



# AAT Bulletin

ISSUE NO. 21/2015

25 MAY 2015

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](mailto:aatweb@aat.gov.au).

## Contents

<b>AAT Recent Decisions</b> .....	<b>2</b>
Child Support .....	2
Civil Aviation .....	2
Compensation.....	2
Customs.....	3
Industrial Law.....	3
Practice and Procedure .....	3
Social Security .....	3
Taxation .....	4
Veterans' Affairs.....	5
<b>Appeals</b> .....	<b>6</b>
Appeals lodged .....	6
Appeals finalised.....	6

---

## 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.

### Child Support

[The Mother and Child Support Registrar and The Father \(Joined Party\)](#) [2015] AATA 330; 15/5/2015; Senior Member G Ettinger

Shared care – dispute over findings of the Child Support Agency and SSAT – appeal by the mother to the AAT regarding the findings of the SSAT – decision under review varied

### Civil Aviation

[Fadlalla and Civil Aviation Safety Authority](#) [2015] AATA 331; 15/5/2015; Senior Member E Fice, Mr W Evans, Member

Regulation of air navigation – Pilots – Cancellation of licence – Breach of regulations – Applicant held Private Pilot (Aeroplane) Licence and Student Pilot Licence – Licences cancelled – Whether Applicant failed in his duty with respect to any matter affecting the safe navigation or operation of an aircraft – Whether Applicant a fit and proper person to hold licences – decision under review set aside

### Compensation

[Matthews and Commonwealth Bank of Australia](#) [2015] AATA 344; 15/5/2015; Deputy President PE Hack SC, Dr M Sullivan, Member

Whether trauma to elbow – reliability of Applicant's account – inconsistency between first accounts and evidence – decisions affirmed

[Kennedy and Comcare](#) [2015] AATA 334; 18/5/2015; Deputy President PE Hack SC

Definition of "injury" – "connected with his or her employment" – terms of representations – whether wilful and false – adjustment disorder with depression and anxiety – failure to disclose previous psychiatric history – representations knowingly false – decisions under review affirmed

[Bayani and Australian Postal Corporation](#) [2015] AATA 342; 19/5/2015; Senior Member J Handley

Applicant has chronic neck and left shoulder pain – treatment from 2004 to date principally has been physiotherapy – denial by Respondent of liability for cost of ongoing physiotherapy treatment and gymnasium program – physiotherapy has provided temporary symptomatic relief only – treatment has not alleviated the injuries – Clinical Framework for the Delivery of Health Services considered – whether Applicant should be instructed in self-management strategies for relief of pain – ongoing physiotherapy and gymnasium is not reasonable treatment – decision affirmed

## Customs

### [Vestas – Australian Wind Technology Pty Limited and Chief Executive Officer of Customs](#)

[2015] AATA 348; 21/5/2015; Deputy President SA Forgie, Mr C Ermert, Member

Tariff concession order – gear boxes for wind turbines – whether substitutable goods – respondent concedes no substitutable goods – whether substitutable goods can be deemed when conceded there are none – statutory interpretation – core criteria met – decision set aside

## Industrial Law

### [Soueid and Secretary, Department of Employment](#)

[2015] AATA 320; 14/5/2015; Senior Member JF Toohy

Fair Entitlements Guarantee – real estate agent – whether Applicant entitled to payment of account of wages – wages entitlement period – governing instrument – meaning of work done – decision under review affirmed

## Practice and Procedure

### [Craig and Commissioner of Taxation](#)

[2015] AATA 339; 21/4/2015; Professor R Deutsch, Deputy President

Jurisdiction – whether Tribunal has jurisdiction to review purported decision – objection to Australian government expenditure of Applicant's income tax as outlined in Tax Receipt issued in conjunction with Notice of Assessment – whether purported decision is a reviewable objection decision – meaning of 'assessment' – not reviewable as Tax Receipt does not form part of assessment – application for review dismissed

### [Dunn and Secretary, Department of Defence](#)

[2015] AATA 351; 11/5/2015; Senior Member BJ McCabe

Dismissal application – no prospect of meaningful review – no jurisdiction to review aspect of decision which constitutes sole dispute in proceedings – meaning of expression "frivolous and vexatious" – application dismissed

### [Tually and Secretary, Department of Social Services](#)

[2015] AATA 354; 22/5/2015; Deputy President SD Hotop

Jurisdiction – application to Social Security Appeals Tribunal (SSAT) for review of decision of authorised review officer – decision of delegate of Principal Member of SSAT dismissing application for review – dismissal power conferred on Principal Member not on SSAT – decision dismissing application for review not made by SSAT – decision of delegate of Principal Member dismissing application for review not reviewable by Administrative Appeals Tribunal (AAT) – AAT does not have jurisdiction in respect of application for review of decision of delegate of Principal Member of SSAT

