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Contents

Editor's notes

This edition of *VeRBosity* contains one report on the Federal Court decision of *Johnson*. It includes some general information concerning the upcoming **Veterans' Law Conference** in July 2006; Rwanda service being upgraded from 'hazardous' to 'warlike' service; and 'blindness' being redefined.

This edition also includes reports on selected AAT decisions handed down in the period from January to March 2006; along with some practical articles revisiting some commonly used legal concepts that were applied in these AAT cases.

Also reported is a recent VRB case that raised questions about the interaction of the MRCA with the VEA and the effect of the new sections 9A and 70A of the VEA. As VRB hearings are conducted in private, information that might identify the applicant has been omitted.

Trina McConnell
Editor

Veterans' Law Conference – 27-28 July 2006

Southern Cross University, in association with the Veterans' Review Board, will hold a Veterans' Law Conference at the Crowne Plaza Hotel, Surfers Paradise, on 27-28 July 2006. Key speakers include:

- **Justice Garry Downes AM**, President of the Administrative Appeals Tribunal;
- **Professor Robin Creyke**, Alumni Chair of Administrative Law, ANU, and co-author of *Veterans' Entitlements Law* (the 2nd edition of which will be published later this year);
- **Professor Ken Donald**, Chairman of the Repatriation Medical Authority;
- **Professor John McMillan**, the Commonwealth and Defence Force Ombudsman; and
- **Brigadier Bill Rolfe**, Principal Member of the Veterans' Review Board.

The general aim of the conference is to discuss and promote communication and transparency on issues relating to veterans' entitlements and military compensation.

The conference fee, which includes the conference dinner and trivia quiz, is **$350**.

Further information and registration details are available at the VRB's web site: **www.vrb.gov.au**.

The conference papers for the 2004 Veterans' Law Conference are also available on the VRB's web site, on the Publications page.

Rwanda service upgraded to 'warlike'

The Minister for Veterans' Affairs and Minister Assisting the Minister for Defence recently determined service by members of the ADF in Rwanda in 1994-95 to be 'warlike service' instead of 'hazardous service'. The Minister has made a determination of 'warlike service' to cover the deployment of up to 640 ADF personnel who were part of the UN Assistance Mission in Rwanda. A copy of the determination is available at:
www.vrb.gov.au/service_eligibility/service.html

'Blindness' redefined

The Repatriation Commission recently changed its policy on the meaning of 'blindness' for the purposes of the VEA (see s 5D(3)). Previously, a veteran had to be assessed as having permanent visual acuity of less than or equal to **3/60** in both eyes. Now it is to be less than or equal to **6/60** in both eyes. A copy of the policy can be found on CLIK or at:
http://www.vrb.gov.au/policy/CM5829.doc

Ministerial determinations of service

Under s 5R(1) of the VEA, the Minister for Veterans' Affairs may determine by a written instrument that the VEA or certain provisions of the VEA apply to:

- a person while rendering certain service as if the person was a member of the ADF rendering continuous full-time service at that time; or
- a member of the ADF while rendering part-time service as if the person was rendering continuous full-time service at that time; or
- a person while rendering certain service as if the person was a member of a specified unit of the ADF at that time.

A number of instruments have been made under these provisions (or an earlier equivalent of s 5R(1) – see below).

For example, in the first category, there are instruments for certain civilians in World War 2 who were employed by the Commonwealth and who were attached to the ADF to provide assistance to the ADF to deem them to be members of the ADF rendering continuous full-time service while performing those tasks.

Other instruments deem representatives of certain philanthropic organisations who provided welfare services to the ADF during World War 2, in the Korea, Malaya, Singapore, Malaysia and Vietnam operational areas, and since 7 December 1972 to be members of the ADF rendering continuous full-time service while performing those services.

Recently certain civilian war artists and photographers attached to the ADF in East Timor, Iraq, Afghanistan, and Solomon Islands have been the subject of similar determinations.

In the second category, instruments have been made that deem members of the ADF who rendered part-time service:

- during World War 2;
- in the Vietnam operational areas between 31 July 1962 and 11 January 1973; or
- while attached to the Far East Strategic Reserve in Malaya, Singapore or Malaysia between 2 July 1955 and 27 May 1963,

to be rendering continuous full-time service while rendering part-time service.

In 1991, Parts I and III of the VEA were rewritten, and s 5R(1) was inserted in that process. Previously, the same powers were contained in s 5(13) of the VEA. Section 8 of the *Veterans' Entitlements* (*Rewrite*) *Transition Act 1991* provided, in effect, that any instruments that were made under the former s 5(13) continue in force as if they had been made under s 5R(1). A number of instruments referred to above were made under s 5(13).

Section 8 of the MRCA has a similar provision. An determination was made recently for a civilian for service as a war photographer at the request or direction of the ADF between 1 February 2006 and 30 April 2006.

These determinations are available at:
www.vrb.gov.au/service_eligibility/service.html

Kind of death

In order for the death of a veteran or member to be accepted as being related to service, one of the requirements in s 8 or s 70 (VEA) or s 28 (MRCA) must be met. However, before applying those provisions relating to causation, it is necessary to determine the kind of death applicable to the veteran or member.

The 1994 amendments of the VEA that brought in Statements of Principles (SoPs), introduced the concept of 'kind of death' into the VEA. The same concept applies in the MRCA.[1]

For a death to be war-caused or defence-caused under the VEA, or a 'service death' under the MRCA, the hypothesis or contention said to connect the person's death with their service must be 'upheld' by (or must 'fit the template' of) a factor in the relevant SoP.

To determine which, if any, SoP applies, it is necessary to know whether the RMA has made a SoP about the 'kind of death' suffered by the veteran or member.

This means that the 'kind of death' met by the person must be determined before considering a connection, if any, between the person's death and their service.

The 'kind of death met by the person' is a preliminary issue to be decided on the balance of probabilities,[2] but not by reference to the SoPs.[3] This was amplified by Selway J in *Hancock*, setting out the correct approach as follows:

> **First**, … determine, on balance of probabilities, whether the pre-conditions other than causation, had been made out ...
>
> **Next**, … determine on balance of probabilities what kind of death Mr Hancock had suffered. This involved the identification, on the balance of probabilities, of any and all Statements of Principles … and any other 'kinds of death' which were applicable to that death.
>
> If one or more Statement of Principles were applicable, then the methodology in *Deledio* is applicable in relation to those 'kinds of death'.
>
> …
>
> If no Statement of Principles … is applicable at all to a particular kind of death then the methodology in *Byrnes* is applicable … .

Mr Hancock had inoperable cancer. He died within 3 weeks of major surgery and within 2 weeks of suffering a stroke. As he was unable to exercise properly due to osteoarthrosis of his knees, it was suggested that this lack of exercise reduced his life expectancy.

For the claim to succeed on this basis, it first had to be established on the balance of probabilities that his osteoarthrosis contributed to his death in this way. If that could be found, then Mr Hancock's 'kind of death' could be characterised as 'death from osteoarthrosis of the knees'. Only then could the decision-maker consider whether a hypothesis had been raised connecting his operational service with his death from osteoarthrosis of the knees.

Repatriation Commission v Hancock (2003) 19 *VeRBosity* 82.

[1] VEA s 120A(2), (4), s 120B(2), (4); MRCA s 338, s 339

[2] *Repatriation Commission v Hancock* (2003) 19 *VeRBosity* 82; *Repatriation Commission v Codd* (2005) 21 *VeRBosity* 68

[3] *Benjamin v Repatriation Commission* (2001) 17 *VeRBosity* 119, *Hancock* (2003) 19 *VeRBosity* 82; *Codd* (2005) 21 *VeRBosity* 68

The 'kind of death' is death from the particular injury or disease, if any, that is said to have contributed to the death of the person. A person may have had more than one kind of death if more than one condition contributed to their death.[4]

A person's death may be contributed to by an injury or disease if that condition hastened their death.[5]

If the material suggests that a person's death was contributed to by a particular injury or disease, the *fact* of that manner of death must be established before consideration can be given to a hypothesis, or contention, of connection between that injury or disease and the person's service.

The question whether the injury or disease contributed to the person's death is not part of the hypothesis[6] or contention[7] of a connection to service. It is a preliminary issue to be decided on the balance of probabilities.

When the kind of death suffered by veteran or member is determined, attention then turns to addressing whether there is any causal connection arising out of or attributable to his or her service and the kind of death suffered.

While determining the 'kind of death' is one of the preliminary steps in deciding a claim for a dependant's pension (under the VEA – s 14), or a claim for liability and / or compensation (under the MRCA – s 319), the other important preliminary steps that apply before considering the kind of death are:

- **whether the claimant is a dependant** of the veteran or member (ss 5E, 10, 11, 11A, VEA; ss 5, 15, 16, 17, 18, MRCA);
- **whether the person was a veteran or member** (ss 5C, 7, 68, VEA; ss 5, 6, MRCA);
- **whether the person can make a claim** (s 16, VEA; s 320, MRCA).

Deciding whether a SoP applies

SoPs usually define 'death from' the relevant injury or disease in a non-exhaustive way to include 'death from a terminal event or condition that was contributed to by' that injury or disease.

SoPs define 'terminal event' to mean 'the proximate or ultimate cause of death'. If a person's death is found to have been contributed to by a particular injury or disease for which there is a SoP, then there is a SoP in respect of that 'kind of death' and s 120A(3) or s 120B(3) applies.

