



# 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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## Contents

<b>AAT Recent Decisions</b> .....	<b>2</b>
Civil Aviation .....	2
Compensation.....	2
Education .....	3
Immigration and Citizenship .....	3
Practice and Procedure .....	3
Social Security .....	3
Taxation .....	4
Veterans' Affairs.....	4
<b>Appeals</b> .....	<b>5</b>
Appeals lodged .....	5
Appeals finalised.....	5

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## AAT Recent Decisions

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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

[Randazzo and Civil Aviation Safety Authority](#) [2014] AATA 581; 21/8/2014; Mr R Bartsch, Member and Dr W Isles, Member

Conditions placed upon pilots licence – condition imposed requiring pilot to undertake all flights with safety pilot present – Applicant with medical conditions – atrial fibrillation – whether applicant likely to endanger the safety of air navigation – history of compliance with medications unsatisfactory – conditions appropriately imposed – decision under review affirmed

### Compensation

[Davies and Australian Postal Corporation](#) [2014] AATA 578; 20/8/2014; Miss EA Shanahan, Member

Injury or disease – liability for right forearm strain accepted in 2009 – liability for bilateral carpal tunnel syndrome denied in October 2010 – repetitive movement claimed during mail sorting – complex medical history arising from craniopharyngioma of pituitary gland – cause of carpal tunnel syndrome multifactorial – work contribution material but not significant – decision affirmed

[Ergarac and Comcare](#) [2014] AATA 592; 22/8/2014; Senior Member RM Creyke

Commonwealth employee – whether injury resulted in reasonable requirement for household assistance and gardening assistance – amount of assistance required – decision varied

[Odell and Comcare](#) [2014] AATA 591; 22/8/2014; Senior Member RM Creyke

Commonwealth employee – accepted injury to left leg – whether continues to suffer accepted injury – whether suffered impairment as a result of injury – whether impairment is permanent – whether met minimum level of whole person impairment in accordance with Guide – whether suffered compensable economic loss – decision affirmed

[O'Loughlin and Linfox Australia Pty Ltd](#) [2014] AATA 577; 50/8/2014; Senior Member GD Friedman

Face and left knee injury – revocation of previously accepted liability – altercation while delivering fuel – whether injury arose out of or in the course of employment – decision affirmed

## Education

[Doan and Secretary, Department of Education](#) [2014] AATA 580; 7/8/2014; Mr C Ermert, Member

Higher Education Support – Student Learning Entitlement – application period – whether application is made before the end of the application period – whether not possible for the application to be made before the end of that period – decision under review affirmed

## Immigration and Citizenship

[Cremin and Minister for Immigration and Border Protection](#) [2014] AATA 574; 18/8/2014; Deputy President JW Constance

Citizenship by descent – eligibility – requirement that one parent became an Australian citizen on 26 January 1949 – Applicant’s father killed during WWII – decision affirmed

[Saba and Minister for Immigration and Border Protection](#) [2014] AATA 579; 21/8/2014; Senior Member PW Taylor SC

Citizenship application – close and continuing association with Australia – decision set aside – decision remitted to Minister for redetermination

[Zaidan and Minister for Immigration and Border Protection](#) [2014] AATA 584; 21/8/2014; Senior Member CR Walsh

Citizenship by conferral – eligibility – general residence requirement – overseas absences – “good character” requirement – decision under review affirmed

## Practice and Procedure

[Twentyman; Secretary, Department of Social Services and](#) [2014] AATA 582, 21/8/2014; Deputy President JW Constance

Application for the Tribunal to direct the Respondent to attend a medical examination – consideration of the Tribunal’s power under ss 33 and 43(1) of the *Administrative Appeals Tribunal Act* – application refused

## Social Security

[Brown and Secretary, Department of Social Services](#) [2014] AATA 583; 21/8/2014; Senior Member CR Walsh and Dr J Chaney, Member

Disability support pension – applicant had fully diagnosed but not fully treated and stabilised physical impairments arising from a degenerative disease of the lumbar spine and Dupuytren’s contractures of both hands – applicant had hypercholesterolaemia and hypothyroidism which were not fully diagnosed, treated and stabilised – applicant’s physical impairments did not attract 20 points or more under the “Impairment Tables” on the date she claimed DSP or within 13 weeks thereafter – decision under review affirmed

