



AAT Bulletin

ISSUE NO. 3/2015

19 JANUARY 2015

The *AAT Bulletin* is a weekly publication containing a list of recent AAT decisions and information relating to appeals against AAT decisions. The Bulletin occasionally includes information on legislative changes that affect the AAT and other important developments.

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.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

Enquiries regarding this publication may be directed to aatweb@aat.gov.au.

Contents

AAT Recent Decisions.....	2
Compensation.....	2
Immigration and Citizenship	3
Practice and Procedure	3
Social Security	3
Veterans' Affairs.....	4
Appeals	5
Appeals lodged	5
Appeals finalised.....	5

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.

Compensation

[**Colombo and Australian Postal Corporation**](#) [2014] AATA 10; 13/1/2015; Senior Member PW Taylor SC

Employee of licensed corporation – disc herniation – pain – underlying cervical spine degeneration – whether applicant has a compensable injury as defined by the *Safety, Rehabilitation and Compensation Act 1988* – decisions affirmed

[**Ripper and Australian Postal Corporation**](#) [2015] AATA 15; 14/1/2015; Senior Member GD Friedman

Whether return to work program was a valid and suitable rehabilitation program – refusal or failure to undertake rehabilitation program – meaning of to undertake – whether reasonable excuse

[**Sandercock and Military Rehabilitation and Compensation Commission**](#) [2015] AATA 18; 15/1/2015; Deputy President SD Hotop

Commonwealth employees – applicant performed National Service in 1958 and 1959 and served in Citizen Air Force and Royal Australian Air Force General Reserves from 1962 to 1970 – applicant exposed to noise from gunfire during service – applicant claimed compensation for hearing loss in 2011 – Tribunal not satisfied that applicant's hearing loss causally related to service – respondent prejudiced by applicant's failure to give timely notice of hearing loss – applicant's failure to give timely notice of hearing loss and to make claim for compensation within prescribed period not occasioned by mistake, absence from Australia or other reasonable cause – applicant not entitled to compensation for hearing loss – decision under review affirmed

[**Saunders and Telstra Corporation Limited**](#) [2015] AATA 8; 12/1/2015; Deputy President SA Forgie

Election to institute action or proceeding against Commonwealth for damages for non-economic loss following determination that compensation payable for permanent impairment in relation to back injury – damages recovered – subsequent claim for compensation for psychological condition resulting from back injury – liability for injury accepted but liability for permanent impairment resulting from psychological condition refused on basis damages recovered in action instituted following election – election related only to back injury but action related to damages arising out of accident in which back injury one of injuries sustained – compensation not payable where damages recovered – decision affirmed

Immigration and Citizenship

Mashoor and Minister for Immigration and Border Protection [2015] AATA 11; 13/1/2015;
Senior Member RW Dunne

Application for citizenship – refusal by the delegate – general residence requirement not met – whether applicant was unlawful non-citizen – exercise of discretion – discretion not exercised – decision under review affirmed

Practice and Procedure

Krivoshev and Secretary, Department of Employment [2015] AATA 12; 14/1/2015; Senior Member N Isenberg

Extension of time to lodge application for review – whether acceptable explanation for delay – whether applicant rested on rights – merits of substantive application – extension of time granted

Social Security

Birch and Secretary, Department of Social Services [2015] AATA 3; 5/1/2015; Miss EA Shanahan, Member

Pensions, benefits and allowances – disability support pension – applicant has Down Syndrome – intellectual disability and late onset epilepsy – New Zealand citizen – in receipt of a pension in New Zealand – born in the United Kingdom – failure to satisfy the requirements of the Social Security Agreement between the Government of Australia and the Government of New Zealand (New Zealand Agreement) – decision affirmed

Elli and Secretary, Department of Social Services [2015] AATA 14; 14/1/2015; Dr M Denovan, Member

Pensions, benefits and allowances – disability support pension – DSP – 20 points or more under the Impairment Tables – decision under review affirmed

Harper and Secretary, Department of Social Services [2015] AATA 21; 16/1/2015; Senior Member AC Cotter

Disability support pension – DSP – whether 20 points or more under the impairment tables during the relevant period – applicant did not satisfy legislative criteria within the relevant period or subsequent 13 weeks – decision under review affirmed

Housego and Secretary, Department of Social Services [2015] AATA 7; 9/1/2015; Deputy President K Bean

Allowances – Newstart – connection and reconnection failures – reconnection penalty – whether reasonable excuse – cancellation of Newstart – whether applicant qualified for payment – refusal to enter into Employment Pathway Plan – decisions under review affirmed

Tavili and Secretary, Department of Social Services [2015] AATA 19; 15/1/2015; Senior Member AC Cotter

Newstart allowance – disability support pension – DSP – compensation payment – preclusion period – compensation charge recoverable by Centrelink – decision set aside and substituted – preclusion period altered – periodic compensation amount paid to be disregarded and treated as not having been made – recalculation of compensation charge recoverable by Centrelink

Walker and Secretary, Department of Social Services [2015] AATA 16; 14/1/2015; Dr M Denovan, Member

Pensions, benefits and allowances – age pension payment – compensation – statutory objectives – affected payment – preclusion period – whether special circumstances – assessment of legal expenses – financial hardship – decision under review affirmed

Veterans' Affairs

Lightowers and Repatriation Commission [2015] AATA 17; 15/1/2015; The Hon B Tamberlin QC, Deputy President and Dr S Toh, Member

Disability pension – conditions of thymoma, autoimmune haemolytic anaemia and cryptococcoma of the lung – whether conditions are war-caused – operational service – decision under review set aside

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
Boskoski v Secretary, Department of Social Services	[2014] AATA 915
Xardia v Comcare	[2014] AATA 487
Minister for Immigration and Border Protection v Farag & AAT	[2014] AATA 927
Deane v Secretary, Department of Social Services & AAT	[2014] AATA 970

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Comcare v Martin	[2014] AATA 553	[2015] FCA 4

© Commonwealth of Australia 2015



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](#). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website:
<http://www.itsanhonour.gov.au/coat-arms/>.

Enquiries regarding the licence are welcome at aatweb@aat.gov.au.

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](#). Those terms provide that section 182A of the *Copyright Act 1968* applies.