



AAT Bulletin

ISSUE NO. 34/2014

1 SEPTEMBER 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.

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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.

Business Names Registration

[G C Swinburne and F J McFarlane and Australian Securities and Investments Commission and Child Psychology Services Pty Ltd \(Joined Party\)](#) [2014] AATA 602; 26/8/2014; Deputy President FJ Alpins

Business Names Registration Act 2011 (Cth) – whether business names “available” for registration – whether business names “identical or nearly identical” to business name registered to another entity – meaning of “nearly identical” – construction of legislative instrument made under Act – effect of provision granting power to use computer programs to make decisions on construction of Act and legislative instrument

Compensation

[Baker and Linfox Armaguard Pty Limited](#) [2014] AATA 597; 25/8/2014; Senior Member BJ McCabe

Accepted liability for injury sustained at work – Claims for permanent impairment and non-economic loss – Applicant claims he has lost use of fingers – No medical evidence to establish that injury prevents applicant from using his fingers – Decision under review affirmed

[Cunningham and Commonwealth Bank of Australia](#) [2014] AATA 607; 28/8/2014; Senior Member J Handley

Applicant suffered bilateral carpal tunnel syndrome, cervical degeneration, tendonitis and secondary psychiatric illness – work duties varied – whether injuries or diseases attributable to her employment – conflicting medical opinions – whether duties undertaken repetitively and rapidly – decision affirmed

[Hutchison and Comcare](#) [2014] AATA 588; 22/8/2014; Deputy President SD Hotop

Commonwealth employees – applicant suffered mental ailments – respondent accepted liability to pay compensation to applicant for "major depressive disorder – single episode" – respondent subsequently accepted liability to pay compensation to applicant for "post-traumatic stress disorder" – date on which applicant first suffered compensable mental injury – description of first compensable mental injury amended to “major depressive disorder” – decision under review varied

[McGree and Anor and Comcare](#) [2014] AATA 613; 28/8/2014; Deputy President K Bean

Commonwealth employees – Preliminary issue as to whether applicants continued or ceased to be employed by the Commonwealth for the purposes of subsection 8(10) of the *Safety, Rehabilitation and Compensation Act 1988* – Applicants transferred to State employment before being re-appointed to APS – Determination that applicants ceased to be employed by the Commonwealth

[Prain and Comcare](#) [2014] AATA 593; 22/8/2014; Senior Member RM Creyke

Commonwealth employee – injury to right knee travelling on public transport to Comcare-funded medical treatment – whether claim arose out of or in the course of employment – whether Comcare liable to pay compensation – decision under review affirmed

[Willis and Comcare](#) [2014] AATA 603; 27/8/2014; Senior Member BJ McCabe

Dispute concerning calculation of Normal Weekly Earnings – Respondent accepts liability for applicant’s injury – Applicant continues to work reduced hours – Respondent pays difference of current earnings and previous Normal Weekly Earnings – Effect of Higher Duties Allowance and Work Location Allowance on calculation – Reviewable decision affirmed

Practice and Procedure

[Mohammed and Secretary, Department of Employment](#) [2014] AATA 611; 14/8/2014; Deputy President SA Forgie

Application for extension of time – applicable principles – applicant could not satisfy eligibility criteria under *Fair Entitlements Guarantee Act 2012* – no prospects of success – application refused

[The Trustee for Oenoviva \(Australia & New Zealand\) Plant and Equipment Trust and Commissioner of Taxation](#) [2014] AATA 614; 28/8/2014; Senior Member E Fice

Standing – Joinder – Dismissal pursuant to s 42A of the AAT Act – Private hearing pursuant to s 14ZZE of the *Taxation Administration Act* – Taxation – Goods and Services Tax – Input Tax Credit – Creditable acquisition – Administrative penalties – Disqualification from managing a corporation – Trust Deeds

Social Security

[Davies and Secretary, Department of Social Services](#) [2014] AATA 604; 27/8/2014; Senior Member D Letcher, QC

