



## 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

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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.

### Civil and Political Rights

[TSJY and Director-General of Security](#) [2015] AATA 243; 23/4/2014; Deputy President JW Constance, Deputy President SE Frost, Senior Member N Isenberg

NATIONAL SECURITY – adverse security assessment – whether assessment should be affirmed as correct – assessed as involved in people smuggling – serious threat to territorial and border integrity – assessment affirmed

### Civil Aviation

[Albatross Helicopters Pty Ltd and Civil Aviation Safety Authority](#) [2015] AATA 276; 29/4/2015; Senior Member BJ McCabe

Application for Air Operator's Certificate refused – no approved chief pilot – no power to issue certificate where key personnel requirement not met – fixed term of certificate not a reviewable decision – no jurisdiction to review length or duration of certificate – decision under review affirmed

[Barnes and Civil Aviation Safety Authority](#) [2015] AATA 272; 29/4/2015; Senior Member E Fice

Pilots – qualification for licence – medical requirements – Administrative Appeals Tribunal – Jurisdiction – reviewable decisions – Class 2 medical certificate issued for 12 months – no request to vary authorisation – no jurisdiction to review authorisation to issue medical certificate

### Compensation

[Borg and Australian Postal Corporation](#) [2015] AATA 254; 24/4/2015; Senior Member JF Toohey

Claim for dizziness, blurred vision and memory loss – insufficient evidence of diagnosis or causal connection to employment – decision under review affirmed

[Bureau of Meteorology and Comcare and Anor](#) [2015] AATA 267; 28/4/2015; Deputy President SA Forgie

Entitlement to compensation – claim – approved form – whether a claim made – whether substantial compliance – medical certificate – whether lodged – claim not taken to have been made – decision set aside

[Cook and Australian Postal Corporation](#) [2015] AATA 280; 30/4/2015; Senior Member JF Toohey

Cervical strain – bilateral shoulder pain – pre-existing degenerative changes – nature and conditions of employment – whether effects of accepted injury had ceased – decisions under review affirmed

[Gallway and Australian Postal Corporation](#) [2015] AATA 259; 27/4/2015; Ms S Taglieri, Member

Whether Applicant no longer suffered effects of injury – whether pain the result of work related injury – Applicant undertaking modified duties – some continuing symptoms consistent with injury – treatment requires pain management – decision set aside and remitted

[Newport and Australian Postal Corporation](#) [2015] AATA 261; 28/4/2015; Deputy President K Bean, Deputy President G Humphries

Permanent impairment resulting from two separate shoulder injuries – degree of whole person impairment – whether combination of impairment values possible – decision under review affirmed

## **Corporations**

[NHPT and Members of the Companies Auditors and Liquidators Disciplinary Board and Australian Securities & Investments Commission \(Joined Party\)](#) [2015] AATA 245; 24/4/2015; The Hon B Tamberlin QC, Deputy President

Auditor's registration – suspension of registration as an auditor – imposition of conditions on future conduct and professional training – previous conditions imposed by ASIC – whether applicant failed to comply with these conditions – whether applicant failed to perform adequately and properly the duties of an auditor – appropriate remedy – decision affirmed

## **Courts and Judicial System**

[Kalman and Military Rehabilitation and Compensation Commission](#) [2015] AATA 278; 17/4/2015; Deputy President PE Hack SC

JURISDICTION – first application – Freedom of Information – no IC reviewable decision – no jurisdiction – application dismissed

JURISDICTION – second application – Freedom of Information – no deemed refusal – FOI application taken to be withdrawn – no decision capable of review – application dismissed

JURISDICTION – third application – Freedom of Information – no IC reviewable decision – no jurisdiction – application dismissed

JURISDICTION – fourth application – consent decision of 1993 – amounts subject to order – whether deductions for amounts authorised – not a decision – remedy in common law. Freedom of Information – no deemed refusal – no decision on reconsideration – no IC reviewable decision – no jurisdiction – application dismissed

JURISDICTION – fifth application – claim for cervical spine condition – claim not yet determined by original decision-maker – no decision to be reviewed – no jurisdiction – application dismissed

JURISDICTION – sixth application – claim for depression condition – claim not yet determined by original decision-maker – no decision to be reviewed – no jurisdiction – application dismissed

## Customs

[Pacific Worldwide Pty Ltd and Chief Executive Officer of Customs](#) [2015] AATA 253; 24/4/2015; Senior Member J Handley

Good entered as wontons, dumplings, parcels and hargows – classified as Pasta – whether or not cooked or stuffed – duty paid under protest – skins of the imported goods are not pasta nor are they stuffed pasta goods – decision set aside

## Health

[Darnell and Australian Community Pharmacy Authority and Anor](#) [2015] AATA 263; 28/4/2015; Deputy President PE Hack SC

PHARMACEUTICAL BENEFITS – application for approval to supply pharmaceutical benefits – “new additional pharmacy” – at least 200 m in a straight line from nearest approved premises – whether located in the same town – interpretation of “town” – ordinary and accepted meaning – does not have attributes of town – decision under review affirmed

## Immigration and Citizenship

[Beyan and Minister for Immigration and Border Protection](#) [2015] AATA 256; 24/4/2015; Senior Member CR Walsh

Whether Tribunal is satisfied with the identity of the Applicant – whether Applicant of “good character” – decision under review affirmed

[Li and Minister for Immigration and Border Protection](#) [2015] AATA 270; 29/4/2015; Senior Member PW Taylor SC

