



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.

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AAT Recent Decisions

The following decisions were recently delivered by the Tribunal. The Library compiles this list. If the decision is to be summarised, this will be noted. Click on the links for direct access to the full text of the decision.

Recent decisions can also be viewed on the [AAT website](#).

Business Name Registration

[Smith and Australian Securities and Investments Commission and Ameer Donohoe trading as Central Coast Surf Academy \(Joined Party\)](#) [2014] AATA 192, 7/4/2014, Senior Member BJ McCabe

Objection to registration of business name – availability of business names that are identical or nearly identical – comparison of ‘academy’ and ‘school’ – legislation provides precise and exhaustive list of names that are identical or nearly identical – decision under review affirmed.

Child Support

[Parent A and Child Support Registrar and Anor](#) [2014] AATA 199; 4/4/2014; Mr S Webb, Member

Percentage of care – care period – pattern of care – actual care of child over 16 – factors relevant to the determination of actual care – change in pattern of care – determination of new percentages of care in a period – decision varied

Compensation

[Dunstan and Comcare](#) [2014] AATA 208; 10/4/2014; Mr S Webb, Member

Incapacity for work – amount able to earn – normal weekly earnings – suspension from duty without pay – incarceration pending trial – deemed leave of absence without pay – continuity of employment – reduction of NWE – hardship payments to be taken into account as earnings – lump sum annual performance pay – component included in superannuation salary – no effect on ongoing earnings – lump sum productivity pay rise after termination of employment not payable – decision affirmed

[Klaus and Telstra Corporation Limited](#) [2014] AATA 200; 9/4/2014; Senior Member JL Redfern

Claim for cost of medical treatment – whether treatment in respect of accepted workplace injury – decision set aside

[Mackay and Australian Postal Corporation](#) [2014] AATA 201; 9/4/2014; Senior Member BJ McCabe

Ankle injury – claim for incapacity – claim for permanent impairment – no medical evidence connecting symptoms to accepted workplace injuries – decision affirmed

Immigration and Citizenship

[Apire and Minister for Immigration and Border Protection](#) [2014] AATA 193; 4/4/2014; Mr S Webb, Member

Permanent resident – application for citizenship – character test – multiple minor driving offences – pattern of offending behaviour – disregard for the law – not a long period since last offence – decision affirmed

[Nicholls and Minister for Immigration and Border Protection](#) [2014] AATA 196; 8/4/2014; Senior Member RW Dunne

Sub class 801(Partner) visa – permanent resident – application for Australian citizenship by conferral – applicant married to an Australian citizen – applicant does not meet general residence requirement – application of Australian Citizenship Instructions – whether the applicant had, and will maintain, a close and continuing association with Australia – decision under review affirmed

[Sauvao and Minister for Immigration and Border Protection](#) [2014] AATA 170; 28/3/2014; The Hon BJM Tamberlin QC, Deputy President

Visa cancellation – failure to pass character test – substantial criminal record – discretion to cancel applicant's visa – Ministerial Direction No 55 – seriousness and nature of the relevant conduct – the risk conduct may be repeated – best interests of minor children – decision under review set aside and substituted

Practice and Procedure

[Fernandes and National Archives of Australia](#) [2014] AATA 198; 8/4/2014; President D Kerr

Archives Act 1983 s 55A – automatic stay of Tribunal's decision on institution of appeal to Federal Court

Application by respondent for extension of date on which decision is to come into operation after Tribunal decision favourable to applicant and publication of reasons but before expiration of extension or of appeal period – whether Tribunal has power to grant further extension – power of Tribunal to re-exercise a power as the occasion requires – particular legislative context – application for further extension unopposed – stay extended by Tribunal

Social Security

[Barnes and Secretary, Department of Social Services](#) [2014] AATA 204; 9/4/2014; Senior Member RM Creyke

Application for disability support pension barred by compensation preclusion period – whether compensation preclusion period properly imposed – whether there are special circumstances to shorten preclusion period – decision set aside and varied

[Bloch and Secretary, Department of Social Services](#) [2014] AATA 212; 11/4/2014; Senior Member N Isenberg

Pensions – disability support pension – physical impairment – permanent conditions – whether the Applicant had an impairment rating of 20 points or more under the impairment tables – whether the Applicant had a “continuing inability to work” – decision under review set aside

[Byrnes and Secretary, Department of Social Services](#) [2014] AATA 197; 4/4/2014; Mr S Webb, Member

Disability Support Pension – lump sum compensation – compensation preclusion period – change in circumstances – reduced financial capacity to provide for future needs

[Jamieson and Secretary, Department of Social Services](#) [2014] AATA 211; 10/4/2014; Senior Member AF Cunningham