A death certificate usually has two parts:

- the first indicates the direct and antecedent causes of death;
- the second indicates other significant conditions contributing to the death, but not related to the disease or condition causing it.

While the death certificate is not definitive and can be contradicted by other more cogent evidence, both parts of the death certificate may be taken to indicate conditions that might have contributed either directly or indirectly to the death, and so might point to one or more 'kinds of death' in a particular case.

[4] *Hancock* (2003) 19 *VeRBosity* 82; *Codd* (2005) 21 *VeRBosity* 68

[5] *Repatriation Commission v Doolette* (1990) 6 *VeRBosity* 66

[6] VEA s 120A(3); MRCA s 338(3)

[7] VEA s 120B(3); MRCA s 339(3)

Section 119 of the VEA

Section 119 of the VEA permits some cases to be decided on less persuasive evidence than might otherwise be required. However, in *Mason v Repatriation Commission* [2000] FCA 1409, Weinberg J said that s 119 does not provide a warrant to:

> [75] … fill in gaps where the evidence does not assist the applicant's case.

Paragraph 119(1)(h) may not be used to find a substantive connection between service and a condition suffered by a veteran that ignores the requirements of a reasonable hypothesis: *Re East* (1986) 11 ALD 161. Credible evidence is also required. In *Re Repatriation Commission and Ottaway* (1990) 21 ALD 465. The AAT said:

> [41] Whilst we realise that there may have been difficulties in demonstrating the existence of benzene in the petrol which the veteran was handling, we do not consider that paragraph [119(1)](h) obliges us, on that account alone, to make a finding in favour of the veteran of the existence of the relevant fact. If one were to assume the existence of all necessary facts in the veteran's favour, there would be no need to hold an enquiry into the facts of any application. There must be some probative evidence put forward. Obviously it need not be admissible under the rules of evidence. It must, however, be evidence to which some credence can be given and must be evidence that is capable of being of tested in general terms of credibility or by reference to contemporary records.

In *Re Stevenson* (2006) 22 *VeRBosity* 15 the Tribunal said:

> [65] … Section 119 does not displace section 120 when it comes to the requirement for evidence to point to a connection between the veteran's disease and his or her war service.

In *Repatriation Commission v Flentjar* (1997) 47 ALD 67, at 72-73, Spender J noted that s 119 does not permit the Tribunal to disregard statutory criteria or override other provisions of the Act.

While s 119 (1)(h) cannot take the place of the material necessary to point to a hypothesis, it can permit a positive finding to be made without corroborative evidence.

If a veteran makes a credible statement about an event during service, s 119(1)(h) may permit a finding to be made in the veteran's favour even though it is the only evidence of that event occurring. It might be difficult to locate another witness to the event who can corroborate the veteran's evidence given the lapse of time since service.

Evidence from a widow that her late husband told her certain things about his service may raise inferences or findings of fact even though her evidence is hearsay and there is no other evidence to directly support it. Paragraph 119(1)(f) provides that the rules of evidence do not apply, and so her hearsay evidence can give rise to a finding in her favour if it is credible, consistent and reliable.

Subsection 138(1) of the VEA is in similar terms to s 119 and applies to the VRB's consideration. Section 334 of the MRCA is equivalent to s 119 of the VEA.

Clinical onset

Most Statements of Principles (SoPs) contain factors that refer to the time of 'clinical onset' of the injury or disease.

The clinical onset of an injury or disease is the time when there were sufficient signs or symptoms that would have enabled a medical practitioner to have diagnosed the disease.

The test laid down for time of clinical onset is either:

- when a person becomes aware of some feature or symptom that enables a doctor to say the disease was present at that time; or
- when a finding is made on investigation that is indicative to a doctor of the disease being present at that time.[8]

The minimum diagnostic criteria must exist at the time of clinical onset. If a SoP sets out a minimum set of signs and symptoms (the diagnostic criteria) in the definition of a disease, then at least that minimum must be present for clinical onset to be said to have occurred at that time.[9]

The SoP for motor neurone disease (MND) defines it as 'a progressive neuro-degenerative disease with clinical signs of lower and upper motor neurone damage in the absence of … evidence of other disease processes that explain the clinical signs'. In ***Re Graham*** [2002] AATA 112, the veteran had chest muscle problems in 1990. Expert evidence was that such problems could be a symptom of MND, but if it had been MND in Mr Graham's case, he would have also had breathing problems and would have died within 3 years. He was not diagnosed with MND until 1997 when he had cramps in his hands. Clinical onset was when he first had these symptoms in his hands. The chest symptoms must have been some other disability, not MND.

'Clinical onset' is to be distinguished from simple 'onset'. The onset of a disease is when it began, whether detectable at that time or not. 'Clinical' means there are objective signs and symptoms enabling diagnosis. So, 'clinical onset' is when the disease was first capable of diagnosis by objective assessment.

In **'reasonable hypothesis'** cases, the time of clinical onset need only be *pointed to* by the material, not proven on the balance of probabilities.[10] If the time of clinical onset is an essential element of a SoP factor, the material must *point to* at least the minimum diagnostic criteria as existing at the relevant time.[11]

In other cases, the diagnostic criteria must be shown to exist on the balance of probabilities.

Clinical onset steps:

1. Identify the injury or disease definitional criteria in the SoP.

2. Assess the evidence to see whether it points to (in reasonable hypothesis cases) or establishes on the balance of probabilities (in other cases) the existence of those criteria necessary to meet the SoP definition.

3. Identify the earliest date from which the evidence points to or demonstrates that all the necessary diagnostic criteria existed.

[8] *Re Robertson* [1998] AATA 127; *Cornelius* (2002) 18 *VeRBosity* 52; *Lees* (2002) 18 *VeRBosity* 109

[9] *Lees* (2002) 18 *VeRBosity* 109

[10] *Cornelius* (2002) 18 *VeRBosity* 52

[11] *Lees* (2002) 18 *VeRBosity* 109; *Youngnickel* (2004) 20 *VeRBosity* 144

Characterising the kind of remunerative work

The term, 'remunerative work', is defined in s 5Q(1) of the VEA to mean 'any remunerative activity'. However, it is used in a number of different ways in the tests for the special rate of pension in s 24. This article shows the importance of obtaining a full work history before presenting or deciding a special rate case.

'Remunerative work' in s 24(1)(b)

'Remunerative work' in s 24(1)(b) is used in the sense of any kinds of work for which the veteran has vocational, trade or professional skills, qualifications or experience, being work that a person with such skills, qualifications or experience might reasonably undertake.[12] The veteran's incapacity from accepted disabilities 'of itself alone' must permanently prevent the veteran from undertaking such kinds of remunerative work for more than 8 hours a week.

Mr Chambers worked as a clerk until he retired on the ground of ill health due to war-caused personality disorder. In retirement he structured his lifestyle around physical exercise and could run ands cycle for many kilometres each day. The court held that Mr Chambers' physical fitness or aptitude can be seen as part of his vocational qualifications, even if his physical condition was unrelated to a formal training program or previous employment. For the purposes of s 24(1)(b) he had the vocational skills to undertake unskilled manual work.
Chambers v Repatriation Commission (1995) 11 *VeRBosity* 24

'Remunerative work' in s 24(1)(c)

In s 24(1)(c), 'remunerative work' is used in the sense of a kind of work (not a particular job) that the veteran had previously undertaken,[13] but which he or she is now prevented from continuing to undertake solely because of the veteran's incapacity from accepted disabilities.[14]

As s 24(1)(c) uses the words, 'prevented from continuing to undertake' it is a kind of work that the veteran is no longer capable of doing ***at all*** rather than work that the veteran continues to undertake at reduced hours.[15]

The kind of work in s 24(1)(c) does not relate to a particular job.[16] This means that while a veteran might give up a particular kind of work that had been done as part of their job, the veteran might still being able to undertake other kinds of work in that job and still meet s 24(1)(c), provided that giving up the first kind of work resulted in a loss of salary, wages or earnings on his or her own account.[17]

As all the special rate tests must be met at a point in time within the assessment

[12] This is explained in section 28 of the VEA.

[13] *Starcevich* (1987) 3 *VeRBosity* 163

[14] *Cavell* (1988) 5 *VeRBosity* 29; *Hendy* (2002) 18 *VeRBosity* 47

[15] *Wright* (2005) 21 *VeRBosity* 18. See article in (2005) 21 *VeRBosity* 132

[16] *Banovich* (1986) 2 VeRBosity 112

[17] *Graham* (2004) 20 *VeRBosity* 136

period, it is necessary to consider whether the veteran would still have been continuing to undertake the relevant work that he or she had given up were it not for the effects of his or her accepted disabilities.

All the kinds of work that the veteran had previously undertaken must be considered not only for the purpose of s 24(1)(b) to determine what skills, qualifications, or experience the person has, but also to determine why the person is no longer undertaking one or more of those kinds of work in the assessment period.

If the only reason the veteran is not still doing a particular kind of work is incapacity from accepted disabilities, then the first part of s 24(1)(c) will be met.

The second part of s 24(1)(c) concerns a loss of salary, wages or earnings. This loss must be caused by being prevented from continuing to undertake a particular kind of work the person had previously undertaken.

Mr Starcevich worked as a farmer until a war-caused leg condition caused him to give that up. He then worked in a job repairing telephone dials. He would have continued to work as a farmer had it not been for the leg condition. The fact that the only reason he was prevented from continuing to work as a farmer was his war-caused disability meant that he met the 'prevented from continuing to undertake remunerative work' test in s 24(1)(c). The reason for not continuing to work as a telephone dial repairer or in other similar work might have been relevant for the s 24(2)(a) test, but it was not relevant for the s 24(1)(c) test.

