



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

[Caplikas and Comcare](#) [2015] AATA 170; 25/3/2015; Senior Member JF Toohey, Dr W Isles, Member

Knee injury – liability accepted – stem cell assisted arthroscopy – whether proposed surgery was reasonable medical treatment – evidence of promising results – decision under review affirmed

[Greaves and Comcare](#) [2015] AATA 177; 26/3/2015; Deputy President K Bean

Commonwealth employees – whether Applicant continues to suffer effects of injury – nature of injury suffered – whether symptoms result from pre-existing degenerative condition – decision under review affirmed

[Thompson and Military Rehabilitation and Compensation Commission](#) [2015] AATA 171; 25/3/2015; Deputy President PE Hack SC, Dr M Sullivan, Member

Where an injury to an employee results in death – rheumatic fever an accepted “injury” – contracted during military employment – evaluation of causal chain – relationship between rheumatic fever and later cardiac conditions – acute myocardial infarction – whether aortic dissection – paucity of imaging and post-mortem evidence – “uncommon condition” – decision under review affirmed

Immigration and Citizenship

[Kurban and Minister for Immigration and Border Protection](#) [2015] AATA 168; 24/3/2015; Professor R Deutsch, Deputy President

Whether Applicant of good character – Australian Citizenship Instructions – declaring offences on statutory declaration – gambling addiction – expired good behaviour bond – decision under review set aside and remitted

Passports

[WTJP and Minister for Foreign Affairs](#) [2015] AATA 178; 4/2/2015; Ms R Perton, Member

FOREIGN AFFAIRS – passport – child under 16 years – parent refused consent for child’s passport – special circumstances – contact provisions – delegate’s decision to refuse passport issue affirmed

Practice and Procedure

[Mahaffy and Tax Practitioners Board](#) [2015] AATA 173; 26/3/2015; Deputy President JW Constance

Application to dismiss proceedings – failure to comply with direction within reasonable time – application dismissed

Social Security

[Akter and Secretary, Department of Social Services](#) [2015] AATA 184; 27/3/2015; Senior Member JF Toohey

Carer payment – carer allowance – child – claim by mother – congenital heart disease – evidence that medical reports not genuine – evidence of moderate developmental delay – no reliable evidence of care needs – decision under review affirmed

[Cox; Secretary, Department of Social Services and](#) [2015] AATA 183; 26/3/2015; Senior Member JF Toohey

Disability support pension – shoulder dislocations – chronic lymphoedema of right arm – scoliosis – ischaemic heart disease – whether left hand fully diagnosed – lymphoedema of right arm fully diagnosed treated and stabilised – whether rated 20 points – whether respondent had continuing inability to work – Tribunal satisfied respondent qualified for disability support pension during claim period – decision under review affirmed

[Madanat and Secretary, Department of Social Services](#) [2015] AATA 180; 27/3/2015; Professor R McCallum AO, Member

Debt – compensation affected payments – whether debt should be waived in whole or in part – whether special circumstances exist – decision affirmed

[Morton and Secretary, Department of Social Services](#) [2015] AATA 175; 26/3/2015; Senior Member G Ettinger

Pension bonus scheme – calculations of Applicant's entitlements based on earlier earnings – tax return supplied subsequently indicates the Applicant was earning more than previously reported – reduction in payment of pension bonus not contemplated by the Respondent or the Tribunal – the Applicant is not eligible for further payment of pension bonus – decision under review affirmed

[Negri and Secretary, Department of Social Services](#) [2015] AATA 179; 26/2/2015; Dr R McRae, Member

Disability support pension – fibromyalgia – continuing inability to work – whether able to work 15 hours per week – decision under review affirmed

[Sterrantino and Secretary, Department of Social Services](#) [2015] AATA 182; 27/3/2015; Dr I Alexander, Member

Debt – overpayment of age pension – whether all or part of debt should be waived or written off – decision affirmed

[Stronach and Secretary, Department of Social Services](#) [2015] AATA 186; 25/3/2015; Senior Member CR Walsh

