VeRBosity Volume 19 No. 2

Contents

April - June 2003

Editor's notes

This edition of *VeRBosity* contains reports on nine Federal Court decisions relating to veterans' matters handed down in the period from April to June 2003. There is also a report on a decision of the Federal Magistrates Court.

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

This will be my last edition of *VeRBosity* as I am resigning from the Australian Public Service to pursue other interests. I would like to thank VRB staff and others who have assisted me over the past ten years and wish readers all the best for the future.

Robert Kennedy
Editor

General Information

Extract from Media Release by the Prime Minister
22 June 2003

AUSTRALIA'S NEW GOVERNOR-GENERAL

I am pleased to announce that Her Majesty The Queen has accepted my recommendation to appoint Major-General Michael Jeffery, AC,CVO,MC as Australia's next Governor-General.

While the appointment, when formally made, will be at royal pleasure, it is expected that General Jeffery will serve between three and four years.

General Jeffery has a long and distinguished record of public service. He was Governor of Western Australia from 1993 to 2000, during which period he twice served as Administrator of the Commonwealth. General Jeffery is currently Chairman of the not-for-profit public policy think-tank, Future Directions International.

He was born in Wiluna, Western Australia in 1937 and was educated at Cannington and East Victoria Park State Schools and Kent Street High School.

After attending the Royal Military College, Duntroon, General Jeffery served with distinction in the Australian Defence Force in many capacities until 1993. During a tour of duty in Vietnam, as an infantry company commander with the 8th Battalion, Royal Australian Regiment, he was awarded the Military Cross for courageous action and the South Vietnamese Cross of Gallantry.

In 1976 he assumed command of the SAS regiment in Perth and was subsequently promoted to Colonel as the first Director of the Army's Special Action Forces. From 1981-1983 he headed Australia's national counter terrorist co-ordination authority.

After attending the Royal College of Defence Studies in London, and promoted to Major-General, from 1986 General Jeffery commanded the Army's 15,000-man 1st Division. He later served as Deputy Chief of the General Staff, responsible for the day to day running of a 65,000 person army.

General Jeffery will be the first Australian born Governor-General to have had a full-time military career.

From "The Grey Eight in Vietnam, The History of Eighth Battalion The Royal Australian Regiment November 1969 - November 1970", Editor, Major A Clunies-Ross, 1989, p.149

Major Philip Michael Jeffery, Military Cross

Between 16th February and 28th February 1970, Major Jeffery's company was engaged in Operation "Hammersley" in the Long Hai Hills, Phuoc Tuy Province. During this period the company was engaged in reconnaissance in force and ambush operations against a tenacious enemy in extremely heavily mined terrain. On the 18th February, 1970 the company came into heavy contact with enemy firing from well entrenched positions. After a fierce fire fight the company routed the enemy killing six of them. On the 16th, 22nd, 25th and 28th of February, 1970 ambushes by the company accounted for thirteen enemy dead. The light casualties suffered by the company and the heavy losses inflicted on the enemy during this period were attributable to Major Jeffery's courage and professional competence.

On 1st May, 1970 Major Jeffery's company was engaged in Operation "Nudgee" in an area west of Binh Ba village, Phuoc Tuy Province. The company mission was to ambush tracks in the area with a view to eliminating the local guerilla groups. Immediately after fifteen enemy were seen moving north, Major Jeffery ordered them to be engaged with artillery and several groups moved into the waiting ambush killing zones. A subsequent intelligence report revealed that ten members of the Binh Ba Guerilla Unit had been eliminated in the ambushes, including the unit's Party Chapter Secretary. This success was directly attributable to Major Jeffery's skilful siting of the company's ambushes and his effective use of artillery.

Throughout a year of active service Major Jeffery's company has displayed outstanding morale and efficiency and has accounted for 37 enemy killed in action for a loss of only one of his company by enemy ground fire. Major Jeffery's leadership, drive and professionalism have assured that this high standard has been achieved and maintained. His actions reflect great credit on himself and are in the highest traditions of the Australian Army.

Media Release by The Hon. Danna Vale MP Minister for Veterans' Affairs Minister Assisting the Minister for Defence
27 June 2003

GOVERNMENT DELIVERS ENHANCED MILITARY REHABILITATION AND COMPENSATION SCHEME

Australian Defence Force personnel and their families will benefit from an enhanced rehabilitation and compensation scheme outlined in draft legislation released today by the Minister for Veterans' Affairs and Minister Assisting the Minister for Defence, Danna Vale.

Mrs Vale said the Military Rehabilitation and Compensation Bill delivered on the Howard Government's commitment to introduce a modern, military-specific rehabilitation and compensation scheme for ADF personnel and their families.

"The new scheme enhances benefits available to Defence personnel and their families in the tragic event that a member suffers illness, injury or death as a result of their service to our nation," Mrs Vale said.

"As well as improving support for injured members, the new scheme also increases the amount available to war widows and dependents who choose a lump sum as compensation."

Mrs Vale said rehabilitation was a key focus of the new scheme.

"We want to ensure that any injured ADF member receives the support they need to make a full recovery or reach their optimum level of health, and to return to work where possible," the Minister said.

The release of the exposure legislation follows extensive consultation with the ex-service community. Further meetings will be held with Defence and veteran representatives around the nation.

Submissions on the draft legislation close on August 31, 2003.

"The Military Rehabilitation and Compensation Bill recognises the unique circumstances of military service in Australia today," Mrs Vale said.

"With this legislation we will establish a modern scheme to meet the needs of future generations of veterans and their families.

"I welcome the Opposition parties' in-principle endorsement of a new scheme and look forward to their support for the passage of this legislation through Parliament."

The new scheme is planned to start in mid-2004. Further information and copies of the draft legislation are available at:

www.defence.gov.au/dpe/militarycompensation2003.

KEY FEATURES OF THE PROPOSED MILITARY REHABILITATION AND COMPENSATION SCHEME

Rehabilitation

- Rehabilitation will be a primary focus. The scheme will include assessments for all members or former members who have a claim accepted, aimed at full recovery, return to work where possible, or reaching optimum health and well-being.
- Defence Service chiefs will retain responsibility for the rehabilitation of serving ADF members.

Compensation

- Compensation payments at least match those provided under existing legislation, with significant enhancements for severe injury or incapacity.
- The scheme will offer a choice between a lump sum or regular pension payments for permanent impairment.
- For severely injured personnel, a choice between incapacity payments to age 65 or a lifetime fortnightly 'safety net' payment will ensure that the minimum benefits for someone who cannot work will be no less than the T&PI rate of veteran disability pension.

Common income support regardless of service

- The scheme introduces common income support entitlements for all types of service, including warlike, non-warlike, peacetime, reserve and cadet service.

Widowed partners

- The scheme will offer a choice for widowed partners of a regular pension, equivalent to the war widow's pension, or a lump sum based on the lifetime pension value
- Lump sum benefits for widows are enhanced. For example, the 25-year-old widowed partner with two children of an ADF member killed on warlike service will have the choice of lump sum benefits totalling approximately $580,000. In addition, the widowed partner will be eligible for free health care for themselves and dependent children, Military Superannuation benefits, an allowance of approximately $132 per week for dependant children, and other ancillary benefits.

Financial advice

- Where a choice is available, the Federal Government will help pay the cost of independent financial advice to assist injured personnel and their families in choosing the most appropriate benefits.

Continuation of Veterans' Entitlements Act benefits

- Links between the new scheme and existing veterans' entitlements will provide benefits to new veterans with operational and qualifying service, such as the Gold Card at age 70 and the service pension at age 60.

Governance

- The new scheme will be the responsibility of the Minister for Veterans' Affairs and Veterans' Affairs portfolio, in keeping with the traditional approach to Australian repatriation, which acknowledges the unique nature of military service.

Commencement

- The new scheme will cover all ADF service from the date the legislation takes effect, planned for mid-2004.

Media Release by The Hon. Danna Vale MP Minister for Veterans' Affairs Minister Assisting the Minister for Defence
7 August 2003

NAVY VETERAN APPOINTED NEW REPATRIATION COMMISSIONER

A former career officer in the Royal Australian Navy, Rear Admiral Simon Harrington (Ret'd), will be the new Services member of the Repatriation Commission, the Minister for Veterans' Affairs, Danna Vale, announced today.

Mrs Vale said RADM Harrington would take up his three-year appointment as Repatriation Commissioner from 25 August 2003, succeeding Major General Paul Stevens.

"The Repatriation Commission is the agency charged with meeting Australia's commitment to care for those who have served our nation in wars, conflicts and peace operations," Mrs Vale said.

"With the support of the Department of Veterans' Affairs, the Commission delivers compensation and health benefits and discharges the nation's obligation to remember and honour our servicemen and women.

"The Services member of the Commission is appointed from nominations received from the ex-service community. RADM Harrington's appointment was proposed by the RSL, Legacy and the Naval Association of Australia, and I am confident he will be well-received by the Australian veteran community," the Minister said.

RADM Harrington joined the RAN at the age of 15 and, after graduating from the Royal Australian Naval College, served in a number of ships including HMAS *Vampire* and HMAS *Yarra* during the Vietnam War.

