT
Wilson, N E 23 Feb 2001

metastatic squamous cell carcinoma
- move to Darwin
O'Brien, E M 15 Mar 2001

prostate cancer
- animal fat consumption
Gull, T 12 Feb 2001

Dependant

whether living in a marriage-like relationship
- separated at time of death
Moir, G M 12 Mar 2001

Dermatological disorder

chronic solar skin damage
- solar UV damage factor ratio
Robson, D 23 Feb 2001

dyshidrotic eczema
- stress & exposure to solvents
Godbolt, H P 22 Mar 2001

Diabetes

obesity
Devlin, B K 02 Mar 2001

Entitlement

Statements of Principles
- whether accrued rights & liabilities
Moore, R 07 Mar 2001

Extreme disablement adjustment

lifestyle rating
Deegan, A J 25 Jan 2001
Henderson, A G 19 Feb 2001

Gastrointestinal disorder

gastro-oesophageal reflux disease
- smoking
Knauer, W 05 Feb 2001

gastro-oesophageal reflux disease & hiatus hernia
- alcohol dependence
Robson, D 23 Feb 2001

General rate pension

1998 GARP assessment
Davies, P 30 Mar 2001

Injury and disease

jaw fractures
- fall from window
Hawkins, H W 13 Feb 2001

obesity
- whether a disease
Hilton, J 18 Jan 2001

Jurisdiction

whether AAT application lodged within time
- Commission decision not properly served - posted to PO Box
Bond, A W 26 Mar 2001

Musculoskeletal disorder

internal derangement of the knee
- trauma due to intoxication
Roncevich, J J 16 Mar 2001

Paget's disease of bone
- inability to obtain appropriate clinical management
Campbell, N 08 Feb 2001

Osteoarthrosis

ankle
- gout
Moore, R 07 Mar 2001
- trauma
Duckworth, A G 01 Mar 2001

hip
- trauma
Lucas, B 29 Jan 2001

knee
- malalignment & obesity
Byrne, K L 19 Mar 2001
- trauma
Hawkins, H W 13 Feb 2001
- trauma - jump from helicopter
Robinson, R C 03 Jan 2001

Respiratory disorder

Spinal disorder

Visual disorder

Words and phrases