Disability Support Pension – psychiatric impairment – whether condition “permanent” – whether condition fully diagnosed, treated and stabilised at relevant time – diagnosis for the purposes of Table 5 – “appropriately qualified medical practitioner” – clinical psychologist – decision under review affirmed

[Gupta and Secretary, Department of Social Services](#) [2014] AATA 586; 22/8/2014; Senior Member NA Manetta

Pensions, benefits and allowances – Disability Support Pension – whether conditions warranted 20 impairment points under one or more tables – continuing inability to work – program of support – whether applicant unable to work for 15 hours per week – decision under review affirmed

[Kelsey and Secretary, Department of Social Services](#) [2014] AATA 596; 25/8/2014; Professor R McCallum, Member

Youth Allowance – meaning of income – meaning of ordinary income – whether deferred annuity payments compensation – meaning of compensation – decision under review affirmed

[Kuloba and Secretary, Department of Social Services](#) [2014] AATA 605; 27/8/2014; Mr C Ermert, Member

Disability support pension – disabilities – Impairment Tables – diagnoses – corroborating evidence – fully diagnosed – fully treated – fully stabilised – decision affirmed

[Lewis and Secretary, Department of Social Services](#) [2014] AATA 598; 26/8/2014; Dr I Alexander, Member

Pensions – disability support pension – whether applicant's conditions were fully diagnosed, treated and stabilised – whether applicant's impairment is rated 20 points or more under the Impairment Tables – decision under review affirmed

[Lu and Secretary, Department of Social Services](#) [2014] AATA 608; 28/8/2014; Dr I Alexander, Member

Pensions – disability support pension – whether applicant's conditions were fully diagnosed, treated and stabilised – whether applicant's impairment is rated 20 points or more under the Impairment Tables – decision under review affirmed

[Manhire and Secretary, Department of Social Services](#) [2014] AATA 585; 22/8/2014; Senior Member RW Dunne

Pensions, benefits and allowances – claim for disability support pension rejected – physical, intellectual or psychiatric impairment – whether impairment rating of 20 points or more existed under the Impairment Tables – whether there was a "continuing inability to work" – reports of medical practitioners considered – Job Capacity Assessments conducted – decision under review affirmed

[O'Bryan and Secretary, Department of Social Services](#) [2014] AATA 590; 1/8/2014; Senior Member NA Manetta

Disability support pension – whether applicant has impairments totalling 20 points – whether return to work program by WorkCover sufficient program of support – decision under review affirmed.

[Polat and Secretary, Department of Social Services](#) [2014] AATA 609; 28/8/2014; Senior Member AK Britton

Disability Support Pension – Whether the Applicant's conditions were diagnosed, fully treated and stabilised – What rating should be assigned the Applicant's conditions under the impairment tables – Whether the Applicant suffers a "severe impairment" – Whether the Applicant has undertaken a program of support – Whether any exceptions apply to the Applicant in regards to undertaking a program of support

[Ridden and Secretary, Department of Social Services](#) [2014] AATA 599; 25/8/2014; Senior Member CR Walsh

Family tax benefit – arrears of family tax benefit – applicant's husband failed to lodge income tax returns on time – variation of instalment and past period entitlement determination where income tax return not lodged – no discretion to pay applicant arrears of family tax benefit – proof of letters having been sent by Commonwealth agencies – decision under review affirmed

Taxation

[GHP 104 160 689 Pty Ltd and Commissioner of Taxation](#) [2014] AATA 515; 29/7/2014; President D Kerr

Income taxation – deductions for research and development expenditure – applicant conducted plant trials in copper and lead concentrator and copper smelter – whether expenditure deductible at a premium rate – whether expenditure “research and development expenditure” – whether expenditure “feedstock expenditure”

STATUTES – interpretation – centrality of statutory text – defined words – statutory purpose to be found in statutory text rather than in any a priori assumptions based on policy

PRACTICE AND PROCEDURE – extrinsic materials – whether Tribunal may have regard to materials capable of assisting in the ascertainment of the meaning of a statutory provision that would be inadmissible in a court – Tribunal not bound by rules of evidence – importance of consistent statutory interpretation by courts and tribunals – regard had to rules of evidence in determining the admissibility of extrinsic aids to statutory interpretation