His 39-year Navy career includes service in the Far East Strategic Reserve and in Papua New Guinea, before commanding HMAS *Canberra* in 1987-88 and HMAS *Adelaide* in 1992-93. RADM Harrington also served in positions including Commanding Officer of the RAN College at Jervis Bay, Director General Recruiting and Support Commander – Navy, and was Head of Australian Defence Staff and Defence Attache at the Australian Embassy in Washington for three years until retiring in 2002.

"RADM Harrington brings to his appointment a depth of operational and administrative experience that will be invaluable during what is likely to be a challenging period for the Repatriation Commission," the Minister said.

"This includes the implementation of the proposed new Military Rehabilitation and Compensation Scheme, which is planned to be administered by a commission including the three members of the Repatriation Commission."

In welcoming RADM Harrington to the Commission, Mrs Vale paid tribute to the work of MAJGEN Stevens, who steps down after six years as Repatriation Commissioner.

"Paul Stevens served with distinction on the Commission at a time when the Gold Card was extended, when veteran partnering with private hospitals and Veterans' Home Care were introduced and when the new military rehabilitation and compensation legislation was drafted. He has also been instrumental in guiding significant studies into the health of Vietnam, Korean War and Gulf War veterans.

"MAJGEN Stevens is highly regarded for his dedication to the welfare of veterans and war widows and he leaves the Repatriation Commission with the gratitude and best wishes of the Government and the veteran community," Mrs Vale said.

[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.]

Senate Inquiry into the administrative review within the area of veteran and military compensation and income support

Terms of Reference

On 19 June 2003, the following matter was referred to the Senate Finance and Public Administration References Committee for inquiry and report.

The options and preferences for a revised system of administrative review within the area of veteran and military compensation and income support, including:

(a) an examination and assessment of the causes for such extensive demand for administrative review of decisions on compensation claims in the veterans and military compensation jurisdictions;

(b) an assessment of the operation of the current dual model of internal review, Veterans' Review Board/Administrative Appeal Tribunal, its advantage, costs and disadvantages;

(c) an assessment of the appropriate model for a system of administrative review within a new, single compensation scheme for the Australian Defence Forces and veterans of the future, including compensation claim preparation, evidentiary requirements, facilitation of information provision and the onus of proof;

(d) identification of policy and legislative change required to amend the system at lowest cost and maximum effectiveness; and

(e) an assessment of the adequacy of non-means tested legal aid for veterans, the appropriateness of the current merits and its administration, and options for more effective assistance to veteran and ex-service claimants by ex-service organizations and the legal industry.

The closing date for submissions was on 15 August 2003.

Administrative Appeals Tribunal

Re R Cunnington and Repatriation Commission

Hotop & Lloyd

[2003] AATA 355
17 April 2003

Qualifying service – Vietnam waters – whether a veteran

Mr Cunnington applied for review of a decision that he was not eligible for a service pension. He had enlisted in the Royal Naval Reserve ("RNR") in Portsmouth, United Kingdom in 1963. In December 1966 while residing in Australia, he applied to the Royal Australian Navy to carry out 3 months sea training with the RAN (in order to fulfil his RNR obligations). The RAN referred his application to the UK authorities for approval. Such approval was granted in March 1967.

On 26 October 1967, the Naval Board RAN posted him to *HMAS Sydney* for 3 months training. He served on board *HMAS Sydney* from 20 November 1967 to 19 February 1968, which included service in Vietnamese waters. He was discharged from the RNR in 1974.

In 2001, Mr Cunnington lodged a claim for service pension. The claim was refused on the basis that he was "not a Commonwealth veteran as defined in section 5C of the *Veterans' Entitlements Act 1986*."

Legislation

By s 7(1)(a) of the *VE Act*, "a person who has rendered operational service shall be taken to have been rendering eligible war service while the person was rendering operational service".

By s 6C(1), "a member of the Defence Force who has rendered continuous full-time service in an operational area as:

(a) a member who was allotted for duty in that area; or

(b) a member of a unit of the Defence Force that was allotted for duty in that area;

is taken to have been rendering operational service in the operational area while the member was so rendering continuous full-time service".

The expression "member of the Defence Force" is defined in s 5C(1) to include "a person appointed for continuous full-time service with a unit of the Defence Force".

The Tribunal observed that this definition is an inclusive one and does not purport to define exhaustively the persons, or classes of persons, who may properly be regarded as members of the Defence Force for the purposes of the *VE Act*. In the present case, HMAS *Sydney* was a "unit of the Defence Force", as defined in s 5C(1), and the applicant was, on 26 October 1967, posted by the Naval Board RAN to HMAS *Sydney* for 3 months training.

The Tribunal was of the view that the applicant could be regarded as a "member of the Defence Force" for the duration of his period of service on board HMAS *Sydney* from 20 November 1967 to 19 February 1968, on the basis that he had been appointed for continuous full-time service for the duration of that period with that unit of the Defence Force.

By Ministerial instrument dated 23 December 1997, it was determined that

HMAS *Sydney* was taken to have been allotted for duty in Vietnam (an "operational area" for the purposes of the *VE Act*) during the periods from 20 December 1967 to 3 January 1968 (inclusive) and from 17 January 1968 to 16 February 1968 (inclusive). By a Ministerial "Continuous full-time service determination" dated 27 August 1998, the *VE Act* applies to any member of the Defence Force who, while not rendering continuous full-time service, was rendering service as a member of a unit of the Defence Force that was allotted for duty in Vietnam at any time during the period from 31 July 1962 to 11 January 1973, "as if the member was rendering continuous full-time service".

Tribunal's conclusions

The Tribunal found that the applicant, during his period of service on board HMAS *Sydney* from 20 November 1967 to 19 February 1968, had rendered "continuous full-time service in an operational area as ... a member of a unit of the Defence Force that was allotted for duty in that area", for the purposes of s 6C(1).

The Tribunal found therefore, that the applicant was to be taken to have been rendering "operational service" in the operational area of Vietnam while he was rendering continuous full-time service on board HMAS *Sydney* during the periods that HMAS *Sydney* was allotted for duty in that operational area, from 20 December 1967 to 3 January 1968 and from 17 January 1968 to 16 February 1968. In accordance with s 7(1)(a), the Tribunal also found that the applicant is to be taken to have been rendering "eligible war service" during those periods. It followed therefore, that he was a "veteran" as defined in s 5C(1) of the *VE Act* and had rendered "qualifying service" in accordance with s 7A(1)(a)(iii).

Formal decision

The Tribunal set aside the decision and substituted its decision that Mr Cunnington had rendered qualifying service for service pension purposes.

Re D H Guthrie and Repatriation Commission

Lloyd

[2003] AATA 361
22 April 2003

Osteoarthrosis knee & lumbar spondylosis – repeated lifting of loads in Vietnam

Mr Guthrie applied for review of a decision that his claimed conditions of osteoarthrosis of the right knee and lumbar spondylosis were not war-caused. He served in the Australian Army in Vietnam from 11 February to 5 December 1969 and this period constituted operational service.

Mr Guthrie contended that his right knee and lumbar spine conditions were both caused, or contributed to in a material degree, by his war service. Specifically he contended that, as a rifleman and subsequently as a driver in Vietnam over 10 months, he was consistently involved in carrying/lifting items while weight bearing and that this activity was a causal factor in the subsequent development of osteoarthrosis right knee and lumbar spondylosis.

Weight bearing factor

In relation to osteoarthrosis of the right knee, the factor in the SoP (No 81 of 2001) relevant to the hypothesis raised was factor 5(k) which stated as follows:

> "(k) for osteoarthrosis of a hip or knee joint lifting loads of at least 25 kg while weight bearing to a cumulative total of 120,000 kg within any 10 year

period, before the clinical onset of osteoarthrosis in that joint;"

In relation to lumbar spondylosis, the factor in the SoP (No 46 of 2002 as amended) relevant to the hypothesis raised was factor 5(j) which stated as follows:

"(j) manually lifting or carrying loads of at least 25 kg while weight bearing to a cumulative total of 120,000 kg within any 10 year period, before the clinical onset of lumbar spondylosis;"

Contentions

In Vietnam, Mr Guthrie first served with the Army's reinforcement unit ("IARU") as a rifleman, from 11 February to 18 March 1969 - a total of 36 days. He stated that he spent 15 days on close-in patrols around the Task Force base at Nui Dat ("TAOR patrols") during which he carried a semi-full pack, rifle, ammunition and water bottles - together weighing a total of about 27 kg. These patrols were normally overnight and would have involved him lifting and carrying his pack etc an estimated 10 times each day. He stated that approximately 15 days were spent on work party activity. This involved filling/lifting and laying sand bags, digging and preparing weapon pits/firing bays - most of which activity encompassed weight bearing. This 15 days of work party activity required some 40 lifts of sandbags etc each day with average weights of each lift of 30 kg and sometimes heavier than that. The calculation in respect of his time in IARU, came to a cumulative total of 22,050 kg.

Mr Guthrie was subsequently posted to an infantry battalion (9RAR), from March to November 1969. Initially his employment was as a rifleman and he stated that he was involved in battalion operations. These operations involved occupation of fire bases away from the Australian Task Force base at Nui Dat. He was equipped as before, with a rifle but with more ammunition and water bottles, and a full pack including rations - all of which would have weighed a total of at least 30 kg on each operation. He estimated that the lifts of this total load would have occurred at least 10 times per day. The total period on operations was 91 days. The weight bearing calculation in regard to his period on operations with 9RAR as a rifleman came to a total of 27,300 kg.