Starcevich v Repatriation Commission (1987) 3 *VeRBosity* 163

'Remunerative work' in s 24(2)(a)

Even if there is a loss, s 24(2)(a) provides that a person will be taken ***not*** to be suffering such a loss if the person has stopped working or is unable to work for any reason other than the person's incapacity from accepted disabilities.

This deeming provision will not apply if the person is still engaged in remunerative work of some kind.

In s 24(2)(a), 'remunerative work' means any kinds of work the veteran might reasonably have been undertaking at the relevant time in the assessment period. The inquiry is not particularly concerned with why the veteran left their last job (although that might be relevant), but why the veteran was not working at the relevant time in the assessment period.

A veteran is taken not to be suffering a loss of salary, wages or earnings if some reason other than the effects of accepted disabilities contributes to why the veteran is not undertaking any kind of work that the veteran might otherwise be capable of doing.

'Remunerative work' in s 24(2)(b)

In s 24(2)(b), a veteran is taken to meet the 'prevented from continuing to undertake remunerative work' test in s 24(1)(c) if the veteran has been genuinely seeking to engage in remunerative work but his or her incapacity from accepted disabilities is the substantial cause of being unable to obtain remunerative work.

'Remunerative work' in this provision refers to any kinds of remunerative work for which the veteran has skills, qualifications or experience such that, but for their accepted disabilities, he or she would be employable.

'Remunerative work' in s 24(2A)(d)

For a veteran who was over 65 years of age at the application day, s 24(1)(c) does not apply, instead, more rigorous criteria apply because they are generally taken to have had a full working life. The veteran's incapacity from accepted disabilities must be the only reason preventing the veteran from continuing to undertake the last kind of remunerative work that he or she had been undertaking before the claim or application for increase was made.

Instead of considering any of the kinds of work the veteran had previously undertaken, the decision-maker can have regard only to the 'last paid work' the veteran has done.

The tests concerning this 'last paid work' are spelt out further in the succeeding paragraphs of s 24(2A), which state that:

- the veteran must have suffered a loss of salary, wages, or earnings on his or her own account due to stopping this last paid work;[18]
- the veteran must have been undertaking that work after turning 65;[19]
- the veteran had to be doing that work continuously for at least 10 years beginning before turning 65; and
- this continuous period must have been with the same employer (if the veteran was an employee in their last paid work), or in the same profession, trade, employment, vocation, or calling (if the veteran had been working on his or her own account.[20]

'Remunerative work' in s 24(2B)

Subsection 24(2B) deems a person not to have suffered a loss for the purpose of s 24(2A)(e) if the person has ceased to engage in remunerative work, or is prevented from engaging in remunerative work, for a reason other than incapacity from accepted disabilities. In this context, 'remunerative work' means any kinds of work in which the veteran might reasonably be employed, but for accepted disabilities.

Summary of 'remunerative work' as used in s 24

24(1)(b)	Any kinds of work for which the veteran has skills, qualifications, or experience, that a person with such a background might reasonably undertake.
24(1)(c)	A kind of work that the veteran has previously undertaken, but is no longer capable of undertaking.
24(2)(a)	Any kinds of work in which the veteran might reasonably be employed, but for accepted disabilities.
24(2)(b)	Any kinds of work for which the veteran might reasonably be employable, but for accepted disabilities.
24(2A)(d)	The last kind of work undertaken by the veteran before making the claim or application for increase.
24(2B)	Any kinds of work in which the veteran might reasonably be employed, but for accepted disabilities.

[18] s 24(2A)(e)

[19] s 24(2A)(f)

[20] s 24(2A)(g)

VRB case affected by s 9A or s 70A of the VEA

The general scheme of amendments to the VEA and new legislation in the form of the *Military Rehabilitation and Compensation* (*Consequential and Transitional Provisions*) *Act 2004* (the CTPA) and the *Military Rehabilitation and Compensation Act 2004* (the MRCA) is to close off benefits under the VEA[21] and to create benefits under the MRCA where an injury disease or death is related to service rendered on or after 1 July 2004 (the commencement date of the MRCA).[22] To that extent, entitlements flowing from service prior to 1 July 2004 continue under the VEA while entitlements (now, generally referred to as 'liability') flowing from service after that date arise under the MRCA – but there are exceptions to this general rule.

- An injury disease or death occurring on or after 1 July 2004 that relates to defence service rendered either **on or after** or **before and on or after** 1 July 2004 is covered under the MRCA, not the VEA;[23]
- An aggravation of or a material contribution to an injury or disease or a sign or symptom of an injury or disease occurring on or after 1 July 2004 where the aggravation or material contribution relates to defence service rendered either **on or after** or **before and on or after** 1 July 2004 is covered under the MRCA, not the VEA;[24]
- An injury disease or death occurring on or after 1 July 2004 that is an unintended consequence of treatment (of a kind mentioned in s 29 of MRCA) provided either **on or after** or **before and on or after** 1 July 2004 is covered under the MRCA, not the VEA;[25]
- An aggravation or material contribution of an injury or disease occurring on or after 1 July 2004 and occurring as an unintended consequence of treatment (of a kind mentioned in s 29 of the MRCA) and provided either on or after 1 July 2004 where the aggravation or material contribution related to defence service rendered either **on or after** or **before and on or after** 1 July 2004 is covered under the MRCA, not the VEA.[26]

A particular exception is provided for where a person has an injury or disease accepted as war- or defence-caused under the VEA and where the injury or disease is subsequently aggravated or contributed to in a material degree by service rendered on or after 1 July 2004. In such a case, s 12 of the CTPA (which identifies this particular exception) provides that the person has a choice to

[21] s 9A and s 70A of the VEA.

[22] s 7 of the CTPA.

[23] s 7(1) of the CTPA.

[24] s 7(2) of the CTPA.

[25] s 8(1) of the CTPA.

[26] s 8(2) of the CTPA.

pursue an application for increase in pension under the VEA or make a claim under the MRCA.

If a person is offered the choice and elects to apply or continue with an application for increase in pension under s 15 of the VEA then the MRCA does not apply.[27] The incapacity from the entire injury or disease then remains pensionable under the VEA.

If the person elects to make, or continue with, a claim under s 319 of the MRCA then the VEA-accepted condition is taken not to be war- or defence-caused.[28] In this case, compensation is provided under the MRCA, which generally provides compensation only for the effects of the aggravation rather than the whole injury or disease as aggravated. This might mean that any effects of the injury or disease that were unaffected by the aggravation remain pensionable under the VEA.

In a recent case, the Board considered whether the evidence indicated that the transitional provisions might have an impact on the Board's consideration. There was some evidence from the applicant that the accepted condition of ischaemic heart disease had worsened in the period following 1 July 2004. Accordingly the Board adjourned the hearing to ask the Secretary of DVA to investigate:

- Whether the accepted underlying injury or disease has been made worse since 1 July 2004 [29] – rather than the worsening being the natural progression of the injury or disease or just a worsening of the signs or symptoms of the injury or disease (this calls for medical evidence);[30]
- Whether the aggravation or material contribution of the underlying injury or disease was related to service rendered on or after 1 July 2004;[31] and
- If so, whether the MRCC has sent the person a notice under s 12 MRCA and whether the person has then chosen to make a claim under the MRCA or VEA.

The Board's reasons stated, in part:

> It is the member's contention that incapacity from all accepted conditions justifies pension at 100% of the general rate. He stated that his overall condition has deteriorated over the past two years and that incapacity from ischaemic heart disease increased significantly during the latter half of 2005.
>
> The assessment of pension in the decision of … September 2005 reflects what appears to be a dramatic worsening in symptoms of ischaemic heart disease since the previous assessment … on … December 2004 for the purposes of the decision under review. That earlier assessment obviously took into account a report on Effort Tolerance dated 29 May 2004 by cardiologist, Dr [ABC], and a

[27] s 9A(2) and s 70A(2) of the VEA; s 9 of the CTPA.

[28] s 15(1A), s 9A(2), s 70A(2) of the VEA; s 7 of the CTPA.

[29] s 9A(2)(a), s 70A(2)(a) of the VEA.

[30] *Repatriation Commission v Yates* (1995) 38 ALD 80, 21 AAR 331, 11 *VeRBosity* 45.

[31] s 9A(2)(b), s 70A (2)(b) of the VEA.

subsequent medical report by Dr [ABC] dated 26 July 2004.

In the Effort Tolerance report, Dr [ABC] noted a symptomatic activity level at 6-7 METs, the limiting symptom being shortness of breath, partially due to wheeze. He indicated that 'airways disease' contributed to the symptoms.

In his report of 26 July 2004 Dr [ABC] noted established coronary artery disease and an anterior myocardial infarction in 1999. He also noted that a stress test on 28 May 2004 indicated a symptomatic activity level of at least 6 METs. …

In his medical impairment reports of 7 July 2005 concerning ischaemic heart disease, Dr [XYZ] noted a symptomatic activity level at 3-4 METs, stating that the only real symptom was shortness of breath and '…maybe ½ - ¼ due to asthma – uses Ventolin.' …

The member … sees Dr [ABC] every 6 months, the last occasion being in November-December 2005. He said that on that occasion Dr [ABC] commented on the fact that he 'looked very different' and that his cholesterol level was raised. He said that he commenced a stress test during that consultation, but was unable to complete it.

