VeRBosity

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Contents

Editor's notes

This edition reports a grouped proceeding involving 21 AAT cases concerning death from prostate cancer. To give some background to these cases, there is included a brief history of the SoP for malignant neoplasm of the prostate.

There was very positive feedback from practitioners concerning the last edition of *VeRBosity* in which we included short articles on various veterans' law topics. As a result we have included a few more in this issue.

An aspect of the eligibility rules for the special rate and intermediate rate is discussed in one article. The other articles concern practical matters for representatives and applicants before the Board.

The other two AAT cases noted in this edition are special rate cases, both of which have been appealed to the Federal Court, so we wait with interest to see how the law develops in this area.

Trina McConnell

This edition of *VeRBosity* contains reports of a Federal Court and a Federal Magistrates Court judgment in veterans' matters received in October to December 2005 as well as selected AAT decisions handed down in the same period. There is an index of all AAT and Court cases received in this period and information on recent Statements of Principles determined by, and current investigations of, the Repatriation Medical Authority.

Veterans' Law Conference – call for papers

Southern Cross University, in association with the Veterans' Review Board, will hold a Veterans' Law Conference on the Gold Coast in July 2006. Details of the conference will be available in early April.

If you wish to present a paper at the conference, or if you have any suggestions for topics you would like discussed, or speakers you would like to hear, please send the VRB an e-mail by 31 March 2006 to: **contact@vrb.gov.au**

The conference papers for the 2004 Veterans' Law Conference are available on the VRB's website: **www.vrb.gov.au** on the Publications page.

Eligibility for special rate or intermediate rate while continuing to work

The Federal Court cases of *Haskard* (2002) 18 *VeRBosity* 104 and *Wright* (2005) 21 *VeRBosity* 18 have clarified the law concerning the meaning of **'prevented from continuing to undertake remunerative work'** (see s 23(1)(c) and (24(1)(c) of the VEA) in the context of over-65s and under-65s respectively.

'Prevented' means that the person must have stopped doing the relevant kind of work for both special rate and intermediate rate purposes.

For those aged 65 or over on the application day this is an absolute rule: the veteran must be prevented from working at all.

For those under 65, the test is qualified by the *kind* of work that the person must have stopped doing.

Aged 65 or over on the application day

If a person is aged 65 years or over on the application day, he or she cannot be engaged in any remunerative work at all if seeking either the intermediate rate or the special rate of pension.

Under s 24(2A)(d), the person must have been prevented from continuing to undertake the work the person was last undertaking due to incapacity from accepted disabilities alone.

A person cannot still be undertaking any work and be entitled to either the special rate or the intermediate rate of pension because the section says that the person must have been 'prevented' from undertaking their last paid work.

Haskard's case held that if the person is still working, the person has not been 'prevented' from undertaking their last paid work.

Aged under 65 on the application day

If a person is aged under 65 on the application day, he or she may be engaged in remunerative work but not the kind of work that the person relies upon for the purposes of s 24(1)(c) or s 23(1)(c).

Under s 24(1)(c) a person must have been prevented from continuing to undertake the work that the person had been undertaking due to incapacity from accepted disabilities alone.

A person under 65 can still be capable of working (and may actually be working) for up to 8 hours a week (20 hours for intermediate rate). But it must be in some kind of work *other than* the kind of work that the person was prevented from continuing to undertake by accepted disabilities alone.

Wright's case indicates that a person cannot be 'prevented' from undertaking a particular kind of work yet still be doing that kind of work.

Examples

Twelve years ago the veteran gave up farming solely due to a war-caused condition. He would still be farming today but for that condition. After leaving the farm he began working as a clerk. His accepted conditions have since worsened. Just taking the accepted disabilities into account, he is now unable to do 20 hours or more a week in any kind of work for which he has relevant skills. He works part-time in his clerical job 3 hours each day for 5 days a week.

If the veteran is over 65, he would not be eligible for either the intermediate or special rate because he has not stopped his last paid work. The farming history is irrelevant because it is only the 'last paid work' that can be considered.

If the veteran is under 65 he might be eligible for the intermediate rate.

He meets the 'of itself alone' 20-hour work test for all the kinds of work for which he has skills. The relevant work that he gave up was farming (he has not given up clerical work, so the 'alone' test cannot apply to clerical work).

If during the assessment period the gross earnings he probably would have been earning if he had kept on farming would have been greater than his current wages as a clerk, he will be taken to be suffering a loss of earnings. (See *Counsel's* case (2002) 18 *VeRBosity* 55.)

As he has not ceased work, s 23(3)(a) (for special rate see s 24(2)(a)) is not relevant. Thus he would be entitled to the intermediate rate.

If, instead, the veteran had only ever been a clerk, he would not be entitled to the intermediate rate. He is still doing clerical work, and so he has not been 'prevented from continuing to undertake' that kind of work.

If, instead, the veteran's only job had involved both clerical work and truck driving, but he had to give up the truck driving component of his job because of his war-caused disabilities. The fact that he cannot now do truck driving means that he has been prevented from continuing to undertake that kind of work, and he is therefore able to meet s 23(1)(c) even though he continues with the same employer in his clerical work but with reduced hours. (See *Graham's* case (2004) 20 *VeRBosity* 136.)

Communicating with the VRB

The art of getting your message across effectively is a vital part of being a successful pensions officer or representative when appearing before the VRB.

It is often reported that a large percentage of people have a greater fear of speaking in public than of their own death! There is nothing unusual about the anxiety that comes with speaking in public. Feeling some nervousness before a VRB hearing begins is natural and even beneficial, but too much nervousness can be detrimental. Below are a few tips on how to control your butterflies and give better presentations when appearing before the Board.

Background preparation

There are two things you should do before you engage in any form communication. First, decide what you want to say and, second, work out a plan of how to say it.

This may seem very obvious when seen here in the cold print but it is advice that very few people put into practice. When most people want to say something to others they simply plunge in, composing their message as they go along. The result is often a speech or talk that rambles around the issue, taking digressions and making points that are not quite relevant. Poor preparation means your submission is hit and miss. Effective communication reflects good preparation.

Good preparation also means the VRB will be given the facts that it needs to reach their decision. Prepare what you want to say. Develop an outline of your case, organising it around presenting facts in a smooth sequence. Striving for good preparation technique means your case presentation skills will also improve.

If it is your first time presenting a case at the VRB, familiarise yourself with the practice and procedures handbook for pension officers and representatives. Copies of the Handbook may be obtained from VRB Registries or downloaded from the VRB's web site: **www.vrb.gov.au**

It should go without saying, but good preparation involves familiarising yourself with the case. This involves reading the file several times, along with paying attention to the details including any inconsistencies and obtaining further information that may be required before the VRB hearing.

After organising how you intend to present the case, you should draft opening and closing submissions. This allows you to corroborate general thoughts about the facts and law applicable to the case you are preparing. If you have difficulty writing out your opening submission, then that should be the first clue that your thinking about the case may be flawed, or needs further refinement.

Writing down what you want the Board members to know is a good way of making sure you don't forget anything about the case you are presenting.

Don't forget to prepare the applicant and any other witnesses you may be bringing to the hearing.

Finally, it is often helpful to bounce your ideas off friends and/or colleagues. They can provide a clarifying perspective for you.

The day of the hearing

Below are a few points to follow on the day of the hearing to help you with the presentation of your case:

Whether or not a written submission has been prepared, it is useful to introduce

the case by directing the Board's attention to any new information or issues that seem to be central to the case. At the close of the hearing it may be important to reiterate these matters and try to draw together the main threads of your submission.

The first few minutes are important. Take your time, get visual eye contact with the Board members, and speak simply and clearly. Ask the Board for direction at the beginning ('Are there any particular areas you would like me to address?').

Do not rush as you begin to speak. Many representatives are so anxious to get started that they begin before they are really ready. The little extra time taken to arrange your notes will generally help with any nerves you may have.

If you are unsure how to address Board members, just ask politely at the beginning how they would like to be addressed.

Pay careful attention to what is being said to you by Board members so that you can respond accurately.

The tone your of voice is a part of communication in itself – for example, you may convey anger by speaking harshly, or sympathy by speaking softly. A good exercise to develop the skill of managing the tone of your voice is to use a tape recorder at home, play back your voice. Is there any unintentional sharpness? Is it conciliatory? Practice until you are happy with how you sound.

Communication experts tell us that over half of our meaning may be communicated non-verbally. Although non-verbal meaning is communicated through vocal cues, much meaning is carried by the physical behaviours of eye contact, bodily movement, and gestures. In fact, eye contact is one of the most important factors of non-verbal communication. Nothing will enhance your submission more than effective eye contact with Board members. Smiling and relaxing your arms are also ways of using body language to appear more relaxed and confident.

And remember, there is an old axiom that says ... 'Tell them what you are going to tell them, tell them, and then tell them what you told them.' This pretty well sums it up.

Applying *Kattenberg*

The Federal Court in *Kattenberg* (2002) 18 *VeRBosity* 41, held that if a factor in a Statement of Principles (SoP) requires a minimum accumulation of consumption or exposure over time (eg, smoking, alcohol, weight-bearing), that factor can be satisfied if:

- the person ***meets the minimum level*** of consumption or exposure specified in the SoP (whether during service or not); and
- the person's eligible service made a ***material contribution*** to that level of consumption or exposure; ***or***
- that level of consumption or exposure would not have occurred ***but for*** the person rendering eligible service; or

Following the *Deledio* process (the first 3 steps of which can be applied to 'reasonable satisfaction' cases: see *Somerset* (2005) 21 *VeRBosity* 118) to *Kattenberg* applies in the following way.

In ***Re Elson*** (2004), the SoP required the consumption of least 250 kilograms of **alcohol** in a 25 year period within the 40 years before clinical onset. The AAT found that the veteran would have consumed that amount in the relevant period and the consumption that was due to service was a material contribution to it, even though it could not be precisely measured.

***Deledio* step 1**

The first step is to see whether the material raises a hypothesis or contention of a connection between the claimed injury, disease or death and the particular circumstances of the person's eligible service.

***Deledio* step 2**

The relevant SoP must be identified.

***Deledio* step 3**

First, determine the minimum level of consumption or exposure required by the SoP.

The material must indicate that the person was exposed to:

- the entire minimum quantity,
- over the relevant time period required by the SoP factor; and
- within any limitation on the time of clinical onset or worsening.

It is then necessary to consider the service contribution.

The relationship between eligible service and meeting a SoP factor need only be one indicated in s 196B(14), namely, that it:

- resulted from an occurrence;
- arose out of, or was attributable to;
- resulted from an accident;
- materially contributed to or was aggravated by service;
- would not have happened but for service or changes of circumstances consequent upon rendering service.

If it is alleged that a person's exposure to a factor arose out of, or was attributable to the person's service, then a causal ***contribution*** to the person's exposure to that factor is required for it to be 'related to' the person's service.

For a particular relationship to apply, it must be one permitted in the particular

case by the relevant liability provision (these are in s 8, 9, or 70 of the VEA or s 27 or 28 of the MRCA, which reflect the elements of s 196B(14)).

For example, if the aggravation provision does not apply to a case, then the aggravation element of s 196B(14) cannot apply. A SoP does not create liability, but is used to uphold a connection already raised by the material and permitted in terms of the relevant liability provision applicable to the person's case.

While the person must have met all the requirements of the SoP factor, it will be 'related to service' if the person's service contributed in a material way to meeting the factor's requirements.

It is also necessary to determine whether the connection is reasonable both in meeting the SoP and in a more general way.

Finding that a SoP factor is 'related to' the person's service does not mean the claim must succeed:

- the hypothesis must still be 'reasonable', or
- the decision-maker must be reasonably satisfied that connection between service and the claimed injury, disease or death actually existed,

in the circumstances of the particular case.

The fact that a hypothesis is upheld by a SoP does not necessarily make it reasonable. In *Bull* (2001) 17 *VeRBosity* 118, the Full Federal Court held that for a hypothesis to be upheld by a SoP is a necessary test, but it is not a sufficient test in its own right of the reasonableness of the hypothesis in a particular person's case.

A SoP factor is something that can contribute to the cause or aggravation of a disease. If there is a contribution to a factor, it means there may have been a contribution to a contribution to the cause in a particular case.

Whether such a connection is too remote to satisfy the test of 'reasonableness' of the hypothesis or connection between service and the claimed injury, disease or death in a particular case is a matter for the decision maker's judgment on all the available material. (See *East* (1987) 3 *VeRBosity* 167 and *Bey* (1997) 13 *VeRBosity* 117.)

While the main focus of *Kattenberg's* case has been on factors that have a quantitative element, it also applies to any other factor. Service does not need to be the only cause of exposure to the factor.

