



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.

Civil Aviation

[Moorabbin Airport Corporation Pty Ltd and Minister for Infrastructure and Regional Development and Kingston City Council and City of Greater Dandenong \(Joined Parties\)](#) [2015] AATA 77; 17/2/2015; Justice S Kenny, Presidential Member

Airports – Decision by Minister to refuse to approve draft major development plan under s 94(2) of *Airports Act 1996* (Cth) – Application by airport-lessee company for review of decision – Proposed development “relates to” airport within s 91(1A) – Approval of draft major development plan would defeat statutory purpose in s 91(1A), where airport-lessee company no longer able to implement the draft major development plan in accordance with the details of the development set out in it – Evidence predicated on a particular retail tenancy mix – Basis for assumption as to tenancy mix no longer exists – Tribunal unable to assess economic impacts of development adequately – Consideration of matters mandated by s 94(3) – Matters mandated by s 94(3) do not provide a reason not to approve draft major development plan – Consideration of the likely effect of traffic flows, the likely effect of the proposed development on the local and regional economy and community, how the proposed development fits within the local planning schemes for commercial and retail development, the extent of consistency with the planning schemes, and the justification for any inconsistencies – Consideration of last-mentioned matters not provide a reason not to approve the draft major development plan – Decision under review affirmed

Compensation

[WBJM and Comcare](#) [2015] AATA 143; 13/3/2015; Senior Member BJ McCabe

Liability accepted for incapacitation caused by workplace injury – Segway provided to applicant – Cost of insurance for Segway – Insurance not medical treatment – Insurance not aid or appliance – No express provision in legislation made for insurance – Respondent not authorised to pay for insurance – Decision under review affirmed

Customs

[BASF Australia Ltd and Anor and Chief Executive Officer of Customs](#) [2015] AATA 140; 12/3/2015; Deputy President SA Forgie

Tariff classification – Vegapure 95, Vegapure 95E, Vegapure 95FF – Subject goods – Plant sterols – Plant esters – Whether vegetable oil or fraction of vegetable oil – Whether food – Whether medicaments – Whether put up in packings for retail sale – Whether mixtures of chemicals with foodstuffs or with other substances of nutritive value – Decision under review affirmed

Higher Education

[Adamson and Secretary, Department of Education](#) [2015] AATA 141; 12/3/2015; Senior Member CR Walsh and Dr CN Kendall, Member

Student enrolled in graduate diploma at Open Universities Australia – No request for withdrawal received in writing by university by relevant census date – Student FEE-HELP debt affected – Whether grounds to remit FEE-HELP debt – Special circumstances – Ministerial guidelines – Decision under review affirmed

Passports

[Lee and Minister for Foreign Affairs](#) [2015] AATA 142; 13/3/2015; The Hon. B Tamberlin QC, Deputy President

Issue – Date of birth given on passport application different to that on applicant's birth certificate – Discretion to endorse a travel document – decision

Practice and Procedure

[James and Commissioner of Taxation](#) [2015] AATA 136; 11/3/2015; Senior Member BJ McCabe

Jurisdiction - Dispute regarding PAYG credits – Decision with respect to PAYG credits not part of objection decision – Tribunal has no power to review decision with respect to PAYG credits – No jurisdiction

[Kennedy and Comcare](#) [2015] AATA 117; 25/2/2015; Deputy President PE Hack SC

Application for adjournment of preliminary hearing – Applicant given sufficient opportunity to prepare case – Tribunal must use resources efficiently – Proceedings to be dealt with in a way that is fair, just, economical, informal and quick – Application refused

[Kennedy and Comcare](#) [2015] AATA 132; 3/3/2015; Deputy President PE Hack SC

Application for adjournment of preliminary hearing – Six further grounds – Vagueness of evidence – Prospect of legal representation – Capacity to prepare for hearing – Adjournment not warranted – Application refused

[Munday and Comcare](#) [2015] AATA 123; 5/3/2015; Senior Member J Popple

Proceedings – Tribunal's power to issue summons – Whether requested summons is relevant – Requested summons relates to events subsequent to claim – Summons refused

[Ward and Commissioner of Taxation](#) [2015] AATA 138; 11/3/2015; Deputy President SE Frost and Dr J Popple, Senior Member

Excess superannuation contributions tax – Whether Tribunal has jurisdiction – Whether a person can lodge an objection where Commissioner does not make a determination – Ordinary meaning of legislation is manifestly absurd – Person may lodge objection – Tribunal has jurisdiction

Statutes – Interpretation – Ordinary meaning is manifestly absurd – Tribunal may refer to explanatory memorandum – Tribunal may insert words – Construction is reasonably open – Clear when read with explanatory memorandum that amendment confers jurisdiction

[Zhang and Secretary, Department of Social Services](#) [2014] AATA 131; 9/3/2015; Senior Member N Isenberg

Extension of time to lodge application for review – Extension of time refused

Transport

[Jays and Minister for Infrastructure and Regional Development](#) [2015] AATA 145; 13/3/2015; Deputy President PE Hack SC

Definition of “road vehicle” not satisfied – Appropriate form of decision – Decision set aside and remitted to Minister with direction

Small Taxation Claims

[Clemens and Commissioner of Taxation](#) [2015] AATA 124; 6/3/2015; Professor R Deutsch, Deputy President

Notice of assessment – Tax return – Resident of Australia – Ordinary concepts test – 183 day test – Decision under review affirmed

[Jaczenko and Commissioner of Taxation](#) [2015] AATA 125; 6/3/2015; Professor R Deutsch, Deputy President

Notice of assessment – Tax return – Resident of Australia – Ordinary concepts test – 183 day test – Decision under review affirmed

[Koustrup and Commissioner of Taxation](#) [2015] AATA 126; 6/3/2015; Professor R Deutsch, Deputy President

Notice of assessment – Tax return – Resident of Australia – Ordinary concepts test – 183 day test – Decision under review affirmed

Taxation

[HVZZ and Commissioner of Taxation](#) [2015] AATA 133; 5/3/2015; Senior Member CR Walsh

Private rulings – Non-commercial business loss deferral rule – Commissioner’s discretion not to apply rule – “additional information” not materially different from scheme to which ruling relates – Whether commencement of a new “business activity” – Objective expectation of tax profit – Commercially viable period for industry concerned – Commissioner’s ruling on the scheme as identified in the PBR correct – Objection decision affirmed

Veterans' Affairs

[Tuck and Repatriation Commission](#) [2015] AATA 137; 11/3/2015; Brigadier (Retired) C Ermert, Member

De facto relationship – Separated from partner – Member of a couple – Partner service pension – Non-illness separated spouse – Not legally married – 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
Agapis v A Deputy President of the AAT at Perth & Ors	[2013] AATA 187
Kumar v Minister for Immigration and Border Protection & AAT	[2014] AATA 944

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Smith v Comcare	[2014] AATA 28	[2015] FCAFC 24
P v Child Support Registrar & M	[2014] AATA 229	[2015] FCA 116
Forster v Repatriation Commission	[2014] AATA 91	[2015] FCA 198
Zdziarski v Telstra Corporation Limited	[2014] AATA 108	[2015] FCA 207

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