



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.

Civil Aviation

[Jones and Civil Aviation Safety Authority](#) [2014] AATA 820; 31/10/2014; Senior Member BJ McCabe

Cancellation of flight crew licences – Incidents occurred during filming of television series – Duty with respect to the safe navigation and operation of an aircraft – Fit and proper person – Discretion to vary, suspend or cancel – Cancellation not appropriate – Decision under review set aside and substituted – Flight crew licences suspended until applicant obtains further certification to acquire necessary knowledge and decision-making skills for those licences

Compensation

[Hunter and Comcare](#) [2014] AATA 827; 4/11/2014; Deputy President PE Hack SC

Whether necessary relationship between ailment and employment – whether reasonable administrative action – evidence does not support applicant's claim – decision under review affirmed

[Irwin and K & S Freighters Pty Limited](#) [2014] AATA 840; 7/11/2014; Senior Member E Fice

Injury simpliciter – right rotator cuff tendinitis – injury or aggravation of injury – delayed report of injury – treatment prior to claim – apparent inconsistent evidence – Jones v Dunkel inference – decision set aside and remitted.

[Lindoy and Comcare](#) [2014] AATA 838; 7/11/2014; The Hon RJ Groom, Deputy President and Dr R Walters, Member

Major depressive disorder (single episode) – whether an aggravation of pre-existing psychiatric illness – not contributed to, to a significant degree by employment – decision under review affirmed

Export Market Development Grants

[Asia Pacific Aircraft Storage Pty Ltd and Australian Trade Commission](#) [2014] AATA 835; 6/11/2014; Deputy President IR Molloy

Australian exporters – Grants assisting international promotion of products – Eligible products and services – Eligible tourism and non-tourism services – Service relating to protection operation or maintenance of assets – Assets held in Australia – Decision under review affirmed

Immigration and Citizenship

[Forster and Minister for Immigration and Border Protection](#) [2014] AATA 829; 5/11/2014; Senior Member N Isenberg

Refusal of application for citizenship by conferral – whether the applicant is of good character – common assault – no conviction recorded – good behaviour bond – decision set aside and remitted

[Mahmoud and Anor and Minister for Immigration and Border Protection](#) [2014] AATA 824; 4/11/2014; Professor R McCallum AO, Member

Application for Australian citizenship – Whether the Applicant is of “good character” – Applicant’s criminal history – Nature of offences – Extenuating circumstances – Citizenship application of child directly linked to citizenship application of parent – Decision set aside and remitted

[Namaan and Ors and Minister for Immigration and Border Protection](#) [2014] AATA 834; 5/11/2014; Senior Member N Isenberg

Application for Australian Citizenship – General Residence Requirements not Satisfied – Whether the Applicants were present in Australia as unlawful non-citizens due to an administrative error – Whether the discretion to treat a period as one in which the Applicants were not present in Australia as an unlawful non-citizens should be exercised – Children’s applications for citizenship – Decisions affirmed

[Plunkett and Minister for Immigration and Border Protection](#) [2014] AATA 828; 5/11/2014; Senior Member N Isenberg

Application for Australian Citizenship – General Residence Requirements not satisfied – Whether administrative error – No administrative error – No significant hardship or disadvantage – Decision under review affirmed

Practice and Procedure

[Cremona and Secretary, Department of Social Services](#) [2014] AATA 836; 14/10/2014; Deputy President FJ Alpins

Application for reinstatement – application for review of decision concerning cancellation of carer payment under *Social Security Act 1991* (Cth) – application dismissed for failure to appear at hearing of proceeding – applicant failed to appear because Tribunal not constituted as requested prior to hearing – whether reasonable excuse for failure to appear – whether application for review had sufficient prospects of success – application for reinstatement dismissed

[Jones and Commissioner of Taxation](#) [2014] AATA 821; 15/10/2014; Senior Member BJ McCabe

Taxation – Objection decision – Teacher – Alleged education related expenditure – CDs and DVDs for personal use not deductible – Items essentially private or domestic expenditures not deductible – Distributing resources for purposes of education deductible – Costs of acquiring or developing teaching aids deductible – Link between expenditure and income producing activity cannot be too remote – Necessary to characterise expenditure and determine existence of nexus – Claim for the work-related vehicle expenses rejected – Claim for home office expenses rejected – Decision affirmed

