



## AAT Bulletin

ISSUE NO. 6/2015

9 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
Immigration and Citizenship .....	2
Social Security .....	3
Taxation .....	3
Veterans' Affairs.....	3
<b>Appeals</b> .....	<b>4</b>
Appeals lodged .....	4
Appeals finalised.....	4

---

## 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

[Corby and Comcare](#) [2015] AATA 42; 29/1/2015; Deputy President K Bean

Commonwealth employees – claims for fibromyalgia, chronic fatigue syndrome, and pneumonia – whether claimed conditions significantly contributed to by employment with ATO – whether applicant suffered an aggravation of her conditions – whether any aggravation resulted in incapacity or impairment – decisions under review affirmed

[Hardcastle and Comcare](#) [2015] AATA 46; 29/1/2015; Dr M Denovan, Member

Chronic fatigue syndrome – Coxsackie B virus – water drunk – decision under review affirmed

[Polkinghorne and Comcare](#) [2015] AATA 54; 30/1/2015; Deputy President IR Molloy

Commonwealth Employees – claim for work related stress and anxiety – ailment not in dispute – whether ailment contributed to by employment to a significant degree – decision under review affirmed

### Immigration and Citizenship

[Al Kasiri and Minister for Immigration and Border Protection](#) [2015] AATA 60; 4/2/2015; Deputy President JW Constance

Citizenship by conferral – residence requirement – consideration of discretion in section 22(9) – whether the Applicant had a close and continuing association with Australia during periods of absence – decision affirmed

[Amosa and Minister for Immigration and Border Protection](#) [2015] AATA 55; 30/1/2015; Deputy President JW Constance

Citizenship by conferral – good character – whether the applicant satisfies the legislative requirement to be shown to be of good character – previous convictions – failure to disclose convictions – decision affirmed

[El Houmayssi and Minister for Immigration and Border Protection](#) [2015] AATA 61; 4/2/2015; Deputy President JW Constance

Citizenship by conferral – good character – whether the applicant satisfies the legislative requirement to be shown to be of good character – finding of guilt for domestic violence – consideration of mitigating factors – decision set aside and remitted

## Social Security

[Kirk and Secretary, Department of Social Services](#) [2015] AATA 63; 30/1/2015; Senior Member CR Walsh

Disability support pension (DSP) – applicant has physical “impairments” (being lower back pain and left knee osteoarthritis) – applicant’s impairments not “permanent” – applicant’s impairments not fully diagnosed, treated and stabilised and “permanent” and did not attract 20 points or more under the Impairment Tables on the date he claimed DSP or within 13 weeks thereafter – decision under review affirmed

[Ly and Anor and Secretary, Department of Social Services](#) [2015] AATA 57; 2/2/2015; Senior Member N Isenberg

Compensation – preclusion period – whether special circumstances existed – financial circumstances – need for modified vehicle – large family – discretion exercised by Social Security Appeals Tribunal to disregard part of compensation payment – whether Tribunal should further exercise discretion – decision affirmed

[ZKHF and Secretary, Department of Social Services](#) [2015] AATA 59; 3/2/2015; The Hon. B Tamberlin QC, Deputy President

Disability support pension – cancellation – whether applicant has 20 points under the impairment tables – job capacity assessment – decision affirmed

## Taxation

[Caporale and Commissioner of Taxation](#) [2015] AATA 49; 30/1/2015; Deputy President SE Frost

GST – enterprise – carrying on an enterprise – input tax credits – creditable acquisitions – applicant not carrying on an enterprise – acquisitions not made for a creditable purpose – administrative penalty – intentional disregard of the law – penalty uplifted – objection decisions affirmed

Income Tax – default assessments – whether assessments excessive – failure to prove actual taxable income for relevant income years – deduction claims – no explanation for deductions – no explanation for income figures – administrative penalty – recklessness – intentional disregard of the law – penalty uplifted – objection decisions mostly affirmed

## Veterans' Affairs

[Kelly and Repatriation Commission](#) [2015] AATA 56; 2/2/2015; Senior Member N Isenberg

Disability pension – operational service – claim that emotional problems were war-caused – consideration of Statement of Principles – diagnosis – response to alleged stressors – decision 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
-----------	---------------

**None lodged**

---

### Appeals finalised

---

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

<b>Garrett v Commissioner of Taxation</b>	<a href="#">[2014] AATA 614</a>	<a href="#">[2015] FCA 40</a>
---	---------------------------------	-------------------------------

© 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.