



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

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

[**Gibbs and Comcare**](#) [2015] AATA 72; 12/2/2015; Deputy President SD Hotop

Commonwealth employees – applicant employed by Australian Taxation Office (ATO) – applicant suffered injury to neck, left shoulder and arm in November 2005 in performance of employment duties at ATO – applicant suffered injury to neck, right shoulder and arm in April 2011 in performance of employment duties at ATO – respondent accepted liability to pay compensation for 2005 injury and 2011 injury – respondent ceased payment of compensation in November 2013 – applicant's pain symptoms in neck, shoulders and arms no longer causally related to compensable injuries – respondent not liable to pay compensation to applicant for compensable injuries since November 2013 – decision under review affirmed

[**Hoffman and Comcare**](#) [2015] AATA 53; 30/1/2015; Deputy President K Bean

Adjustment reaction with mixed emotional features – whether applicant's condition arose as a result of reasonable administrative action taken in a reasonable manner – condition a result of reasonable administrative action taken in a reasonable manner – decision under review affirmed

Education and Research

[**Hewawasam Revulge and Secretary, Department of Education**](#) [2015] AATA 70; 10/2/2015; Ms R Perton, Member

HIGHER EDUCATION – student enrolled for post graduate course – request for leave of absence for semester – application deemed lodged after census date – leave of absence granted – fees imposed – whether grounds to re-credit entitlements – special circumstances – Ministerial guidelines – decision affirmed

Immigration and Citizenship

[**GJRL and Minister for Immigration and Border Protection**](#) [2015] AATA 76; 13/2/2015; Senior Member J Handley

Application for citizenship by conferral – finding that applicant was not of good character – applicant arrived in Australia aged 5 and now 35 years – offended on multiple occasions and annually between 1995 and 2003 and again in 2007 – offending first occurred as a teenager – section 501 notice in 2004 was not contested – applicant lawfully returned to Australia in 2005 – subsequently married, became a father, obtained secure employment with substantial salary – strong supportive family network – forensic psychologist found the applicant at low risk of recidivism – decision set aside

Kim and Minister for Immigration and Border Protection [2015] AATA 67; 9/2/2015; 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

Shekarchian and Minister for Immigration and Border Protection [2015] AATA 68; 9/2/2015; Deputy President JW Constance

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

YVWV and Minister for Immigration and Border Protection [2015] AATA 66; 9/2/2015; Deputy President JW Constance

Refugees – protection visa – whether protection obligations to applicant – whether serious reasons for considering that applicant had committed a serious non-political crime prior to admission – decision set aside and remitted

Social Security

EI Mohammed and Secretary, Department of Social Services [2015] AATA 75; 13/2/2015; The Hon. B Tamberlin QC, Deputy President

Disability Support Pension – participation in a program of support – decision affirmed

Frenzel and Secretary, Department of Social Services [2015] AATA 71; 11/2/2015; Senior Member AC Cotter

Age Pension – whether Australian resident for purposes of pension payment – extended periods living outside Australia – decision under review affirmed

Khdher and Secretary, Department of Social Services [2015] AATA 74; 13/2/2015; Professor R McCallum AO, Member

Pensions – disability support pension – whether the applicant's impairment is of 20 points or more under the Impairment Tables – decision affirmed

Whitham and Secretary, Department of Social Services [2015] AATA 9; 12/1/2015; Miss EA Shanahan, Member

Pensions benefits allowances – disability support pension claim – conditions of chronic fatigue syndrome, post-traumatic stress disorder, depression and chronic obstructive pulmonary disease – no condition fully diagnosed, treated and stabilised – no impairment rating attracted – decision affirmed

YKBJ and Secretary, Department of Social Services [2015] AATA 65; 4/2/2015; Senior Member CR Walsh

Overpayment of parenting payment, family tax benefit and childcare benefit – overpayments debts due to Commonwealth – write-off of debts inappropriate – debts not attributable solely to administrative error made by Centrelink – no “special circumstances” warranting waiver of debts – decision under review affirmed

Taxation

Wu and Commissioner of Taxation [2015] AATA 78; 13/2/2015; Deputy President PD Hack SC

Assessable income – whether assessments were excessive – whether income derived from overseas interests – decision set aside – remitted for reconsideration

Shortfall penalty – recklessness – statements false or misleading in a material particular – shortfall penalty 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
Saunders v Telstra Corporation	[2015] AATA 8

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Tarrant v Australian Securities and Investments Commission	[2013] AATA 926	[2015] FCAFC 8
Carson v Comcare	[2014] AATA 699	[2015] FCA 50
MYVC v Director-General of Security & Minister for Foreign Affairs & Administrative Appeals Tribunal	[2014] AATA 511	[2014] FCA 1447

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