



AAT Bulletin

ISSUE NO. 30/2014

4 AUGUST 2014

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.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

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

Contents

AAT Recent Decisions	2
Child Support	2
Compensation.....	2
Employment.....	3
Immigration and Citizenship	3
Social Security	3
Veterans' Affairs.....	4
Appeals	5
Appeals lodged	5
Appeals finalised.....	5

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 403; 23/6/2014; Senior Member N Isenberg

Percentage of care – Relevant period for determination – Factors relevant to the determination of actual care – Determination of new percentages of care in a period – Decision set aside

[Varley and Child Support Registrar](#) [2014] AATA 517; 29/7/2014; Senior Member RG Kenny

Deportation Prohibition Order (“DPO”) – No grounds requiring revocation of DPO – No grounds for exercising discretion to revoke DPO – Objects of the *Child Support (Registration and Collection) Act 1988* (Cth) – Use of the Child Support Guide – Decision under review affirmed

Compensation

[Fisher and Military Rehabilitation and Compensation Commission](#) [2014] AATA 530; 1/8/2014; Deputy President IR Molloy

Service in the Australian Regular Army – Claim for emphysema/chronic obstructive pulmonary disease due to cigarette smoking – No evidence that employment contributed to a significant degree to applicant’s disease – Decision under review affirmed

[Forster and Comcare](#) [2014] AATA 529; 31/7/2014; Senior Member BJ McCabe

Claims for permanent impairment and non-economic loss – Respondent previously accepted liability for work-related condition of musculoligamentous strain – Medical evidence does not support finding that applicant’s current symptoms attributable to her Work-related condition – Decision under review affirmed.

[Shorthouse and Military Rehabilitation and Compensation Commission](#) [2014] AATA 528; 31/7/2014; Deputy President IR Molloy

Military compensation – Whether s 19 or s 20 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) should be applied – Whether applicant incapacitated for work at time of discharge from Royal Australian Air Force – Decision under review affirmed

[Xardia and Comcare](#) [2014] AATA 487; 17/7/2014; Senior Member D Letcher, QC

Psychological injury – claimed acute reaction to stress – constitutional schizophrenia – no evidence directly relevant to facts of claim – employment did not make a material contribution to claimed injury – decision affirmed

Employment

[McBryde and Secretary, Department of Employment](#) [2014] AATA 434; 2/7/2014; Senior Member RG Kenny

Company in liquidation – Claim by employee for an advance under the *Fair Entitlements Guarantee Act 2012* (Cth) – Applicant’s brother a director of and employee of the company – On that basis, applicant excluded from making a claim – Decision under review affirmed

Immigration and Citizenship

[Zhang and Minister for Immigration and Border Protection](#) [2014] AATA 514; 28/7/2014; Dr P McDermott RFD, Senior Member

Application for citizenship by conferral – Whether applicant meets residence requirements – Whether applicant likely to reside in Australia – Whether ministerial discretion be exercised – Whether applicant has a close and continuing association with Australia – Decision under review affirmed

Social Security

[Austin and Secretary, Department of Social Services](#) [2014] AATA 516; 29/7/2014; Senior Member RG Kenny

Pensions, benefits and allowances – Settlement of compensation claim – Lump-sum compensation payment includes component referable to lost earnings and capacity to earn – Imposition of preclusion period – Use of Guide to Social Security Law – Special circumstances not established for part of settlement to be treated as not having been received – Preclusion period not shortened – Decision under review affirmed

[Confidential and Secretary, Department of Social Services](#) [2014] AATA 510; 25/7/2014; Miss EA Shanahan, Member

Pensions and allowances – carer allowance – incomplete medical assessment and carer’s questionnaire forms provided – no diagnosis of any medical condition – assessment relates to the intensity of the level of care not the intensity of the underlying medical condition if any – decision affirmed

[Grabovsky and Secretary, Department of Social Services](#) [2014] AATA 522; 31/7/2014; Deputy President RP Handley

Disability support pension – whether condition is permanent – whether condition fully treated and stabilised during the relevant period

PRACTICE AND PROCEDURE – medical evidence from outside the relevant period that the condition was intractable – whether Tribunal can consider evidence outside the relevant period in determining the correct and preferable decision

[Merhab and Secretary, Department of Social Services](#) [2014] AATA 512; 22/7/2014; Mr C Ermert, Member

Newstart Allowance – new decision under review – time limits for favourable determination – notices – decision affirmed

[Hmura and Secretary, Department of Social Services](#) [2014] AATA 525; 31/7/2014; Senior Member JF Toohey

Disability support pension – cancellation – multiple impairments – whether conditions fully diagnosed treated and stabilised – decision under review affirmed

[Ms C and Secretary, Department of Social Services](#) [2014] AATA 523; 31/7/2014; Senior Member J Toohey

Disability support pension – cancellation – impairment rating – further application – whether applicant qualified – decision concerning cancellation of pension affirmed – decision refusing application set aside

Veterans' Affairs

[Beezley and Repatriation Commission](#) [2014] AATA 495; 18/7/2014; Senior Member J Handley

Special Rate – applicant engaged in electroplating initially as a sole trader from 1980 – business incorporated in 1991 – Applicant and his wife were directors of the company until 11 May 2011 when it was placed into liquidation – applicant turned 65 on 23 May 2011 – claim for special rate pension made on 31 May 2011 – applicant paid income for month in advance from first week of May 2011 – the applicant completed orders between 11 and 19 May 2011, assisted the liquidator and attended the creditors meeting on 26 May 2011 – statutory responsibilities assisting the liquidator was not last paid work – applicant not prevented from continuing to undertake last paid work by war-caused injuries alone after turning 65 – decision under review affirmed

[Horn and Repatriation Commission](#) [2014] AATA 520; 29/7/2014; Dr P McDermott RFD, Senior Member and Dr GJ Maynard, Brigadier (Rtd), Member

Pensions and benefits – Widow's pension – Death of veteran – Death by dementia – Operational service – Statement of Principles concerning Alzheimer-type Dementia – Statement of Principles concerning Hypertension – 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

[Lamp and Repatriation Commission](#) [2014] AATA 506; 25/7/2014; Deputy President K Bean and Senior Member NA Manetta

Veterans' entitlements – Rate of disability pension – Special rate – Whether "alone test" satisfied – Decision under review varied.

[Thompson and Repatriation Commission](#) [2014] AATA 518; 29/7/2014; Dr P McDermott RFD, Senior Member and Dr GJ Maynard, Brigadier (Rtd), Member

Pensions and benefits – Widow's pension – Death of veteran – Death by hypertension – Operational service – Statement of Principles concerning Hypertension (Instrument No 63 of 2013) – 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

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
Duwai v Minister for Immigration and Border Protection & AAT	[2013] AATA 339
Kumar v Secretary, Department of Social Services	[2014] AATA 442
O'Donnell v K & S Freighters Pty Ltd	[2014] AATA 437

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
IOOF Holdings Ltd v Commissioner of Taxation & AAT	[2013] AATA 239	[2014] FCAFC 91 [2013] FCA 1189
Watkins v Repatriation Commission	[2011] AATA 918	[2014] FCA 787

© Commonwealth of Australia 2014



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](#). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <http://www.itsanhonour.gov.au/coat-arms/>.

Enquiries regarding the licence are welcome at aatweb@aat.gov.au.

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](#). Those terms provide that section 182A of the *Copyright Act 1968* applies.