



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.

Civil Aviation

[Ekinci and Ors and Civil Aviation Safety Authority](#) [2014] AATA 424; 27/6/2014; The Hon. B Tamberlin QC, Deputy President and MR R Bartsch, Member

Cancellation and suspension of licences, certificates, approvals and permits – certification of maintenance – recording of flight times – conducting flights in aircraft with outstanding maintenance – flights over built-up areas – effect of transitional provisions – whether fit and proper person – allegations of bribery – responsibilities of supernumerary positions – whether component required to be retired – whether a failure to perform maintenance – dual signatures upon certifications – flight time and time in service – classification of operations – procedural fairness and natural justice – conducting training flights under expired instructor rating – mercy flight – hire or reward – commercial flights – low level aerobatic flights upon expired approval – applicant not a fit and proper person – decision under review set aside and substituted

Compensation

[Marsden and Comcare](#) [2014] AATA 429; 1/7/2014; Senior Member D Letcher QC and Dr I Alexander, Member

Household services – compensation in respect of a disease, physical or mental injury suffered by an employee contributed to a significant degree by their employment – previously accepted psychological injury – whether compensable injury – adjustment disorder – ventricular tachycardia – decision under review affirmed

PRACTICE AND PROCEDURE – tender of statements – witnesses unavailable for cross-examination – leave to grant statements refused

[O'Donnell and K & S Freighters Pty Ltd](#) [2014] AATA 437; Senior Member N Isenberg and Dr I Alexander, Member

Entitlement to compensation for medical expenses and incapacity payments – decision under review affirmed

[Richardson and Australian Postal Corporation](#) [2014] AATA 440; 3/7/2014; Senior Member RG Kenny

Australia Post employee – liability accepted in 2004 under s 14 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (the Act) for “soft tissue injury left knee” – new claim in 2012 for “two tears in cartilage of left knee” – reviewable decision that liability denied under s 14 of the Act for “two tears in cartilage of left knee” – decision affirmed

Corporations

[Gabay and Anor and Australian Securities and Investments Commission](#) [2014] AATA 425; 27/6/2014; The Hon. B Tamberlin QC, Deputy President

Disqualification as director of corporations – whether disqualification is justified as the consequence of the person's conduct – related body corporate – reasonable suspicion of insolvency – trading while insolvent – escrow agreements – whether proper consideration provided – assignment of intellectual property rights – whether required consent obtained – whether adequate records kept – delegation of duties – whether duties discharged with care and diligence – decision under review affirmed – decision under review varied

Immigration and Citizenship

[Tongia and Minister for Immigration and Border Protection](#) [2014] AATA 435; 2/7/2014; Dr P McDermott RFD, Senior Member

Constitution of the Independent State of Papua New Guinea – Independence Day and automatic citizenship – cessation of Australian citizenship – application for resumption of Australian citizenship – cessation outside legislative scope – applicant ineligible for resumption – decision affirmed

Practice and Procedure

[Hurmiz and Secretary, Department of Education](#) [2014] AATA 443; 3/7/2014; D I Alexander, Member

Application for review – no appearance at hearing – non compliance with direction of the Tribunal – failure to comply with direction of the Tribunal – application for dismissal of application – Tribunal dismisses application for review

[O'Neill and Child Support Registrar](#) [2014] AATA 426; 30/6/2014; Deputy President K Bean

Whether first application for review should be dismissed pursuant to s 42B in circumstances where travel dates in the relevant application for a departure authorisation certificate have passed – whether application futile – where travel dates in a further application for review are open ended – no utility in undertaking review of both decisions – first application for review dismissed

Whether directions should be made pursuant to s 25(4A) limiting the scope of the hearing – whether Tribunal bound by previous assessments of applicant's financial position – whether Tribunal can make findings inconsistent with previous assessments – s 116 certificate determinative of existence of amount of child support liability – Tribunal has no power to amend assessments – not necessary for Tribunal to review correctness of previous assessments – directions made limiting the scope of the hearing

[Said and Secretary, Department of Social Services](#) [2014] AATA 439; 15/5/2014; Deputy President SD Hotop

Request for order staying decision under review – relevant factors – hardship – likelihood of recovery of moneys – prospects of success of application for review – stay order not appropriate for purpose of securing effectiveness of hearing and determination of application for review – Tribunal not of opinion that desirable to make stay order – applicant's request for stay order refused

Social Security

[Elliott and Secretary, Department of Social Services](#) [2014] AATA 432; 2/7/2014; Mr I Thompson, Member

Pensions, benefits and allowances – Carer Payment – whether start date of payment is correct – date of enquiry for payment of benefit – date of actual lodgement of claim form – valid lodgement of claim form later than prescribed limit – no provision for backdating grant to date of enquiry – decision under review affirmed

[Fanning and Secretary, Department of Social Services](#) [2014] AATA 447; 4/7/2014; Deputy President RP Handley

Disability support pension – whether condition is permanent – whether condition fully treated and stabilised during the relevant period – decision under review affirmed

PRACTICE AND PROCEDURE – medical evidence from outside the relevant period that the condition was intractable – whether Tribunal can consider evidence outside the relevant period in determining the correct and preferable decision

[Kelly and Secretary, Department of Social Services](#) [2014] AATA 441; 3/7/2014; Senior Member RG Kenny

Benefits and entitlements – Applicant in receipt of disability support pension – request for unlimited portability of disability support pension – Applicant not severely impaired – decision under review affirmed

[Kerdi and Secretary, Department of Social Services](#) [2014] AATA 427; 1/7/2014; 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

