



AAT Bulletin

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The *AAT Bulletin* is a weekly publication containing a list of recent AAT decisions and information relating to appeals against AAT decisions. The Bulletin occasionally includes information on legislative changes that affect the AAT and other important developments.

It is recommended that the Bulletin be read on-line. This has the advantage of allowing the reader to use hyperlinks to access the full text of cases and other internet sites mentioned in the Bulletin.

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Enquiries regarding this publication may be directed to aatweb@aat.gov.au.

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AAT Recent Decisions

This section of the Bulletin provides information about decisions recently published by the AAT. Only AAT decisions that have been published on [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

Compensation

[Edwards and Comcare](#) [2014] AATA 963; 24/12/2014; Senior Member BJ McCabe

Applicant's entitlement to compensation for incapacity – Applicant's employment terminated on grounds of incapacity – deductions made from applicant's incapacity payment – Applicant unable to earn anything from suitable employment – decision under review set aside and substituted

[Stebbing and Military Rehabilitation and Compensation Commission](#) [2014] AATA 948; 19/12/2014; Deputy President SD Hotop

Commonwealth employees – applicant served in Royal Australian Navy (RAN) from 1972 to 1995 – applicant suffered severe coronary artery disease and myocardial infarct in September 2012 – applicant claimed compensation for heart disease in July 2013 – Tribunal not satisfied the applicant's severe coronary artery disease contributed to, to a significant degree, or at all, by his RAN service – applicant's severe coronary artery disease not a compensable injury – decision under review affirmed

Customs

[Iijin Australia Pty Ltd and Chief Executive Officer of Customs](#) [2014] AATA 960; 23/12/2014; Senior Member E Fice

Identification of goods – use of Interpretive Rules – classification – composite goods – essential character – tariff concession order – use of Explanatory Notes – decision affirmed

Immigration and Citizenship

[Tran and Minister for Immigration and Border Protection](#) [2014] AATA 957; 22/12/2014; Senior Member G Ettinger

Eligibility – citizenship by conferral – general residence requirement – spouse of Australian citizen – long periods of absence from Australia in four years immediately before citizenship application – Applicant with Australian citizen husband overseas for his employment – discretion to treat periods of absence from Australia as ones in which Applicant was present in Australia as a permanent resident – whether Applicant had close and continuing association with Australia during periods of absence from Australia in the four years immediately before citizenship application – decision under review set aside and remitted

National Disability Insurance Scheme

[ZNDV and National Disability Insurance Agency](#) [2014] AATA 921; 25/11/2014; Deputy President K Bean and Mr I Thompson, Member

Early intervention requirements – Asperger’s disorder – reasonable and necessary supports – occupational therapy room and equipment in applicant’s home – whether support represents value for money – support not reasonable, relative to likely benefits – decision under review varied to incorporate terms of further plan agreed to by parties

Practice and Procedure

[El Dirani and Secretary, Department of Social Services](#) [2014] AATA 893; 3/12/2014; Senior Member N Isenberg

Extension of time to lodge application for review – application refused

Social Security

[Andrich and Secretary, Department of Social Services](#) [2014] AATA 953; 19/12/2014; Senior Member CR Walsh

Disability support pension (DSP) – applicant’s fully diagnosed, treated and stabilised impairment (being osteoarthritis which impacts upon his lower and upper limbs and spine) does not attract 20 points or more under the Impairment Tables on the date the applicant claimed DSP or within 13 weeks thereafter – decision under review affirmed

[Bayliss and Secretary, Department of Social Services](#) [2014] AATA 964; 24/12/2014; Dr P McDermott RFD, Senior Member and Senior Member AC Cotter

Newstart Allowance – Unpaid Present Entitlements – UPE – value of assets exceed limit – balance held in trust – UPE held to be loan for purposes of attribution – whether UPE loan, debt or otherwise – method for valuing assets – decision varied and remitted

[Colbert and Secretary, Department of Social Services](#) [2014] AATA 965; 24/12/2014; Dr P McDermott RFD, Senior Member and Senior Member AC Cotter

