

VETERANS' REVIEW BOARD, NSW
SUBMISSION N01/1467

**CLAIM FOR WAR WIDOW'S PENSION BY JOY COLES, WIDOW
OF DONALD ROBERT COLES NX137346**

The claim can be divided into two parts, firstly that Mrs Coles was a dependant of Mr Coles, and secondly that his death was related to his war service.

PART I: MARRIAGE-LIKE RELATIONSHIP

Introduction

Mrs Coles' submission is that the essential features – both positive and negative - of her marriage relationship to Don Coles continued after their divorce in 1980. Naturally the financial arrangements and living arrangements changed but otherwise things continued much the same. Neither of them sought alternative sexual partners or formed marriage-like relationship with other persons. After the divorce Mr Coles always maintained to their friends that he considered himself still married and Mrs Coles did not contest this. The amount of time Mrs Coles spent with Mr Coles as he got progressively more ill was probably more than the amount of time they used to spend together prior to their divorce and when they were both working. They were married for 33 years and divorced 14 years. Mrs Coles doesn't think the divorce changed things much except the occasional break from her husband helped her mentally.

Dependant Status of Mrs Coles

The test for dependant status in the Veterans' Entitlements Act (VEA) is to be found in S5E parts (2) and (3), of which S11A forms one part. So far as is relevant to the claim, the scheme of the VEA can be summarised as follows:

- Section 16 states that a **dependant** of a deceased veteran may make a claim for pension;
- Section 11 states that a dependant includes the **partner** of a veteran;
- Section 5E(1) states that a **war widow** is a woman who was the **partner** of, or was legally married to, a veteran;
- Section 5E(1) states that a partner means a person who is a **member of a couple**;
- Section 5E(2) states a non-married person is a member of a couple provided the person is **living with** their partner and the person and the partner are living in a **marriage-like relationship**;
- Section 5E(3) states a person is to be treated as **living with** another person during an absence of one of those persons resulting from illness if they would, but for the absence, have been living together during that period; &

- Section 11A sets out the criteria for determining whether two persons have a **marriage-like relationship**.

The relevant parts of the S5E Clauses are reproduced in the following extract:

“5E (2) A person is a **member of a couple** for the purposes of this Act if:

- all of the following conditions are met:
 - the person is living with a person of the opposite sex (in this paragraph called the "partner");
 - the person is not legally married to the partner;
 - the person and the partner are, in the Commission's opinion (formed as mentioned in section 11A), in a marriage-like relationship;
 - the person and the partner are not within a prohibited relationship for the purposes of section 23B of the *Marriage Act 1961*.

NOTE 1: For "living with a person" see subsection (3).

5E (3) For the purposes of subparagraph (2)(b)(i), a person is to be treated as **living with** another person during:

- any temporary absence of one of those persons;
- an absence of one of those persons resulting from illness or infirmity;

if the Commission is of the opinion that they would, but for the absence, have been living together during that period."

The application of these provisions to Mrs Coles situation means that she has to satisfy the following tests:

- a) the Commission is satisfied she would have been living with Mr Coles but for the psychiatric illness which caused his violent behaviour which led to the divorce;
- b) she was not legally married to Mr Coles;
- c) consistent with the two previous provisions, she and Mr Coles were in a marriage-like relationship.

In relation to test (a) there is evidence that Don Coles suffered from a psychiatric condition likely to be PTSD. The fact there is no diagnosis or determination of this psychiatric condition cannot be read against the claim because it is arguable the Department breached the legislative requirement to investigate claims when it overlooked the informal claim for nervous condition on Mr Coles' AFI lodged 22 July 1976: *Re Cox and Repatriation Commission* (1988); & *Re Reid and Repatriation Commission* (1988).

Although the descriptions have been glossed over by Mr Coles' widow and brother, this condition was responsible for a range of violent behaviours, including verbal and physical violence, sudden and frightening changes of mood and at times threats to shoot people (he owned a 6-shot .22 Bruno rifle). Just before his death Mr Coles told his

brother and sisters that all the trouble between him and Mrs Coles was because he'd always been a 'bastard' in the way he had treated her. Mrs Coles has made it clear the psychiatric disability was the sole reason for her seeking divorce and subsequent physical separation. The S5E clauses in the VEA make specific provision for couples to be recognised as partners where an illness causes them to be temporarily or permanently separated. The decision is left to the VRB's discretion but it is very difficult to see how Mrs Coles could fail this test.