[Kumar and Secretary, Department of Social Services](#) [2014] AATA 442; 3/7/2014; Senior Member RG Kenny

Benefits and entitlements – Applicant in receipt of Newstart Allowance – claim for disability support pension – Applicant not suffering severe impairment – Applicant required to undertake a program of support – program of support not undertaken – decision affirmed

[Mirilovic and Secretary, Department of Social Services](#) [2014] AATA 428; 1/7/2014; Dr I Alexander, Member

Pensions – disability support pension – whether the applicant's conditions were fully diagnosed, treated and stabilised – whether the applicant's impairments were rated 20 or more points under the Impairment Tables – whether the applicant had a continuing inability to work – decision set aside and substituted

[Smith and Secretary, Department of Social Services](#) [2014] AATA 444; 4/7/2014; Senior Member RG Kenny

Pensions, benefits and allowances – Rejection of claim for age pension – Request for review more than 13 weeks after decision – Favourable decision to grant age pension – Start date calculated to be date of late request – Decision under review affirmed

Tax Agents

[Harris and Tax Practitioners Board](#) [2014] AATA 430; 1/7/2014; Senior Member RG Kenny

Cancellation of registration – whether fit and proper person – late lodgement of personal income tax returns and business activity statements – decision under review set aside – Applicant found to be a fit and proper person for registration as a tax agent

Taxation

[Nassar and Commissioner of Taxation](#) [2014] AATA 445; 4/7/2014; Senior Member JL Redfern

Income tax – goods and services tax – burden of proof – whether business income was understated – whether business expenses were overstated – penalty – decisions affirmed

[Yazbek and Commissioner of Taxation](#) [2014] AATA 423; 27/6/2014; Deputy President R Deutsch

Income Tax – whether dividends derived by partnership or individuals – whether dividend “paid” to applicants – “paid” includes payment by direction – failure to include dividends in assessable income – penalties – reckless as to operation of taxation law – reliance on professional advice – failure to obtain independent review does not amount to recklessness – failure to take reasonable care – decisions in respect of primary liabilities affirmed, decision in respect of shortfall penalty set aside and substituted

Veterans' Affairs

[Hughes and Repatriation Commission](#) [2014] AATA 431; 1/7/2014; Senior Member N Isenberg

Operational service – consideration of Statement of Principles – decision under review set aside and substituted

[Murray and Repatriation Commission](#) [2014] AATA 433; 2/7/2014; Senior Member RG Kenny

Benefits and entitlements – disability pension payable at 100% of general rate – eligibility for intermediate or special rate of pension – defence-caused disabilities sufficient to prevent applicant from working eight hours per week – incapacity from defence-caused conditions sufficient, alone, to prevent undertaking remunerative work for more than 8 hours per week – special rate payable – date of effect – assessment decision under review set aside and substituted

[Sheppard and Repatriation Commission](#) [2014] AATA 449; 4/7/2014; Senior Member GD Friedman

Veterans' entitlements – pilonidal sinus – diabetes mellitus – morbid obesity – sleep apnoea – whether conditions related to service – decisions affirmed

Vocational Education and Training

[Echelon National Security Agency Pty Ltd and Australian Skills Quality Authority](#) [2014] AATA 438; 3/7/2014; The Hon RJ Groom AO, Deputy President

National Vocational Education and Training Regulator Act 2011 (Cth) – application for initial registration as an RTO – whether applicant complies with standards for NVR registered training

organisations – whether applicant satisfies Fit and Proper Person Requirements – continuing non-compliance with standards – Tribunal not satisfied that applicant not a “fit and proper person” – decision not to grant initial registration 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
Commissioner of Taxation v Moignard	[2014] AATA 342

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Ayles v Tax Practitioners Board	[2014] AATA 112	[2014] FCA 675

Statements of Principles

This section of the Bulletin provides information on recent developments in relation to Statements of Principles made by the Repatriation Medical Authority for the purposes of the [Veterans' Entitlements Act 1986](#) and the [Military Rehabilitation and Compensation Act 2004](#).

New Statements of Principles

The Tribunal has been advised that the Repatriation Medical Authority has made the following new Statements of Principles. They take effect from **2 July 2014**.

[Statement of Principles concerning malignant neoplasm of the stomach No. 58 of 2014](#)

[Statement of Principles concerning malignant neoplasm of the stomach No. 59 of 2014](#)

[Statement of Principles concerning melioidosis No. 60 of 2014](#)

[Statement of Principles concerning melioidosis No. 61 of 2014](#)

[Statement of Principles concerning lumbar spondylosis No. 62 of 2014](#)

[Statement of Principles concerning lumbar spondylosis No. 63 of 2014](#)

[Statement of Principles concerning thoracic spondylosis No. 64 of 2014](#)

[Statement of Principles concerning thoracic spondylosis No. 65 of 2014](#)

[Statement of Principles concerning cervical spondylosis No. 66 of 2014](#)

[Statement of Principles concerning cervical spondylosis No. 67 of 2014](#)

[Statement of Principles concerning hiatus hernia No. 68 of 2014](#)

[Statement of Principles concerning hiatus hernia No. 69 of 2014](#)

[Statement of Principles concerning warts No. 70 of 2014](#)

[Statement of Principles concerning warts No. 71 of 2014](#)

Amended Statements of Principles

The Tribunal has been advised that the Repatriation Medical Authority has made the following instruments amending the Statement of Principles for the specified condition. They take effect from **13 May 2014**.

[Amendment Statement of Principles concerning myeloma No. 72 of 2014](#)

[Amendment Statement of Principles concerning myeloma No. 73 of 2014](#)

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