



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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AAT Recent Decisions

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

[Awad and TNT Australia Pty Ltd](#) [2014] AATA 331; 28/5/2014; Senior Member J Toohey and Dr B Isles, Member

Psychological condition – diagnosis – whether state of affairs actually occurred – whether employment contributed to a significant degree – decision under review set aside

[Hay and Comcare](#) [2014] AATA 325; 27/5/2014, Senior Member BJ McCabe

Applicant diagnosed as suffering adjustment disorder with symptoms of anxiety – date of onset agreed between parties – respondent argues the condition does not meet legislative definition of ‘injury’ – distinction between matters connected to employment and matters of an operational nature – Tribunal not satisfied that meeting concerned matters connected to applicant’s employment – legislative exemption does not apply – reviewable decision set aside – decided in substitution that respondent is liable for the applicant’s claim

[Morgan and Comcare](#) [2014] AATA 324; 27/5/2014, Senior Member BJ McCabe

Application for compensation in respect of “adjustment reaction with mixed emotional features” – date of onset unclear – cause of applicant’s condition multi-factorial – no corroborative evidence demonstrating work stressors were significant contributor to onset of condition – reviewable decisions affirmed

[Talevski and K & S Freighters Pty Ltd](#) [2014] AATA 334; Senior Member N Bell and Dr W Isles, Member

Commonwealth employees – whether applicant suffered injury to his right knee – whether applicant suffered injury to his left elbow and lower back – decision under review set aside

[Zimin and Comcare](#) [2014] AATA 328; 27/5/2014; 27/5/2014; Senior Member AK Britton and Dr W Isles, Member

Commonwealth employees – psychological injury – whether the Applicant suffers a mental ailment – whether the injury was contributed to, to a significant degree, by the employees employment by the Commonwealth – whether the injury is a result of reasonable administrative action taken in a reasonable manner

Immigration and Citizenship

[Zafar and Minister for Immigration and Border Protection](#) [2014] AATA 329; 28/5/2014; Senior Member RM Creyke

General residence requirement – inadequate number of days in Australia to meet legislative requirements — Ministerial discretion – whether partner was a citizen of Australia at the time of the application for citizenship by conferral – whether applicant has a close and continuing relationship with Australia

Social Security

[Bornecrantz and Secretary, Department of Social Services](#) [2014] AATA 327; 27/5/2014; Deputy President RP Handley

Age pension – assets test – attributable stakeholder of a company – controlled private company – asset attribution percentage of less than 100%

Age pension – assets test – whether an individual can elect to be treated as a non-homeowner – principal home exception

[Leszczynska-Zimon and Secretary, Department of Social Services](#) [2014] AATA 338; 29/5/2014; Mr C Ermert, Member

NEWSTART ALLOWANCE – absence from Australia – purpose of absence – humanitarian purpose – allowable absence – maximum portability period – decision affirmed

[Lwin; Secretary, Department of Social Services and](#) [2014] AATA 332; 29 May 2014; Senior Member AK Britton

Baby Bonus — eligibility — whether the child is a “FTB child” — whether the child was living with her father — interpretation of term “living with”

[Watson and Secretary, Department of Social Services](#) [2014] AATA 333; 29/5/2014; Deputy President K Bean and Senior Member NA Manetta

Pensions – Disability Support Pension – attribution of income derived by applicant’s financial services company to applicant – whether attributed income should be reduced by outgoings of company – income protection payments derived by company not income “from the business” – element of double counting in calculation of applicant’s ordinary income – whether certain payments should be treated as “excluded income” under s 1207Y(2) – decision under review set aside and remitted for reconsideration in accordance with directions

Taxation

[Davsa Forty-Ninth Pty Ltd as Trustee for the Krongold Ford Business Unit Trust and Commissioner of Taxation](#) [2014] AATA 337; 29/5/2014; Senior Member FD O’Loughlin

GST whether an enterprise carried on – whether motor vehicles acquired in carrying on enterprise – whether tax invoices held, whether consideration paid for acquisitions – whether input tax credits allowable in respect of new and second hand motor vehicles acquired – whether decreasing luxury car tax adjustment available – whether reasonable care taken – whether penalty remission appropriate – decision affirmed

[Dempsey and Commissioner of Taxation](#) [2014] AATA 335; 29/5/2014; The Honourable Justice JA Logan RFD, Presidential Member, Deputy President PE Hack SC and Senior Member RG Kenny

INCOME TAX – assessment – residence of taxpayer – employment in the Kingdom of Saudi Arabia – income derived from sources within the Kingdom of Saudi Arabia – whether resident of Australia – whether permanent place of abode was outside Australia – decision set aside and substituted

[Dotrac Pty Ltd and Anor and Commissioner of Taxation](#) [2014] AATA 336; 29/5/2014; Deputy President SE Frost

GST – whether applicants carrying on an enterprise – identification of activities – whether applicants making acquisitions – whether "promissory notes" constitute the provision of consideration – administrative penalty – recklessness – failure to seek independent advice on an arrangement involving multiple parties not at arm's length – decisions affirmed

[Thompson and Commissioner of Taxation](#) [2014] AATA 339; 29/5/2014; Deputy President R Deutsch

Discretionary power to disregard or allocate to another financial year some or all of the Applicant's non-concessional contributions - the contributions that give rise to the excess contributions tax assessment - whether there are special circumstances - no special circumstances - excess contributions tax assessment not excessive - decision under review affirmed

Veterans' Affairs

[Dunn and Repatriation Commission](#) [2014] AATA 330; 28/5/2014; Dr M Denovan, Member

Benefits and entitlements – eligibility for pension – ulcerative proctitis – operational service – reasonable hypothesis connecting disease with veteran's service – whether condition aggravated or materially contributed to by service – decision under review affirmed

[McCallum and Repatriation Commission](#) [2014] AATA 323; 26/5/2014; Senior Member J Toohey

Claim for war widow's pension – 'kind of death' – oesophageal cancer – prostate cancer – evidence oesophageal cancer hastened veteran's death – whether oesophageal cancer a medical cause of death – kind of death not war caused – decision under review affirmed

[Willis and Repatriation Commission](#) [2014] AATA 326; 27/5/2014; Deputy President JW Constance

Special rate of pension – type of remunerative work – whether applicant prevented from continuing to undertake that work by reason of incapacity from war-caused diseases (or any of them) alone – whether applicant suffered a loss of salary, wages or earnings on his own account by reason of his being prevented from undertaking remunerative work – whether applicant would be suffering the financial loss if he was free of the war-caused incapacity – decision under review set aside

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

None lodged

Appeals finalised

CASE NAME

AAT REFERENCE

COURT REFERENCE

Arifin v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs

[\[2013\] AATA 502](#)
[\[2013\] AATA 429](#)

[\[2014\] FCAFC 61](#)
[\[2013\] FCA 1162](#)

Besson v Repatriation Commission

[\[2012\] AATA 377](#)

[\[2014\] FCCA 123](#)

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