Pensions, benefits, allowances – disability support pension – DSP – whether 20 impairment points – decision under review affirmed

[Gabath and Secretary, Department of Social Services](#) [2014] AATA 966; 24/12/2014; Dr P McDermott RFD, Senior Member and Senior Member AC Cotter

Pensions, benefits and allowances – disability support pension – whether 20 impairment points – whether continuing inability to work – Applicant did not participate in a program of support – decision under review affirmed

[Johansson and Secretary, Department of Social Services](#) [2014] AATA 956; 22/12/2014; Mr I Thompson, Member

Disability support pension – whether applicant has a severe impairment – whether applicant has a 'continuing inability to work' – applicant has an impairment attracting 20 point rating – decision under review set aside – decision substituted that applicant entitled to payment from 16 May 2013

[Nelson and Secretary, Department of Social Services](#) [2014] AATA 954; 12/12/2014; Deputy President PE Hack SC and Senior Member AC Cotter

Disability support pension – asset-test exempt income stream – provision of actuarial certificate out of time – no fault on applicant’s behalf – no discretion to depart from guidelines – decision under review affirmed

[Peel and Secretary, Department of Social Services](#) [2014] AATA 959; 22/12/2014; Miss EA Shanahan, Member

Application for disability support pension (DSP) – anxiety and depression – alcohol dependence – s 94(1)(a) satisfied – psychiatric conditions not fully diagnosed, treated and stabilised – impairment rating not attracted – decision affirmed

Taxation

[Confidential and Commissioner of Taxation](#) [2014] AATA 952; 19/12/2014; Deputy President SA Forgie

Sale of business – capital gains tax event – whether CGT event A1 or B1 – when capital gains tax incurred

Sale of business – Contract of Sale – settlement date not met – heads of agreement – deed of licence – whether one document or separate documents – separate documents under umbrella of Contract of Sale

Whether determination of income made by trustee that nil income or no determination made so that income determined under cl 10.5 and so in accordance with net income provisions in s 95 of ITAA36 – burden of proof not satisfied

Alternative assessments – role of Tribunal limited – outside Tribunal's role to oversee Commissioner’s actual recovery of taxation liability from taxpayers

PRACTICE AND PROCEDURE – effect of withdrawal of application

WORDS AND PHRASES – “income of the trust estate” – “net income of the trust estate”

WORDS AND PHRASES – “present entitlement”

[Confidential and Commissioner of Taxation](#) [2014] AATA 961; 23/12/2014; Deputy President FJ Alpins

International taxation – double taxation treaties – Australia-Ireland Double Taxation Agreement – *International Tax Agreements Act 1953* (Cth) s 11K – general principles of interpretation of double taxation treaties – Irish Pay Related Social Insurance employment contributions made by Australian employee – whether Pay Related Social Insurance a tax covered by Agreement – whether a “substantially similar tax” to Irish or Australian income tax

INCOME TAX – foreign income tax offsets – ‘foreign income tax’

TAXATION ADMINISTRATION – private rulings – consideration by Tribunal of additional information not considered when ruling made

Veterans' Affairs

[Clark and Repatriation Commission](#) [2014] AATA 955; 22/12/2014; Senior Member G Ettinger

Disability pension – Special rate of pension – whether prevented from continuing to participate in remunerative work for more than eight hours a week due to his accepted conditions alone – loss of salary, wages or earnings suffered – decision under review set aside and substituted – Veteran is eligible for pension at the Special

[Lovell and Repatriation Commission](#) [2014] AATA 958; 22/12/2014; The Hon B Tamberlin QC, Deputy President

Partner service pension – whether applicant was receiving a social security pension immediately before the veteran's death – decision under review affirmed

[McCracken and Repatriation Commission](#) [2014] AATA 946; 19/12/2014; Deputy President K Bean and Lt Col R Ormston (Rtd), Member

Rate of disability pension – intermediate and special rates – whether the applicant fulfils the “part-time” test – whether the applicant fulfils the “8-hour” test – whether the applicant suffered a loss of salary, wages or earnings – decision under review varied

[Phillips and Repatriation Commission](#) [2014] AATA 962; 24/12/2014; Deputy President JW Constance