He said that he had played volleyball early in 2005 but had stopped due to shortness of breath and general weakness. He also said that he completed the 5km walk inside the standard time in April 2005. He has not had a subsequent fitness test. …

Given this history the Board felt unable to assess incapacity from ischaemic heart disease without an up to date report from the member's treating cardiologist, Dr [ABC]. This would need to include a report on Effort Tolerance (METs), noting symptoms which limit effort tolerance and any conditions other than ischaemic heart disease, such as asthma, that contribute to the symptoms, and the percentage of any such contribution. The report should address the degree of such incapacity at the time of Dr [ABC]'s consultations in mid 2005, late 2005, and presently.

A complicating factor is the possible impact of the [CTPA].

This arises because of the member's belief that his incapacity from ischaemic heart disease has worsened since 1 July 2004. If there has in fact been a worsening it needs to be established whether the worsening is the natural progression of the condition, or whether it has been made permanently worse by circumstances of service on or after that date.

In these circumstances Dr [ABC] will need to be asked to address the member's degree of incapacity from ischaemic heart disease at the time of each 6 monthly consultation since his reports of 29 May and 26 July 2004, and presently, and to provide a specific opinion as to whether any worsening of the condition on or after 1 July 2004 was a natural progression of the disease or whether it has been made permanently worse by any service-related event or circumstance.

Accordingly, the Board had no alternative but … to adjourn the hearing pursuant to s 152 of the Act pending a response [to the Board's request to the Secretary to obtain the opinion from Dr ABC].

Administrative Appeals Tribunal

Re Drochmann and Repatriation Commission

McDermott SM

[2006] AATA 146
23 February 2006

Extreme disablement adjustment – lifestyle rating – impairment rating – merits review – new evidence

Mr Drochmann sought pension at the extreme disablement rate, which requires the person to be aged over 65, have an impairment rating of at least 70 points and a lifestyle rating of at least 6 points.

Prior to the AAT hearing, Mr Drochmann was examined by two occupational physicians, both of whom gave an impairment rating of 70 points. Nevertheless, they differed in relation to some individual impairment ratings. Their ratings were as follows:

Impairment	Doctor 1	Doctor 2
respiratory	40	39
anxiety	27	36
hearing loss	5	5
tinnitus	10	2
impotence	15	15

The only matter of difference that the AAT addressed in its reasons concerned tinnitus, in which it accepted the rating of 10 points based on Mr Drochmann's use of a radio as a masking device.

The AAT found that Mr Drochmann had an overall impairment rating of 70 points.

In considering lifestyle, both the Commission and the VRB gave ratings of 5 points for all categories except domestic activities, for which they both gave 6 points. The AAT agreed with the rating of 5 points for personal relationships, mobility, recreational & community activities, but found that the rating for domestic activities should be 5 points rather than 6. It said:

> [64] … [I]n making an appropriate rating I must act on the evidence before me. … [T]he task of this Tribunal is to examine the decision under review 'thoroughly and with care – often in a way that the original decision maker could not undertake'. …
>
> [70] Given the additional evidence before the Tribunal, the respondent should take account of the new ratings under Lifestyle as recorded in these reasons. This is to ensure that his overall lifestyle rating is a matter of record.

Formal decision

The AAT affirmed the decision under review.

EDITOR: **While the AAT set out the lifestyle ratings 'as a matter of record', this finding cannot bind the Commission or the VRB in any future decision they might make concerning Mr Drochmann's pension assessment. Each decision-maker must satisfy itself about all relevant issues on the evidence before it at the time it makes its decision.**

Re Stevenson and Repatriation Commission

Fisher

[2006] AATA 60
27 January 2006

War widow's pension – ischaemic heart disease

Mr Stevenson died of a cardiac arrest due to ischaemic heart disease. It was suggested that he suffered from a depressive disorder caused by his service and that this had contributed to the ischaemic disease from which he died.

Mr Stevenson served in the Army from 1941 to 1945 mainly within Australia, but from March to June 1945 he served at Morotai in the Dutch East Indies.

Mrs Stevenson gave evidence that there was a marked change in her late husband after his service in World War 2. She said that unexpected noises caused him to cringe and on one occasion in 1946 he crouched when a truck backfired. However, the veteran did not speak about any unpleasant experiences during his service, but did tell the applicant that he was fearful that the ammunition dump near where his unit was camped might be blown up whenever he heard planes approaching.

She said that Mr Stevenson had rejoined the Army in 1952 and was discharged in 1960 following being treated, in 1959, for depression. He made an unsuccessful claim for pension for that disorder in 1960.

Mrs Stevenson's daughter, an academically trained historian had conducted some research into her father's service. She gave evidence that while Japanese attacks on Morotai ended before March 1945 (with the exception of one air attack on 22 March 1945), she considered that her father may have had fear of overhead aircraft even if they were allied planes. She said that the island of Halmahera, which was controlled by the Japanese, was only 12 miles from Morotai. She accepted the evidence of Associate Professor McCarthy that Mr Stevenson was not involved in any action with the enemy and that the sea voyages to and from Morotai were uneventful in terms of enemy attack.

There was no evidence concerning the proximity of the veteran to the single air attack on 22 March 1945 in which a hut was bombed and an American was wounded.

The Tribunal noted that:

> [25] … While circumstantial evidence may be influential and even be decisive in the right case (because the cumulative weight and effect of such circumstantial evidence enables the court or tribunal to draw or infer the necessary further fact or facts relevant to the ultimate issue), it is a matter for the Tribunal as an appellate decision-maker to weigh up and sift the circumstantial evidence carefully. The Tribunal notes that the veteran never described to the Applicant a specific war-related incident or incidents which may have caused him to experience a psycho-social stressor … The Tribunal accepts and finds that the veteran was

> a markedly different man before his overseas military service than he was afterwards … The closest anything recounted by the veteran … comes to experiencing a psycho-social stressor is the comment that he was worried about being blown to kingdom come if the Japanese had managed to bomb the American ammunition dump …[T]his particular statement indicates only a fear that the veteran held for his own safety, and not the basis of that fear (for example, Japanese air attacks which involved him personally or adjacent fighting between Allied and Japanese forces which involved him personally or affected him personally).
>
> [26] The Tribunal notes that there is no corroborating evidence which supports the contention made by the Applicant that the veteran experienced a severe psycho-social stressor.

Preliminary issues – service and diagnosis

The Tribunal then discussed the law and evidence in terms of the decision-making process set out in a number of court cases. It first considered the veteran's service, noting that it was operational service. It then considered the 'kind of death' and said it was reasonably satisfied that death from ischaemic heart disease was the proper diagnosis.[32]

Deledio step 1 – raising a hypothesis

The Tribunal considered that there was:

> [52] … a hypothesis linking the depressive disorder and the subsequent ischaemic heart disease suffered by the veteran with his operational service. The evidence discloses that the veteran's post-World War II behaviour towards his wife and his family and people beyond his family was out of character with what he was like before his World War II service.

Deledio step 2 – identifying the SoPs

The Tribunal identified the SoPs for depressive disorder (No. 58 of 1998) and ischaemic heart disease (No. 53 of 2003 as amended by No. 9 of 2004) as being applicable to the hypothesis.

Deledio step 3 – assessing whether the hypothesis is reasonable

The Tribunal noted that it could not make findings of fact at this stage, but had to decide whether the raised facts 'fit' the SoP.[33]

The Tribunal considered the hypothesis that service had caused depressive disorder, which in turn caused ischaemic heart disease, which was the cause of death.

Mrs Stevenson invited the Tribunal to infer from the circumstances of the veteran's service that he experienced a severe psychosocial stressor within the two years immediately before the clinical onset of depressive disorder (as is required by the SoP). She contended that the relevant stressor was based on the threat or possible Japanese aerial attack or ground attack and upon flights overhead by Allied aircraft carrying ordnance.

[32] See the article on 'Kind of death' at page 4.

[33] Editor: At this point the Tribunal referred to the wrong provision, namely, s 120B(3)(b), instead of s 120A(3)(b). This appears to have led the Tribunal to say that whether a factor is met is to be determined on the balance of probabilities.

The Tribunal noted that the earliest formal diagnosis of depression was in 1959 and said:

> [65] The major difficulty facing the Applicant is that there must be an identifiable objective occurrence which fits within the framework of a severe psychosocial stressor. The 1960 war pension claim of the veteran did not provide any pinpoint references to specific events which amount to an identifiable objective occurrence. Given the sad death of the veteran in 1985, the 1960 war pension claim represents the best opportunity the veteran had to document and establish his claim to a war pension by referring to specific events or occurrences which may have caused his depressive disorder. *Repatriation Commission v Bey* (1997) 79 FCR 364 at 373; (1997) 47 ALD 481 at 490 directs this Tribunal (and other subordinate decision-makers) that there must be material pointing to a connection between the veteran's disease and his or her war service. The Tribunal accepts that there is evidence from the veteran which states that the veteran attributed his nervous condition to his war service. But this does not go far enough because there is no evidence of an objective occurrence in order to meet the requirements of the SoP for a severe psychosocial stressor. Section 119 does not displace section 120 when it comes to the requirement for evidence to point to a connection between the veteran's disease and his or her war service. The appeal by the Applicant to the beneficial nature of the Act as grounding the existence of a depressive disorder in the veteran sometime before December 1959 does not meet or overcome the deficiency in the evidence relating to whether or not an identifiable occurrence corresponding to a severe psychosocial stressor was expressed by the veteran. Accordingly, the Tribunal is not satisfied on the balance of probabilities [see Editor's note below] on the evidence before it that the veteran experienced a severe psychosocial stressor within the two years before the clinical onset of depressive disorder or any clinical worsening of depressive disorder. This conclusion means also that the immediate cause of death of the veteran (ischaemic heart disease) cannot be attributed to his war service in a causative sense.

