



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.

Child Support

[Confidential and Child Support Registrar and Anor](#) [2014] AATA 153; 19/3/2014; Dr P McDermott RFD, Senior Member

Percentage of care – child did not live with other party for entire period in question – no evidence of care by the applicant – decision under review affirmed

Compensation

[Houssenloge and Australian Postal Corporation](#) [2014] AATA 154; 20/3/2014; Senior Member AK Britton

Liability accepted for lower back injury – rehabilitation program – failure to recommence work – failure to follow program – compensation suspended – whether there was a reasonable excuse – fitness to return to work – whether reasonable belief in views expressed by medical experts

[Sheppard and Comcare](#) [2014] AATA 157; 21/3/2014; Mr S Webb, Member

Neck and pain syndrome injury claims – no frank injury – no objective evidence of neck pathology – soft tissue neck injury not established by probative evidence – back injury claim rejected – back symptoms not attributable to claimed neck injury - neck symptoms not significantly contributed to by employment - unreliable and inconsistent evidence – medical evidence reliant upon applicant's unreliable account – theories of causation – possibility and plausibility not sufficient – employment contribution to neck ailments not established as significant - decisions affirmed

Immigration and Citizenship

[Kumar and Minister for Immigration and Border Protection](#) [2014] AATA 145; 14/3/2014; The Hon B Tamberlin QC, Deputy President

Application for Australian Citizenship – whether Applicant unlawful non-citizen – Migration Zone – applicant held valid visas while within Australia – purposive approach to interpreting legislation – decision under review set aside – remitted for reconsideration

[Varpetyan and Minister for Immigration and Border Protection](#) [2014] AATA 150; 19/3/2014; Senior Member N Bell

Permanent resident – application for citizenship – applicant does not meet good character requirement – decision under review affirmed

Practice and Procedure

[Daily Update Pty Ltd and Australian Skills Quality Authority](#) [2014] AATA 118; 6/3/2014; Senior Member G Ettinger

Stay granted – application to vary stay – imposition of condition - prospects of success, public interest, consequences for parties and consequences on application for review considered by Tribunal – variation not granted

Social Security

[Housego and Secretary, Department of Social Services](#) [2014] AATA 146; 17/3/2014; Senior Member NA Manetta

Pensions, benefits and allowances – newstart allowance – “connection” and “reconnection” failures – alleged failure to enter into an Employment Pathway Plan – failure found to have occurred – decision under review affirmed

[Joseph and Secretary, Department of Social Services](#) [2014] AATA 149; 19/3/2014; Senior Member N Bell

Disability support pension – applicant seeks indefinite portability of disability support pension – whether applicant has a severe impairment – decision under review affirmed

[Salem and Secretary, Department of Social Services](#) [2014] AATA 93; 14/2/2014; Senior Member JF Toohey

Family tax benefit – whether applicant overpaid – lump sum received on account of past wages – whether counted as taxable income for the year – Lump Sum Tax Offset applied by Australian Taxation Office – whether Centrelink required to apply the same – decision under review affirmed

[Toki and Secretary, Department of Social Services](#) [2014] AATA 144; 13/3/2014; Senior Member J Toohey

Disability support pension – applicant serving prison sentence – applicant detained under the Mental Health (Forensic Provisions) Act – whether applicant entitled to disability support pension – whether disability support pension should have been cancelled – decision under review affirmed

Taxation

[Tier Toys Limited and Commissioner of Taxation](#) [2014] AATA 156; 20/3/2014; Senior Member CR Walsh

Research and development tax offset - research and development expenditure – research and development activities — whether expenditure incurred by taxpayer “directly in respect of” registered “research and development activities” – “systematic, investigative and experimental activities” - “objects” provision considered - substantiation of R&D expenditure claimed - whether expenditure “excluded plant expenditure” – whether expenditure on “overseas research and development activities” – whether expenditure on “market research, market testing or market development, or sales promotion” – shortfall penalty imposed on taxpayer for “recklessness” – meaning of “recklessness” considered - reliance by taxpayer on registered tax agent in preparation of income tax return – meaning of “reasonable care” considered - taxpayer’s

behaviour not “reckless” – taxpayer failed to take “reasonable care” – Commissioner’s discretion to remit part of penalty exercised – R&D Objection Decision affirmed - Penalty Objection Decision set aside and remitted to Commissioner for reconsideration in accordance with Tribunal’s Reasons for Decision

Veterans' Affairs

[Lightowlers and Repatriation Commission](#) [2014] AATA 80; 21/2/2014; Senior Member JF Toohy, and Dr M Couch, Member

Operational service – whether alcohol dependence war-caused – Vung Tau – scare charges – applicant witness to assault – whether category 1A or category 1B stressor – whether reasonable hypothesis raised – decision under review 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
Fisher v Military Rehabilitation and Compensation Commission	[2013] AATA 934

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Rigoli v Commissioner of Taxation	[2012] AATA 757	[2014] FCAFC 29 [2013] FCA 784
Commissioner of Taxation v Dowling	[2013] AATA 49	[2014] FCA 252
Paerau v Minister for Immigration and Border Protection & AAT	[2012] AATA 798	[2014] FCAFC 28 [2013] FCA 1119
Dyke v Repatriation Commission	[2013] AATA 472	BRG797/2013

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