VeRBosity Volume 19 No. 1

Contents

January - March 2003

Editor's notes

This edition of *VeRBosity* contains reports on two Federal Court decisions relating to veterans' matters handed down in the period from January to March 2003.

One case was an appeal involving a spinal condition. The other relates to a claim for compensation for internment of civilians by the Japanese during World War 2.

This edition includes reports on selected AAT decisions handed down in the period from January to March 2003. Information is also included about Statements of Principles issued recently by the Repatriation Medical Authority and matters currently under formal investigation.

Information was provided in the last edition about the Board's National Case Appraisal Registrar. Applicants or their representatives who want to discuss issues such as eligibility or the application of particular Statements of Principles can contact me for the cost of a local call on 1300 13 55 74.

Robert Kennedy
Editor

General Information

Media Release by the Hon Danna Vale, Minister for Veterans' Affairs and Minister Assisting the Minister for Defence 13 February 2003

RELEASE OF CLARKE REPORT INTO VETERANS' ENTITLEMENTS

The Minister for Veterans' Affairs, Danna Vale, today released the report of the independent Review of Veterans' Entitlements.

The Federal Government delivered on its 2001 election commitment by establishing, in February 2002, an independent committee to examine perceived anomalies in access to veterans' entitlements and the current level of benefits and support for recipients of Veterans' Affairs disability pensions.

"This significant Review, chaired by the Hon John Clarke QC, covered a range of complex issues raised in more than 3000 submissions from ex-service organ-isations, veterans and the community," Mrs Vale said.

In all, the committee made 109 recommendations ranging across areas including eligibility for qualifying service and hazardous service under the *Veterans' Entitlements Act 1986*, access to health care under the Gold Card, eligibility and assistance for widows, and benefits and support for recipients of the special (T&PI) and intermediate rates of veteran disability pension.

"The Report addresses complex matters that will require detailed consideration in the context of broader Government policies and long-standing principles of veteran entitlements," Mrs Vale said.

"However, there are several aspects of the Report that warrant an immediate response.

"Veterans can be assured that the Government does not accept the Report's recommendation that future access to the Gold Card should be subject to means testing.

"The Government also notes the Committee's conclusions that life-time Totally and Permanently Incapacitated (T&PI) disability benefits are adequate when compared with community norms, and that T&PI recipients with qualifying service receive 90 to 115 per cent of Male Total Average Weekly Earnings plus additional benefits.

"The proposals for restructuring those benefits will require careful consideration and further comment from veteran organisations before the Government makes its response."

Mrs Vale said the Government had still to consider its response to the detail of the Report. However, a key factor in shaping the Government's response will be to ensure that the current funding envelope is maintained.

Mrs Vale thanked the Committee for its work in taking submissions and conducting meetings with interested parties across the country in the lead-up to preparing its final Report.

"The Government also appreciates the strong support of the veteran community for the Review. I will continue to seek its feedback on the Committee's recommendations," the Minister said.

The report of the Review of Veterans' Entitlements is available on the Internet at http://www.veteransreview.gov.au

Media Release by the Hon Danna Vale, Minister for Veterans' Affairs and Minister Assisting the Minister for Defence 25 March 2003

MINISTER ACCEPTS FINDINGS OF GULF WAR VETERANS' HEALTH STUDY

A major independent study into the health of veterans of the 1991 Gulf War has found no Gulf War Syndrome.

The study, released today by the Minister for Veterans' Affairs and Minister Assisting the Minister for Defence, Danna Vale, found no evidence of a syndrome unique to those who served in the Gulf. This follows similar findings in major studies in the United States and United Kingdom.

The study also found that the number of deaths and cancers amongst Gulf War veterans was lower than those expected in the general population.

Mrs Vale noted that Defence had already addressed the recommendation for improved psychological and educational support for personnel, particularly pre-deployment.

The study found that Gulf War veterans were more likely to report physical symptoms and were at greater risk of developing psychological disorders, including post-traumatic stress disorder and anxiety disorders, and of substance abuse.

"In the decade since the Gulf War the Australian Defence Force has introduced strategies to help prevent, identify and treat psychological disorders, particularly through the ADF Mental Health Strategy, launched in 2002," she said.

"Greater emphasis is also being given to educating personnel preparing to deploy about chemical and biological weapons to improve their understanding and minimise the fear of uncertainty."

Mrs Vale said the ADF's initiatives in this area had already been recognised by the mental health sector.

"For example, Adelaide University Professor of Psychiatry Sandy McFarlane, a member of the Scientific Advisory Committee overseeing the study, recently told media that 'the Australian Armed Services have done a great deal in the last two years to improve the quality of mental health care for their soldiers. In fact, there has been a new set of services the military has developed in recognition of these issues….. the services provided within the military are significantly better than those available to civilians in Australia'."

Mrs Vale also noted that no personnel serving on ADF operations in the 1991 Gulf War were given anthrax vaccinations.

"This should help allay the concerns of veterans who contend that their receipt of anthrax immunisation is associated with the symptoms of the purported 'Gulf War Syndrome'."

The Minister said a comprehensive range of treatment and support programs was already available to Gulf War veterans.

"In addition to providing medical assistance and compensation to Gulf War veterans who present with conditions as a result of their war service, the Government also provides for full medical assistance for any Gulf War veteran who presents with an unidentifiable condition.

"I have asked the Repatriation Medical Authority to consider the study and advise me if further support and assistance is needed," the Minister said.

The health study was conducted by a team from Monash University, under the supervision of an independent Scientific Advisory Committee and a consultative forum representing veteran and service organisations.

Veterans taking part in the study were examined and their health compared to a similar group of Australian Defence Force members who did not serve in the Gulf, as well as against the health of the general population.

The Minister thanked the veterans who had been involved in the study.

“Some 80 per cent of Gulf War veterans agreed to be examined for the study, enabling the study team to achieve results that were as accurate as possible,” she said.

The findings of the Gulf War Veterans’ Health Study are available online at:

www.dva.gov.au/media/publicat/2003/gulfwarhs/index.htm.

[Ed: Media releases are reprinted for general public information. Any opinions or commentary in the above material are not necessarily those of the Veterans’ Review Board.]

Time limits and the scope of the review

Bruce Topperwien

Section 135 of the *Veterans' Entitlements Act 1986* sets out the time limits for applying to the Board for the review of a decision of the Repatriation Commission. Subsection 135(4) provides the general rule that an application for review is to be made within 12 months of notification of the Commission's decision to the applicant in accordance with subsection 34(2) of the Act. Subsections 135(5) and (5A) provide exceptions to that general rule. They provide that if the application is for the review of an assessment decision, cancellation of a pension, or refusal of an attendant allowance, it must be made within 3 months of notification of the decision sought to be reviewed.

No extension of time permitted

Unlike some other tribunals, the Board has no discretion to grant an extension of time in which an application can be made. The Act makes this clear by saying that the application is to be made within the specified time limits, 'but not otherwise'. In *Gordon's* case (1990) 6 *VeRBosity* 138, the Federal Court said, 'The words "but not otherwise" indicate that the time limit is mandatory and goes to the jurisdiction of the Board to entertain the application'.

Nature of the decision

It is important to note that the time limit does not depend on the nature of the action that brought about the Commission's decision. That is, it does not matter whether the initiating action was a claim for pension, an application for increase in pension, an application for review under section 31, or an own-motion review under section 31 by the Commission. The factor that determines which time limit applies is the nature of the decision sought to be reviewed.

In cases such as *Stafford* (1995) 11 *VeRBosity* 51, *Bramwell* (1998) 14 *VeRBosity* 92, and *Stewart* (2002) 18 *VeRBosity* 22, the Federal Court has indicated that while the Repatriation Commission may decide a number of different matters within a single decision, when a person applies to the Board for a review, it is the entire decision including all matters considered by the Commission that is the subject of the Board's review. However, an applicant may choose to remove some matters from the review by a 'clear and unambiguous' withdrawal.

