



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.

## Citizenship

[RVXY and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 857; (10 November 2015); Deputy President PE Hack SC

Whether citizenship should be conferred – Applicant aged 16 at time of application – does not satisfy residence requirements – policy considerations – Australian Citizenship Instructions – not satisfied of significant hardship or disadvantage – consideration of unusual nature of circumstances – Applicant integrated into Australian community – nature of father's employment overseas – accuracy of Embassy advice – best interests served by granting citizenship – decision set aside and remitted with direction citizenship be approved

[Wong and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 847; (4 November 2015); Senior Member PW Taylor SC

Eligibility – general residence requirement not met – whether discretion should be exercised in Applicant's favour – whether Applicant had a close and continuing association with Australia – decision under review affirmed

## Compensation

[Kumar and Linfox Australia Pty Ltd](#) (Compensation) [2015] AATA 850 (6 November 2015); Senior Member G Ettinger

Applicant has osteoarthritis of the right shoulder – injury/aggravation of his degenerative condition – claim also for Depression and Anxiety – liability not accepted by the Respondent under the SRC Act for all three applications – Respondent submits there are issues of credit and inconsistencies in the Applicant's evidence – whether significant material contribution of the workplace – decision under review with regard to the assault of 8 November 2013 set aside and substituted – liability accepted – liability also accepted for Depression and Anxiety

## National Disability Insurance Scheme

[PNMJ and National Disability Insurance Agency](#) [2015] AATA 866 (11 November 2015); Senior Member JF Toohey and Ms R Perton, Member

Child – early intervention – reasonable and necessary supports – whether full-time in-home care a reasonable and necessary support – what is reasonable to expect families, carers, informal networks and the community to provide – mother also a participant in the NDIS – decision under review varied

## Practice and Procedure

[Bellia and Secretary, Department of Social Services](#) (Social security second review) [2015] AATA 859 (10 November 2015); Ms S Taglieri, Member

Application to extend time to appeal – Appeal over 5 months out of time – whether delay satisfactorily explained and if appeal had arguable merit – whether in interests of justice to allow extension of time – extension of time refused

[Dal Broi Wines Pty Ltd and Australian Grape and Wine Authority](#) [2015] AATA 868 (30 October 2015); Senior Member E Fice

Administrative Appeals Tribunal – procedure and evidence – application for stay of operation of decision – cancellation of grape export licence – public interest considerations – impact of stay order on wine industry – stay refused

[Vee Dri \(Aust\) Pty Ltd and Comptroller-General of Customs](#) [2015] AATA 878 (4 November 2015); Senior Member E Fice

Administrative Appeals Tribunal – procedure and evidence – parties – joinder application – person whose interests are affected by decision – customs – payment of duty under protest – importation of flupropanate – party applying for joinder was customer of the Applicant – joinder refused

## Professions and Trades

[Thiel and Registrar of Marriage Celebrants](#) [2015] AATA 872 (8 October 2015); Dr C Kendall, Deputy President

MARRIAGE – registration as marriage celebrant – celebrant registration charge – charge not paid within prescribed period – consequences of not paying charge within notified period – scope of discretion to give notice of deregistration on non-payment of charge – no discretion on part of Registrar – section 42B application asking that application be dismissed on the basis that application is misconceived and has no reasonable prospect of success – 42B application successful – substantive application dismissed

## Social Security

[Carapeta and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 863 (11 November 2015); Senior Member AF Cunningham

Age pension – overseas Applicants – value of assets – loan to controlled private company – applicants 100% attributed controllers – insufficient evidence that assets subject to a charge or encumbrance – decision under review affirmed

[CJFN and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 853 (6 November 2015); Senior Member E Fice

Application for low income health care card – receipt of weekly compensation payments – qualification period – change in circumstances – decision under review affirmed

[Harris; Secretary, Department of Social Services and](#) (Social services second review) [2015] AATA 869 (12 November 2015); Deputy President K Bean

Disability support pension – Whether Respondent’s conditions fully diagnosed, treated and stabilised during assessment period – Whether impairments attract a rating of 20 points or more under the Impairment Tables – Severe impairment – Whether continuing inability to work – Decision under review affirmed

[Krause and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 854 (29 October 2015); Deputy President PE Hack SC