Deledio step 4 – satisfaction beyond reasonable doubt

The Tribunal did not need to proceed to this step as it had found the hypothesis not to be reasonable.

Formal decision

The AAT affirmed the decision under review.

EDITOR: **There would appear to be an error in referring to being satisfied 'on the balance of probabilities' about whether the veteran suffered a severe psychosocial stressor within 2 years of clinical onset. Nevertheless, the Tribunal clearly set out the decision-making steps in a useful way. In particular, the Tribunal's discussion on the limited operation of s 119 and the need for there to be some evidence to point to the essential elements of the relevant factor in a SoP are important matters to keep in mind both in preparing and deciding cases.**

Re Iverson and Repatriation Commission

Kelly, SM

[2006] AATA 280
6 March 2006

Whether a veteran – civilian entertainer in Vietnam – Ministerial determination

Mr Iverson made a claim for pension for cirrhosis, claiming that he was a 'veteran' as defined in the VEA.

Mr Iverson was not a member of the Australian Defence Force (ADF), but during the Vietnam war he had made four tours of Vietnam as an entertainer with the ABC Showband. He sought to rely on an instrument made by the Minister for Veterans' Affairs determined in 1987 that deemed certain persons to be members of the Defence Force rendering continuous full-time service for the purposes of the VEA (see the article at page 3).

The Ministerial instrument provided that 'persons who, as representatives of an approved philanthropic organisation provided welfare services to the Defence Force' were deemed to be members of the ADF on continuous full-time service for the purposes of service in Vietnam. The instrument named the Australian Forces Overseas Fund (AFOF) as a philanthropic organisation.

The Tribunal had to decide whether Mr Iverson was a representative of the AFOF, and if so, whether he provided welfare services to the ADF. The Tribunal said:

> [26] The only concert tour in which Mr Iverson participated that was sponsored by AFOF and the Army was the December 1969 to January 1970 concert party tour. (T10) The historian who prepared the report at T10 found no material indicating who sponsored the second and fourth tours Mr Iverson went on. The first concert tour was sponsored by the government.
>
> [27] … Mr Iverson volunteered to go on the concert tours. He was paid by the Army. He did not give evidence that he was a member of AFOF, and said indeed that he did not remember going through an accreditation process to join AFOF. That evidence does not support the contention that he is a representative of AFOF.
>
> [28] I also take account of … evidence that philanthropic representatives who have served with the ADF were part of the task force in Vietnam and that their day to day conditions were similar to members of the ADF and that the Army holds records of representatives of approved philanthropic organisations and that all representatives serving in Vietnam are listed in the honour roll of veterans under ADF. I note that Mr Iverson is on the nominal role of Vietnam Veterans. However there was no evidence to suggest that he was recorded in Army records as a representative of AFOF.
>
> [29] He was a member of a party sponsored jointly by the Army and AFOF. It could not be said that Mr Iverson represented the Army by virtue of its joint sponsorship. Nor can it be said that he represented ADF. I

assume that the wording of the FACE [Forces Advisory Committee on Entertainment] web page … that: 'Tour parties would generally consist of an ADF band with civilian performers attached to that band as philanthropic representatives' is relied upon to support Mr Iverson's case. It does not, for several reasons. First, there is no evidence that Mr Iverson was a performer attached to an ADF band. Secondly, there is a record dated 2003 on this web page and one might infer arrangements were different then from how they were in the late 1960s and early 1970s. Finally, that the FACE website uses the language 'philanthropic representatives' does not assist my interpretation and application of the 1987 Ministerial direction in Mr Iverson's circumstances.

[30] On the above evidence I find that Mr Iverson was not a representative of AFOF and accordingly the Ministerial determination does not apply to him.

[31] A further argument advanced in support of Mr Iverson's case relied on a Ministerial determination made on 23 December 1997 by the Minister for Defence Industry, Science and Personnel pursuant to section 5B(2)(c) of the Act. Relevantly it was argued that Mr Iverson was a person who had been allotted for duty in Vietnam (Southern Zone) and fell within a class of person specified in schedule B to the instrument. Schedule B set out 'class of persons' and continued relevantly:

> Members of the Australian Navy, Army or Air Force:
>
> (a) on staff visits to or inspections of Australian forces in Vietnam; or
>
> (b) on equipment visits or inspections in Vietnam; or
>
> (c) on public relations, familiarisation or welfare visits to Australian Forces in Vietnam; or
>
> (d) on attaché duties in Vietnam.

[32] It was argued that Mr Iverson was on a welfare visit and that he was allotted to duty in an operational area, Vietnam (Southern Zone). The difficulty with this argument is that the Ministerial direction clearly requires that a person be a member of the Australian Navy, Army or Air Force who is on such a visit. Mr Iverson was not a member of those services. Accordingly this argument cannot succeed.

[33] … Mr Iverson … pointed to his receipt of the logistics support medal, which I accept he was awarded, that he is on the nominal role of Vietnam veterans and he has received a certificate from a grateful nation for his efforts during the Vietnam War. Neither party could point to the power under the Act which related to the awarding of the medal or inclusion in the honour role of Vietnam veterans. I find that the receipt of that medal, Mr Iverson's inclusion in the nominal role and his receipt of the certificate does not establish that he is a veteran within the meaning of the Act.

Formal decision

The AAT affirmed the decision under review.

EDITOR: The Ministerial determination can be found at:

www.vrb.gov.au/service_eligibility/service.html

Re Annett and Repatriation Commission

Allen SM

[2006] AATA 234
13 March 2006

Special rate – aged over 65

Mr Annett's claim was made in 2003, when he was aged 67. He sought pension at the special rate based on his incapacity primarily from post traumatic stress disorder.

Work history

When he retired from the Army he commenced a business making and selling donuts. This business originally operated as a partnership but in 1981 Oephelia Pty Ltd (Oephelia) was incorporated. Through Oephelia, Mr Annett opened or licensed to other operators, outlets in various shopping centres in and around Canberra. After 1993, difficulties arose due to location and exorbitant rents so that by 1998, Oephelia had disposed of all food outlets.

Originally Mr Annett drew a salary from Oephelia. According to income tax returns, in 1997, Mr Annett did not receive income other than superannuation and bank interest. He gave evidence that the last financial year in which he engaged in paid work for Oephelia was the tax year 1995-96.

In about 1992 Mr Annett together with his wife and a Mr Bowden, acquired a company, the purpose which was to conduct a hot dog business. This business did not eventuate but Mr Annett, his wife and Mr Bowden purchased an arts and crafts business. The company then became Artisan Arts & Crafts Pty Ltd ('Artisan'), which involved arts and craft retailing and wholesaling, conducting art and craft courses, and ceramic manufacture.

Mr Annett also conducted, as part of the business of Artisan, a ceramic repair business. This business commenced between 1993 and 1995.

When Artisan commenced business, Mr Annett and his wife made a loan to the company to help establish it. While Artisan was trading, the ceramic repairs were carried out in Mr Annett's capacity as an employee of Artisan.

Artisan was not viable as a business and it accumulated losses. At the commencement of its business Mr Annett drew a wage from Artisan and was a PAYE tax payer. However, Mr Annett's income tax returns commencing for the tax year 1996-97 did not show the payment of any wages or salary or even directors fees from Artisan.

Mr Annett claimed that after 1995-96, instead of payments to him (and his wife) by Artisan, monies were directed to repayment of the loan from him and his wife to the company. The financial records of Artisan showed that in the years 1994 to 2001 borrowings by the company were reduced annually. Artisan ceased trading on 30 June 2002.

Mr Annett said that he intended to continue work in ceramic restoration after Artisan ceased trading and also to sell art materials and conduct lessons and to that end had built a home studio and a

kiln. A new business name was obtained and a website constructed.

In December 2003 Mr Annett suffered an ischaemic attack and was hospitalised. In the years 2002-2003 he did some repair work but this was not reflected in his tax returns. He stated that but for incapacity occasioned by his PTSD, he would be in receipt of remuneration from his arts and craft activities.

Tribunal's consideration

The Tribunal was satisfied that Mr Annett was unable to work more than 8 hours a week due to his PTSD alone. It then considered whether the other special rate criteria that apply to persons aged over 65 were met.

