



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

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

[Aldenton and Military Rehabilitation and Compensation Commission](#) [2014] AATA 906; 8/12/2014; Dr M Denovan, Member

Hearing loss – whether further loss of hearing casually related to military service – service caused hearing loss does not contribute materially to need for hearing aid – decision under review affirmed

[Ali and Comcare](#) [2014] AATA 918; 11/12/2014; Ms R Perton, Member

Whether injury arose out of or in the course of employment – decision affirmed

[Engida and Linfox Australia Pty Ltd](#) [2014] AATA 912; 9/12/2014; Senior Member J Handley

Applicant claimed compensation for left shoulder and upper back injuries with another employer in 2006 – liability accepted under the Victorian Work Cover Scheme – report of three incidents at work in 2008 claiming injuries to his right shoulder and upper back – liability accepted – many attempts to return to work under rehabilitation schemes until 2010 – did not succeed – claim for permanent impairment compensation made for injuries not previously claimed – liability therefore never determined – claimed injuries did not meet 10 percent threshold for whole person impairment – whether applicant suffered depression or mild chronic adjustment disorder as a consequence of ongoing pain for right shoulder injury – claim for permanent impairment compensation for depression not determined by the respondent – the respondent's liability is remitted for reconsideration with recommendations – other decisions affirmed

[Jones and Svitzer Offshore Pty Ltd](#) [2014] AATA 902; 5/12/2014; Deputy President SD Hotop

Seafarers – extension of time for requesting reconsideration of determination – respondent accepted applicant's claim for compensation for injury suffered in 2003 – respondent made determination in 2008 ceasing incapacity payments - Applicant requested reconsideration of determination in 2013 – Respondent taken to have refused request for reconsideration – Applicant gave acceptable explanation for delay – Applicant did not rest on rights – Applicant's request for reconsideration meritorious – Tribunal not satisfied that significant prejudice would be caused to respondent by grant of extension of time – fair and equitable to grant required extension of time for requesting reconsideration – decision under review set aside

Immigration and Citizenship

[Hamed and Minister for Immigration and Border Protection](#) [2014] AATA 916; 10/12/2014; Deputy President JW Constance

Whether the applicant is of good character – previous convictions – domestic violence – failure to disclose convictions on application for citizenship – decision affirmed

[Khan and Minister for Immigration and Border Protection](#) [2014] AATA 898; 4/12/2014; Senior Member GD Friedman

Jurisdiction question – whether applicant permanent resident – whether letter constitutes a certificate certifying residency

[Tang and Minister for Immigration and Border Protection](#) [2014] AATA 917; 11/12/2014; Ms S Taglieri, Member

Cancellation of citizenship approval – on grounds that not likely to reside or to continue to reside in Australia or maintain a close and continuing relationship with Australia – cancellation set aside

Practice and Procedure

[Carey and Commissioner of Taxation](#) [2014] AATA 919; 5/12/2014; Deputy President PE Hack SC

Reinstatement – application dismissed after failure to comply with direction – no error in decision to dismiss – reinstatement refused

Social Security

[Abed and Secretary, Department of Social Services](#) [2014] AATA 922; 10/11/2014; Senior Member BJ McCabe

Special circumstances – whether applicant satisfies special circumstances requirements – applicant does not satisfy requirements provided for in s 1184K of the *Social Security Act 1991* (Cth) – decision under review affirmed

[Allsop and Secretary, Department of Social Services](#) [2014] AATA 903; 8/12/2014; Deputy President B Tamberlin

Pensions – lump sum preclusion period – discretion to treat the whole or part of a compensation payment as not having been made – whether special circumstances – decision affirmed

[Ashby and Secretary, Department of Social Services](#) [2014] AATA 913; 5/12/2014; Senior Member CR Walsh

FAMILY ASSISTANCE – whether applicant “member of a couple” with her husband during the relevant period – whether applicant and husband were “living separately and apart” from one another “on a permanent or indefinite basis” during the relevant period – whether applicant has debts due to the Commonwealth – whether debts should be written off or waived – decision under review set aside

[Boskoski and Secretary, Department of Social Services](#) [2014] AATA 915; 10/12/2014; Deputy President JW Constance

Assets test – payments made at the single rate – whether a member of a couple – whether debt owing to the Commonwealth – whether debt should be waived or written off – decision affirmed

[Cracknell and Secretary, Department of Social Services](#) [2014] AATA 910; 5/12/2014; Senior Member CR Walsh

Disability support pension – the applicant’s impairments (being fibromyalgia, and depression and tendonitis) were not fully diagnosed, treated and stabilised on the date she 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

[Kisso and Secretary, Department of Social Services](#) [2014] AATA 911; 9/12/2014; Miss EA Shanahan, Member

Pensions, benefits and allowances – newstart allowance – applicant self-employed – conducting retail business and working 48 hours per week – trading at a loss – employed or unemployed – exercise of discretion to find unemployed despite engagement in a business – decision affirmed

[Lambie and Secretary, Department of Social Services](#) [2014] AATA 907; 8/12/2014; Dr M Denovan, Member

Pensions, benefits and allowances – disability support pension – DSP – 20 points or more under the Impairment Tables – decision affirmed

[Locke and Secretary, Department of Social Services](#) [2014] AATA 904; 5/12/2014; Senior Member CR Walsh

Disability support pension – overpayment – debt due to the Commonwealth – applicant allegedly given incorrect information by Centrelink officer - whether recovery of debt should be written off or waived – debt not attributable solely to an administrative error made by Centrelink – no “special circumstances” – decision under review affirmed

Veterans' Affairs

[Gover and Repatriation Commission](#) [2014] AATA 909; 8/12/2014; Dr M Denovan, Member

Pensions and benefits – widow’s pension – veteran’s death was not war-caused – no causal connection between veteran’s service and alcohol consumption – no evidence of stressful service – no evidence of events said to have caused stress during service happening – reasonable hypothesis test not satisfied – decision affirmed

[Mewett and Repatriation Commission](#) [2014] AATA 914; 10/12/2014; Deputy President PE Hack SC

Veterans' entitlements – special rate – intermediate rate – whether there are other reasons preventing continuing remunerative work – whether genuinely seeking to engage in remunerative work – decision under review affirmed

[Nation and Repatriation Commission](#) [2014] AATA 905; 8/12/2014; Dr M Denovan, Member

Service pension –special rate of pension – whether applicant ceased remunerative work for reasons other than his war-caused incapacity – intermediate rate – whether war-caused injury or disease is sole or substantial cause of applicant's inability to obtain work – effect of age and time out of the workforce – decision under review affirmed

[Shaw and Repatriation Commission](#) [2014] AATA 908; 8/12/2014; Senior Member BJ McCabe and Dr M Sullivan, Member

Application for disability pension – cervical spondylosis – consideration of two Statements of Principles – neither Statement of Principles satisfied – 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
Minister for Immigration and Border Protection v Han & AAT	[2014] AATA 846

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Australian Postal Corporation v Edwards	[2013] AATA 874	[2014] FCA 1348
Commissioner of Taxation v Qantas Airways Limited	[2014] AATA 316	[2014] FCAFC 168
Sami v Minister for Immigration and Citizenship	[2012] AATA 459	[2014] HCASL 212 [2013] FCAFC 128 [2013] FCA 106
Taniela v Minister for Immigration and Border Protection & Anor	[2013] AATA 632	[2014] HCASL 242 [2014] FCAFC 104 [2014] FCA 375

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