



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

[Grant and Comcare](#) [2014] AATA 726; 7/10/2014; Senior Member N Isenberg

Accepted condition – whether condition contributed to by employment – Applicant employed in Centrelink call centre – contemporaneous medical evidence attributes condition to alternate employment – condition not contributed to in a significant degree by applicant's employment – decision under review affirmed

Immigration and Citizenship

[Yang and Minister for Immigration and Border Protection](#) [2014] AATA 731; 9/10/2014; Senior Member J Toohey

Criminal record – whether applicant of good character – traffic offences – driving while under suspension – driving while disqualified – applicant still disqualified from driving at time of the Tribunal proceedings – Tribunal not satisfied applicant of good character for the purposes of conferral of citizenship – decision under review affirmed

Practice and Procedure

[Nijaat and Minister for Immigration and Border Protection](#) [2014] AATA 717; 24/9/2014; Senior Member AK Britton

Application for extension of time – application for review lodged outside prescribed period – factors relevant to an extension of time – prospects of success remote – application for extension of time refused

[Perla and Secretary, Department of Social Services](#) [2014] AATA 724; 24/9/2014; Senior Member BJ McCabe

APPLICATION FOR DISMISSAL – Application frivolous or vexatious – Applicant's entitlement to Austudy paid at the higher rate – failure to meet statutory criteria – no jurisdiction to decide claims of misleading or deceptive conduct – natural justice – role of the Tribunal conducting merits review – application dismissed

Social Security

[Cloros and Secretary, Department of Social Services](#) [2014] AATA 716; 2/10/2014; Senior Member NA Manetta

Overpayment of Newstart allowance – recovery – alleged administrative error giving rise to overpayment – applicant's evidence of bona fide disclosure of earnings not accepted – no administrative error found – decision affirmed

Social Security

[Javed and Secretary, Department of Social Services](#) [2014] AATA 732; 9/10/2014; Senior Member JF Toohey

Disability support pension – anxiety and depression – osteoarthritis in both knees – gastric reflux – morbid obesity – hyperlipidaemia – spinal stenosis – whether conditions fully diagnosed treated and stabilised – impairment ratings – program of support – decision under review affirmed

[Misrachi and Secretary, Department of Social Services](#) [2014] AATA 727; 7/10/2014; Senior Member AF Cunningham

Parental leave pay – work test – adopted child – no referable provision in Act to accommodate applicant's circumstances – decision under review affirmed

[Rainsford and Secretary, Department of Social Services](#) [2014] AATA 735; 10/10/2014; Mr M Hyman, Member

FAMILY ASSISTANCE – family tax benefit – child born overseas – determination of rate of benefit - where recipient spent an extended period overseas – operation of discretion to extend portability – whether recipient involved in custody proceedings – whether proceedings were in Fiji - whether unable to travel – whether proceedings occurred or began in the initial period of absence – decision set aside and substituted

[Vaneski and Secretary, Department of Social Services](#) [2014] AATA 728; 7/10/2014; Brigadier C Ermert (Rtd), Member

Disability Support Pension – unlimited portability – severe impairment – inability to work independently of program of support – decision set aside and substituted

Taxation

[Scanlon and Commissioner of Taxation](#) [2014] AATA 725; 3/10/2014; Senior Member E Fice

Assessable income – Capital Gains Tax – eligible termination payments – disposal of a CGT asset – ETP Liability – maximum net asset value test – small business CGT affiliate – assets used solely for personal use and enjoyment – capital proceeds from a CGT event – penalties – failure to take reasonable care – reasonably arguable position – sale of shares – company resolution – contract – goodwill – loans – decision under review affirmed

Veterans' Affairs

[Dawes and Repatriation Commission](#) [2014] AATA 730; 9/10/2014; Brigadier C Ermert (Rtd), Member

Veteran not yet turned 65 – veteran is totally and permanently incapacitated – incapacity from war-caused injuries alone – prevented from continuing to undertake remunerative work – suffering a loss of salary – decision set aside and substituted

[Lipke and Repatriation Commission](#) [2014] AATA 729; 8/10/2014; Dr M Denovan, Member

Benefits and entitlements – eligibility for pension – rhabdomyosarcoma inability to obtain appropriate clinical management – whether these is material contribution to a condition – whether there is aggravation of a condition – no connection between eligible defence service and condition – not entitled to any benefits – 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
May v Military Rehabilitation and Compensation Commission	[2011] AATA 886
Gaffey v Comcare	[2014] AATA 659
Threadgold v Secretary, Department of Social Services	[2014] AATA 654

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Luck v Department of Human Services & AAT & Stephanie Ann Forgie (as Deputy President of the AAT)	[2010] AATA 6	[2014] FCA 1060 [2014] FCA 798
Polydorou v Secretary, Department of Social Services	[2014] AATA 478	[2014] FCA 1059

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