



# 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

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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](#).

### Compensation

[Li and Australian Postal Corporation](#) [2014] AATA 278; 8/5/2014; Senior Member G Ettinger, Dr M Couch, Member

Applicant claims incident with heavy tray of mail at work in August 2010 caused right shoulder cuff tear – compensated for right shoulder cuff tear – applicant at the Tribunal for liability to be accepted for left shoulder cuff tear – applicant’s evidence that she used the left arm more at home and at work because of pain on the right – at hearing results of an ultrasound taken in July 2010 approximately three weeks before the alleged incident at work shows the right shoulder cuff tear – further applications for compensation in relation to work hours – decisions under review affirmed

[Menz and Boarder Express Pty Ltd](#) [2014] AATA 266; 5/5/2014; Senior Member RM Creyke

Whether Tribunal had jurisdiction – oral decision – request for reasons – Tribunal has already decided matters raised in application

[Riley and Military Rehabilitation and Compensation Commission](#) [2014] AATA 262; 2/5/2014; Senior Member BJ McCabe

VETERANS’ AND MILITARY COMPENSATION – application for compensation for “service death” – soldier suffered fatal heart attack – applicant relied on Statement of Principles concerning ischaemic heart disease and Statement of Principles concerning hypertension – conditions of hypertension and dyslipidaemia not linked to service – no assessment of inability to perform physical activity to required level – soldier’s ischaemic heart disease not linked to service – reviewable decision affirmed

[Starr and Comcare](#) [2014] AATA 268; 6/5/2014; Senior Member N Bell, Dr H Haikal–Mukhtar, Member

Compensation for injuries – whether injury permanent – degree of whole person impairment – non-economic loss – decision under review affirmed

### Immigration and Citizenship

[Fahd and Minister for Immigration and Border Protection](#) [2014] AATA 274; 8/5/2014; Deputy President SD Hotop

Applicant arrived in Australia in 2003 aged 16 years – applicant convicted of offences in period from 2004 to 2011 – no custodial sentences imposed – Tribunal not satisfied that applicant presently a person of good character – applicant not eligible to become Australian citizen – decision under review affirmed

## Practice and Procedure

[Hollier and Secretary, Department of Social Services](#) [2014] AATA 270; 11/3/2014; Senior Member GD Friedman

Extension of time to lodge application for review – application refused

## Social Security

[Barrass and Secretary, Department of Social Services](#) [2014] AATA 272; 7/5/2014; Senior Member RM Creyke

Compensation recovery charge – whether compensation recovery charge properly imposed – whether all or part of the compensation payment should be treated as not having been made – decision affirmed

[Burlock and Secretary, Department of Social Services](#) [2014] AATA 267; 6/5/2014; Dr M Denovan, Member

Pensions, benefits and allowances – applicant in receipt of disability support pension – applicant resided overseas for more than 6 week portability period – whether portability can be extended due to illness of the applicant – whether applicant suffered ‘serious illness’ during portability period – decision under review affirmed

[Harrison and Secretary, Department of Social Services](#) [2014] AATA 273; 8/5/2014; Mr I Thompson, Member

Claim for Disability Support Pension – whether conditions warranted 20 impairment points under one or more tables – continuing inability to work – program of support – decision affirmed

[Lewis and Secretary, Department of Social Services](#) [2014] AATA 281; 9/5/2014; Dr I Alexander, Member

Application for Disability Support Pension – whether the Applicant has any permanent conditions – whether the Applicant has obtained 20 Points under the Impairment Tables – decision under review affirmed

[McIntyre and Secretary, Department of Social Services](#) [2014] AATA 271; 7/5/2014; Senior Member N Bell

Disability Support Pension – DSP – impairment tables – impairment rating – qualification for DSP – continuing inability to work – whether severe impairment – whether required to participate in a program of support – decision under review set aside

[O’Gorman–Watson and Secretary, Department of Social Services](#) [2014] AATA 277; Dr I Alexander, Member

Application for Disability Support Pension – whether Applicant has participated in a Program of Support – applicant was unable to participate in a Program of Support due to her impairments

## Taxation

[Research Scientist and Commissioner of Taxation](#) [2014] AATA 242; 28/4/2014; Deputy President SE Frost

Administrative penalty – credits claimed for tax withheld in years when tax was not withheld – whether statements false or misleading in a material particular – shortfall amount – intentional disregard – recklessness – objection decision set aside; objection allowed in part

[Thorpe and Commissioner of Taxation](#) [2014] AATA 210; 10/4/2014; Senior Member G Ettinger

Applicant failed to declare income from Maylands Project – Applicant's assessable income increased following audit – 50% penalty imposed for recklessness – whether amounts are deductible as being related to Maylands real estate project – further considerations ; whether moneys obtained from long term client of Applicant's legal practice invested without client's consent constituted a loan to the solicitor or his practice – whether repayments of monies are deductible – moneys provided by client were a loan to the Applicant – decisions varied

[Yates and Commissioner of Taxation](#) [2014] AATA 279; 30/4/2014; Prof R Deutsch, Deputy President

Goods and Services Tax – Applicant claimed Input Tax Credits on business activity statements – whether claims for Input Tax Credits can be substantiated – whether penalties should be imposed for recklessness – decision varied

## Veterans' Affairs

[Budge and Repatriation Commission](#) [2014] AATA 276; 8/5/2014; Senior Member J Toohey

VETERANS ENTITLEMENTS – claim for war widow's pension – operational service – kind of death – hypertension – salt intake – no reasonable hypothesis raised on the material – decision under review affirmed

[Huxham and Repatriation Commission](#) [2014] AATA 265; 2/5/2014; Dr M Denovan, Member

PENSIONS AND BENEFITS – eligibility for Pension Bonus Scheme – eligibility for service pension (age) – applications withdrawn due to financial circumstances – applications resubmitted due to change in financial circumstances – service pension granted – application for Pension Bonus Scheme rejected – decision under review affirmed

[Turner and Repatriation Commission](#) [2014] AATA 264; 2/5/2014; Dr M Denovan, Member

Benefits and entitlements – eligibility for pension – no connection between eligible defence service and condition – no entitlement to pension – decision under review affirmed

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## Appeals

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[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
<b>Comcare v Nicolas</b>	<a href="#">[2014] AATA 189</a>	NSD438/2014	Section 44 appeal lodged; 1/5/2014
<b>Haque v Migration Agents Registration Authority</b>	<a href="#">[2014] AATA 225</a>	VID257/2014	Section 44 appeal lodged; 7/5/2014
<b>Kawicki v Repatriation Commission</b>	<a href="#">[2014] AATA 207</a>	NSD445/2014	Section 44 appeal lodged; 6/5/2014
<b>National Archives of Australia v Fernandes</b>	<a href="#">[2014] AATA 180</a>	ACD28/2014	Section 44 appeal lodged; 30/4/2014
<b>Repatriation Commission v Richmond</b>	<a href="#">[2013] AATA 421</a>	VID217/2014 <a href="#">[2014] FCA 272</a>	Appeal from decision of single judge lodged; 15/4/2014

### Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE	APPEAL DETAILS
<b>Yiasemides v Inspector General in Bankruptcy &amp; AAT</b>	<a href="#">[2014] AATA 51</a>	NSD238/2014	EOT refused (by consent); Bennett J; 2/5/2014