Mr Guthrie estimated that of the remaining period as a rifleman with 9RAR, when not on actual operations, some 65 days were spent by him on work parties in the battalion/Task Force base area. This again involved a lot of manual work - filling/carrying and laying sandbags, carrying coils of barbed wire and improving defensive works etc that involved lifting and weight bearing of items/stores most of which were often in excess of, but probably averaging, 30 kg in weight. Such lifts and carries would have occurred at least 40 times a day for each of those 65 working days. The relevant weight bearing calculation in this period was 78,000 kg.

Based on the assessed figures provided by the applicant, the cumulative total of loads lifted and carried by him in excess of 25 kg while weight bearing during these periods of his service in Vietnam was **127,350 kg.**

Tribunal's conclusions

The Tribunal concluded that the figures indicated by Mr Guthrie in his evidence were within reasonable limits of accuracy. They did not seem to be to any relevant degree fanciful or obviously exaggerated.

The Tribunal was satisfied that his war service activity, involving manual lifting and carrying, met the weight bearing requirement prescribed in factor 5(j) in the SoP relating to lumbar spondylosis and of factor 5(k) in the SoP relating to osteoarthrosis (of the right knee). In fact it exceeded the required 120,000 kg

cumulative total applicable in both Instruments. This war service activity occurred within a one year period (some 10 months only) and was therefore well within the 10 year period required by the SoPs. The Tribunal concluded on this basis that both conditions were war-caused.

Formal decision

The Tribunal set aside the decision under review and substituted its decision that osteoarthrosis right knee and lumbar spondylosis were war-caused.

The Compensation Claims Processing System (Version 2003/04) contains the following guidelines on how the manual lifting factor should be applied.

Calculations

To accumulate 120,000 kg at the rate of 25 kg per lift or 168,000 kg at the rate of 35 kg per lift would require the following number of lifts per day over various periods of time:

Years	Lifts per day
1	13.15
2	6.58
3	4.38
4	3.28
5	2.63
6	2.19
7	1.87
8	1.64
9	1.46
10	1.3

You can calculate the number of lifts required to accumulate the required total weight by dividing 120,000 (or 168,000) by the weight being lifted. For example if a veteran regularly lifted 27 kg in the course of his duties as a storeman, then he would need to lift this weight 4,444 times to accumulate 120,000 kg. Dividing this number by the number of days in the period during which he did the lifting will give you the number of lifts per day required during this period, in order to accumulate the necessary total weight. Thus if the veteran only worked as a storeman for six months regularly lifting 27 kg, and did no other heavy lifting during service, he would need to have lifted 27 kg 24.4 times each day (4,444 divided by 180), in order to meet the SOP requirements.

Where the veteran performed a number of activities for varying lengths of time, lifting various weights, it will be more practical to simply add the weights lifted. For example if a the above veteran also worked in a vehicle workshop for two months and lifted 30 kg twice every day, then you would:

- multiply 27 kg by 4 times per day by 180 days in six months, to obtain the total for his stint as a storeman, then
- multiply 30 kg by 2 times per day by 60 days in two months, to obtain the total for his time in the workshop.

The sum of these two figures will give the cumulative total.

[Ed: The Federal Court case of *Kattenberg* (2002) 18 *VeRBosity* 41, would appear to indicate that service-related lifting merely needs to *contribute* to the overall amount of lifting performed over the 10 year period rather than account for the entire amount of lifting in that period.]

Re R D Croxford and Repatriation Commission

Bullock & Campbell

[2003] AATA 393
30 April 2003

Alcohol dependence – inability to obtain appropriate clinical management

Mr Croxford applied for review of a decision that post traumatic stress disorder with depression and alcohol dependence were not service-related. He served in the RAN from 1971 to 1975. This period included operational service in Vietnam in *HMAS Sydney* but as the contentions related to his service in Australia, the Tribunal limited its consideration to his defence service after 7 December 1972.

Mr Croxford told the Tribunal that he started consuming alcohol after joining the Navy and that he was a minor at the time. His evidence was that he was able to obtain alcohol from other sailors who were of the legal drinking age. His drinking continued and worsened during service. He was involved in a number of incidents in 1974 and 1975 which are alcohol-related. He was discharged on 28 May 1975 as unsuitable for naval service.

Appropriate clinical management

The Tribunal was satisfied that the correct diagnosis of Mr Croxford's condition was alcohol dependence. There was insufficient evidence to support diagnoses of post traumatic stress disorder or depressive disorder.

The Statement of Principles relating to alcohol dependence (No 77 of 1998) includes as a factor related to service:

> "(e) inability to obtain appropriate clinical management for alcohol dependence or alcohol abuse;"

The Tribunal heard evidence which it accepted, that in the 1970s, appropriate clinical management for alcohol dependence would have consisted of referral to a psychiatrist, Alcoholics Anonymous and to undertake group psychotherapy.

Tribunal's conclusions

The Tribunal found that from the commencement of Mr Croxford's alcohol consumption in *HMAS Sydney*, this worsened in *HMAS Vendetta* to the point where he was brought to the attention of the authorities on a number of occasions and charged and convicted of alcohol-related offences. The Tribunal considered that the onset of his alcohol abuse was in 1973 during service in *HMAS Vendetta* and continued in a worsening pattern, leading to alcohol dependence during 1974 and 1975.

The Tribunal considered that the management of alcohol dependence in the Navy leading up to his discharge in 1975 consisted principally of the use of disciplinary processes. He was referred to a senior psychologist but this was for assessment in relation to possible discharge and did not represent ongoing counselling or assistance. Mr Croxford denied that he received any other counselling. He also denied having any discussions with his supervisor or his Commander beyond being told to cease drinking and being read the "riot act" about his behaviour.

The Tribunal was satisfied that in the 1970s when Mr Croxford was experiencing his alcohol-related problems, a form of clinical management was available but no such clinical management was provided to him. The Tribunal said that factors such as Mr Croxford's age, his particular personality, the type of condition from which he was suffering and his service in the Navy were all to be taken into consideration in determining whether or

not he was able to obtain appropriate clinical management of his alcohol dependence.

The Tribunal noted that Navy authorities were aware of his alcohol-related problems and there was an investigation as to whether or not he should be discharged. It was recommended by the senior psychologist that he be placed on probation for six months and transferred from *HMAS Vendetta.* This recommendation was not followed through and resulted in a failure to provide appropriate clinical management of his alcohol problem. The Tribunal concluded that the Navy had the means of properly managing Mr Croxford's condition and did not do so to the requisite clinical management standards of the 1970s. This resulted in a worsening of his alcohol dependence during his service in the Navy.

Formal decision

The Tribunal set aside the decision under review and substituted its decision that Mr Croxford's alcohol dependence was defence-caused.

Re J F Boyd and Repatriation Commission

Allen & Thorpe

[2003] AATA 467
23 May 2003

Death – post operative – removal of kidney stones – effects of dehydration during service

Mrs Boyd applied for review of a decision that the death of her late husband was not war-caused. He had rendered operational service in tropical areas in the South West Pacific during World War 2. He died in 1973 from a pulmonary embolism following surgery for the removal of a renal calculus (kidney stone).

The hypothesis was put forward that the deceased had become dehydrated while serving in tropical areas, which in turn led to the formation of crystals in the urine and over time led to the formation of a kidney stone.

The hypothesis was supported by Dr Rosen, urologist who postulated that the kidney stone could have been present for many years before migrating to obstruct the kidney. Dr Rosen suggested that dehydration during the war years may have led to kidney stone formation.

Professor Zwi, consultant physician doubted that renal calculus had been present for some time although he conceded that dehydration would increase the tendency to form crystals in the urine, leading to the formation of a kidney stone. Dr Breslin, consultant urologist thought it "extremely unlikely" that the late veteran had developed a renal calculus as a result of dehydration during the war.

The Tribunal also noted a study by Borghi et al which confirmed that high uric acid relative supersaturation was present during occupation in hot temperatures and that "chronic dehydration represents a real lithogenic risk factor mainly for uric acid stones, and adequate fluid intake is recommended during hot occupations."

Tribunal's conclusions

The Tribunal referred to the Statement of Principles regarding nephrolithiasis (No 178 of 1995) which contains the following definitions:

> "**hyperuricosuria**" means the excretion of an excessive amount of uric acid in the urine, attracting ICD code 791.9
>
> "**nephrolithiasis**" (also known as renal calculi) means a condition marked by the presence of kidney stones that consist of calcium salts (predominantly oxalate or

> phosphate), uric acid, cystine or struvite (the triple salt of magnesium, ammonium and phosphate); attracting ICD code 274.11 or 592.0

The Statement of Principles states in paragraph 1(e) that a reasonable hypothesis connecting nephrolithiasis with the circumstances of service will be raised where the veteran is:

> (e) suffering from hyperuricosuria before the clinical onset of signs or symptoms of nephrolithiasis;

The Tribunal found that the clinical onset of kidney stones in this case was in about September 1973. However the material raised the hypothesis that the deceased's hyperuricosuria arose during his war service in tropical areas as a result of a lack of hydration. Borghi et al found that hyperuricosuria can be a result of occupation in hot temperatures and constant dehydration, causing an increase in uric acid concentration in the urine (hyperuricosuria). The hypothesis therefore conformed to the SoP and the facts were not negatived beyond reasonable doubt.