## Social Security

### [Hananeia and Secretary, Attorney-General's Department](#)

[2015] AATA 319; 14/5/2015; Deputy President SD Hotop

Australian Victim of Terrorism Overseas Payment (AVTOP) – 2002 Bali bombings declared by Prime Minister to be "declared overseas terrorist acts" – Applicant in hotel in Kuta, Bali at time of bombings – Applicant attended place of bombing 15 minutes after explosion – Applicant

subsequently contracted major depressive illness and post traumatic stress disorder – Applicant not "in the place where the terrorist act occurred" – Applicant not qualified for AVTOP – decision under review affirmed

[Anderson-Clemence and Secretary, Department of Social Services](#) [2015] AATA 329; 15/5/2015; Deputy President PE Hack SC

Disability support pension – Post-Concussion Syndrome – adjustment disorder – whether "permanent" – whether Applicant's impairment fully diagnosed, treated and stabilised – functional ability uncertain – future treatments recommended – relevant timeframe – medical evidence inconsistent – medical evidence insufficient – decision under review affirmed

[Nakhla and Secretary, Department of Social Services](#) [2015] AATA 333; 15/5/2015; Dr I Alexander, Member

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 – decision affirmed

[Payne and Secretary, Department of Social Services](#) [2015] AATA 336; 18/5/2015; Mr C Ermert, Member

Disability support pension – whether the Applicant's impairment attracts 20 points – decision affirmed

[Pakzad and Secretary, Department of Employment](#) [2015] AATA 337; 18/5/2015; Deputy President FJ Alpins

Newstart allowance – compensation payment for injury at work – preclusion period during which allowance not payable – discretion to treat whole or part of compensation payment as not having been made – whether "special circumstances" – whether appropriate to exercise discretion – decision affirmed

[Woolcock and Secretary, Department of Social Services](#) [2015] AATA 340; 18/5/2015; Dr P McDermott RFD, Senior Member

Pensions, benefits and allowances – rent allowance – change in circumstances – when Applicant informed Centrelink – backdating of benefits – benefits backdated to date when Centrelink informed of change in circumstances – decision under review affirmed

[Krivoshev and Secretary, Department of Employment](#) [2015] AATA 341; 19/5/2015; Dr I Alexander, Member

Allowances – newstart allowance – reconnection failure – penalty for reconnection failure – cancellation of newstart allowance – failure to re-engage with disability service provider – decisions affirmed

## **Taxation**

[Senior and Commissioner of Taxation](#) [2015] AATA 353; 22/5/2015; Professor R Deutsch, Deputy President

Objection decisions – private ruling – lump sum payment – decision affirmed

## Veterans' Affairs

[Fraser and Repatriation Commission](#) [2015] AATA 345; 20/5/2015; Senior Member E Fice

Entitlements – Preliminary matters – Whether veteran incapacitated from a defence-caused injury or a defence-caused disease – Pensions for veterans – General rate – Veteran claimed conditions of hiatus hernia, neck and head injuries, lumbar spondylosis and cervical spondylosis were defence-caused – Statement of Principles not satisfied – decisions under review affirmed

[Cleary and Repatriation Commission](#) [2015] AATA 352; 21/5/2015; Senior Member BJ McCabe

Application for widow's pension – claim that veteran's death war-caused – contention that veteran's smoking habit increased after operational service in Vietnam – material before Tribunal does not raise reasonable hypothesis connecting veteran's death with operational service – decision under review affirmed

[Harris and Repatriation Commission](#) [2015] AATA 349; 21/5/2015; Senior Member BJ McCabe

Intermediate rate of pension – assessment of whether incapacity arising from war-caused condition alone prevents continuance of remunerative work

[Winter and Repatriation Commission](#) [2015] AATA 350; 21/5/2015; Senior Member BJ McCabe, Dr M Sullivan, Member

Veteran's death from aortic stenosis and/or ischaemic heart disease – hypothesis attributing fatal heart condition(s) to presence of hypertension – development of veteran's drinking habit – temporal and causal connection to operational service – decision under review set aside – decided in substitution veteran's death was war-caused

---

## 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

---

**None lodged**

---

### Appeals finalised

---

CASE NAME

AAT REFERENCE

COURT REFERENCE

---

**Cloros v Department of Social Services**

[\[2014\] AATA 716](#)

[\[2015\] FCA 461](#)

---

**Macoun v Commissioner of Taxation**

[\[2014\] AATA 155](#)

[\[2015\] HCATrans 112](#)

[\[2014\] FCAFC 162](#)

---

**Mentink v Secretary, Department of Social Services**

[\[2013\] AATA 184](#)

[\[2015\] FCA 473](#)

---

© Commonwealth of Australia 2015



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](mailto: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.