



## 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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Enquiries regarding this publication may be directed to [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

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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

[McCarthy and Military Rehabilitation and Compensation Commission](#) [2014] AATA 83; 21/2/2014; Deputy President RP Handley

Transitional provisions – whether notice of injury given as soon as practicable according to *Commonwealth Employees' Compensation Act 1930* – injury reported to the Sick Bay – particulars of notice recorded on medical record

Transitional provisions – whether failure to make a claim within six months the result of mistake or reasonable cause – ignorance of the right to make a claim not reasonable cause

Claim for injury arising out of medical treatment – Commonwealth not liable for knee injury – not liable to pay compensation for osteoarthritis arising from an operation to treat that injury – decision under review affirmed

[Morales and Australian Postal Corporation](#) [2014] AATA 82; 21/2/2014; Senior Member J Handley and Dr K Breen, Member

Applicant engaged in heavy manual work over 18-year period with the respondent – diagnosis of L4/5 disc protrusion – employment materially contributed to the injury – applicant incapacitated – respondent did not take reasonable steps to provide suitable employment – respondent liable and applicant entitled to compensation – applicant has a permanent impairment of 11% under Table 9.17 – decisions set aside

[Ting and Comcare](#) [2014] AATA 85; 21/2/2014; Deputy President RP Handley

Definition of disease – ailment – mental disorder – must be outside the boundaries of normal mental functioning and behaviour – contributed to a significant degree by employment

Definition of injury – excludes diseases or injuries resulting from reasonable administrative action taken in a reasonable manner – management of an employee's performance generally reasonable – reasonable manner – consideration of the particular circumstances of the individual – administrative action not taken in a reasonable manner

### Immigration and Citizenship

[El-Masri and Minister for Immigration and Border Protection](#) [2014] AATA 75; 19/2/2014; Senior Member G Ettinger

Australian Citizenship application – Failure to satisfy character grounds – Applicant subject to good behaviour bond – Tribunal prohibited from approving application due to good behaviour bond still on foot – Decision under review affirmed

[Hamo and Minister for Immigration and Border Protection](#) [2014] AATA 77; 10/2/2014;  
Deputy President JW Constance

Good character – overseas penal clearance – decision under review affirmed

[Tawhi and Minister for Immigration and Border Protection](#) [2014] AATA 74; 18/2/2014;  
Deputy President SD Hotop

Visa – cancellation of visa – applicant a citizen of New Zealand – applicant has lived in Australia from December 2009 when aged 23 years – applicant convicted of sexual offences against child aged 11 in 2012 – applicant sentenced to 4 years' imprisonment – applicant does not pass character test – discretion to cancel visa – primary consideration of protection of Australian community outweighs other relevant primary considerations and other relevant considerations – risk of future serious harm to Australian community by applicant unacceptable – preferable decision is that visa be cancelled – decision under review affirmed

## **Practice and Procedure**

[Kann and Decision Maker](#) [2014] AATA 73; 14/2/2014; Mr S Webb, Member

Jurisdiction – Defence service terms and conditions – rent allowance determination – Defence redress of grievance procedure – no jurisdiction

[Taylor and Military Rehabilitation and Compensation Commission](#) [2014] AATA 78;  
20/2/2014; Senior Member RM Creyke

COMPENSATION – extension of time – two delays in application – significant delay of time between injury and decision – delay between decision and appeal – extension of time granted

## **Social Security**

[Budisa and Secretary, Department of Social Services](#) [2014] AATA 79; 20/2/2014; Senior Member JF Toohey

Disability support pension – multiple impairments – whether conditions fully diagnosed treated and stabilised – decision under review affirmed

[Flatley and Secretary, Department of Social Services](#) [2014] AATA 84; 21/2/2014;  
Dr P McDermott RFD, Senior Member

Pensions, benefits and allowances – Disability support pension – Whether 20 impairment points – Whether continuing inability to work – Applicant did not participate in program of support – Decision affirmed

[Gobin and Secretary, Department of Social Services](#) [2014] AATA 76; 19/2/2014; Senior Member RM Creyke

Age pension – pension bonus scheme – partnered verses single rates – calculation of pension bonus – means testing

[Pelka and Secretary, Department of Social Services](#) [2014] AATA 81; 21/2/2014; Senior Member G Ettinger

Pensions – disability support pension – whether Applicant has conditions which have been diagnosed, treated and stabilised within the requisite period – whether Applicant's impairment is rated 20 points or more under the Impairment Tables – decision under review affirmed

[Thorne and Secretary, Department of Social Services](#) [2014] AATA 72; 18/2/2014; Ms S Taglieri, Member

Cancellation of disability support pension following review – Osteoarthritis of back and lower limbs, diabetes, with complication of peripheral neuropathy – Impairment points available under Impairment Tables operating after 1.1.12 – Whether continuing inability to work satisfied – Decision under review affirmed

## **Veterans' Affairs**

[Ipson and Repatriation Commission](#) [2014] AATA 67; 14/2/2014; Senior Member RG Kenny

Pensions and benefits – Service in Australia as Ammunition Examiner with Australian Army – Danger not incurred by hostile forces of the enemy – Qualifying service for service pension not rendered – 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>The Study and Prevention of Psychological Diseases Foundation Inc v Commissioner of Taxation</b>	<a href="#">[2013] AATA 919</a>
<b>Smith v Comcare</b>	<a href="#">[2014] AATA 28</a>

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### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Preston Super Access Pty Ltd v Australian Trade Commission</b>	<a href="#">[2013] AATA 537</a>	NSD1774/2013 <a href="#">[2013] FCA 1450</a>
<b>Cao v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs</b>	<a href="#">[2013] AATA 591</a>	<a href="#">[2014] FCA 52</a>
<b>Kennedy v Comcare</b>	<a href="#">[2013] AATA 696</a>	<a href="#">[2014] FCA 82</a>
<b>Dickinson v Commissioner of Taxation</b>	<a href="#">[2013] AATA 25</a>	<a href="#">[2014] HCATrans 27</a> <a href="#">[2013] FCAFC 99</a>
<b>Onorato v Comcare</b>	<a href="#">[2013] AATA 383</a>	ACD70/2013
<b>Nelson v Commissioner of Taxation</b>	<a href="#">[2012] AATA 579</a>	<a href="#">[2014] FCA 57</a>

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## Jurisdiction and legislative changes

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This section of the Bulletin provides a summary of legislative changes that affect the AAT, including changes to the AAT's jurisdiction to review decisions. Information about the AAT's jurisdiction can also be found on the [AAT website](#).

### New Norfolk Island jurisdiction

The [\*Administrative Appeals Tribunal Amendment \(Norfolk Island Land Valuation Decisions\) Regulation 2014\*](#) (Norfolk Island Regulations) has amended the *Administrative Appeals Tribunal Regulations 1976* (AAT Regulations) in relation to the AAT's Norfolk Island jurisdiction. The amendments were approved by the Governor-General on 17 February 2014 and commenced on 20 February 2014, the day after they were registered on the Federal Register of Legislative Instruments.

The Norfolk Island Regulations has amended the AAT Regulations by:

- listing in Schedule 4, the Norfolk Island *Land Valuation Act 2012*, to provide that the AAT now has jurisdiction to review decisions made under subsection 79(1) of that Act, and
- removing all references to the Norfolk Island 'executive member' and replacing them with 'Minister' for consistency with terminology in Norfolk Island legislation.

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