



## 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

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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.

### Child Support

[Confidential and Principal Member, Social Security Appeals Tribunal](#) [2014] AATA 755; 17/10/2014; Dr M Denovan, Member

Child Support Agency – CSA – application for extension of time – reasons for delay outside of Applicant’s control – decision set aside and substituted

### Compensation

[Melodia and Military Rehabilitation and Compensation Commission](#) [2014] AATA 773; 24/10/2014; Senior Member AK Britton

Military rehabilitation and compensation – claim for adjustment disorder and achilles tendinopathy – whether a service injury or service disease – whether the injury/disease is connected with service – category 2 stressor – decision affirmed

[Munswamy and Australian Postal Corporation](#) [2014] AATA 757; 20/10/2014; Senior Member G Ettinger and Dr W Isles, Member

Employee of licensed corporation – injury in 2008 – liability to pay compensation for injury to lumbar spine accepted – subsequent decision of no present entitlement to compensation for medical expenses and incapacity affirmed by consent – present proceedings involve review of three decisions – determination of no present entitlement to compensation for medical expenses and incapacity in relation to accepted aggravation of constitutional degenerative changes in lumbar spine – denial of liability to pay compensation for new claim of aggravation of constitutional degenerative changes in lumbar spine – denial of liability to pay compensation for psychological injury due to alleged bullying and harassment – decisions under review affirmed

[Ragg and Military Rehabilitation and Compensation Commission](#) [2014] AATA 758; 20/10/2014; Senior Member BJ McCabe

Accepted liability for neck condition and its sequelae – regular zen shiatsu massage – Treatment provided by massage therapists – massage therapists not registered practitioners – massage not recommended as part of treatment plan by psychiatrist or pain specialist – treatment not reasonable – decisions under review affirmed

[Roberts and Military Rehabilitation and Compensation Commission](#) [2014] AATA 765; 23/10/2014; Deputy President PE Hack SC

Service in Australian Regular Army – thoracic back degeneration – no medical evidence to support relationship between present condition and army service – decision under review affirmed

[Salazar and John Holland Pty Ltd](#) [2014] AATA 770; 24/10/2014; Deputy President JW Constance

Whether the applicant suffered from a disease – whether the applicant suffered from a condition outside the boundaries of normal mental functioning and behaviour – decision affirmed

## **Freedom of Information**

[Matthews and Australian Securities and Investments Commission and Newmont Australia Ltd and Ryan and Knapp \(Parties Joined\)](#) [2014] AATA 769; 24/10/2014; Deputy President SA Forgie

Documents subject of 2010 decision but consideration of personal privacy and business affairs exemptions deferred – further information within documents claimed to be exempt – additional documents located – deletion of information not relevant to the request

PRACTICE AND PROCEDURE – abuse of process – whether Tribunal has power to consider – no power to decide abuse of process – joined party's claim of delay by ASIC – no abuse of process

Personal information – unreasonable disclosure – objective standard –third party consultation undertaken

Business affairs – 'would, or could reasonably be expected' – 'unreasonably affect' – in respect of a person – concerning an organisation or undertaking

Protected information under ASIC Act – disclosure of information under FOI considered separately – such disclosure under law of Commonwealth and so permitted under s 127(2) of ASIC Act

Breach of confidence – four elements to found action – identify information with specificity – information to have the necessary quality of confidentiality – information to have been received in circumstances to import an obligation of confidence – threatened misuse of information

Deletion of exempt matter or irrelevant material – 'would reasonably be regarded'

## **Immigration and Citizenship**

[Lo and Minister for Immigration and Border Protection](#) [2014] AATA 736; 14/10/2014; Deputy President JW Constance

Citizenship by conferral – likely to reside or maintain a close and continuing association with Australia – whether temporal limit on when residence must be likely to occur – decision affirmed

Citizenship by conferral – good character – previous convictions for traffic offences – failure to disclose information on application form – decision affirmed