Formal decision

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

Re J Moran and Repatriation Commission

McCabe

[2003] AATA 610
27 June 2003

Eligibility – time spent AWOL and in detention not eligible service

Mr Moran applied for review of a decision that he was ineligible for pension under the *Veterans' Entitlements Act 1986*. His claim was refused on the basis that he had not completed three years effective full-time service in the Defence Force. Although he spent longer than three years in the Army, part of that time was excluded because he was absent without leave or undergoing punishment.

Mr Moran enlisted in the Australian Army on 12 July 1972 and was discharged on 29 July 1975. He was AWOL on some seven occasions during his service. The absences were mostly for short periods and he was subject to disciplinary action. On the last occasion, he was AWOL for 19 days from 23 September 1973 to 11 October 1973. He was sentenced to 96 hours detention on 12 October 1973. Combining the time he spent AWOL and the time in detention, he was unavailable for duty for 23 days consecutively.

Before being eligible for discharge after serving three years, Mr Moran had to make up for the time he was unavailable for duty. He was discharged on 29 July 1975, some three years and 17 days after he enlisted. Excluding the time he spent AWOL or in detention, he did not render three years effective full-time service.

At issue was the construction of the expression "effective full-time service", which is defined in s 68 of the *VE Act*. That section provides:

> ***"effective full-time service***, in relation to a member of the Defence Force, means any period of continuous full-time service of the member other than:
>
> (a) a period exceeding 21 consecutive days during which the member was:
>
> (i) on leave of absence without pay;
>
> (ii) absent without leave;
>
> (iii) awaiting or undergoing trial in respect of an offence of which the member was later convicted; or
>
> (iv) undergoing detention or imprisonment;"

Submissions

The Repatriation Commission submitted that the 19-day period during which Mr Moran was AWOL must be combined with the four days of detention. If that 23-day period was excluded from the calculation of effective service, he was several days short of three years effective full-time service.

Mr Moran submitted that any period of time lost in terms of the definition in s 68 will only count for the purposes of s 70 if it exceeds 21 days. Periods shorter than 21 days are ignored in the calculation of effective full-time service for the purposes of determining an entitlement under s 70. The 23-day period during which he was unavailable for duty in September - October 1973 was comprised of two periods of less than 21 days duration each which cannot be combined. On that approach, he had in excess of three years effective full-time service, with the absences and periods of detention of less than 21 days being ignored.

Tribunal's conclusions

The Tribunal concluded that Mr Moran's continuous service was interrupted for more than 21 consecutive days. It said it would be artificial to ignore the interruption on the basis that it was attributable to two different factors, where *both* factors ultimately arose out of the one course of conduct.

The Tribunal observed that the *VE Act* is designed to reward those who were available to serve their country. While the definition in s 68 makes it clear that short gaps in availability might be excused, a member of the Defence force would not qualify for benefits if he or she was not available for three years of effective full-time service, as opposed to three calender years of enlistment. Since Mr Moran was unavailable for 23 consecutive days in 1973, the policy of *VE Act* suggested that period should not be counted, even though part of the absence was attributable to being AWOL and part of it was time spent in detention.

The Tribunal noted that the *VE Act* is beneficial legislation and should be given a liberal interpretation "so as to give the fullest relief which the fair meaning of its language will allow": see *Bull v Attorney-General (NSW)* (1913) 17 CLR 370 at 384 per Isaacs J. The limits of the rule were explained by Mason, Brennan, Deane and Dawson JJ in *Khoury v Government Insurance Office of NSW* (1984) 54 ALR 639. Their Honours said (at 650):

> "… the rule that remedial provisions are to be beneficially construed so as to provide the most complete remedy of the situation with which they are intended to deal must … be restrained within the confines of 'the actual language employed' and what is 'fairly open' on the words used."

The Tribunal invited the Commission to consider the possibility of an act of grace payment to Mr Moran for his condition given that he had missed out on his entitlements because he had no control over the date of his discharge.

Formal decision

The Tribunal affirmed the decision that Mr Moran was not eligible for a pension.

[Ed: This case is consistent with *Sellars v. Nielsen* (1943) QSR 217, in which the Supreme Court of Queensland held that a person was not rendering service while in prison. Also in *Re Lester* (1991) 23 ALD 69, the Tribunal held that a person was not rendering service while in detention.]

Federal Court of Australia

Price v Repatriation Commission

Conti J

[2003] FCA 339
16 April 2003

Compensation for internment by Japanese during World War 2 – meaning of "interned" – expert testimony on events in Singapore

Mrs Price appealed against a decision of the AAT refusing her claim for a lump sum payment of $25,000 under the *Compensation (Japanese Internment) Act 2001.* She had claimed on the basis that her late husband was interned by the Japanese in Singapore during World War 2.

The late veteran enlisted in the AIF on 19 May 1941 and rendered full time service, including service in Malaya and later in New Guinea, until he was discharged on 11 July 1946. He was present in Singapore on 5 October 1941 following active service in Malaya and arrived back in Australia on 7 March 1942 on board a Dutch ship named the *Zaandam*. The formal surrender of Singapore to the Japanese forces occurred on 15 February 1942.

The essential issue before the AAT was whether the late veteran was in fact "interned" by Japanese military forces for the purposes of the *Internment Act*. The expression "interned" is defined in the Act as follows:

> "(a) confined in a camp, building, prison or other place (including a vehicle); or
>
> (b) restricted to residing within specified limits."

Members of the late veteran's family gave evidence at the AAT of what he had told them about the circumstances of his escape from Singapore and return to Australia. The AAT also heard evidence by a qualified historian, Mr Brendan O'Keefe.

The AAT found that the late veteran was not interned by Japanese military forces for the purposes of the *Internment Act*. It concluded that it was most likely that the veteran had escaped after the surrender of Singapore but before capture by Japanese forces.

Appeal grounds

Mrs Price's counsel submitted that the AAT had erred in law by failing to apply s 119(1)(h) of the *VE Act*, which requires the AAT to take into account any difficulties in ascertaining evidence due to the effects of time or the absence of or deficiency in official records. Counsel also submitted that the AAT had misconstrued the meaning of "interned". It was contended that being in Singapore and subject to the terms of surrender brought the veteran within the meaning of "interned".

Court's conclusions

Conti J rejected both submissions. As arbiter of fact, the AAT had preferred Mr O'Keefe's expert testimony to that of the family members. It had not failed to apply s 119. He also concluded that the AAT had not misconstrued the meaning of "interned". The AAT's finding that the veteran was never interned by the Japanese was open to it on the evidence.

Formal decision

The Court dismissed Mrs Price's appeal.

Stoddart v Repatriation Commission

Mansfield J

[2003] FCA 334
17 April 2003

Statements of Principles – accrued rights – experiencing a severe stressor – threat of death or serious injury – perception of risk

Mr Stoddart appealed to the Federal Court against a decision of the Tribunal that his post traumatic stress disorder and alcoholic liver damage were not war-caused. He served in the RAN and had operational service in the Far East Strategic Reserve between 1956 and 1959 for a total period of 134 days.

Mr Stoddart told the Tribunal that during his operational service, he experienced "severe stressors" whilst working in the engine rooms of vessels, namely:

(i) occasions when he was required to check the tunnels and temperature gauges deep down at the bottom of the vessel, which he undertook alone without radio or other contact, and where he had no way of communicating if he was in trouble; while doing this task he had to lock doors behind him to ensure the area was completely sealed and water tight; and

(ii) occasions when the vessel was called to action stations while he was in the engine room below the water line, sealed and water tight.

He claimed that he was intensely frightened during those periods as there would have been little, if any, chance of him getting out alive.

Appeal grounds

Mr Stoddart raised two issues on appeal to the Court:

(i) whether he was entitled to have his application determined by applying the SoPs in force at the time of lodging his original claim; and

(ii) whether the AAT had misconstrued the SoPs by:

- failing to consider whether he had subjectively experienced a "severe stressor", and
- failing to consider whether the events claimed to lead to the "severe stressor" experienced by him may have arisen or occurred from a threat to another person's physical integrity.

Accrued rights

Mr Stoddart submitted that he was entitled to have his application determined by applying the SoPs in force at the time of lodging his original claim. Earlier SoPs which were in force when he lodged his claim were more favourable to him. The AAT followed the Court's decision in *Repatriation Commission v Gorton* [2001] FCA 1194 and applied the SoPs in force at the time of its review. (See 17 *VeRBosity* 85)

Mansfield J noted that the circumstances in this case were not addressed in *Gorton* and *Keeley*. In both cases, the SoPs in force at the time of the Commission's decision and at the application for benefits under the *VE Act* were the same.

Mansfield J concluded that the AAT in this case had correctly rejected the contention that the applicant had an "accrued right" to have his claim determined by the SoP in force at the time his application was made. The accrued right which arises by reason of making a claim for benefits under the *VE Act* is to have the claim determined by reference to the SoP in force at the time of the Commission's decision. That is because of the direction in s 120A(2). Accordingly, there was no accrued right to have the matter reviewed in terms of

the SoPs in force at the time of the original claim.

Experiencing a severe stressor

The Statement of Principles applied by the Tribunal in relation to PTSD was Instrument No 3 of 1999 (as amended) and in relation to alcohol dependence or alcohol abuse was Instrument No 76 of 1998.