The Tribunal found that Mr Annett's last paid work was as an employee of Artisan. He was last paid by that company in the tax year 1995-96. The Tribunal said:

> [31] Although the Applicant may be prevented from undertaking remunerative activity due to his war-caused injuries and diseases, that incapacity did not prevent him from carrying out his last paid work or suffering a loss of salary or wages on his own account. He ceased being paid wages because the company could not afford to pay him.
>
> [32] I am reasonably satisfied that when Artisan … ceased trading … it was because the company was unprofitable and that the Applicant, because of his war-caused PTSD, was unable to continue to apply himself to the affairs of the company. In other words I am satisfied that as at 30 June 2002 any cessation of remunerative activity by the Applicant as an employee or director of Artisan …, that is to say his last paid work, was not because of war-caused incapacity alone but because of a combination of incapacity and economics. …
>
> [34] Further, as the Applicant ceased his last paid work in 1995-1996 he had not, contrary to paragraph 24(2A)(g), been working for Artisan … for a period of 10 years prior to ceasing his last paid work.
>
> [35] … [In] an application the Applicant made to the Department of Veterans' Affairs on 27 November 2002 for income support … the Applicant states that he will be ceasing work and retiring in December. … I see no reason not to accept what he has there written at face value namely, that he had made the decision to cease work in December 2002.
>
> [36] This statement by the Applicant together with the small amount of work actually undertaken by him post 2002, reasonably satisfies me that the ceramic repair work undertaken by him after that date was no more than a hobby and was not, in the terms used by Tamberlin J in *Repatriation Commission v Fox* [1997] FCA 737 substantial remunerative work.
>
> [37] So far as the food retailing business engaged in by the Applicant, it is quite clear that those activities had ceased by 1998. … Consequently, there had been no paid work from that activity after the Applicant turned 65.
>
> [38] As I am satisfied that the Applicant cannot meet all the criteria set forth in s 24(2A) VEA, in particular paragraphs (d), (e), (f) and (g), the decision under review is affirmed.

Formal decision

The AAT affirmed the decision under review.

Re Lees and Repatriation Commission

McCabe SM

[2006] AATA 2
4 January 2006

Alcohol abuse – clinical onset

In 2003, the AAT affirmed a decision of the Commission that rejected Mr Lees' claim for pension for post traumatic stress disorder (PTSD).[34] Mr Lees appealed that decision to the Federal Court, which by consent remitted the matter to be reheard. On 9 June 2005, the AAT again affirmed the rejection of the claim in relation to PTSD, but remitted the question of whether Mr Lees' alcohol abuse was war-caused.[35]

The Commission found that it was not war-caused, and the matter was brought back to the Tribunal to be finalised.

The Tribunal summarised the evidence as follows:

> [4] … the applicant was a sailor working aboard HMAS *Sydney* as it made one of its trips to Vietnam in 1972. On 23 or 24 November of that year, the Sydney was anchored in Vung Tau harbour. The applicant was part of a work party detailed to retrieve stores from the freezer compartment of the ship. There was a sudden commotion as a result of some scare charges going off nearby. Some of the sailors thought the ship was under attack. In the confusion, the freezer was sealed with the applicant still inside. The applicant panicked because he was aware that the freezer was ordinarily opened only once a day to preserve its temperature. He said he thought he would soon die amongst the frozen items in the freezer space. As it happens, his colleagues realised he was missing a short while later and rescued him from the freezer. They found him on the floor of the compartment. He had soiled himself and was clearly distressed.
>
> [5] The applicant said he began drinking heavily after the incident. Other sailors confirmed he would binge drink when he went ashore.

The success of the case turned on whether or not there was evidence pointing to clinical onset of alcohol abuse within 2 years of this incident (as is required by the SoP). The AAT said:

> [6] … As the Federal Court pointed out in *Youngnickel v Repatriation Commission* [2004] FCA 1691, the onset of the condition for the purposes of the VEA will be the date on which a doctor could have (with the benefit of hindsight) made a diagnosis …. Dr Chalk also pointed out that alcohol abuse often evolved into alcohol dependence over time. It might be difficult to identify the precise point at which the transition was made. He acknowledged alcohol abuse was easier to diagnose than alcohol dependence.
>
> [7] Dr Chalk acknowledged he had referred to a drink-driving incident in 1972 in his report. He also acknowledged the applicant had told him of difficult interpersonal

[34] *Re Lees and Repatriation Commission* [2003] AATA 1027.

[35] It was remitted under s 42D of the AAT Act.

> relationships … upon his return from Vietnam. Dr Chalk agreed with the suggestion that the applicant was probably abusing alcohol 'hard up against' the incident in the freezer.
>
> [8] Dr Chalk added that he was not sure that the incident in the freezer was the genesis of the applicant's drinking problem. Although he stressed it was not necessary for him to reach a view as to causation in order to make a diagnosis, he said he suspected the applicant's maladaptive pattern of drinking actually began before the incident, not long after he entered the Navy. Dr Chalk plainly did not believe the applicant's history of limited alcohol use before late 1972.
>
> [9] The date of the drink-driving incident in question was the subject of conflicting evidence. Dr Chalk recalls being told it was in 1972 – perhaps late 1972. I asked the applicant to recall the date: he said he thought it was in March 1973. The respondent said the service records disclosed an offence in 1974.

The AAT then considered the date of onset at step 3 of the Deledio process, and said:

> [18] I accept there is evidence that the applicant could have been diagnosed with an alcohol abuse condition in the two years between the incident aboard HMAS *Sydney* in November 1972 and November 1974. There is ample evidence the applicant was exhibiting a maladaptive pattern of alcohol abuse that was giving rise to problems in his personal relationships (he spoke of being an unsatisfactory and even abusive husband) and he was charged with at least one drink-driving offence. He was also getting into fights. These features emerged within a 12 month period of each other as required by the diagnostic criteria for alcohol abuse set out in clause 3 of the SoP. The evidence does not all point to alcohol abuse: the applicant apparently continued to perform his work satisfactorily, it seemed. Even so, I accept the applicant's story fits the template provided by the SoP.

The Tribunal then considered whether the hypothesis could be disproved beyond a reasonable doubt, and said that while the applicant's story had changed over time, and that an earlier version concerning scare charges was impossible,

> [20] … the applicant's account of the incident in the freezer was corroborated by his ship-mates, especially Mr Eberhardt. Mr Eberhardt also confirmed the applicant was not a heavy drinker prior to the incident but became a much heavier drinker thereafter. I am therefore inclined to accept that evidence.
>
> [21] I also note there was some uncertainty about when the applicant's drink-driving problems occurred. In the circumstances there is little doubt they occurred in either 1973 or 1974. I have no reason to doubt the applicant's domestic relationships were also being affected by his drinking during the same period.

Formal decision

The AAT set aside the decision under review and determined that alcohol abuse or dependence was war-caused.

Re Crabb and Repatriation Commission

McCabe SM

[2006] AATA 295
15 March 2006

Special rate – lost last job as miner due to non-accepted disability – previous managerial work considered

Mr Crabb worked in a bank for many years. By the time he left the bank in 1996, he was an assistant manager. He then worked as a miner.

He worked underground until June 2000, when he fractured his ankle. He was off work for a number of months, then returned to work doing clerical duties in the mine office. When it was realised that his ankle injury prevented him doing underground work, his employment was terminated. He has not worked nor looked for work since.

The AAT noted that Mr Crabb had undertaken managerial and administrative work for many years and that it was appropriate to look beyond the mining work since the bulk of his working life occurred in the service of the bank.

The AAT found that Mr Crabb was prevented from continuing his career in the bank due to incapacity from his war-caused post traumatic stress disorder and alcohol abuse and dependence, and that this was the reason he could not do that kind of work in the assessment period. The AAT said:

> [20] … He says he cannot face returning to work where he has to deal with people and take responsibility for matters. He says he experiences a sense of panic and guilt whenever he contemplates the prospect. His ankle is not a problem; although he has been away from the work since 1996 and may no longer be familiar with the particular systems in place at the [bank], his generic managerial skills remain intact and appropriate. There was no evidence to suggest he could not find work, despite his age. Even if he would not be employed by the [bank], there is no evidence to suggest he could not use his generic managerial skills in other organisations. The only things stopping him from doing so are his war-caused conditions.

The AAT then addressed the question whether he had suffered a loss of salary wages or earnings and said:

> As a wage earner, his inability to work clearly causes him a loss of wages.

Formal decision

The AAT set aside the decision under review, assessing pension at the special rate.

EDITOR: **The AAT did not address the question in s 24(2)(a) whether, during the assessment period, Mr Crabb has ceased working because of a reason other than his accepted disabilities. While his ankle was the reason he stopped working in 2001, it appeared now not to cause him difficulties. It was unclear why he could not return to work as a miner, though the Commission seems to have conceded that he could not work 8 hours a week in any kind of work of which he had experience.**

Federal Court of Australia

Johnson v Veterans' Review Board

Kiefel, Kenny and Graham JJ
[2006] FCAFC 15
21 February 2006

Appeal from refusal of AAT to re-open finalised matter and from decision of AAT to declare application frivolous or vexatious – applicant seeking to re-agitate a question of law decided in an earlier appeal to the Federal Court from another AAT decision

Mr Johnson's claim has been the subject of numerous applications and appeals. The history of the matter is set out in the judgment of Lander J from which this appeal was taken (see (2005) 21 *VeRBosity* 116).

Mr Johnson's complaints concern the dismissal of his VRB application for review in 1999 relating to a Commission decision made in 1996. The application was dismissed by a Registrar of the VRB under s 155AB of the VEA because no response had been received within the statutory 28 days to a notice under that section.

Mr Johnson alleged that the Registrar had acted outside the scope of his delegation from the Principal Member.

The Full Court dismissed the appeal on the basis that Mr Johnson was prevented from raising issues that had already been litigated in previous Federal Court cases (see (2002) 18 *VeRBosity* 114 and (2003) 19 *VeRBosity* 52) that were not open to challenge in the current appeal.

The Court held that the matters that Mr Johnson sought to raise in this appeal had already been considered by the Federal Court in previous litigation to which both he and the VRB had been parties.

The Court held that the AAT had correctly dismissed his application as frivolous and vexatious (see (2004) 20 *VeRBosity* 13) because the AAT could not reopen a matter that it had finally decided (see (2000) 16 *VeRBosity* 34), and the essence of the AAT's decision had been upheld by judicial review in the Federal Court (see (2002) 18 *VeRBosity* 114 and (2003) 19 *VeRBosity* 52).

