



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.

Compensation

[Armstrong and Comcare](#) [2014] AATA 658; 10/9/2014; Senior Member RM Creyke and Dr P Wilkins, Member

Commonwealth employee – accepted aggravation of injury – whether applicant suffers a permanent impairment as a result of accepted condition – whether the impairment exceeds 10 percent whole person threshold – decision under review affirmed

[Domjahn and Military Rehabilitation and Compensation Commission](#) [2014] AATA 663; 11/9/2014; Senior Member BJ McCabe

Claim that applicant's sleep apnoea linked to his defence service – Application of Statement of Principles – Not established that applicant was obese at time of onset – Applicant unable to establish necessary factors in Statement of Principles – Insufficient evidence to establish clinical worsening – Reviewable decision affirmed

[Gaffey and Comcare](#) [2014] AATA 659; 10/9/2014; Senior Member RM Creyke

Commonwealth employee – diagnosis of claimed psychiatric condition – deemed date of injury – whether employment contributed to a significant degree – whether condition was suffered as the result of reasonable administrative action taken in a reasonable manner – decision under review affirmed

[Jones and Australian Postal Corporation](#) [2014] AATA 661; 11/9/2014; Senior Member AK Britton

Workers' Compensation – Commonwealth – Whether incapacity for work was a result of the relevant injury – Whether medical treatment was in relation to the relevant injury – Inconsistent evidence – Decision affirmed

[Mier and Comcare](#) [2014] AATA 650; 5/9/2014; Miss EA Shanahan, Member

Widow's claim – deceased worker exposed to asbestos leading to the development of pleural plaques – death following cardiac surgery – deceased a plumber with asbestos exposure in non-Commonwealth employment – contribution by Commonwealth employment to death conceded – contribution not significant – decision affirmed

[Nicoll and Military Rehabilitation and Compensation Commission](#) [2014] AATA 660; 10/9/2014; Senior Member P McDermott

Injury – Whether applicant suffered an injury in the nature of a psychiatric condition being depression – Whether employment contributed to "disease" in a material degree – Decision under review affirmed

Immigration and Citizenship

[Sabumei and Minister for Immigration and Border Protection](#) [2014] AATA 648; 5/9/2014; Senior Member CR Walsh

Eligibility – citizenship by conferral – general residence requirement – non-citizen applicant spouse of Australian citizen – non-citizen applicant physically present in Australia for 173 days (and absent from Australia for 1,288 days) in four years immediately before citizenship application – non-citizen applicant employed overseas – spousal discretion – whether non-citizen applicant had “close and continuing association with Australia” during periods of absence from Australia in relevant period – decision under review affirmed

Practice and Procedure

[Vallas and Comcare](#) [2014] AATA 669; 5/9/2014; Senior Member RM Creyke

Request for release from implied undertaking of medical report – claim for permanent impairment and non-economic loss arising from accepted condition – whether report was produced under compulsion – no clear indication of intention to cease liability – whether special circumstances apply to waive implied undertaking – request not granted

Social Security

[Alali and Secretary, Department of Social Services](#) [2014] AATA 551; 11/8/2014; Professor T Sourdin, Member

Overpayment and debt recovery – whether the debt should be waived – whether the debt should be written off – special circumstances – decision under review

[Atanassoff and Secretary, Department of Social Services](#) [2014] AATA 656; 10/9/2014; Deputy President JW Constance

Age pension – eligibility – Australian resident – whether applicant was an Australian resident at the time of claim – decision affirmed

[Blackman and Secretary, Department of Social Services](#) [2014] AATA 638; 4/9/2014; Senior Member RW Dunne

Pensions, benefits and allowances – claim for disability support pension – physical, intellectual or psychiatric impairment – whether impairment rating of 20 points or more existed under the Impairment Tables – whether “continuing inability to work” – Job Capacity Assessment reports – reports of treating general practitioner – decision under review affirmed

[Blake and Secretary, Department of Social Services](#) [2014] AATA 653; 8/9/2014; Mr P Wulf, Member

Pensions, benefits and allowances – Age pension – Rate of Pension – Member of a couple – Documents indicating separation – Ambiguity and veracity of evidence – lack of detail – antecedence – Decision under review affirmed

[Charlish and Secretary, Department of Social Services](#) [2014] AATA 652; 8/9/2014; Mr P Wulf, Member

HEALTH AND AGEING – Rent assistance – retirement village residents – ingoing/entry contribution – whether homeowners – not homeowners – yearly payment – whether rent – not rent due to infrequency of payment – decision affirmed.

[Li and Secretary, Department of Social Services](#) [2014] AATA 666; 12/9/2014; 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

[Naba and Secretary, Department of Social Services](#) [2014] AATA 665; 12/9/2014; 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

[Paterson and Secretary, Department of Social Services](#) [2014] AATA 651; 8/9/2014; Mr P Wulf, Member

Pensions, benefits and allowances – Disability support pension – Payment of Income Protection Insurance not declared – Overpayment – Confusion related to advice to different Government Departments – Recovery of overpayments – Whether overpayments recoverable – No special circumstances – Decision under review affirmed

[Taleb and Secretary, Department of Social Services](#) [2014] AATA 657; 10/9/2014; Senior Member P Taylor SC

Compensation preclusion period – Lump sum preclusion period – Whether special circumstances exist – Ongoing expenses – Whether discretion should be exercised to treat compensation payment as not being made – decision under review varied

[Trad and Secretary, Department of Social Services](#) [2014] AATA 655; 9/9/2014; 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 – whether applicant had a continuing inability to work – decision set aside

Taxation

[K.A. Hicks and Associates Pty Ltd and Ors and Commissioner of Taxation](#) [2014] AATA 668; 11/9/2014; Senior Member G Ettinger

Whether funds received from the Company were repayment of loans to it by the directors, the Applicants, or assessable income in their hands – little documentation – whether funds remitted from overseas to Mr Hicks were funds for the syndicate, or assessable income in his hands – difficulties with substantiation – status of syndicate – whether PAYG amounts were required to be withheld by the Company – whether PAYG amounts were required to be withheld by the Company – decisions under review affirmed

[Riley and Commissioner of Taxation](#) [2014] AATA 664; 12/9/2014; Professor R Deutsch, Deputy President

Income tax – private ruling – payment pursuant to *Workers Compensation Act 1987* (NSW) – compensation for domestic assistance – gratuitous domestic assistance – income according to ordinary concepts – decision affirmed

Veterans' Affairs

[Clark and Repatriation Commission](#) [2014] AATA 533; 4/8/2014; Senior Member J Toohey; Dr I Alexander, Member

Special rate of pension – whether applicant prevented from continuing in employment by reason of accepted disabilities alone – decision under review set aside

[Smith and Repatriation Commission](#) [2014] AATA 662; 11/9/2014; Senior Member BJ McCabe

Claim that cervical spondylosis connected to applicant's defence service – Head injury in 1983 while serving on Canadian submarine – Medical records incomplete – Application of relevant Statement of Principles – Requirements met – Reviewable decision set aside and substituted with decision that cervical spondylosis connected with defence service

Claim that bruxism connected to applicant's defence service – Bruxism caused by emotional stress – Many stressors present in applicant's life – Impossible to conclude bruxism caused by emotional stresses arising out of defence service in particular – 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
Luck v Secretary, Department of Human Services & AAT & Deputy President Forgie	[2010] AATA 6
Comcare v Martin	[2014] AATA 553

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Fletcher v TNT Australia Pty Ltd & AAT & Comcare	[2013] AATA 173	[2014] FCA 981

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