



AAT Bulletin

ISSUE NO. 41/2014

20 OCTOBER 2014

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.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

Enquiries regarding this publication may be directed to aatweb@aat.gov.au.

Contents

AAT Recent Decisions	2
Compensation.....	2
Freedom of Information	2
Practice and Procedure	3
Social Security	3
Taxation	3
Veterans' Affairs.....	4
Appeals	5
Appeals lodged	5
Appeals finalised.....	5

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

[Durham and Comcare](#) [2014] AATA 753; 17/10/2014; Senior Member G Ettinger

Comcare has accepted liability for lumbar spine injury incurred on 12 March 1996 – two further aggravations in 2005, 2006 – continuing request for physiotherapy reviewed by Comcare following more than 500 sessions – physiotherapy not provided following graduated reduction in December 2013 and reviewable decision – cost/benefit considerations – decision under review affirmed

[Konstandopoulos and Comcare](#) [2014] AATA 741; 14/10/2014; Senior Member AK Britton and Professor R McCallum AO, Member

Commonwealth employees – psychological injury – whether the injury was contributed to, to a significant degree, by the employees employment by the Commonwealth – whether the injury is a result of reasonable administrative action taken in a reasonable manner – meaning of “suffered as a result of” – decision set aside and substituted

[Sener and Comcare](#) [2014] AATA 734; 10/10/2014; Deputy President SD Hotop

Commonwealth employees – applicant suffered knee injury in 2002 – respondent accepted liability to pay compensation – applicant suffered lumbosacral disc protrusion in 2004 – applicant claimed compensation – applicant's disc protrusion not contributed to in material degree by employment – applicant's disc protrusion not a disease – applicant's disc protrusion not an injury arising out of, or in the course of, employment – applicant's disc protrusion not a compensable injury – decision under review affirmed

Freedom of Information

[Grass and Secretary, Department of Immigration and Border Protection](#) [2014] AATA 751; 17/10/2014; Senior Member AK Britton

Amendments to personal records – Whether information is “personal information” – Whether information is based on mistake of fact – Whether the author of any opinion was biased, unqualified to form the opinion or acted improperly in conducting the factual inquiries that led to the formation of the opinion – Whether the information is incomplete, incorrect, out of date or misleading – Whether power to amend should be exercised – Power to annotate

[Knapp and Australian Accounting Standards Board](#) [2014] AATA 744; 15/10/2014; Senior Member D Letcher QC

Access to electronic documents – documents contained on CDs – whether document is available for purchase by the public – documents not available to the public – documents only available upon inspection of CDs – decision under review set aside – Applicant entitled to access documents

Practice and Procedure

[Wilkins and Australian Securities and Investments Commission](#) [2014] AATA 748; 16/10/2014; Deputy President PE Hack SC

Application for stay – applicant seeking stay of implementation of banning order – applicant prohibited from providing financial advice for a period of five years – whether public interest in banning order outweighs prejudice to applicant – stay granted subject to conditions

Social Security

[Confidential and Secretary, Department of Social Services](#) [2014] AATA 737; 14/10/2014; Senior Member JF Toohey

Disability support pension – motor vehicle accident – spinal injury – anxiety and depression – whether conditions fully treated and stabilised – whether applicant had undergone reasonable treatment for anxiety and depression – whether continuing inability to work – decision under review affirmed

[Goksu and Secretary, Department of Social Services](#) [2014] AATA 752; 17/10/2014; Senior Member AF Cunningham

Overseas applicant – portability of disability support pension – capacity to perform work independently of program of support – decision under review affirmed

[McDonald and Secretary, Department of Social Services](#) [2014] AATA 747; 15/10/2014; Senior Member AF Cunningham

Family Tax Benefit – Applicant not entitled to Family Tax Benefit payments – Overpaid amounts are debts owed to the Commonwealth – Whether debt can be written off or waived – Decision under review affirmed

[Paternostro and Secretary, Department of Social Services](#) [2014] AATA 739; 14/10/2014; Dr I Alexander, Member

Pensions – disability support pension – whether applicant's conditions were fully diagnosed, treated and stabilised – whether applicant's impairments are rated 20 points or more under the Impairment Tables – decision under review affirmed

Taxation

[Cronan and Commissioner of Taxation](#) [2014] AATA 745; 15/10/2014; Professor R Deutsch, Deputy President

Whether it is appropriate for the Commissioner to apply identified industry benchmarks – whether the Applicant is liable to pay an administrative penalty in respect of any income tax and GST shortfall amounts – whether administrative penalties imposed in respect of any income tax and GST shortfall amounts should be remitted in whole or part – decision under review affirmed

[Dewheath Pty Ltd and Commissioner of Taxation](#) [2014] AATA 743; 15/10/2014; Senior Member D Letcher QC

Remission of penalty – failure to lodge Business Activity Statements – failure to lodge Income Tax Returns – Applicant bears onus – whether factors warranting remission – onus not discharged – decision under review affirmed

[Guru 4U and Commissioner of Taxation](#) [2014] AATA 740; 14/10/2014; Senior Member G Lazanas

Goods and services tax – GST registration – cancellation of registration – whether carrying on an enterprise – entitlement to input tax credits – what is the net amount for a period in circumstances where the taxpayer is held not to have been carrying on an enterprise – administrative penalty – calculation of penalty based on tax shortfall – whether conduct involved recklessness – whether applicant is entitled to remission of penalty – decision to cancel registration is affirmed – decision with respect to assessment of GST and penalty is set aside and substituted – decision not to remit penalty is affirmed

[The Trustee for Rane Haulage Trust and Commissioner of Taxation](#) [2014] AATA 733; 10/10/2014; Deputy President SE Frost

Superannuation Guarantee – Applicant had not made employer superannuation contributions by due dates – Applicant had not lodged Superannuation Guarantee Statements by due dates – whether nominal interest charge component of Superannuation Guarantee Charge was imposed correctly – whether assessments could be amended under section 37 of the *Superannuation Guarantee (Administration) Act 1992* – decisions under review affirmed

Veterans' Affairs

[Hardy and Repatriation Commission](#) [2014] AATA 746; 14/10/2014; Brigadier C Ermert (Rtd), Member

Disposal of assets – whether a gift or return of a loan – deprived asset – decision affirmed

[Nobes and Repatriation Commission](#) [2014] AATA 742; 14/10/2014; Senior Member AK Britton

Widows' pension – emphysema and ischaemic heart disease – whether disease was war-caused – whether disease was defence-caused – whether there is material that points to a hypothesis – beneficial legislation – 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
Del Treppo v Comcare	[2014] AATA 711
McKinley v Repatriation Commission	[2014] AATA 670
Smith v Comcare	[2014] AATA 28

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Australian Postal Corporation v Nunez	[2014] AATA 125	[2014] FCA 1095
Ogden v Commissioner of Taxation	[2014] AATA 385	[2014] FCA 1111
SQNR v Minister for Immigration and Border Protection & AAT	[2014] AATA 16	[2014] FCA 1097

© Commonwealth of Australia 2014



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](#). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <http://www.itsanhonour.gov.au/coat-arms/>.

Enquiries regarding the licence are welcome at aatweb@aat.gov.au.

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](#). Those terms provide that section 182A of the *Copyright Act 1968* applies.