[Estate of Emily Pitt and Secretary, Department of Social Services](#) [2014] AATA 575; 19/8/2014; Ms S Taglieri, Member

Cancellation of Age Pension due to non-compliance with notice to complete questionnaire - whether reasonable excuse - whether sections authorising cancellation ought to apply - Age Pension payable from 25 August 2011 to 26 April 2012 - decision under review affirmed

[McGee; Secretary, Department of Social Services and](#) [2014] AATA 567; 7/8/2014; Senior Member NA Manetta

Pensions, benefits and allowances – Newstart allowance – income maintenance period – calculation – payment in lieu of notice – commencement date – decision under review set aside

[ZYFZ and Secretary, Department of Social Services](#) [2014] AATA 589; 22/8/2014; Dr P McDermott RFD, Senior Member

Pensions and benefits – disability support pension (DSP) – whether applicant overpaid DSP – Applicant did not disclose employment – whether overpayment recoverable – debts cannot be written off or waived under the *Social Security Act 1991* (Cth) – decision under review affirmed

## **Taxation**

[The Taxpayers and Commissioner of Taxation](#) [2014] AATA 572; 14/8/2014; The Honourable R Nicholson, Deputy President

GST – accountant sole shareholder and director of two proprietary companies – second company incorporated to act as manager of low cost government loan program – whether second company agent of first company – whether first company claimed deduction for superannuation – whether first company fully paid interest expense – quantum of money received by first company from government agencies – whether accountant's income should include deemed dividends – whether penalties for 'intentional disregard' appropriate – whether penalties should be applied – whether penalty uplift appropriate – remission

## **Veterans' Affairs**

[Hall and Repatriation Commission](#) [2014] AATA 569; 15/8/2014; Dr P McDermott RFD, Senior Member and Dr GJ Maynard, Brigadier (Rtd), Member

Pensions and benefits – agreement that applicant entitled to pension at 70% of general rate – whether applicant eligible for special rate of pension – whether incapacity from defence-caused conditions sufficient to prevent the applicant from undertaking remunerative work for more than 8 hours per week – accepted disabilities alone not responsible for inability to undertake remunerative work – Applicant not entitled to special rate of pension – decision under review varied and otherwise affirmed

[Palmer and Repatriation Commission](#) [2014] AATA 571; 15/8/2014; Dr M Denovan, Member

Pensions and benefits – Widow's pension – whether veteran's death was war-caused – no causal connection between veteran's service and his increased animal fat consumption – reasonable hypothesis test not satisfied – decision under review affirmed

[Paprotny and Repatriation Commission](#) [2014] AATA 573; 18/8/2014; Deputy President K Bean and Lt Col R Ormston (Ret'd), Member

Veterans' entitlements – operational service in Vietnam – whether veteran suffers from PTSD – whether veteran suffers from depressive disorder – whether veteran suffers from alcohol use disorder – whether alcohol use disorder war-caused – Deledio steps – decision under review affirmed

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## Appeals

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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

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CASE NAME	AAT REFERENCE
<b>Grabovsky v Secretary, Department of Social Services &amp; AAT</b>	<a href="#">[2014] AATA 522</a>
<b>Walkerden &amp; Sanghvi v Wodonga Pharmacy Pty Ltd &amp; Australian Community Pharmacy Authority</b>	<a href="#">[2014] AATA 496</a>

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### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Besson v Repatriation Commission</b>	<a href="#">[2012] AATA 377</a>	<a href="#">[2014] FCA 881</a> <a href="#">[2014] FCCA 123</a>
<b>Von Stieglitz v Comcare &amp; Commonwealth of Australia &amp; AAT</b>	<a href="#">[2013] AATA 908</a>	<a href="#">[2014] FCAFC 97</a>
<b>Yao v Minister for Immigration and Border Protection</b>	<a href="#">[2013] AATA 209</a>	<a href="#">[2014] HCASL 148</a> <a href="#">[2014] FCAFC 17</a> <a href="#">[2013] FCA 873</a>

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