



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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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.

Civil Aviation

[Ryan and Civil Aviation Safety Authority](#) [2014] AATA 494; 18/7/2014; Deputy President PE Hack SC

Medical certificate – problematic substance use – whether a history of problematic alcohol use – whether engaged in problematic alcohol use – decision under review set aside and remitted

Compensation

[Miechel and Military Rehabilitation Compensation Commission](#) [2014] AATA 508; 25/7/2014; Deputy President SA Forgie

COMPENSATION – amount payable during periods of incapacity – injury sustained while in Army – discharged from Army – engaged in Citizen Military Force (now Army Reserve) – no continuity of Commonwealth employment – payment as Lieutenant on discharge from Army payable

Health

[Accord Australasia Limited and Director, Chemicals Notification and Assessment Scheme](#) [2014] AATA 504; 24/7/2014; Deputy President RP Handley and Professor G Johnston, Member

Imposition of conditions of use – whether Respondent has power to impose condition of use – whether reasonable for the Respondent to find that, when used in cosmetics, these chemicals may pose an unreasonable risk to health, safety and the environment – chemicals pose an unacceptable risk to human health and/or the environment – appropriate to limit the use of the chemicals to concentrations known to be safe – setting of volume limits not justified – definitive data required to justify the application of specific conditions – decision under review varied – additional conditions removed - further assessment of the chemicals recommended

[Wodonga Pharmacy Pty Ltd and Australian Community Pharmacy Authority and Ors](#) [2014] AATA 496; 18/7/2014; Senior Member E Fice

PHARMACIES – recommendation of Australian Community Pharmacy Authority – approval to supply pharmaceutical benefits – new pharmacy in a small shopping centre – legal right to occupy the proposed premises – information to be considered by the Authority – single management – commercial establishment – gross leasable area of at least 5000 m² – at least 15 other commercial establishments – temporary selling points – occupied by or likely to be occupied by one business – separate commercial establishments – decision under review set aside and substituted

PRACTICE AND PROCEDURE – statutory interpretation – onus of proof – inferences

National Disability Insurance Scheme

[TKCW and National Disability Insurance Agency](#) [2014] AATA 501; 23/7/2014; Senior Member J Toohey and Mr I Thompson, Member

Child – Autism Spectrum Disorder – early intervention requirements – reasonable and necessary supports – The Listening Program – current good practice – child care support – decision under review affirmed

Social Security

[Bates and Secretary, Department of Social Services](#) [2014] AATA 436; 3/7/2014; Senior Member D Letcher QC

Disability Support Pension – suspension and cancellation of payments – whether Applicant resident of Australia at relevant time – relevant considerations – partner and daughter in Indonesia – short periods in Australia only – Tribunal not satisfied on balance of all considerations that applicant resided in Australia at relevant time – decision under review affirmed

[Ellis and Secretary, Department of Social Services](#) [2014] AATA 509; 18/7/2014; Dr J Chaney, Member

Claim for Disability Support Pension – whether Applicant has any Impairments – whether impairments attract 20 points under the Impairment Tables – whether the Applicant has a Continuing Inability to Work

[Rajkovic and Secretary, Department of Social Services](#) [2014] AATA 502; 23/7/2014; Deputy President RP Handley

Age Pension – claim refused for failure to meet residence requirements – whether Applicant Australian Resident – the nature of the accommodation used by the Applicant in Australia – the nature and extent of the family relationships the Applicant has in Australia – the nature and extent of the Applicant's employment, business or financial ties with Australia – the nature and extent of the Applicant's assets located in Australia – the frequency and duration of the Applicant's travel outside Australia – Applicant did not reside in Australia at time of application – Decision under review affirmed

[Sirijovski and Secretary, Department of Social Services](#) [2014] AATA 505; 24/7/2014; Miss EA Shanahan, Member

Pensions and allowances – disability support pension – back injury leading to chronic pain syndrome following motor vehicle accident – anxiety and depression – failure to satisfy s 94(1)(b) of the *Social Security Act 1991* in not attaining a 20 impairment point rating – new application successful in January 2014 – in receipt of DSP – eligibility under review – applicant seeking back payment of DSP – recent treatment for back pain – decision under review affirmed

[Wright and Secretary, Department of Social Services](#) [2014] AATA 498; 21/7/2014; Senior Member RG Kenny

Pensions, benefits and allowances – disability support pension – relevant period for assessment – physical impairment from facial pain condition fully diagnosed, treated, stabilised and permanent – depression not permanent – impairment tables – ratings allocated for chronic pain under Tables 1, 7 and 8 of the Impairment Tables – overall impairment rating more than 20 points – program of support completed by applicant – continuing inability to work – Applicant qualified for disability support pension during the relevant period – decision under review set aside and substituted

Taxation

[Cameron and Commissioner of Taxation](#) [2014] AATA 499; 22/7/2014; Senior Member PW Taylor SC

Income tax – amended assessments disallowed PAYG credit claims – jurisdiction of Tribunal – penalty – whether to remit – decisions affirmed

Veterans' Affairs

[Schwind and Repatriation Commission](#) [2014] AATA 503; 23/7/2014; Senior Member RG Kenny

Benefits and entitlements – disability pension – operational service with Australian Regular Army – claim for bilateral hip pain – diagnoses of trochanteric bursitis and abductor tendonitis both hips – concession by applicant that hip conditions not attributable to Army service – entitlement decision under review affirmed

Disability pension payable at 100% of general rate – eligibility for intermediate or special rate of pension – accepted disabilities sufficient to prevent applicant from working eight hours per week – incapacity from war-caused conditions not sufficient, alone, to prevent undertaking remunerative work for more 8 hours per week – neither intermediate nor special rate payable – assessment decision under review affirmed

[Smith and Repatriation Commission](#) [2014] AATA 500; 22/7/2014; Senior Member D Letcher QC

Claim for war widow's pension – operational service – whether veteran's service led to death – complex hypothesis – decision under review affirmed

[Sweet and Repatriation Commission](#) [2014] AATA 497; 18/7/2014; Senior Member RG Kenny

Benefits and entitlements – disability pension payable at 100% of general rate – application for increase in pension – eligibility for special rate of pension – remunerative work – incapacity from war-caused conditions sufficient to prevent applicant undertaking remunerative work for more than 8 hours per week – Applicant prevented from undertaking remunerative work due solely to accepted disabilities – special rate payable from date of claim for increase in pension – decision under review set aside and substituted

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 |
|---|---------------------------------|
| Gabay v Australian Securities and Investments Commission & AAT | [2014] AATA 425 |

Appeals finalised

| CASE NAME | AAT REFERENCE | COURT REFERENCE |
|---|---------------------------------|--|
| Sullivan v Civil Aviation Safety Authority | [2013] AATA 425 | [2014] FCAFC 93 [2013] FCA 1362 |
| Woodall v Repatriation Commission | [2012] AATA 803 | VID1066/2012 |

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