



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

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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.

Child Support

[Confidential and Principal Member, Social Security Appeals Tribunal and Anor](#) [2015] AATA 100; 23/2/2015; Ms R Perton, Member

Application to extend time to apply to the Social Security Appeals Tribunal – SSAT refused extension – whether it is reasonable in all the circumstances to grant the extension – explanation for delay – whether application has possible merit – extension of time permitted

Civil Aviation

[O'Brien and Civil Aviation Safety Authority](#) [2015] AATA 93; 20/2/2015; The Hon Justice Benjamin and Dr W Isles, Member

Progression from co-pilot to captain – progression from co-pilot to pilot in command – progression from first officer to officer in command – colour vision deficiency (CVD) – protanopia – protanope – Air Transport Pilot (Aeroplane) Licence (ATPL) – Commercial Pilot (Aeroplane) Licence (CPL) – conditions imposed on class 1 Civil Aviation medical certificate – conditions imposed on applicant – Colour Assessment and Diagnosis (CAD) test – Precision Approach Path Indicator (PAPI) – Pseudo-isochromatic Plates (PIP) – Ishihara plates – lantern tests – applicant does not meet medical standard – failure to meet medical standard not likely to endanger the safety to air navigation – decision varied – conditions attached to class 1 Civil Aviation medical certificate varied – only valid for operations within Australia – applicant not permitted to conduct night time operations other than as or with qualified co-pilot – applicant must disclose colour vision deficiency to specified persons – decision varied

Compensation

[Cotic and Military Rehabilitation and Compensation Commission](#) [2015] AATA 103; 26/2/2015; Deputy President SD Hotop

Commonwealth employees – applicant served in Australian Army from 1978 to 1980 – applicant injured left knee in course of service in May 1978 – applicant claimed compensation – compensation payable to applicant for 'torn left medial meniscus' – lump sum compensation paid to applicant for partial loss of efficient use of left leg – in 2012 applicant claimed compensation for osteoarthritis of left knee – compensation payable to applicant for 'osteoarthritis of left knee' – applicant claimed compensation for permanent impairment resulting from compensable left knee injuries – compensable left knee injuries and resulting permanent impairment occurred in 1978 – permanent impairment resulting from osteoarthritis injury same as permanent impairment resulting from meniscus injury – applicant has not suffered new or distinct permanent impairment – no further permanent impairment compensation payable to applicant – decisions under review affirmed

[Khoshaba and Linfox Armaquard Pty Limited](#) [2015] AATA 85; 19/2/2015; Senior Member JF Toohey and Dr M Couch, Member

Liability accepted for multiple injuries following fall at work – whether effect of injuries had ceased – whether respondent liable to compensate applicant for secondary psychological condition – decision under review in respect of physical injuries affirmed – decision under review in respect of psychological injury set aside

Corporations

[Vissenjoux and Australian Securities and Investments Commission](#) [2015] AATA 98; 24/2/2015; Senior Member J Handley

Sequestration order made against applicant's estate on 28 May 2013 – applicant held a financial services representative license – applicant also self-employed as a home builder – debts from that business proved at \$994,940 – banning order for three years because applicant insolvent under administration – responsibility of the respondent to regulate the financial services industry – importance of consumer confidence in licensed financial services providers – decision affirmed

Freedom of Information

[Tate and Director, Australian War Memorial](#) [2015] AATA 107; 27/2/2015; The Hon B Tamberlin QC, Deputy President

Access – practical refusal reason – whether work involved in processing request would substantially and unreasonably divert the resources of the agency from its other operations – decision affirmed

Immigration and Citizenship

[Patel and Minister for Immigration and Border Protection](#) [2015] AATA 108; 27/2/2015; The Hon B Tamberlin QC, Deputy President

Close and continuing association with Australia – intention to reside in Australia – decision under review affirmed

Privacy

[TYGJ and Privacy Commissioner and Secretary, Department of Veterans' Affairs \(Party Joined\)](#) [2015] AATA 112; 27/2/2015; Deputy President SA Forgie

Decision under review is declaration by Privacy Commissioner that Department of Veterans' Affairs had breached Information Privacy Principle 11.1 in disclosing applicant's personal information – Secretary, Department of Veterans' Affairs applied to be made a party to the proceeding – interests affected – exercise of discretion – party joined

Social Security

[Hennessy and Secretary, Department of Social Services](#) [2015] AATA 106; 27/2/2015; Senior Member N Isenberg