[Tacalan and Minister for Immigration and Border Protection](#) [2014] AATA 767; 23/10/2014; Deputy President PE Hack SC

Application for citizenship – whether applicant of good character – applicant provided false date of birth to Department over five years – decision under review affirmed

[Vernon and Minister for Immigration and Border Protection](#) [2014] AATA 777; 24/10/2014; Senior Member D Letcher QC

Cancellation of approval of citizenship application – whether applicant is not of good character – decision affirmed

## **Practice and Procedure**

[Chandra and Secretary, Department of Social Services](#) [2014] AATA 774; 24/8/2014; Senior Member D Letcher QC

Extension of time application – explanation of delay – merits of substantive application – application refused

## **Social Security**

[Khaled and Secretary, Department of Social Services](#) [2014] AATA 763; 23/10/2014; Senior Member PW Taylor SC

Lump sum preclusion period - Applicant in receipt of Disability Support Pension - compensation part of payment - whether special circumstances - portion of lump sum used to repay mortgage - no special circumstances present - decision under review affirmed

[MBRF and Secretary, Department of Social Services](#) [2014] AATA 749; 15/10/2014; Senior Member CR Walsh

Disability support pension – the applicant’s impairments (being generalised musculoskeletal pain and depression) were not fully diagnosed, treated and stabilised on the date he claimed DSP, or within 13 weeks thereafter – applicant’s impairments did not attract 20 points or more under the “Impairment Tables” – decision under review affirmed

[MacMaster and Secretary, Department of Social Services](#) [2014] AATA 776; 24/8/2014; Senior Member D Letcher QC

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 has a continuing inability to work – decision under review affirmed

[Pilato and Secretary, Department of Social Services](#) [2014] AATA 775; 24/8/2014; Senior Member D Letcher QC

Pensions – preclusion period – special circumstances – non-recoverable legal costs – decision set aside

[SD and Secretary, Department of Social Services](#) [2014] AATA 764; 23/10/2014; Senior Member JL Redfern

Debt – whether applicant was a member of a couple – whether there is any special reason to not treat applicant as a member of a couple – whether debt should be written off or waived – debts incurred over period of 10 years – question whether debts “irrecoverable in law” – whether officer became aware or could reasonably be expected to have become aware of circumstances giving rise to the debt – capacity to repay – decisions affirmed

[Spelta and Secretary, Department of Social Services](#) [2014] AATA 754; 10/10/2014; Deputy President PE Hack SC

Benefits and entitlements – applicant refused disability support pension – whether applicant’s conditions warrant a rating of 20 points under the Impairment Tables – whether applicant has continuing inability to work – whether applicant participated in a program of support – whether applicant’s conditions warrant a rating of 20 points or more under a single impairment table – decision under review affirmed

[U’Brien and Secretary, Department of Social Services](#) [2014] AATA 761; 23/10/2014; Senior Member AK Britton

Overpayments and debt recovery — member of a couple — whether there is a special reason the applicant should not be treated as being a member of a couple — whether that discretion should be exercised — whether the debt should be waived—whether special circumstances exist — whether the applicant knowingly made a false statement or representation to Centrelink — meaning of “knowingly” — whether the applicant acted under duress — whether duress is a factor that can be taken into account in determining whether to waive a debt

[Wright and Secretary, Department of Social Services](#) [2014] AATA 768; 27/8/2014; Senior Member AK Britton

Disability Support Pension – whether the applicant has a continuing inability to work – episodic conditions

## **Taxation**

[Carey and Commissioner of Taxation](#) [2014] AATA 762; 22/10/2014; Senior Member BJ McCabe

Income Tax Assessments – appeal against objection decision – Statement of Facts, Issues and Contentions – repeated non-compliance on part of taxpayer – failure to conform to General Practice Direction – effect of ‘guillotine’ order – application dismissed.