If the Commission's decision involved entitlement matters (that is, whether one or more injuries or diseases were war-caused or defence-caused) as well as an assessment matter, the question arises as to the time limit in which an application for review can be made. In such a case, while there is a general time limit of 12 months to review the overall decision, the right to seek a review is subject to the limitation that, in relation to the assessment matter, the application must be made within 3 months. So, if a person seeks review of such a decision 9 months after being notified of it, the Board has the jurisdiction to review the decision and can conduct a merits review of the entitlement matters, but it cannot conduct a merits review of the assessment matter.

However, if upon reviewing the entitlement matters, the Board determines that an injury or disease is war-caused or defence-caused, s. 139(4) then permits the Board to assess the rate of pension. But, if the Board does not find that one of the injuries or diseases is war-caused, it has no power to consider the assessment of pension. The Federal Court case of *Ward v Nichols* (1988) 4 *VeRBosity* 98 suggests that, strictly, in such a situation

the Board must affirm the assessment on the ground that the Act prevents the Board from reviewing the merits of the matter. In practice, the Board usually writes to an applicant well before a hearing indicating that the application appears to be out of time in relation to the assessment aspect and as a result the Board would have no power to review the merits of the matter, and inviting the applicant to withdraw it from the review. It is only when an applicant insists on the matter proceeding to a hearing that the Board would then decide the issue as indicated above.

Backdating of pension and time limits

While there is a 12 month time limit for entitlement matters, section 157 provides that if the application for review was made within 3 months, the Board may, if it decides that an injury, disease or death was war-caused or defence-caused, set a date of effect of up to 3 months before the *claim for pension* was made. But if the application for review was made after 3 months (and up to 12 months) from notification of the decision, the earliest date the Board can set is 6 months before the *application for review* was made. So, while a person may apply to the Board within 12 months, it will be to their advantage to apply within 3 months.

Calculating time limits

The starting point for the 3 and 12 month time limits is the day on which the applicant was served with a copy of the Commission's decision in accordance with s. 34(2).

In *Gordon* (1990) 6 *VeRBosity* 138, the Federal Court said that, 'If the requirements of s. 34(2) ... have not been satisfied in that only some of the documents required to be served have in fact been served, then there has not been service which the legislation calls for, and time does not commence running'. Subsection 34(2) requires the following to be forwarded to an applicant:

- a copy of the decision;
- a statement in writing setting out the Commission's findings on material questions of fact, referring to the evidence or other material on which those findings are based and giving the reasons for the decision; and
- particulars of the right to have the decision reviewed by the Board.

Gordon's case also held that service can be achieved by posting these documents to the applicant by pre-paid post. Section 29 of the *Acts Interpretation Act 1901* provides that service is deemed to be effected by properly addressing, pre-paying and posting the document, and, unless the contrary is proved, is deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post. The Court noted that delivery in the ordinary course of post is a presumption that can be rebutted by evidence in a particular case. The Court also noted that non-receipt is not the same as non-delivery. So, a person is taken to have been served when the letter reaches the person's letterbox, not when it is actually received by the person.

Scope of review

The Board can review only those matters that have been considered by the Commission. In conducting the review the Board has the same powers that the Commission could have used in deciding those matters (s. 139(3)). So, if, for example, the Commission rejected a claim for pension on the ground that the injury or disease was not war-caused and thus did not assess pension, the Board cannot consider the veteran's current pension assessment unless it decides that the injury or disease was war-caused. This is because, in considering a claim for pension, the Commission must first decide whether the injury or disease is war-caused (s. 19(3)), and if it is, then it must assess a rate of pension (ss. 19(5A), (5C) and (5D)). The Commission does not

assess a rate of pension if it does not find that the injury or disease is war-caused. The Board is bound by these same rules.

While the Board can review only those matters that have been considered by the Commission, this does not mean that the Board is bound by the findings of the Commission concerning the scope of the claim. For example, if a veteran made a claim for a 'back injury' and in considering and determining that claim, the Commission decided that the veteran's lumbar spondylosis was not war-caused, when the Board reviews that decision, it must consider the original claim, not just the decision of the Commission. In considering the evidence, the Board might find that the claimed 'back injury' included thoracic spondylosis as well as lumbar spondylosis, and then go on to decide whether they are each war-caused diseases.

In considering both conditions, the Board is still only reviewing the same matter considered by the Commission, namely the veteran's claim that the 'back injury' is war-caused. The Board is able, and is obliged, to consider both disabilities because the Board must make the decision that it thinks the Commission should have made in determining the claim. The fact that the Commission has made a particular decision on the claim does not restrict the way in which the Board can decide the claim. The Commission's decision is merely a prerequisite for the Board having jurisdiction to consider the entire claim afresh. But the Board could not go beyond the scope of the claim to determine, for example, that the veteran's heart disease was war-caused. Heart disease could hardly be said to fit within the description of 'back injury'.

The Board's approach to the review of a decision determining a claim must be:

- what is this claim all about?
- has the Commission decided the claim?
- has the applicant sought review of that decision within the relevant time limits?
- has the applicant withdrawn any aspect from the Board's review?
- what would the Board's decision be in relation to that claim (disregarding any withdrawn aspects)?
- does it coincide with the decision of the Commission?
- if it does not coincide, the Commission's decision must be set aside, and the Board's decision substituted in its place (or, if only a minor change is required, the Commission's decision could be varied to match the decision the Board would have made);
- if it does coincide, the Commission's decision must be affirmed.

When the Board receives an application for review of a decision in which the Commission has determined that one injury is war-caused and another is not war-caused, it takes a practical approach and assumes that the applicant does not want the decision relating to the war-caused injury reviewed unless there is an indication that the applicant is in some way dissatisfied with that aspect of the decision (for example, the description of the injury, or the date of effect of the acceptance as being war-caused). Nevertheless, as indicated by the Federal Court case of *Stewart* (2002) 18 *VeRBosity* 22, in an exceptional case, the Board has the power to review the acceptance of an injury as war-caused if it is not withdrawn from the review. Such cases would be very unusual and for the sake of procedural fairness the Board would ensure that an applicant had an opportunity to consider his or her position and make submissions on the issue before such a review were conducted.

Administrative Appeals Tribunal

Re C Cameron and Repatriation Commission

Bell

[2003] AATA 9
8 January 2003

Death in motor vehicle accident – whether pneumonia contributed to death

Mrs Cameron applied for review of a decision of the Repatriation Commission that the death of her husband was not war-caused. He had served in the Army during World War 2 including operational service. He died when struck by a motor vehicle as he was crossing a street in Mudgee at approximately 7.50pm one Friday night in 1980.

The inquest into the veteran's death concluded that that there were a number of reasons for him having been struck by the vehicle, including his level of intoxication, his dark clothing and the poorly lit street.

The parties agreed at the AAT that the cause of death was a tear to the thoracic aorta and severe trauma caused by the motor vehicle impact. The parties also agreed that on death, the veteran had pneumonia, although the question of whether this was due to the impact of the motor vehicle or whether the pneumonia was present before the accident was in dispute.

The hypothesis put forward by Mrs Cameron was that the veteran's war-caused chronic bronchitis gave rise to bouts of pneumonia, the latest of which developed a few days before his death. It was submitted that the pneumonia had debilitated him and made him unable to properly react to the oncoming car which struck him.

Medical evidence

Dr M Burns suggested that it was more likely than not that the veteran's pneumonia was accompanied by fever. It was quite likely that he had some confusion as a result of his pneumonia and that this was instrumental in his failing to see the car.

Professor Breslin, consultant thoracic physician, was of the opinion that there was no objective evidence that the veteran had a fever at the time of the accident. He said that in order for a fever to cause significant mental impairment and confusion, it would have to be very substantial and this was hardly the case with this veteran.

