



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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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

[Abou-Azar and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 572 (6 August 2015); 6/8/2015; Senior Member N Isenberg

Australian citizenship application – refusal to grant citizenship – whether applicant suffers from permanent or enduring mental incapacity that meant she was not capable of demonstrating a basic knowledge of the English language – reliability of applicant's assertions – no serious attempts to learn English – evidence which suggests some capacity to learn English – decision affirmed

[Barbosa and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 565 (5 August 2015); 5/8/2015; Senior Member G Ettinger

Citizenship by conferral – Applicant did not disclose homicide he had committed when he entered Australia – he gave reason for travel to Australia as business trip on the incoming passenger card in contradiction of actual motive – Applicant did not disclose his conviction for homicide to Australian authorities a number of times – Applicant not of good character – decision under review affirmed

[Torres and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 729 (18 September 2015); 18/9/2015; Deputy President B Tamberlin

Eligibility – application for father and dependent children – whether applicant father of good character – applicant found guilty of common assault in Australia – applicant father placed on good behaviour bond with no conviction – applicant marked no to question about past offences on citizenship application – whether applicant father likely to reside in Australia or to maintain a close and continuing association with Australia – applicant father found not to meet criteria for citizenship – children's applications dependant on father's application – whether children likely to suffer hardship or disadvantage if applications were refused – decisions under review affirmed

Compensation

[Lori and Australian Postal Corporation](#) (Compensation) [2015] AATA 741 (23 September 2015); Ms R Perton, Member

Extension of time for lodgement of application for reconsideration of respondent's original decision – relevant considerations – decision under review affirmed

Customs

[Alpha Energy Pty Ltd and Comptroller-General of Customs](#) [2015] AATA 730 (18 September 2015); Deputy President SA Forgie

Duty paid under protest in response to demand for duty in respect of goods entered for home consumption in April 2015 – application for review of decision made in March 2015 regarding tariff classification of goods of same description – no correlation between decision in respect of which payment made under protest and decision of which review sought – no jurisdiction

[Fletcher Insulation Pty Ltd and Chief Executive Officer of Customs](#) [2015] AATA 748 (25 September 2015); Deputy President SE Frost

Tariff classification – availability of Tariff Concession Order (TCO) – whether goods covered by Chapter 39, 54 or 56 – woven fabrics – nonwovens – goods covered by Chapter 56 and therefore excluded from Chapter 39 – TCO does not apply – decision under review affirmed

Practice and Procedure

[ADPA and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 603 (18 August 2015); 18/8/2015; Deputy President SE Frost

Application for confidentiality orders – whether basis for confidentiality application – whether real risk of applicant being identified in other proceedings – risk of danger and harm to applicant and his family – application granted

Withdrawal – whether application can be withdrawn after decision on review has been made – Tribunal functus officio – withdrawal has no effect

[Gaitanis and Secretary, Department of Employment](#) (Social services second review) [2015] AATA 736 (18 September 2015); 18/9/2015; Senior Member E Fice

ADMINISTRATIVE LAW – Administrative Appeals Tribunal – Procedure and evidence – Parties – Person whose interests are affected by decision – Social welfare – Parenting payment – Qualification – Principal carer – No application made by applicant for parenting payment – Application dismissed

[Hodzic and Commonwealth Bank of Australia](#) (Compensation) [2015] AATA 490 (8 July 2015); 8/7/2015; Senior Member PW Taylor

Dismissal – redetermination – Applicant conceded could not better redetermination – Applicant no basis or intention to pursue current review proceedings – application for review frivolous and vexatious – application for review dismissed

[Major and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 731 (17 August 2015); Deputy President JW Constance

Application for extension of time to lodge application for review – pensions – indefinite portability of disability support pension – whether reasonable in all the circumstances to grant extension – whether reasonable explanation of delay – whether reasonable prospects of success on the substantive application – application refused

[Pacific International College Pty Ltd and Secretary, Department of Education and Training](#) [2015] AATA 742 (24 September 2015); The Hon. B Tamberlin QC, Deputy President

Administrative Appeals Tribunal – jurisdiction – new allegation relied upon – natural justice requirements – the Tribunal has jurisdiction to hear and determine whether the applicant satisfies the fit and proper person requirements and have regard to any additional evidence sought to be relied on in relation to this issue

[Rees and Optus Administration Pty Ltd](#) [2015] AATA 739 (9 September 2015); Senior Member G Ettinger

Application for extension of time to lodge application for review – whether extension reasonable in all the circumstances – explanation for delay – no prejudice to the Respondent – fair and equitable in all the circumstances to extend time – application granted

Social Security

[Adam and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 727 (18 September 2015); Deputy President Dr C Kendall

Family Tax Benefit – schoolkids bonus – whether overpayment – whether applicant and wife “members of a couple” while geographically separated during Relevant Period – whether applicant otherwise providing care for child – whether debt owed to the Commonwealth – whether debt can be waived or written off – decision under review affirmed

