



AAT Bulletin

ISSUE NO. 24/2014

23 JUNE 2014

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

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

[Carbone and Comcare](#) [2014] AATA 376; 16/6/2014; Senior Member RM Creyke

Commonwealth employee – accepted back condition – whether suffered psychiatric injury secondary to accepted injury – whether suffered aggravation of injury in March 2013 – whether hours of work under return to work program were reasonable – whether reasonable excuse not to undertake return to work program – whether continues to suffer the effects of compensable injury – whether suffered aggravation of her psychiatric disorder – decisions under review affirmed

[Dunkerley and Comcare](#) [2014] AATA 381; 18/6/2014; Mr S Webb, Member

Accepted psychological injury – subsequent aggravation injury claim rejected – cessation of entitlement to compensation for incapacity for work and medical treatment – incapacity for work not as a result of accepted injury – medical treatment not obtained in relation to accepted injury – decision affirmed

[Sandford and Linfox Australia Pty Ltd](#) [2014] AATA 375; 16/6/2014; Deputy President RP Handley

Back injury – whether continues to suffer the effects of the injury – whether frank injury or aggravation of a pre-existing degenerative condition

Treatment reasonable for an employee to obtain in the circumstances – spinal fusion – need for further investigations and assessments

Education

[Williams Business College Ltd and Minister for Education and Anor](#) [2014] AATA 371; 12/6/2014; Senior Member AK Britton

Education providers – Registration of college as Higher Education Provider – Conditions imposed upon registration – Whether Education Provider continues to meets the Threshold Standards – Date of effect of decision

Immigration and Citizenship

[Gage and Minister for Immigration and Border Protection](#) [2014] AATA 373; 13/6/2014; Deputy President JW Constance

Application for citizenship by conferral – spouse of an Australian citizen – general residence requirement – close and continuing association with Australia – decision under review affirmed

[Jopson and Minister for Immigration and Border Protection](#) [2014] AATA 380; 17/6/2014; Dr P McDermott RFD, Senior Member

Application for citizenship by conferral – Whether applicant meets residence requirements – Applicant not a permanent resident at date of application – Decision under review affirmed

[Le and Minister for Immigration and Border Protection](#) [2014] AATA 382; 18/6/2014; Senior Member E Fice

Application for Australian citizenship – General residence requirement – Exercise of the discretion under s 22(9) of the *Australian Citizenship Act 2007* – Close and continuing association with Australia – Section 22(2)(g) requirements – Applicant is the de facto partner of an Australian citizen – Overseas absence as a result of accompanying an Australian citizen – decision set aside and remitted

National Disability Insurance Scheme

[Mulligan and National Disability Insurance Agency](#) [2014] AATA 374; 13/6/2014; Senior Member J Toohey and Professor R McCallum, Member

Access criteria – whether applicant meets disability requirements – ischaemic heart disease – cardiomyopathy – Conn's Syndrome – ruptured discs in lower back – whether impairments substantially reduce functional capacity – whether impairments affect applicant's capacity for social and economic participation – whether applicant likely to require support under the NDIS for his lifetime – decision under review affirmed

Practice and Procedure

[Kennedy and Comcare](#) [2014] AATA 369; 11/6/2014; Mr S Webb, Member

Summons – objection – legitimate forensic purpose – fishing expedition – adjectival relevance

[Ng and Australian Health Practitioner Regulation Agency](#) [2014] AATA 377; 4/6/2014; Deputy President K Bean

Jurisdiction – Respondent notified applicant that it had no power to review allegations of misconduct made by the applicant against certain medical practitioners and bodies – No provision which confers jurisdiction on Tribunal to review respondent's "decision" or applicant's allegations of misconduct – Tribunal does not have jurisdiction

Small Taxation Claims

[Ford and Commissioner of Taxation](#) [2014] AATA 361; 27/5/2014; Deputy President SE Frost