Each of the SoPs defines "experiencing a severe stressor" in similar terms. The SoP for alcohol dependence or alcohol abuse includes the definition:

> **"experiencing a severe stressor"** means, the person experienced, witnessed or was confronted with, an event or events that involved actual or threat of death or serious injury, or a threat to the person's or other people's physical integrity, which event or events might evoke intense fear, helplessness or horror.
>
> In the setting of service in the Defence Forces, or other service where the *Veterans' Entitlements Act* applies, events that qualify as severe stressors include:
>
> (i) threat of serious injury or death; or
>
> (ii) engagement with the enemy; or
>
> (iii) witnessing casualties or participation in or observation of casualty clearance, atrocities or abusive violence.

In relation to the definition of "experiencing a severe stressor", the AAT said:

> "This is an objective test. Even if I was to accept the veracity of the applicant's evidence, the events he has outlined do not objectively satisfy the relevant factors. There was never an actual threat to the *Sydney* or the *Melbourne*. I am satisfied, beyond reasonable doubt, that the applicant never experienced, witnessed or was confronted with an event or events that involved actual, or threat of death, or serious injury."

Mr Stoddart's counsel submitted that the AAT erred in regarding the two factors as imposing an objective test only, because the use of the word "experiencing" contains a **subjective** element which it failed to consider. The second contention was that the AAT did not address whether he experienced a severe stressor by reason of actual or threatened death or serious injury to some other persons' physical integrity.

Error of law

Mansfield J agreed that the Tribunal erred in law in its understanding of the expression "experiencing a severe stressor" in each of the SoPs by requiring there to be an actual threat, judged objectively and with full knowledge of all the circumstances, to the applicant's (or another person's) physical integrity before the minimum factors in each SoP could be met.

Mansfield J said that the AAT's error was in requiring a "threat" to be one which, judged objectively and remote from the circumstances and state of knowledge of the person experiencing or witnessing or being confronted with the threat, has a real or actual prospect of actually resulting in death or injury or harm to physical integrity.

Mansfield J continued:

> "The adjectival clause 'that involved actual or threat of death or serious injury ...' explains the nature of the event or events which must be experienced. It contemplates an objective and assessable state of affairs. I do not think it provides for idiosyncratic and personal perceptions of events which, judged objectively, do not in fact fall within

> the adjectival clause. But it does not follow that the 'threat' there referred to must involve events which judged objectively and with full information involve an actual threat of death or serious injury. That construction would appear to go beyond the purpose of SoPs. …
>
> It is consistent with those provisions that the SoPs should be read as meaning that a claimant experiences 'a severe stressor' if that person experiences, witnesses or is confronted with an event or events which that person perceived as a threat of death or serious injury or to physical integrity, and which with that person's knowledge and in that person's experience, could reasonably be so perceived."

Mansfield J rejected Mr Stoddart's second contention. He observed that a fair reading of the AAT's reasons indicated that it found the objective aspect of experiencing a severe stressor simply did not exist, because neither of the vessels in which the applicant served during his operational service was the subject of an actual threat. Further, his case was that he feared for his own safety and not that of other persons.

Formal decision

The Court set aside the Tribunal's decision and remitted the matter to the Tribunal for reconsideration as to whether Mr Stoddart's PTSD and alcoholic liver damage were war-caused.

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

O'Sullivan v Repatriation Commission

Sackville J

[2003] FCA 387
1 May 2003

Special rate application – denial of procedural fairness – no opportunity to inspect complete document at AAT

Mr O'Sullivan appealed to the Federal Court against a decision of the AAT, affirming a decision assessing his pension at 100% of the general rate. His accepted disabilities include anxiety state with migrainous headaches, cardiac arrhythmia, atherosclerotic peripheral vascular disease and renal artery atherosclerotic disease. He claimed that he ceased to practise as a barrister at the age of 77 solely by reason of war-caused injury or disease and was entitled to a Special rate pension under s 24(2A) of the *VE Act.*

His claim for the Special rate was refused by the Repatriation Commission on the ground that a variety of factors, other than his war-caused disabilities, contributed to his decision to retire from practice as a barrister.

The AAT affirmed that decision on the basis that it was not reasonably satisfied that it was his incapacity from war-caused injury or disease alone which led to him giving up practice, but it was a combination of circumstances including the fact that his practice was no longer viable and his outgoings were exceeding his income. It said that it was not solely due to war-caused incapacity that his practice was no longer viable.

At the AAT hearing, he was cross-examined in detail on his 1997-1998 return. A copy of the return shown to him and tendered in evidence omitted page 8 of the return. The missing page showed

that he had made a net loss from his business or profession of $8,041. That loss represented the excess of the expenses incurred in his practice as a barrister over the gross receipts from the practice.

Appeal grounds

Mr O'Sullivan submitted on appeal that he was denied procedural fairness at the AAT by reason of a misleading cross-examination based on an incomplete document, namely a copy of his tax return for the 1997-1998 taxation year. It was also submitted that he should have been given an opportunity to examine his own copy of the tax return.

Breach of procedural fairness

Sackville J noted that the cross-examination of Mr O'Sullivan had proceeded on the basis of two misconceptions. The first was that the tax return was in respect of the 1998-1999 year, when in fact it related to the 1997-1998 year. The second was that he had failed to disclose in his return any profit or loss from his practice as a barrister and thus had not recorded the receipt of any income from that practice.

Sackville J accepted the submission that Mr O'Sullivan was denied procedural fairness in the conduct of the AAT proceedings. He noted that the AAT was under a statutory duty to ensure that the applicant was given a reasonable opportunity to inspect documents which the AAT proposed to have regard in reaching its decision. Section 39 of the *AAT Act* reflects a clear statutory policy that a party should have an opportunity to inspect documents that may play a part in the AAT's decision and to make submissions on those documents.

Sackville J did not accept that there was no denial of procedural fairness merely because the members of the AAT were not personally at fault for the unfairness. The obligation on the AAT, if it proposed to have regard to the tax return, to ensure that the applicant had a reasonable opportunity to inspect the document and make submissions on it extended to the complete tax return. The applicant was denied that opportunity in this case. Sackville J also said that the applicant should have been given an opportunity to examine his own copy of the tax return.

Formal decision

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

Repatriation Commission v Alexander

Spender J

[2003] FCA 399
2 May 2003

Special rate – alone test – whether error of law

The Repatriation Commission appealed to the Federal Court against a decision of the AAT that Mr Alexander qualified for the Special rate. The only issue before the AAT was whether he satisfied s 24(1)(c) of the *VE Act* which provides, as relevant, that "the veteran is, by reason of incapacity from that war-caused injury or war-caused disease, or both, alone, prevented from continuing to undertake remunerative work that the veteran was undertaking".

Mr Alexander had a number of war-caused disabilities consisting of bilateral sensori-neural hearing loss with tinnitus, chronic bronchitis and emphysema, gastro-oesophageal reflux disease, depressive disorder, claustrophobia and atherosclerotic peripheral vascular disease. The conditions of localised osteoarthrosis of the left and right knees, localised osteoarthrosis of the right ankle

and right foot, lumbar spondylosis and migraine were rejected as not being war-caused.

The Repatriation Commission submitted that the AAT had erred in law in its consideration of s 24(1)(c). The AAT had asked whether Mr Alexander's war-caused conditions alone prevented him from undertaking the relevant remunerative work. It concluded that if Mr Alexander did not suffer from war-caused difficulties, "he still would have been working" and that the question of whether some combination of war service conditions and non-war service conditions prevented him from undertaking remunerative work did not arise.

Court's conclusions

Spender J said that while s 24(1)(b) addresses the severity of a person's incapacity, s 24(1)(c) is directed at causation. It requires that the veteran's war-caused incapacity, and **only** that war-caused incapacity, prevented the veteran from continuing to undertake remunerative work that the veteran was undertaking.

Spender J held that the AAT's decision involved an error of law. He said that the test for which s 24(1)(c) provides:

> "… is whether war-caused conditions, alone, prevent the respondent from continuing to undertake remunerative work that he had been undertaking. It seems to me the Tribunal has not addressed the question of causation that s 24(1)(c) calls for, but has, in effect, applied the requirements of s 24(1)(b). The conclusion that 'a combination of war service and non-war service related conditions preventing Mr Alexander from working is a non-issue' is simply wrong. If the non-service related conditions were a factor in preventing Mr Alexander from continuing to undertake remunerative work, albeit those conditions were 'of secondary importance', the 'alone' requirement of s 24(1)(c) would not be satisfied."

Formal decision

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

Johnson v Veterans' Review Board

Weinberg, Stone & Jacobson JJ

[2003] FCAFC 89
9 May 2003

Dismissal of application to VRB – whether delegation of dismissal power valid

Mr Johnson appealed to the Full Court against the decision of Mansfield J, dismissing his appeal against a decision of the AAT. (See 18 *VeRBosity* 114). The AAT had affirmed a decision dismissing his application for review to the VRB.