Whether condition was war-caused – bipolar II disorder – whether applicant suffers condition – clinical onset of condition – Deledio principles – category 2 stressor – concerns in the work environment – decision set aside and substituted

Appeals

This section of the Bulletin provides information about appeals against AAT decisions that have been lodged or finalised. Only appeals in relation to AAT decisions that have been published on [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

Appeals lodged

CASE NAME	AAT REFERENCE
Grabovsky v Secretary, Department of Social Services & AAT	[2014] AATA 522
Mahaffy v AAT	2013/5357

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Ekinci v Civil Aviation Safety Authority	[2014] AATA 424	[2014] FCAFC 180
Samson Maritime Pty Ltd v Aucote	[2014] AATA 296	[2014] FCAFC 182

Statements of Principles

This section of the Bulletin provides information on recent developments in relation to Statements of Principles made by the Repatriation Medical Authority for the purposes of the [Veterans' Entitlements Act 1986](#) and the [Military Rehabilitation and Compensation Act 2004](#).

New Statements of Principles

The Tribunal has been advised that the Repatriation Medical Authority has made the following new Statements of Principles. They take effect from **27 January 2015**.

[Malignant neoplasm of the small intestine No. 1 of 2015](#)

[Malignant neoplasm of the small intestine No. 2 of 2015](#)

[Malignant neoplasm of the testis and paratesticular tissues No. 3 of 2015](#)

[Malignant neoplasm of the testis and paratesticular tissues No. 4 of 2015](#)

[Soft tissue sarcoma No. 5 of 2015](#)

[Soft tissue sarcoma No. 6 of 2015](#)

[Epicondylitis No. 7 of 2015](#)

[Epicondylitis No. 8 of 2015](#)

[Shin splints No. 9 of 2015](#)

[Shin splints No. 10 of 2015](#)

[Tinea No. 11 of 2015](#)

[Tina No. 12 of 2015](#)

[Decompression sickness No. 13 of 2015](#)

[Decompression sickness No. 14 of 2015](#)

[Pulmonary barotrauma No. 15 of 2015](#)

[Pulmonary barotrauma No. 16 of 2015](#)

[Dysbaric osteonecrosis No. 17 of 2015](#)

[Dysbaric osteonecrosis No. 18 of 2015](#)

[Albinism No. 19 of 2015](#)

[Albinism No. 20 of 2015](#)

[Charcot-Marie-Tooth disease No. 21 of 2015](#)

[Charcot-Marie-Tooth disease No. 22 of 2015](#)

[Haemophilia No. 23 of 2015](#)

[Haemophilia No. 24 of 2015](#)

[Marfan syndrome No. 25 of 2015](#)

[Marfan syndrome No. 26 of 2015](#)

[Gaucher's disease No. 27 of 2015](#)

[Gaucher's disease No. 28 of 2015](#)

[Alpha-1 antitrypsin deficiency No. 29 of 2015](#)

[Alpha-1 antitrypsin deficiency No. 30 of 2015](#)

[Horseshoe kidney No. 31 of 2015](#)

[Horseshoe kidney No. 32 of 2015](#)

[Wilson's disease No. 33 of 2015](#)

[Wilson's disease No. 34 of 2015](#)

[Osteogenesis imperfecta No. 35 of 2015](#)

[Osteogenesis imperfecta No. 36 of 2015](#)

[Huntington's chorea No. 37 of 2015](#)

[Huntington's chorea No. 38 of 2015](#)

[Autosomal dominant polycystic kidney disease No. 39 of 2015](#)

[Autosomal dominant polycystic kidney disease No. 40 of 2015](#)

[Von Willebrand's disease No. 41 of 2015](#)

[Von Willebrand's disease No. 42 of 2015](#)

[Multiple osteochondromatosis No. 43 of 2015](#)

[Multiple osteochondromatosis No. 44 of 2015](#)

[Trochanteric bursitis and gluteal tendinopathy No. 45 of 2015](#)

[Trochanteric bursitis and gluteal tendinopathy No. 46 of 2015](#)

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