



## 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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## Statements of Principles

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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 **15 January 2014**.

**Morbid obesity No. 6 of 2014**

<http://www.comlaw.gov.au/Details/F2014L00022>

**Narcolepsy No. 7 of 2014**

<http://www.comlaw.gov.au/Details/F2014L00023>

**Narcolepsy No. 8 of 2014**

<http://www.comlaw.gov.au/Details/F2014L00025>

**Sick sinus syndrome No. 16 of 2014**

<http://www.comlaw.gov.au/Details/F2014L00024>

**Chronic fatigue syndrome No. 11 of 2014**

<http://www.comlaw.gov.au/Details/F2014L00013>

**Chronic fatigue syndrome No. 12 of 2014**

<http://www.comlaw.gov.au/Details/F2014L00015>

**Dental pulp and apical disease No. 3 of 2014**

<http://www.comlaw.gov.au/Details/F2014L00014>

**Dental pulp and apical disease No. 4 of 2014**

<http://www.comlaw.gov.au/Details/F2014L00009>

**Dermatomyositis No. 10 of 2014**

<http://www.comlaw.gov.au/Details/F2014L00011>

**Dermatomyositis No. 9 of 2014**

<http://www.comlaw.gov.au/Details/F2014L00008>

**Fibromyalgia No. 13 of 2014**

<http://www.comlaw.gov.au/Details/F2014L00016>

**Fibromyalgia No. 14 of 2014**

<http://www.comlaw.gov.au/Details/F2014L00018>

**Heart block No. 1 of 2014**

<http://www.comlaw.gov.au/Details/F2014L00007>

**Heart block No. 2 of 2014**

<http://www.comlaw.gov.au/Details/F2014L00005>

**Morbid obesity No. 5 of 2014**

<http://www.comlaw.gov.au/Details/F2014L00010>

**Sick sinus syndrome No. 15 of 2014**

<http://www.comlaw.gov.au/Details/F2014L00020>

## **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 **15 January 2014**.

**Alzheimer-type dementia No. 17 of 2014**

<http://www.comlaw.gov.au/Details/F2014L00026>

**Alzheimer-type dementia No. 18 of 2014**

<http://www.comlaw.gov.au/Details/F2014L00028>

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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.

### Civil Aviation

[Bolton and Civil Aviation Safety Authority](#) [2013] AATA 941; 23/12/2013; Deputy President PE Hack SC

Cancellation of medical certificates – Skull fracture – Extradural haemorrhage – Risk of posttraumatic seizures – Whether applicant meets medical standard – Whether applicant has safety-relevant condition – Whether applicant suffering from safety-relevant effects of head injury – Whether likely to endanger safety of air navigation – Decision set aside and substituted

### Compensation

[Applicant M and Comcare](#) [2013] AATA 946; 24/12/2013; Senior Member J Toohey and Dr M Couch, Member

Cervical spine – Fusion surgery – Agreed permanent impairment – Whether injury related to employment – Whether frank injury – Whether aggravation or acceleration of underlying degenerative disease – Tribunal satisfied applicant suffered injury in the course of his employment – Decision under review set aside – Matter remitted for assessment

[Armstrong and Military Rehabilitation and Compensation Commission](#) [2013] AATA 929; 20/12/2013; Senior Member BJ McCabe

Pensions and benefits – New injury not connected to service – Link between accepted injuries and requested assistance – Liability for travel costs – Limited expert medical opinion provided – Decisions under review affirmed

[Fisher and Military Rehabilitation and Compensation Commission](#) [2013] AATA 934; 23/12/2013; Senior Member RG Kenny

Service in the Australian Regular Army – Claim for chronic obstructive pulmonary disease due to cigarette smoking – No evidence to support relationship between smoking and service – Respondent not liable to pay compensation for incapacity or impairment – Decision under review affirmed

[Hooley and Comcare](#) [2014] AATA 6; 9/1/2014; Deputy President PE Hack SC

Normal weekly earnings – Whether normal weekly earnings include overtime component – Whether normal weekly earnings include enhanced responsibilities allowance component – Decision set aside and remitted

[Hunt and Comcare](#) [2013] AATA 931; 20/12/2013; Senior Member RM Creyke

Commonwealth Employees – Two claims – Adjustment disorder, irritable bowel syndrome, migraines and herpes zoster – Whether some conditions aggravated by employment – Whether contributed to by employment to a significant degree – Whether not compensable because due to reasonable administrative action conducted in a reasonable manner

[Magro and Comcare](#) [2013] AATA 938; 23/12/2013; Senior Member RM Creyke

Commonwealth Employees – Adjustment disorder – Whether the condition is an ailment – Whether contributed to by employment to a significant degree – Whether not compensable because due to reasonable administrative action undertaken in a reasonable manner – Decision under review affirmed