Test (b) is of course satisfied. As elaborated below, it must be kept in mind that defacto relationships can have as wide a range of variation as married relationships.

Test (c) refers to the S11A criteria. However, because it is a (cumulative) part of the whole S5E test for partner/dependant status, S11A should arguably be read in a manner consistent with the other two tests. That is, once it is accepted that Mr and Mrs Coles required separate residences because of his psychiatric illness, the S11A issues that arise from their separation cannot be read in a way to deny Mrs Coles' dependant status.

VEA Section 11 Questions

In relation to the test for marriage-like relationships, Social Security legislation has very similar provisions to the VEA. The following quotations warn that evaluation of the S11A criteria should not be treated as a simple arithmetic exercise:

- *Staunton-Smith v SDSS* (1991):

"The responsibility of the fact-finding tribunal is to have regard to all the material facts of each case, treating the matters listed above [ie S11A] only as indicators. "

"It should, of course, be clearly understood that no tribunal is required in every case, to compile something in the nature of a check list and then to proceed slavishly to comment on each item in the list. The personal circumstances of people vary substantially."

- *Re Peck and SDSS* (1992):

"[S11A] does not contain an exhaustive list of criteria to be addressed when determining whether a 'marriage-like relationship' exists ... and the weight to be given to each factor will vary depending on the circumstances involved, with the object of identifying the presence or absence of the essential character of a marriage-like relationship."

The S11A criteria are used to provide a comprehensive description of the circumstances of the claimed marriage-like relationship in the following submission. General comments have been added to avoid as much as possible the notion of a "check list" with "slavish comment" on each item.

The last page of Part I contains a chronology of living arrangements.

Financial aspects of the relationship - S11 (a)

(i) any joint ownership of real estate or other major assets and any joint liabilities;

Before the divorce Mr & Mrs Coles had joint ownership of their second home at Westminster Street, Schofields, purchased January 1977. After the divorce Don Coles continued living in the Westminster home until it was eventually sold in April/May 1984 and the proceeds were split 50/50.

(ii) any significant pooling of financial resources especially in relation to major financial commitments;

Before the divorce both wages went into the home. There were no other major financial commitments. During the separations and after the divorce there was no significant pooling of financial resources.

(iii) any legal obligations owed by one person in respect of the other person;

No legal obligations by either spouse. Mrs Coles believes she was written out of her husband's will shortly after their divorce. However, in the last couple of years before his death Mr Coles frequently expressed his desire to re-marry her.

(iv) the basis of any sharing of day-to-day household expenses.

Before the separations and the divorce expenses were always shared. On three occasions after the first separation Mrs Coles returned home with the promise things would be different, but found it was extremely difficult to get her husband to contribute fairly to the housekeeping and other expenses. During the initial period of separation she returned home on 3 occasions, firstly for about 1 week, secondly for one month, then 6 months].

Nature of the household - S11 (b)

(i) any joint responsibility for providing care or support of children;

Mr and Mrs Coles raised 3 children but by the time of their divorce in 1980 the two eldest were married. The youngest son made the transition from high school to work during the period Mrs Coles was separating and reuniting with Mr Coles. Naturally there were some occasions when the two parents discussed how their son was going.

(ii) *the living arrangements of the people;*

Before the divorce Mr and Mrs Coles lived together in a typical married arrangement with their youngest child still attending school. After the divorce they each had separate accommodation but while he was still physically active Mr Coles just came and went at Mrs Coles' place as he pleased.

From the time Mr Coles ceased work in mid 1984, Mr and Mrs Coles spent a large part of their time together, increasing to some 70% of their time once she ceased work also. Not only did Mr Coles visit with Mrs Coles, she visited with him in Bathurst on numerous occasions when his family had social functions such as weddings. Mr Coles also accompanied Mrs Coles to weddings of her sister's children and other family gatherings including holidays with their eldest son's family.

(iii) *the basis on which responsibility for housework is distributed.*

Before the divorce Mrs Coles took sole responsibility for the housework and cooking and Mr Coles worked around the house and garden. After the divorce they divided up domestic duties in exactly the same way whenever they stayed with each other.

