



AAT Bulletin

ISSUE NO. 28/2014

21 JULY 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.

Contents

AAT Recent Decisions	2
Compensation.....	2
Immigration and Citizenship	3
Practice and Procedure	3
Social Security	3
Taxation	5
Tax Practitioners' Board	5
Veterans' Affairs.....	5
Appeals	7
Appeals lodged	7
Appeals finalised.....	7

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

[Atkins and Comcare](#) [2014] AATA 473; 14/7/2014; Senior Member RM Creyke

Osteoarthritis in right and left thumbs – whether the applicant suffered from a compensable condition – whether the injury was aggravated by the employment – whether the applicant continued to suffer the compensable condition – decisions under review affirmed

[Egan and Telstra Corporation Limited](#) [2014] AATA 472; 14/7/2014; Senior Member RG Kenny and Dr GJ Maynard, Brigadier (Rtd), Member

Claim for permanent impairment – liability accepted for 1993 injury of lower back strain L5/S1 – further injury to spine in 2011 an aggravation of underlying degenerative disease – condition unrelated to compensable condition – application of the Guide to the Assessment of the Degree of Permanent Impairment (Edition 2.1) (“the Guide”) – whole person impairment rating under Table 9.17 of the Guide – threshold requirement of 10% for payment of compensation for permanent impairment not satisfied – decision under review affirmed

[Gilbert and Australian Postal Corporation](#) [2014] AATA 483; 17/7/2014; Deputy President K Bean and Professor P Reilly AO, Member

Entitlement to incapacity payments under *Safety, Rehabilitation and Compensation Act 1988*, s 19 – whether applicant able to work normal weekly hours – further modified duties not offered to applicant – Applicant’s ability to earn equivalent to what he actually earned in relevant period – decision under review set aside

[Parry and Military Rehabilitation and Compensation Commission](#) [2014] AATA 493; 18/7/2014; Senior Member BJ McCabe and Dr GJ Maynard, Brigadier (Rtd), Member

Application for compensation in respect of cognitive impairment – Applicant already in receipt of pension for PTSD and chronic depression – medical expert evidence suggests cognitive impairment not a separate medical condition – cognitive impairment a consequence of accepted psychiatric conditions already compensated for under separate Act – reviewable decision affirmed

[Ross and Comcare](#) [2014] AATA 476; 15/7/2014; Senior Member RG Kenny

Acceptance of liability under the *Safety, Rehabilitation and Compensation Act 1988* (Cth) for right knee condition – reviewable decision to revoke determinations relating to incapacity payments from 1 July 2007 until 8 July 2012 (“the relevant period”) – further reviewable decision that incapacity entitlement in the relevant period was nil – assessment of ability to earn in suitable employment – decisions set aside and substituted – matters remitted to Comcare for recalculation

[Thompson and Comcare](#) [2014] AATA 486; 17/7/2014; Deputy President SD Hotop

Commonwealth employees – applicant suffered compensable back injury – applicant subsequently suffered mental ailment – mental ailment contributed to, to significant degree, by compensable back injury – mental ailment a disease – mental ailment a compensable injury – applicant incapacitated for work as result of compensable back injury – decisions under review set aside

Immigration and Citizenship

[Slewa and Minister for Immigration and Border Protection](#) [2014] AATA 484; 17/7/2014; Senior Member JL Redfern

Application for citizenship by conferral – application refused – whether applicant is of good character – proceedings for an offence against an Australian law pending – decision affirmed

Practice and Procedure

[Lauricella and Secretary, Department of Social Services](#) [2014] AATA 471; 11/7/2014; Deputy President RP Handley

Extension of time to lodge application for review – application refused

[Secretary, Department of the Prime Minister and Cabinet and Treasurer of the Commonwealth of Australia and Combined Pensioners and Superannuants Association of New South Wales Incorporated \(Party Joined\)](#) [2014] AATA 485; 17/7/2014; Deputy President SA Forgie

FREEDOM OF INFORMATION – direction of differently constituted Tribunal determining parties to the proceeding – whether Tribunal functus officio – whether any basis on which earlier Tribunal made a jurisdictional error so that it had not made a decision at all – Tribunal functus officio

FREEDOM OF INFORMATION – standing – considered if Tribunal not functus officio – interests “affected by” – applicant is a person whose interests are affected by the decision under review

FREEDOM OF INFORMATION – parties to the proceeding – identification of parties – difficulties arising from description of agency as “respondent” when its IC reviewable decision not under review and the Information Commissioner is not a party to the review of the IC decision

FREEDOM OF INFORMATION – legal representation – applicant and respondent having same representative – matter for parties and legal representatives – identification of role of each – interests align – issue of potential conflict should be revisited from time to time

Social Security

[Cope and Secretary, Department of Social Services](#) [2014] AATA 451; 4/7/2014; Senior Member RM Creyke

Pension bonus payment – consecutive qualifying bonus periods – whether applicant satisfied work test requirements – whether applicant applied for pension bonus within time – decision under review set aside

[Danaher; Secretary, Department of Social Services and](#) [2014] AATA 448; 4/7/2014; Deputy President PE Hack SC

Claims – disability support pension – whether injuries permanent – whether Table 1 or Table 4 to be used for spinal injuries – whether injuries qualify for 20 points – decision set aside