Small Taxation Claims

[Watson and Commissioner of Taxation](#) [2014] AATA 823; 4/11/2014; Professor R Deutsch, Deputy President

Income tax – application for debt release – exercise of discretion – decision affirmed

Social Security

[Hay and Secretary, Department of Social Services](#) [2014] AATA 822; 3/11/2014; Deputy President JW Constance

Disability support pension – whether conditions permanent – whether conditions fully diagnosed, treated and stabilised – fluctuating condition – total impairment rating of 10 points – decision affirmed

[Morrison and Secretary, Department of Social Services](#) [2014] AATA 825; 4/11/2014; Ms S Taglieri, Member

Compensation preclusion period – correct amount of compensation part of lump sum compensation payment – whether special circumstances and whether discretion to disregard a part of lump sum should be exercised

[Naidu and Secretary, Department of Social Services](#) [2014] AATA 833; 6/11/2014; Professor R McCallum AO, Member

Disability support pension – Income test – Whether the applicant is a member of a couple – Whether the applicant's wife's income should be taken into account in calculating the applicant's rate of disability support pension – Whether there are special reasons the applicant should be treated as not a member of a couple – Whether the applicant was discriminated against on the grounds of his disability – Decision affirmed

[O'Connor and Secretary, Department of Social Services](#) [2014] AATA 816; 31/10/2014; Deputy President K Bean

Disability support pension – Departmental review of applicant's ongoing qualification for DSP – DSP cancelled – Whether applicant satisfied criteria for DSP as at date of cancellation – Impairments do not attract 20 points under Impairment Tables – Decision under review affirmed

[Tomasevic and Secretary, Department of Social Services](#) [2014] AATA 830; 5/11/2014; Deputy President SA Forgie

Youth allowance – activity test – whether undertaking full-time study – whether special circumstances – recovery of debt waived in SSAT hearing – not subject of review

Student start up scholarship – whether exceptional circumstances for not undertaking full-time study – relevant period

WORDS AND PHRASES – special circumstances – exceptional circumstances

[Wong and Secretary, Department of Social Services](#) [2014] AATA 831; 5/11/2014; Mr C Ermert, Member

Carer payment – carer allowance – absence from Australia – maximum portability period – whether unable to return to Australia – serious illness – hospitalisation – decision affirmed

[Wong and Secretary, Department of Social Services](#) [2014] AATA 832; 5/11/2014; Mr C Ermert, Member

Disability support pension – maximum portability period – extend portability period – serious illness – hospitalisation – decision affirmed

Veterans' Affairs

[Strong and Repatriation Commission](#) [2014] AATA 826; 4/11/2014; Dr M Denovan, Member

Benefits and entitlements – Eligibility for pension – Posttraumatic Stress Disorder – PTSD – Alcohol Use Disorder – Depressive Disorder – Anxiety Disorder – GAD – Adjustment Disorder – Operational service – No reasonable hypothesis connecting disease with service – Whether condition contributed to by eligible service – Decision under review affirmed

[Tovey and Repatriation Commission](#) [2014] AATA 837; 6/11/2014; Deputy President IR Molloy

Varicose Veins of the Lower Limbs – Chronic Obstructive Pulmonary Disease – Hypertension – Chronic Bronchitis and Emphysema – Whether conditions defence-caused injuries or diseases – Not related to service – 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
Scanlon & Scanlon v Commissioner of Taxation	[2014] AATA 725
Cremona v AAT & Secretary, Department of Families, Housing, Community Services and Indigenous Affairs	[2014] AATA 122

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
R.V. Investments (Aust) Pty Ltd as trustee of R.V. Unit Trust v Commissioner of Taxation & AAT	[2014] AATA 158	[2014] FCA 1169
Alphapharm Pty Ltd v H Lundbeck A/S & Ors	[2012] AATA 851	[2014] HCA 42 [2014] HCATrans 79 [2013] FCAFC 129

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