After Mr Coles became sick Mrs Coles did all the housework, cooking and laundry when he was staying with her (which was most of the time).

General Comments

The Tribunal has accepted that separate financial arrangements are a feature of some marriages: "Married people now sometimes retain separate names and often keep their financial affairs separate": *Re Davis and Director-General of Social Security* (1984).

Likewise, the Tribunal in *Re Utczas and SDSS* (1990) had no difficulty in finding the existence of an "alive and on-going" marriage where the partners chose to maintain separate residences after their marriage to meet their own personal needs.

Marriage is the ultimate standard for assessing marriage-like relationships and it would be unduly harsh to hold the financial/household criteria against the Coles' marriage-like relationship. In addition, it needs to be stressed that although they had separate households, Mr and Mrs Coles spent approximately 70% of their time together once Mrs Coles ceased work.

The separate financial arrangements and households resulted from the divorce, which it has been argued was driven by Mr Coles' illness. Once it is conceded the Coles satisfied the "living with a person of the opposite sex" provisions in S5E(2) and (3), it is difficult to see how the separate households and financial arrangements can be held against Mrs Coles' claim.

Social aspects of the relationship – S11 (c)

(i) *whether the people hold themselves out as married to each other;*

They were formally married for 33 years. After the divorce Mr Coles always considered himself married (see letters, S137 folios 41-42). She had tried very hard to make the marriage work but found that Mr Coles continued to threaten her in different ways which was why she needed to live separately, even though they continued to see a great deal of each other.

(ii) *the assessment of friends and regular associates of the people about the nature of their relationship;*

They were formally married for 33 years. After the divorce friends and relatives describe them as spending most of their time together (see letters, S137 folios 41-42).

(iii) *the basis on which the people make plans for, or engage in joint social activities.*

During their formal marriage Mr Coles was generally anti-social so there were really no social activities aside from family visits. After their divorce Mrs Coles made some additional friends (see S137 folios 41-42) but most joint social activities were still via family visits – at both their residences. Before Mr Coles became too sick to travel without assistance, he would arrive at her place at any time so she had to assume he would be part of any social activities.

General Comments

Obviously the divorce caused a major upheaval but the net effect was the forging of a new relationship with Mrs Coles on a stronger and more equal footing. When Mr Coles stayed with her he knew he had to behave: if he flew into one of his rages he simply went home. The fact that they spent so much of their time together would not have been possible if their relationship hadn't dramatically improved.

Mrs Coles did not want to be divorced. For a long time she strongly resisted the idea but her daughter finally persuaded to do it for the sake of her health. After the divorce she continued to use her married name, a fact that the Tribunal has said is a relevant consideration in favour of a marriage-like relationship: *Re RC and Director-General of Social Services* (1981). On social occasions she did not introduce herself as 'divorced', nor did she introduce Mr Coles as her 'ex-husband'.

Just because friends knew they were divorced doesn't mean they didn't have a marriage-like relationship. It often happens that friends will know that a couple are not married but still consider them to have a marriage-like relationship. Nor is it uncommon for divorced

couples – like Mr and Mrs Coles - to form a new marriage-like relationship, whether or not it is ultimately blessed by a formal marriage ceremony.

Sexual relationship between the people – S11 (d)

There was no sexual relationship after the divorce. This cannot be held against the claim because Mrs Coles has advised that her husband was too ill to sustain a sexual relationship.

Nature of the people's commitment to each other – S11 (e)

(i) *the length of the relationship;*

They were together for the best part of 47 years until Mr Coles passed away on 12 April 1995.

(ii) *the nature of any companionship and emotional support that the people provide to each other;*

Naturally during their 47-year relationship they had developed and shared a complex emotional life and companionship, but for Mrs Coles this was continually undermined by her husband's erratic behaviour plus physical violence and excessive verbal abuse to herself, and cruelty to their two sons. She suspected a lot of his aggressive behaviour was due to the fighting he saw during the war. By 1978 with the backing of her daughter and support from both her GP and her counsellor she decided she had to separate because her health was rapidly going downhill. Mr Coles thought it was her job somehow to make the marriage work and when it didn't he made her feel guilty. After the divorce Mr Coles continued to seek emotional support from her and she continued to give it, especially when he became very ill. The separate living arrangements gave Mrs Coles the mental and physical strength to support him through his illnesses – first the IHD and Hypertension, then the bowel cancer and Myelodysplasia.