[Downes and Secretary, Department of Social Services](#) [2014] AATA 492; 17/7/2014; Senior Member BJ McCabe

FAMILY ASSISTANCE AND SOCIAL SECURITY – Dispute over rate of age pension – Applicant contends she made gift of \$75,000 to son in 1999 – respondent contends there was no delivery of gift until 2011 – finding of fact that disposal of financial asset occurred in 1999 – reviewable decision set aside and remitted to respondent

[Fisher and Secretary, Department of Social Services](#) [2014] AATA 488; 17/7/2014; Senior Member BJ McCabe

DISABILITY SUPPORT PENSION – Unsuccessful application for DSP – failure to satisfy “medical criteria” – physical and psychiatric conditions not fully diagnosed, treated and stabilised – not possible to allocate impairment points – applicant made earlier, successful application for another social security payment – not reasonable to exercise discretion to deem earlier application as application for DSP – decision under review affirmed

[Garside and Secretary, Department of Social Services](#) [2014] AATA 489; 17/7/2014; Senior Member BJ McCabe

FAMILY ASSISTANCE AND SOCIAL SECURITY – Applications for Carer Allowance and Carer Payment – medical evidence confirms applicant’s entitlement – dispute over date of entitlement – claim for Carer Allowance effective from day on which applicant asked for review of rejection decision – claim for Carer Allowance effective from day on which applicant lodged second claim form that was ultimately accepted – decision under review affirmed

[Haryanto and Secretary, Department of Social Services](#) [2014] AATA 481; 14/7/2014; Mr S Webb, Member

Claim for Newstart Allowance – compensation for work injury – payment of medical treatment and other expenses, periodic payments and lump sum compensation by previous employer’s insurer prior to settlement – transfer of liability – lump sum settlement of claim – reimbursement of previous employer’s insurer – periodic payments excluded from calculation of lump sum – compensation part of lump sum – calculation of preclusion period – no special circumstances – decision affirmed

[Polydorou and Secretary, Department of Social Services](#) [2014] AATA 478; 10/6/2014; Mr C Ermert, Member

Disability Support Pension – absence from Australia – portability – cancellation – claim for review of cancellation – favourable determination – more than 13 weeks – date of effect – decision affirmed

[Stien and Secretary, Department of Social Services](#) [2014] AATA 477; 4/7/2014; Senior Member RW Dunne

Disability support pension – evidence obtained by respondent that applicant received excessive income during relevant period – decision of Social Security Appeals Tribunal affirming respondent’s decision to suspend and then cancel payment of disability support pension – applicant denies deriving excessive income

PRACTICE AND PROCEDURE – application for stay – hardship, likelihood of recovery by respondent, prospects of success – applicant’s history relating to disability support pension unclear – necessary for substantive question to be decided by Tribunal – application for stay refused.

[Sukkar and Secretary, Department of Social Services](#) [2014] AATA 480; 16/7/2014; Senior Member N Isenberg

Disability support pension – applicant seeks indefinite portability of disability support pension – whether applicant has a severe impairment – decision under review affirmed

Taxation

[Dowling and Commissioner of Taxation](#) [2014] AATA 474; 14/7/2014; Deputy President IR Molloy

Superannuation – excess non-concessional contributions tax – whether special circumstances – whether discretion under Division 292 of the *Income Tax Assessment Act 1997* (Cth) can be exercised – decision under review affirmed

Tax Practitioners’ Board

[Pathiramage and Tax Practitioners’ Board](#) [2014] AATA 490; 14/7/2014; Senior Member J Handley

Registered tax agent – renewal of registration – whether applicant has completed continuing professional education that meets the Board’s requirements – course in Australian taxation law not completed – applicant seeking extension to complete course requirements – power of the Tribunal to extend time – decision to refuse renewal of registration affirmed

Veterans' Affairs

[Elton and Repatriation Commission](#) [2014] AATA 475; 15/7/2014; Senior Member GD Friedman

Veterans’ entitlements – alcohol use disorder – stressful events – whether condition war-caused – cannabis use disorder – whether condition diagnosed and war-caused – decision under review set aside

[QSWZ and Repatriation Commission](#) [2014] AATA 482; 16/7/2014; Miss EA Shanahan, Member

Disability Pension – eligible service – cardiac arrhythmias variously diagnosed – prolonged strenuous high level endurance physical activity – eventual diagnosis paroxysmal atrial fibrillation – satisfaction of Statement of Principles – decision set aside

[Tearle and Repatriation Commission](#) [2014] AATA 491; 17/7/2014; Senior Member AK Britton

Entitlement to pension – shoulder osteoarthritis and/or hand osteoarthritis – whether disease was war-caused – *Deledio* test – pension at the intermediate rate – whether there is material that points to a hypothesis – beneficial legislation – decision 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
Ekinci v Civil Aviation Safety Authority	[2014] AATA 424
Mulligan v National Disability Insurance Agency	[2014] AATA 374
Ogden v Commissioner of Taxation	[2014] AATA 385

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Pangilinan v Secretary, Department of Immigration and Border Protection	[2013] AATA 574	[2014] FCA 740 [2014] FCCA 294

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