



## AAT Bulletin

ISSUE NO. 5/2015

2 FEBRUARY 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](mailto:aatweb@aat.gov.au).

### Contents

|                                   |          |
|-----------------------------------|----------|
| <b>AAT Recent Decisions</b> ..... | <b>2</b> |
| Compensation.....                 | 2        |
| Practice and Procedure .....      | 2        |
| Social Security .....             | 2        |
| Taxation .....                    | 3        |
| Veterans' Affairs.....            | 4        |
| <b>Appeals</b> .....              | <b>5</b> |
| 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

[Cassar and Australian Postal Corporation](#) [2015] AATA 50; 30/1/2015; Ms R Perton, Member

Whether condition caused or aggravated through employment – right shoulder condition – whether shoulder condition arose out of or in the course of employment – whether employment contributed to shoulder condition to a significant degree – decision set aside and substituted

[Howes and Comcare](#) [2014] AATA 39; 28/1/2015; Dr M Denovan, Member

Liability accepted for physical condition – chronic neck and shoulder pain – intervertebral disc disorder cervical region – subacromial bursitis (right) – sprain of shoulder and upper arm – meaning of ‘in relation to’ – breast reduction – plastic surgery – purpose of the treatment – no requirement for treatment to permanently improve injury – test of reasonableness – medical treatment is related to the accepted injury and reasonable to obtain in the circumstances – decision under review affirmed

[Kisso and Comcare](#) [2015] AATA 35; 27/1/2015; Senior Member JF Toohey and Dr I Alexander, Member

Shoulder bursitis – whether claim for injury or disease – whether nature and conditions of employment caused or aggravated the condition – whether employment contributed to a significant degree to the applicant’s condition – decision under review affirmed

### Practice and Procedure

[Bates and Comcare](#) [2015] AATA 25; 8/1/2015; Deputy President PE Hack SC

### Social Security

[Charrouf and Secretary, Department of Social Services](#) [2015] AATA 38; 28/1/2015; Senior Member JF Toohey

Disability support pension – cancellation – intellectual disability – report provided by psychologist who did not assess applicant – report provided by psychiatrist who did not see the applicant – evidence of depression and anxiety – Job Capacity Assessments – debt raised – whether special circumstances – decision under review affirmed

[Cooper; Secretary, Department of Social Services and](#) [2015] AATA 41; 23/1/2015; Senior Member GD Friedman

Compensation preclusion period – whether special circumstances exist to shorten period – whether expenditure reasonable – application of the 50% rule – whether costs should be deducted

[Fletcher and Secretary, Department of Social Services](#) [2015] AATA 43; 28/1/2015; Senior Member CR Walsh

Youth allowance – qualification for youth allowance – activity test – undertaking full-time study – normal amount of full-time study – alternative meaning of normal amount of full-time study – debt due to the Commonwealth – write-off – waiver – debt not solely attributable to administrative error made by Centrelink – “no special circumstances” – decision under review affirmed

[McManus and Secretary, Department of Social Services](#) [2015] AATA 47; 30/1/2015; Senior Member JF Toohy

Disability support pension – head injury fully diagnosed treated and stabilised – 10 points – whether leg injury fully diagnosed treated and stabilised – whether mild or moderate – whether applicant had continuing inability to work – decision under review affirmed

[O’Leary and Secretary, Department of Social Services](#) [2015] AATA 44; 29/1/2015; Deputy President PE Hack SC

Disability support pension – whether applicant has 20 points under the impairment tables – decision under review affirmed

[Van Haften and Secretary, Department of Social Services](#) [2015] AATA 52; 30/1/2015; Dr I Alexander, Member

Carers allowance – disability care load assessment – assessment of care load questionnaire – decision affirmed

[Zalka and Secretary, Department of Social Services](#) [2015] AATA 22; 16/1/2015; Senior Member AF Cunningham

Disability support pension – overseas applicant – not Australian resident – impairment rating of 20 points not met – no portability – decision under review affirmed

## **Taxation**

[CZRS and Commissioner of Taxation](#) [2015] AATA 40; Senior Member RW Dunne

Income tax – payment on termination of employment – whether genuine redundancy payment – whether employment termination payment – informal and formal performance management process – objection decision under review affirmed.

[Raschta Coatings Pty Ltd as trustee for the Raschta Coatings Trust and Commissioner of Taxation](#) [2015] AATA 34; 23/1/2015; Deputy President DP Hack SC

Income tax and GST liability – assessments – whether assessments excessive – shortfall penalty – decisions under review set aside

[Track and Ors and Commissioner of Taxation](#) [2015] AATA 45; Deputy President PE Hack SC

Capital gain – small business CGT concessions – net asset value test – distribution of capital – liabilities “related to” the assets – connection between two subject matters – real and substantial, not remote

Income tax schemes to avoid tax – whether a tax benefit obtained – whether scheme was one to which Part IVA applies

Scheme shortfall penalty assessment – imposition and remission of penalties

## **Veterans' Affairs**

[King and Repatriation Commission](#) [2015] AATA 36; 27/1/2015; Senior Member J Handley

Applicant a member of crew of HMAS Sydney in 1971 when aged 17 years – engaged in operational service – fell down a stairway – applicant had asymptomatic pre-existing pars defects at L5 – back and leg pain immediately and following the fall – significant quantities of prescribed analgesia consumed – spondylolisthesis at L5/S1 diagnosed – incident not reported or treated until consulting with his general practitioner in 2010 – whether fall did occur – whether clinical onset of the injury occurred at the time of the fall – decision set aside and substituted

[Milenz and Repatriation Commission](#) [2015] AATA 48; 30/1/2015; Deputy President FJ Alpins

Application for increase in pension – special rate of pension – whether veteran prevented by incapacity from war-caused condition “alone” from continuing to undertake remunerative work – decision under review affirmed

---

## 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 |
|-----------|---------------|
|-----------|---------------|

---

|  |                                 |
|--|---------------------------------|
| <b>Minister for Immigration and Border Protection v Tran</b> | <a href="#">[2014] AATA 957</a> |
|--|---------------------------------|

---

### Appeals finalised

---

| CASE NAME | AAT REFERENCE | COURT REFERENCE |
|-----------|---------------|-----------------|
|-----------|---------------|-----------------|

---

|                       |  |  |
|-----------------------|--|--|
| <b>None finalised</b> |  |  |
|-----------------------|--|--|

---

© 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](mailto: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.