



## 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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### Contents

<b>AAT Recent Decisions</b> .....	<b>2</b>
Child Support .....	2
Compensation.....	2
Customs.....	3
Practice and Procedure .....	3
Social Security .....	3
Taxation .....	4
Veterans' Affairs.....	5
<b>Appeals</b> .....	<b>6</b>
Appeals lodged .....	6
Appeals finalised.....	6

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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.

### Child Support

[Confidential and Child Support Registrar and Anor](#) [2014] AATA 865; 21/11/2014; Senior Member JF Toohey

SHARED CARE – whether decision of Registrar should be revoked – conflicting evidence of parents – weight of the evidence favours mother’s claims – decision under review set aside and remitted to the respondent to calculate child support payable in accordance with this decision

[Confidential and Child Support Registrar and Anor](#) [2014] AATA 874; 25/11/2014; Ms S Taglieri, Member

Pattern of care – whether revocation of percentage of care correct – actual percentage of care determination applicable for teenager living away from parent

### Compensation

[Brough and Military Rehabilitation and Compensation Commission](#) [2014] AATA 879; 26/11/2014; Deputy President JW Constance

*Military Rehabilitation and Compensation Act 2004* – whether Applicant suffered a service injury – meaning of injury – disc bulge – whether injury resulted from occurrence that happened whilst rendering defence service – determination to be made to the reasonable satisfaction of the decision maker – decision set aside and substituted

*Military Rehabilitation and Compensation Act 2004* – permanent impairment – whether can consider previously non-accepted condition – assignment of impairment rating for loss of musculoskeletal function – decision set aside and remitted

[Coveney and Linfox Armaguard Pty Limited](#) [2014] AATA 882; 27/11/2014; Deputy President PE Hack SC

Whether injury arose out of, or in the course of, employment – medical evidence unreliable – decision under review affirmed

[Van Draanen and Military Rehabilitation and Compensation Commission](#) [2014] AATA 880; 26/11/2014; Senior Member BJ McCabe

Accepted diagnosis of applicant’s condition – dispute as to date of onset – characterisation of condition as ‘injury’ or ‘disease’ – medical evidence establishes date of onset in early 1990s – finding that condition is ‘disease’ – older legislation applicable – employment made material contribution to onset of disease – liability not excluded – decision under review set aside – decided in substitution respondent liable to compensate applicant for disease

[Wing and Military Rehabilitation and Compensation Commission](#) [2014] AATA 859; 20/11/2014; Deputy President K Bean

Military rehabilitation and compensation – claim for bronchiectasis which was diagnosed in 1966 – whether notice served and claim made within period required by 1930 Act – whether prejudice to the Commonwealth – whether mistake, absence from Australia or other reasonable cause – ignorance – decision under review affirmed

## Customs

[JM Gillies and Agencies Pty Ltd and Chief Executive Officer of Customs](#) [2014] AATA 868; 21/11/2014; Senior Member E Fice

Synthetic monofilament fishing lines – classification of goods – chapter 54 and chapter 95 – expert evidence by manufacturers of similar goods – application of the general rules of interpretation – use of chapter and section notes – reference to extrinsic materials – use of Explanatory Notes to the Harmonized Commodity Description and Coding System – statutory construction – tariff concession orders – interpretation of tariff concession orders – the stated use set out in an application for a TCO – tariff classification to which a TCO is keyed – the meaning of nylon yarn – decision affirmed

PRACTICE & PROCEDURE – withdrawal of concessions previously made – model litigant rules – whether estoppel applies to proceedings in the Tribunal

## Practice and Procedure

[Issa and Migration Agents Registration Authority](#) [2014] AATA 870; 24/11/2014; Senior Member G Ettinger

Application to stay decision of Office of Migration Agents Registration Authority – consideration of prospects of success at substantive hearing, public interest, disadvantages to the Applicant – procedural fairness – stay refused

[Zanbergs and Commonwealth Bank of Australia](#) [2014] AATA 866; 21/11/2014; Senior Member JF Toohey

EXTENSION OF TIME – factors to be considered – whether acceptable explanation for delay – whether applicant instructed solicitors to delay application – whether delay on part of solicitors sufficient reason to grant the extension – extension of time granted

## Social Security

[Butler and Secretary, Department of Social Services](#) [2014] AATA 875; 13/11/2014; Senior Member BJ McCabe

Disability Support Pension – whether Applicant has severe impairment – whether Applicant has continuing inability to work – no impairment attracting 20 point rating – no participation in a program of support – decision under review affirmed