Debt – family tax benefit – children absent from Australia – whether the applicant owes a debt to the Commonwealth – whether the debt should be written off – whether the whole or a part of a debt should be waived – decision set aside

[Liang and Secretary, Department of Social Services](#) [2015] AATA 97; 23/2/2015; Deputy President JW Constance

Age pension – work bonus provisions – whether employment income of partner employment income in recipients hands for purposes of work bonus – decision affirmed

[McDonald and Secretary, Department of Social Services](#) [2015] AATA 90; 20/2/2015; Mr I Thompson, Member

Disability Support Pension – whether applicant has severe impairment – whether applicant has a continuing inability to work – no impairment attracting 20 point rating – no participation in program of support with a designated provider – decision under review affirmed

[Mladenov and Secretary, Department of Social Services](#) [2015] AATA 99; 24/2/2015; Senior Member E Fice

Pensions, payments and allowances – Disability support pension – suspension and cancellation – suspension due to employment

Pensions, payments and allowances – unemployment allowances – qualification – disqualification due to employment

Overpayments and debt recovery – amounts recoverable – notification of change in circumstances – no notification by applicant of employment

Overpayments and debt recovery – Waiver of debt – generally

[Russell and Secretary, Department of Social Services](#) [2015] AATA 91; 20/2/2015; Senior Member G Ettinger

Overpayment of DSP – failure to declare partner’s income in full – certain administrative error of the Commonwealth – not sole administrative error – decision under review affirmed

[Treloar and Secretary, Department of Social Services](#) [2015] AATA 94; 23/2/2015; Dr C Ermert, Member

Mobility allowance – voluntary work – 32 hours in every four weeks – ability to use public transport without substantial assistance – decision affirmed

[Zimmerman; Secretary, Department of Social Services and](#) [2015] AATA 110; 28/1/2015; Senior Member NA Manetta

Disability support pension – respondent has accumulated 20 impairment points – respondent has not received 20 points under a single table – whether respondent has continuing inability to work – whether respondent has actively participated in a program of support that meets defined regulatory requirements – respondent does not meet active participation in program of support – SSAT decision set aside

Transport

[Jays and Minister for Infrastructure and Regional Development](#) [2015] AATA 101; 25/2/2015; Deputy President PE Hack SC

Motor vehicle importation – nonstandard vehicle without identification plate – road vehicle – meaning of “motor vehicle” “road motor vehicle” “designed” “solely or principally” for the transport

on “public roads” of people, animals or goods – principles of statutory construction – decision set aside and remitted

[Tormey and Minister for Infrastructure and Regional Development](#) [2015] AATA 104; 26/2/2015; Deputy President IR Molloy

Motor Vehicles – Application to import a non-standard road vehicle which does not have an identification plate – Requirements under Regulation 13(1) *Motor Vehicles Standards Regulations 1989* (Cth) not met – Exercise of discretion under Regulation 11 not warranted – Decision under review affirmed

Veterans' Affairs

[Burton and Repatriation Commission](#) [2015] AATA 105; 26/2/2015; Deputy President FJ Alpins

Application for increase in pension – special rate of pension – ss 24(1)(c) and 24(2)(b) of *Veterans' Entitlements Act 1986* (Cth) – whether veteran prevented by incapacity from war-caused conditions alone from continuing to undertake remunerative work – whether veteran's incapacity the substantial cause of inability to obtain remunerative work

[Conway and Repatriation Commission](#) [2015] AATA 113; 27/2/2015; Senior Member GD Friedman

Veterans' entitlements – special rate of pension – naval service – fitness instructor – spinal injury – whether incapacity from war-caused injuries 'alone' prevented the veteran from undertaking remunerative work – decision set aside

[Duffell and Repatriation Commission](#) [2015] AATA 102; 25/2/2015; Senior Member N Isenberg

Whether veterans' death was war caused – death from ischaemic heart disease – whether veterans' death was war caused – whether smoking related to service – consideration of statement of principles – smoking at least one pack year of cigarettes prior to clinical onset – decision set aside and substituted

[Jones and Repatriation Commission](#) [2015] AATA 96; 23/2/2015; Mr C Ermert, Member

Incapacity from war-caused injuries alone – decision set aside and remitted to the Respondent

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
Corby v Comcare	[2015] AATA 42

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
None finalised		

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