If service was one of the contributing causes of the person being exposed to that factor, then that may be sufficient to succeed. Similarly, if the minimum level of the factor would not have been experienced or consumed but for the person having rendered eligible service, then that may be sufficient to succeed.

In ***Re Brecht*** (2003), the SoP required immersion in an atmosphere with a visible **tobacco smoke haze** in an enclosed space for at least 20 hours a week, for periods totalling at least 5 years, provided that that exposure, if ended, did not end more than 15 years before the clinical onset.

The AAT found that the veteran had such exposure in the relevant time period but that only 53 days exposure was due to operational service.

The AAT referred to *Bull's* case and said that 'although not free from doubt' such an exposure would constitute a material contribution to the required 5 year period.

***Deledio* step 4**

In reasonable hypothesis cases it is necessary to decide whether the hypothesis has been disproved beyond reasonable doubt. This requires evidence proving that an essential fact within the hypothesis is not true.

In ***Re Wheat*** (2003), the SoP required **lifting loads** of at least 25 kg to a cumulative total of 120,000 kg within any 10 year period before the clinical onset.

The AAT found that the veteran would have lifted 73,500 kg due to service and had lifted a total of more than 120,000 in the 10 year period. Therefore the SoP was met.

In ***Re Dunn*** (2005), the SoP required increasing **animal fat consumption** by at least 40% and to at least 70 gm/day for at least 20 years before the clinical onset. Evidence before the AAT referred to many factors that contribute to a person's diet, but the AAT noted that *Kattenberg* held that if the factor would not have occurred but for the rendering of that service, the SoP would be met.

A short history of the prostate cancer SoPs

Malignant neoplasm of the prostate is a common cancer and cause of death in men in Australia. As a consequence, the suggestion that prostate cancer could be linked to the circumstances of military service in some way has been the source of much administrative, legislative and judicial action for many years.

Reported in this edition of *VeRBosity* are the results of a grouped proceeding in which 21 applicants' cases were heard together by the AAT. The applicants sought to link their late husbands' deaths to service through a high fat diet acquired as a result of service.

For many years, efforts have been made to recognise smoking as a cause of prostate cancer and thus establish a link from military service through smoking to prostate cancer. This article sets out some of the history concerning those efforts.

On **26 May 1993**, in *Re Chandler* (1993) 9 *VeRBosity* 26, the President of the AAT found that the hypothesis of a veteran's service-related smoking causing his prostate cancer was not unreasonable.[1] This decision was one trigger for the creation of the Repatriation Medical Authority (RMA).

Within a matter of days after the members were appointed to the RMA, the Repatriation Commission made a formal application to the RMA to investigate whether smoking could cause prostate

[1] The Tribunal expressly stopped short of saying that the hypothesis was reasonable, but said that it could not find that it was *un*reasonable.

cancer. The notice of the investigation was gazetted on **21 September 1994**.

On **8 March 1995**, the RMA determined SoPs for malignant neoplasm of the prostate, being Instruments Nos 95 and 96 of 1995.

On **22 May 1995**, the Vietnam Veterans Association of Australia, NSW Branch, Inc (VVAA(NSW)), applied to the SMRC for a review of the SoP on the ground that the RMA did not include the use of tobacco products as a factor in the reasonable hypothesis SoP.

On **22 December 1995**, the SMRC decided there was no 'sound medical-scientific evidence' to justify amendment of the SoPs to include the use of tobacco products. That decision was challenged in the Federal Court and then the Supreme Court of NSW.

On **12-14 February 1996**, the RMA convened an international conference on the issue, which concluded that there was no relevant connection between smoking and prostate cancer.[2]

On **15 November 1996**, in *VVAA(NSW) v Cohen* (1996) 12 *VeRBosity* 88 the Federal Court held that it did not have jurisdiction to review SMRC decisions.[3]

On **9 December 1996**, the RMA amended the SoPs, by Instruments Nos 191 and 192 of 1996.

On **2 January 1997**, the VVAA(NSW) sought a SMRC review of the RMA's failure to include in the *amended* SoPs, a link between tobacco products and prostate cancer.

On **4 May 1999**, the NSW Supreme Court held that the SMRC had made an error of law in reaching its decisions on 22 December 1995. The Repatriation Commission then appealed that judgment to the NSW Court of Appeal.

On **9 November 1999**, the RMA revoked its earlier SoPs and replaced them with new SoPs, being Instruments Nos 84 and 85 of 1999, although both its earlier decisions in respect of the SoPs were subject to on going review.

On **31 March 2000**, the NSW Court of Appeal held that the SMRC's declaration concerning the reasonable hypothesis SoP was void because the Council had misapplied the definition of 'sound medical-scientific evidence' in s 5AB(2) of the Act.[4]

On **3 August 2001**, the SMRC completed its review of the decision to amend the SoPs in 1996 and declared that 'the Council is of the view that there is insufficient sound medical-scientific evidence to justify the amendment of that Statement of Principles to include, as a factor, "cigarette consumption".'

On **7 September 2001**, the VVAA(NSW) sought a declaration from the Federal Court that the SMRC declarations on the 1996 amendments were void.

On **7 June 2002**, the Federal Court ordered that the SMRC review its declaration.[5] Appeals were then lodged by both the VVAA(NSW) and the SMRC to the Full Court.

On **20 December 2002**, the Full Federal Court held that when the RMA revoked the SoPs in 1999, that had terminated the SMRC review in respect of that SoP. It also held that the SMRC had misapplied the reasonable hypothesis test.[6] This meant that the SMRC had no

[2] The findings of the consensus conference are available at www.rma.gov.au/pubs/cancer.htm.

[3] Since then, amendments were made to s 39B of the *Judiciary Act 1903* so that review can be sought of legislative decisions (such as making SoPs) made under Commonwealth Acts.

[4] *Repatriation Commission v VVAA(NSW) & SMRC* (2000) 16 *VeRBosity* 17.

[5] *VVAA(NSW)c v SMRC* (2002) 18 *VeRBosity* 49.

[6] *VVAA(NSW) v SMRC* (2002) 18 *VeRBosity* 117.

power to continue its review of the SoP because it had been revoked and replaced by the RMA.

On **16 July 2003**, the RMA gazetted its intention to review the SoP.

On **28 September 2005**, a new SoP was determined by RMA, revoking the old SoP. Still there was no inclusion of a smoking factor.

Following an application for review, on **21 December 2005**, a notice was published in the *Gazette* notifying of the SMRC's intention to carry out a review of the RMA's most recent prostate cancer SoPs.

This long history demonstrates the potential of this SoP to generate litigation. Litigation surrounding the SoP also involved cases in the AAT in which applicants hoped to delay hearings until the SoP changed.

In *McMillan* (1997) 13 *VeRBosity* 75 the Federal Court dismissed an appeal against decisions of the AAT refusing postponement of hearings pending investigations and reviews by the RMA and SMRC.

In *Beale* (1998) 14 *VeRBosity* 22, the Federal Court dismissed an appeal against an order of the Tribunal that it would proceed to a hearing even though Mr Beale was himself an applicant to the RMA seeking an investigation into the SoP that was relevant to the AAT proceedings.

In *Re Seale* (2004) 20 *VeRBosity* 44, the AAT again refused to postpone its hearing while the prostate cancer SoP was being reviewed.

Administrative Appeals Tribunal

Grouped proceedings concerning death from prostate cancer

Twenty-one cases were heard together over 9 hearing days. They all dealt with the question whether the veteran's death from prostate cancer was war-caused.

In 6 cases (reported in the first group of cases, below) the AAT found that the deaths were war-caused.

In the other 15 (reported in the second group, below), the AAT found that they were not war-caused.

Separate reasons for decision were given in each applicant's case.

SoP Factors

The relevant factor for the reasonable hypothesis SoP is:

> increasing animal fat consumption by at least 40% and to at least 50gm/day, and maintaining these levels for at least five years within the twenty-five years before the clinical onset of malignant neoplasm of the prostate

The relevant factor for the balance of probabilities SoP is:

> increasing animal fat consumption by at least 40% and to at least 50gm/day, and maintaining these levels for at least ten years within the twenty-five years before the clinical onset of malignant neoplasm of the prostate

Hypothesis or contention in each case

The hypothesis or contention of connection to service in each case was that:

- for many years before his death from prostate cancer the veteran had been in the habit of eating a high animal fat diet;
- this eating habit arose out of the veteran's eligible war service because the veteran had become accustomed to eating a high animal fat diet during his service; and
- this diet was substantially higher in animal fat content that the veteran's pre-service diet.

Evidence concerning habituation

Dr Kenardy, a psychologist and specialist in behavioural and rehabilitation medicine, gave the following evidence:

> So that, once the war was over, whatever drive to consume that fat had been established during the war would continue irrespective of factors that were operating on that person's environment.
>
> That if a person had changed their preference and desire to consume fat during the war, then that would be something that would be related specifically to the fat itself that they'd consumed, not the circumstances of the war. So you would expect that that would generalise into new situations because once they'd left the war circumstances there would be – you would expect to see that that preference and desire to consume fat would continue irrespective of the circumstances that they were in.

Re Rankin and Repatriation Commission

Re Smith, B and Repatriation Commission

Re Smith, L and Repatriation Commission

Re Gill and Repatriation Commission

Re Stevenson and Repatriation Commission

Re Chesterman and Repatriation Commission

Muller DP

14, 15, 16, 21, 23, 30 December 2005

Death from malignant neoplasm of the prostate – high animal fat diet – death accepted as war-caused

Each of the veterans had served during World War 2. All but Mr Stevenson had rendered operational service. Three had served in the RAAF, two served in the Army, and one served in the Royal Navy (Mr Chesterman had Australian domicile at the time he enlisted in the Royal Navy and so is taken to have rendered operational service – see s 6C(2) of the VEA).

Rankin [2005] AATA 1230

Pre-war, his family had little money and they grew their own vegetables. Meat was a luxury. They ate a lot of mashed potatoes. They had an occasional rabbit. They regularly ate corn for an evening meal.

On entry to the RAAF Mr Rankin weighed 55kgs, which was well below the ideal weight for his height. While stationed in Canada he regularly wrote to his family, stating that the food was 'great'. He developed a liking for potato chips, big

meals, maple syrup on ice-cream and dumplings, chocolate and waffles. When stationed in England he developed a taste for bacon and eggs. Upon discharge he weighed 66kgs.

Dr English, a dietician, gave evidence that:

> [26] if Mr Rankin's pre-war diet was as meagre as that depicted, he would not have had sufficient food to survive. She also believes that if he ate as much fat post war as claimed, he would have increased his weight to an extraordinary degree.

The AAT said:

> [30] I note the concerns that Dr. English has about the accuracy of the dietary surveys and I agree with her that the specific amounts of food noted in those surveys are probably an underestimation in the pre-war section, and an over-estimation in the post-war section. Nevertheless, I am satisfied that Mr Rankin had a diet low in animal fat pre-war, a diet much higher in animal fat during his operational service, that he developed a taste for food containing animal fat whilst on operational service, and that he then significantly increased his animal fat intake in his post war civilian life.

Smith, B, [2005] AATA 1236

Mr Smith grew up on a mixed farm, on which they grew their own vegetables and fruit. Meat was in short supply, but they usually had a roast on Sunday. They kept hens and sometimes had scrambled eggs for an evening meal. The ate poultry only when a hen was killed because it was old and not laying. They ate the mushrooms, home-made bread and rolled oats. They usually drank skim milk because their father sold the cream to a local butter and cheese factory. They ate a lot of fruit salads, but had sausages 'now and again'.

When serving in New Guinea Mr Smith was constantly on the move. His unit continually had problems with the supply of food ration packs. They were often short of food. He told his wife that his food supply was only at subsistence level and that it was tasteless.

When Mr Smith returned to civilian life he said that he had not had 'decent food' in the Army. He seemed to react to the fact by developing a large appetite for what he called 'decent food', eating more meat, full cream milk and cheese.

He worked for some years on his father's farm, then bought his own dairy farm in 1953. They made their own butter and cheese.

For breakfast Mr Smith usually had cereal and bacon and eggs, or sausage and eggs. He usually had morning tea consisting of a piece of date loaf or sandwich. Lunch consisted of cold meat sandwiches with salad.

The AAT accepted that the veteran's post-war diet was related to the food privations he suffered while serving in New Guinea.

Smith, L, [2005] AATA 1245

Prior to service Mr Smith's diet was relatively low in animal fat content. He did not like fat, cutting it off his meat. He ate only small quantities of butter.

When serving in Canada, England, France and Belgium he acquired a taste for food that had higher animal fat content than he had been accustomed to before he enlisted.

On his return to civilian life his eating habits had changed dramatically. He preferred rich foods. He had become a big eater, preferring a cooked breakfast, and enjoying pastries with cream.