[Martinez and Comcare](#) [2013] AATA 949; 24/12/2013; Mr S Webb, Member

Psychological injury claim – Decision to reject the claim overturned by Tribunal at first hearing – Tribunal decision upset on appeal and remitted to be decided according to law – Meaning of ‘reasonable administrative action undertaken in a reasonable manner in respect of the employee’s employment’ – Disease a result of exclusionary factors – Decision affirmed

[Prater and Comcare](#) [2014] AATA 7; 9/1/2014; Senior Member RM Creyke

Commonwealth Employees – Shoulder injury – Injury claimed to be sustained when lifting bags – Whether injury arose out of or in the course of employment – Whether notification given ‘as soon as practicable’ – Decision set aside and substituted

[Rusten and Telstra Corporation Limited](#) [2014] AATA 8; 10/1/2014; Senior Member AK Britton

Osteoarthritis – Liability accepted

## **Freedom of Information**

[Nikjoo and Minister for Immigration and Border Protection](#) [2013] AATA 921; 20/12/2013; Senior Member AK Britton

Access and exemptions – Whether access to requested documents would found an action for breach of confidence – The iniquity principle – Application of section 22 of the *Freedom of Information Act 1982*

PRACTICE AND PROCEDURE – Recusal application – Apprehended bias and negligence– Application misconceived – Application refused

PRACTICE AND PROCEDURE – Summons — Grounds for refusing request to issue

## **Immigration and Citizenship**

[DGKQ and Minister for Immigration and Border Protection](#) [2014] AATA 4; 8/1/2014; Ms R Perton, Member

Cancellation of visa – character test – substantial criminal record – protection of Australian community – risk to the Australian community should the conduct be repeated – strength, duration and nature of ties to Australia – whether risk of future harm acceptable – exercise of discretion – decision under review affirmed

[Hoang and Minister for Immigration and Border Protection](#) [2013] AATA 932; 23/12/2013; The Hon B Tamberlin QC, Deputy President

BB Subclass 155 (Five Year Resident Return) visa – Cancellation – Character test – Substantial criminal record – Whether visa should be cancelled – Primary considerations – Other considerations – Decision set aside

## **Practice and Procedure**

[Liu and Australian Securities and Investments Commission](#) [2013] AATA 864; 3/12/2013, Senior Member J Redfern

Reinstatement – Dismissal for failure to comply with a direction – Applicant no longer represented – Whether there was an error – Application granted

[Peter and Secretary, Department of Social Services](#) [2014] AATA 2; 7/1/2014; The Hon RJ Groom AO, Deputy President

Extension of time – length of delay – prospects of success – substantive application lacking in merit – application to extend time refused

[Van and Secretary, Department of Social Services](#) [2013] AATA 951; 25/11/2013; Senior Member GD Friedman

Extension of time to lodge application for review – Application refused

## **Social Security**

[Bronson and Secretary, Department of Social Services](#) [2013] AATA 937; 23/12/2013; Senior Member RG Kenny

Pensions, Benefits and Allowances – Newstart allowance – Applicant not compliant with notification requirements – Failure to advise Centrelink of relevant income information – Overpayment raised – Debt due to the Commonwealth with no basis to write off or waive – Debt confirmed by Social Security Appeals Tribunal (SSAT) – Decision set aside by SSAT and remitted to respondent for recalculation of amount of debt in accordance with directions – Application for review by Administrative Appeals Tribunal lodged prior to variation of debt – Imposition of a 10% penalty – Decision under review affirmed

[Crockett and Secretary, Department of Social Services and Anor](#) [2013] AATA 928; 20/12/2013; Ms R Perton, Member

Family tax benefit – Shared care – Whether child chose not to come to parent – Whether parent entitled to payment for some weeks even though child not with him – Dispute over nature of notification of non-attendance – Decision affirmed

[Davis and Secretary, Department of Social Services](#) [2013] AATA 933; 23/12/2013; Senior Member RG Kenny

Pensions, benefits and allowances – Disability support pension – Relevant period for assessment – Physical impairment – Impairment Tables – Evidence of conditions being fully diagnosed, treated, stabilised and permanent – Overall impairment rating of 10 points – Qualifying requirements for disability support pension not met during the relevant period – Decision under review affirmed

[Guy and Secretary, Department of Social Services](#) [2013] AATA 943; 23/12/2013; Ms R Perton, Member

Age pension – Applicant married – Whether a member of a couple for the purposes of the *Social Security Act 1991* – Whether applicant should not be treated as a member of a couple – Total combined income exceeded eligibility requirements – Whether superannuation pension should be considered as part of husband's income – Decision affirmed

[Rees and Secretary, Department of Social Services](#) [2013] AATA 939; 23/12/2013; Deputy President PE Hack SC

Eligibility – Disability support pension – Whether condition fully diagnosed, treated and stabilised – Whether impairment rating of 20 points under impairment tables – Decision affirmed