Paid parental leave – Applicant seeks review of relevant start day – premature birth and health problems – late lodgement of claim – start day is date claim is made – no mechanism to alter start date whether exceptional circumstances or not – no reasonable prospect of success – application dismissed

[Le and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 855 (10 November 2015); Senior Member AC Cotter

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

[Mathers and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 864 (11 November 2015); Senior Member AF Cunningham

Disability support pension – accepted lumbar spine condition and osteoarthritis of both knees – neither condition fully treated and stabilised such as to attract an impairment rating during assessment period – decision under review affirmed

[McRoberts and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 875 (23 October 2015); Senior Member E Fice

Pensions, payments and allowances – family payments – family tax benefit – entitlement to payment incorrectly calculated by Centrelink due to clerical error – whether arrears payable – special circumstances – decision under review set aside

[Monty and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 856 (10 November 2015); Mr S Webb, Member

Pension bonus scheme – divestment of assets – preclusion period – no discretion to vary duration of preclusion period – calculation of pension bonus amount – decision affirmed

[Thomas and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 851 (6 November 2015); Mr S Webb, Member

Disability Support Pension – impairments – diagnosed conditions not fully treated or stabilised – impairments do not attract rating of 20 or more points – no continuing inability to work – decision affirmed

[ZPRR and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 871 (12 November 2015); Ms S Taglieri, Member

Disability Support Pension – whether Applicant has severe impairment – participation in a program of support – no impairment attracting 20 point rating – whether Applicant has a continuing inability to work – Decision affirmed

## **Taxation**

[Cornell and Commissioner of Taxation](#) (Taxation) [2015] AATA 852 (6 October 2015); Senior Member FD O'Loughlin

Deposits to bank accounts – whether income – whether taxpayer resident – whether company money should be treated as taxpayers money – separate legal persons – decision affirmed

## **Veterans' Affairs**

[Blakeney and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 862 (11 November 2015); Deputy President JW Constance

Widow's pension – whether veteran rendered British nuclear test defence service – smoking – ischaemic heart disease – whether material points to hypothesis connecting death with circumstances of service – reasonable hypothesis – death of Veteran defence-caused – decision under review set aside

[Chakir and Military Rehabilitation and Compensation Commission](#) (Veterans' entitlements) [2015] AATA 867 (11 November 2015); Senior Member E Fice

Particular injuries and diseases – claim for compensation for urothelial carcinoma (bladder cancer) – subsequent diagnosis of ureteral cancer – ureteral cancer same injury as bladder cancer and therefore reviewable – liability to pay compensation – causation – consumption of Phenacetin through Bex Powders – insufficient evidence of consumption – smoking – smoking unrelated to defence service – decision under review affirmed

[Ford and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 865 (11 November 2015); Senior Member BJ McCabe

Whether veteran entitled to special rate pension – whether Applicant satisfies the 'alone' test – whether Marfan syndrome exacerbates accepted conditions – Marfan syndrome does not contribute independently to an inability to work – decision set aside and substituted

[Jones and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 860 (10 November 2015); Ms R Perton, Member

Repatriation Pharmaceutical Benefits Card – whether Applicant had qualifying service in United Kingdom Navy during World War 2 – whether Applicant was in an area outside the United Kingdom at a time when she incurred danger from hostile forces of the enemy in that area – decision set aside – Applicant is entitled to the Repatriation Pharmaceutical Benefits Card

# 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
<b>Rawson v Secretary, Department of Social Services</b>	<a href="#">[2015] AATA 791</a>
<b>Secretary, Department of Health (as successor to the Secretary, Department of Social Services) v DLW Health Services Pty Ltd</b>	<a href="#">[2015] AATA 796</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Watkins v Repatriation Commission</b>	<a href="#">[2011] AATA 918</a>	<a href="#">[2015] HCASL 191</a> <a href="#">[2014] FCA 787</a> <a href="#">[2015] FCAFC 10</a>
<b>Warren v Repatriation Commission</b>	<a href="#">[2014] AATA 670</a>	<a href="#">[2015] FCAFC 159</a> <a href="#">[2015] FCA 145</a>
<b>Elbehidi v Secretary, Department of Employment</b>	<a href="#">[2015] AATA 228</a>	<a href="#">[2015] FCA 1229</a>

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