While the AAT recognised that there were probably inaccuracies in the estimates of fat consumed, it accepted the general thrust of the applicant's evidence concerning the veteran's

change in diet, level of fat content, and its relationship to service.

Gill [2005] AATA 1276

Mr Gill's pre-service diet contained a lot of seafood due to the fact that his father was in poor circumstances financially due to his ill health and that the family did a lot of fishing. That diet would have been very low in animal fat content.

The AAT found that Mr Gill probably ate a lot of Army field rations during his operational service in the Middle East, New Guinea and Borneo. The AAT relied on its own knowledge that such ration packs contained a lot of bully beef, which had a significant animal fat content.

The AAT found that Mr Gill had acquired a taste for food with a higher animal fat content in the Army and he continued to eat food with a high animal fat content upon return to civilian life.

Stevenson [2005] AATA 1310

The AAT found it reasonable to infer that, prior to his service, Mr Stevenson ate the food prepared by his mother, which was much the same type of food before his RAAF service as she, and his wife, prepared after his RAAF service.

During his service in the RAAF Mr Stevenson developed the habit of putting large amounts of butter and salt on his food to make it palatable. This habit continued in his civilian life for many years. This was confirmed by his huge increase in weight.

The AAT was satisfied that this post service habit arose out of the habit he acquired while he served in the RAAF, which habit was caused by the unpalatability of RAAF-provided food.

Chesterman [2005] AATA 1316

While there was no specific evidence concerning Mr Chesterman's diet before his service, the AAT accepted that his diet was probably about the average Australian diet at that time.

Mr Chesterman ate large quantities of lard and dripping during his Royal Navy service. The AAT noted that the naval authorities believed that a diet high in animal fat content helped to ward off the effects of freezing conditions.

While Mr Chesterman's immediate post war diet was low in animal fat content because of the state of his digestive system, once his alimentary canal returned to normal and he was able to eat the food he enjoyed, he ate a diet which was high in animal fat. He continued that diet high in animal fat until he developed diabetes in 1978.

Formal decisions

In each of these cases, the AAT set aside the decision under review and determined that the applicants were entitled to the war widow's pension.

Re Philp and Repatriation Commission

Re Patterson and Repatriation Commission

Re Trennery and Repatriation Commission

Re Fraser and Repatriation Commission

Re Horton and Repatriation Commission

Re Lewis and Repatriation Commission

Re Beaver and Repatriation Commission

Re Marrinan and Repatriation Commission

Re Hore and Repatriation Commission

Re Wallace and Repatriation Commission

Re Patrick and Repatriation Commission

Re Rowlingson and Repatriation Commission

Re Wells and Repatriation Commission

Re Powell and Repatriation Commission

Re Duel and Repatriation Commission

Muller DP

15, 16, 20, 21, 22, 23 December 2005

Death from malignant neoplasm of the prostate – high animal fat diet – death not accepted as war-caused

All of the veterans, except Mr Patterson and Mr Beaver, served during World War 2.

Mr Powell and Mr Marrinan rendered non-operational eligible war service during World War 2.

Mr Marrinan and Mr Patterson served in Malaya in the 1950s.

Mr Philp and Mr Beaver served in Korea in the 1950s.

Nine veterans had served in the RAAF, five had served in the Army, and Mr Wallace had served with the Merchant Navy.

Philp [2005] AATA 1237

The material before the AAT did not reveal what Mr Philp ate prior to service, but indicated that the average daily intake of Australian males was about 126gm per day.

The material did not reveal what Mr Philp ate in Japan or Korea, but indicated that the ration packs in Japan contained 139.8 gm of animal fat per day.

The material did not reveal what Mr Philp ate on his return to Australia, other than he ate breakfast and lunch at the Sergeants' Mess, and that his wife cooked western style food at home in the early days of their marriage.

For about the last 20 years of his life Mr Philp cut fat out of his diet or attempted to avoid eating it, and had soup or a light meal in the evening.

The AAT found that the material did not raise the hypothesis that Mr Philp increased his post war intake of animal fat by any significant level, for a significant number of years, over his pre-war diet, for reasons related to his service.

Patterson [2005] AATA 1248

Mrs Patterson had no knowledge of her husband's diet prior to his joining the RAAF. Mr Patterson ate at the RAAF Mess in the years that he was in the RAAF before their marriage.

When they lived at Butterworth Base in Malaya, Mrs Patterson prepared all of her husband's meals, except for some lunches and except for the periods when he was away from the base. The lunches she prepared usually consisted of salad sandwiches, sometimes with cold meat. His diet in Malaya was 'much the same' as he had in Australia 'except that we ate a lot more curries'.

The AAT noted:

> [20] The material placed before the Tribunal indicates that from the date of the marriage of Mr and Mrs Patterson, Mrs Patterson prepared practically all of the meals that Mr Patterson ate for their entire married life. She cooked for him in Australia for nearly three years before they went to Butterworth. She cooked the same meals for him, except for a lot more curries, in Butterworth as

she had done for him in Australia. She cooked similar meals for him in Australia after they returned to Australia from Butterworth.

[21] There is no indication in the material placed before the Tribunal that Mr Patterson's service in Malaya had anything whatsoever to do with his diet, either in Malaya or Australia.

Trennery [2005] AATA 1249

The material before the AAT did not reveal what Mr Trennery ate prior to service, but indicated that the average daily intake of Australian males was 122gm to 126gm per day.

The material did not reveal what Mr Philp ate during his operational service in New Guinea and Bougainville other than the statistical fact that if he ate all of the ration packs supplied to him he would have consumed less animal fat per day (113.9gm) than he did prior to enlistment, for most of his time in New Guinea and slightly more animal fat per day (132.5gm) for a few months, than he did prior to enlistment.

The AAT noted that the material indicated nothing about his diet for the first five years after his service other than he probably ate regularly at country cafes or road houses.

Mr Trennery put on weight once he stopped the heavy work involved in the trucking business but then changed his diet to keep his weight down. His weight was 60 kg in 1971 and 57 kg in 1986.

The AAT found that there was no indication in the material before it that Mr Trenerry's service had anything to do with his diet, whatever it was, after his discharge from the Army. The AAT found that no hypothesis of a connection with service was raised by the material.

Fraser [2005] AATA 1253

The material before the AAT indicated that Mr Fraser's post war diet consisted almost entirely of the food prepared by his first wife, Mavis, and by his second wife, Beryl. The food prepared by Beryl was the same type of food as that previously prepared by Mavis. The food prepared by Mavis was specifically tailored for her diabetic condition. It was low in fat and low in sugar.

The AAT noted that there was no evidence as to what Mr Fraser ate before service, or what he ate while on operational service in New Guinea.

The AAT said that there was nothing in the material before it that Mr Fraser's service in Milne Bay, Madang or Port Moresby had anything to do with his diet in the years following his eligible service. The AAT found that he did not insist on eating fatty foods and that he was not served fatty food at home.

The AAT found that no hypothesis was raised that linked Mr Fraser's death with the particular circumstances of his service.

Horton [2005] AATA 1262

The material before the AAT did not reveal what Mr Horton ate prior to service, but indicated that the average daily intake of Australian males was about 126gm per day. He weighed 47kg on enlistment, and so the AAT assumed that his animal fat intake was probably less than 126gm per day.

The AAT noted that the material did not reveal what Mr Horton ate while on service, but there was evidence that the ration packs in New Guinea contained 113.8 gm of animal fat per day, at the time Mr Horton was in New Guinea. He was only in New Guinea for about 3 weeks and that he spent most of that time in hospital with the measles.

Mr Horton's wife cooked all of his meals at home, with no input from him apart from his consumption of milk and ice-cream. He drank copious quantities of milk and ate ice-cream because of

chronic dyspepsia, which was not accepted as being related to his service.

The AAT found that the material did not raise the hypothesis that Mr Horton increased his post war intake of animal fats by any significant level, for a significant number of years, over his pre-war diet, for reasons related to his service.

Lewis [2005] AATA 1263

There was no evidence before the AAT as to what Mr Lewis's animal fat intake was prior to his service. The AAT noted that he was 19 years of age on enlistment. After discharge he lived with his mother for the following 7 years.

The AAT said that it appeared that Mr Lewis's diet for at least 7 years after his service was identical to his diet before service and that his wife continued preparing much the same type of meals for him as his mother had done, up until about 1980.

The AAT found that the material suggested that Mr Lewis had a diet relatively high in animal fat content both before and after his service and that the amounts were about the same. The material also suggested that his diet during his service was probably lower in animal fat content than either his pre-war diet or his post-war diet.

The AAT found that Mr Lewis's service diet had nothing to do with his post-war diet. His post-war diet was basically controlled by his mother and, later, by his wife. The material did not raise the hypothesis that Mr Lewis increased his post war intake of animal fats by any significant level, for a significant number of years, over his pre-war diet, for reasons related to his service.

Beaver [2005] AATA 1265

The AAT said that the material before it did not reveal what Mr Beaver ate before service in Korea, or what the average animal fat intake of the male population was in the late 1940s or early 1950s. It did not reveal what Mr Beaver ate while on service in Korea or what the contents of the ration packs were that were supplied to members of the Army in Korea.

Mr Beaver cooked for his wife and himself for three years between 1955 and 1958. He cooked mostly fried and bar-b-qued food;

The AAT noted that the Beaver's diet was probably fairly high in animal fat from the date of their marriage until they modified their diets in the 1970s.

The AAT said that it was not possible to know whether his consumption of animal fat on a daily basis increased during his service in the Army, and it was not possible to know whether his post-service diet contained more animal fat than his pre-service diet.

The AAT found that the material did not raise the hypothesis that Mr Beaver increased his post war intake of animal fats by any significant level, for a significant number of years, over his pre-war diet, for reasons related to his service.

Marrinan [2005] AATA 1272

The AAT said that there was no evidence concerning the diet of the veteran before his eligible service, but it was prepared to accept that Mr Marrinan's diet contained 129gm of animal fat per day, which was the Australian average for adult males.

Ms Kilworth, a dietician, calculated the average daily fat intake, post eligible service, as 180gm, based on the information supplied by the applicant and her daughter. This would be an increase from 129gm of fat, or just under 40%.

However, the AAT accepted the evidence of Dr English, a dietician, that if Mr Marrinan had consistently eaten the diet attested to by his wife and daughter

he would have put on a lot of weight. As it was, his weight fell after he went to Malaya and remained relatively low at about 64 kg from 1960 to 1970.

The AAT found that Mr Marrinan's diet after his eligible service contained much less than an average of 180gm per day. Therefore the SoP was not satisfied.

The AAT held that no hypothesis was raised that linked the Mr Marrinan's death with the particular circumstances of his eligible service.

Hore [2005] AATA 1286

The AAT said that the material before it did not reveal what Mr Hore ate before his service but it was prepared to accept that he probably had a daily intake of about 126 gm of animal fat, being the average for Australian males at that time.

Similarly, the evidence did not reveal what he ate while serving but he probably ate the normal service rations which contained a daily amount of 89.6 gm, rising to 113.9 gm, of animal fat, while based in Australia and a daily amount of 132.5 gm of animal fat while overseas.

After service, Mr Hore ate typical Australian meals for the period and was not a particularly big eater. He was very conscious of his weight and as part of that consciousness sent his second wife to Weight Watchers.

The AAT found that there was no evidence that Mr Hore developed a taste for animal fat during his RAAF service, but that the material indicated the very reverse, in that he did not eat bacon for breakfast until his second wife introduced it into their breakfast diet.

Mr Hore's weight remained fairly constant throughout his adult life at between 62 kg and 74 kg.

The AAT found that the material did not raise the hypothesis that Mr Hore increased his post war intake of animal fats by any significant level, for a significant number of years, over his pre-war diet, for reasons related to his service.

Wallace [2005] AATA 1289

The AAT noted that there was no evidence as to what Mr Wallace's animal fat intake was before his Merchant Navy service, but noted that the average at the time for the adult male population was 126 gm per day.

There was also no evidence as to what Mr Wallace's animal fat intake was during his operational service. Nevertheless, the AAT was prepared to accept that it was probably plentiful and high in animal fat content.

Consequently, the AAT found that there no evidence as to whether Mr Wallace's intake of animal fat on an average daily basis increased or decreased during his operational service.

Additionally, there is no evidence as to whether Mr Wallace developed a preference for food containing animal fat during his operational service or whether he had such a preference prior to his service. However, it was clear that he enjoyed food that was high in animal fat, when he ate at home.

The AAT found that the material before it did not raise a hypothesis that Mr Wallace increased his consumption of animal fat while on operational service, nor that his consumption of a diet high in animal fat after service had anything to do with his service.

Patrick [2005] AATA 1291

The AAT found that there was no evidence as to what Mr Patrick's animal fat intake was before his service in the RAAF, but noted that the average Australian adult male consumed about 126 gm of animal fat per day.

