



AAT Bulletin

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The *AAT Bulletin* is a weekly publication compiled by [Legal & Policy](#) and [Library & Information Services](#). It provides the latest information on Tribunal decisions, appeals, legislative changes and other important developments. It also lists reported cases, case notes and books recently received and available from the AAT Library Network, as well as journal articles, research papers, speeches and internet sites likely to be of interest to AAT members and staff.

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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](#).

Child Support

[Confidential and Child Support Registrar and Anor](#) [2014] AATA 255; 30/4/2014; Ms R Perton, Member

Percentage of care – decision affirmed

Compensation

[Brown and Australian Postal Corporation](#) [2014] AATA 261; 2/5/2014; Senior Member RG Kenny

Australia Post employee – liability initially accepted under s 14 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (the Act) for “soft tissue injury right knee” – reviewable decision that respondent has no present liability under s 16 of the Act for that injury affirmed – reviewable decision that respondent has no present liability under s 19 of the Act for psychiatric effects of that injury set aside – matter to be remitted to the respondent – costs

Australia Post employee – reviewable decision that liability denied under s 14 of the Act for “depression secondary to right knee injury” – decision under review set aside – respondent liable under s 14 of the Act to pay compensation in accordance with the Act for major depressive disorder – matter to be remitted to the respondent – costs

[Matthews and Telstra Corporation Limited](#) [2014] AATA 251; 29/4/2014; Deputy President K Bean

Commonwealth employees – whether use of a treadmill constitutes reasonable medical treatment – whether therapeutic treatment – not obtained at the direction of a legally qualified medical practitioner – not under supervision of a physiotherapist – whether treadmill is an aid or appliance – no participation or assessment of inability to undertake a rehabilitation program – decision under review affirmed

[Palmer and Comcare](#) [2014] AATA 241; 24/4/2014; Deputy President PE Hack SC

Australian Broadcasting Corporation employee – liability not accepted for major depressive disorder or permanent impairment – whether injury was contributed to, to a significant degree, by employment – decision under review affirmed

[Pocock and Asciano Services Pty Ltd](#) [2014] AATA 256; 30/4/2014; Senior Member J Handley

Applicant suffered L5/S1 disc prolapse in 2004 – claims permanent impairment pursuant to Table 9.17 of the Guide – evidence led concurrently from three medico legal specialists – applicant satisfies the criteria against an impairment of 8% – did not have significant signs of radiculopathy at the date of review – decision affirmed

[Sullivan and Military Rehabilitation and Compensation Commission](#) [2014] AATA 259; 1/5/2014; Senior Member RG Kenny

Service in the Australian Regular Army – liability for “lumbar and thoracic spondylosis” accepted under s 14 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (“the Act”) – reconsideration of liability for lumbar and thoracic spondylosis under s 62 of the Act – revocation of determination – no compensable injury of lumbar and thoracic spondylosis under s 14 of the Act – decision under review affirmed

Immigration and Citizenship

[Davies and Minister for Immigration and Border Protection](#) [2014] AATA 245; 28/4/2014; Deputy President RP Handley

Citizenship by conferral – residence requirements – ministerial discretion – whether the applicant had a close and continuing association with Australia – decision affirmed

[The applicant \(PMYL\) and Anor and Minister for Immigration and Border Protection](#) [2014] AATA 148; 18/3/2014; Senior Member AK Britton

Citizenship application – residency requirement not met – application of government policy by AAT – whether close and continuing association with Australia – applicants under the age of 16 who apply for citizenship

Social Security

[Clements and Secretary, Department of Social Services](#) [2014] AATA 243; 28/4/2014; Dr P McDermott RFD, Senior Member

Pensions, benefits and allowances – disability support pension – whether 20 impairment points – whether continuing inability to work – applicant has not completed a Program of Support – decision affirmed

[Cole and Secretary, Department of Social Services](#) [2014] AATA 252; 29/4/2014; Miss EA Shanahan, Member

Disability support pension – youth allowance – applicant has right hemiplegia and cerebral palsy – full time university student – questionable impairment ratings assigned – ability to work – ineligible for youth allowance on parental income – decisions affirmed

[Girgs and Secretary, Department of Social Services](#) [2014] AATA 263; 2/5/2014; Professor T Sourdin, Member