Tribunal's conclusions

The Tribunal noted that there was no material other than Dr Burns' assertion, pointing to the veteran's fever as having given rise to delirium or confusion at the time he crossed the road. There was material that pointed away from it, including his level of intoxication (0.2%), his dark clothing and the poorly lit street. There was also evidence at the inquest that the veteran had, notwithstanding his illness, left his home on three occasions that day: first, on foot for about one hour, to attend to an errand; second, again on foot, to consume an amount of alcohol over approximately one and a half hours sufficient to give him, after a lapse of more than two hours, a blood alcohol reading of 0.2% and: third, to attend the hotel again, and presumably to return on foot, in order to purchase more alcohol.

Having considered the whole of the material before it, the Tribunal was of the view that there was no material pointing to the veteran having had, on the day of his death, fever, confusion or delirium of a degree sufficient to impact on his ability to avoid an oncoming vehicle. It followed that the hypothesis was not reasonable in terms of s 120(3) of the *VE Act.*

Formal decision

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

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

Re E A Hyndman and Repatriation Commission

Christie

[2003] AATA 69
24 January 2003

Lumbar spondylosis – disc prolapse – catering staff – repetitive or persistent flexion, extension or twisting

Mrs Hyndman applied for review of a decision that her intervertebral disc prolapse and lumbar spondylosis were not defence-caused. She served in the Catering Corps of the Royal Australian Air Force as a cook from 1982 to 1993. This constituted defence service for the purposes of the *VE Act*. The matters were to be decided to the reasonable satisfaction of the Tribunal in accordance with the standard in subsection 120(4).

Mrs Hyndman provided the following description of her work during the period of her defence service:

(a) Food preparation involving cutting and preparing foods on benches and pastry-making. The width of the bench, together with the nature of her work, required extension and stretching effort.

(b) Cleaning of ovens and stoves.

(c) Cleaning of refrigerators, cold rooms and chest freezers.

(d) All of these tasks (a) to (c) required different forms of extension and stretching.

(e) All of the tasks (a) to (c) were fairly constant over her entire period of defence service (about 11½ years).

(f) Her day's roster would involve the preparation of two meals each day plus cleaning.

(g) Her roster involved 10 days of work on and 5 days off. Allowing for leave entitlements and rostered days on work, she would work around 275 days per annum.

Mrs Hyndman stated that she suffered a trauma to her lower back when she slipped on excess water on a kitchen floor in August 1982 at Wagga. She said that she did not report the injury until two to three days later, after finishing her morning shift. She said that she was prescribed Panadol by a service doctor and referred to a physiotherapist. She said that following this injury, she continued to do her work and was not given any time off work. She explained that she was the only female cook at the time and, because of the male culture in the RAAF, she had a lot of pressure from her colleagues to perform.

Mrs Hyndman said that she continued suffering lower back pain and aches following her fall and that they were *"pretty well frequent, every other day - especially half way through an 8 hour shift"*. She stated that at different times she sought medical treatment for her lower back pain and aches but rarely saw a doctor - usually seeing a registered nurse only.

Mrs Hyndman moved to Williamtown in NSW in 1988 and after that to Tindall NT and then to Tottenham in Victoria. After she moved to Williamtown, the frequency of the pain became continuous.

Lumbar spondylosis

The Statement of Principles for lumbar spondylosis (Instrument No 47 of 2002 as amended by No 78 of 2002) includes as factors related to service:

(g) *suffering a trauma to the lumbar spine within the 25 years immediately before the clinical onset of lumbar spondylosis; or*

(h) *suffering a lumbar intervertebral disc prolapse before the clinical onset of lumbar spondylosis at the level of the intervertebral disc prolapse; or*

(i) *manually lifting or carrying loads of at least 35 kg while weight bearing to a cumulative total of 168,000 kg within any 10 year period, before the clinical onset of lumbar spondylosis, and where such physical activity has ceased, the clinical onset of lumbar spondylosis has occurred within the 25 years immediately following such activity; or*

(j) *repetitive or persistent flexion, extension or twisting of the lumbar spine for at least one hour each day on more days than not for at least 10 years before the clinical onset of lumbar spondylosis, and where such physical activity has ceased, the clinical onset of lumbar spondylosis has occurred within the 25 years immediately following such activity;*

Submissions

Mrs Hyndman submitted that repetitive or persistent flexing, extension or twisting of her lumbar spine during the 11½ year period of her defence service was clear evidence that her lumbar spondylosis was defence-caused. She also contended that when she complained of back pain in the 1980s it was treated as scoliosis, never lumbar spondylosis. As a result, there had been no treatment or diagnosis other than scoliosis.

The Repatriation Commission submitted that in terms of repetitive or persistent flexion, extension or twisting of the lumbar spine, the Tribunal was required to assess whether the one hour threshold required a continuous period of one hour - or whether the one hour threshold could be satisfied if the tasks of repetitive twisting etc **aggregated** to at least one hour.

Tribunal's conclusions

The Tribunal accepted that the earliest date of clinical onset of lumbar spondylosis and disc prolapse was in 1997.

In relation to **intervertebral disc prolapse**, the Tribunal was not reasonably satisfied of a connection between intervertebral disc prolapse and the circumstances of Mrs Hyndman's defence service because:

(i) There was no evidence of her suffering a trauma to the relevant disc at the time of the clinical onset of symptoms in 1997. Factor 5(a) was not satisfied; and

(ii) Factor 5(c) was not satisfied because the five year period immediately before the clinical onset of symptoms (1992-1997) placed Mrs Hyndman almost exclusively outside her defence service period. As a result, the two year period for the *"weight threshold"* assessment could not be satisfied.

In relation to **lumbar spondylosis**, the Tribunal concluded that Factors 5(g), (h) and (i) were not satisfied. It found that the incident in 1982 when Mrs Hyndman slipped on the kitchen floor did not give rise to the prescribed symptoms of "trauma" as defined in the SoP.

In relation to Factor 5(j), the Tribunal noted the meaning of the terms in this clause in the Macquarie Dictionary (3rd Edition, 1997).

- *"repetitive"* : the act of repeating; repeated action, performance
- *"persistent"* : continuing, constantly repeated
- *"flexion"* : the motion of a joint which brings the connected parts continually nearer together
- *"extension"* : the act of straightening a limb
- *"twisting"* : to bend tortuously; a curve, bend or turn.

The Tribunal concluded that an assessment of the meaning of the qualifying adjectives *"repetitive"* or *"persistent"* means some degree of continuity or repeating of the tasks involving flexion, extension or twisting of the lumbar spine. The requirement for some degree of continuity or repeating the tasks means that the *"one hour threshold each day"* as specified by the SoP would be the **aggregate or cumulative** time during a shift - rather than one single event of one hour.

The Tribunal was reasonably satisfied that:

(a) Mrs Hyndman experienced repetitive or persistent flexion, extension or twisting of her lumbar spine for at least one hour per day;

(b) this occurred on more days than not for at least ten years (1982-1992) before the clinical onset of lumbar spondylosis in 1997; and

(c) this physical activity ceased in 1992 and the lumbar spondylosis had occurred within 25 years immediately following such activity.

The Tribunal was reasonably satisfied that there was a connection between lumbar spondylosis and the circumstances of Mrs Hyndman's service, specifically related to the repetitive or persistent flexion, extension or twisting of the lumbar spine associated with her activities as a cook in the Catering Corps of the RAAF.

Formal decision

The Tribunal set aside the decision under review and substituted its decision that Mrs Hyndman's lumbar spondylosis was defence-caused.

Re D J H Johnson and Repatriation Commission

Carstairs

[2003] AATA 90
31 January 2003

Anxiety disorder – severe psychosocial stressor – whether serious default, wilful act or serious breach of discipline

Mr Johnson applied for review of a decision that his anxiety disorder was not war-caused.

Mr Johnson served in the Army in Vietnam from 8 June 1967 to 12 February 1968, and this period was operational service under the *VE Act.* He served in the Artillery Corps. He re-enlisted in the Army after his National Service and continued serving until 1993.