Income tax – allowable deductions – travel expenses – train guard – transport of materials between home and work – whether materials bulky and essential to income generating activity – whether secure environment provided – whether personal choice involved – decision under review affirmed

Social Security

[Dean and Secretary, Department of Social Services](#) [2014] AATA 386; 20/6/2014; Ms S Taglieri, Member

Cancellation of DSP following review – Right leg injury, hypertension, diabetes, and other conditions not regarded permanent – Impairment points available under Impairment Tables operating after 1.1.12 – Whether residency requirement satisfied – Decision under review affirmed

[Hares and Secretary, Department of Social Services](#) [2014] AATA 389; 20/6/2014; Deputy President RP Handley

Compensation preclusion period – whether special circumstances to treat part of the compensation payment as not having been made – financial hardship – applicant spent a large portion of the compensation payment on a house – visual impairment – no special circumstances – decision affirmed

[Ireland and Secretary, Department of Social Services](#) [2014] AATA 383; 5/6/2014; Senior Member RW Dunne

Pensions, benefits and allowances – whether applicant medically qualifies to receive disability support pension – whether impairment rating of 20 points or more exists under the Impairment Tables – Job Capacity Assessment, Functional Capacity Evaluation, report of medical adviser from Health Professional Advisory Unity – applicant travelled to Cambodia – decision made that applicant was no longer qualified for disability support pension – decision under review affirmed

[Paxton and Secretary, Department of Social Services and Anor](#) [2014] AATA 387; 20/6/2014; Dr M Denovan, Member

Family Tax Benefit – Shared care of children – Percentage of care – Decision set aside and substituted

[Smith and Secretary, Department of Social Services](#) [2014] AATA 379; 17/6/2014; Mr S Webb, Member

Disability Support Pension claims – Qualification Periods – impairments – impairment points – qualification requirements not satisfied – decision affirmed

[Van den Berg and Secretary, Department of Social Services](#) [2014] AATA 378; 17/6/2014; Mr C Ermert, Member

Age pension – Australian resident – ceases to be an Australian resident – leaves Australia before two years – age pension not payable – duty of care – claim for defective administration – decision affirmed

Taxation

[Advent 7 Pty Ltd and Commissioner of Taxation](#) [2014] AATA 365; 10/6/2014; Professor 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

[Ogden and Commissioner of Taxation](#) [2014] AATA 385; 20/6/2014; Senior Member G Ettinger

Deductibility of items claimed – difficulties with substantiation – objection 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
Tran v Minister for Immigration and Border Protection & AAT	[2012] AATA 384
Commissioner of Taxation v Qantas Airways Limited	[2014] AATA 316

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Plaintiff S288/2013 v Minister for Immigration and Border Protection & AAT	[2012] AATA 368	[2014] HCATrans 118
Repatriation Commission v Holden	[2013] AATA 778	[2014] FCA 605
Summers v Repatriation Commission	[2013] AATA 439	[2014] FCA 608
Salahuddin v Minister for Immigration and Border Protection & AAT	[2013] AATA 1	[2014] HCASL 107 [2013] FCAFC 141 [2013] FCA 588
Clement v Comcare	[2013] AATA 638	[2014] FCA 654

Jurisdiction and legislative changes

This section of the Bulletin provides a summary of legislative changes that affect the AAT, including changes to the AAT's jurisdiction to review decisions. Information about the AAT's jurisdiction can also be found on the [AAT website](#).

Biennial fee increase on 1 July 2014

The Tribunal's fees are revised every two years in accordance with regulation 19A of the *Administrative Appeals Tribunal Regulations 1976* to take into account changes in the Consumer Price Index.

Fees that are payable when lodging certain applications with the Tribunal will increase on 1 July 2014 to:

- \$861 for standard applications, and
- \$85 for applications in the Small Taxation Claims Tribunal.

There will be no change to the \$100 reduced fee that is payable in some circumstances, or the circumstances where no fee is payable.

For more information, visit the fees section on our [website](#) or call us on 1300 366 700.

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