



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.

Civil Aviation

[Repacholi and Anor and Civil Aviation Safety Authority](#) [2015] AATA 374; 28/5/2015; Senior Member S Penglis, Mr W Evans, Member

Aircraft maintenance – aircraft maintenance engineer licence – Certificate of Approval – breach of regulations – cancellation of licence – series of breaches – facts and circumstances – decision under review set aside

[Wallace and Civil Aviation Safety Authority](#) [2015] AATA 365; 27/5/2015; Senior Member E Fice

Aircraft maintenance – Certificate of Approval to conduct maintenance on class B aircraft – Breach of regulations – series of breaches – cancellation of Certificate of Approval – breach of conditions of stay order – decision under review affirmed

Compensation

[Papaioannou and Australian Postal Corporation](#) [2015] AATA 370; 28/5/2015; Senior Member J Handley

Applicant suffered back and neck injuries in motorcycle accidents travelling to and in the course of his work as a postal delivery officer – subsequent aggravation of lumbar and cervical disease by work activities – contributed to a significant degree by the employment – frank and traumatic tear of the left supraspinatus tendon – the injury arose out of or in the course of employment – tendon tear was not a disease and applicant did not make a wilful and false representation – also suffered adjustment disorder with mixed anxiety and depressed mood secondary to chronic pain – decisions set aside

[Reardon and Comcare](#) [2015] AATA 360; 26/5/2015; Ms S Taglieri, Member

Ear and hearing conditions – whether work caused or aggravated – hyperacusis determined to have been aggravated – aggravation caused to a significant degree by employment – decision set aside

[Zoric and Australian Postal Corporation](#) [2015] AATA 372; 28/5/2015; Senior Member E Fice

Entitlement to compensation – Employment related injury or disability – Causal relation between injury and incapacity – Applicant sustained right elbow injury – Ongoing symptoms not causally related to workplace injury – decision under review affirmed

Customs

[Studio Fashion \(Australia\) Pty Ltd and Chief Executive Officer of Customs](#) [2015] AATA 366; 28/5/2015; Deputy President SA Forgie

Goods delivered duty paid – customs duty underpaid – collection of duty – whether Applicant is “owner of the goods” – whether discretion in collecting duty – decision affirmed

Freedom of Information

[Secretary, Department of Prime Minister and Cabinet and Secretary, Department of Infrastructure and Regional Development and Sanderson \(Party Joined\)](#) [2015] AATA 361; 27/5/2015; Deputy President SA Forgie

Exemptions – whether documents exempt or conditionally exempt – standing of Secretary, Department of Prime Minister and Cabinet – whether documents were submitted to Cabinet – whether documents created for the dominant purpose of submission to Cabinet – whether document reveals Cabinet deliberations or decisions – document would disclose deliberative matter – decision set aside

Immigration and Citizenship

[Jafferi and Minister for Immigration and Border Protection](#) [2015] AATA 347; 21/5/2015; Senior Member RW Dunne

Application for Australian citizenship – application refused on character grounds – criminal record – whether Applicant has reformed and is now of good character – decision under review set aside and remitted

Practice and Procedure

[Devkota and Australian Skills Quality Authority](#) [2015] AATA 356; 22/5/2015; Senior Member G Ettinger

Application for extension of time in which to lodge application for review of decision of ASQA – Applicant seeking compensation from various Commonwealth agencies – Tribunal has no jurisdiction in those matters – merits of case – extension of time refused

Social Security

[Arkawazi and Secretary, Department of Social Services](#) [2015] AATA 358; 25/5/2015; Mr S Webb, Member

Disability Support Pension – impairment rating – whether conditions are permanent – requirement for 20 impairment points not met – decision affirmed

[Jones and Secretary, Department of Social Services](#) [2015] AATA 362; 27/5/2015; Senior Member G Ettinger