In Vietnam, Mr Johnson served as a gunner with the field battery at Nui Dat. He described a number of stressful incidents in Vietnam. In the first incident (*the random firing incident*), a New Zealand soldier commenced firing on the camp at Nui Dat from outside the perimeter, and several bullets had struck his tent, which made him fear for his life. In the second incident (*the artillery fire incident*) during the Tet Offensive, he claimed to have come under enemy

artillery fire while assisting a New Zealand battery. In the third incident (*the friend's death incident*), a close friend was killed in action and he was distressed, though he was not present when the friend died. In the fourth incident (*the provocation incident*) he said that he suffered verbal taunts by a bombardier after failing an education course, and felt humiliated and distressed. He lost control and threatened to shoot the bombardier and had to be restrained.

Diagnosis

Mr Johnson was examined by a number of psychiatrists between 1990 and the AAT hearing. His counsel submitted that the correct diagnosis of his condition was post traumatic stress disorder and that he had experienced a "severe stressor" as defined in the Statement of Principles. In the alternative, it was submitted that there was a diagnosis of generalised anxiety disorder and that the four incidents fell within the definition of "severe psychosocial stressor" in the SoP for anxiety disorder.

The Repatriation Commission submitted that the correct diagnosis was anxiety disorder and not PTSD. It submitted that the provocation incident could not be relied upon as a *severe stressor* (for PTSD) nor a *severe psychosocial stressor* (for anxiety disorder) because of the provision made in s 9(3) of the *VE Act* that an injury or disease will not be compensible if it resulted from a serious breach of discipline committed by the veteran, or arose from an occurrence that happened while the veteran was committing a serious breach of discipline. There was evidence that threatening an officer was a serious breach of discipline.

The Commission submitted further that the random firing incident, the death of a friend incident and the artillery incident did not meet the definition of *severe psychosocial stressor* in the SoP. Furthermore, it submitted that there was no evidence of *clinical onset* of anxiety disorder within two years of service in Vietnam. Rather, the evidence pointed to clinical onset in 1991 after the death of the applicant's mother and sister, and again, later in 1994, as a reaction to discharge from the Army.

Tribunal's conclusions

The Tribunal was reasonably satisfied that the appropriate diagnosis in this case was anxiety disorder and not PTSD.

The SoP for anxiety disorder (No 1 of 2000) includes as factors related to service:

> "(ii) experiencing a severe psychosocial stressor within the two years immediately before the clinical onset of anxiety disorder; ...
>
> (v) experiencing a severe psychosocial stressor within the two years immediately before the clinical worsening of anxiety disorder;"

Paragraph 8 of the SoP defines *severe psychosocial stressor* as:

> **"severe psychosocial stressor"** means an identifiable occurrence that evokes feelings of substantial distress in an individual, for example, being shot at, death or serious injury of a close friend or relative, assault (including sexual assault), major illness or injury, experiencing a loss such as divorce or separation, loss of employment, major financial problems or legal problems.

The Tribunal found that the provocation incident and the death of the veteran's friend were both "severe psychosocial stressors" as defined in the SoP. It also found that clinical onset of the anxiety disorder occurred within 2 years of him experiencing the stressors in Vietnam. The hypothesis was therefore reasonable in terms of the SoP and was not disproved beyond reasonable doubt.

In relation to the Commission's submission that the provocation incident could not be relied on by the veteran, s 9(3) of the *VE Act* provides:

> "(3) Paragraph (1)(a), (b), (c) or (d) does not apply to an injury suffered, or disease contracted, by a veteran if the injury or disease:
>
> (a) resulted from the veteran's serious default or wilful act; or
>
> (b) arose from:
>
> (i) a serious breach of discipline committed by the veteran; or
>
> (ii) an occurrence that happened while the veteran was committing a serious breach of discipline."

The Tribunal decided that this provision did not disqualify the veteran in this particular case. The Tribunal said:

> "While the action by the applicant, of threatening the Bombardier, would be a *serious default* or a *serious breach of discipline*, the sub-section requires that the injury or disease *resulted from* the serious default or that it *arose from* the serious breach of discipline. The injury or disease in this case is an anxiety disorder arising from provocative insulting language, used to a person who, on all the evidence, was peculiarly vulnerable, based on his personality, illiteracy and learning difficulties. The injury here *results* from that provocation, not from the veteran's default or wilful act (s9(3)(a)). Nor did the injury *arise from* serious breach of discipline on the part of the applicant for the same reason (s9(3)(b)(i)). In considering whether the injury or disease arose from *an occurrence that happened while the veteran was committing a serious breach of discipline* (s9(3)(b)(ii)), this injury has arisen from the provocation by the Bombardier. The Bombardier's act is separate from the applicant's reaction to it. The Tribunal finds that the injury has not arisen from the applicant's subsequent threatening action to the Bombardier. His reaction was a serious breach of discipline but in the sequence in which the events occurred, the applicant was not the deliberate creator or author of his own injury or disease: *Repatriation Commission v Levi* (1994) 61 FCR 189."

Formal decision

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

Re F Twible and Repatriation Commission

Beddoe

[2003] AATA 117
7 February 2003

Death – whether veteran engaged in actual combat against the enemy

Mrs Twible applied for review of a decision that the death of her late husband was not war-caused. The main cause of his death was respiratory failure (2 days); antecedent causes were bilateral aspiration pneumonia (4 days) and other significant conditions were diffuse gastritis and upper gastro-intestinal bleed.

The late veteran served in the Australian Army during World War 2. He was posted to coastal defence duties and was stationed at Goode Island or Thursday Island from 11 August 1941 to 31 October 1942. During this period he served as a gunner with Royal Australian Artillery units located on Thursday Island and Goode Island. The Tribunal heard evidence that batteries operating on

those islands were primarily for defence of the sea lanes rather than defence from air attack.

Actual combat against the enemy

The Tribunal considered first whether the veteran had rendered operational service during World War 2. Section 6A of the *VE Act* provides, as relevant, that a member of the Defence Force is taken to have been rendering operational service during any period during which the member was rendering:

> "(d) continuous full-time service rendered within Australia during World War 2 in such circumstances that the service should, in the opinion of the Commission, be treated as service in actual combat against the enemy."

The Tribunal heard evidence that Horn Island, contiguous to Thursday and Goode Islands, had an airfield and was the target of a number of Japanese air raids in 1942-43. Bombs also fell on Thursday Island. The heaviest raid took place on 14 March 1942 when 17 Japanese aircraft attacked the airfield on Horn Island. Eleven aircraft also attacked the airfield on 30 April 1942 and it was attacked again on 11 August 1942 by 13 aircraft. Sixteen Japanese aircraft dropped some 200 fragmentation bombs on the RAAF base. Some of the other raids were by single Japanese aircraft.

The Tribunal observed that a mere perception of, or proximity to, enemy action is not sufficient to justify an exercise of the discretion to deem operational service. A favourable exercise of discretion should embrace circumstances of actual combat and of actual preparation for imminent combat. Mere proximity to combat is not sufficient when, on the material, it is more likely than not that combat would not take place.

The Tribunal found that it is more likely than not that the veteran was a gunner on coastal defence duties as distinct from air attack defence. This is consistent with his subsequent transfers to other coastal defence batteries. The Tribunal was not satisfied that the circumstances of the veteran's service were such that it should be treated as service in "actual combat against the enemy". It followed that the claim was to be decided to the Tribunal's reasonable satisfaction in terms of s 120(4) of the *VE Act*.

Medical evidence

The Tribunal next turned to whether the veteran's death was war-caused. A smoking questionnaire completed by Mrs Twible said that the veteran commenced smoking in 1941 and ceased in 1975. She gave oral evidence that she was told that he continued to smoke after that at the bowling club. The Tribunal accepted that his smoking probably ceased in 1989. The Tribunal was satisfied that the veteran's smoking habit was service-related. However, it was not satisfied that the clinical onset of peptic ulcer disease occurred while the veteran was smoking at least ten cigarettes per day.

