



## 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](mailto:aatweb@aat.gov.au).

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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.

### Archives

[Pemberton and Director-General, National Archives of Australia](#) [2015] AATA 115; 27/2/2015; Dr J Popple, Senior Member

Access – personnel files – whether unreasonable disclosure of information relating to personal affairs – records include medical and other personal information – persons still of employable age – information of limited public interest – decision to deny access affirmed

Access – weight to be given to policy – whether policy inconsistent with *Archives Act 1983* – policy balances public interest – Tribunal to consider policy at time of decision – policy a relevant consideration

### Compensation

[Griffin and Military Rehabilitation and Compensation Commission](#) [2015] AATA 121; 4/3/2015; Deputy President JW Constance

Permanent impairment – whether degree of whole person impairment has increased by 10% or more – decision set aside and remitted

[Saunders and Comcare](#) [2015] AATA 111; 13/2/2015; Deputy President AG Melick SC

Commonwealth employees – claim lodged six years after injury – whether precluded by failure to give notice as soon as practicable – application dismissed

Commonwealth employees – injury caused by work – whether reasonable administrative action – whether carried out in a reasonable manner – employee placed under supervision of manager with whom he had prior issues – employer had corporate knowledge of prior issues – Comcare liable for injury

### Corporations

[Frugtniet and Australian Securitites and Investments Commission](#) [2015] AATA 128; 6/3/2015; Senior Member GD Friedman

CREDIT ACTIVITIES – banning order – whether fit and proper person to engage in credit activities – prior dishonest conduct – duration of order

## Immigration and Citizenship

[FBMR and Minister for Immigration and Border Protection](#) [2015] AATA 116; 2/3/2015;  
Dr P McDermott RFD, Senior Member

Application for citizenship by descent – whether applicant of good character – decision under review affirmed

## Practice and Procedure

[Hayward and Secretary, Department of Social Services](#) [2015] AATA 118; 3/3/2015;  
Ms S Taglieri, Member

Disability support pension; extension of time sought; no arguable basis for review to succeed; extension of time refused

## Social Security

[Mitchell and Secretary, Department of Social Services](#) [2015] AATA 122; 5/3/2015;  
Mr I Thompson, Member

Disability Support Pension – whether applicant's condition is fully diagnosed, fully treated and fully stabilised – whether applicant's conditions attract 20 points or more on the Impairment Tables during the assessment period – decision under review affirmed

[Sharp and Secretary, Department of Social Services](#) [2015] AATA 127; 6/3/2015;  
Ms R Perton, Member

Parenting payment (single) – whether member of a couple – decision under review affirmed

## Taxation

[Morrison and Commissioner of Taxation](#) [2015] AATA 114; 27/2/2015; Deputy President SE Frost

Income tax – amended assessments – whether the taxpayers entered into a sham arrangement with Hua Wang Bank Berhad – whether loan documents represent true dealings or relationship – shortcomings and inconsistencies in financial records – whether Commissioner empowered to amend taxpayers' assessments or whether assessments were out of time – avoidance of tax due to fraud or evasion – meaning of evasion – failure to prove avoidance of tax was not due to evasion – proper characterisation of payment by taxpayers' company to taxpayers' superannuation fund – payments characterised as assessable income of the superannuation fund – not assessable to the taxpayers under either s 44 or Division 7A of the *Income Tax Assessment Act 1936* – administrative penalty – intentional disregard of the law – penalty uplifted – objection decisions relating to the 2008 income year set aside and allowed in part – all other objection decisions affirmed

[WWXY and Commissioner of Taxation](#) [2015] AATA 130; 6/3/2015; Senior Member BJ McCabe

INCOME TAX ASSESSMENT AND PENALTY DECISIONS – private ruling – characterisation of proceeds of sale – assessable income or capital gain – objective of scheme – finding that taxpayer was engaged in a business of property development – profit-making purpose from time of acquisition – profitable sale of property within taxpayer’s contemplation – profits of sale assessable income – decision under review affirmed

## **Veterans' Affairs**

[Olsen and Repatriation Commission](#) [2015] AATA 119; 4/3/2015; Dr M Denovan, Member

Benefits and entitlements – eligibility for pension – posttraumatic stress disorder – PTSD – major depression – antisocial personality disorder – generalised anxiety disorder – operational service – whether conditions related to service – no reasonable hypothesis connecting conditions with service – decision under review affirmed

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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>Cameron v Secretary, Department of Human Services</b>	<a href="#">[2015] AATA 62</a>
<b>Agapis v A Deputy President of the Administrative Appeals Tribunal at Perth &amp; Ors</b>	<a href="#">[2013] AATA 187</a>

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### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>McKinley v Repatriation Commission</b>	<a href="#">[2014] AATA 670</a>	<a href="#">[2015] FCA 145</a>
<b>Commissioner of Taxation v Moignard</b>	<a href="#">[2014] AATA 342</a>	<a href="#">[2015] FCA 143</a>
<b>SZRTN v Minister for Immigration and Border Protection &amp; AAT</b>	<a href="#">[2013] AATA 818</a>	<a href="#">[2015] HCASL 12</a>
<b>von Stieglitz v Comcare &amp; Commonwealth of Australia &amp; AAT</b>	<a href="#">[2013] AATA 908</a>	<a href="#">[2015] HCASL 2</a>

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## Statements of Principles

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This section of the Bulletin provides information on recent developments in relation to Statements of Principles made by the Repatriation Medical Authority for the purposes of the [Veterans' Entitlements Act 1986](#) and the [Military Rehabilitation and Compensation Act 2004](#).

### New Statements of Principles

The Tribunal has been advised that the Repatriation Medical Authority has made the following new Statements of Principles. They take effect from 30 March 2015.

**Herpes zoster – No. 47 of 2015**

<http://www.comlaw.gov.au/Details/F2015L00253>

**Herpes zoster – No. 48 of 2015**

<http://www.comlaw.gov.au/Details/F2015L00254>

**Malignant neoplasm of the salivary gland – No. 57 of 2015**

<http://www.comlaw.gov.au/Details/F2015L00252>

**Malignant neoplasm of the salivary gland – No. 58 of 2015**

<http://www.comlaw.gov.au/Details/F2015L00261>

**Neoplasm of the pituitary gland – No. 53 of 2015**

<http://www.comlaw.gov.au/Details/F2015L00259>

**Neoplasm of the pituitary gland – No. 54 of 2015**

<http://www.comlaw.gov.au/Details/F2015L00260>

**Paget's disease of bone – No. 49 of 2015**

<http://www.comlaw.gov.au/Details/F2015L00255>

**Paget's disease of bone – No. 50 of 2015**

<http://www.comlaw.gov.au/Details/F2015L00256>

**Plantar fasciitis – No. 51 of 2015**

<http://www.comlaw.gov.au/Details/F2015L00257>

**Plantar fasciitis – No. 52 of 2015**

<http://www.comlaw.gov.au/Details/F2015L00258>

**Seborrhoeic keratosis – No. 55 of 2015**

<http://www.comlaw.gov.au/Details/F2015L00250>

**Seborrhoeic keratosis – No. 56 of 2015**

<http://www.comlaw.gov.au/Details/F2015L00251>

**Spondylolisthesis and spondylolysis – No. 59 of 2015**

<http://www.comlaw.gov.au/Details/F2015L00262>

**Spondylolisthesis and spondylolysis – No. 60 of 2015**

<http://www.comlaw.gov.au/Details/F2015L00263>

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