While there was no specific evidence as to what Mr Patrick ate while he was in the RAAF, official records showed that when

he served in New Guinea in early 1943, his ration pack would have contained 113.9gm of animal fat per day, and that during his service in the United Kingdom in 1944-45 his ration packs would have contained 86.9 gm of animal fat per day.

The AAT found that, the available material indicated that Mr Patrick's consumption of animal fat probably decreased during his RAAF service, compared to his pre-service diet.

There is also no evidence as to what Mr Patrick ate in the 20 years following his service, from 1946 to 1966, but the AAT noted that Mr Patrick had a diet that was relatively high in animal fat content from 1966 onwards.

The AAT noted that it is impossible to tell from the material available to it whether Mr Patrick's taste for animal fat arose pre-service or in the 20 years post-service.

The AAT noted that there was no evidence that Mr Patrick's post 1966 diet had anything to do with his RAAF service. Consequently, the material did not raise a hypothesis that Mr Patrick increased his consumption of animal fat while on service, such that he then increased his consumption of animal fat in his post-war service diet.

Rowlingson [2005] AATA 1293

Mr Rowlingson's service records indicated that he weighed 63.5kg on enlistment in 1941, as a 20 year old, 70.8kg on discharge in 1946 and 66.7kg on discharge in 1971.

Dr English, dietician, gave evidence that if Mr Rowlingson had eaten as much as his widow recorded in her dietary surveys, he would have gained weight in excess of 62kg each year.

The AAT noted that there was no evidence as to what Mr Rowlingson's animal fat intake was before his service. His pre-war occupation had been variously recorded as 'labourer' and 'sailor'. The AAT noted that the average adult male consumed about 126gm of animal fat per day at that time.

There was no specific evidence about what Mr Rowlingson ate in the Army, but the AAT noted that the New Guinea food ration when he was in New Guinea for five weeks, contained 113.9gm of animal fat per day, and that the ration packs for Army personnel in Australia contained less animal fat than that.

The AAT said that the evidence suggested that Mr Rowlingson's intake of animal fat during service was probably less than it was prior to service.

There was no evidence about Mr Rowlingson's diet during the 6 years of his first marriage between 1947 and 1953.

The AAT noted that from 1954 until he was discharged in 1971, Mr Rowlingson apparently ate only one big meal per day. The AAT said that there did not seem to have been anything out of the ordinary about the food he ate, and there was no evidence that he had a preference for meals high in animal fat content.

The AAT noted that Mr Rowlingson was not particularly heavy. He weighed 66.7kg on discharge in 1971 when he was 50 years of age, and that this was lighter than he had been in 1946.

The AAT concluded that the material did not raise a hypothesis that Mr Rowlingson increased his post war intake of animal fat by any significant amount, for any significant period, over his pre-war diet, for any reasons related to his service.

Wells [2005] AATA 1297

The AAT noted that while there was no specific evidence about Mr Wells' pre-service diet, it probably contained a lot less animal fat than the then average intake of animal fat for adult males given

that he was quoted as being continually 'starving' during that period.

According to Mrs Wells, her husband told her that he ate a lot of bully beef during World War 2.

The AAT said that while bully beef has been given a bad name by some ex-service people, and it did have some fat around it, it was actually made from lean beef. The AAT noted that the typical pack available to Mr Wells in Darwin would have contained 102.1gm of animal fat per day. His ration pack would have contained 107.7gm/day of animal fat, while he was stationed in southern Australia.

The AAT found that Mr Wells' post service diet was not particularly rich in animal fat, but was a fairly average Australian diet for that period, and there is no evidence that he preferred a diet rich in animal fat.

The records showed that Mr Wells' weight at various times as follows:

55kg on enlistment (1942)
57kg on discharge (1946)
62 kg (1950)
67 kg (1973)
64 kg (1986)

Mrs Wells filled in two dietary questionnaires for analysis by the dieticians who prepared reports for the case. Dr English noted that if Mrs Wells' answers were correct, Mr Wells would have had an animal fat intake of 72.3gm/day on the answers to the first questionnaire, and an animal fat intake of 157 gm/day on the answers to the second questionnaire.

The AAT concluded that there was no evidence that would allow it to make a reasonably accurate estimate of Mr Wells' intake of animal fat on a daily basis before his service. His intake of animal fat was probably lower than the average (126 gm/day) but whether it was more or less than 100gm per day was impossible to say.

The AAT said that during his service Mr Wells' intake of animal fat would have been about 102gm to 108gm per day, depending on where he was stationed. However, there was no evidence that he enjoyed bully beef to such an extent that he developed a preference for fatty food.

The AAT noted that Mr Wells' post war diet was quite unremarkable. He ate what his wife put in front of him. She cooked much the same type of meals as her mother had done before her, and he does not appear to have had any preference for fatty food.

The AAT concluded that the material did not raise a hypothesis that Mr Wells increased his post war intake of animal fat by any significant amount, for any significant period, over his pre-war diet, for any reasons related to his service.

Powell [2005] AATA 1309

The AAT noted that there was no evidence as to what Mr Powell ate prior to his service in the RAAF, but assumed that he probably ate about the same as the average adult male which was about 122gm to 126 gm of animal fat per day.

There was no specific evidence as to what Mr Powell ate while on service in the RAAF, but the AAT noted that the ration packs, during his service, contained animal fat in the amount of 102.1gm per day in the tropics, and 107.7 gm per day in the southern states.

The AAT said that the material before it indicated that Mr Powell had not developed any particular food preference as a result of his RAAF service. For the first 10 years after his service he ate what his mother-in-law put in front of him. Thereafter he ate what his wife put in front of him.

The AAT found that it was probable that Mr Powell's post war diet contained more

animal fat per day than his pre-service diet but if it did it had nothing whatsoever to do with the food he ate while he served in the RAAF. The AAT held that his post war diet was not connected in any way with any aspect of his RAAF service.

Duel [2005] AATA 1311

The AAT found there is no evidence about what Mr Duel ate before his service in the RAAF, but again the AAT assumed that he probably had a diet similar to the average Australian adult male at the time (between 122 and 126 gm of animal fat per day).

There is no evidence about what Mr Duel ate during his RAAF service in Australia or in the United Kingdom, apart from the fact that he got bacon and eggs for breakfast prior to going on a mission. On the basis of that evidence, the AAT assumed that bacon and eggs for breakfast was not served on a regular basis. Dr English produced figures that showed that service ration packs contained animal fat in the amounts of 107.7gm per day in Australia and 86.3gm per day in the United Kingdom.

The evidence showed that Mr Duel did not have much choice in what he ate after he was married. His wife controlled their eating patterns. She regulated how much fat her husband ate and believed that fatty food was not good for people with ulcers. She said that they were not fat eaters and that they sometimes had light meals.

The AAT found that the material before it indicated that Mr Duel may have consumed less animal fat while he was in the RAAF than he did before his service. It indicated that he increased his animal fat intake after he joined the RAAF but the material did not indicate that he developed any particular preference for fatty food.

The AAT held that the material did not raise the hypothesis that Mr Duel increased his consumption of animal fat while he was in the RAAF, nor did it raise the hypothesis that he increased his post war intake of animal fats by any significant level, for a significant number of years, over his pre-war diet, for any reasons related to his service.

Formal decisions

In each of these cases, the AAT affirmed the decision under review, deciding that the applicants were not entitled to a war widow's pension.

Editor: These cases indicate that in order to succeed in connecting prostate cancer to service through a high animal fat diet, there needs to be evidence pointing, at least in a general way, to *all* the following elements:

- **the kind of diet the person had before their eligible service;**
- **the circumstances of service that led to them changing their dietary habit after service to include a diet with a higher animal fat content;**
- **the level of change in fat content before and after that dietary change;**
- **that the higher animal fat diet lasted the 5 or 10 years required by the relevant SoP; and**
- **that the 5 or 10 year high animal fat diet period fell within the 25 years immediately before the clinical onset of the person's prostate cancer.**

Re Leigh and Repatriation Commission

Muller DP

[2005] AATA 1081
28 October 2005

Special rate – whether incapacity for work temporary or permanent – post traumatic stress disorder – 5-year period of temporary incapacity set – 25 years of age

Mr Leigh rendered service in East Timor, and as a consequence of that service had post traumatic stress disorder, alcohol dependence, hearing loss and tinnitus accepted as war-caused. In February 2004, the Repatriation Commission assessed pension at the temporary special rate until November 2005. On review, the VRB varied the decision by extending the period of payment at the temporary special rate until August 2009. Mr Leigh sought to be assessed at the permanent special rate, and applied for review by the AAT.

On behalf of Mr Leigh it was argued that:

- he is very ill;
- he has been treated by an experienced psychiatrist for the past two years and he has not improved; and
- it is unlikely that he will ever improve.

The case put on behalf of the Commission was that:

- Mr Leigh is relatively young at 25 years of age;
- he has only been undergoing treatment for 2 years;
- it is likely that he could suddenly improve within the next 2 or 3 years;
- he would not normally expect to retire until the age of 60 or 65;
- improvements in medical knowledge are occurring every year; and
- it would be speculative and unnecessarily pessimistic to conclude that he would not improve over the next 30 or 40 years.

Evidence given by Dr Rogers, the treating psychiatrist, was to the effect that:

- Mr Leigh attended an intensive community based program for PTSD sufferers, but he remained unable to work;
- there is good evidence of severe and continuing symptoms, despite intensive treatment interventions;
- PTSD is a chronic debilitating condition and there is every indication that this will continue to be so for Mr Leigh, particularly given the treatment inputs and failure to improve;
- it would be highly unlikely that Mr Leigh will return to work on a full or part-time basis, even for up to 8 hours per week; and
- Mr Leigh's incapacity is likely to continue for an indefinite period given the above experience.

The AAT considered this opinion was too pessimistic and preferred the more optimistic evidence of psychiatrist, Dr Cook, to the effect that:

- Mr Leigh is severely and markedly incapacitated by his various psychiatric conditions;
- he is incapable of working for any periods of time in a remunerative capacity;
- it is too early to say whether he will remain unable to work totally for the rest of his life;

- he is still a young man who has a good track record at school and in the Army behind him;
- he has a supportive family;
- he had a good childhood;
- he will probably not improve in the next two years;
- it is usual for people who suffer from PTSD to have a year or two of poor functioning;
- the possibility of improvement exists and there is an approximate 50% chance that he will be able to re-enter the work force over the next four or five years, even if it is within a limited/part-time capacity;
- he could have symptoms for the rest of his life but may be able to lead a life where he functions well.

The Tribunal said:

> [14] In ordinary usage the word 'permanent' means:
>
> > The *New Shorter Oxford English Dictionary* (1993): Permanent adj. continuing or designed to continue indefinitely without change; abiding, lasting, enduring; persistent.
> >
> > The *Macquarie Concise Dictionary* (1992): Permanent adj. Lasting or intended to last indefinitely; remaining unchanged; not temporary; enduring; abiding.
>
> [15] The Tribunal was referred to an observation by Woodward J in *McDonald v Director General of Social Security* (1984) 6 ALD 6, at 13 where he said,
>
> > The vital contrast between temporary and permanent incapacity must be based upon an assessment of future prospects at the time the decision is made. It is not inconsistent with the notion of permanent incapacity that the pensioner's position should be reviewed from time to time. Unexpected improvement in the person's condition, advances in medical science, the achievement of fresh skills, or even changes in the labour market, could bring to an end an incapacity which had been thought to be permanent.
> >
> > In my view the true test of a permanent, as distinct from temporary, incapacity is whether in the light of the available evidence, it is more likely than not that the incapacity will persist in the foreseeable future. (Cf *Re Tiknaz and Director-General of Social Services* (1981) 4 ALN No 19).
> >
> > This test involves two questions. The first is whether it is more likely than not that the disability will terminate (or fall below 85 per cent in the sense - referred to above) at some time in the future. Even if the answer to this question is 'Yes', I think it would be inaccurate in the context of employment to describe as 'temporary' a condition which was likely to last for a number of years. Hence the two elements of degree of likelihood of improvement and time-span for that improvement, should be weighed together in determining what is permanent and what is temporary. The greater the likelihood of substantial improvement and the earlier that it is likely to occur, the more accurate will be a 'temporary' label. The longer the period and the less probable the improvement, the more appropriate will be a finding of permanent incapacity.
>
> [16] The comments of Woodward J, quoted above, must be read in the light of the provisions of the *Social Security Act 1947*, with which they were concerned. Under that Act pensions and benefits were payable for the purpose of affording a measure of support for people who usually fitted into at least one of three categories, namely;

(i) Permanent incapacity for work (Invalid Pension);

(ii) Temporary incapacity for work (Sickness Benefit);

(iii) Capacity for work and reasonable attempts to obtain work, without success (Unemployment Benefit).

