



## 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

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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.

### Child Support

[Askew and Child Support Registrar](#) [2014] AATA 354; 5/6/2014; Senior Member P McDermott RFD

Departure prohibition order (“DPO”) – child support debt – objects of the *Child Support (Registration & Collection) Act 1988* (Cth) – no basis for revocation of DPO – security offered by applicant insufficient – Applicant has failed to discharge liability when able – decision under review affirmed

[Hart and Child Support Registrar](#) [2014] AATA 282; 9/5/2014; Senior Member N Isenberg

FAMILY SUPPORT – Applicant not permitted to leave Australia under Departure Prohibition Order – Applicant applied for Departure Authorisation Certificate – application refused – period for Departure Authorisation Certificate elapsed – any decision of the Tribunal would be futile – Application Dismissed under s 42B of the *Administrative Appeals Tribunal Act 1975*

### Compensation

[Genc and National Australian Bank Limited](#) [2014] AATA 359; 6/6/2014; Senior Member E Fice

Depression and anxiety claim – injury – disease – reasonable administrative action taken in a reasonable manner – Applicant diagnosed with adjustment disorder with anxious mood and depression – allegations made by employees at a meeting regarding behaviour of the Applicant – Applicant alleged work related harassment and bullying – formal warning – independent investigation – decision affirmed

[Sampson and Military Rehabilitation and Compensation Commission](#) [2014] AATA 356; 6/6/2014; Senior Member RG Kenny

Injury (knee condition) occurring prior to commencement of *Safety, Rehabilitation and Compensation Act 1988* (Cth) – transitional provisions – failure, under *Commonwealth Employees' Compensation Act 1930* (Cth) (“the Act”), to give notice of accident as soon as practicable or before applicant’s service ended – failure under the Act to make a claim within six months from the occurrence of the incident – Commonwealth prejudiced by want of notice – late notice and claim not due to mistake – no reasonable cause for late notice or claim – relevance of ignorance about notice and claim procedure – decision under review affirmed – claim for knee condition not admitted for determination

## Immigration and Citizenship

[Kola and Minister for Immigration and Border Protection](#) [2014] AATA 349; 3/6/2014; Senior Member RM Creyke

Eligibility – whether applicant is of good character – previous criminal convictions – decision affirmed

## Practice and Procedure

[Davey and Australian Electoral Commission and Ors](#) [2014] AATA 355; 5/6/2014; Deputy President JW Constance

Registered officer – whether application stayed by reason of applicant being declared bankrupt – effect of trustee failing to elect to prosecute or discontinue application – application for substitution as applicant – application for review of decision dismissed

## Social Security

[Al Ugali and Secretary, Department of Social Services](#) [2014] AATA 352; 5/6/2014; Senior Member N Isenberg

Disability Support Pension – 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 affirmed

[Bunworth; Secretary, Department of Social Services and](#) [2014] AATA 348; 3/6/2014; Senior Member BJ McCabe

DISABILITY SUPPORT PENSION – appeal from decision of Social Security Appeals Tribunal – SSAT decided that applicant for DSP rated twenty points on Impairment Tables – Centrelink Job Assessor rated ten points – medical evidence does not support rating of twenty points – reviewable decision set aside – decided in substitution that respondent does not qualify for DSP

[Klein and Secretary, Department of Social Services](#) [2014] AATA 351; 4/6/2014; Senior Member RG Kenny

Pensions, benefits and allowances – loan to trust by applicant – entry of loan amount as a liability to applicant in trust balance sheet included as a financial asset – deemed income provisions – decision under review affirmed

[Whittaker and Secretary, Department of Social Services](#) [2014] AATA 345; 2/6/2014; Miss EA Shanahan, Member

Pension benefits and allowances – disability support pension – fibromyalgia – adjustment disorder with depressed mood – not fully treated and stabilised during review period – recent application for disability support pension successful – applicant seeking payment of disability support pension backdated to July 2012 – decision affirmed

[Wilson and Secretary, Department of Social Services](#) [2014] AATA 350; 4/6/2014; Mr P Wulf, Member

Benefits and entitlements – multiple claims for Australian Government Disaster Recovery Payment (“AGDRP”) – whether principal place of residence – whether at principal place of residence at time of disaster – Applicant’s property and place of residence not flooded – access to neighbours’ properties and streets available – Applicant not stranded in her place of residence – whether no electricity for more than 48 hours – not adversely affected – debt owed – decisions under review affirmed

## **Taxation**

[Moignard and Commissioner of Taxation](#) [2014] AATA 342; 30/5/2014; Senior Member RW Dunne

Income tax – failure to lodge taxation returns – default assessment – trustee discretion – assessment of trust income – present entitlement – burden of proof – administrative penalty – objection decision under review set aside.

[Power and Commissioner of Taxation](#) [2014] AATA 343; 2/6/2014; Deputy President IR Molloy

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

## **Veterans' Affairs**

[David Sandeman \(as attorney for Dorothy Marie Kluge\) and Repatriation Commission](#) [2014] AATA 353; 5/6/2014; Senior Member J Handley

Application by the son of widow of a WW2 veteran as her attorney – veteran served in New Guinea and Bougainville – exposed to battle at Slater’s Knoll in 1945 – veteran shot and wounded and exposed to category 1A and 1B type events – 3 hypotheses pursued connecting death by CVA with service – whether hypertension attributable to consumption of salt – whether veteran suffered depressive disorder – decision set aside

[Erickson and Repatriation Commission](#) [2014] AATA 347; 3/6/2014; Senior Member J Handley

Veteran engaged in operational service in WW2 – stress of service conceded – cause of death certified as respiratory failure and pneumonia – cause of death disputed – applicant pursued hypotheses of death by COPD and ischaemic heart disease – smoking history in a questionnaire completed by the veteran inconsistent with evidence of the applicant, his children and clinical entries in medical records – significant dispute between doctors interpreting the clinical evidence – whether veteran did suffer COPD – whether connection between veteran’s death and IHD – decision affirmed

[Sharley and Repatriation Commission](#) [2014] AATA 344; 2/6/2014; Miss EA Shanahan, Member

Disability pension – reconsideration of claim of osteoarthritis of the knees was war-caused – on remittal from Federal Court – decision affirmed

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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>Soames v Secretary, Department of Families, Housing Community Services and Indigenous Affairs</b>	<a href="#">[2014] AATA 258</a>
<b>SZRTN v Minister for Immigration and Border Protection &amp; AAT</b>	<a href="#">[2013] AATA 818</a>

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### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Tran v Minister for Immigration and Border Protection</b>	<a href="#">[2012] AATA 384</a>	<a href="#">[2014] FCA 533</a>
<b>Rand v Comcare</b>	<a href="#">[2013] AATA 580</a>	<a href="#">[2014] FCA 584</a>

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