(iii) *whether the people consider that the relationship is likely to continue indefinitely;*

Neither person ever sought alternative sexual partners or formed marriage-like relationship with other parties after their formal divorce. Mr Coles died in April 1995.

(iv) *whether the people see their relationship as a marriage-like relationship.*

As far as Mr Coles was concerned they were never divorced. Mrs Coles felt that after the divorce they were still married in all but name. After Mr Coles went into the nursing home in Bathurst she visited him regularly. Effectively their marriage continued until his death.

General Comments

From about 1986 until his death Mr Coles spent about 70% of his time in Joy's company, most often at her place, but also in Bathurst and together with other family and friends. During some of his visits Mrs Coles effectively gave him post-operative nursing (eg after his bowel cancer surgery), but he was not bedridden until he went to the nursing home. Although he suffered from a number of chronic illnesses he certainly wasn't sick all the time. Most of their time together he was able to get about and socialise and enjoy Joy's company. When he was staying at Mrs Coles' place he did a lot of work around the house and yard.

In *Re Smith and SDSS* (1985) it is said: "Perhaps it is some emotional element that must exist in the relationship between a man and a woman before she can be regarded in any way as his wife." Mrs Coles maintains that this 'emotional element' between her and Mr Coles continued to be there after their divorce.

When he became aware of his terminal illness Mr Coles tried very hard to persuade Mrs Coles to re-marry. One of the arguments he used was that it might provide her with some sort of benefit. Mrs Coles refused because she felt the idea of marrying just to obtain a potential benefit was 'not right'.

Mrs Coles didn't look after her ex-husband's physical and emotional needs just because she was sorry for him. She didn't look after him because it gave her additional financial support via a carer's pension (she never applied for one). From an objective point of view the only reason she cared for him, welcomed him into her home and socialised with him was because she was in effect still fulfilling her marriage vows, ie ... "for better or for worse, for richer or poorer, in sickness and in health, do death do us part".

Summary

Just because it wasn't a Hollywood type of happy-ending marriage doesn't mean that no marriage-like relationship existed in terms of the Act: *Re Hucker and SDSS* (1992). Mrs Coles says that – consistent with a war-caused etiology - Mr Coles' unpredictable bouts of violent behaviour were present from day one of their marriage and just got worse over time. In many respects Mr Coles presents as a classic PTSD veteran who at times made life hell for his spouse and children. However, in 1980 there were none of the counselling and marriage support services that are available for PTSD veterans today, leaving Mrs Coles with no option but divorce.

Mrs Coles saw her post-divorce relationship as a continuation of her pre-divorce relationship, albeit dramatically improved because she was stronger and more equal.

The Federal Court stated in *Staunton-Smith v SDSS* (1991): "The personal circumstances of people vary substantially." Also in *Re Tang and Director-General of Social Services* (1981) it is stated: "The difficulties inherent in approaching the problem are obvious, for it involves a comparison of a relationship with a very imprecise standard, namely

marriage. The day has long passed (if it in fact ever existed) when one could safely generalise about what constituted a typical marriage.”

The two main objections canvassed in the Commission decision were the separate households and the perception that the post-divorce relationship was quite different from the pre-divorce relationship. The first objection fails because it is relatively easy to identify married couples living in similar circumstances to Mr and Mrs Coles. The second objection misconstrues the post-divorce relationship: there were more similarities than differences between it and the pre-divorce relationship but the main difference was that it was a better relationship, closer in effect to the marriage ideal than their actual marriage.

Although the issue never arose, it is more than likely that if the Department of Social Security had reviewed Mr and Mrs Coles’ arrangements after she ceased work they would have reduced their pensions to the married rate on the basis they were living together most of the time!

It is therefore submitted that Mrs Coles was a dependant of Mr Coles at the time of his death.