Administration of the Act requires that distinctions be drawn between the three categories. The drawing of the dividing lines between the categories was of necessity somewhat artificial and arbitrary. The Act intended that all relevant forms of incapacity had to fall on one side or the other of that line. Thus, an incapacity which was not temporary was automatically permanent.

[17] There is no such concept in sections 24 or 25 of the VEA.

[18] In the case of Mr Leigh, he is being paid pension at the special rate irrespective of whether his incapacity is temporary or permanent. The only usual difference between temporary or permanent payment at the special rate is that a person who is granted a permanent payment of pension at the special rate is unlikely, in practice, to ever be re-assessed.

[19] The Tribunal was referred … to a part of the Minister's speech on the occasion of his introducing the Repatriation Legislation Amendment Bill 1985 … in which he said that the purpose of the special rate of pension is to provide for severely disabled veterans of a relatively young age 'who could never go back to work and could never hope to support themselves or their families'.

[20] I take the view that 'permanent' in the context of sections 24 and 25 of the VEA means for a period longer than just a few years hence. …

[23] I am conscious of the views of both psychiatrists that it would not be in the best interests of Mr Leigh to have him subjected to regular re-assessments. I believe that the decision of the VRB to specify that re-assessment not take place before 25 August 2009 to be perfectly reasonable.

Formal decision

The Tribunal affirmed the VRB's decision.

Editor: The applicant has appealed this decision to the Federal Court.

The AAT's rejection of the application of the Social Security case law on the meaning of 'permanent' is of particular interest. Part of the reasoning for rejecting that case law is set out in para [18], in which the AAT said that the 'only usual difference' between the temporary and permanent special rate of pension was that the permanent rate was not usually reassessed. The AAT might not have been aware of the substantial differences in benefits available to persons on these two rates. Unlike a person in receipt of the permanent rate, a person in receipt of the temporary special rate is *not* entitled to:

- **the full benefit of the Veterans' Vocational Rehabilitation Scheme;**
- **access to the Veterans' Children Education Scheme for the person's children;**
- **State and local government concessions;**
- **public transport and public utility concessions;**
- **the supply of a car or motorbike and car or motorbike parts free of the goods and services tax; and**
- **automatic dependants' pensions and health care for dependants upon the person's death.**

The fact that the Commission does not usually review pensions that have been assessed at the permanent special rate does not mean that it would not do so in a case such as this. Section 31 of the VEA gives authority for such review.

Re Butcher and Repatriation Commission

Jarvis DP, Hastwell SM

[2005] AATA 1151
18 November 2005

Special rate – temporary effect of non defence-caused disabilities on capacity to work

Following the acceptance of a new disability as defence-caused, the Commission assessed Mr Butcher's pension at 100% of the general rate with effect from 31 December 2002.

Mr Butcher had not worked since 1998 when he worked as a general hand for a large vegetable farming operation (Comit Farm). He sought the special rate of pension and applied for review to the VRB.

In August 2004, the VRB affirmed assessment at 100% of the general rate on the ground that non defence-caused disabilities had played a role in preventing him from continuing to work.

At the AAT he gave evidence that he left Comit Farm mainly because the kind of work aggravated his accepted skin disorder by exposure to insecticides and because of the ongoing effects of his accepted anxiety disorder.

In 1978, Mr Butcher suffered a shoulder injury, which has not been accepted as defence-caused. That injury was operated on and caused no further problems until 1999 or 2000, when he started having problems with his shoulder. He said that he was still having problems with it in 2003, but that it had settled with rest. Medical opinion was that it was caused by a degenerative condition of the cervical spine, but it was not related to any of his accepted disabilities.

The AAT found that Mr Butcher was not capable of working more than 8 hours a week due to his accepted disabilities in any work to which he had skills or experience.

The AAT then had to consider whether Mr Butcher was prevented from continuing to undertake a kind of work that he had been undertaking because of his incapacity from defence-caused injuries or diseases alone.

The AAT said:

> [35] The tribunal accepts that the degenerative condition of the cervical spine would be a factor in preventing the applicant from undertaking certain of the types of remunerative work which he had undertaken in the past. For example, the tribunal finds that the applicant would not be able to undertake work as a labourer in tasks that entailed working above his head and looking up, such as fixing ceilings or cornices, or painting, or in tasks such as concrete laying or flooring work, where he would be looking down for long periods of time. Further, from the applicant's description of work as a fork-lift driver, the tribunal finds that his cervical condition would be a factor preventing him from doing that work, because that work frequently entails stacking shelving at heights that would involve a fork-lift operator looking upwards for significant periods.
>
> [36] However, the Tribunal accepts the applicant's evidence that he was not troubled by his shoulder problems whilst he was working at Comit Farm. The Tribunal finds that his cervical condition would not be a factor that would prevent him from undertaking work as a storeman or general farm labourer. Further, the tribunal finds that his cervical spine condition would not be a factor that would prevent him from working as a truck driver, bearing in mind that many trucks are equipped with lifting devices, and if necessary, the applicant could also use a fork lift as an incident to truck driving, if it were necessary to load heavy objects when receiving or delivering loads. The tribunal accordingly finds that the

applicant has been prevented, by his war-caused injuries alone, from carrying out remunerative work that he had previously undertaken.

[37] The tribunal is further satisfied that as a result of his [defence]-caused conditions, the applicant is suffering a loss of wages or earnings on his own account that he would not have suffered if he were free of that incapacity. In reaching this decision, the tribunal has also had regard to s 24(2)(a) of the VE Act. The applicant ceased to engage in remunerative work when he gave up his work with Comit Farm. As mentioned above, the tribunal is satisfied that he gave up this work because of the exacerbation of his severe psoriasis and because of his psychiatric problems. The tribunal finds that there were no other factors which led him to give up that work.

[38] It is clear from the evidence of Dr Lettberg, however, that the applicant had experienced problems with his left shoulder in the period from and after he lodged his application for an increase in pension, and that these problems had persisted. Further, it appears further from Mr Angel's report (exhibit A2) that as at the date of his second examination, that is on 6 September 2004, the applicant when referring to his shoulder said that he had felt normal for the preceding month. The tribunal finds that in the period from when the application for an increase in pension was lodged until say 31 July 2004 his non-accepted degenerative condition of the cervical spine would have been a factor in his having been prevented from undertaking any of the kinds of remunerative work which he had undertaken in the past. However, as from 1 August 2004 onwards, the non-accepted cervical spine condition would not have been a factor that would have prevented him from undertaking work as a farmhand or a truck driver. His entitlement to pension at the special rate should therefore commence on and from 1 August 2004.

Formal decision

The AAT set aside the decision under review and assessed pension at the special rate from 1 August 2004.

Editor: This case shows that if a person is not eligible because of the effects of a factor other than accepted disabilities, it does not necessarily prevent assessment at the special rate at a later date, within the assessment period, once the effects of that disentitling factor stop operating.

In Mr Butcher's case, once the disabling effects of the non-accepted disability had eased, they no longer played a part in preventing him from continuing to undertake the kind of work he had been doing. It was then only the effects of his accepted disabilities that prevented him from continuing to do that kind of work.

It is also important to note that in Mr Butcher's case, there were no reasons other than his accepted disabilities involved in his decision to cease working in 1998. The non-accepted disability did not cause any incapacity for work until after he had already ceased work. This meant that he did not fail the 'loss of salary, wages, or earnings on his own account' test.

Even if the non-accepted disability had played a part in his decision to stop work, Mr Butcher might still have passed that test once the non-accepted disability improved. If it could be shown that, in the assessment period, the non-accepted disability was no longer part of the reason for him not being in the workforce, he could meet that test. The 'ceased to engage' test must be applied in the assessment period, not at the date the person stopped working.

The Commission has appealed this decision to the Federal Court.

Federal Court of Australia

Collins v Repatriation Commission

Spender J
[2005] FCA 1566
4 November 2005

Polycythaemia vera – whether reasonable hypothesis linking applicant's operational service and his PV exists – whether AAT applied correct SoP

Mr Collins had consistently maintained that his polycythaemia vera (PV) was caused by exposure to ionising radiation during his operational war service in Japan in 1947 and 1948. During his time in Japan he served in and around Hiroshima, where he operated a bulldozer, demolishing bomb damaged buildings and preparing sites for redevelopment.

Mr Collins had claimed several times to have his PV accepted as a war-caused disability, first in 1988, then in 1995 and again in 2000. The Commission on 16 May 2000 initially rejected the latest claim. Mr Collins applied to the VRB, which affirmed the decision, and then to the AAT, which remitted the matter to the Commission to determine. On 3 December 2001 the Commission again rejected the claim. The VRB affirmed the decision, as did the Tribunal on 5 September 2003. It is that decision which Mr Collins appealed to the Federal Court.

Grounds of appeal

Essentially, the Mr Collins argued that the Tribunal had applied the wrong SoP. When the application was lodged, the relevant SoP was No 78 of 1999. Subsequently, it was amended by No 11 of 2001. No 78 of 1999 relevantly provided:

> *Basis for determining the factors*
>
> 3. The Repatriation Medical Authority is of the view that there is sound medical-scientific evidence that indicates that polycythaemia vera and death from polycythaemia vera can be related to relevant service rendered by veterans, members of Peacekeeping Forces, or members of the Forces.
>
> *Factors that must be related to service*
>
> 4. Subject to clause 6, the factor set out in clause 5 must be related to any relevant service rendered by the person.
>
> *Factors*
>
> 5. The factor that must as a minimum exist before it can be said that a reasonable hypothesis has been raised connecting polycythaemia vera or death from polycythaemia vera with the circumstances of a person's relevant service is:
>
> (a) inability to obtain appropriate clinical management for polycythaemia vera.
>
> *Factors that apply only to material contribution or aggravation*
>
> 6. Paragraph 5(a) applies only to material contribution to, or aggravation of polycythaemia vera where the person's polycythaemia vera was suffered or contracted before or during (but not arising out of) the person's relevant service; paragraph 8(1)(e), 9(1)(e), 70(5)(d) or 70(5A)(d) of the Act refers.

It was then further argued that should No 78 of 1999 apply, '[56] by its own operation, clause 6 of SoP 78 takes clause 5 out of play in this case, because 'this case is a case of cause' [and …] that clause 4, by its operation, keeps clause 5 out of the way because of the content of clause 6'.

In summary, Mr Collins submitted that only clause 3 of the SoP has operation on the applicant's claim, and therefore the medical evidence supported a hypothesis connecting the his PV with relevant service.

The Commission submitted that the Tribunal had applied the correct SoP, being SoP 78 as amended by SoP 11, which specifically excluded the hypothesis that the applicant's PV was caused by operational service. It was further submitted that the amendments made by SoP 11 to SoP 78 made it clear '[59] … that an hypothesis based on the proposition that service caused the onset of the disease was covered by the amended SoP'. In relation to this submission, however, Spender J noted:

> [59] However, the statement in the explanatory note that 'the information available to the Authority during these investigations does not support a decision that any factor can be related to onset of this disease' is logically inconsistent with the contention in clause 4 of the amended SoP that 'the factor that must as a minimum exist in relation to the circumstances of a person's relevant service causing ... polycythaemia vera ... is inability to obtain appropriate clinical management for polycythaemia vera.'
>
> [60] The real difficulty in this case is that SoP 78 as amended by SoP 11 has the effect of requiring that the factor that must exist before there is a connection between a veteran's operational service and the condition of PV is that his PV must be caused by his inability to obtain appropriate clinical management for his PV

Spender J went on to describe the required factor in SoP 11 in relation to the cause of PV as 'nonsensical'. He said:

> [61] I find it extraordinarily difficult to accept that such a requirement could be expounded by any rational person, let alone an expert body of medical scientists. Yet that is what the amended Statement of Principle postulates as a necessary requirement before the hypothesis of connection between operational service and the veteran's PV is a reasonable hypothesis.

Notwithstanding the logical inconsistency contained in the wording of SoP 78 as amended by SoP 11, Spender J found it to be the applicable SoP. In so doing Spender J relied on the observations of Mansfield J in *Stoddart v Repatriation Commission*[7]:

> '[64] In *Gorton*, [*Repatriation Commission v Gorton* (2001) 110 FCR 321] the Full Court (Heerey, Emmett and Allsop JJ) determined that, in performing its function of review, the tribunal should first approach the question of entitlement to a pension under the VE Act by reference to the SoP in force at the time of its decision. If it determined by reference to that SoP that there was no entitlement to a pension, only then should it consider whether, by virtue of an SoP in force at the time of the commission's decision (or perhaps at the time of the application) there was an 'accrued right' which was preserved under that earlier SoP to have the claim determined also by reference to that earlier SoP. In the earlier decision of the Full Court in *Repatriation Commission v Keeley* (2000) 98 FCR 108; 60 ALD 401 (*Keeley*) the Full Court decided that a claimant is entitled to an accrued right to have his or her claim considered and reviewed by the tribunal on the basis of the SoP current at the time of the commission's decision, despite the later revocation of that earlier SoP. As explained in *Gorton*, it is only necessary to have regard to any such accrued right if the Tribunal, applying the SoP current at

[7] *Stoddart v Repatriation Commission* [2003] FCA 334, (2003) 74 ALD 366, 19 *VeRBosity* 48

> the date of its review, is of the view that the claim should be refused.'