[Tallboys and Secretary, Department of Social Services](#) [2013] AATA 950; 19/12/2013; Senior Member AF Cunningham

Disability support pension – Date of eligibility – Deemed claim – Contact made prior to written claim – Decision under review affirmed

## **Superannuation**

[Adiga and Australian Securities and Investments Commission](#) [2013] AATA 952; 12/12/2013; Senior Member PW Taylor SC

Statutory criteria for registration – Alternative interpretations proposed by applicant and registration authority – Authority preferring its proposed construction and determining that criteria not satisfied – No factual dispute – Authority's determination that criteria were not satisfied constituted a decision and was amenable to review – Decision under review affirmed

## **Taxation**

[Gutteridge and Commissioner of Taxation](#) [2013] AATA 947; 24/12/2013; Senior Member FD O'Loughlin

Small business relief – Whether discretionary trust controlled by a non-director of corporate trustee – Penalty – Decision set aside and substituted

[Mathoura Property Pty Ltd as Trustee for the Mathoura Property Trust](#) [2013] AATA 922; 20/12/2013; Deputy President FJ Alpines

Administrative penalties – False or misleading statement – Whether shortfall amount resulted from a failure to take reasonable care – Voluntary disclosure – Whether remission of penalty warranted – *Taxation Administration Act 1953* (Cth), ss 284–75, 284–90, 284–225 and 298–20 of Schedule 1 – Decision under review varied

[PNGR and Anor and Commissioner of Taxation](#) [2013] AATA 942; 23/12/2013; Senior Member BJ McCabe

Income tax – Assessable income – Tobacco distribution business – Real property assets – Whether under-reporting of assessable income – Lack of evidence of source of income – Whether fraud or evasion – Imposition of penalties – Objection decisions under review affirmed

[Simon Harland as Trustee for the PCS Global Discretionary Trust and Commissioner of Taxation](#) [2013] AATA 930; 20/12/2013; Deputy President SA Forgie

GOODS AND SERVICES TAX – Whether meets criteria for an input tax credit – Whether acquisition and supply of rights under contract – Entity claiming input tax credit not party to contract – Whether consideration – Assessment of penalty – Objection decisions affirmed

PRACTICE AND PROCEDURE – Applications for review – Whether an application to Tribunal for review of objection decision reviewing objections to separate assessments or decisions should be regarded as a separate application for review of separate objection decision relating to separate assessments or decisions

[XTJT and Commissioner of Taxation](#) [2013] AATA 936; 23/12/2013; Deputy President IR Molloy

Assessment of income – Whether deductions incurred in carrying on business – Whether deductions incurred in gaining or producing assessable income – Objection decisions affirmed

[Yeates and Commissioner of Taxation](#) [2014] AATA 10; 10/1/2014; Senior Member D Letcher QC

Income Tax – Allowable deductions – Whether deductions for outgoings of a private or domestic nature – Whether expenditure on travel between home and workplace an allowable deduction – Administrative penalty – Discretion to remit the penalty – Decision under review affirmed

[YPFD and Commissioner of Taxation](#) [2014] AATA 9; 10/1/2014; Senior Member G Ettinger

Whether the Applicant is in the business of letting rental properties – Deductibility of items claimed – Difficulties with substantiation – Objection decision affirmed in part

## **Veterans' Affairs**

[Hutton and Repatriation Commission](#) [2013] AATA 940; 23/12/2013; Senior Member BJ McCabe

Pensions and benefits – Widow's pension – Kind of death of veteran war caused – Level and history of salt intake – Decision under review set aside and remitted



[Ralph and Repatriation Commission](#) [2013] AATA 948; 24/12/2013; Ms R Perton, Member

Pension at special rate – Whether war caused conditions alone cause of inability to work – Claim lodged shortly after applicant’s 65th birthday – Whether applicant still working after 65th birthday – Whether 10 years of work in same field as employee or contractor – 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>Tran v Minister for Immigration and Border Protection &amp; AAT</b>	<a href="#">[2012] AATA 384</a>
<b>Deslandes v Repatriation Commission</b>	<a href="#">[2013] AATA 800</a>
<b>Sunesis Pharmaceuticals Inc &amp; Millenium Pharmaceuticals Inc v Commissioner of Patents</b>	<a href="#">[2013] AATA 858</a>
<b>Williams v Minister for Immigration and Border Protection &amp; AAT</b>	<a href="#">[2013] AATA 923</a>
<b>Kamali v Minister for Immigration and Border Protection &amp; AAT</b>	<a href="#">[2012] AATA 368</a>

### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>National Australia Bank v Georgoulas</b>	<a href="#">[2013] AATA 512</a> <a href="#">[2013] AATA 553</a>	<a href="#">[2013] FCA 1412</a>
<b>Watsford v Commissioner of Taxation</b>	<a href="#">[2012] AATA 815</a>	<a href="#">[2013] FCA 1389</a>

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