Chronology

Don & Joy Coles

Date	Home Addresses	Comments
1965 - 1976	Argowan St, Schofields.	First home.
25 January 1977 [second home]	38 Westminster St, Schofields, NSW.	Second home purchased with DSH Loan.
24 April 1978 [Date of formal separation]	Don stays at Westminster St, Joy moves to 3/147 March St, Richmond.	Joy’s daughter Kim defers ACT transfer for a year to share flat 3 with Joy.
8 October 1980 [Date divorce becomes absolute]	Don at Westminster St.	After formal separation Joy had tried returning to Don 3 times.
21 March – 4 June 1984 [Westminster house is sold]	Don moves from Westminster St to his sister’s place at Rocket St.	House sale proceeds split half and half between Don and Joy.
11 June 1984 [date Don ceased work]	Don at Rocket St, Bathurst	Don was working with Department of Defence
7 August 1984	Don’s address now 2/104 Bentinck St, Bathurst	
?1986 [Joy moves to south coast]	Joy purchased cottage at Fisherman’s Paradise near	Joy worked for a couple of years after the Westminster

	Bomaderry.	house was sold.
June 1987	Don's address now 9/23 Culnane Place, Kelso	"An aged people's one bedroom unit nr Bathurst"
15 September 1994	Don now living MacQuarie Homes N/Home, Bathurst	Advice received from daughter Kim Klippan
12 April 1995	MacQuarie Homes	Date of Don's death.

PART II: WAR-CAUSED DEATH

Medical History

Cause of Death

The Death Certificate states the cause of death as “Myelodysplasia years” and the duration of the last illness “Ischaemic Heart Disease years”. The threshold issue is whether Ischaemic Heart Disease (IHD) was also a cause of death, that is, whether IHD significantly hastened his death. While not contesting that Myelodysplasia was the major cause of death, this submission argues that Ischaemic Heart Disease was also a cause of death.

One reason why heart disease contributed to Mr Coles’ death was that he was progressively debilitated by the condition over a period of at least three decades. A second and more important reason was the life-threatening interaction between his heart condition and Myelodysplasia, as explained by specialist Dr Kronenberg in a report dated 15 September 1992:

“Review of the bone marrow aspirate and trephine suggests that this man has Myelodysplasia with an FAB classification of refractory anaemia with ring sideroblasts. There were less than 5% myeloblasts in the marrow and as such, this disorder has a reasonably good prognosis as far as the myelodysplastic syndrome is concerned. However, the major problem is likely to be exacerbation of his cardiac symptoms with his recurrent anaemia and as such we have advised him that he should have transfusion more frequently than normally indicated. Should he become symptomatic with shortness of breath or angina, he should be quickly transfused.”

If Mr Coles had not suffered from IHD, his Myelodysplasia would have had “a reasonably good prognosis”. It would appear his IHD hastened his death by quite a few years.

It is possible that Mr Coles' bowel cancer also hastened his death in some way but this is not addressed in this submission.

Duration of Ischaemic Heart Disease

Clearly both Myelodysplasia and Ischaemic Heart Disease constituted his “last illnesses”, and both illnesses lasted for “years”. However, it is clear that Mr Coles had suffered from Ischaemic Heart Disease (IHD) much longer than Myelodysplasia.

On the first occasion IHD was firmly diagnosed (August 1971), Mr Coles’ two major symptoms were shortness of breath and chest pains. As demonstrated by the extract from Dr Kronenberg’s 1992 report, these continued to be the major symptoms of his heart disease up until his death in April 1995. However, in an appeal against the rejection of

an April 1965 claim for “Asthma, Piles & Sinus”, Mr Coles stated he first suffered shortness of breath during his war service in New Guinea. He was so convinced of this that he twice appealed the issue to the War Pensions Entitlement Appeals Tribunal (WPEAT) – in June 1966 in relation to rejection of Asthma, and in July 1972 in relation to rejection of Ischaemic Heart Disease. Running the gauntlet of the WPEAT in those days was reputedly such an intimidating process that it often caused veterans to give up trying ever again. This probably explains Mr Coles’ comment in a letter lodged 22 September 1983, in which he said “one thing is for sure I shall never ever go back to No 2 Appeals Tribunal in Cleveland Street not in a million years.” This from a man who was not easily intimidated.

