



## 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

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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

[Barber and Military Rehabilitation and Compensation Commission](#) [2014] AATA 839; 7/11/2014; Deputy President SD Hotop

MILITARY COMPENSATION – applicant rendered "peacetime service" – applicant claimed for acceptance of liability for various conditions – respondent accepted liability for septicaemia but refused to accept liability for Crohn's disease, diverticular disease of the colon, nephrolithiasis, lung scarring, and malignant neoplasm of the thyroid gland – applicant's malignant neoplasm of the thyroid gland is a "service disease" for which respondent is liable – none of the other conditions is a "service injury" or a "service disease" for which respondent liable – decision under review varied

[Blade and Comcare](#) [2014] AATA 847; 12/11/2014; Senior Member BJ McCabe

Preliminary legal issue – applicable legislative scheme for assessment of permanent impairment – liability accepted for initial injuries sustained in 1970 – secondary conditions developed in 1995 and 2012 – changes to Commonwealth legislation – discreet injury – older legislation does not apply – section 24 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) applies.

[Hogan and Military Rehabilitation and Compensation Commission](#) [2014] AATA 841; 7/11/2014; Dr P McDermott RFD, Senior Member

Liability – Royal Australian Navy – RAN – Left shoulder condition – Subluxation acromioclavicular joint left shoulder – Left rotator cuff – Glenohumeral joint – Ailment or an aggravation contributed to in a material degree by employment – Respondent liable for injury under *Safety Rehabilitation and Compensation Act 1988* (Cth) – Decision varied – Matter remitted to Respondent for consideration of medical treatment for Applicant.

[Taranto and John Holland Pty Ltd](#) [2014] AATA 848; 12/11/2014; Senior Member G Ettinger

Whether condition is an injury – prior injuries and conditions – injuries not disclosed on pre-employment form – whether wilful and false representation – whether proposed surgery in relation to injury – whether surgery was reasonable to obtain in the circumstances – omission on pre-employment form does not constitute wilful and false representation – decisions under review affirmed

### Immigration and Citizenship

[Han and Minister for Immigration and Border Protection](#) [2014] AATA 846; 11/11/2014; Deputy President JW Constance

Citizenship by conferral – residence requirement – consideration of discretion in subsection 22(9) – whether an applicant’s spouse must also be an Australian citizen during the applicant’s periods of absence from Australia

Citizenship by conferral – residence requirement – consideration of discretion in section 22(9) – close and continuing association with Australia

## **Practice and Procedure**

[Taylor and Secretary, Department of Social Services](#) [2014] AATA 842; 10/11/2014; Senior Member N Isenberg

INTERLOCUTORY APPLICATION – application for extension of time to lodge application – whether it is reasonable in all the circumstances to extend time – reasons for delay – merits of the application – extension application refused

## **Social Security**

[Filonoff and Secretary, Department of Social Services](#) [2014] AATA 844; 11/11/2014; Professor R McCallum AO, Member

Carer Payment – whether claim for social security payment made – request for review more than 13 weeks after decision – date of entitlement – no early claim made – no power to back date payment – decision under review affirmed

[Greenwood and Secretary, Department of Social Services and Anor](#) [2014] AATA 843; 7/11/2014; Senior Member CR Walsh

Family Tax Benefit (FTB) – applicant and his ex-wife were “members of a couple” during the 2010/2011 financial year – applicant and his ex-wife were not “living separately and apart from one another on a permanent or indefinite basis” in the 2010/2011 financial year – applicant not entitled to FTB for 2010/2011 financial year – decision under review affirmed

[Strbac and Secretary, Department of Social Services](#) [2014] AATA 845; 11/11/2014; Senior Member JF Toohy

Disability support pension – back condition fully diagnosed treated and stabilised – 10 points – applicant to undergo surgery on shoulder – diagnosed but not fully treated and stabilised – depression diagnosed but not fully treated and stabilised – other conditions not fully treated and stabilised – decision under review affirmed

## **Veterans' Affairs**

[Gordon and Repatriation Commission](#) [2014] AATA 849; 12/11/2014; Senior Member BJ McCabe

Application for disability pension – applicant seriously injured in motor vehicle accident while travelling away from duty – no direct evidence establishing travel authorised – interpretation of ‘journey’ provisions – no wilful act – no serious breach of discipline – applicant not excluded from entitlement to pension.

[Hales and Repatriation Commission](#) [2014] AATA 850; 13/11/2014; Senior Member Dr P McDermott RFD

Disability pension – accepted conditions of Lumbar spondylosis, Bilateral sensorinerual hearing loss, Anxiety disorder, and Tinnitus – whether eligible for intermediate rate of pension – decision set aside and substituted – matter remitted to respondent to determine whether applicant entitled to Extreme Disablement Adjustment

[Hammal and Repatriation Commission](#) [2014] AATA 851; 14/11/2014; Senior Member N Isenberg

Whether Applicant's pension should be paid at partnered rate – whether there are special reasons – financial difficulties – health issues – no special reasons – decision under review affirmed

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## Appeals

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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

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CASE NAME	AAT REFERENCE
<b>Secretary, Department of Social Services v Vaneski</b>	<a href="#">[2014] AATA 728</a>
<b>Carson v Comcare</b>	<a href="#">[2014] AATA 699</a>

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### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Singh v Minister for Immigration and Border Protection &amp; AAT</b>	<a href="#">[2014] AATA 37</a>	WAD189/2014 <a href="#">[2014] FCA 598</a>

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