



## AAT Bulletin

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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.

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## AAT Recent Decisions

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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

[Eli 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**

[Lightowlers 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

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## Appeals

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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

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CASE NAME	AAT REFERENCE
<b>Boskoski v Secretary, Department of Social Services</b>	<a href="#">[2014] AATA 915</a>
<b>Xardia v Comcare</b>	<a href="#">[2014] AATA 487</a>
<b>Minister for Immigration and Border Protection v Farag &amp; AAT</b>	<a href="#">[2014] AATA 927</a>
<b>Deane v Secretary, Department of Social Services &amp; AAT</b>	<a href="#">[2014] AATA 970</a>

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### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Comcare v Martin</b>	<a href="#">[2014] AATA 553</a>	<a href="#">[2015] FCA 4</a>

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