The diagnosis of Asthma in 1965 was never confirmed by respiratory function tests. The DMO who examined Mr Coles in May 1965 diagnosed Allergic Rhinitis to answer his claim for ‘sinus’, but in the Medical Opinion (KE2) this was changed to Asthma, to cover both Rhinitis symptoms and shortness of breath (the KE2 was written by another DMO, not the examining DMO). Given that the shortness of breath symptom was attributed to Ischaemic Heart Disease in 1971, it is arguable the correct answer to his 1965 claim should have been Allergic Rhinitis and IHD. This is further suggested by Mr Coles’ complaint that *Amesec*, the drug prescribed for his ‘asthma’ in 1965, caused him chest pains rather than relieving his shortness of breath. From 1971 he was prescribed *Anginine* to relieve his heart symptoms.

The evidence together thus suggests that Mr Coles’ heart disease could have commenced during or shortly after his war service.

Experiencing a Severe Stressor

During his war service with the 2/6 Commando Squadron, Don Coles saw active combat service in the Ramu Valley (New Guinea), Morotai, Balikpapan (Borneo) and Makassar (Celebes). His service in all four theatres of war satisfies the department’s definition of “experiencing a severe stressor” several times over. This submission argues that one of the effects of this service was a psychiatric disability, likely to be Post Traumatic Stress Disorder (PTSD).

Mr Coles’ LMO Dr John C Yuen told Mrs Coles her husband suffered from a psychiatric condition with manic and depressive aspects. The accounts of Mr Coles’ behaviour with his family are consistent with this. There is also clear evidence that Mr Coles believed he had a psychiatric disability. On an Application For Increase (AFI) lodged 22 July 1976 – when Dr Yuen was his LMO - he wrote:

“I suffer from nervous disorder this causes me to show symptoms of being tense irritable loss of concentration and inability to sleep normally [sic]”.

Arguably this statement should have been treated as a new disability claim but there is no evidence on file indicating the department asked Mr Coles about his intention. If the statement had been followed up there may have been a firm diagnosis. Given Mr Coles’

service history and the descriptions of his behaviour, it is likely he suffered from war-caused PTSD. His brother, William Coles, has written that Mr Coles' post-war "mood swings with, at times, extremely erratic behaviour" was due to his war service (see letter, S137 folio 25). The following comments by Mr Coles on a Lifestyle Questionnaire lodged 17 September 1993 are also pertinent:

"My life changed the day I went up the Ramu Valley and Shaggy Ridge from then on it was never the same, I used to pride myself on walking ability and toughness, I use to laugh at some people never knowing it would happen to me, bad dreams but most of all missing the mateship, the unit I was in was supreme in both friendship and comradeship everyone a goer officers and NCOs true blue and a yard wide in a way I was lucky a good few never made 50 [sic]."

Hypertension

The relevant Statement of Principles define Hypertension in part as "a usual blood pressure reading where the systolic reading is greater than or equal to 140 mm Hg and/or where the diastolic reading is greater than or equal to 90mm Hg ... excluding temporary elevations in blood pressure ..."

The following table demonstrates that Don Coles suffered from Hypertension from at least 1965.

Date of BP Reading	Document Source	Blood Pressure
29 June 1946	Discharge Medical	120/80
7 May 1965	MF9A Medical	140/95
26 May 1965	H File form	130/100
19 June 1971	Dr Mellick CN	130/95
21 July 1971	MF9A Medical	141/84
9 August 1971	Dr Corlette (H file)	140/90
7 October 1971	MF9A Medical	150/90
22 October 1980	Dr Pawsey (H file)	160/110

In addition, an X-ray taken 21 July 1971 showed a "cardiac shadow somewhat enlarged and hypertensive in type". The presence of frank target organ damage in 1971 suggests an onset for hypertension in the 1950's.

Hypotheses

It is proposed the above material raises the following hypotheses:

Hypothesis 1 – Ischaemic Heart Disease (IHD) factor 5(p)

Experiencing multiple severe stressors during war service in several theatres of war leading to Ischaemic Heart Disease leading to death.

Hypothesis 2 – Hypertension SOP factor 5(c), IHD SOP factor 5(a)

Acquisition of the habit of eating excessive amounts of crystalline salt with meals during war service which continued for some 30 years after discharge leading to the development of Hypertension in the 1950's in turn leading to Ischaemic Heart Disease in 1965-1971 in turn contributing to premature death in 1994.

