



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.

Compensation

[Kennedy and Comcare](#) [2014] AATA 557; 12/8/2014; Senior Member J Toohey and Dr M Couch, Member

Whether applicant suffered an injury in 2009 – psychological condition – whether events in 2009 aggravated a previous injury – decision under review affirmed

[Martin and Comcare](#) [2014] AATA 553; 11/8/2014; Senior Member AK Britton

Psychiatric injury – Whether injury is the result of reasonable administrative action taken in a reasonable manner – Reasonableness to be assessed with reference to the circumstances surrounding the action

PRACTICE AND PROCEDURE – procedural fairness – role of “pleadings”

Immigration and Citizenship

[Wang and Minister for Immigration and Border Protection](#) [2014] AATA 555; 8/8/2014; Senior Member CR Walsh

Eligibility – citizenship by conferral – general residence requirement – non-citizen Applicant spouse of Australian citizen – non-citizen Applicant had periods of absence from Australia in four years immediately before citizenship application – non-citizen Applicant accompanied Australian citizen husband overseas for his employment – discretion to treat periods of absence from Australia as ones in which non-citizen Applicant was “present in Australia as a permanent resident” – whether non-citizen Applicant had “close and continuing association with Australia” during periods of absence from Australia in four years immediately before citizenship application – decision under review affirmed

Practice and Procedure

[Clarke and Secretary, Department of Social Services](#) [2014] AATA 540; 7/8/2014; Deputy President SD Hotop

Extension of time – application for review lodged outside prescribed period – unsatisfactory explanation for delay – applicant rested on rights – apparent lack of merit of application for review – Tribunal not satisfied that reasonable in all the circumstances to grant extension of time – application for extension of time refused

[SM and Secretary, Department of Social Services](#) [2014] AATA 552; 5/8/2014; Senior Member J Toohey

Extension of time – application for extension of time refused

Social Security

[Balsara and Secretary, Department of Social Services](#) [2014] AATA 562; 13/8/2014; Miss EA Shanahan, Member

Disability support pension – no impairment rating possible – multiple medical conditions none of which are fully treated and stabilised – decision affirmed

[Lukin and Secretary, Department of Social Services](#) [2014] AATA 563; 14/8/2014; Senior Member RW Dunne, Professor P Reilly, Member

Pensions, benefits and allowances – claim for disability support pension rejected – physical, intellectual or psychiatric impairment – whether impairment rating of 20 points or more existed under the Impairment Tables – whether there was a "continuing inability to work" – reports of medical practitioners and psychiatrist considered – Job Capacity Assessments conducted – decision under review affirmed

[Swale; Secretary, Department of Social Services and](#) [2014] AATA 554; 1/8/2014; Senior Member AF Cunningham

Claim for Parenting Payment (Partnered) – whether Assessable Income exceeds the Personal Income Cut-Off Limit – whether Trust Income should be included – whether Applicant is an Attributable Stakeholder of the Trust – whether Trust Distributions were made in accordance with Validly Executed Resolutions under the Trust Deed – decision under review set aside

[Tralongo and Secretary, Department of Social Services](#) [2014] AATA 560; 31/7/2014; Senior Member RW Dunne

Pensions, benefits and allowances – claim for fares allowance – journey using reasonable route at least expensive form of public transport that is reasonable – no discretion – decision under review affirmed

[Von Zum Hof and Secretary, Department of Social Services](#) [2014] AATA 556; 5/6/2014; Senior Member J Toohey

AUSTUDY – whether applicant overpaid – whether special circumstances – decision that applicant has a debt affirmed – amount of debt varied on account of special circumstances

[Wells and Secretary, Department of Social Services](#) [2014] AATA 549; 28/7/2014; Ms R Perton, Member

Newstart allowance – unemployment arising from a voluntary act or misconduct as an employee – eight week period of non-payment – limited discretion to waive eight week period – decision affirmed

[Wroblewska-Drag and Secretary, Department of Social Services](#) [2014] AATA 559; 26/5/2014; Senior Member AF Cunningham

Portability of payments – cancellation of benefits whilst applicant was overseas for more than 6 weeks – decision under review affirmed

Veterans' Affairs

[Hart and Repatriation Commission](#) [2014] AATA 564; 14/8/2014; Senior Member J Handley

Applicant served with the Royal Australian Navy – three periods of operational service – increase in smoking prior to operational service – whether attributable to fear of entering a war zone or the disappointment of not being permitted to pursue preferred career path – whether carotid artery disease, chronic obstructive pulmonary disease and cerebrovascular accident war-caused – decision set aside – assessment remitted

[Hind and Repatriation Commission](#) [2014] AATA 565; 15/8/2014; Senior Member RG Kenny

Disability pension – Defence service with Royal Australian Air Force – Malignant neoplasm of the bladder – Condition related to smoking cigarettes – Statement of Principles for malignant neoplasm of the bladder – Smoking not related to defence service – Condition not defence caused – Decision affirmed

[Howes and Repatriation Commission](#) [2014] AATA 568; 15/8/2014; Dr P McDermott RFD, Senior Member

Applicant served in Royal Australian Air Force – Applicant suffers from adjustment disorder – Whether adjustment disorder is defence-caused – Insufficient evidence to conclude applicant suffers from adjustment disorder – Whether applicant suffered category 2 stressor within the 3 months before clinical onset – No evidence of date of clinical onset provided – Decision under review 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
Roberts-Billett v Commonwealth Superannuation Corporation	[2014] AATA 415

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Ellis v Repatriation Commission	[2013] AATA 433	[2014] FCA 847
P v Child Support Registrar & Anor	[2013] AATA 426	[2014] FCAFC 98 [2013] FCA 1312

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