



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

[Shahani and Child Support Registrar](#) [2014] AATA 312; 19/5/2014; Senior Member D Letcher QC

Departure Prohibition Order – revocation – child support liability – no arrangement to wholly discharge liability – liability recoverable – discretion not enlivened – decision under review affirmed

Compensation

[Garcia and Comcare](#) [2014] AATA 320; 23/5/2014; Senior Member RG Kenny

Comcare and Department of Veterans' Affairs employee – Reviewable decision that liability denied under s 14 of the *Safety, Rehabilitation and Compensation Act 1988* for “thoracic sprain” – applicant suffers from mechanical thoracic back pain – whether pre-existing injury aggravated by employment – decision under review affirmed

[Moss and Comcare](#) [2014] AATA 309; 16/5/2014; Mr S Webb, Member

Claim for psychological injury – depression and anxiety – previously existing ailment – predisposition to recurrence or worsening of symptoms – personality style or tendency to focus on conflict – restructuring of work – work stress – voluntary cessation of temporary acting appointment at a higher level – action to address high level of unplanned absences from employment – allegation of bullying by supervisor at work – employment an operative factor in the process of symptoms – employment contribution not substantially more than material – claim not made out – decision affirmed

[Sinclair and Military Rehabilitation and Compensation Commission](#) [2014] AATA 304; 16/5/2014; Deputy President SD Hotop

Military compensation – respondent accepted liability under *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) to pay compensation to applicant for left knee condition – respondent paid applicant lump sum compensation for permanent impairment resulting from left knee condition – respondent accepted liability under *Military Rehabilitation and Compensation Act 2004* (MRC Act) to pay compensation to applicant for atrial fibrillation – determination of amount of permanent impairment compensation payable to applicant for atrial fibrillation – offsetting amount of permanent impairment compensation paid to applicant under SRC Act for left knee condition – respondent determined that amount of permanent compensation payable to applicant under MRC Act – Tribunal determined that no amount of permanent impairment compensation payable to applicant under MRC Act – decision under review set aside

[Wade and Military Rehabilitation and Compensation Commission](#) [2014] AATA 306; 16/5/2014; Deputy President PE Hack SC

Liability for permanent impairment – application of legislation – whether superseded Act applies – injury – whether two distinct injuries supported on the evidence

Intellectual Property

[B & L Whittaker Pty Ltd and Australian Securities and Investments Commission and Anor](#) [2014] AATA 302; 15/5/2014; Deputy President PE Hack SC

Registration of business names – unavailability of business names that are identical or nearly identical – comparison of ‘Cairns Concrete Pumping’ and ‘Cairnscrete Pumping’ – determination provides precise and exhaustive mechanism to decide whether names are identical or nearly identical – decision under review affirmed

Social Security

[Coelho and Secretary, Department of Social Services](#) [2014] AATA 317; 21/5/2014; Miss EA Shanahan, Member

Pensions and allowances – disability support pension – medical condition of paroxysmal atrial fibrillation – permanency – frequency and severity of symptoms – treatment response – incapacity for work – impairment rating – inadequate medical opinion – decision remitted for reconsideration

[Crofts and Secretary, Department of Social Services](#) [2014] AATA 311; 17/3/2014; Senior Member J Toohey

Disability Support Pension – neck and back pain – bilateral carpal tunnel syndrome – type II diabetes – hypertension – whether applicant’s conditions fully diagnosed, treated and stabilised – program of support – decision under review affirmed

[De Alwis and Secretary, Department of Social Services](#) [2014] AATA 318; 21/5/2014; Miss EA Shanahan, Member

Disability support pension – impairment rating – failure to satisfy s 94(1)(b) of the *Social Security Act 1991* – decision affirmed

[Hill and Secretary, Department of Social Services](#) [2014] AATA 321; 23/5/2014; Senior Member RG Kenny

Pensions, benefits and allowances – review of disability support pension qualifications – relevant date of assessment – physical impairment from “vertebrae stress fracture” – Impairment Tables – condition not fully diagnosed, treated, stabilised or permanent at relevant time – applicant not qualified for disability support pension at relevant date – decision under review affirmed

