



## AAT Bulletin

ISSUE NO. 10/2014

17 MARCH 2014

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

[Confidential and Comcare](#) [2014] AATA 134; 12/3/2014; Senior Member J Toohey

Psychological condition – complaint of bullying, harassment and victimisation – diagnosis of condition – whether applicant's employment contributed to a material degree – whether employment contributed to a significant degree – classification of applicant's position – reasonable administrative action – decision under review affirmed

[Gibson and Military Rehabilitation and Compensation Commission](#) [2014] AATA 135; 13/3/2014; Deputy President S Hotop

Commonwealth employee – member of Defence Force – applicant served in Army from 1968 to 1971 – applicant smoked cigarettes during service – applicant continued to smoke cigarettes until 1993 – applicant contracted oral cancer in 2002 – applicant's oral cancer caused by cigarette smoking – applicant's cigarette smoking not causally related to service or performance of duties as member of Defence Force – applicant's oral cancer not contributed to in material degree by service or performance of duties as member of Defence Force – applicant's oral cancer not a compensable injury – decision under review affirmed

[Kaur and Comcare](#) [2014] AATA 127; 10/3/2014; Deputy President RP Handley and Dr W Isles, Member

Lumbar injury – whether the applicant continues to suffer the effects of an injury – current symptoms not the result of the injury for which liability was accepted – decision affirmed

[Nunez and Australian Postal Corporation](#) [2014] AATA 125; 7/3/2014; Senior Member D Letcher QC

Liability accepted for psychological injury – rehabilitation program – refusal and failure to recommence work – failure to follow program – compensation suspended – reasonable excuse – intention to return to work – reasonable belief in views expressed by medical experts – decision set aside and substituted

[Turton and Australian Postal Corporation](#) [2014] AATA 138; 14/3/2014; Senior Member N Bell and Dr I Alexander, Member

Commonwealth Employees – whether applicant suffered a new injury to her left foot – whether injury an aggravation of a pre-existing condition – whether employment contributed to aggravation of pre-existing condition - tibialis tendon dysfunction – decision under review set aside

## Immigration and Citizenship

[Naughton and Minister for Immigration and Border Protection](#) [2014] AATA 140; 14/3/2014; Senior Member RM Creyke

General residence requirement – inadequate number of days in Australia to meet legislative requirements – spouse deceased – Ministerial discretion – whether close and continuing relationship with Australia – decision under review affirmed

[Zhang and Minister for Immigration and Border Protection](#) [2014] AATA 136; 13/3/2014; Senior Member J Toohey and Professor R McCallum, Member

Whether applicant of good character – offences committed on one day – good behaviour bonds imposed – Tribunal satisfied offences out of character – Tribunal satisfied applicant of good character – decision under review set aside

## Practice and Procedure

[Kowalski and Repatriation Commission](#) [2014] AATA 141; 14/3/2014; Deputy President SA Forgie

Estoppel – whether Tribunal estopped from making a determination inconsistent with an earlier decision of the Veterans' Review Board – not estopped

Frivolous or vexatious application – whether application frivolous or vexatious – meaning of those terms – identification of principles relevant to determining whether frivolous or vexatious and whether application should be dismissed on that basis and whether a direction should be made that the applicant not make a subsequent application without leave – application dismissed and direction made in relation to certain applications

Frivolous or vexatious application – application of a party to the proceedings for a direction that an applicant must not make a further application without leave – whether application must be made in writing – no requirement that it be made in writing – no prescribed form if made in writing – oral application made

[Menz and Border Express](#) [2014] AATA 124; 6/3/2014; Senior Member RM Creyke

COMPENSATION – whether Tribunal had jurisdiction – oral decision – request for reasons – several matters – whether all aspects of those matters already dealt with by the Tribunal – whether matter dismissed in error – Tribunal reinstated one issue under *Administrative Appeals Tribunal Act 1975* (Cth) s 42A(10)

[Presneill and Civil Aviation Safety Authority](#) [2014] AATA 142; 14/3/2014; Member Mr S Webb

Extension of time to lodge an application for review of a decision imposing restrictions under a medical certificate – original decision fixed in time – sequential decision making – restrictions lifted by subsequent decision – standing where interests not presently affected – determination of application for review can have no practical effect – proceedings futile – collateral purpose – meaning of 'frivolous or vexatious' – role of Tribunal when reviewing a decision – test of 'reasonable in all the circumstances' – extension not granted

[Soames and Secretary, Department of Social Services](#) [2014] AATA 133; 7/2/2014; Senior Member AK Britton

Extension of time application – no prospects of success – application refused  
Recusal application – actual bias and apprehended bias – application refused

## **Social Security**

[Halls and Secretary, Department of Social Services](#) [2014] AATA 129; 10/3/2014; Senior Member J Toohey and Professor McCallum, Member

Carer payment – cancellation – meaning of constant care – whether applicant has constant care of his son – decision under review set aside

[Hrnjicek and Secretary, Department of Social Services](#) [2014] AATA 130; 11/3/2014; Senior Member D Letcher QC

Pensions – disability support pension – whether applicant's impairment is of 20 points or more under the Impairment Tables – whether the applicant had a continuing inability to work – decision affirmed

[Kearns and Secretary, Department of Social Services](#) [2014] AATA 126; 7/3/2014; Senior Member RG Kenny

Pension Bonus Scheme – work test – accruing and non-accruing membership – gainful employment – acceptance of late registration – application for pension bonus out of time – no special circumstances to justify extension of time – decision affirmed

[Krivoshev and Secretary, Department of Social Services](#) [2014] AATA 132; 12/3/2014; Senior Member D Letcher QC

Disability Support Pension – physical impairment – whether condition permanent – whether condition fully diagnosed, treated and stabilised at relevant time – impairment tables – decision under review affirmed

[Thomas and Secretary, Department of Social Services](#) [2014] AATA 131; 11/3/2014; Mr P Wulf, Member

Newstart Allowance – undeclared income – income declared during incorrect periods – failure to declare full amount of income earned – recovery of overpayments – whether overpayments recoverable – whether special circumstances justify waiver of debt – no special circumstances – recoverable without penalty as mistakes made in good faith – decision under review affirmed

## **Taxation**

[Executor for the late Joan E Osborne and Commissioner of Taxation](#) [2014] AATA 128; 10/3/2014; Professor R Deutsch, Deputy President

Income tax – whether taxpayer was carrying on a business of share trading – consideration of factors indicative of a business being conducted – decision under review affirmed

## Veterans' Affairs

[Needs and Repatriation Commission](#) [2014] AATA 143; 14/3/2014; Deputy President PE Hack SC

Dementia – whether war caused – whether moderate to severe cerebral trauma – whether external force

[Reid and Repatriation Commission](#) [2014] AATA 137; 13/3/2014; Senior Member GD Friedman

Veterans' entitlements – major depressive disorder – back pain – whether defence-caused – whether eligible for pension at special rate – decision set aside and substituted

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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>SQNR v Minister for Immigration and Border Protection &amp; AAT</b>	<a href="#">[2014] AATA 16</a>
<b>Singh v Minister for Immigration and Border Protection &amp; AAT</b>	<a href="#">[2014] AATA 37</a>

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### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Comcare v Dunstan</b>	<a href="#">[2013] AATA 402</a>	<a href="#">[2014] FCAFC 21</a>

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