



Administrative  
Appeals Tribunal

# AAT Bulletin

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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.

## Civil Aviation

[Barnes and Civil Aviation Safety Authority](#) [2015] AATA 797 (13 October 2015); Deputy President SA Forgie

PRACTICE AND PROCEDURE – JURISDICTION – refusal to extend period for which medical certificate in force – whether refusal to extend a variation of an authorisation – jurisdiction.

PRACTICE AND PROCEDURE – STAY OF OPERATION OF DECISION – limits of power to order stay – do not extend to powers given to Tribunal after reviewing merits of decision on substantive application.

## Compensation

[Garrett and Comcare](#) (Compensation) [2015] AATA 801 (15 October 2015); Dr J Popple, Senior Member

Commonwealth employees – employee suffered stroke in shower in hotel room while away from usual place of work – whether injury arose in the course of employment – whether injury suffered during an interval or interlude in an overall period or episode of work – whether employer induced or encouraged employee to engage in activity engaged in when injury occurred – whether causal connection required between activity and injury – decision set aside and substituted.

[Krnjeta and Australian Postal Corporation](#) (Compensation) [2015] AATA 802 (15 October 2015); Deputy President JW Constance

Right arm and psychological injuries – contribution by employment not found to be to a significant degree – decisions affirmed – accepted injury to left arm – no incapacity for work – decision affirmed – lower back injury – aggravation which arose out of, or in the course of employment – decision set aside and substituted.

[Rigg and Comcare](#) (Compensation) [2015] AATA 781 (8 October 2015); Dr I Alexander, Member

Carpal tunnel syndrome – cervical intervertebral disc displacement – applicant claims injuries a result of workload – applicant claims aggravation of existing undiagnosed condition – whether injury related to employment – whether respondent liable to compensate applicant – decision under review in respect of carpal tunnel syndrome affirmed – decision under review in respect of cervical intervertebral disc displacement set aside and remitted.

## Practice and Procedure

[Gylman and Tax Practitioners Board](#) [2015] AATA 794 (12 October 2015); Senior Member PW Taylor SC

Stay application – considerations relevant to determining application for stay – decision to refuse renewal of registration – stay application refused.

**Nozohoor Mehrabad and Secretary, Department of Immigration and Border Protection**

(Freedom of information) [2015] AATA 790 (9 October 2015); Dr J Popple, Senior Member

Whether application has reasonable prospect of success – whether Tribunal bound by findings of Federal Court – whether issue estoppel prevents findings contrary to Federal Court – “fresh evidence” filed by Applicant – whether Tribunal could make findings required for Applicant to succeed – application for review dismissed.

**Social Security**

**Amini and Secretary, Department of Social Services** (Social services second review) [2015]

AATA 799 (15 October 2015); Ms R Perton, Member

Disability support pension – indefinite portability – whether individual accepted medical conditions attract 20 points for condition – decision affirmed.

**Chaouk and Secretary, Department of Social Services** (Social services second review) [2015]

AATA 793 (12 October 2015); Miss EA Shanahan, Member

Cancellation of disability support pension – re-assessment of eligibility for pension – impairment points attracted less than 20 – most medical conditions not fully diagnosed treated and stabilised – failure to satisfy section s 94(1)(b) of the *Social Security Act 1991* – decision affirmed.

**DLW Health Services Pty Ltd and Secretary, Department of Social Services** [2015] AATA 796

(13 October 2015); Deputy President SA Forgie

AGED CARE – care provided to residents by overseas qualified physiotherapist under supervision of physiotherapist registered in Australia – classification levels of residents – delegate’s decision based on notes in ACFI 12 relating to complex health care for care to be provided by an allied health professional – whether notes are within power – outside of power – assessment by reference to care recipient’s needs not by reference to how what is needed is being delivered or provided  
LEGAL PRINCIPLES – whether Tribunal can consider lawfulness of delegated legislation.

**Fisher and Secretary, Department of Social Services** (Social services second review) [2015]

AATA 792 (12 October 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.

**Glinster and Secretary, Department of Social Services** (Social services second review) [2015]

AATA 800 (15 October 2015); Senior Member AC Cotter

Disability support pension – DSP – unlimited portability – whether 20 points or more under the impairment tables during the relevant period – whether conditions are fully diagnosed, treated and stabilised – value of medical evidence – decision under review affirmed.

[Kristoffersen and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 806 (16 October 2015); Senior Member BJ McCabe

Disability Support Pension – portability – overseas travel by applicant exceeded “allowable absence” – no determination in place for unlimited portability – power of Tribunal to dismiss proceedings – whether proceedings have any reasonable prospect of success – application dismissed pursuant to s 42B *Administrative Appeals Tribunal Act 1975* (Cth).

[Limburg and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 795 (14 September 2015); Senior Member NA Manetta

Whether applicant was a member of a couple for social security purposes – financial aspects of relationship – nature of the household – social aspects of relationship – sexual relationship – nature of people's commitment to each other – totality of circumstances – decision under review affirmed.

[Rawson and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 791 (9 October 2015); Senior Member AF Cunningham

Disability support pension – failure to meet qualification requirements – decision under review affirmed.

[Thornley and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 782 (8 October 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.

## **Taxation**

[Alderton and Commissioner of Taxation](#) (Taxation) [2015] AATA 807 (16 October 2015); Deputy President PE Hack SC

Assessable income – trust estate – beneficiaries – trust income – whether beneficiary presently entitled – beneficiary knew nothing of trust affairs – beneficiary had interest in income vested in interest and possession – lack of knowledge no consequence – disclaimer of interest – must constitute absolute rejection of gift – applicant accepted benefit of gift – use and benefit of distribution – disclaimer ineffective – decision under review affirmed.

## **Veterans' Affairs**

[Van As and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 789 (9 October 2015); Dr D Cremean, Senior Member

War-caused injury or disease – Emphysema – Special Rate – alone – substantial cause.

# 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

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CASE NAME

AAT REFERENCE

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**None lodged**

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## Appeals finalised

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CASE NAME

AAT REFERENCE

COURT REFERENCE

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**Bai v Commissioner of Taxation (No 2)**

[\[2013\] AATA 612](#)

[\[2015\] FCA 1083](#)

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