



Administrative
Appeals Tribunal

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The *AAT Bulletin* is a weekly publication containing information about recently published decisions and appeals against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions. The Bulletin also regularly includes information about decisions of interest recently published in the AAT's Migration & Refugee Division. It 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 all decisions recently published in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions as well as about select decisions recently published in the Migration & Refugee Division. 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.

Citizenship

[Incze and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 577 (7 August 2015); Ms R Perton, Member

Application for citizenship by conferral – permanent resident did not meet required time in Australia in the year prior to application due to overseas study and work commitments – Australian citizen spouse – extended family in Australia – whether close and continuing association with Australia – intention to reside in Australia – decision affirmed

[Sirote and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 564 (5 August 2015); Professor R Deutsch, Deputy President

Application for resumption of citizenship – whether Australian citizenship had been ceased to avoid suffering significant hardship or detriment – decision set aside and remitted

Compensation

[Pearce and Total Marine Services Pty Ltd](#) (Compensation) [2015] AATA 573 (6 August 2015); Deputy President Dr C Kendall

Seafarers – Applicant suffered lower back injury in course of employment in 2013 – medical treatment – incapacity for work – Applicant continues to be incapacitated due to back injury caused at work – compensation continues to be payable to Applicant for costs of medical treatment – decisions under review set aside – matters sent back to Respondent for determination of quantum payable

Migration and Refugee

[1415061](#) (Migration) [2015] AATA 3001 (2 July 2015); R Gagliardi, Member

Partner (Provisional) (Class UF) visa - subclass 309 – definition of 'De facto partner' – *SZOXF v Minister for Immigration and Border Protection* [2015] FCAFC 69 (11 June 2015) – waive 12 month de facto requirement – decision under review remitted

[1406165](#) (Refugee) [2015] AATA 3130 (1 July 2015); S Webb, Member

Protection visa – Afghanistan – imputed political opinion – perceived supporter of Afghan government and international community due to employment – failed asylum seeker – decision under review affirmed

[1411811](#) (Refugee) [2015] AATA 3129 (2 July 2015); D McCulloch, Member

Protection visa – Malaysia - complementary Protection – *SZGIZ v MIAC* (2013) 212 FCR 235 (3 July 2013) – ethnicity – Chinese – debt to underground money lenders – decision under review affirmed

Practice and Procedure

[Hopkins and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 571 (6 July 2015); Senior Member NA Manetta

Whether Tribunal has jurisdiction to review one of its own decisions – Applicant seeking in 2015 to have Tribunal review one of its own decisions from 2009 and filing associated application for an extension of time – whether application for review competent – application held to be incompetent – application for an extension of time within which to make the application for review refused

[Nguyen and Australian Community Pharmacy Authority](#) [2015] AATA 555 (30 July 2015); Deputy President JW Constance

Joinder – application to supply pharmaceutical benefits from particular premises – nearby pharmacy – consideration of whether interests are affected by decision under review – whether competitor should be joined as a party

Social Security

[Bazzi and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 557 (29 July 2015); Senior Member JF Toohey

Disability support pension – diabetes – hypertension – depression – lower back pain – shoulder, knee, feet and hip pain – whether conditions fully diagnosed, treated and stabilised – decision under review affirmed

[Bishop and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 561 (31 July 2015); Mr C Ermert, Member

Disability support pension – whether injury permanent – whether 20 impairment points assignable – decision affirmed

[Brawn and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 574 (6 August 2015); Ms S Taglieri, Member

Age Pension – whether ought not be treated as a member of a couple – nature of discretion and whether special reason – discretion not exercised – decision under review affirmed

[Capa and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 562 (4 August 2015); Dr G Hughes, Member

Disability support pension – requirement to demonstrate 20 points or more under the Impairment Tables – back injury assessed at 10 impairment points – condition not stabilised – no evidence of active participation in a program of support – decision affirmed

[Cetin and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 563 (4 August 2015); Professor R McCallum AO, Member

Disability support pension – Maximum Portability Period – whether the Applicant has a severe impairment – decision under review affirmed

[Michell and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 560 (31 July 2015); Deputy President G Humphries

Disability support pension – whether conditions fully diagnosed, treated and stabilised – whether impairments attract a rating of 20 points or more under the Impairment Tables – decision affirmed

[Skinner and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 569 (5 August 2015); Professor R Deutsch, Deputy President

Overpayment – whether debt to the Commonwealth – calculation of debt – waiver – write off – decision under review affirmed

[Slamkov and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 558 (31 July 2015); Senior Member JF Toohey

Social security – age pension – lump sum compensation payments – preclusion period – legal costs – whether special circumstances – decision under review affirmed

[Smalldon and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 575 (31 July 2015); Senior Member BJ McCabe

Disability support pension – whether conditions fully diagnosed, treated and stabilised at the relevant time – Fibromyalgia, arthritis, costochondritis, temporomandibular joint pain – decision remitted to Respondent for reconsideration

[Teng and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 559 (31 July 2015); Deputy President JW Constance

Age pension – residence requirements – whether 10 years qualifying Australian residence – decision affirmed

Veterans' Affairs

[Armstrong and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 566 (5 August 2015); Dr G Hughes, Member

Widows' pension – whether death of veteran 'war caused' – excessive alcohol intake during full time Army service between 1975 and 1983 – death from ischaemic heart disease, with hypertension a contributing factor – whether Army service contributed to hypertension – "drinking culture" in the regular Army – whether exposure to a "drinking culture" which contributed to hypertension means that the hypertension arose out of or was attributable to defence service – decision under review set aside and substituted – Applicant qualified for widow's pension

[Coleman and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 552 (30 July 2015);
Senior Member N Isenberg

Veterans' entitlements – pension – special rate – whether Applicant satisfies s 24(1)(c) of the *Veterans' Entitlements Act 1986* – whether Applicant is prevented from undertaking remunerative work by reason of incapacity from war-caused injuries alone – whether Applicant is suffering a loss of wages or earnings which he would not be suffering if he were free of that incapacity – decision under review set aside and substituted – Applicant entitled to pension at the special rate

[Loose and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 570 (6 August 2015);
Senior Member BJ McCabe

Service pension – must be Australian resident at time of claim – must be in Australia on that date – Applicant Australian citizen – not satisfied Applicant Australian resident – more likely return to Australia was temporary – decision under review affirmed

Appeals

This section of the Bulletin provides information about appeals that have been lodged or finalised against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions. Information is only included about appeals relating to AAT decisions that have been published on [AustLII](#). Full copies of the decisions can be accessed through the hyperlinks provided below.

Appeals lodged

CASE NAME	AAT/COURT REFERENCE
Military Rehabilitation and Compensation Commission v May	S144/2015 [2015] FCAFC 93 [2014] FCA 406 [2011] AATA 886
Novosel v Comcare	[2015] AATA 476
Comcare v Power	[2015] AATA 471
Commissioner of Taxation v Haritos & Kyritsis	M171/2015 [2015] FCAFC 92 [2014] FCA 96 [2013] AATA 112

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
None finalised		

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