In finding SoP No 78 of 1999 as amended by No 11 of 2001 to be the relevant SoP, Spender J held the Tribunal not to have made an error of law. Spender J did, however, criticise the construction of the SoP by saying:

> [68] It may be thought quite unsatisfactory that the terms of the SoP in force at the time of the Commission's decision (and which was the same amended SoP in force at the time of the decision of the AAT) are devoid of rational or scientific conviction.
>
> [69] The requirement that the hypothesis connecting operational service with the condition of PV in the veteran be a reasonable hypothesis is, by the amended SoP, the nonsensical requirement that the veteran's PV be ***caused*** by an inability to obtain appropriate clinical management of his PV.
>
> [70] That nonsensical requirement, however, is what the Parliament by s 120A(3) of the Act, and the Repatriation Medical Authority, by SoP 78 as amended by SoP 11, has stipulated as necessary.
>
> [71] There is nothing the AAT or this Court can do about it.

The appeal was dismissed.

Editor: The effect of this case is that if a SoP does not contain any causal factors (factors concerning clinical onset), but only contains aggravating factors (factors concerning clinical worsening), a hypothesis or contention cannot succeed if it is claimed that service caused the injury or disease.

The 'inability to obtain appropriate clinical management' factor is an aggravating factor, even though it might not refer to 'clinical worsening'. It cannot cause the onset of an injury or disease.

Federal Magistrates Court of Australia

Hackett v Repatriation Commission

Baumann FM
[2005] FMCA 1698
22 November 2005

Post traumatic stress disorder – alcohol abuse and dependence – stressor not severe enough to cause or aggravate – adequacy of AAT's reasons

Mr Hackett contended that his claimed disabilities of post traumatic stress disorder and alcohol dependence should be regarded as war caused. He relied on a claim that he could not obtain appropriate clinical management for PTSD and that this aggravated that condition during operational service. He also claimed to have suffered a severe stressor while serving in HMAS *Perth*, which led to an increase in his alcohol intake. The AAT had affirmed decisions of the Commission that Mr Hackett's PTSD and alcohol abuse and dependence were not war-caused.

Issue

The Commission did not dispute that Mr Hackett suffered from PTSD and alcohol abuse and dependence.

Principally, the applicant relied on submissions alleging the Tribunal to have erred in not considering aggravation.

The Tribunal's decision

The Tribunal detailed the stressors relied upon by Mr Hackett as follows:

> [19] 11. The Applicant's claims … centre on certain events associated with his service in the RAN. These are:
>
> - HMAS *Queenborough*
>
> 7 December 1967 – this was a boiler room accident, whereby a sailor was killed by an explosion and exposure to extreme heat and steam. The Applicant was in the environs of the accident site and witnessed the dead sailor being brought out of that site.
>
> - HMAS *Perth*
>
> Incident 1 – stress of routine of being on watch in the fire room and at action stations.
>
> Incident 2 – when on watch in the fire room and action stations were called, the hatches were bolted down.
>
> Incident 3 – when the guns were firing there was stress of being given no information about the vulnerability of the ship. The Applicant states that while working in the boiler room he was concerned about what would happen if there was a direct hit on the fire room.
>
> Incident 4 – the gun turrets would often fire day and night without warning and 'my heart would leap into my mouth each time the gun first shell was fired'. Approximately 200 – 300 shells were fired in an engagement.
>
> Incident 5 – there were times when prisoners were brought on board; and grenades would be dropped either side of the ship to inhibit divers placing mines on the ship's side.
>
> Incident 6 – the Applicant states that sailors were told that mines could be in the water and consequently, he never knew whether some of the sounds were grenades in the water or whether the ship had hit a mine.
>
> Incident 7 – in one incident, the crew were told that they were going to the aid of a patrol boat which was being fired upon from shore and that their ship would also need to be close to the shore.'

The AAT noted that the incident in HMAS *Queenborough* did not occur during operational service, but remarked that,

> [23] … it may be relevant at a subsequent stage if it can be shown to be an aggravation of a pre-existing condition of PTSD or some other psychiatric disability.

In relation to the incidents on operational service in HMAS *Perth*, the AAT found that only incidents 3, 4 and 6 raised a reasonable hypothesis, and then asked whether there was evidence of a 'severe stressor' as required by paragraph 5 of the SoP.

The Court summarised the AAT's findings as follows:

> [25] The AAT found that on an 'objective assessment, none of the three identified events were "severe stressors"', and said:
>
> '[59] Turning now to the subjective aspect of this assessment, the Tribunal does not accept that the Applicant would have experienced the degree of fear for the events claimed which would satisfy the standard in the definition "experiencing a severe stressor".'
>
> [26] In making that finding the member gave cogent reasons for doing so. It was clearly a finding open to the member.
>
> [27] The member used an analogous analysis when dealing with the claims that the Applicant's alcohol abuse and generalised anxiety disorder were also 'war-caused'.
>
> [28] The member came to the same conclusion on each specific area of

> suffering – namely that none of these 'diseases' were 'war-caused', requiring him, therefore, to affirm the earlier Veterans' Review Board decision.

Counsel for Mr Hackett submitted that the AAT failed to take into account relevant considerations. It was argued that the AAT had not revisited the incident in HMAS *Queenborough* to consider an aggravation hypothesis. It was also submitted that the AAT had failed to take into account Mr Hackett's evidence and that the AAT failed to provide sufficient reasoning, particularly in the rejection of incidents 1, 2, 5 and 7.

Court's findings

The Court found the AAT's reasoning to be adequate. The Court said:

> [33] I believe the Applicant is able to 'identify with certainty what reasons the Tribunal had for reaching its conclusion and what facts it considered material to that conclusion.

The Court also noted that:

> [i]t would be inconsistent with the legislative intent of section 43(2B) [of the *AAT Act*] to apply an overly 'picknicky' approach.

In relation to the submission that the AAT failed to take into account Mr Hackett's evidence, Baumann FM said:

> [34] I have reached the conclusion that the entirety of the evidence before the AAT was capable of supporting each of its findings of fact. It is clear, for example, that in some respects the member preferred the 'Writeway Research' to the oral evidence of the Applicant … . That course was open to the member.
>
> [35] Although some of the findings of fact are brief, they are in my view adequate.

Baumann FM agreed with the Commission's submissions that the AAT had not ignored the potential application of factor 5(b) of the SoP (concerning aggravation). Baumann FM quoted from the Commission's submissions:

> [38] … (c) It is necessary, because of SoP 4 to show that 'at least one of the factors set out in clause 5 must be related to any relevant service' – that is, it is necessary to establish that the 'severe stressor' must be related to operational service.
>
> (d) Although not specifically dealing with factor 5(b) (because it was not a contention relied upon by the Applicant), the finding by the AAT that incidents 3, 4 and 6 on the HMAS *Perth* could not justify the standard of a 'severe stressor' for the purposes of factor 5(a) means logically, it could not be capable of satisfying that element for the purposes of factor 5(b). No different decision would have been available on the findings of fact made. Incident 1 on the HMAS *Queenborough* may have assisted the Applicant with satisfying factor 5(b), if the severe stressors that he was alleging in service on HMAS *Perth* gave rise to an aggravation. By finding no 'severe stressors' occurred, the issue was, perhaps not directly, but by necessary reasonable implication dealt with by the AAT.

Baumann FM then concluded

> [39] … that in my view a fair reading of the reasons of the AAT as a whole does not raise any sustainable argument that the learned member fell into an error of law.

The appeal was dismissed.

Editor: This case shows that if an incident is found not to have been sufficiently stressful to be a 'severe stressor' for the *cause* of a psychiatric injury or disease, then it cannot be relied upon as an *aggravating* factor for that injury or disease.

The SoPs do not indicate that there is a different standard of severity for stressors that can cause a psychiatric disorder than for stressors that can aggravate one.

Statements of Principles issued by the Repatriation Medical Authority

October – December 2005

Number of Instrument	Description of Instrument
31 of 2005	Revocation of Statement of Principles (Instrument No 81 of 2001) and determination of Statement of Principles concerning **osteoarthrosis** and death from osteoarthrosis.
32 of 2005	Revocation of Statement of Principles (Instrument No 82 of 2001) and determination of Statement of Principles concerning **osteoarthrosis** and death from osteoarthrosis.
33 of 2005	Revocation of Statement of Principles (Instrument Nos 50 and 81 of 2002) and determination of Statement of Principles concerning **cervical spondylosis** and death from cervical spondylosis**.**
34 of 2005	Revocation of Statement of Principles (Instrument Nos 51, 64 and 82 of 2002) and determination of Statement of Principles concerning **cervical spondylosis** and death from cervical spondylosis.
35 of 2005	Revocation of Statement of Principles (Instrument Nos 48 and 79 of 2002) and determination of Statement of Principles **thoracic spondylosis** and death from thoracic spondylosis**.**
36 of 2005	Revocation of Statement of Principles (Instrument Nos 49 and 80 of 2002) and determination of Statement of Principles concerning **thoracic spondylosis** and death from thoracic spondylosis.
37 of 2005	Revocation of Statement of Principles (Instrument Nos 46 and 77 of 2002) and determination of Statement of Principles concerning **lumbar spondylosis** and death from lumbar spondylosis.
38 of 2005	Revocation of Statement of Principles (Instrument Nos 47 and 78 of 2002) and determination of Statement of Principles concerning **lumbar spondylosis** and death from lumbar spondylosis.
39 of 2005	Determination of Statement of Principles concerning **solvent-related chronic encephalopathy** and death from solvent-related chronic encephalopathy.
40 of 2005	Determination of Statement of Principles concerning **solvent-related chronic encephalopathy** and death from solvent-related chronic encephalopathy.
41 of 2005	Revocation of Statement of Principles (Instrument Nos 79 of 2001 and 13 of 2003) and determination of Statement of Principles concerning **peripheral neuropathy** and death from peripheral neuropathy.
42 of 2005	Revocation of Statement of Principles (Instrument Nos 80 of 2001 and 14 of 2003) and determination of Statement of Principles concerning **peripheral neuropathy** and death from peripheral neuropathy.
43 of 2005	Revocation of Statement of Principles (Instrument Nos 99 and 185 of 1996, 18 of 2002 and 49 of 2003) and determination of Statement of Principles concerning **sudden unexpected death**.

44 of 2005	Revocation of Statement of Principles (Instrument Nos 100 and 186 of 1996, 19 of 2002 and 50 of 2003) and determination of Statement of Principles concerning **sudden unexpected death**.
45 of 2005	Revocation of Statement of Principles (Instrument Nos 55 of 1997 and 20 of 2002) and determination of Statement of Principles concerning **malignant neoplasm of the pancreas** and death from malignant neoplasm of the pancreas.
46 of 2005	Revocation of Statement of Principles (Instrument Nos 56 of 1997 and 21 of 2002) and determination of Statement of Principles concerning **malignant neoplasm of the pancreas** and death from malignant neoplasm of the pancreas.
47 of 2005	Revocation of Statement of Principles (Instrument No 1 of 2005) and determination of Statement of Principles concerning **epileptic seizure** and death from epileptic seizure.
48 of 2005	Revocation of Statement of Principles (Instrument No 2 of 2005) and determination of Statement of Principles concerning **epileptic seizure** and death from epileptic seizure.
49 of 2005	Revocation of Statement of Principles (Instrument No 3 of 2005) and determination of Statement of Principles concerning **epilepsy** and death from epilepsy.
50 of 2005	Revocation of Statement of Principles (Instrument No 4 of 2005) and determination of Statement of Principles concerning **epilepsy** and death from epilepsy.
51 of 2005	Revocation of Statement of Principles (Instrument No 15 of 2005) and determination of Statement of Principles concerning **dermatomyositis** and death from dermatomyositis.
52 of 2005	Revocation of Statement of Principles (Instrument No 16 of 2005) and determination of Statement of Principles concerning **dermatomyositis** and death from dermatomyositis.
53 of 2005	Determination of Statement of Principles concerning **Guillain-Barré syndrome** and death from Guillain-Barré syndrome.
54 of 2005	Determination of Statement of Principles concerning **Guillain-Barré syndrome** and death from Guillain-Barré syndrome.
55 of 2005	Determination of Statement of Principles concerning **steatohepatitis** and death from steatohepatitis.
56 of 2005	Determination of Statement of Principles concerning **steatohepatitis** and death from steatohepatitis.
57 of 2005	Determination of Statement of Principles concerning **narcolepsy** and death from narcolepsy.
58 of 2005	Determination of Statement of Principles concerning **narcolepsy** and death from narcolepsy.