[Roesch and Commissioner of Taxation](#) [2014] AATA 595; 22/8/2014; Deputy President IR Molloy

Assessment of income – Asset betterment assessment – Shortfall penalty – Whether asset betterment error constitutes excessive assessment – Unaccounted expenditure – Excessive assessment not demonstrated – Whether intentional disregard of taxation law or recklessness

[ZGVK and Commissioner of Taxation](#) [2014] AATA 576; 19/8/2014; Deputy President SE Frost

Income tax – taxpayer lodges returns without deduction claims – claims later that significant deductions should be allowed – uncertainty around arrangements – objection decisions largely upheld

Veterans' Affairs

[Hopkins and Repatriation Commission](#) [2014] AATA 606; 27/8/2014; Senior Member RG Kenny

Veterans' Entitlements – Operational service and defence service with Australian Regular Army – Application of Statements of Principles – Diagnosis of Alzheimer-type dementia – Clinical onset – Reasonable hypothesis of relevant relationship to service raised – Not satisfied beyond reasonable doubt that Alzheimer-type dementia war-caused – Decision under review affirmed

[Martin and Repatriation Commission](#) [2014] AATA 600; 26/8/2014; Senior Member RG Kenny

Disability pension – Operational service with Royal Australian Navy – Application of Statement of Principles – Appropriate diagnosis of posttraumatic stress disorder and depressive disorder – Reasonable hypotheses of relationship to service raised – Not satisfied beyond reasonable doubt that psychiatric conditions not related to service – Posttraumatic stress disorder and depressive disorder war-caused – Decision under review set aside – Remittal of assessment to respondent

[Sheehan and Repatriation Commission](#) [2014] AATA 594; 22/8/2014; Dr M Denovan, Member

Service pension – Special rate of pension – Whether applicant ceased remunerative work for reasons other than his war-caused incapacity, intermediate rate – Whether war-caused injury or

disease is sole or substantial cause of applicant's inability to obtain work – Decision under review affirmed

[Tucker and Repatriation Commission](#) [2014] AATA 610; 28/8/2014; Senior Member RG Kenny

Veterans' Entitlements – Defence service with Australian Regular Army – Diagnosis of smoking related chronic bronchitis – Application of Statements of Principles – Not reasonably satisfied that smoking attributable to eligible war-service – 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
Yazbek & Anor v Commissioner of Taxation	[2014] AATA 423
MYVC v Director-General of Security & Minister for Foreign Affairs	[2014] AATA 511
Beezley v Repatriation Commission	[2014] AATA 495

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](#).

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 **22 September 2014**.

[Peripheral Neuropathy No. 74 of 2014](#)

[Peripheral Neuropathy No. 75 of 2014](#)

[Creutzfeldt-Jakob disease No. 76 of 2014](#)

[Creutzfeldt-Jakob disease No. 77 of 2014](#)

[Vascular dementia No. 78 of 2014](#)

[Vascular dementia No. 79 of 2014](#)

[Malignant neoplasm of unknown primary site No. 80 of 2014](#)

[Malignant neoplasm of unknown primary site No. 81 of 2014](#)

[Posttraumatic stress disorder No. 82 of 2014](#)

[Posttraumatic stress disorder No. 83 of 2014](#)

[Chronic lymphocytic leukaemia/small lymphocytic lymphoma No. 84 of 2014](#)

[Chronic lymphocytic leukaemia/small lymphocytic lymphoma No. 85 of 2014](#)

Amended Statements of Principles

The Tribunal has been advised that the Repatriation Medical Authority has made the following instruments amending the Statements of Principles for the specified conditions. They take effect from **22 September 2014**.

[Diabetes mellitus No. 88 of 2014](#)

[Diabetes mellitus No. 89 of 2014](#)

[Non-Hodgkin's Lymphoma No. 86 of 2014](#)

[Non-Hodgkin's Lymphoma No. 87 of 2014](#)

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