Pensions – disability support pension – time at which continuing inability to work commenced – decision set aside

[Gregson and Secretary, Department of Social Services](#) [2014] AATA 254; 30/4/2014; Senior Member RG Kenny

Pensions, benefits and allowances – Disability support pension – relevant period for assessment – physical impairment from “mechanical low back pain – degenerative and spinal stenosis... L4/L5” and “reflux oesophagitis” – impairment Tables – conditions not fully diagnosed, treated, stabilised or permanent in relevant period – applicant not qualified for disability support pension during relevant period – decision under review affirmed

[Jacob and Secretary, Department of Social Services](#) [2014] AATA 248; 28/4/2014; Deputy President SD Hotop and Dr J Chaney, Member

Disability support pension – applicant has impairment – applicant’s impairment is of 5 points under Impairment Tables – applicant does not have severe impairment – Tribunal not satisfied that applicant has continuing inability to work – applicant not qualified for disability support pension – decision under review affirmed

[Mansell and Secretary, Department of Social Services](#) [2014] AATA 230; 17/3/2014; Miss EA Shanahan, Member

Disability support pension (DSP) – multiple medical conditions – none fully treated and stabilised – no impairment rating raised – most conditions attributed to the treatment of Hepatitis C infection – expected improvement on conclusion of treatment – decision affirmed

[McHattie and Secretary, Department of Social Services](#) [2014] AATA 246; 28/4/2014; Senior Member AK Britton

Disability support pension — date of effect of decision of Social Security Appeals Tribunal – date of effect of decision of Administrative Appeals Tribunal – decision set aside

[Mentink and Secretary, Department of Social Services](#) [2014] AATA 249; Dr P McDermott RFD, Senior Member

PENSIONS AND BENEFITS – age pension – age pension debt raised against applicant – whether applicant was an Australian resident during the relevant period – whether age pension paid to applicant constitutes a debt – whether debt has to be repaid – decision under review affirmed

[Popal and Secretary, Department of Social Services](#) [2014] AATA 253; 30/4/2014; Ms R Perton, Member

Special benefit – spouse visa – ineligibility for social security benefits for 104 weeks after arrival – substantial change of circumstances beyond applicant’s control – limited discretion – criteria to be met on date of claim – decision under review affirmed

[Soames and Secretary, Department of Social Services](#) [2014] AATA 258; 30/4/2014; Senior Member AK Britton and Senior Member J Toohey

Application for recusal – whether apprehended or actual bias – application refused

Leave required under section 42B of the *Administrative Appeals Tribunal Act 1975* for Applicant to file application with the Tribunal – no new evidence provided that would suggest the Applicant’s assets were previously calculated incorrectly – leave refused

Application for confidentiality orders – scandalous allegations – application refused

Disability Support Pension – eligibility – assets test

Superannuation

[Mourched and Commissioner of Taxation](#) [2014] AATA 223; 16/4/2014; Prof R Deutsch, Deputy President

Application for waiver of disqualified status – whether exceptional circumstances for delay in filing application – applicant previously found guilty of publishing a false statement for a financial advantage – applicant disqualified person under the Act – no evidence of exceptional circumstances – decision under review affirmed

Tax Agents

[Cleary and Tax Practitioners Board](#) [2014] AATA 260; 2/5/2014; Senior Member A F Cunningham

Registration – suspension – serious breaches of Code of Professional Conduct – lack of contrition and appreciation of seriousness of breaches – decision under review varied to increase period of suspension

Taxation

[Confidential and Commissioner of Taxation](#) [2014] AATA 257; 30/4/2014; Deputy President FJ Alpins

Practice and procedure – jurisdiction of Tribunal – Pt IVC of *Taxation Administration Act 1953* – decision regarding PAYG withholding credits – not subject of reviewable decision – administrative penalties – false or misleading statement – whether shortfall amount resulted from recklessness by applicant – whether remission of penalty warranted

[The Public Servant and Commissioner of Taxation](#) [2014] AATA 247; 28/4/2014; Senior Member G Lazanas

PRIVATE RULINGS – Employment termination payment – whether compensation paid under deed of release was “in consequence of termination” – whether payment properly characterised as an employment termination payment – whether payment properly characterised as a capital sum in respect of personal injury – whether additional information provided by taxpayer subsequent to the private ruling is to be taken into account by the Commissioner – whether additional information to be considered by Tribunal – Tribunal’s role in reviewing objection to private ruling – objection decision affirmed