[Kirkby and Commissioner of Taxation](#) [2014] AATA 759; 21/10/2014; Deputy President PE Hack SC

Income Tax – assessment – acquisition and sale of mining tenements – applicant did not declare profits as income – applicant directed how profits were to be dealt with – objection decision affirmed

## **Tax Agents**

[Frugniet and Tax Practitioners Board](#) [2014] AATA 766; 23/10/2014; Senior Member E Fice

Termination of registration as a tax agent – prevented from applying for registration for a period of five years – tax practitioner registration requirements – not a fit and proper person to be registered as a tax agent – applicant refused admission to practise as a barrister and solicitor – complaints lodged by clients – decision affirmed

## Veterans' Affairs

[Adamson and Repatriation Commission](#) [2014] AATA 756; 17/10/2014; Dr P McDermott RFD, Senior Member

Australian Army – war-caused diseases prevented remunerative work – post-traumatic stress disorder – PTSD – depression – anxiety – alcohol dependence – applicant entitled to pension – decision set aside – decision substituted for entitlement of pension at intermediate rate

[Rayfield and Repatriation Commission](#) [2014] AATA 772; 17/10/2014; Deputy President PE Hack SC

Service pension – overpayment – whether Tribunal has jurisdiction – decision not made under s 57 of the *Veterans' Entitlements Act 1986* (Cth) – Tribunal lacks jurisdiction – Application dismissed

[Schmidt and Repatriation Commission](#) [2014] AATA 760; 21/10/2014; Deputy President PE Hack SC

Veterans' entitlements – disability pension – posttraumatic stress disorder – whether applicant exposed to actual or threatened death or serious injury – diagnosis of posttraumatic stress disorder cannot be made – 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>Burnett v Tax Practitioners Board</b>	<a href="#">[2014] AATA 687</a>
<b>Garrett v Deputy Commissioner of Taxation</b>	<a href="#">[2014] AATA 614</a>

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### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Commissioner of Taxation v Desalination Technology Pty Ltd</b>	<a href="#">[2013] AATA 846</a>	<a href="#">[2014] FCA 1120</a>
<b>Grabovsky v Secretary, Department of Social Services</b>	<a href="#">[2014] AATA 522</a>	<a href="#">[2014] FCA 1130</a>
<b>Szajna v Australian Postal Corporation</b>	<a href="#">[2013] AATA 898</a>	<a href="#">[2014] FCA 1136</a>
<b>Uelese v Minister for Immigration and Border Protection &amp; AAT</b>	<a href="#">[2012] AATA 793</a>	<a href="#">[2014] HCATrans 239</a> <a href="#">[2013] FCAFC 86</a> <a href="#">[2013] FCA 342</a>

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## Statements of Principles

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This section of the *Bulletin* provides information on recent developments in relation to Statements of Principles made by the Repatriation Medical Authority for the purposes of the [Veterans' Entitlements Act 1986](#) and the [Military Rehabilitation and Compensation Act 2004](#).

### New Statements of Principles

The Tribunal has been advised that the Repatriation Medical Authority has made the following new Statements of Principles. They take effect from **17 November 2014**.

[Osteomyelitis No. 90 of 2014](#)

[Osteomyelitis No. 91 of 2014](#)

[Malignant Neoplasm of the Lung No. 92 of 2014](#)

[Malignant Neoplasm of the Lung No. 93 of 2014](#)

[Leptospirosis No. 94 of 2014](#)

[Leptospirosis No. 95 of 2014](#)

[Malignant Neoplasm of the Breast No. 96 of 2014](#)

[Malignant Neoplasm of the Breast No. 97 of 2014](#)

[Osteoporosis No. 98 of 2014](#)

[Osteoporosis No. 99 of 2014](#)

[Rotator Cuff Syndrome No. 100 of 2014](#)

[Rotator Cuff Syndrome No. 101 of 2014](#)

[Anxiety Disorder No. 102 of 2014](#)

[Anxiety Disorder No. 103 of 2014](#)



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