[Karimi and Secretary, Department of Social Services](#) [2014] AATA 314; 16/5/2014; Ms K Hogan, Member

Family Tax Benefit – change of circumstances not notified – debt owed to the Commonwealth – whether debt can be written off – whether debt can be waived solely due to an administrative error – whether debt can be waived due to special circumstances

[Pala and Secretary, Department of Social Services](#) [2014] AATA 313; 16/5/2014; Senior Member JL Redfern

Whether the applicant was a member of a couple for the purpose of determining the rate of age pension payable – previous findings by Tribunal – whether there had been a change in circumstances – exercise of discretion under s 24(1) of the *Social Security Act 1991* not to treat the applicant as a member of a couple where there are extended absences from Australia – decision varied

[Tanjic and Secretary, Department of Social Services](#) [2014] AATA 315; 16/4/2014; Senior Member AF Cunningham

Application for Pension Bonus Scheme – applicant not registered for Pension Bonus Scheme during 26 week period surrounding the applicant turning 65 – neither section 92P or 92Q of the *Social Security Act* apply to the applicant – applicant was an accruing member – applicant failed the work test – decisions under review affirmed

Superannuation

[XVQY and Commissioner of Taxation](#) [2014] AATA 319; 22/5/2014; The Hon R Nicholson, Deputy President

Employee contributions – relationship between company and workers – whether workers were employees or independent contractors – indicia – whether common law employees – whether employees because contracts wholly or principally for labour – burden of proof

Taxation

[Qantas Airways Limited and Commissioner of Taxation](#) [2014] AATA 316; 20/5/2014; Justice Benjamin and Senior Member FD O’Loughlin

Fringe Benefits Tax – meaning of commercial parking station – meaning of car parking spaces are available in the ordinary course of business to members of the public for all-day parking on that day – meaning of all-day parking – whether a car park needs to be primarily for commuters to and from work to be a commercial parking station – whether airport car parking facilities are commercial parking stations – whether a car park that allows only airline travellers and meeters and greeters of airline travellers is a commercial parking station

[Stevens Nominees \(Sydney\) Pty Ltd ATF SNS Trust and Commissioner of Taxation](#) [2014] AATA 303; 16/5/2014; Senior Member G Lazanas

TAXATION – practice and procedure – jurisdiction of Tribunal – Pt IVC of *Taxation Administration Act 1953* – *res judicata*

Veterans' Affairs

[Aspinall and Repatriation Commission](#) [2014] AATA 305; 16/5/2014; Senior Member P McDermott RFD

VETERANS' AFFAIRS – pensions and benefits – widow's pension – death of veteran – death by cardiomyopathy – operational service – Statement of Principles concerning cardiomyopathy – reasonable hypothesis connecting death with circumstances of service – not satisfied beyond reasonable doubt that death was not war caused – decision under review set aside and substituted

[Lees and Repatriation Commission](#) [2014] AATA 308; 16/5/2014; Senior Member JF Toohey, Dr W Isles, Member

Operational service – whether veteran suffers from post-traumatic stress disorder – depressive disorder – alcohol dependence – whether conditions war-caused – whether reasonable hypothesis raised – decision under review affirmed

[Murray and Repatriation Commission](#) [2014] AATA 307; 16/5/2014; Senior Member J Toohey

VETERANS ENTITLEMENTS – special rate of pension – multiple accepted conditions – PTSD – head injury – failed business venture – whether applicant prevented from continuing remunerative work by accepted conditions alone – decision under review affirmed

[Zerner and Repatriation Commission](#) [2014] AATA 310; 16/5/2014; Senior Member BJ McCabe

VETERANS' AND MILITARY COMPENSATION – applicant diagnosed with generalised anxiety disorder – several accepted service-related conditions – requirement that applicant experienced chronic pain for at least six months prior to date of onset – no medical evidence of chronic pain during relevant period – reviewable decision 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
Sheldon v Repatriation Commission	[2014] AATA 228

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Avetmiss Easy Pty Ltd v Australian Skills Qualifications Authority	[2013] AATA 732	[2014] FCA 507 [2014] FCA 314
Evans v Secretary, Department of Social Services	[2013] AATA 944	[2014] FCA 491

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