



Administrative
Appeals Tribunal

AAT Bulletin

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The *AAT Bulletin* is a weekly publication containing a list of recently published AAT decisions and information relating to appeals against AAT decisions. The Bulletin also occasionally includes information on legislative changes that affect the AAT.

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.

Child Support

[Ms CM, The Mother and Child Support Registrar](#) (Child support second review) [2015] AATA 520 (16 July 2015); Senior Member G Ettinger

Shared care of children by parents who lived separated under one roof during the care period – method of calculation – Tribunal sets aside the decision of the SSAT, and in substitution finds different percentages of care

Citizenship

[Kikkert and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 501 (13 July 2015); Senior Member A Cunningham

Citizenship by conferral – cancellation of citizenship approval – measure of good character – decision under review affirmed

[Safar and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 503 (13 July 2015); Mr S Webb, Member

Eligibility – permanent resident – application for citizenship by conferral – character test – multiple driving offences – pattern of offending behaviour – disregard for the law – proceedings for offence pending – bar on citizenship approval – decision affirmed

[Gupta and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 500 (13 July 2015); Senior Member AF Cunningham

Immigration – good character test – decision under review affirmed

[Khodeir and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 499 (13 July 2015); Senior Member PW Taylor SC

Whether the Applicant satisfied the awareness, English and knowledge criteria for Australian citizenship – whether the Applicant was suffering from a permanent or enduring physical or mental incapacity – Tribunal not satisfied that Applicant's limited English language abilities a result of mental incapacity – decision under review affirmed

Education and Research

[Technical Education Australia Pty Ltd and Australian Skills Quality Authority and Anor](#) [2015] AATA 496; 19/6/2015; Senior Member E Fice

Cancellation of registration – application for registration for new courses – audit for compliance purposes – role of CEO – decision set aside and remitted

[Brown and Secretary, Department of Education and Training](#) [2015] AATA 518 (16 July 2015); Senior Member E Fice and Dr D Cremean, Senior Member

FEE-HELP balance – Re-crediting of FEE-HELP – Special circumstances of domestic violence, homelessness and depression – Application lodged after application period – decision under review affirmed

Freedom of Information

[Bell and Secretary, Department of Health](#) (Freedom of Information) [2015] AATA 494 (9 July 2015); Deputy President SA Forgie

Conditional exemption claimed – business – whether disclosure would affect person adversely – access in public interest – access not given where access is open to the public in a public register under another enactment and subject to a fee – decision varied

Practice and Procedure

[El-Chahal and Secretary, Department of Employment](#) [2015] AATA 512 (15 July 2015); Mr S Webb, Member

Application for dismissal – discretion – meaning of ‘frivolous or vexatious’ – fair entitlement guarantee scheme – eligibility for advance – meaning of ‘excluded employee’ – no prospect of success – application dismissed

Social Security

[Nassimi and Secretary, Department of Social Services](#) [2015] AATA 423; 16/6/2015; The Hon. B Tamberlin QC, Deputy President

Overpayments and debt recovery – whether Applicant earned income during the relevant period – whether Applicant overpaid disability support pension during the relevant period – whether debt recoverable – decision affirmed

[Martin and Secretary, Department of Social Services](#) [2015] AATA 432; 19/6/2015; The Hon. B Tamberlin QC, Deputy President

Disability support pension – whether Applicant’s conditions were fully diagnosed, treated and stabilised – whether Applicant has 20 points under the Impairment Tables – whether Applicant has participated in a program of support – whether Applicant has a continuing inability to work – decision under review affirmed

[MLLF and Secretary, Department of Social Services](#) [2015] AATA 436; 23/6/2015; The Hon. B Tamberlin QC, Deputy President

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

[Karaga and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 491 (8 July 2015); Miss EA Shanahan, Member

Application for the disability support pension – chronic pain syndrome secondary to major trauma in 1990 – chronic obstructive airways disease – depression and anxiety – are conditions fully diagnosed, treated and stabilised – no evidence of chronic obstructive pulmonary disease – chronic pain syndrome not fully treated and stabilised – impairment rating of 20 points not attracted – evidence that Applicant has been working – decision affirmed

[Wilson and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 497 (10 July 2015); Senior Member AC Cotter

Disability support pension – whether 20 points or more under the impairment tables during the relevant period – value of medical evidence – evidence inconsistent or contradictory – absence of cogent corroborating medical evidence – decision under review affirmed

[TKJN and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 507 (14 July 2015); Dr P McDermott RFD, Senior Member

Family tax benefit – FTB – percentage of care – decision varied

[Vassiliou and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 510 (15 July 2015); Ms S Taglieri, Member

Disability support pension – overseas Applicant – length of Australian Working Life Residence – whether resident in Australia in specific period – whether absence temporary – decision under review set aside and remitted

[Ngo and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 513 (15 July 2015); Miss EA Shanahan, Member

Disability support pension – claimed medical conditions head and neck pain – aetiology unknown – bilateral carpal tunnel syndrome – depression – conditions not fully diagnosed, treated and stabilised – impairment rating less than 20 points – decision affirmed

[Said and Secretary, Department of Social Security](#) (Social security second review) [2015] AATA 508 (15 July 2015); Deputy President C Kendall

Disability support pension – period in gaol – period of psychiatric confinement – whether lawfully detained – whether undergoing a course of rehabilitation – decision under review affirmed

[Ward and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 509 (15 July 2015); Deputy President C Kendall

Disability support pension – Whether Applicant's impairments attract 20 points or more under the Impairment Tables – Whether Applicant has a "continuing inability to work" – decision under review affirmed

[Al-Taay and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 516 (16 July 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

[Wahlsten and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 517 (16 July 2015); Mr S Webb, Member

Age pension – assets – farming family trusts – farming partnership – trust assets used as security for failed partnership property development ventures – assets sold under foreclosure – partnership loans written off on winding up trusts – trust asset attribution rules – unrealisable asset rules – deprivation rules – decision set aside and remitted

Taxation

[Bazaad and Commissioner of Taxation](#) (Taxation) [2015] AATA 502 (7 July 2015); Deputy President PE Hack SC

Income tax – deductibility of items claimed – work-related expenses – whether incurred in gaining or producing assessable income – objection decision under review varied

Veterans’ Affairs

[Dall and Repatriation Commission](#) (Veterans’ entitlements) [2015] AATA 498 (10 July 2015); Dr P McDermott RFD, Senior Member

Claim for war widow’s pension – operational service – kind of death – hypertension – ischaemic heart disease – aortic stenosis – whether conditions war-caused – reasonable hypothesis raised on the material – decision under review set aside

[Bendall-Harris and Repatriation Commission](#) (Veterans’ entitlements) [2015] AATA 521 (17 July 2015); Senior Member AF Cunningham

Operational service – whether PTSD war caused – meaning of being an eyewitness – 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
Chief Executive Officer of Customs v Vestas – Australian Wind Technology Pty Limited	[2015] AATA 348
Murray v Repatriation Commission	[2015] AATA 364
Zoric v Australian Postal Corporation	[2015] AATA 372
Comcare v Fletcher	[2015] AATA 430
Daley v Secretary, Department of Social Services	[2015] AATA 412

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Applicant in WAD 230/2014 v Minister for Immigration and Border Protection & AAT (No 2)	[2011] AATA 920	[2015] FCA 705
Agius v Commissioner of Taxation	[2014] AATA 854	[2015] FCA 707

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