There was evidence that the veteran had been treated with high dosage aspirin in the 1980s and low dosage aspirin thereafter, and that the use of aspirin would be a causal factor contributing to gastrointestinal bleed. The Tribunal accepted that low dosage aspirin was prescribed after the veteran had a stroke in 1996. It inferred that the veteran continued to take low dosage aspirin on a daily basis until his death so that the diagnosis of duodenal ulcer in 1997 was relevant to a finding of death from peptic ulcer disease.

The Tribunal was satisfied that the veteran's smoking history was such as to satisfy Factor 5(k)(i) of Instrument No 53 of 1999 concerning cerebrovascular

accident, the smoking being related to the veteran's service.

As the veteran had been taking low dosage aspirin from the time of the stroke, the Tribunal was also satisfied that Factor 5(c) of Instrument 22 of 1999 concerning peptic ulcer disease was satisfied.

The Tribunal concluded that the veteran's death was in part caused by gastrointestinal bleeding caused by peptic ulcer disease which it was satisfied was war-caused.

Formal decision

The Tribunal set aside the decision under review and substituted its decision that the death of Mr Twible was war-caused.

Re R H Spotswood and Repatriation Commission

Kiosoglous

[2003] AATA 152
13 February 2003

Jurisdiction – condition not considered in reviewable decision

Mr Spotswood served in the Royal Australian Navy from 12 March 1966 to 1 June 1976. He rendered operational service in Vietnam for the purposes of the *VE Act* from 18 November 1968 until 25 November 1968, and again from 16 November 1969 until 29 November 1969, aboard *HMAS Duchess*. He also rendered eligible defence service for the purposes of *VE Act* from 7 December 1972 until 1 June 1976. He applied for review of a number of conditions which he claimed were war-caused or defence-caused. The Repatriation Commission had rejected anxiety disorder, alcohol dependence or abuse, chronic pancreatitis, and spondylolisthesis and spondylolysis as being either war-caused or defence-caused.

Mr Spotswood had originally claimed for a number of conditions, including "low back pain" which he attributed to heavy lifting. The Commission diagnosed "spondylolisthesis and spondylolysis" and determined that it was not war-caused or defence-caused. At the Tribunal hearing, Mr Spotswood submitted that his back condition should be diagnosed as "lumbar spondylosis" and was related to a trauma to the lumbar spine during his operational service. He claimed that he slipped down a stairwell and landed heavily on his lower back and spine while the ship was in Vung Tau harbour.

Jurisdictional issue

The Tribunal considered first whether it had jurisdiction to determine whether the veteran's lumbar spondylosis was war-caused. The Repatriation Commission submitted that under s 175 of the *VE Act*, an applicant only has the right to apply for review of a decision of the Commission that has been "affirmed, varied or set aside" by the VRB. In this instance, there was no decision of the Commission or the VRB concerning lumbar spondylosis. Rather, the Commission had made a determination concerning "spondylolisthesis and spondylolysis". The Commission had received no evidence that the veteran was suffering from lumbar spondylosis until more than 18 months after it made its decision, and more than 6 months after the VRB affirmed that decision.

The Commission contended that the AAT would only have jurisdiction to make a decision concerning lumbar spondylosis once that condition had been the subject of a determination by the Commission, and that determination had been affirmed, varied or set aside by the VRB.

Mr Spotswood contended that the condition of lumbar spondylosis was before the Tribunal and that it had

jurisdiction to make a determination on this issue.

The Tribunal noted that the Federal court has held in a number of cases that the Tribunal is obliged not to limit its determination to the case articulated by the applicant, and that it is obliged to determine the substantive issues raised by the material and evidence before it. (*Grant v Repatriation Commission* (1999) 57 ALD 1; *Benjamin v Repatriation Commission* (2001) 34 AAR 270 and *Budworth v Repatriation Commission* (2001) 63 ALD 422). The Court noted in *Budworth* that the AAT in conducting its review "stands in the shoes" of the decision-maker and is able to determine the matter *de novo*, in the process of making the "correct or preferable decision" to stand as the decision of the primary decision-maker. If there is material before a decision-maker which positively suggests that a veteran may be suffering from a disease, then the primary decision-maker has a duty to determine whether the veteran does have a disease.

The Tribunal concluded that in this case, it had jurisdiction to consider whether the veteran was entitled to compensation for war-caused lumbar spondylosis. It said:

> "In *Budworth*, PTSD was the only condition argued before the Commission. Nevertheless, the Tribunal was bound to consider any other psychiatric condition that arose on the material before it, regardless of the fact that no such condition was argued before it. The Tribunal is similarly bound in this matter to consider medical conditions that arise on the evidence before it, despite the fact that they were not argued in the same form before the Commission in the first instance. It should be noted here that the applicant's original claim form stated that he was claiming for *"low back pain"*. Lumbar spondylosis fits within this broad claim, so it cannot be stated that the applicant has introduced a completely new condition before the Tribunal."

Tribunal's conclusions

The Tribunal then considered whether the veteran's claimed conditions were war-caused or defence-caused. In relation to generalised anxiety disorder, the veteran alleged that he had experienced a number of stressful incidents while on *HMAS Duchess*. These related to a sudden call to "action stations" in Vung Tau harbour, hearing gunfire on deck, observing a helicopter crash and hearing scare charges being dropped while in port in Vung Tau.

The Commission submitted that the call to action stations was not a "severe psychosocial stressor" as defined in SoP No 1 of 2000, as it was not objectively as stressful as the examples given in the definition.

The Tribunal rejected this, noting that the SoP refers to an event which "evokes feelings of substantial distress in an individual" which is inherently subjective. The only objective requirement is that the fear that was felt by the veteran was as severe as that which an average person might suffer in one of the given examples. The Tribunal found that the hypothesis was reasonable and was not satisfied beyond reasonable doubt that the events did not occur. Accordingly, the veteran's generalised anxiety disorder was war-caused.

In relation to lumbar spondylosis, the Tribunal was satisfied that the veteran's return to light duties shortly after his alleged fall down a stairwell indicated that he did not have "acute symptoms" of pain and tenderness, as required in the definition of "trauma to the lumbar spine" in SoP No 27 of 1999. The Tribunal was also satisfied that other factors in the SoP were not satisfied and that his lumbar spondylosis was not war-caused.

The Tribunal also concluded that the veteran's alcohol dependence and abuse and chronic pancreatitis were not war-caused.

Formal decision

The Tribunal set aside the decision in relation to generalised anxiety disorder and determined that that condition was war-caused. The Tribunal determined that lumbar spondylosis, alcohol dependence and abuse and chronic pancreatitis were not war-caused.

Re E Boother and Repatriation Commission

Allen & Horton

[2003] AATA 195
28 February 2003

Claim PTSD led to veteran's suicide – necessity to satisfy SoP requirements – rejection of claim that Tribunal can depart from criteria mandated by SoP

Mrs Boother applied to the Tribunal for review of a decision that the death of her husband was not attributable to his war service. He died as a result of suicide. He had served in Korean waters aboard *HMAS Tobruk* and this constituted operational service in terms of the *VE Act*.

The Statement of Principles for suicide includes as factors, suffering from depression or post traumatic stress disorder at the time of suicide. Mrs Boother contended that at the time of his death, the veteran was suffering from a war-caused PSTD or war-caused depression. Both depression and PTSD are conditions for which there are Statements of Principles. In the matter of *McKenna v Repatriation Commission* (1999), it was held that where a sub-hypothesis exists and there is a relevant SoP, then the factors stated in that SoP must also be met.

Depression or PTSD?

The SoP for depressive disorder (No 58 of 1998), in factor 5(b) requires that the disorder has its clinical onset within two years of experiencing a "severe psychological stressor". The Tribunal found that there was no material suggesting that the deceased veteran suffered from depressive disorder within two years post operational service.

