



Administrative
Appeals Tribunal

AAT Bulletin

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The *AAT Bulletin* is a weekly publication containing information about recently published decisions and appeals against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions. The Bulletin also regularly includes information about decisions of interest recently published in the AAT's Migration & Refugee Division. It occasionally includes information on legislative changes that affect the AAT.

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 all decisions recently published in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions as well as about select decisions recently published in the Migration & Refugee Division. 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.

Citizenship

[Kugathas and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 129 (28 January 2016); Prof R Deutsch, Deputy President

Citizenship by conferral – good character – drink driving – issue of probity and honesty – decision affirmed

Compensation

[Buckley and Comcare](#) (Compensation) [2016] AATA 151 (15 March 2016); Dr P McDermott RFD, Deputy President

Compensation for injuries resulting in permanent impairment – compensation for non-economic loss – accepted condition – date of permanent impairment considered – decision affirmed under review

[Penafiel and Comcare](#) (Compensation) [2016] AATA 150 (15 March 2016); Senior Member JF Toohey

Right epicondylitis and synovitis – liability accepted – calculation of the applicant's ability to earn per week – cervical disc bulge – whether Respondent liable to compensate Applicant for cervical disc bulge – whether cervical disc bulge related to employment – decision concerning right elbow affirmed – decision concerning cervical disc bulge affirmed

[Piercy and Military Rehabilitation and Compensation Commission](#) (Compensation) [2016] AATA 156 (16 March 2016); Dr P McDermott RFD, Deputy President

Service in the Royal Australian Navy – liability claim for cervical condition and thoracic condition – weight accorded to expert evidence – diseases not caused by employment – decision under review affirmed

[Tzioumis and Comcare](#) (Compensation) [2016] AATA 154 (16 March 2016); Senior Member N Isenberg

Injury during work related flight – Bikram yoga classes – meaning of 'medical treatment' – whether the treatment was conducted by, or under the supervision of a physiotherapist, osteopath, masseur or chiropractor – treatment may be characterised as therapeutic but was not conducted by or under the supervision of a specified health practitioner in the circumstances – decision affirmed

[Ware and Comcare](#) (Compensation) [2016] AATA 146 (11 March 2016); Dr J Pople, Senior Member

Commonwealth employees – claim for ‘injury’ or ‘disease’ – whether employment caused or aggravated the condition – whether employment contributed to a significant degree to Applicant’s condition – date of injury – decision under review set aside and substituted

Jurisdiction – scope of claim for compensation – whether jurisdiction to consider claim for aggravation of an injury or an ailment of Applicant’s right shoulder

Social Security

[Borg and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 138 (8 March 2016); Dr I Alexander, Member

Disability support pension – mental health condition – whether condition fully diagnosed, treated and stabilised - impairment ratings – Applicant found to have a severe impairment – continuing inability to work – decision under review set aside and substituted

[Ilich-Gaebler and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 155 (16 March 2016); Senior Member CR Walsh

Overpayment of parenting payment – overpayment a debt due to the Commonwealth – whether debt should be written-off or waived due to sole administrative error by Centrelink or because “special circumstances” exist – decision under review affirmed

[Ioannou and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 148 (15 March 2016); Ms EA Shanahan, Member

Disability support pension claim – multiple conditions – impairment rating attracted 10 points – other conditions not fully diagnosed, treated and stabilised – decision affirmed

[Kapitula and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 144 (11 March 2016); Mr I Thompson, Member

Disability support pension – whether Applicant's medical conditions are fully diagnosed, fully treated and fully stabilised within 13 weeks of the claim – whether Applicant's conditions warrant a rating of 20 points under the Impairment Tables – whether Applicant's conditions warrant a rating of 20 points or more under a single impairment table – decision under review affirmed

[Ledgard and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 130 (4 March 2016); Prof R McCallum AO, Member

Disability support pension – whether conditions fully diagnosed, treated and stabilised – impairment ratings – decision affirmed

[Payne and Secretary, Department of Social Services](#) (Social services second review) [2016]
AATA 143 (11 March 2016); Brigadier AG Warner, Member

Age pension – eligibility - whether Applicant residing in Australia at the relevant time – relevant considerations – Applicant residing in Thailand – Applicant’s circumstances in Thailand – International Social Security Agreements – decision under review affirmed

[Rayner and Secretary, Department of Social Services](#) (Social services second review) [2016]
AATA 147 (14 March 2016); Senior Member CR Walsh

Disability support pension – Applicant’s fully diagnosed, treated and stabilised impairments did not attract 20 points or more under the Impairment Tables in the qualification period – decision under review affirmed

[Shedrawi and Secretary, Department of Social Services](#) (Social services second review) [2016]
AATA 139 (9 March 2016); Prof R McCallum AO, Member

Disability support pension – whether conditions fully diagnosed, treated and stabilised – impairment ratings – continuing inability to work – decision affirmed

[Thomas and Secretary, Department of Social Services](#) (Social services second review) [2016]
AATA 153 (15 March 2016); Dr I Alexander, Member

Disability support pension – whether conditions fully diagnosed, treated and stabilised – whether impairment is 20 points or more under the impairment tables – whether there is a “continuing inability to work” – decision affirmed

[Walton and Secretary Department of Social Services](#) (Social services second review) [2016]
AATA 145, (11 March 2016); Dr P McDermott RFD, Deputy President

Disability support pension – continuing inability to work – where Applicant has not participated in a program of support – whether condition permanent – whether impairment rating can be assigned – decision affirmed

Appeals

This section of the Bulletin provides information about appeals that have been lodged or finalised against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions. Information is only included about appeals relating to AAT decisions that have been published on [AustLII](#). Full copies of the decisions can be accessed through the hyperlinks provided below.

Appeals lodged

| CASE NAME | AAT REFERENCE |
|--|--------------------------------|
| Commissioner of Taxation v Miley | [2016] AATA 73 |
| Comptroller-General of Customs v Sulo MGB Australia Pty Ltd | [2016] AATA 78 |

Appeals finalised

| CASE NAME | AAT REFERENCE | COURT REFERENCE |
|--|---------------------------------|---|
| Hananeia v Secretary, Attorney-General's Department | [2015] AATA 319 | [2016] FCAFC 36 |
| Walker v Secretary, Department of Health and Ageing | [2015] AATA 606 | [2016] FCA 233 |
| Rigoli v Commissioner of Taxation | [2015] AATA 169 | [2016] FCAFC 38 [2015] FCA 803 |
| Mentink v Secretary, Department of Social Services | [2013] AATA 184 | [2016] FCAFC 39 [2015] FCA 473 |

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