



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.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

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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

[Baltruweit and Australian Postal Corporation](#) [2014] AATA 394; 20/6/2014; Miss EA Shanahan, Member

Acute inflammatory process right wrist and hand – tenosynovitis and synovitis – underlying joint disease of uncertain origin – repetitive wrist movements – failure to respond to treatment for gout or rheumatoid arthritis – aggravation of an underlying arthropathy of uncertain aetiology – left thumb tendonitis – decision set aside

[Carlile and Linfox Australia Pty Ltd](#) [2014] AATA 416; 25/6/2014; Ms R Perton, Member

Whether condition caused or aggravated through employment – whether employment contributed to a significant degree – decision affirmed

[Huynh and Australian Postal Corporation](#) [2014] AATA 418; 26/6/2014; Senior Member N Bell and Dr M Crouch Member

Commonwealth Employees – whether applicant continues to suffer the effects of her injury – degenerative condition – whether lower back condition aggravated by incident – whether the nature and conditions of applicant's work significantly contribute to her back condition – decisions under review affirmed

[Palmer and Australian Postal Corporation](#) [2014] AATA 391; 20/6/2014; Deputy President SD Hotop

Employee of licensed corporation – applicant suffered elbow injury in November 2010 in performance of employment duties – respondent accepted liability to pay compensation for elbow injury – respondent determined in December 2012 that effects of elbow injury had ceased and no compensation payable – as at December 2012 applicant's ongoing elbow pain not causally related to compensable elbow injury – respondent not liable to pay compensation to applicant for compensable injury from December 2012 and presently – decision under review affirmed

[Warmisham and Military Rehabilitation and Compensation Commission](#) [2014] AATA 422; 27/6/2014; Deputy President PE Hack SC, Dr M Sullivan, Member

Injury – impairments – reasoning and memory dysfunction – whether multifactorial in cause – headaches – whether impairments in their own right or symptoms of post-traumatic stress disorder – reliability of evidence – decision under review affirmed

[Wiegand and Comcare](#) [2014] AATA 413; 25/6/2014; President D Kerr and Deputy President K Bean

Commonwealth employees – entitlement to incapacity payments under Safety, Rehabilitation and Compensation Act 1988 – findings made by differently constituted Tribunal regarding applicant's date of injury – Applicant sought to relitigate date of injury issue – whether Tribunal should exercise its discretion to revisit date of injury in the context of these proceedings – further “new” evidence considered – no basis to permit relitigation of issue already decided – consideration of applicant's entitlement to incapacity payments – decision under review varied

Maritime Safety

[Mogilyuk and Australian Maritime Safety Authority](#) [2014] AATA 409; 24/6/2014; Senior Member BJ McCabe

Detention orders – international trading vessel detained on basis that it was both ‘unseaworthy’ and ‘substandard’ – failure of safety management system – safety and environmental obligations – application of international maritime conventions – issue of whether discretion to detain properly exercised – reviewable decision affirmed

National Disability Insurance Scheme

[Young and National Disability Insurance Agency](#) [2014] AATA 401; 20/6/2014; Senior Member J Toohey and Senior Member J Handley

Reasonable and necessary supports – emphysema – diabetes – portable oxygen concentrator – insulin pump – whether supports most appropriately funded or provided through the NDIS or more appropriately funded or provided through the health system – decision that both more appropriately funded through the health system affirmed

Practice and Procedure

[BQRW and Anor and Commissioner of Taxation](#) [2014] AATA 410; 24/6/2014; Deputy President SE Frost

Application to re-open proceedings after Tribunal's decision reserved but before final decision made – whether Tribunal under an unqualified obligation to re-open – whether proceedings can be re-opened as a matter of discretion – relevant factors – applications in the Tribunal's taxation jurisdiction are different from applications in other jurisdictions where there are no onus of proof provisions – application to re-open refused

[Lateral Thinking Pty Ltd and Australian Securities and Investments Commission](#) [2014] AATA 405; 20/6/2014; Prof R Deutsch, Deputy President

Application for extension of time to lodge application for review – factors relevant to an extension of time – explanation of delay – irregularities in evidence – merits of substantive application – application refused

Social Security

[Andriotis and Secretary, Department of Social Services](#) [2014] AATA 390; 20/6/2014; Deputy President K Bean

Age pension – assets test – market value of properties in Greece – valuation by qualified and independent valuer – reduction in value of properties due to Greek economy – decisions under review varied

[Bubanja and Secretary, Department of Social Services](#) [2014] AATA 393; 20/6/2014; Deputy President JW Constance

Disability support pension – depression – ischaemic heart disease – left shoulder pain – varicose veins – sinusitis – hernia – whether conditions fully diagnosed, treated and stabilised – decision under review affirmed

[Bubanja and Secretary, Department of Social Services](#) [2014] AATA 397; 20/6/2014; Deputy President JW Constance

Disability support pension – left eye blindness – gynaecological condition – depression – whether conditions fully diagnosed, treated and stabilised – decision under review affirmed

[Camaj and Secretary, Department of Social Services](#) [2014] AATA 412; 25/6/2014; Dr I Alexander, Member

Pensions – disability support pension – whether applicant's conditions were fully diagnosed, treated and stabilised – whether applicant's impairment is rated 20 points or more under the Impairment Tables – decision under review affirmed