The background was that in 1996, Mr Johnson lodged an application for review with the VRB concerning his claim for vertigo and epilepsy. On 19 October 1998, the Registrar of the VRB wrote to him in terms of s 155AA(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. On 4 February 1999, the Registrar of the VRB sent him a similar notice in terms of s 155AB(4) of the *VE Act.*

In response to the second notice, Mr Johnson sent back a form indicating that he had nominated a representative from the VVAA (SA) to respond to the VRB in relation to the notice. When no response was received from the veteran or his representative within 28 days, the Registrar, as delegate of the Principal

Member, dismissed the application pursuant to s 155AB(5) of the *VE Act.*

In dismissing the appeal, Mansfield J rejected the contention that the Principal Member, having failed to give notice in accordance with s 155AA(4) within a brief time after the "standard review period" on 30 April 1998, was no longer empowered to activate those provisions or to dismiss the application under s 155AB(5).

Mansfield J also rejected the contention that the delegation of the dismissal powers to Registrars of the VRB by the former Principal Member ceased to have effect when the new Principal Member was appointed in 1997.

Appeal grounds

Mr Johnson argued two points in support of his appeal. The first was that the Registrar did not comply with dismissal procedures laid down in a direction issued by the Principal Member under s 142(2)(a) of the *VE Act* on 21 July 1992.

Those procedures included a direction that where a registrar is not of the opinion that an applicant should be ready for a hearing, a note should be made on the file and the application should be checked again in three months. He submitted that the Registrar did not make a note on the file at or close to the end of the standard review period and that this procedural irregularity invalidated the notice given under s 155AA(4).

Mr Johnson's second contention was that the written notice to which s 155AA(4) refers can only be given at the end of the standard review period or a short period (which he submitted did not exceed 28 days) after the expiration of that period.

Full Court's conclusions

The Full Court rejected both grounds of appeal. It said that the dismissal procedures were merely directions given by the Principal Member in accordance with s 142(2)(a) of the *VE Act* "for the purpose of increasing the efficiency of the operations of the Board". There is nothing in either s 142 or s 155AA which expressly or impliedly indicates that compliance with such a direction is an essential pre-condition to the exercise of the power to give a notice under s 155AA(4). It said it is plain that such a result was not intended.

The Full Court said that the second contention was also wrong. As Mansfield J observed, it ignores the second criterion for the exercise of the power, namely that the Principal Member must be satisfied that an applicant should be ready to proceed to a hearing before he or she can issue a notice.

Formal decision

The Full Court dismissed Mr Johnson's appeal.

Thomas v Repatriation Commission

Heerey, Whitlam & Marshall JJ

[2003] FCAFC 122
30 May 2003

Prostate cancer – which Statement of Principles applies – accrued rights

Mr Thomas appealed to the Full Court against the decision of Mansfield J, setting aside the AAT's decision and remitting the matter to the AAT for rehearing. (See 18 *VeRBosity* 108). The AAT had determined that Mr Thomas's malignant neoplasm of the prostate was war-caused, on the basis of increased animal fat consumption.

In its decision, the AAT had applied Statement of Principles No 95 of 1995 as amended by No 191 of 1996. Those SoPs were revoked and replaced by

No 84 of 1999 on 17 November 1999, prior to the AAT's decision.

Mansfield J held that in applying the 1995 SoP as amended, the AAT had erred in law. In accordance with the Full Court's decision in *Repatriation Commission v Gorton* (2001) (17 *VeRBosity* 85), the AAT should have applied the 1999 SoP. If Mr Thomas's circumstances did not fit the template of the 1999 SoP, it should then have considered whether he had an "accrued right" by reason of the application of the 1995 SoP.

Mansfield J also held that there was no accrued right to have the matter determined in terms of the SoP in force at the time of the VRB's decision.

Appeal grounds

Mr Thomas contended that Mansfield J had misstated the test as to whether a SoP was satisfied and had erred in law in finding that there was no "accrued right" by virtue of a more favourable SoP in force at the time of the VRB's decision.

Full Court's conclusions

The Full Court held that following the Full Court judgments in *Gorton* and *Keeley*, the AAT should have addressed the SoP which applied at the time of its decision. Its failure to do so constituted an error of law. This was sufficient to dispose of the appeal.

The Full Court then addressed the other issues raised on appeal. It held that those grounds were without merit as they took issue with the reasoning rather than the order of the primary judge.

Formal decision

The Full Court dismissed Mr Thomas's appeal.

Conway v Repatriation Commission

Dowsett J

[2003] FCA 704
19 June 2003

Special rate – not genuinely seeking to engage in remunerative work – leave to appeal refused

Mr Conway applied for leave to appeal from a decision of the AAT that he did not qualify for the Special rate of pension. Leave to appeal was required as he had failed to lodge an appeal within 28 days after receiving the AAT's decision.

The AAT had refused his application as it was not satisfied that he had been genuinely seeking to engage in remunerative work, particularly in the period from 1992 to 1997, when he became totally incapacitated for work.

Mr Conway would be entitled to the Special rate only if he satisfied the requirements of s 24(2)(b), that he had been genuinely seeking to engage in remunerative work, that he would, but for that incapacity, be continuing so to seek to engage in remunerative work and that his incapacity was the substantial cause of his inability to obtain remunerative work.

Mr Conway submitted that the AAT had applied s 24(2)(b) incorrectly. He relied on the decision in *Hall v Repatriation Commission* (1994) 33 ALD 454 in which Spender J said that the question of whether a veteran has been "genuinely seeking to engage in remunerative work" has to be addressed in a realistic way, and that the requirement that permanently incapacitated veterans should be genuinely seeking work "seems to involve something of a charade".

Court's conclusions

Dowsett J observed that under s 24(2)(b), there must be an inquiry as to whether or not an applicant has been genuinely seeking to engage in remunerative work in the past, that is prior to becoming incapacitated for the purposes of s 24. Then it is necessary to enquire whether or not he would be continuing to seek to engage in remunerative work had he not been incapacitated, and whether the incapacity is the substantial cause of his inability to obtain remunerative work. The "genuinely seeking" test relates to the work history of the applicant rather than to efforts which he might make after he becomes incapacitated.

Dowsett J concluded that the comments by Spender J (approved by Madgwick J in *Hendy v Repatriation Commission* (2002) 18 *VeRBosity* 47) mean only that a realistic approach must be taken to the efforts made by any particular applicant to find employment. In this case, there was no error of law in the approach adopted by the AAT.

Dowsett J also rejected a submission that the AAT had failed to give adequate reasons for its decision.

Formal decision

The Court refused Mr Conway's application for leave to appeal.

Fogarty v Repatriation Commission

Spender, Tamberlin & Kenny JJ

[2003] FCAFC 136
20 June 2003

Generalised anxiety disorder – diagnosis – failure of the Tribunal to determine preliminary issue

Mrs Fogarty appealed to the Full Court against the decision of Ryan J, dismissing an appeal against a decision of the Tribunal that her late husband's generalised anxiety disorder was not war-caused. (See 18 *VeRBosity* 112). He had rendered operational service in the RAN during World War 2. His case before the Tribunal was that he had a generalised anxiety disorder, which was attributable to his experiences in the Navy, including conditions aboard ships and his exposure to Japanese aerial attacks.

The Tribunal said that the evidence pointed to hypotheses connecting generalised anxiety disorder with the veteran's war service. The Tribunal concluded however that the hypotheses were not reasonable as they did not fit within the 'template' in the relevant SoPs.

The Tribunal was of the opinion that although Mr Fogarty experienced stressful service in the Navy, he never developed a generalised anxiety disorder as a result of any aspect of his service.

Ryan J held that although the Tribunal erred in law in failing to have regard to the current "anxiety disorder" Statement of Principles (No 1 of 2000) and in failing to consider the existence of generalised anxiety disorder as a preliminary issue, those errors were not material in the result. Ryan J dismissed the appeal.

Appeal grounds

On appeal to the Full Court, Mrs Fogarty submitted that the Tribunal erred in law:

(a) in failing to determine, as a preliminary matter, whether the veteran suffered from the claimed psychiatric condition in accordance with s 120(4) of the *VE Act*;

(b) in deciding that the veteran did not develop a generalised anxiety disorder in the course of forming an opinion as to whether the hypothesis raised by the material (and connecting the disease to the veteran's war service) was a reasonable one;

(c) in failing to make an inquiry as to whether the raised hypothesis was reasonable in accordance with s 120(1) and (3), and s 120A(3) of the *VE Act*;

(d) in failing to consider a report by Dr Sime; and

(e) in failing to consider the 2000 SoP.

Full Court's conclusions

The Full Court allowed the appeal. Kenny J (with Spender J and Tamberlin J agreeing) said that the Tribunal's finding that the veteran did not develop a generalised anxiety disorder as a result of his service was ambiguous. If it was rejecting the existence of the disease, it made an error of law.

Kenny J noted that the authorities establish that, where there is an issue as to whether or not a veteran is suffering from a claimed injury or disease, then the Commission (and, on review, the VRB or the Tribunal) must decide the issue to its reasonable satisfaction, as required by s 120(4) of the *VE Act.* (See the Full Court decisions in *Benjamin*, *Cooke*, *Budworth* and *Hill* and per Weinberg J in *Gosewinckel*).

Kenny J said that there was nothing in the Tribunal's reasons to indicate that it ruled upon the veteran's claim to be suffering from a generalised anxiety disorder in accordance with the standard in s 120(4) of the *VE Act.* Further, instead of determining the issue of diagnosis as a preliminary matter, the Tribunal first turned to issues properly arising only after it had ruled on the existence of the condition and in the veteran's favour. It is only after a decision-maker determines that a veteran is suffering from a particular injury or disease (or this fact is agreed or conceded) that the question arises as to whether the particular injury or disease is war-caused within the meaning of s 9 of the *VE Act.*

Kenny J also held that the Tribunal had made material errors of law in failing to have regard to Dr Sime's report and in failing to apply the Statement of Principles in force at the time of its review. (See Full Court's decision in *Repatriation Commission v Gorton* (2001) 17 *VeRBosity* 85).