Age pension cancelled – disability support pension cancelled – designated private company – controlled private company – applicants “attributable stakeholders” – attribution of “ordinary income” to applicants – combined annual income of applicants above the allowable limit – derivation period – attribution period – decision under review affirmed

[Madej and Secretary, Department of Social Services](#) [2015] AATA 162; 20/3/2015; Mr C Ermert, Member

Disability support pension – impairment tables – impairment rating – fully treated – fully stabilised – whether 20 impairment points – decision affirmed

[Norman and Secretary, Attorney-General's Department](#) [2015] AATA 92; 20/2/2015; Deputy President JW Constance

Victims of terrorism payment – secondary victim of a declared overseas terrorist act – close family member – partner – whether Applicant a member of a couple with the deceased – whether relationship was a de facto relationship – decision set aside and remitted

[Saad and Secretary, Department of Social Services](#) [2015] AATA 160; 19/3/2015; Professor R McCallum AO, Member

Disability support pension – wife pension – cancellation of payments – qualification for indefinite portability – decision affirmed

Taxation

[Anderson and Commissioner of Taxation](#) [2015] AATA 167; 23/3/2015; Senior Member BJ McCabe

GST ASSESSMENT AND PENALTY DECISIONS – applicant’s liability to pay GST – trustee of the trust is separate entity to trustee in personal capacity – trustee not an ‘incapacitated entity’ for purposes of tax legislation – retirement of individual as trustee does not affect liability of trustee in that capacity – trustee of the trust liable to pay GST – question of recovery not before Tribunal – objection decision varied in light of concessions made by parties – decided in substitution that assessment for quarter ended 31 December 2009 reduced to \$21,446 – assessment for quarter ended 31 March 2010 reduced to nil – total administrative penalty for quarters ended 31 December 2009 and 31 March 2010 reduced to nil

[Rigoli and Commissioner of Taxation](#) [2015] AATA 169; 24/3/2015; Senior Member E Fice

Income tax and related legislation – returns and assessments – assessments – default, special and arbitrary assessments – assessments made where no tax return provided

Administration of federal tax legislation – objections, reviews and appeals – review or appeal – Evidence – onus of proof that taxation decision excessive or incorrect – taxpayer to prove assessment excessive – failure to discharge onus

Administration of federal tax legislation – objections, reviews and appeals – review or appeal – review by Administrative Appeals Tribunal and its predecessors – nature of review – Administrative Appeals Tribunal reviews objection decision

[The Trustee for SBM Trust and Commissioner of Taxation](#) [2015] AATA 174; 26/3/2015; Deputy President SE Frost

Goods and services tax – input tax credits – revised business activity statements – time limit on entitlement to input tax credits – revision out of time – no refund payable – decision affirmed

[Ting and Commissioner of Taxation](#) [2015] AATA 166; 23/2/2015; Deputy President FJ Alpins

Income tax – allowable deductions – whether expenses incurred in undertaking post-graduate studies in management were incurred “in gaining or producing” applicant’s assessable income as school teacher – *Income Tax Assessment Act 1997* (Cth) s 8-1

Administrative penalty – false or misleading statement – whether shortfall amount resulted from a failure to take reasonable care – whether remission of penalty warranted

Veterans' Affairs

[Woodall and Repatriation Commission](#) [2015] AATA 163; 20/3/2015; Senior Member J Handley

Applicant made redundant from his employment in 2008 – subsequently applied for 70 jobs without success – granted temporary special rate pension in 2009 which ceased in 2010 – payments reverted to 100 per cent of general rate – claim for special rate rejected by respondent and VRB – heard and affirmed by AAT – appeal to Federal Court – remitted by consent of both parties to the AAT after Full Court decision in *Smith v Repatriation Commission* – focus on re-hearing on s 24(2)(b) – previous AAT decision reversed – decision under review set aside

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
Automotive Components Limited (Receivers and Managers Appointed) (In Liquidation) v Secretary, Department of Industry and Science	[2015] AATA 79
Comcare v Saunders	[2015] AATA 111

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Ralph v Repatriation Commission	[2013] AATA 948	[2015] FCA 165

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