[Gibbons and Secretary, Department of Social Services](#) [2014] AATA 398; 23/6/2014; Senior Member RW Dunne

Pensions, benefits and allowances – youth allowance – earnings by applicant as a trainee – whether a "job seeker" or a "new apprentice" – "income free area" – decision under review affirmed

[Harvey and Secretary, Department of Social Services](#) [2014] AATA 364; 10/6/2014; Mr I Thompson, Member

Pensions and benefits and allowances – entitlement to Disability Support Pension – physical, intellectual or psychiatric impairment – whether impairment rating of 20 points or more existed under the Impairment Tables – whether conditions were fully diagnosed, treated and stabilised – conditions not fully treated at the date of claim or the 13 weeks following – decision affirmed

[Hermez and Secretary, Department of Social Services](#) [2014] AATA 400; 23/6/2014; Dr I Alexander, Member

Pensions – Disability Support Pension – whether applicant's conditions fully diagnosed, treated and stabilised – whether applicant had a continuing inability to work – decision affirmed

[Jennings and Secretary, Department of Social Services](#) [2014] AATA 419; 4/6/2014; Senior Member AF Cunningham

Aged Pension – calculation of rate of Australian Aged Pension – whether gross amount of foreign pensions should be taken into account

[Maatouk and Secretary, Department of Social Services](#) [2014] AATA 417; 25/6/2014; Ms R Perton, Member

Social security payments – assets test – former directors and shareholders of private company – consideration of factors in Principles – effective control – attributable assets – decision set aside and remitted for re-calculation of assets held by applicants

[Ruzicka; Secretary, Department of Social Services and](#) [2014] AATA 341; 30/5/2014; Ms R Perton, Member

Newstart allowance – undeclared assets – overpayment – debt to the Commonwealth – special circumstances – waiver of debt – decision set aside and remitted for recalculation of debt

[Scott and Secretary, Department of Social Services](#) [2014] AATA 408; 23/5/2014; Senior Member AK Britton

Parenting Payment – Whether Parenting Payment should be paid at the single rate—whether there was a marriage-like relationship during the relevant period – whether the Applicant was living separately and apart from her husband on a permanent or indefinite basis – decision set aside and substituted

[Ulukut and Secretary, Department of Social Services](#) [2014] AATA 399; 23/6/2014; Senior Member N Isenberg

Disability support pension – permanent conditions – whether the Applicant has an impairment rating of 20 points or more under the impairment tables – whether the Applicant had a continuing inability to work – whether Applicant has a severe impairment – decision under review set aside

Superannuation

[Roberts-Billett and Commonwealth Superannuation Corporation](#) [2014] AATA 415; 25/6/2014; Ms R Perton, Member

Spouse pension – widow – applicant remarried husband shortly before his death – applicant not living with husband – whether apart due to special circumstances – remittal by Federal Court to explain reason for a particular finding more fully – decision affirmed

Taxation

[RepairCo and Commissioner of Taxation](#) [2014] AATA 414; 25/6/2014; Deputy President SE Frost

Income tax – creation of employee welfare fund – whether contributions to the scheme are deductible – whether applicant has established that the quantum of deductions claimed is correct – incomplete primary records produced – whether a particular loss or outgoing was incurred in gaining or producing assessable income – whether Commissioner empowered to make assessments – circumstances in which a taxpayer "had a tax loss" – administrative penalty applicable

PRACTICE AND PROCEDURE – requirement to give a party a reasonable opportunity to present case – further submissions after hearing not received by Tribunal

[Sisely and Commissioner of Taxation](#) [2014] AATA 411; 24/6/2014; Senior Member BJ McCabe

Excess superannuation contributions – excess taxed at higher rate – Commissioner refused to exercise discretion to disregard or reallocate excess – no finding of ‘exceptional circumstances’ – exercise of discretion not consistent with statutory objective – reviewable decision affirmed

[Van Gestel and Commissioner of Taxation](#) [2014] AATA 396; 20/6/2014; Senior Member BJ McCabe

GST Assessment and Penalty Decision – alleged identity fraud in lodgement of Business Activity Statement – consideration of whether taxpayer is ‘dissatisfied’ in relevant sense with the objection decision – Tribunal has jurisdiction to review the objection decision

[Vuong and Commissioner of Taxation](#) [2014] AATA 402; 23/6/2014; Dr G Hughes, Member

Taxpayer requested rollover of superannuation fund to a new fund which proved to be fraudulent – whether the rolled over sum should be included in taxpayer's assessable income – whether taxpayer entitled to early release of superannuation benefit – level of penalty to apply where applicant is the victim of a fraud – whether penalty should be waived – penalty remitted in full – decision relating to the underlying liability affirmed

Veterans' Affairs

[Douglas and Repatriation Commission](#) [2014] AATA 407; 24/6/2014; Senior Member N Isenberg

Eligible defence service – whether a depressive disorder was defence-caused – consideration of Statement of Principles – decision under review is affirmed

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
Contreras v Minister for Immigration and Border Protection & AAT	[2013] AATA 914
Dunkerley v Comcare	[2014] AATA 381
TNT Australia Pty Ltd	[2014] AATA 331

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
FTZK v Minister for Immigration and Border Protection	[2012] AATA 312	[2014] HCA 26 [2013] FCAFC 44

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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