Formal decision

The Court dismissed the appeal and awarded costs against Mr Johnson.

Statements of Principles issued by the Repatriation Medical Authority

January – March 2006

Number of Instrument	Description of Instrument
1 of 2006	Revocation of Statement of Principles (Instrument Nos 27 and 155 of 1995 and Nos 151 and 193 of 1996) and determination of Statement of Principles concerning **malignant neoplasm of the larynx** and death from malignant neoplasm of the larynx.
2 of 2006	Revocation of Statement of Principles (Instrument Nos 28 and 156 of 1995 and Nos 152 and 194 of 1996) and determination of Statement of Principles concerning **malignant neoplasm of the larynx** and death from malignant neoplasm of the larynx.
3 of 2006	Determination of Statement of Principles concerning **heart block** and death from heart block.
4 of 2006	Determination of Statement of Principles concerning **heart block** and death from heart block.
5 of 2006	Revocation of Statement of Principles (Instrument No 15 of 1997) and determination of Statement of Principles concerning **spondylolisthesis and spondylolysis** and death from spondylolisthesis and spondylolysis.
6 of 2006	Revocation of Statement of Principles (Instrument No 16 of 1997) and determination of Statement of Principles concerning **spondylolisthesis and spondylolysis** and death from spondylolisthesis and spondylolysis.
7 of 2006	Revocation of Statement of Principles (Instrument No 65 of 2001) and determination of Statement of Principles concerning **motor neurone disease** and death from motor neurone disease.
8 of 2006	Revocation of Statement of Principles (Instrument No 66 of 2001) and determination of Statement of Principles concerning **motor neurone disease** and death from motor neurone disease.
9 of 2006	Revocation of Statement of Principles (Instrument No 33 of 1998) and determination of Statement of Principles concerning **malignant neoplasm of the thyroid** and death from malignant neoplasm of the thyroid.
10 of 2006	Revocation of Statement of Principles (Instrument No 34 of 1998) and determination of Statement of Principles concerning **malignant neoplasm of the thyroid** and death from malignant neoplasm of the thyroid.
11 of 2006	Revocation of Statement of Principles (Instrument Nos 5 and 56 of 1999) and determination of Statement of Principles concerning **acute stress disorder** and death from acute stress disorder.
12 of 2006	Revocation of Statement of Principles (Instrument Nos 6 and 57 of 1999) and determination of Statement of Principles concerning **acute stress disorder** and death from acute stress disorder.

Copies of these instruments can be obtained from Repatriation Medical Authority, GPO Box 1014, Brisbane Qld 4001 or at *http://www.rma.gov.au/*

Conditions under Investigation by the Repatriation Medical Authority

as at 31 March 2006

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, acquired	[*Instrument Nos. 37 and 38 of 2001 as amended by Instrument Nos. 32 and 33 of 2002*]	1-03-06
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
Dental caries	[*Instrument Nos. 366/95 & 367/95*]	1-09-04
Depressive disorder	[*Instrument Nos. 58/98 & 59/98*]	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
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
Macular degeneration	[*Instrument Nos. 25 and 26 of 2003*]	1-03-06
Malignant melanoma of the skin	[*Instrument Nos. 39 and 40 of 2001*]	1-03-06
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 lip epithelium	[*Instrument Nos. 41 and 42 of 2001 as amended by Instrument Nos. 49 and 50 of 2001*]	1-03-06
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
Marfan syndrome	[*Instrument Nos 9/95 & 10/95*]	15-06-05
Meniere's disease	[*Instrument Nos 77/01 & 78/01*]	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
Non-melanotic malignant neoplasm of the skin	[*Instrument Nos. 48 and 49 of 2004*]	1-03-06
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
Peptic ulcer disease	[*Instrument Nos 21/99 & 22/99*]	23-06-04
Peritoneal adhesions	—	1-03-06
Plantar fasciitis	[*Instrument Nos.3 and 4 of 2000, as amended by Instrument Nos.47 and 48 of 2003*]	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
Pterygium	[*Instrument Nos. 45 and 46 of 2001 as amended by Instrument Nos. 53 and 54 of 2001*]	1-03-06
Pulmonary barotrauma	—	24-03-04
Rotator cuff syndrome	[*Instrument Nos. 83/97 & 84/97*]	19-11-03
Seborrhoeic keratoses	—	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 – January to March 2006

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

Application for review

dismissal of VRB application
- whether s155AB notice was valid
Johnson (Kiefel, Kenny and Graham JJ)
[2006] FCAFC 15 21 Feb 2006

Carcinoma

malignant neoplasm of lymph nodes of the neck
- smoking
Webster, R D (Navy)
[2006] AATA 162 24 Feb 2006

malignant neoplasm of the prostate
- high fat diet
Tipper, M (Navy)
[2005] AATA 1181 1 Dec 2005
Butler, A (Army)
[2005] AATA 1302 9 Jan 2005
Powell, M J (RAAF)
[2005] AATA 1309 23 Dec 2005
Stevenson, M (RAAF)
[2005] AATA 1310 23 Dec 2005
Duel, E F (RAAF)
[2005] AATA 1311 23 Dec 2005
Chesterman, C W (Navy)
[2005] AATA 1316 30 Dec 2005
- peptic ulcer
Butler, A (Army)
[2005] AATA 1302 9 Jan 2006
- smoking
Butler, A (Army)
[2005] AATA 1302 9 Jan 2006

non-Hodgkins lymphoma
- coeliac disease
Trower, J E (Army)
[2006] AATA 113 10 Feb 2006

Circulatory disorder

cardiomyopathy
- alcohol
Thompson R A (RAAF)
[2006] AATA 104 8 Feb 2006

hypertension
- alcohol
Portakiewicz, R J (Navy)
[2005] AATA 1292 22 Dec 2005
- psychiatric disorder
Sappelli, C (Navy)
[2006] AATA 264 21 Mar 2006

ischaemic heart disease
- hypertension
- alcohol
James, E (Navy)
[2006] AATA 22 13 Jan 2006
- smoke haze
James, E (Navy)
[2006] AATA 22 13 Jan 2006
- smoking
- temporal not causal connection
Profitt, J (RAAF; Navy)
[2006] AATA 250 16 Mar 2006
- gradual increase in habit
Maroney, D J (Navy)
[2006] AATA 168 27 Feb 2006

varicose veins
- diagnosis
Ardill, L (Army)
[2006] AATA 217 9 Mar 2006
- leading to amputation
Ardill, L (Army)
[2006] AATA 217 9 Mar2006

Eligible service

qualifying service
- whether allotted for duty
- Malaysia
Corbin, P (Army)
[2006] AATA 167 22 Feb 2006

whether a veteran or member of the Forces
- entertainer in Vietnam
  - Ministerial determination
    Iverson, J (civilian)
    [2006] AATA 280 6 Mar 2006
  - whether a representative of AFOF
    Iverson, J (civilian)
    [2006] AATA 280 6 Mar 2006
- Ministerial determination
  - philanthropic organisation
    Iverson, J (civilian)
    [2006] AATA 280 6 Mar 2006

Entitlement and liability

arose out of ,or was attributable to
- conditions arising out of treatment of war-caused condition
  Webster, R D (Navy)
  [2006] AATA 162 24 Feb 2006

operational service
- allotted for duty
  - Malaysia
    Corbin, P (Army)
    [2006] AATA 167 22 Feb 2006

Statements of Principles – conditions not covered by
- chain of causation
  Ardill, L (Army)
  [2006] AATA 217 9 Mar 2006
- septic arthritis
  Ardill, L (Army)
  [2006] AATA 217 9 Mar 2006
- whether bound by previously accepted condition in chain of causation
  Ardill, L (Army)
  [2006] AATA 217 9 Mar 2006

travelling to or from duty
- whether reasonably direct
  Smith T V (Army)
  [2006] AATA 123 15 Feb 2006
- whether increased risk due to interruption
  Smith T V (Army)
  [2006] AATA 123 15 Feb 2006
- whether substantial interruption
  Smith T V (Army)
  [2006] AATA 123 15 Feb 2006

Evidence and Proof

circumstantial evidence
- whether capable of giving rise to an inference
  Stevenson, D (Army)
  [2006] AATA 60 27 Jan 2006

credibility
- inconsistent account of events
  Profitt, J (RAAF; Navy)
  [2006] AATA 250 16 Mar 2006

insufficient evidence
  Stevenson, D (Army)
  [2006] AATA 60 27 Jan 2006

Extreme Disablement Adjustment

lifestyle rating
  Fry, D
  [2006] AATA 66 27 Jan 2006
  Bevin, W S
  [2006] AATA 99 7 Feb 2006
  Drochman, A
  [2006] AATA 146 23 Feb 2006
  Webster, R D
  [2006] AATA 162 24 Feb 2006

Gastrointestinal disorder

gastro-oesophageal reflux disease
- alcohol
  Sappelli, C (Navy)
  [2006] AATA 264 21 Mar 2006

Historical material

Navy
- HMAS *Melbourne* - 1965
  - crash landing of Gannet aircraft
    Hayward, W C J (Navy)
    [2006] AATA 149 22 Feb 2006
  - use of depth charges on FESR service
    Hayward, W C J (Navy)
    [2006] AATA 149 22 Feb 2006
- HMAS *Tobruk* - 1959
  - torpedo fire malfunction (non operational service)
    Pengelly R (Navy)
    [2005] AATA 1296 23 Dec 2005