Formal decision

The Full Court set aside the Tribunal's decision in relation to generalised anxiety disorder and remitted the matter to the Tribunal for rehearing.

Roncevich v Repatriation Commission

Heerey, Whitlam & Marshall JJ

[2003] FCAFC 146
30 June 2003

Knee injury – fall from window following mess function

Mr Roncevich appealed to the Full Court against the decision of Mansfield J, dismissing his appeal against a decision of the Tribunal that his left knee injury was not defence-caused. (See 18 *VeRBosity* 106).

Mr Roncevich injured his left knee in 1986 while posted to Holsworthy Barracks. One night while ironing his clothes for the following day, he felt the need to spit. He walked across to an open window and bent forward to spit out of the window. He over-balanced and fell to the ground below, suffering the left knee injury. He claimed that the main reason for the fall was the fact that he was inebriated at the time. He had been drinking in the sergeants' mess on the ground floor for about four hours before he returned to his room on the first floor.

The AAT heard evidence that Mr Roncevich was not obliged to live on the base. It was also not compulsory for him to go to the sergeants' mess or to drink alcohol that night. It was also not compulsory to stay until a specific time.

The AAT found that the only links between the Army and his intoxication were that it occurred on an Army base and that he and his fellow drinkers were soldiers. The knee injury was not caused by defence service, as it did not arise out of his defence service and was not attributable to his defence service, nor was it due to an accident that would not have occurred but for him having rendered defence service.

Full Court's conclusions

The Full Court held (by majority, Heerey J dissenting), that the AAT had not erred in law in deciding that the knee injury had no connection with Mr Roncevich's defence service.

Whitlam and Marshall JJ upheld the decision of Mansfield J at first instance that the AAT had not erred in law. Mansfield J had held that the AAT's finding of fact that Mr Roncevich's attendance and his excessive drinking at the function were not related in any way to his defence service was open to it. Mansfield J also rejected submissions that the AAT had erred in not concluding that the knee injury was deemed by s 70(7) to be defence-caused as the fall would not have happened but for his having rendered defence service, had failed to apply s 119 of the *VE Act* and had failed to provide sufficient reasons for its decision.

Whitlam and Marshall JJ agreed that the critical finding of the AAT that Mr Roncevich was not required to attend the relevant function on the day in question was open to the AAT.

Heerey J would have allowed Mr Roncevich's appeal. He noted the evidence at the AAT that attendance by a Senior NCO at the sergeants' mess, and especially at a function to welcome visiting dignitaries, was an integral and valuable part of Army life. Referring to the case of *Repatriation Commission v Tuite* (1993) concerning smoking, he observed that in this case, the circumstances of Army life and the function of the sergeants' mess operated as a contributing cause to the appellant's consumption of alcohol, and hence to his accident and injury. In his view, the AAT erred in law in that it effectively ignored what the appellant was, as a matter of practicality, required or expected to do as part of his service in the Army.

Formal decision

The Full Court dismissed Mr Roncevich's appeal.

Federal Magistrates Court of Australia

Repatriation Commission v Case

Baumann FM

[2003] FMCA 153
29 April 2003

Special rate – whether failure to apply proper test

The Repatriation Commission appealed to the Federal Magistrates Court against a decision of the AAT that Mr Case qualified for the Special rate. He was retrenched from his employment with Bowen Coke in 1998. His post traumatic stress disorder was accepted as war-caused. His lumbar and thoracic spondylitis were not war-caused.

The AAT was satisfied that it was the war-caused PTSD alone which caused the loss of his remunerative work, which prevented him from obtaining other remunerative work and that he genuinely sought to engage in remunerative work but was unsuccessful because of his PTSD. The AAT also found that his lumbar and thoracic spondylitis had not prevented him from working until the time of redundancy.

The Repatriation Commission submitted that the AAT had made a number of errors of law. In particular, it failed to address the test enunciated by the Full Court in *Flentjar v Repatriation Commission* (1997) 13 *VeRBosity* 111. It should have asked itself what Mr Case would have done if he had none of his service disabilities. Had the AAT posed that question, and had it given proper attention to the evidence it would have taken into account:

(a) the opinion of Dr Lewis, orthopaedic surgeon, that because of his non-war caused spinal injuries, the veteran was not capable of working more than 20 hours a week in any occupation and most unlikely able to work more than 8 hours per week; and

(b) the impact of the veteran's age and the depressed labour market in Bowen.

Court's conclusions

The Court agreed that the AAT had failed to address the fourth question posed in *Flentjar*, namely:

> "Is the veteran by reason of being prevented from continuing to undertake that work, suffering a loss of salary, wages or earnings on his own account that he would not be suffering if he were free of that incapacity?"

This failure to apply the full test set out in the legislation constituted an error of law.

Formal decision

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

Statements of Principles issued by the Repatriation Medical Authority

June – August 2003

Number of Instrument	Description of Instrument
15 of 2003	Revocation of Statement of Principles (Instrument No.7 of 1997 concerning **chronic myeloid leukaemia** and death from chronic myeloid leukaemia), and Determination of Statement of Principles under subsection 196B(2) concerning chronic myeloid leukaemia and death from chronic myeloid leukaemia.
16 of 2003	Revocation of Statement of Principles (Instrument No.8 of 1997 concerning **chronic myeloid leukaemia** and death from chronic myeloid leukaemia), and Determination of Statement of Principles under subsection 196B(3) concerning chronic myeloid leukaemia and death from chronic myeloid leukaemia.
17 of 2003	Revocation of Statement of Principles (Instrument No.40 of 1999 concerning **malignant neoplasm of the brain** and death from malignant neoplasm of the brain), and Determination of Statement of Principles under subsection 196B(2) concerning malignant neoplasm of the brain and death from malignant neoplasm of the brain.
18 of 2003	Revocation of Statement of Principles (Instrument No.41 of 1999 concerning **malignant neoplasm of the brain** and death from malignant neoplasm of the brain), and Determination of Statement of Principles under subsection 196B(3) concerning malignant neoplasm of the brain and death from malignant neoplasm of the brain.
19 of 2003	Revocation of Statement of Principles (Instrument No.9 of 1996 concerning **atrial fibrillation** and death from atrial fibrillation), and Determination of Statement of Principles under subsection 196B(2) concerning atrial fibrillation and death from atrial fibrillation.
20 of 2003	Revocation of Statement of Principles (Instrument No.10 of 1996 concerning **atrial fibrillation** and death from atrial fibrillation), and Determination of Statement of Principles under subsection 196B(3) concerning atrial fibrillation and death from atrial fibrillation.
21 of 2003	Revocation of Statement of Principles (Instrument No.211 of 1995 concerning **chronic sinusitis** and death from chronic sinusitis), and Determination of Statement of Principles under subsection 196B(2) concerning chronic sinusitis and death from chronic sinusitis.
22 of 2003	Revocation of Statement of Principles (Instrument No.212 of 1995 concerning **chronic sinusitis** and death from chronic sinusitis), and Determination of Statement of Principles under subsection 196B(3) concerning chronic sinusitis and death from chronic sinusitis.

23 of 2003 Revocation of Statement of Principles (Instrument No.90 of 1997 concerning **chronic fatigue syndrome** and death from chronic fatigue syndrome), and Determination of Statement of Principles under subsection 196B(2) concerning chronic fatigue syndrome and death from chronic fatigue syndrome.

24 of 2003 Revocation of Statement of Principles (Instrument No.91 of 1997 concerning **chronic fatigue syndrome** and death from chronic fatigue syndrome), and Determination of Statement of Principles under subsection 196B(3) concerning chronic fatigue syndrome and death from chronic fatigue syndrome.

25 of 2003 Revocation of Statement of Principles (Instrument No.29 of 1997 concerning **macular degeneration** and death from macular degeneration), and Determination of Statement of Principles under subsection 196B(2) concerning macular degeneration and death from macular degeneration.

26 of 2003 Revocation of Statement of Principles (Instrument No.30 of 1997 concerning **macular degeneration** and death from macular degeneration), and Determination of Statement of Principles under subsection 196B(3) concerning macular degeneration and death from macular degeneration.

27 of 2003 Revocation of Statement of Principles (Instrument No.344 of 1995, as amended by Instrument No.14 of 2002 concerning **melioidosis** and death from melioidosis), and Determination of Statement of Principles under subsection 196B(2) concerning melioidosis and death from melioidosis.

28 of 2003 Revocation of Statement of Principles (Instrument No.345 of 1995, as amended by Instrument No.15 of 2002 concerning **melioidosis** and death from melioidosis), and Determination of Statement of Principles under subsection 196B(3) concerning melioidosis and death from melioidosis.

29 of 2003 Amendment of Statement of Principles, Instrument No.9 of 2003, under subsection 196B(2) concerning **carotid arterial disease** and death from carotid arterial disease.

30 of 2003 Amendment of Statement of Principles, Instrument No.10 of 2003, under subsection 196B(3) concerning **carotid arterial disease** and death from carotid arterial disease.

