



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

[Connors and Australian Postal Corporation](#) [2014] AATA 27; 22/1/2014; Deputy President SD Hotop

Employee of licensed corporation – Applicant suffered knee strain in performance of employment duties in August 2006 (2006 injury) – Respondent accepted liability to pay compensation for 2006 injury – applicant suffered exacerbation of knee pain in performance of employment duties in June 2009 (2009 injury) – Respondent accepted liability to pay compensation for 2009 injury – Respondent ceased payment of compensation for 2006 injury in September 2006 – Respondent ceased payment of compensation for 2009 injury in April 2012 – Respondent continued to be liable to pay compensation for medical treatment for 2006 injury from September 2006 to June 2009 – Respondent continued to be liable to pay compensation for medical treatment and for incapacity for work in respect of 2009 injury from April 2012 to date – Decisions under review set aside

[Smith and Comcare](#) [2014] AATA 28; 22/1/2014; Senior Member RG Kenny

Osteoarthritis of right hip – Decision to reject the claim upheld by Tribunal at first hearing – Appeal to Full Federal Court allowed and matter remitted to Tribunal – No material contribution by employment as meat inspector – Decision affirmed

Immigration and Citizenship

[Cronin and Minister for Immigration and Border Protection](#) [2014] AATA 29; 23/1/2014; Deputy President SD Hotop

Bridging visa – Refusal to grant – Applicant a citizen of Ireland – Applicant sentenced to 4 years' imprisonment in Ireland for offence committed in 2002 – Applicant arrived in Australia in 2009 – applicant convicted of offences in Australia in 2010–2013 for which fined and not sentenced to imprisonment – Applicant's visa expired in 2011 – Applicant does not pass character test – Discretion to refuse visa – Best interests of children and other relevant considerations outweigh protection of Australian community – Risk of future harm to Australian community by applicant not unacceptable – Preferable decision is that visa not be refused – Decision under review set aside

[L and Minister for Immigration and Border Protection](#) [2014] AATA 3; 7/1/2014; Senior Member PW Taylor SC

Visa cancellation – Failure to pass character test – Substantial criminal record – Discretion to cancel applicant's visa – Ministerial Direction No 55 applied – Protection of the Australian community – Seriousness and nature of the relevant conduct – The risk conduct may be repeated – Impact of the cancellation – Decision under review affirmed

[Luy and Minister for Immigration and Border Protection](#) [2014] AATA 23; 21/1/2014; Senior Member GD Friedman

Cambodian citizen – Cancellation of partner visa – Convictions for sexual offences – Character test – Exercise of discretion – Decision under review affirmed

Practice and Procedure

[Austin and Commonwealth Bank of Australia](#) [2014] AATA 21; 20/1/2014; Senior Member J Toohey

COMPENSATION – Whether application for compensation valid – Whether application for review frivolous or vexatious – Whether discontinued application should be reinstated – Application to dismiss as vexatious or frivolous refused

[Byrne and District Registrar, Administrative Appeals Tribunal](#) [2014] AATA 26; 22/1/2014; Deputy President PE Hack SC

Fee reduction – Whether financial hardship – Non-earning applicant maintained by earning spouse – Lack of information of financial situation of spouse – Decision affirmed

[Maksymiuk and Minister for Foreign Affairs](#) [2014] AATA 24; 21/1/2014; Senior Member BJ McCabe

PASSPORTS – Application for a passport – Incomplete form – Rejection of application – Internal review required – Jurisdiction of the Tribunal – Application dismissed

[Maksymiuk and Secretary, Department of Social Services](#) [2014] AATA 25; 21/1/2014; Senior Member BJ McCabe

SOCIAL SECURITY – Pensions, benefits and allowances – Jurisdiction of the Tribunal – Social Security Appeals Tribunal must first review decisions – Application dismissed

[Matias and Secretary, Department of Social Services](#) [2013] AATA 955; 18/12/2013; Senior Member GD Friedman

SOCIAL SECURITY – Extension of time to lodge application for review – Application refused

[Singh and Secretary, Department of Social Services](#) [2013] AATA 954; 19/12/2013; Deputy President JW Constance

SOCIAL SECURITY – Jurisdiction – Frivolous and vexatious application – Rights of appeal exhausted – Tribunal has no power to review its own decisions – Direction requiring applicant to seek leave is not discharged or varied – No jurisdiction – Application dismissed

Social Security

[Lewis and Secretary, Department of Social Services](#) [2014] AATA 31; 24/1/2014; Deputy President RP Handley

Baby Bonus – Eligibility – Australian resident – Whether the Applicant resided in Australia at the relevant time – Relevance of intention to return to Australia – Applicant resided in the United Kingdom during the relevant period – Decision under review affirmed

[Vendrell and Secretary, Department of Social Services and Anor](#) [2014] AATA 22; 21/1/2014; Senior Member J Toohey

Family tax benefit – Shared care – Whether percentage of care to be assessed by reference to nights in care or hours of care – Tribunal satisfied hours in care more accurately reflects actual care – Decision under review set aside – Matter remitted for calculation of FTB entitlement

[Yates and Secretary, Department of Social Services](#) [2014] AATA 20; 20/1/2014; The Hon RJ Groom AO, Deputy President

Disability support pension – Rotator cuff tear/arthritis/depression – Whether the conditions attract 20 points under the Impairment Tables – Attract 15 points only – Applicant not qualified for disability support pension – Decision under review affirmed

Taxation

[Confidential and Commissioner of Taxation](#) [2014] AATA 32; 24/1/2014; Deputy President SA Forgie

Assessment of income and penalties – Partnership loss claimed in respect of managed investment scheme disallowed – Loss claimed in return lodged by tax agent and refund paid to nominated bank account – Audit – Amended assessments – Whether return lodged without taxpayer's authority – Whether amended assessments made within time – Whether properly served – Whether Commissioner estopped from amending assessments by representations made by ATO officers – Decisions affirmed

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
Commissioner of Taxation v Desalination Technology Pty Ltd	[2013] AATA 846
Soames v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs	[2013] AATA 945
Tarrant v Australian Securities and Investments Commission	[2013] AATA 926
Australian Postal Corporation v Edwards	[2013] AATA 874
Ralph v Repatriation Commission	[2013] AATA 948

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
None finalised		

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](#).

Amended Statements of Principles

The Tribunal has been advised that the following instrument amending the Statement of Principles for the specified condition has been made at the direction of the Specialist Medical Review Council. It took effect on **19 December 2013**.

Posttraumatic stress disorder – No. 19 of 2014
<http://www.comlaw.gov.au/Details/F2014L00066>

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