The SoP for PTSD (No 3 of 1999 as amended) requires that the traumatic event to which the sufferer was exposed is persistently re-experienced. The Tribunal found that there was no material pointing to the deceased having those symptoms, so that the hypothesis did not conform to the SoP and was not a reasonable hypothesis.

Non-SoP condition

It was contended by Mrs Boother that this matter could be regarded on a reasonable hypothesis basis without recourse to any SoP on the basis the deceased had suffered from "Non SoP PTSD". The Tribunal rejected this submission and made reference to comments by Weinberg J in the matter of *Repatriation Commission v Gosewinckel* (1999):

> "The AAT cannot use the evidence of an expert to contradict or provide an alternative to the requirements of the SoP. Section 120A, and the associated provisions in Pt XIA of the *VE Act* were introduced in order to take the determination of 'purely medical ... issues' out of the hands of bodies such as the AAT - Explanatory Memorandum to *Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Bill 1994* at p 3. Evidence which contradicts an SoP, or which

> proposes that a reasonable hypothesis may be raised by some factor not identified in the SoP, cannot alter the operation of the SoP in relation to any matter to which it is applicable - see *Deledio v Repatriation Commission*. An hypothesis that fails to fit within the template will be deemed not to be 'reasonable', and the claim will fail.
>
> The hypothesis which the AAT found to be reasonable, namely, that the veteran experienced the clinical onset of generalised anxiety disorder within two years of experiencing a stressful event (ie within two years of the conclusion of the war) was not upheld by the relevant SoP. The AAT could not, therefore, have found that the hypothesis was reasonable, and was bound, on the material before it, to find that the veteran's generalised anxiety disorder was not war-caused."

The Tribunal said that this passage makes it clear that there cannot be a "non SoP PTSD".

Finally, the Tribunal said that there was no evidence that the veteran was ever exposed to a "traumatic event" as defined in the SoP for PTSD. As a result, the hypothesis contended for by Mrs Boother did not conform with the applicable SoP and was not reasonable. The Tribunal was satisfied beyond reasonable doubt that the veteran's death was not war-caused.

Formal decision

The Tribunal affirmed the decision under review.

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

Federal Court of Australia

Hill v Repatriation Commission

Heerey J

[2003] FCA 46
7 February 2003

Intervertebral disc prolapse – trauma – error of law

Mr Hill appealed against a decision of the AAT that his lumbar intervertebral disc prolapse was not war-caused. He served in the Royal Australian Navy from 1963 to 1972. This included operational service while serving aboard *HMAS Yarra* in Vietnamese waters from 25 April to 9 May 1966 and from 26 May to 9 June 1966.

His evidence was that on 21 March 1966, prior to operational service, he injured his back while working in the wardroom galley. He fell backwards and struck his back on a banana box. The injury was described as "slipped disc (minimal subluxation)". He spent seven days in a Naval hospital. He returned to normal duties aboard the ship while still experiencing slight pain. He sought medication from the medical officer when necessary.

On 27 May 1966, he was descending a ladder on board *HMAS Yarra* when he slipped and fell a distance of about five feet to the deck. He landed on his feet but then fell forward injuring his shoulder when it hit an upright stanchion on the ship. He experienced a sharp pain in the right shoulder. He did not seek any medical attention at that time but the pain got slightly worse. The condition has persisted ever since. On occasions his back has locked up and he has not been able to move. He has had analgesics prescribed and also undergone physiotherapy.

Trauma to the relevant disc

The relevant SoP concerning intervertebral disc prolapse (No 130 of 1996 as amended by No 92 of 1997) includes as a factor related to service:

> "(g) suffering trauma to the relevant disc at the time of the clinical worsening of intervertebral disc prolapse."

The AAT said that there was no clear medical evidence of a back injury or aggravation at the time of the second fall. It said:

> "If his word is accepted then the query is whether the second fall, during operational service, really can be regarded as causative of a significant medical problem."

The AAT concluded:

> "There is no specific medical evidence concerning the immediate outcome of Mr Barry John Hill's second fall, but he continued to serve in the Navy until 24 November 1972, presumably judged fit for full duties. In these circumstances, it cannot be argued Mr Hill meets the criteria specified in the relevant SoP and thus his application fails."

Court's conclusion

Heerey J held that the AAT made an error of law in that it identified the wrong issue and asked itself the wrong question. He observed that in the last quoted paragraph, the AAT appears to be deciding on the truth or otherwise of the proposition that the applicant suffered "trauma of the relevant disc" in the second incident. However the AAT was required, at this stage of the process, to consider his claim without making any

judgment as to its truth: *Dixon v Repatriation Commission* (1999) 29 AAR 235 at 243, *Repatriation Commission v Hill* [2002] FCAFC 192 at [59] to [61].

Heerey J said that the AAT's task was to consider whether the material before it raised or pointed to the relevant hypothesis of connection. The approach adopted by the AAT involved an error of law.

Formal decision

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

Parnell-Schoneveld v Repatriation Commission

Jacobson J

[2003] FCA 153
6 March 2003

Compensation – internment by Japanese during World War 2 – whether domiciled in Australia

Mrs Parnell-Schoneveld and Mrs Parnell are sisters-in-law. They both applied for compensation, in the form of a "one-off" payment of $25,000, under the provisions of the *Compensation (Japanese Internment) Act 2001*. Mrs Parnell-Schoneveld sought compensation on the basis that she was a civilian who had been interned by the Japanese during World War 2. Mrs Parnell sought compensation on the basis that her late husband (Mr Frank Parnell) had been interned by the Japanese.

The Repatriation Commission refused the applicants' claims for compensation. The decisions were affirmed by the AAT. The applicants then appealed to the Federal Court on a question of law.

Background

Mrs Parnell-Schoneveld and Mr Frank Parnell were born in Australia in June 1926 and February 1925 respectively. Their father was killed in a car accident in 1926. In 1930, their mother took the Parnell children on a cruise from Sydney to Singapore. There, in October 1930, she married a Mr Keyzer who was born in Holland and was a Dutch citizen. In 1931, after her marriage to Mr Keyzer, their mother, her new husband and the Parnell children moved from Singapore to Batavia, which was then the capital of the Netherlands East Indies where Mr Keyzer was based. From 1931 to 1942, Mr and Mrs Keyzer and the Parnell children lived in Batavia as a family. There were two children of the mother's marriage to Mr Keyzer who lived with them.

Mrs Parnell-Schoneveld's evidence was that the children were booked on a ship to return to Australia but it was too late to embark as the Japanese had by then entered the Netherlands East Indies. The Japanese Army occupied Batavia in March 1942. Mrs Parnell-Schoneveld was then 15 years of age and Mr Frank Parnell had just turned 17. The Parnell children and their mother were interned by the Japanese on the island of Java for approximately 3 years.

Domicile

The only issue before the Tribunal was whether Mrs Parnell-Schoneveld and Mr Frank Parnell were "domiciled in Australia" immediately before the commencement of their internment. The Tribunal was satisfied that they were not domiciled in Australia.

The term "domicile" is not defined in the Act. The Tribunal proceeded on the basis that the claims were governed by the common law test of domicile.

The parties agreed that the relevant principles were correctly stated, with the

exception of the last, by the Tribunal. The principles were summarised as follows:

- at birth, legitimate children acquire the domicile of their father
- a domicile of choice is acquired if a person resides in a country and intends to remain there indefinitely
- a person is only able to acquire a domicile of choice if that person has attained the age of 21
- a woman on marriage assumes the domicile of her husband
- a domicile of a child whose father is no longer alive is primarily dependent on that of his or her mother who has the option of changing the child's domicile when she changes hers but she may abstain from exercising that option if this is for the welfare of the child.