[Confidential and Secretary, Department of Social Services and Anor](#) [2014] AATA 872; 25/11/2014; Ms S Taglieri, Member

Family Tax Benefit – whether payable for 14 week qualifying period – to mother of child who left without her consent – or actual carer due to special circumstances

[Drewett and Secretary, Department of Social Services](#) [2014] AATA 876; 26/11/2014; Senior Member NA Manetta and Professor P Reilly, Member

Pensions, benefits and allowances – claim for disability support pension – whether there is a "continuing inability to work" – whether 20 points – decision under review affirmed

[Gifford and Secretary, Department of Social Services](#) [2014] AATA 873; 21/11/2014; Senior Member CR Walsh

Disability support pension – lump sum compensation payment – 50% rule – lump sum preclusion period – "Special circumstances" discretion – it is appropriate to treat the payment of legal costs, including disbursements, as not having been made – decision under review set aside and substituted

[Jones and Secretary, Department of Social Services](#) [2014] AATA 885; 28/11/2014; Senior Member AF Cunningham

Disability support pension – applicant overseas – whether entitled to indefinite portability – no severe impairment – decision under review affirmed

[Nicol and Secretary, Department of Social Services](#) [2014] AATA 886; 28/11/2014; Senior Member BJ McCabe

Debt – whether the applicant was a member of a couple during the relevant period – financial aspects of relationship – nature of household – social aspects of relationship – any sexual relationship – nature of people's commitment to each other – decision set aside

[Piazza and Secretary, Department of Social Services](#) [2014] AATA 871; 13/11/2014; Senior Member BJ McCabe

Pensions – disability support pension – whether conditions are fully diagnosed, stabilised and treated – whether applicant's impairments are rated 20 or more points under the impairment tables – decision affirmed

## **Taxation**

[Byrt and Commissioner of Taxation](#) [2014] AATA 867; 21/11/2014; Deputy President PE Hack SC

INCOME TAX – assessment – sale of mining tenements – profits not declared as income – decision under review affirmed

[GHP 104 160 689 Pty Ltd and Commissioner of Taxation](#) [2014] AATA 869; 24/11/2014; President D Kerr

Income taxation – remission of shortfall interest charge – shortfall quantum agreed by parties – orders made in terms of short minutes of orders submitted by consent

[Hope and Commissioner of Taxation](#) [2014] AATA 877; 26/11/2014; Deputy President SA Forgie

Excess contributions tax – superannuation payments in 2009 financial year – excess contributions made – request for determination from Commissioner for reallocation of contributions to other tax year – whether special circumstances – no special circumstances

Jurisdiction – commissioner’s decision to refuse to make determination – rights of review for determination – substantive application decided

[The Trustee for the Confidential Trust and Commissioner of Taxation](#) [2014] AATA 878; 26/11/2014; Senior Member E Fice

Discretionary trust – minors as beneficiaries – tax on distribution to minors – low-income tax offset – prescribed person – excepted person – excepted income – excepted trust income – absolute vested interest in property of the trust

## **Veterans' Affairs**

[Jones and Repatriation Commission](#) [2014] AATA 887; 28/11/2014; Deputy President IR Molloy

Posttraumatic Stress Disorder – PTSD – alcohol dependence – alcohol use disorder – gastro-oesophageal reflux disease – smoking – whether connected to relevant service – hypothesis connecting the worsening of PTSD with service not reasonable – evidence incapable of establishing connection between smoking or alcohol dependence and relevant service – decisions of Commission under review affirmed

[Rokonayalewa and Repatriation Commission](#) [2014] AATA 881; 27/11/2014; Senior Member BJ McCabe

Accepted service-related orthopaedic conditions – applicant unable to exercise – morbid obesity – Statements of Principle concerning morbid obesity – excess caloric intake relative to energy output not related to applicant’s service – morbid obesity not connected to service – 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>Jensen v Military Rehabilitation and Compensation Commission</b>	<a href="#">[2014] AATA 807</a>
<b>Kelly v Australian Postal Corporation</b>	<a href="#">[2014] AATA 779</a>
<b>Luy v Minister for Immigration and Border Protection &amp; AAT</b>	<a href="#">[2014] AATA 23</a>
<b>Munswamy v Australian Postal Corporation</b>	<a href="#">[2014] AATA 757</a>

### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Civil Aviation Safety Authority v Marsh</b>	<a href="#">[2013] AATA 729</a>	<a href="#">[2014] FCA 1253</a>
<b>National Archives of Australia v Fernandes</b>	<a href="#">[2014] AATA 180</a>	<a href="#">[2014] FCAFC 158</a>

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