Copies of these instruments can be obtained from:

- **Repatriation Medical Authority, GPO Box 1014, Brisbane Qld 4001**
- **RMA Website: *http://www.rma.gov.au/***

Conditions under Investigation by the Repatriation Medical Authority

as at 31 December 2005

Description of disease or injury	[*SoPs under consideration*]	Gazetted
Achilles tendonitis or bursitis	[*Instrument Nos. 53/96 & 54/96*]	19-11-03
Acute myeloid leukaemia	[*Instrument Nos 169/96 & 170/96*]	16-07-03
Acute sprains and acute strains	[*Instrument Nos. 50/94 & 51/94*]	19-11-03
Acute stress disorder	[*Instrument Nos 5/99 & 6/99 as amended by 56/99 & 57/99*]	7-09-05
Albinism	[*Instrument Nos. 49/95 & 50/95*]	15-06-05
Alkaptonuria	[*Instrument Nos. 13/95 & 14/95 as amended by 188/95 & 189/95*]	15-06-05
Alpha-1 antitrypsin deficiency	[*Instrument Nos. 19/95 and 20/95*]	15-06-05
Anxiety disorder	[*Instrument Nos. 1/00 & 2/00*]	1-09-04
Binge eating disorder	—	15-06-05
Bipolar disorder	[*Instrument Nos 128/96 & 129/96*]	24-03-04
Caisson disease	[*Instrument Nos 147/95 & 148/95*]	31-03-04
Carcinoma in situ of the skin	—	7-09-05
Cardiomyopathy	[*Instrument Nos 19/98 & 20/98 as amended by 22/02 & 23/02*]	2-03-05
Cataract, congenital	[*Instrument Nos 237/95 & 238/95 as amended by 12/03 & 13/03*]	15-06-05
Cerebrovascular accident	[*Instrument Nos 30/02 & 31/02 as amended by 57/03 & 58/03*]	15-06-05
Charcot-Marie-Tooth disease	[*Instrument Nos 51/95 & 52/95*]	15-06-05
Chicken pox	[*Instrument Nos 58/94 and 59/94, as amended by Instrument Nos. 186/95 and 187/95)*.	15-06-05
Cirrhosis of the liver	[*Instrument Nos 35/98 and 36/98)*.	02-11-05
Depressive disorder	[*Instrument Nos. 58/98 & 59/98*]	1-09-04
Dental caries	[*Instrument Nos. 366/95 & 367/95*]	1-09-04
Dyspepsia	—	7-09-05
External burns	[*Instrument Nos 37/94 & 38/94 as amended by 195/95 & 196/95*]	25-02-04
Fracture	[*Instrument Nos. 11/94 & 12/94 as amended by Nos. 219/95 & 220/95*]	19-11-03
Gaucher's disease	[*Instrument Nos. 21/95 & 22/95*]	15-06-05
Haemophilia	[*Instrument Nos. 53/95 & 54/95 as amended by 215/95 & 216/95*]	15-06-05
Hallux valgus, acquired	[*Instrument Nos. 47/98 & 48/98*]	15-06-05
Hallux valgus, congenital	[*Instrument Nos. 300/95 & 301/95*]	15-06-05
Heart block (complete)	—	15-06-05
Hepatitis A	[*Instrument Nos 41/94 & 42/94*]	15-06-05
Hepatitis E	[*Instrument Nos 46/94 & 47/94*]	15-06-05
Hereditary spherocytosis	[*Instrument Nos 57/95 & 58/95*]	15-06-05
Herpes zoster	[*Instrument Nos 60/94 & 61/94*]	15-06-05
Horseshoe kidney	[*Instrument Nos 17/95 & 18/95*]	15-06-05
Huntington's chorea	[*Instrument Nos 107/95 & 108/95*]	15-06-05
Idiopathic fibrosing alveolitis	[*Instrument Nos 15/98 & 16/98*]	15-06-05
Intervertebral disc prolapse	[*Instrument Nos 130/96 & 131/96 as amended by 92/97 & 93/97*]	23-06-04
Ischaemic heart disease	[*Instrument Nos 53/03 & 54/03 as amended by 9/04 & 10/04*]]	15-06-05

Description of disease or injury	[*SoPs under consideration*]	Gazetted
Loss of teeth	[*Instrument Nos 5/03 & 6/03*]	2-03-05
Macular branch vein occlusion	—	2-03-05
Malignant neoplasm of the bile duct	[*Instrument Nos 17/00 & 18/00*]	22-12-04
Malignant neoplasm of the bladder	[*Instrument Nos 23/00 & 24/00*]	28-12-05
Malignant neoplasm of the breast	[*Instrument Nos 53/97 & 54/97*]	16-07-03
Malignant neoplasm of the endometrium	[*Instrument Nos 129/95 & 130/95, as amended by Nos 183/96 & 184/96 and 45/03 & 46/03*]	02-11-05
Malignant neoplasm of the larynx	[*Instrument Nos 27/95 & 28/95 as amended by Nos 155/95 & 156/95, 151/96 & 152/96, 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 oesophagus	[*Instrument Nos. 115/96 & 116/96 as amended by 11/98 & 12/98*]	1-09-04
Malignant neoplasm of the thyroid gland	[*Instrument Nos 33/98 & 34/98*]	16-07-03
Marfan syndrome	[*Instrument Nos 9/95 & 10/95*]	15-06-05
Meniere's disease	[*Instrument Nos 77/01 & 78/01*]	5-05-04
Motor neuron disease	[*Instrument Nos 65/01 & 66/01*]	5-05-04
Multiple osteochondromatosis	[*Instrument Nos 1/99 & 2/99*]	15-06-05
Myasthenia gravis	[*Instrument Nos 263/95 & 264/95*]	15-06-05
Myelodysplastic disorder	[*Instrument Nos 15/00 & 16/00*]	20-08-03
Myopia, hypermetropia and astigmatism	[*Instrument Nos 23/99 & 24/99*]	15-06-05
Osteogenesis imperfecta	[*Instrument Nos. 11/95 & 12/95*]	15-06-05
Osteopaenia	[*Instrument Nos. 67/02 & 68/02 as amended by 25/04*]	20-07-05
Osteoporosis	[*Instrument Nos. 67/02 & 68/02 as amended by 25/04*]	1-09-04
Paget's disease of bone	[*Instrument Nos.15/96 & 16/96*]	28-01-04
Parkinson's disease	[*Instrument Nos. 36/02 & 37/02*]	2-03-05
Peptic ulcer disease	[*Instrument Nos 21/99 & 22/99*]	23-06-04
Plantar fasciitis	[*Instrument Nos. 3/00 & 4/00 as amended by Nos. 47/03 & 48/03*]	19-11-03
Polycystic kidney disease	[*Instrument Nos. 3/99 & 4/99 as amended by 54/99 & 55/99*]	1-09-04
Post traumatic stress disorder	[*Instrument Nos. 3/99 & 4/99 as amended by 54/99 & 55/99*]	1-09-04
Pulmonary barotrauma	—	24-03-04
Rotator cuff syndrome	[*Instrument Nos. 83/97 & 84/97*]	19-11-03
Seborrhoeic keratosis	—	7-09-05
Secondary parkinsonism	[*Instrument Nos 38/02 & 39/02*]	2-03-05
Soft tissue sarcoma	[*Instrument Nos 23/01 & 24/01*]	20-08-03
Spina bifida	[*Instrument Nos 59/95 & 60/95*]	15-06-05
Spondylolisthesis & spondylolysis	[*Instrument Nos 15/97 & 16/97*]	5-03-03
Systemic lupus erythematosus	—	28-09-05
Tuberculosis	[*Instrument Nos. 81/97 & 82/97*]	1-09-04
Vascular dementia	—	13-04-05
Von Willebrand's disease	[*Instrument Nos. 61/95 & 62/95*]	15-06-05
Wilson's disease	[*Instrument Nos. 15/95 & 16/95*]	15-06-05

AAT and Court decisions – October to December 2005

AATA = Administrative Appeals Tribunal
HCA = High Court of Australia
FCA = Federal Court
FCAFC = Full Court of the Federal Court
FMCA = Federal Magistrates Court

Allowances and benefits

recreation transport allowance
- whether incapacity similar in effect or severity to amputation
Sleep, K (Lander J)
[2005] FCA 1872 21 Dec 2005

Carcinoma

Hodgkin's lymphoma
- inability to obtain appropriate clinical management
Smith, S A (RAAF)
[2005] AATA 1057 24 Oct 2005

malignant neoplasm of the colorectum
- alcohol
Hague, J (Army)
[2005] AATA 1090 14 Oct 2005
- high fat diet
Hague, J (Army)
[2005] AATA 1090 14 Oct 2005

malignant neoplasm of the prostate
- high fat diet
- related to service
Rankin, D J (RAAF)
[2005] AATA 1230 14 Dec 2005
Smith, B J (Army)
[2005] AATA 1236 15 Dec 2005
Fraser, B W (RAAF)
[2005] AATA 1253 16 Dec 2005
Smith, L (RAAF)
[2005] AATA 1245 16 Dec 2005
Horton, H I (Army)
[2005] AATA 1262 20 Dec 2005
Lewis, M J (RAAF)
[2005] AATA 1263 20 Dec 2005
Beaver, T (Army)
[2005] AATA 1265 20 Dec 2005
Marrinan, J C (RAAF)
[2005] AATA 1272 20 Dec 2005
Stevenson, M (RAAF)
[2005] AATA 1310 23 Dec 2005
Chesterman, C W (RN)
[2005] AATA 1316 30 Dec 2005
- not related to service
Lawrence, M (Navy)
[2005] AATA 1135 16 Nov 2005
Philp, R (RAAF)
[2005] AATA 1237 15 Dec 2005
Patterson, V E (RAAF)
[2005] AATA 1248 16 Dec 2005
Trennery, B (Army)
[2005] AATA 1249 16 Dec 2005
Fraser, B W (RAAF)
[2005] AATA 1253 16 Dec 2005
Horton, H I (Army)
[2005] AATA 1262 20 Dec 2005
Lewis, M J (RAAF)
[2005] AATA 1263 20 Dec 2005
Beaver, T (Army)
[2005] AATA 1265 20 Dec 2005
Marrinan, J C (RAAF)
[2005] AATA 1272 21 Dec 2005
Hore, M E (RAAF)
[2005] AATA 1286 22 Dec 2005
Wallace, M J (Merchant Navy)
[2005] AATA 1289 22 Dec 2005
Patrick, S S (RAAF)
[2005] AATA 1291 22 Dec 2005
Rowlingson, M J (Army)
[2005] AATA 1293 22 Dec 2005
Wells, A S (Army)
[2005] AATA 1297 23 Dec 2005
Powell, M J (RAAF)
[2005] AATA 1309 23 Dec 2005
Duel, E F (RAAF)
[2005] AATA 1311 23 Dec 2005

myelofibrosis
- exposure to benzene and petroleum
Farley-Simth, G (Army)
[2005] AATA 968 4 Oct 2005

polycythaemia rubra vera
- inability to obtain appropriate clinical management
Collins (Spender J)
[2005] FCA 1566 4 Nov 2005

Circulatory disorder

hyperlipidaemia
- high fat diet
Scanlon, M T (Navy)
[2005] AATA 1053 21 Oct 2005

hypertension
- alcohol
Cartwright, P (Army)
[2005] AATA 1136 17 Nov 2005

Schubinski, S R (Navy)
[2005] AATA 1273 20 Dec 2005
- clinical onset
Cartwright, P (Army)
[2005] AATA 1136 17 Nov 2005
- obesity
Schubinski, S R (Navy)
[2005] AATA 1273 20 Dec 2005
- psychiatric disorder
- post traumatic stress disorder
Ryan, D C (Army)
[2005] AATA 981 6 Oct 2005

ischaemic heat disease
- hypertension
- alcohol
Cartwright, P (Army)
[2005] AATA 1136 17 Nov 2005

Death

subdural hematoma
- accepted disabilities contributed to a fall resulting in hematoma
Scully, F M (Army)
[2005] AATA 1046 20 Oct 2005
- war-caused emphysema prevented operation on hematoma
Scully, F M (Army)
[2005] AATA 1046 20 Oct 2005

Eligible service

qualifying service
- whether allotted for duty
- Malaysia
Haegney, W (Army)
[2005] AATA 1122 15 Nov 2005
Manning, R (Army)
[2005] AATA 1126 15 Nov 2005