The Tribunal accepted the Commission's submission that the domicile of origin of Mrs Parnell-Schoneveld and Mr Frank Parnell was in Australia. The effect of their mother's marriage was that she acquired her new husband's domicile in the Netherlands East Indies.

Submissions

Counsel for the applicants submitted that the Tribunal asked itself the wrong question and applied the wrong test. This was because it was said that the Tribunal looked for evidence to show that the mother did not intend her children's domicile to follow hers. Rather, the question was whether there was evidence of an intention to change the children's domicile.

It was also submitted that the evidence of arrangements made in late 1941 or early 1942 to send the children back to Australia constituted a change of the domicile of Mrs Parnell-Schoneveld and Mr Frank Parnell back to Australia.

Court's conclusion

Jacobson J noted that at common law, clear evidence is required to establish a change of domicile and this is particularly so to displace the domicile of origin with a domicile of choice. Residence, however long, which is "neutral or colourless or indeterminate in character" is not sufficient. On the other hand, a mere "floating intention" to return to the country of origin will not be sufficient to retain a domicile of origin if a person has settled elsewhere with an intention to remain for an indefinite period of time.

The proper question which the Tribunal had to ask itself was whether the mother had, by her marriage to Mr Keyzer and residence in Batavia, evinced an intention to change the domicile of Mrs Parnell-Schoneveld and Mr Frank Parnell to the Netherlands East Indies in the interests of her children.

Jacobson J concluded that on a fair reading of the Tribunal's reasons, it had not erred in law. It had made all of the requisite findings so as to satisfy the correct test which it applied.

Formal decision

The Court dismissed the appeal.

Statements of Principles issued by the Repatriation Medical Authority

March – May 2003

Number of Instrument	Description of Instrument
5 of 2003	Revocation of Statement of Principles (Instrument No.374 of 1995 concerning **loss of teeth** and death from loss of teeth), and Determination of Statement of Principles under subsection 196B(2) concerning loss of teeth and death from loss of teeth.
6 of 2003	Revocation of Statement of Principles (Instrument No.375 of 1995 concerning **loss of teeth** and death from loss of teeth), and Determination of Statement of Principles under subsection 196B(3) concerning loss of teeth and death from loss of teeth.
7 of 2003	Revocation of Statement of Principles (Instrument No.67 of 1997, as amended by Instrument No.9 of 1998, concerning **malignant neoplasm of the stomach** and death from malignant neoplasm of the stomach), and Determination of Statement of Principles under subsection 196B(2) concerning malignant neoplasm of the stomach and death from malignant neoplasm of the stomach.
8 of 2003	Revocation of Statement of Principles (Instrument No.68 of 1997, as amended by Instrument No.10 of 1998 concerning **malignant neoplasm of the stomach** and death from malignant neoplasm of the stomach), and Determination of Statement of Principles under subsection 196B(3) concerning malignant neoplasm of the stomach and death from malignant neoplasm of the stomach.
9 of 2003	Revocation of Statement of Principles (Instrument No.346 of 1995 concerning **carotid arterial disease** and death from carotid arterial disease), and Determination of Statement of Principles under subsection 196B(2) concerning carotid arterial disease and death from carotid arterial disease.
10 of 2003	Revocation of Statement of Principles (Instrument No.347 of 1995 concerning **carotid arterial disease** and death from carotid arterial disease), and Determination of Statement of Principles under subsection 196B(3) concerning carotid arterial disease and death from carotid arterial disease.
11 of 2003	Determination of Statement of Principles under subsection 196B(2) concerning **mitral valve prolapse** and death from mitral valve prolapse.
12 of 2003	Determination of Statement of Principles under subsection 196B(3) concerning **mitral valve prolapse** and death from mitral valve prolapse.

13 of 2003 Amendment of Statement of Principles, Instrument No.79 of 2001, under subsection 196B(2) concerning **peripheral neuropathy** and death from peripheral neuropathy.

14 of 2003 Amendment of Statement of Principles, Instrument No.80 of 2001, under subsection 196B(3) concerning **peripheral neuropathy** and death from peripheral neuropathy.

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 16 APRIL 2003

Description of disease or injury	Date gazetted
Asbestosis [Instrument Nos 138/96 & 139/96]	16-04-03
Atrial fibrillation [Instrument Nos 9/96 & 10/96]	19-09-01
Brodie's abscess	05-03-03
Chronic bronchitis & emphysema [Instrument Nos 73/97 & 74/97]	16-04-03
Chronic fatigue syndrome [Instrument Nos 90/97 & 91/97]	19-09-01
Chronic myeloid leukaemia [Instrument Nos 7/97 & 8/97]	16-01-02
Chronic sinusitis [Instrument Nos 211/95 & 212/95]	01-08-01
Diabetes mellitus [Instrument Nos 82/99 & 83/99 as amended by Nos 9, 10, 91 & 92/01]	28-11-01
Endometriosis	16-10-02
Epilepsy [Instrument Nos 79/96 & 80/96]	05-03-03
Gastro-oesophageal reflux disease [Instrument Nos 52/02 & 53/02]	18-12-02
Gulf War syndrome	17-11-99
Haemorrhoids [Instrument Nos 13/00 & 14/00]	13-11-02

Description of disease or injury	Date gazetted
Hiatus hernia [Instrument Nos 42/99 & 43/99]	14-08-02
Hypertension [1] [Instrument Nos 31/01 & 32/01]	24-04-02
Inguinal hernia [Instrument Nos 72/98 & 73/98]	16-04-03
Ischaemic heart disease [Instrument Nos 38/99 & 39/99]	28-11-01
Jakob-Creutzfeldt disease [Instrument Nos 63/95 & 64/95 as amended by Nos 190/95, 49/97 & 50/97]	18-12-02
Leptospirosis	05-03-03
Macular degeneration [Instrument Nos 29/97 & 30/97]	06-06-01
Malignant neoplasm of the brain [Instrument Nos 40/99 & 41/99]	10-01-01
Malignant neoplasm of the oral cavity or hypopharynx [Instrument Nos 113/96 & 114/96]	06-03-02
Malignant neoplasm of the salivary gland [Instrument Nos 25/97 & 26/97]	06-03-02
Malignant neoplasm of the small intestine [Instrument Nos 153/96 & 154/96 as amended by Nos 7/98 & 8/98]	16-04-03
Malignant neoplasm of the testis and paratesticular tissues [Instrument Nos 3/97 & 4/97]	14-08-02
Melioidosis [Instrument Nos 344/95 & 345/95 as amended by Nos 14/02 & 15/02]	29-05-02

[1] This investigation follows a declaration by the Specialist Medical Review Council under subsection 196W(4) that there is sound medical-scientific evidence to justify amendment of the SoPs for hypertension to include as a factor *"occupational or work related stress consequent upon working in a high demand, low decision latitude or control job".*

Description of disease or injury	Date gazetted
Myeloma [Instrument Nos 72/99 & 73/99]	19-09-01
Neoplasm of the pituitary gland [Instrument Nos 37/97 & 38/97]	13-11-02
Non melanotic malignant neoplasm of the skin [Instrument Nos 43/01 & 44/01 as amended by Nos 51/01 & 52/01]	08-05-02
Non-Hodgkin's lymphoma [Instrument Nos 80/99 & 81/99]	03-07-02
Obesity	28-02-01
Osteomyelitis	05-03-03
Restless legs syndrome	27-11-02
Rheumatoid arthritis [Instrument Nos 126/96 & 127/96]	13-11-02
Seizures [Instrument Nos 81/96 & 82/96]	05-03-03
Spondylolisthesis & spondylolysis [Instrument Nos 15/97 & 16/97]	05-03-03
Subarachnoid haemorrhage [Instrument Nos 48/99 & 49/99]	29-05-02
Tinea [Instrument Nos 27/94 & 28/94 as amended by Nos 184/95, 185/95, 7/02 & 8/02]	29-05-02