Disability support pension – assets test – meaning of principal home – duplex units – assets limit exceeded – overpayment – waiver considered – decision remitted to Secretary for recalculation of debt

[Karabatsos and Secretary, Department of Social Services](#) [2014] AATA 213; 11/4/2014; Senior Member N Isenberg

Pensions – disability support pension – irritable bowel syndrome – whether the applicant had an impairment rating of 20 points or more under the impairment tables – whether the applicant had a “continuing inability to work” – decision under review set aside

[Lin and Secretary, Department of Social Services](#) [2014] AATA 194; 9/4/2014; Senior Member D Letcher QC

Newstart Allowance – request for information – suspension of payment – failure to comply ‘without reasonable excuse’ – unexplained cash deposits – decision under review affirmed

[McGuinness and Secretary, Department of Social Services](#) [2014] AATA 202; 8/4/2014; Mr S Webb, Member

Disability Support Pension – impairments – requirement for 20 or more impairment points not satisfied – decision affirmed

[McManus and Secretary, Department of Social Services and Anor](#) [2014] AATA 206; 10/4/2014; Senior Member N Isenberg

Family Tax Benefit – percentage of care – shared care – care period – change in care – decision under review set aside

[Spasic and Secretary, Department of Social Services](#) [2014] AATA 203; 8/4/2014; Mr S Webb, Member

Disability Support Pension – impairments – requirement for 20 or more impairment points not satisfied – decision affirmed

[Richards and Secretary, Department of Social Services](#) [2014] AATA 209; 10/4/2014; Miss EA Shanahan, Member

Carer allowance – worker’s compensation periodic payments – payment of weekly earnings for six weeks for period in 2011 – impact, if any, of working credits – applicant’s reliance on Centrelink advice – applicant has multiple Centrelink registration numbers (CRNs) – data from one CRN provided – remitted for reconsideration – decision under review affirmed

[Wilks and Secretary, Department of Social Services](#) [2014] AATA 195; 4/4/2014; Mr S Webb, Member

Age Pension – rate calculator – member of a couple – ordinary income – income free area – ordinary income excess amount – ordinary income excess reduction factor – published information ambiguous but not binding – decision affirmed

Superannuation

[Dominic B Fishing Pty Ltd and Commissioner of Taxation](#) [2014] AATA 205; 10/4/2014; Senior Member BJ McCabe

SUPERANNUATION – Employee contributions – relationship between commercial fisher and crew members – whether contract of service or contract for service – limited direction and supervision – crew members conducting own independent businesses – contract not wholly or principally for labour of crew members – crew members not employees for purposes of legislation – objection decision set aside

Taxation

[Hulsen and Commissioner of Taxation](#) [2014] AATA 190; 4/4/2014; Senior Member RG Kenny

Taxation liability – release – whether payment of tax liability would cause serious hardship – factors relevant to exercise of discretion – decision affirmed

Veterans' Affairs

[Fraser and Repatriation Commission](#) [2014] AATA 191; 7/4/2014; Senior Member RG Kenny

Benefits and entitlements – disability pension – operational service with Australian Regular Army – claim for trigger finger – no applicable Statement of Principles – no reasonable hypothesis of relationship to service – condition not war-caused – entitlement decision under review affirmed – disability pension payable at 100% of general rate – eligibility for intermediate or special rate of pension – incapacity from war-caused conditions not sufficient, alone or substantially, to prevent undertaking remunerative work for more than 20 hours or 8 hours per week, respectively – neither intermediate nor special rate payable – use of Guide to the Assessment of Rates of Veterans' Pensions – lifestyle rating less than 6 – extreme disablement adjustment not made – assessment decision under review affirmed

[Kawicki and Repatriation Commission](#) [2014] AATA 207; 10/4/2014; Deputy President RP Handley

Special Rate of pension – whether accepted conditions alone render incapable of continuing to undertake remunerative work – non-accepted condition of Blip Syndrome a factor in incapacity to work – not qualified for the Special Rate of pension

General Rate of pension – level of incapacity – GARP assessment – combined impairment rating of 60 – lifestyle rating of 4 – entitled to 100% of the General Rate of pension – decision varied

Appeals

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

CASE NAME	AAT REFERENCE
Australian Postal Corporation v Nunez	[2014] AATA 125
Cremona v AAT & Secretary, Department of Families, Housing, Community Services and Indigenous Affairs	[2014] AATA 122

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Avetmiss Easy Pty Ltd v Australian Skills Qualifications Authority	[2013] AATA 732	[2014] FCA 314
Fisher v Military Rehabilitation and Compensation Commission	[2013] AATA 934	QUD110/2014
O’Kane v Comcare	[2013] AATA 722	[2014] FCA 341

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