



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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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

[Cakany and Australian Postal Corporation](#) [2014] AATA 714; 1/10/2014; Senior Member G Ettinger

Employee of licensed corporation – injury suffered in 2012 – liability previously accepted for musculoskeletal strain of the lumbar spine – review of determination that applicant has no present entitlement to compensation pursuant to sections 16 and 19 of the SRC Act – decision affirmed

[Carson and Comcare](#) [2014] AATA 699; 25/9/2014; Senior Member NA Manetta

Travel expenses for treatment of severe dermatitis – treatment undertaken over a course of consecutive days – each day's attendance to be separately evaluated for its reasonableness – no single round trip exceeds 50 kilometres – no aggregation of trips permissible – decision affirmed

[Del Treppo and Comcare](#) [2014] AATA 711; 30/9/2014; Deputy President FJ Alpines

Commonwealth employees – weekly compensation payments for incapacity – transitional provisions of *Safety, Rehabilitation and Compensation Act 1988* (Cth) – effect of 65th birthday – reduction of payments to “former employee” – whether reduced payments correctly calculated – whether reduced payments to be indexed – whether estoppel against operation of provision reducing payments – whether any relief from reduction of payments on grounds of unfairness or financial hardship – decision under review affirmed

Tribunal's jurisdiction – review of decision affirming determination upon reconsideration – reviewable decision – whether Tribunal has jurisdiction in respect of periods not subject of reviewable decision – request for reconsideration of determination – characterisation of request for reconsideration

[Hall and Comcare](#) [2014] AATA 673; 29/5/2014; Senior Member AK Britton

Commonwealth employees – psychological injury – adjustment disorder – whether the injury was contributed to, to a significant degree, by the employee's employment by the Commonwealth – whether the injury was a result of reasonable administrative action taken in a reasonable manner – decision affirmed

[Leon and TNT Australia Pty Ltd](#) [2014] AATA 712; 30/9/2014; Senior Member BJ McCabe

Claim that psychiatric condition arose out of applicant's employment – contributing factors outside of workplace – finding that workplace stressors made significant contribution – reviewable decision set aside – respondent liable

[McClelland and Telstra Corporation Limited](#) [2014] AATA 719; 2/10/2014; Deputy President PE Hack SC

Compensation for incapacity – employees in receipt of lump sum benefit – whether ‘member contributions’ should be deducted from incapacity payments – whether applicant ‘required’ to make contributions initially – decision under review affirmed

Environment

[LMS Energy Pty Ltd and Clean Energy Regulator](#) [2014] AATA 709; 30/9/2014; Deputy President K Bean

STATUTES – interpretation – *Carbon Credits (Carbon Farming Initiative) Act and Regulations 2011* – calculation required under subsection 18(3) and regulation 2.5 – decisions under review affirmed

Freedom of Information

[Diamond and Chief Executive Officer of the Australian Curriculum, Assessment and Reporting Authority](#) [2014] AATA 707; 29/9/2014; Deputy President SA Forgie and Ms S Taglieri, Member

Request for NAPLAN and non-NAPLAN data held by ACARA – whether exemptions did not arise for consideration at all because threshold requirement of disclosure “under” the *Freedom of Information Act 1982* could not be met when data had already been publicly disclosed on My School website – consideration of “disclosure” – public interest conditional exemptions relating to Commonwealth-State relations and to proper and efficient conduct of an agency’s operations apply – conceded that, if conditionally exempt, access would be contrary to the public interest – access to documents refused – decision under review affirmed

WORDS AND PHRASES – document – identified through a number of factors including analysis of context, evidence and way in which information stored

Immigration and Citizenship

[AP and Minister for Immigration and Border Protection](#) [2014] AATA 706; 29/9/2014; Senior Member PW Taylor, SC

Citizenship by conferral – application refused – minor – child of Nepalese mother – father’s nationality uncertain – whether applicant is stateless – whether entitled to acquire foreign citizenship – decision affirmed

[Hussaini and Minister for Immigration and Border Protection](#) [2014] AATA 715; 30/9/2014; Senior Member CR Walsh

Citizenship by conferral – eligibility – general residence requirement – Applicant convicted of two offences less than one month before applying for Australian citizenship – Weapons Act offence – Road Traffic Act offence – “good character” requirement for Australian citizenship considered – offences “minor” under Australian Citizenship Instructions – Applicant of “good character” – decision under review set aside and substituted with decision that Applicant be granted Australian citizenship