Entitlement and liability

events occurring when off duty
- excursion in land rover in Vietnam
Byrne, P (RAAF)
[2005] AATA 1169 28 Nov 2005

Statements of Principles
- accrued rights
Collins (Spender J)
[2005] FCA 1566 4 Nov 2005
- nonsensical factors
Collins (Spender J)
[2005] FCA 1566 4 Nov 2005

Gastrointestinal disorder

diverticular disease of the colon
- clinical onset
Bamford, A J (Army)
[2005] AATA 1093 4 Nov 2005

irritable bowel syndrome
- psychiatric disorder
- depressive disorder
Milenz, Y (Navy)
[2005] AATA 1038 20 Oct 2005

General Rate and Extreme Disablement Adjustment Rate of Pension

Guide to Assessment (1998) (GARP)
- Chapter 4 - emotional & behavioural
Askew, B
[2005] AATA 1041 20 Oct 2005

Haematological & immunological disorders

human T-cell lymphotropic virus type-1
- radiation exposure
Wilkinson, P (RAAF)
[2005] AATA 1002 12 Oct 2005
- sharing needles
Wilkinson, P (RAAF)
[2005] AATA 1002 12 Oct 2005

Musculoskeletal disorder

osteoarthrosis
- knee
- sporting injury
Bamford, A J (Army)
[2005] AATA 1093 4 Nov 2005

patello femoral arthralgia
- result of physical exercise during defence service
Haensel, G (RAAF)
[2005] AATA 1254 16 Dec 2005

Psychiatric disorder

alcohol abuse
- clinical onset
- prior to experience of stressors
Beveridge, K (Navy)
[2005] AATA 962 3 Oct 2005
Skewes, D P (Navy)
[2005] AATA 1026 17 Oct 2005
- diagnosis
Schubinski, S R (Navy)
[2005] AATA 1273 20 Dec 2005
- diagnostic criteria
Bamford, A J (Army)
[2005] AATA 1093 4 Nov 2005

- psychiatric disorder
  - anxiety disorder
    Demczuk, V N (Navy)
    [2005] AATA 1012 12 Oct 2005
    Travers, M (Army)
    [2005] AATA 1040 20 Oct 2005
  - depressive disorder
    Milenz, Y (Navy)
    [2005] AATA 1038 20 Oct 2005
  - post traumatic stress disorder
    Ryan, D C (Army)
    [2005] AATA 981 6 Oct 2005
- stressor
  - action stations
    O'Malley, W N (Navy)
    [2005] AATA 985 6 Oct 2005
  - blood on damaged APC
    Hendrickson, G F (Army)
    [2005] AATA 1252 16 Dec 2005
  - boiler room incident
    Beveridge, K (Navy)
    [2005] AATA 962 3 Oct 2005
  - clean up of fuel in boiler room
    Beveridge, K (Navy)
    [2005] AATA 962 3 Oct 2005
  - collision with barge
    O'Malley, W N (Navy)
    [2005] AATA 985 6 Oct 2005
  - electrocution and death of fellow sailor
    O'Malley, W N (Navy)
    [2005] AATA 985 6 Oct 2005
  - fear of wild animals
    Rose, I W G (Army)
    [2005] AATA 1124 14 Nov 2005
  - jack-knifed trailer incident
    Hendrickson, G F (Army)
    [2005] AATA 1252 16 Dec 2005
  - machete attack
    Rose, I W G (Army)
    [2005] AATA 1124 14 Nov 2005
  - sentry duty
    Hendrickson, G F (Army)
    [2005] AATA 1252 16 Dec 2005
  - witnessing dead bodies
    Skewes, D P (Navy)
    [2005] AATA 1026 17 Oct 2005
  - witnessing prisoners aboard HMAS Perth
    Beveridge, K (Navy)
    [2005] AATA 962 3 Oct 2005

anxiety disorder
- clinical onset
  Demczuk, V N (Navy)
  [2005] AATA 1012 12 Oct 2005
  Saunders, C S G (RAAF)
  [2005] AATA 1058 24 Oct 2005
  Berryman, G W (Navy)
  [2005] AATA 1066 25 Oct 2005
- diagnosis
  Saunders, C S G (RAAF)
  [2005] AATA 1058 24 Oct 2005
  - diagnostic criteria not met
    Reardon, J (Navy)
    [2005] AATA 1190 5 Dec 2005
- stressor
  - action stations
    O'Malley, W N (Navy)
    [2005] AATA 985 6 Oct 2005
  - assault on kitchenhand
    Parsons, L (Army)
    [2005] AATA 1094 4 Nov 2005
  - boiler room incident
    Meaker, R (Navy)
    [2005] AATA 1146 18 Nov 2005
  - collision with barge
    O'Malley, W N (Navy)
    [2005] AATA 985 6 Oct 2005
  - disposal of ticking shells
    Demczuk, V N (Navy)
    [2005] AATA 1012 12 Oct 2005
  - dropping of shell
    Demczuk, V N (Navy)
    [2005] AATA 1012 12 Oct 2005
  - electrocution and death of fellow sailor
    O'Malley, W N (Navy)
    [2005] AATA 985 6 Oct 2005
  - fear of wild animals
    Rose, I W G (Army)
    [2005] AATA 1124 14 Nov 2005
  - hearing of death of friends
    Travers, M (Army)
    [2005] AATA 1040 20 Oct 2005
  - hospitalised alongside serious casualties
    Travers, M (Army)
    [2005] AATA 1040 20 Oct 2005
  - machete attack
    Rose, I W G (Army)
    [2005] AATA 1124 14 Nov 2005
  - mortar attack
    Demczuk, V N (Navy)
    [2005] AATA 1012 12 Oct 2005

- presence of navy divers
  Berryman, G W (Navy)
  [2005] AATA 1066 25 Oct 2005
- scare charges
  Hartland, C J (Navy)
  [2005] AATA 1270 20 Dec 2005
- shot at in convoy
  Saunders, C S G (RAAF)
  [2005] AATA 1058 24 Oct 2005
- sighting object in water while on sentry duty
  Hartland, C J (Navy)
  [2005] AATA 1270 20 Dec 2005
- solo beach landing
  Meaker, R (Navy)
  [2005] AATA 1146 18 Nov 2005
- sound of gunfire
  Berryman, G W (Navy)
  [2005] AATA 1066 25 Oct 2005
- stopped in convoy
  Parsons, L (Army)
  [2005] AATA 1094 4 Nov 2005
- suspicion of mines
  Demczuk, V N (Navy)
  [2005] AATA 1012 12 Oct 2005
- witnessed dead bodies
  Saunders, C S G (RAAF)
  [2005] AATA 1058 24 Oct 2005
- witnessed injured personnel and casualties
  Parsons, L (Army)
  [2005] AATA 1094 4 Nov 2005
  Patterson, S (Army)
  [2005] AATA 1243 16 Dec 2005
- witnessing photographs of tortured and mutilated bodies
  Travers, M (Army)
  [2005] AATA 1040 20 Oct 2005
- witnessed unmarked coffins
  Parsons, L (Army)
  [2005] AATA 1094 4 Nov 2005

depressive disorder
- clinical onset
  Berryman, G W (Navy)
  [2005] AATA 1066 25 Oct 2005
- clinical worsening
  Milenz, Y (Navy)
  [2005] AATA 1038 20 Oct 2005
- major illness or injury
  - acute pain from war-caused orthopaedic injury
    Hasted, G (RAAF)
    [2005] AATA 1055 24 Oct 2005
  - stressor
    - action stations
      Milenz, Y (Navy)
      [2005] AATA 1038 20 Oct 2005
    - blood on damaged APC
      Hendrickson, G F (Army)
      [2005] AATA 1252 16 Dec 2005
    - jack-knifed trailer incident
      Hendrickson, G F (Army)
      [2005] AATA 1252 16 Dec 2005
    - mine clearance
      Byrne, P (RAAF)
      [2005] AATA 1169 28 Nov 2005
    - presence of navy divers
      Berryman, G W (Navy)
      [2005] AATA 1066 25 Oct 2005
    - sentry duty
      Hendrickson, G F (Army)
      [2005] AATA 1252 16 Dec 2005
    - sound of gunfire
      Berryman, G W (Navy)
      [2005] AATA 1066 25 Oct 2005

post traumatic stress disorder
- clinical worsening
  Hackett (Baumann FM)
  [2005] FMCA 1698 22 Nov 2005
- diagnosis
  Shearman, H (Navy)
  [2005] AATA 964 3 Oct 2005
  Ryan, D C (Army)
  [2005] AATA 981 6 Oct 2005
- stressor
  - boiler room incident
    Beveridge, K (Navy)
    [2005] AATA 962 3 Oct 2005
  - clean up of fuel in boiler room
    Beveridge, K (Navy)
    [2005] AATA 962 3 Oct 2005
  - colleague wounded by mortar attack
    Ryan, D C (Army)
    [2005] AATA 981 6 Oct 2005
  - collision between HMAS Duchess and sampan
    Shearman, H (Navy)
    [2005] AATA 964 3 Oct 2005
  - mine clearance
    Byrne, P (RAAF)
    [2005] AATA 1169 28 Nov 2005
  - refuelling helicopters
    Ryan, D C (Army)
    [2005] AATA 981 6 Oct 2005

- severed head in a freezer
  Shearman, H (Navy)
  [2005] AATA 964 3 Oct 2005
- witnessing brutality and abuse of prisoners
  Shearman, H (Navy)
  [2005] AATA 964 3 Oct 2005
- witnessing colleague attempt to jump overboard
  Shearman, H (Navy)
  [2005] AATA 964 3 Oct 2005
- witnessing prisoners aboard HMAS Perth
  Beveridge, K (Navy)
  [2005] AATA 962 3 Oct 2005

Remunerative work and Special Rate

capacity to undertake remunerative work
- kinds of work a person might reasonably undertake
  Hayles, R I
  [2005] AATA 1079 28 Oct 2005
- no evidence to support incapacity
  Summers, J M (Army)
  [2005] AATA 1150 18 Nov 2005
- whether incapable of more than part-time work or 20 hour per week
  Kaine, W E
  [2005] AATA 1168 25 Nov 2005

ceased to be engaged in remunerative work
- reason for ceasing
  - decision to retire
    Griffiths, J
    [2005] AATA 1048 21 Oct 2005
  - restructure of work
    Kaine, W E
    [2005] AATA 1168 25 Nov 2005

employment
- administrative work
  Kaine, W E
  [2005] AATA 1168 25 Nov 2005
  Freer, K N
  [2005] AATA 1256 15 Dec 2005
- aircraft engineer
  Hasted, G (RAAF)
  [2005] AATA 1055 24 Oct 2005
- barman
  Saggus, A C (Army)
  [2005] AATA 1056 24 Oct 2005
- building maintenance
  Ansell, S V
  [2005] AATA 1101 7 Nov 2005
- cleaner
  Summers, J M (Army)
  [2005] AATA 1150 18 Nov 2005
- clerical worker
  Hasted, G (RAAF)
  [2005] AATA 1055 24 Oct 2005
  Summers, J M (Army)
  [2005] AATA 1150 18 Nov 2005
- computer operator
  Vahdat, B
  [2005] AATA 1047 21 Oct 2005
- delivery business
  Garcia, R
  [2005] AATA 1097 4 Nov 2005
- farm hand
  Butcher, G M
  [2005] AATA 1151 18 Nov 2005
- farmer
  Hasted, G (RAAF)
  [2005] AATA 1055 24 Oct 2005
  Whitwell, I R
  [2005] AATA 1102 7 Nov 2005
- fireman
  Bridges, K J
  [2005] AATA 1266 20 Dec 2005
- fisherman
  Miller, D M B
  [2005] AATA 972 4 Oct 2005
- hostel worker
  Saggus, A C (Army)
  [2005] AATA 1056 24 Oct 2005
- middle management
  Griffiths, J
  [2005] AATA 1048 21 Oct 2005
- overseas aid worker
  Hart, L J
  [2005] AATA 1152 21 Nov 2005
- plumber
  Cornell, C A
  [2005] AATA 1177 29 Nov 2005
- sales
  Hayles, R I
  [2005] AATA 1079 28 Oct 2005
- senior executive
  Hall, D W
  [2005] AATA 990 6 Oct 2005
- truck driver
  Butcher, G M
  [2005] AATA 1151 18 Nov 2005

temporarily incapacitated
  Leigh, A J
  [2005] AATA 1081 28 Oct 2005

whether genuinely seeking to engage in
- meagre attempt
  Griffiths, J
  [2005] AATA 1048 21 Oct 2005
- 'the substantial cause' test applied
  Bridges, K J
  [2005] AATA 1266 20 Dec 2005

Skin disorder

Spinal disorder

Words and phrases