Carer payment – carer allowance – whether temporary cessation in caring for Applicant’s mother during period of respite – Tribunal finds that Mr Jones ceased caring for his mother permanently on 11 December 2013 – Tribunal does not have jurisdiction to review cancellation of Applicant’s carer allowance – decision under review set aside and substituted

PRACTICE AND PROCEDURE – carer allowance – whether Tribunal has jurisdiction to review decision of Respondent cancelling carer allowance not appealed from primary decision maker – Tribunal has no jurisdiction

[Lai and Secretary, Department of Employment](#) [2015] AATA 373; 27/5/2015; Senior Member PW Taylor SC

Allowances – newstart allowance – value of assets exceeds asset value limit – mortgage debt secured over multiple properties – mortgage debt to be apportioned – determination of asset values – decision affirmed

[Matthews and Secretary, Department of Social Services](#) [2015] AATA 363; 27/5/2015; Mr C Ermert, Member

Disability support pension – heart condition – depression – impairment tables – impairment rating – full treated – fully stabilised – whether 20 impairment points – decision affirmed

[Rekic and Secretary, Department of Social Services](#) [2015] AATA 369; 22/5/2015; Senior Member GD Friedman

Disability support pension – impairment points – whether Applicant participated in program of support – decision under review affirmed

[Rus and Secretary, Department of Social Services](#) [2015] AATA 367; 28/5/2015; Senior Member J Handley

Whether Applicant a primary victim of overseas terrorism – Applicant was a passenger on a train approaching central London which was stopped before its intended destination on 7 July 2005 – passengers directed to alight and exit underground rail loop – intention to continue journey by bus from Tavistock Square – ordinarily would have been on a No. 30 bus – numbers of persons which boarded it caused her to take another bus – No. 30 bus was bombed when she was 142 meters away from it – declared terrorist act – Applicant was not in the place where the terrorist act occurred – decision affirmed

Taxation

[Shord and Commissioner of Taxation](#) [2015] AATA 355; 21/5/2015; Senior Member CR Walsh

Whether taxpayer “resident of Australia” – employment overseas as oilfield diver and supervisor – income derived from foreign sources – whether taxpayer “resides” in Australia – “domicile” of taxpayer – whether taxpayer’s “permanent place of abode” outside Australia – whether “foreign source income” of taxpayer exempt – whether taxpayer entitled to foreign tax offsets – whether shortfall interest charge and shortfall penalties should wholly or partly be remitted – objection decision affirmed

[Vo and Anor and Commissioner of Taxation](#) [2015] AATA 359; 26/5/2015; Deputy President PE Hack SC

Assessment of income – income tax – default assessments – unexplained deposits – amounts treated as assessable income – burden of proof for excessive assessment – failure to show evidence of taxable income – credibility of witnesses – lack of reliability – evidence inherently unbelievable – evidence comprises broad assertion – objection decisions varied

Shortfall penalty – intentional disregard – evidence demonstrates avoidance of tax – conclusion of fraud or evasion amply justified – objection decisions varied

Veterans' Affairs

[Hansell and Repatriation Commission](#) [2015] AATA 377; 29/5/2015; Dr R McRae, Member

Veteran's entitlements – amended Statement of Principles – post-traumatic stress disorder (PTSD) – new Statement of Principles – decision under review affirmed

[Murray and Repatriation Commission](#) [2015] AATA 364; 27/5/2015; Dr R McRae, Member

Receipt of disability pension at 100 per cent of general rate – whether entitled to higher payment than 100 per cent of the general rate – ceased work, then backdated effective date of subsequently accepted war-caused diseases – factors preventing obtaining employed work – 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
Commissioner of Taxation v Devuba Pty Ltd	[2015] AATA 255
Newport v Australian Postal Corporation	[2015] AATA 261
Melvin v Secretary, Department of Social Services	[2015] AATA 248
Gallacher v Secretary, Department of Social Services	[2015] AATA 294

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Coshott v Commissioner of Taxation	[2014] AATA 622	[2015] FCAFC 71

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