Administrative Appeals Tribunal decisions – January to March 2003

Carcinoma

bladder
- pre-enlistment smoking habit
  West, M F 25 Feb 2003

pancreas
- smoking
  Renton, G D 12 Feb 2003

Circulatory disorder

carotid artery disease
- smoking
  Stewart, T 06 Mar 2003

hypertension
- alcohol abuse
  Gorton, R A 28 Feb 2003
- alcohol dependence
  La Roche, P T 13 Feb 2003
  Tully, D S 07 Feb 2003
  Portakiewicz, R 19 Mar 2003

ischaemic heart disease
- smoking
  Digney, J W 25 Feb 2003
- smoking cessation
  Young, W C 14 Feb 2003

ischaemic heart disease & hypertension
- smoking & inability to obtain appropriate clinical management
  Woodger, J R 16 Jan 2003

supraventricular tachycardia
- no evidence of ischaemic heart disease
  Parow, W M 22 Jan 2003

Date of effect

Administrative Appeals Tribunal
- whether application lodged within 3 months after service – VRB decision not received
  Glasson, E 14 Jan 2003

Extreme disablement adjustment
- impairment ratings
  Dickson, B E 07 Feb 2003

Death

carcinoma of prostate
- animal fat consumption
  Tate, N A C 17 Jan 2003
  Fordham, P 22 Jan 2003

cerebrovascular accident
- inability to undertake physical activity
  Smith, M 13 Feb 2003

cirrhosis of liver
- alcohol dependence & panic disorder
  Pettigrew, E 17 Jan 2003

fall resulting in sepsis
- osteoarthrosis of knee
  Henderson, E 07 Feb 2003

gastrointestinal bleeding
- peptic ulcer - smoking
  Twible, F 07 Feb 2003

ischaemic heart disease
- hypertension – salt ingestion
  Salter, J H 12 Mar 2003
- pneumonia – mustard gas exposure
  Smith, V R 14 Mar 2003

motor cycle accident
- mental disturbance
  Strub, D 02 Jan 2003

motor vehicle accident
- chronic bronchitis – pneumonia
  Cameron, C 08 Jan 2003
- severe blood loss – Warfarin medication
  Hook, J 24 Jan 2003

non-Hodgkin's lymphoma
- Helicobacter pylori infection
  Thomas, H 23 Jan 2003

reinstatement of pension
- remarried before 1984
  Weinert, D 07 Jan 2003

generalised anxiety disorder & alcohol dependence or abuse

- severe psychosocial stressor – Vietnam service

Ellis, G T 19 Mar 2003

- severe psychosocial stressor – Vietnam waters

Rogers, G L 14 Mar 2003

Demczuk, V N 31 Mar 2003

- severe psychosocial stressor – Vung Tau harbour

Spotswood, R H 13 Feb 2003

post traumatic stress disorder

- experiencing a severe stressor – assault by military police in Singapore

Gorton, J L 31 Jan 2003

- experiencing a severe stressor – Borneo service

Anderson, W 28 Mar 2003

- experiencing a severe stressor – Vietnam service

Borg, A S 13 Mar 2003

- no diagnosis

Cooke, G R 04 Feb 2003

post traumatic stress disorder & alcohol dependence

- experiencing a severe stressor – Vietnam waters

Portakiewicz, R 19 Mar 2003

post traumatic stress disorder & alcohol dependence or abuse

- experiencing a severe stressor – Vietnam service

Rice, K 14 Feb 2003

- experiencing a severe stressor – Vung Tau harbour

Winn, G H 24 Jan 2003

post traumatic stress disorder, alcohol dependence or abuse & depressive disorder

- experiencing a severe stressor – Vietnam service

Day, J M 28 Mar 2003

post traumatic stress disorder, depressive disorder, alcohol dependence & impotence

- experiencing a severe stressor – body bags incident

Tully, D S 07 Feb 2003

post traumatic stress disorder, depressive disorder & psychoactive substance abuse or dependence

- experiencing a severe stressor – Vietnam service

Gerzina, A 05 Mar 2003

Remunerative work & special rate

Intermediate rate

- whether incapable of more than part-time work

Gibson, P A 14 Jan 2003

whether genuinely seeking to engage in

- electrician - redundancy

Smith, L C 23 Jan 2003

whether incapacity permanent

Hatherall, K J 31 Jan 2003

whether prevented by war-caused disabilities alone

- electrical inspector

Leane, J A 07 Feb 2003

- garbage collector

Collins, K C 04 Mar 2003

- laboratory worker

Smith, W K 07 Feb 2003

- plasterer/welder

Van Heteren, P W F 11 Feb 2003

- school groundsman/janitor

Pritchard, R M 15 Jan 2003

- soldier – voluntary discharge

Nugent, C 12 Mar 2003

whether unable to work 8 hours a week

- handyman

Tudor, D 13 Mar 2003

- part-time office work following redundancy

Manelski, M A 13 Mar 2003

Respiratory disorder

chronic bronchitis

- smoking

Rice, K 14 Feb 2003

Collins, K C 04 Mar 2003

Skin disorder

sebaceous cyst of scalp & fibrolipomata of abdomen & back

- trauma – Singapore assault by military police

Gorton, J L 31 Jan 2003

Spinal disorder

intervertebral disc prolapse & lumbar spondylosis

- trauma & repetitive or persistent flexion – cook

Hyndman, E A 24 Jan 2003

lumbar spondylosis

- trauma – fall at Ubon

Barlow, H 14 Feb 2003

- trauma – fall on stairs

Spotswood, R H 13 Feb 2003

- trauma – lifting & filling sandbags

Webb, F J 27 Mar 2003

- trauma – lifting injury

Tully, D S 07 Feb 2003

- trauma – oil drum injury

Donoghue, D P 17 Jan 2003

spondylolisthesis & spondylolysis

- severe high energy trauma – parachute jump

Emmett, K J 18 Feb 2003

Visual disorder

glaucoma

- corticosteroid therapy

Grant, N R 28 Feb 2003

Words and phrases

actual combat against the enemy

Twible, F 07 Feb 2003

clinical onset

Grant, N R 28 Feb 2003

permanent

Hatherall, K J 31 Jan 2003

serious breach of discipline

Johnson, D J H 31 Jan 2003

National Case Appraisal Registrar

In the last issue of *VeRBosity*, the National Case Appraisal Registrar, Peter Studman, reported on his activities in that role. In April 2003, Peter retired from the Australian Public Service. We wish Peter well in his retirement and thank him for his service as Registrar of the NSW Registry and lately as National Case Appraisal Registrar.

Peter's retirement does not mean that case appraisal has ceased. The job involves two aspects, the appraisal mainly of unrepresented cases to focus on the readiness of cases to proceed to hearing; and a veterans' advocacy liaison role. The Editor of *VeRBosity*, Bob Kennedy, has taken on this latter role, and the Board's Queensland Registrar, Joedy Bauer, will assume the case appraisal role, with more of this work being performed by the other State Registrars.

Veterans' representatives can telephone Bob Kennedy about any case preparation, procedural, or technical issues on 1300 135 574 for the cost of a local call, Australia-wide. Some of the issues that have been raised with Peter and Bob have included:

- how to obtain further details concerning eligible service;
- clarification of the meaning and operation of a factor in a Statement of Principles;
- how to deal with a question of changing diagnosis;
- information concerning the criteria for the special rate of pension;
- information about offsetting compensation and disability pension;
- the nature and relevance of particular evidence being obtained for a particular type of case.

Representatives often find it useful to consult the VRB's Internet site, *www.vrb.gov.au*. It contains useful information about the VRB's procedures as well as links to *VeRBosity*, the Annual reports and AAT and court cases. Many representatives have been particularly interested in the link to information concerning eligible service. You can find this on the 'Links' page under 'Legislation and cases'. It contains details on the dates and areas of the various types of eligible service under the *VE Act* as well as maps and copies of the relevant statutory instruments determining eligibility.

Bruce Topperwien
VRB Executive Officer