31 of 2003 Determination of Statement of Principles under subsection 196B(2) concerning **morbid obesity** and death from morbid obesity.

32 of 2003 Determination of Statement of Principles under subsection 196B(3) concerning **morbid obesity** and death from morbid obesity.

33 of 2003 Determination of Statement of Principles under subsection 196B(2) concerning **restless legs syndrome** and death from restless legs syndrome.

34 of 2003 Determination of Statement of Principles under subsection 196B(3) concerning **restless legs syndrome** and death from restless legs syndrome.

35 of 2003 Revocation of Statement of Principles (Instrument No.31 of 2001 concerning **hypertension** and death from hypertension), and Determination of Statement of Principles under subsection 196B(2) concerning hypertension and death from hypertension.

36 of 2003 Revocation of Statement of Principles (Instrument No.32 of 2001 concerning **hypertension** and death from hypertension), and Determination of Statement of Principles under subsection 196B(3) concerning hypertension and death from hypertension.

37 of 2003 Revocation of Statement of Principles (Instrument No.80 of 1999 concerning **non-Hodgkin's lymphoma** and death from non-Hodgkin's lymphoma), and Determination of Statement of Principles under subsection 196B(2) concerning non-Hodgkin's lymphoma and death from non-Hodgkin's lymphoma.

38 of 2003 Revocation of Statement of Principles (Instrument No.81 of 1999 concerning **non-Hodgkin's lymphoma** and death from non-Hodgkin's lymphoma), and Determination of Statement of Principles under subsection 196B(3) concerning non-Hodgkin's lymphoma and death from non-Hodgkin's lymphoma.

39 of 2003 Revocation of Statement of Principles (Instrument No.48 of 1999 concerning **subarachnoid haemorrhage** and death from subarachnoid haemorrhage), and Determination of Statement of Principles under subsection 196B(2) concerning subarachnoid haemorrhage and death from subarachnoid haemorrhage.

40 of 2003 Revocation of Statement of Principles (Instrument No.49 of 1999 concerning **subarachnoid haemorrhage** and death from subarachnoid haemorrhage), and Determination of Statement of Principles under subsection 196B(3) concerning subarachnoid haemorrhage and death from subarachnoid haemorrhage.

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 20 AUGUST 2003

Description of disease or injury	Date gazetted
Acute myeloid leukaemia [Instrument Nos 169/96 & 170/96]	16-07-03
Asbestosis [Instrument Nos 138/96 & 139/96]	16-04-03
Brodie's abscess	05-03-03
Chronic bronchitis & emphysema [Instrument Nos 73/97 & 74/97]	16-04-03
Chronic lymphoid leukaemia [Instrument Nos 67/01 & 68/01]	16-07-03
Dermatomyositis	16-07-03
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
Haemorrhoids [Instrument Nos 13/00 & 14/00]	13-11-02
Hiatus hernia [Instrument Nos 42/99 & 43/99]	14-08-02
Hodgkin's disease [Instrument Nos 25/00 & 26/00]	20-08-03

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
Malignant neoplasm of the breast [Instrument Nos 53/97 & 54/97]	16-07-03
Malignant neoplasm of the colorectum [Instrument Nos 58/02 & 59/02]	02-07-03
Malignant neoplasm of the larynx [Instrument Nos 27/95 & 28/95 as amended by Nos 155/95 & 156/95, 151/96 & 152/96 and 193/96 & 194/96]	16-07-03
Malignant neoplasm of the lung [Instrument Nos 35/01 & 36/01]	20-08-03
Malignant neoplasm of the oral cavity or hypopharynx [Instrument Nos 113/96 & 114/96]	06-03-02
Malignant neoplasm of the pancreas [Instrument Nos 55/97 & 56/97 as amended by 20/02 & 21/02]	20-08-03
Malignant neoplasm of the prostate [Instrument Nos 84/99 & 85/99 as amended by Nos 69/02 & 70/02]	16-07-03
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
Malignant neoplasm of the thyroid gland [Instrument Nos 33/98 & 34/98]	16-07-03

Myelodysplastic disorder [Instrument Nos 15/00 & 16/00]	20-08-03
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
Osteomyelitis	05-03-03
Peripheral neuropathy [Instrument Nos 79/01 & 80/01 as amended by 13/03 & 14/03]	20-08-03
Pleural plaques	11-06-03
Rheumatoid arthritis [Instrument Nos 126/96 & 127/96]	13-11-02
Seborrhoeic dematitis [Instrument Nos 50/99 & 51/99]	16-07-03
Seizures [Instrument Nos 81/96 & 82/96]	05-03-03
Sleep apnoea [Instrument Nos 39/97 & 40/97]	11-06-03
Soft tissue sarcoma [Instrument Nos 23/01 & 24/01]	20-08-03
Spondylolisthesis & spondylolysis [Instrument Nos 15/97 & 16/97]	05-03-03
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 – April to June 2003

Allowances & benefits

Special assistance
- motorcycle GST rebate – quad bike
George, R 10 Jun 2003

travelling expenses
- no jurisdiction
Campbell, N 28 May 2003

Circulatory disorder

cerebrovascular accident
- panic disorder
Riley, J A 19 Jun 2003

hypertension
- alcohol dependence
Monteith, T R 11 Apr 2003

hypertrophic obstructive cardiomyopathy
- alcohol consumption & failure to diagnose
Andersen, M J 02 May 2003

ischaemic heart disease
- obesity & hypertension
Williams, J A 04 Apr 2003
- smoking
Johnston, L J 26 Jun 2003
Jacobs, N 27 Jun 2003

Death

adenocarcinoma kidney
- smoking
McMurchie, N W 07 May 2003

astrocytoma & bronchopneumonia
- head trauma
Wright, M J 01 May 2003

carcinoma prostate
- animal fat consumption
Smart, E M 20 May 2003

carcinoma – unknown primary
- smoking
Simpson, A S 20 Jun 2003

cardiorespiratory failure
- smoking
Hammond, G 04 Apr 2003

cerebrovascular accident
- alcohol consumption
Smith, B F 14 May 2003
- smoking
Dyson-Smith, I 22 May 2003
- vertebrobasilar ischaemia – cervical spondylosis
Nipperess, J C 23 May 2003

dementia
- cerebrovascular accident – alcohol consumption
Harris, I 17 Apr 2003

idiopathic pulmonary fibrosis & chronic lymphocytic leukaemia
- drug therapy
Eastwood, R E 08 Apr 2003

ischaemic heart disease
- obesity
Prendergast, C 30 May 2003
- smoking
Evans, K 06 Jun 2003
Norris, R E 04 Apr 2003

ischaemic heart disease & panic disorder
- cardiac arrhythmia
Marshall, F L 17 Apr 2003

primary hypertrophic cardiomyopathy
- alcohol consumption
Cannon, E 30 Apr 2003

pulmonary embolism
- post operative – removal of kidney stones
Boyd, J F 23 May 2003

sudden unexplained death
- death in bushland
Towns, T J 22 May 2003

paranoid personality disorder

- catastrophic experience – death of mother & marriage breakdown

Collins, M 22 May 2003

personality disorder & alcohol dependence

- experiencing a severe stressor – Vietnam service

White, L J 30 Jun 2003

post traumatic stress disorder

- experiencing a severe stressor – despatch rider

Anderson, G 14 Apr 2003

- experiencing a severe stressor – sea snake incident

Dee, J R 06 Jun 2003

- experiencing a severe stressor – Vietnam waters

Rodsted, M T 02 Apr 2003

- experiencing a severe stressor – Vung Tau harbour

Anderson, N 29 Apr 2003

post traumatic stress disorder & alcohol abuse

- experiencing a severe stressor – Vietnam service

Keleris, G 15 May 2003

- no diagnosis

Waller, W 12 May 2003

post traumatic stress disorder & alcohol dependence

- experiencing a severe stressor – Vietnam waters

Monteith, T R 11 Apr 2003

post traumatic stress disorder & alcohol dependence or abuse

- experiencing a severe stressor – aircraft & ship on radar

Clarke, D A 30 May 2003

- experiencing a severe stressor – Korean service

Briggs, R 27 Jun 2003

Qualifying service

Gold card eligibility

- Qantas aircrew to Vietnam

Chenu, A 23 May 2003

Remunerative work & special rate

Intermediate rate

- plumber

Cobb, R C 30 Jun 2003

- redundancy

Maurice, I 26 Jun 2003

temporarily incapacitated

- taxi driver, barman & customer service

Ashton, P 23 Apr 2003

whether genuinely seeking to engage in

- delivery driver

Smith, C O 23 May 2003

whether prevented by war-caused disabilities alone

- caretaker

Crilly, B J 29 Apr 2003

- delivery driver

Groves, A J F 29 Apr 2003

- driver

Stadoliukas, A J 17 Jun 2003

- farmer

Anderson, G 14 Apr 2003

- marine engineer

Van Ewijk, P 27 Jun 2003

- pilot

Hales, P 06 Jun 2003

- real estate management

Thompson, R 27 Jun 2003

- research officer

Gregory, R 04 Jun 2003

- shopkeeper

Heard, K 04 Apr 2003

- taxi driver

McDuffie, N 09 May 2003

- transport worker – redundancy following restructure

Ryan, R 15 May 2003

whether prevented from continuing last paid work (over 65)

- real estate agent

Haskard, H 17 Apr 2003