Infection

septic arthritis
- varicose veins
Ardill, L (Army)
[2006] AATA 217 9 Mar 2006

Musculoskeletal disorder

gout
- alcohol abuse
Mann, W R (Navy)
[2006] AATA 256 17 Mar 2006
Sappelli, C (Navy)
[2006] AATA 264 21 Mar 2006

internal derangement of the knee
- trauma
York, D (Army)
[2006] AATA 111 10 Feb 2006

osteoarthrosis
- shoulder
- trauma
Cox, G (Army)
[2006] AATA 15 12 Jan 2006

Neurological disorder

tension headache
- inability to obtain appropriate clinical management
Davis P W (Army)
[2006] AATA 122 14 Feb 2006

Psychiatric disorder

alcohol abuse
- clinical onset
Portakiewicz, R J (Navy)
[2005] AATA 1292 22 Dec 2005
Lake, R (Navy)
[2006] AATA 116 13 Feb 2006
Hayward, W C J (Navy)
[2006] AATA 149 22 Feb 2006
O'Rourke, M G (RAAF)
[2006] AATA 248 10 Mar 2006
Walker, R W (Navy)
[2006] AATA 290 29 Mar 2006
- prior to service
Madden, P (Navy)
[2005] AATA 1218 9 Dec 2005
- diagnosis
White, R (Navy)
[2006] AATA 293 29 Mar 2006
- stressor
- abandoned in isolated compound
Morris, J R (RAAF)
[2006] AATA 72 1 Feb 2006
- action stations
Walker, R W (Navy)
[2006] AATA 290 29 Mar 2006
- boiler room incident
White, R (Navy)
[2006] AATA 293 29 Mar 2006
- confrontation with Malay police
Morris, J R (RAAF)
[2006] AATA 72 1 Feb 2006
- crash landing of Gannet aircraft
Hayward, W C J (Navy)
[2006] AATA 149 22 Feb 2006
- death of colleague
White, R (Navy)
[2006] AATA 293 29 Mar 2006
- depth charge dropped on deck
Hayward, W C J (Navy)
[2006] AATA 149 22 Feb 2006
- experience at a brothel
Corbin, P (Army)
[2006] AATA 167 22 Feb 2006
- locked in a freezer
Lees, A (Navy)
[2006] AATA 2 4 Jan 2006
- scare charges
Madden, P (Navy)
[2005] AATA 1218 9 Dec 2005
Lake, R (Navy)
[2006] AATA 116 13 Feb 2006
Walker, R W (Navy)
[2006] AATA 290 29 Mar 2006
White, R (Navy)
[2006] AATA 293 29 Mar 2006
- witnessed battle activity
Walker, R W (Navy)
[2006] AATA 290 29 Mar 2006

anxiety disorder
- clinical onset
Mann, W R (Navy)
[2006] AATA 256 17 Mar 2006
Sapelli, C (Navy)
[2006] AATA 264 21 Mar 2006
- evidence of
Hayward, W C J (Navy)
[2006] AATA 149 22 Feb 2006

- diagnosis
  Hayward, W C J (Navy)
  [2006] AATA 149 22 Feb 2006
  Pritchard, G (Navy)
  [2006] AATA 251 16 Mar 2006
- stressor
  - boarding party incident
    Mann, W R (Navy)
    [2006] AATA 256 17 Mar 2006
  - crash landing of Gannet aircraft
    Hayward, W C J (Navy)
    [2006] AATA 149 22 Feb 2006
  - depth charge dropped on deck
    Hayward, W C J (Navy)
    [2006] AATA 149 22 Feb 2006
  - scare charges
    Madden, P (Navy)
    [2005] AATA 1218 9 Dec 2005
  - small boat patrol in Vung Tau harbour
    Sapelli, C (Navy)
    [2006] AATA 264 21 Mar 2006

depressive disorder

- clinical onset
  Kenfield, L S (Army)
  [2006] AATA 180 1 Mar 2006
  O'Rourke, M G (RAAF)
  [2006] AATA 248 10 Mar 2006
- diagnosis
  Kenfield, L S (Army)
  [2006] AATA 180 1 Mar 2006
- stressor
  - based only on circumstantial evidence
    Stevenson, D (Army)
    [2006] AATA 60 27 Jan 2006
  - Cyclone Tracy – moving bodies
    O'Rourke, M G (RAAF)
    [2006] AATA 248 10 Mar 2006
  - driving in Saigon
    Kenfield, L S (Army)
    [2006] AATA 180 1 Mar 2006

post traumatic stress disorder

- clinical onset
  - pre-existing personality disorder
    Pengelly R (Navy)
    [2005] AATA 1296 23 Dec 2005
- clinical worsening
  - no stressor identified
    Pengelly R (Navy)
    [2005] AATA 1296 23 Dec 2005
- diagnosis
  Turner, B (RAAF)
  [2005] AATA 1313 8 Dec 2005
  Profitt, J (RAAF; Navy)
  [2006] AATA 250 16 Mar 2006
  White, R (Navy)
  [2006] AATA 293 29 Mar 2006
- stressor
  - abandoned in isolated compound
    Morris, J R (RAAF)
    [2006] AATA 30 17 Jan 2006
  - accidental discharge of a weapon
    Cox, G (Army)
    [2006] AATA 15 12 Jan 2006
  - boiler room incident
    Portakiewicz, R J (Navy)
    [2005] AATA 1292 22 Dec 2005
    White, R (Navy)
    [2006] AATA 293 29 Mar 2006
  - confrontation with Malay police
    Morris, J R (RAAF)
    [2006] AATA 30 17 Jan 2006
  - death of colleague
    White, R (Navy)
    [2006] AATA 293 29 Mar 2006
  - encounter with a tiger
    Cox, G (Army)
    [2006] AATA 15 12 Jan 2006
  - faulty brakes on forklift
    Portakiewicz, R J (Navy)
    [2005] AATA 1292 22 Dec 2005
  - identifying body of a colleague
    Turner, B (RAAF)
    [2005] AATA 1313 8 Dec 2005
  - civilian mistaken to be armed with grenades
    Cox, G (Army)
    [2006] AATA 15 12 Jan 2006
  - scare charges
    Portakiewicz, R J (Navy)
    [2005] AATA 1292 22 Dec 2005
    White, R (Navy)
    [2006] AATA 293 29 Mar 2006
  - torpedo fire malfunction
    Pengelly R (Navy)
    [2005] AATA 1296 23 Dec 2005
  - witnessed boy shot and killed
    Profitt, J (RAAF; Navy)
    [2006] AATA 250 16 Mar 2006

- witnessed dead and mutilated bodies
Cox, G (Army)
[2006] AATA 15 12 Jan 2006
- witnessed shoot out
Profitt, J [(RAAF; Navy)
[2006] AATA 250 16 Mar 2006

Remunerative work and Special Rate

capacity to undertake remunerative work
- no evidence to support incapacity
Bruin, J
[2006] AATA 53 25 Jan 2005

ceased to be engaged in remunerative work
- reason for ceasing
- effects of cancer
Michael, W
[2005] AATA 1261 1 Dec 2005
- voluntary redundancy
Webster, R D
[2006] AATA 162 24 Feb 2006
- reason for ceasing last job not the reason for ceasing work
Crabb, R
[2006] AATA 295 15 Mar 2006

kind of work the person had been undertaking
- accounting / finance
- bank officer
Crabb, R
[2006] AATA 295 15 Mar 2006
- administrative
- clerical officer
Crabb, R
[2006] AATA 295 15 Mar 2006
- aircraft maintenance
Murray , A
[2006] AATA 3 4 Jan 2006
- brick layer
Kennett, R J
[2005] AATA 1307 23 Dec 2005
- engineering
- maintenance analyst
Walker, R W
[2006] AATA 290 29 Mar 2006
- farmer
Gowing, G
[2005] AATA 1201 6 Dec 2005
- general hand
Hearne, V E J
[2006] AATA 117 10 Feb 2006
- mining
- miner
Crabb, R
[2006] AATA 295 15 Mar 2006
- policeman
Bruin, J
[2006] AATA 53 25 Jan 2005
- town planner
Michael, W
[2005] AATA 1261 1 Dec 2005
- truck and forklift driver
Webster, R D
[2006] AATA 162 24 Feb 2006
- security guard
Moon, M
[2006] AATA 172 28 Feb 2006
- warehousing
Webster, R D
[2006] AATA 162 24 Feb2006

last paid work (aged over 65)
- whether worked for a continuous period of at least 10 years
Moon, M
[2006] AATA 172 28 Feb 2006

time at which criteria to be met
- during the assessment period
Crabb, R
[2006] AATA 295 15 Mar 2006

whether genuinely seeking to engage in
Hearne, V E J
[2006] AATA 117 10 Feb 2006
Webster, R D
[2006] AATA 162 24 Feb 2006

whether prevented by war-caused disabilities alone
- age
Gowing, G
[2005] AATA 1201 6 Dec 2005
Webster, R D
[2006] AATA 162 24 Feb 2006
- effect of non-accepted conditions
Kennett, R J
[2005] AATA 1307 23 Dec 2005
Bruin, J
[2006] AATA 53 25 Jan 2005
Murray , A
[2006] AATA 3 4 Jan 2006
- depression
Webster, R D
[2006] AATA 162 24 Feb 2006

Respiratory disorder

Service pension

Spinal disorder

Words and phrases