[Applicant and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 749 (25 September 2015); Mr S Webb, Member

Newstart allowance – income maintenance period – discretion to waive all or part of period – severe financial hardship – meaning of ‘reasonable or unavoidable expenses’ – overseas travel – guardianship – severe financial hardship not due to reasonable or unavoidable expenses – income maintenance period incorrectly calculated – decision varied

Special benefit – preconditioning criteria for exercise of discretion – unable to earn sufficient livelihood – medically unfit for work – reasonable expectation of obtaining employment – discretion exercised – applicant qualified for Special Benefit – decision set aside

[Blandford and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 545 (28 July 2015); 28/7/2015; Dr I Alexander, Member

Pensions – 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

[Campbell and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 634 (27 August 2015); 27/8/2015; Senior Member T Nicoletti

Pensions – disability support pension – whether applicant’s conditions were fully diagnosed, treated and stabilised – whether applicant’s impairments rated 20 points or more under the Impairment Tables – decision affirmed

[Chapman and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 639 (27 August 2015); 27/8/2015; Dr I Alexander, Member

Pensions – disability support pension – whether applicant’s conditions were fully diagnosed, treated and stabilised – whether applicant’s impairment rated 20 points or more under the Impairment Tables – decision affirmed

[Davies and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 734 (21 September 2015); Senior Member AC Cotter

Disability support pension – DSP – whether 20 points or more under the impairment tables during the relevant period – value of medical evidence – decision under review affirmed.

[Dixon and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 694 (10 September 2015); 10/9/2015; Deputy President B Tamberlin

Application for Disability Support Pension and Newstart Allowance – compensation preclusion period – whether special circumstances exist to warrant reduction or elimination of preclusion period – purchase of property – expenditure on extended holiday – financial hardship – whether circumstances out of the ordinary – decision affirmed

[Hooker and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 732 (21 September 2015); Senior Member JF Toohey

Family tax benefit – late claim – whether special circumstances prevented applicant from lodging claim within time – decision under review affirmed

[Johns and Secretary, Department of Social Services](#) [2015] AATA 662 (2 September 2015); 2/9/2015; Mr S Webb, Member

Age Pension – data matching – taxable income exceeds declared income – applicant denies undeclared income – overpayment – debt – discretion to write off exercised – decision set aside and remitted

[McMahon and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 640 (27 August 2015); 27/8/2015; Mr S Webb, Member

Disability Support Pension – meaning of ‘Australian resident’ – multiple absences from Australia – medical reasons for travel overseas – availability of discounted air fares – enduring ties to Australia – eligibility for payment of Disability Support Pension subject to portability rules – decision set aside and remitted

[Malhas and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 746 (17 September 2015); Professor R McCallum AO, Member

Pensions – disability support pension – qualification – whether the person’s impairment is of 20 points or more under the Impairment Tables – decision affirmed

[Milakovic and Secretary, Department of Employment](#) (Social services second review) [2015] AATA 616 (20 August 2015); 20/8/2015; Senior Member G Ettinger

Newstart allowance – whether Applicant residentially qualified to receive newstart allowance – Applicant held not to have been a resident on the day of application for the benefit – Applicant has been living in Serbia with his family since 2007 – wants to have pension paid there – decision under review affirmed

[PRPQ and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 743 (24 September 2015); Senior Member AC Cotter

Family Tax Benefit – percentage of care – decision set aside and remitted

[Robinson and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 702 (11 September 2015); Dr G Hughes, Member

Family Tax Benefit – applicant deliberately understated level of care in order to enable wife to receive an increased percentage of benefit – applicant seeks to rectify the record – no evidence to contradict applicant's assertions – decision under review set aside and substituted

Veterans' Affairs

[Franke and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 733 (21 September 2015); Dr G Hughes, Member

Whether a trust is a "controlled private trust" – whether applicants were "attributable stakeholders" – whether purported variation of the trust deed is legally effective – decision affirmed

[McGibbon and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 745 (24 September 2015); Senior Member G Ettinger

Veteran's pension – widow of the Veteran is the Applicant at the Tribunal seeking review of a decision of the VRB which denied the widow's pension on the basis that the Veteran's death from pancreatic cancer was not war-caused – smoking/drinking claim – temporal claim established, but no causal connection to service – decision under review affirmed

[Phillips and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 744 (24 September 2015); The Hon. B Tamberlin QC, Deputy President and Dr S Toh, Member

War widow's pension – whether death war caused – cause of death cardiomyopathy – whether alcohol consumption related to service – whether reasonable hypothesis connecting death to service – hypothesis considered reasonable – decision set aside and substituted

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 REFERENCE
Sizmur v Repatriation Commission & Administrative Appeals Tribunal	[2015] AATA 580
Breakwell & Breakwell Investments Pty Ltd v Commissioner of Taxation	[2015] AATA 628

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
None finalised		

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