Hypothesis 1

It is submitted that this hypothesis is supported by the Medical History preceding this section, in particular the account under the subheading “Duration of Ischaemic Heart Disease”.

Hypothesis 2

No one disputes that servicemen in the South West Pacific were strongly encouraged to ingest large amounts of salt via salt tablets and crystalline salt with meals, and that their food was often salted because of the need for preservation. It is not surprising that at least some servicemen acquired a “salt habit” in these circumstances and continued this habit after discharge. Expert evidence has been successfully led before the tribunal in support of such habituation. The Hypertension SOP factor 5(c) reflects scientific research that such a habit can lead to Hypertension.

This “salt habit-hypertension hypothesis” has been explicitly endorsed as a reasonable hypothesis by the Tribunal in the following cases:

- **Tait, Mima (1997)** Senior Member Muller (Qld): PNG veteran - hypertension present immediately after war service.
- **Oakman, Eileen (1999)** SM Muller, SM Dr Kennedy and member Major-General Stein (Qld): PNG veteran - hypertension developed in the early 1960's.
- **Ovenden, Bernice (2000)** SM Purcell, members Captain Keane & Dr Cull (Qld): South West Pacific veteran - hypertension diagnosed in 1987.
- **Bradley, Veronica (2001)** SM Handley (Vic): Korea veteran - hypertension developed in the 1980's.
- **Lucas, Beverley (2001)** SM Burton (Canberra): PNG veteran - hypertension diagnosed in 1992.

In all but *Tait* hypertension was not accurately diagnosed until many years after service but the Tribunal found this did not invalidate the hypothesis.

Mrs Coles has indicated that the late Mr Coles consumed large quantities of salt commensurate with the salt factor in the Hypertension SOP – of the order of a generous teaspoon of salt per meal. She states that although she used salt during cooking up until the mid 1970's, Mr Coles always insisted on adding lots of extra salt to his food. When she ceased using cooking salt due to changing public medical advice, he made up the difference. Mr Coles told her about the salt tablets he had taken during overseas service and that he had greatly increased his salt consumption as a result of his war service.

An incident in the 1980's illustrates how seriously Mr Coles viewed his need for salt. He and Mrs Coles were at their eldest son's place at Mt Hunter near Camden and she had just cooked a meal without salt. When the veteran discovered there was no salt in the house he became extremely angry and abusive towards Mrs Coles. Despite warnings from his son he continued like this and the son eventually threw him out of the house. It was night, it was raining and Mr Coles did not have his car. He had just had an operation on his hand in Canberra Hospital and had been instructed not to drive. Apparently that night he either hitched or walked to Camden, caught a bus to Canberra, picked up his car and drove himself home to Bathurst.

The Tribunal's endorsement of the salt habit-hypertension hypothesis is very persuasive. It is also most instructive that the department has not published any policy document on the issue nor has it appealed any of the decisions set aside by the Tribunal.

Beneficial Act

It is well known that the VEA is fundamentally beneficial in nature. The operative provision is S119. This does not mean that the wording of the VEA should be "strained or exceeded", but according to Keely J in *Repatriation Commission v Hayes* (1982) it does mean:

the Act is a remedial Act and "should be constructed so as to give the fullest relief which the fair meaning of its language will allow": per Isaacs J in *Bull v Attorney-General (NSW)* (1913) 17 CLR 370 at 384.

Fox J in the Full Federal Court in *Starcevitch v Repatriation Commission* (1987)(with whom Jenkinson J agreed) made the point more generally:

It is hardly necessary to say so, but the legislation should in my view be given a reasonably liberal interpretation; it has often been pointed out that it is a matter of great public importance to provide adequately for incapacitated ex-servicemen (at 76 AAR 454).

It is also a matter of great public importance to provide adequately for the widows of incapacitated ex-servicemen and to give them the fullest relief that the fair meaning of the Act and its legislative instruments – the SOPs – will allow. The reasonable hypotheses

linking Mr Coles death with his war service are not fanciful or unreal or inconsistent with known facts: the claim for war widow's pension should be granted.

John E Ransley
Representative for Mrs Joy Coles,
11 April 2002