[WGMH and Ors and Commissioner of Taxation](#) [2014] AATA 244; 28/4/2014; Senior Member BJ McCabe

INCOME TAX – Reassessment of tax liability for 2002–2004 years of income – objections lodged out of time – principles governing extension of time – no extension of time granted – no leave to amend assessments

INCOME TAX – Reassessment of tax liability for 2005–2006 years of income – characterisation of income – alleged mistake – taxpayers’ evidence contradictory and incomplete – failure of taxpayers to prove that assessments are incorrect – objection decisions under review affirmed

Appeals

[Legal & Policy](#) maintains information relating to appeals from Tribunal decisions. The appeals set out in the table below have been lodged or finalised since the last edition of the *Bulletin*.

For appeals lodged, the table records the following information: the name of the Tribunal decision which has been appealed; the Tribunal reference number (including a hyperlink to the Tribunal's written decision if available); the Court appeal reference number; the type of appeal lodged; and the date the appeal was lodged. For appeals finalised, the table records the following information: the name of the Court judgment; the Tribunal reference number (including a hyperlink to the Tribunal's decision if available); the Court reference number (including a hyperlink to the Court's judgment if available); the outcome of the appeal, the name(s) of the judge(s) who decided the appeal and the date on which the appeal was decided.

Information on all appeals lodged or finalised after 1 January 2005 is in spreadsheets on the [intranet](#).

Appeals lodged

CASE NAME	AAT REFERENCE	COURT REFERENCE	APPEAL DETAILS
None lodged			

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE	APPEAL DETAILS
Alphapharm Pty Ltd v H Lundbeck A/S & Ors	[2012] AATA 851	[2014] HCATrans 79 [2013] FCAFC 129	Special leave granted; Kiefel and Keane JJ; 11/04/2014
May v Military Rehabilitation and Compensation Commission	[2011] AATA 886	[2014] FCA 406	Appeal dismissed; Buchanan J; 30/4/2014
Smith v Repatriation Commission	[2012] AATA 94	[2014] FCAFC 53 [2012] FCA 1043	Appeal allowed, Decision set aside and remitted; Rares, Buchanan and Foster JJ; 1/5/2014

Statements of Principles

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 **7 May 2014**.

[Statement of Principles concerning Hodgkin's lymphoma No. 35 of 2014](#)

[Statement of Principles concerning Hodgkin's lymphoma No. 36 of 2014](#)

[Statement of Principles concerning chronic obstructive pulmonary disease No. 37 of 2014](#)

[Statement of Principles concerning chronic obstructive pulmonary disease No. 38 of 2014](#)

[Statement of Principles concerning malignant neoplasm of the thyroid gland No. 39 of 2014](#)

[Statement of Principles concerning malignant neoplasm of the thyroid gland No. 40 of 2014](#)

[Statement of Principles concerning acute stress disorder No. 41 of 2014](#)

[Statement of Principles concerning acute stress disorder No. 42 of 2014](#)

[Statement of Principles concerning mitral valve prolapse No. 43 of 2014](#)

[Statement of Principles concerning mitral valve prolapse No. 44 of 2014](#)

[Statement of Principles concerning pleural plaque No. 45 of 2014](#)

[Statement of Principles concerning pleural plaque No. 46 of 2014](#)

[Statement of Principles concerning chronic myeloid leukaemia No. 47 of 2014](#)

[Statement of Principles concerning chronic myeloid leukaemia No. 48 of 2014](#)

[Statement of Principles concerning atrial fibrillation and atrial flutter No. 49 of 2014](#)

[Statement of Principles concerning atrial fibrillation and atrial flutter No. 50 of 2014](#)

[Statement of Principles concerning otitis media No. 51 of 2014](#)

[Statement of Principles concerning otitis media No. 52 of 2014](#)

Amended Statements of Principles

The Tribunal has been advised that the Repatriation Medical Authority has made the following instrument amending the Statement of Principles for the specified condition. It takes effect from **7 May 2014**.

[Amendment Statement of Principles concerning non-Hodgkin's lymphoma No. 57 of 2014](#)