Practice and Procedure

[Moroni and Secretary, Department of Social Services](#) [2014] AATA 704; 26/9/2014; Senior Member PW Taylor, SC

Extension of time application – explanation for delay – merits of substantive application – application refused

Social Security

[Aker and Secretary, Department of Social Services](#) [2014] AATA 708; 30/9/2014; Senior Member N Isenberg

Claim for baby bonus – Question as to identity of claimant on form – Relevant period for consideration – Whether Applicant or child Australian Residents at time of application – Child not resident in Australia at time of application – Applicant not eligible for Family Tax Benefit with respect to birth of child – No discretion to waive residence requirement – Decision under review affirmed

[Connley and Secretary, Department of Social Services](#) [2014] AATA 710; 30/9/2014; Senior Member AF Cunningham

Disability support pension – disc prolapse and frozen shoulder – required impairment rating of 10 points not satisfied – decision under review affirmed

[Coulter; Secretary, Department of Social Services and](#) [2014] AATA 695; 24/9/2014; Senior Member NA Manetta

Pensions, benefits and allowances – entitlement to Disability Support Pension – whether impairments 20 points under the Impairment Tables – continuing inability to work – program of support – decision set aside

[Kaley and Secretary, Department of Social Services](#) [2014] AATA 723; 3/10/2014; Mr M Hyman, Member

Pensions and benefits – newstart allowance – whether qualified – whether payable – documentation not supplied – appointment not booked – effect of partner's income – newstart allowance not payable – decision under review affirmed

[Kirvan and Secretary, Department of Social Services](#) [2014] AATA 721; 11/9/2014; Deputy President K Bean

Disability support pension – whether applicant actively participated in a program of support – Applicant completed TAFE course – consideration of Guidelines in Social Security (Requirements and Guidelines – Active Participation for Disability Support Pension) Determination 2011 – TAFE course not tailored to applicant's needs or circumstances – program of support requirement not satisfied – decision under review affirmed

[Mihri and Secretary, Department of Social Services](#) [2014] AATA 720; 2/10/2014; Senior Member D Letcher QC

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 – whether Applicant had a continuing inability to work – decision affirmed

[Spry and Secretary, Department of Social Services and Anor](#) [2014] AATA 722; 3/10/2014;
Senior Member CR Walsh

Disability support pension – applicant’s physical impairments (being diabetes and ischaemic heart disease) did not attract 20 points or more under the “Impairment Tables” on the date she claimed DSP or within 13 weeks thereafter – decision under review affirmed

[Taylor and Secretary, Department of Social Services](#) [2014] AATA 705; 26/9/2014; Mr M Hyman, Member

Application for disability support pension – claimant suffers from spinal condition and depression – whether spinal condition fully diagnosed, treated and stabilised – whether depression fully diagnosed, treated and stabilised – depression not fully treated – decision under review affirmed

[Westbrook and Secretary, Department of Social Services](#) [2014] AATA 700; 25/9/2014;
Senior Member NA Manetta

Age pension – review of varied decision taken by respondent – departmental decision to seek recovery of an alleged overpayment – wife’s income relevant to applicant’s pension entitlement overestimated – matter previously remitted to respondent under s 42D of the *Administrative Appeals Tribunal Act* – gross income – expenses incurred in the earning of income irrelevant – averaging over preceding 13 week period or over a full year – decision remitted to respondent for further minor recalculation

Transport

[Moore and Minister for Infrastructure and Regional Development](#) [2014] AATA 718;
30/9/2014; Senior Member S Penglis

Importation of motor vehicle not owned by the applicant while overseas for a continuous period of at least 12 months – discretion not exercised in favour of importation – turns on its own facts

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
Becker Vale Pty Ltd v Chief Executive Officer of Customs	[2014] AATA 625

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
GTMY v Minister for Immigration and Border Protection & Administrative Appeals Tribunal	[2014] AATA 340	NSD667/2014
Repatriation Commission v Richmond	[2013] AATA 421	[2014] FCAFC 124 [2014] FCA 272
Soames v Secretary, Department of Social Services	[2013] AATA 945	[2014] FCA 1054 [2014] FCA 295

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