Citizenship application – Applicant did not meet residence requirement – close and continuing association with Australia – prior decision set aside and remitted to Minister for redetermination – role of policy in decision of Tribunal – decision affirmed

[Seddigh and Minister for Immigration and Border Protection](#) [2015] AATA 252; 24/4/2015; Senior Member JF Toohey

Citizenship – criminal record – fraud – applicant placed on good behaviour bonds – whether Applicant of good character – whether sufficient time had passed since bonds expired – Tribunal satisfied in all the circumstances that Applicant of good character – decision under review set aside

## Practice and Procedure

[O’Sullivan and Australian Securities and Investments Commission](#) [2015] AATA 265; 30/3/2015; Professor R Deutsch, Deputy President

Application for stay of decision – relevant considerations – prospects of success – public interest – stay granted

Confidentiality orders – suppression orders – proceedings generally held in public – open administration of justice – prejudice to Applicant’s reputation – prejudice to concurrent civil proceedings – request for suppression orders refused

[Palmer Aviation Pty Ltd and Air Services Australia and Anor](#) [2015] AATA 258; 24/4/2015; Deputy President PE Hack SC

Failure to attend hearing – whether application should be dismissed – application dismissed

## **Social Security**

[Blow and Secretary, Department of Social Services](#) [2015] AATA 289; 1/4/2015; Dr M Denovan, Member

Pensions, benefits and allowances – Disability Support Pension – 20 points or more under the Impairment Tables – spinal condition – amputation of thumb – knee condition – whether fully diagnosed treated and stabilised – decision under review affirmed

[Fagen and Secretary, Department of Social Services](#) [2015] AATA 260; 27/4/2015; Professor R McCallum AO, Member

Pension Bonus Scheme (PBS) – whether valid application for registration for PBS – late application – whether circumstances permit exercise of discretion to allow late application – accruing member – work test – failure to meet work test for final period – decision affirmed

[Fuda and Secretary, Department of Social Services](#) [2015] AATA 279; 30/4/2015; Senior Member PW Taylor SC

Age pension – rate – member of a couple – separation in marital home – partially separate finances – discretion to treat as not a member of a couple – no special reason – discretion not enlivened – decision under review affirmed

[Hasan and Secretary, Department of Social Services](#) [2015] AATA 193; 31/3/2015; Senior Member JF Toohey

Disability support pension – diabetes – inguinal hernia – right lower limb – back pain – nasal condition – left hand – depression and anxiety – anal bleeding – whether conditions fully diagnosed treated and stabilised during claim period – decision under review affirmed

[Hasan and Secretary, Department of Social Services](#) [2015] AATA 194; 31/3/2015; Senior Member JF Toohey

Child care benefit – claim for payment to wife for care of children – FTB child – regular care child – no entitlement to payment – decision under review affirmed

[Hasan and Secretary, Department of Social Services](#) [2015] AATA 195; 31/3/2015; Senior Member JF Toohey

Carer payment and carer allowance – claim that wife had congenital heart disease – Tribunal not satisfied documents submitted in support of claim genuine – inconsistent statements concerning wife’s need for care – Tribunal not satisfied Applicant’s wife had been assessed and given the necessary scores under the Adult Disability Assessment Tool – Tribunal not satisfied applicant provided relevant level of care – decision under review affirmed

[Knott and Secretary, Department of Social Services](#) [2015] AATA 266; 28/4/2015; Senior Member BJ McCabe

Disability support pension – cancellation of payment for failure to comply with information requirement – applicant diagnosed with chronic schizophrenia – whether cancellation a reasonable exercise of Respondent’s powers in the circumstances – whether Applicant entitled to repayment of arrears – date of effect of Tribunal decision – application for review made more than 13 weeks after the original decision – whether s 43 of the *Administrative Appeals Tribunal Act 1975* (Cth) is subject to the *Social Security Administration Act 1991*(Cth) ss 109 and 152 – decision under review affirmed

[Liang and Secretary, Department of Social Services](#) [2015] AATA 275; 29/4/2015; Senior Member PW Taylor SC

Age Pension – special reason not to be treated as a member of a couple – inability to pool resources with spouse – absence of spouse to fulfil filial obligations – financial hardship – modest financial circumstances – unreasonableness of using superannuation entitlement allocated to funeral expenses – decision under review set aside and substituted

[McMillan and Secretary, Department of Social Services](#) [2015] AATA 277; 30/4/2015; The Hon B Tamberlin QC, Deputy President

Newstart Allowance – compensation preclusion period – whether special circumstances exist – purchase of property with son – dishonest conduct by son – whether to treat whole or part of compensation payment as not having been made – decision varied and remitted

[Melvin; Secretary, Department of Social Services and](#) [2015] AATA 248; 24/4/2015; Deputy President SD Hotop

Member of a couple – marriage-like relationship – de facto relationship – criteria for forming opinion about relationship – Respondent received payments of disability support pension (DSP) at single rate – Respondent a member of a couple – Respondent received overpayment of DSP – debt due to Commonwealth by Respondent – debt cannot be written off – debt cannot be waived – debt recoverable in full from Respondent – decision under review set aside

[Mosesian and Secretary, Department of Social Services](#) [2015] AATA 251; 24/4/2015; Professor R McCallum AO, Member

Pensions – disability support pension – whether the Applicant’s impairment is of 20 points or more under the Impairment Tables – whether the Applicant has a continuing inability to work – decision affirmed

[Mufovska and Secretary, Department of Social Services](#) [2015] AATA 283; 30/4/2015; Dr I Alexander, Member

Disability Support Pension – whether Applicant qualifies for unlimited portability – whether Applicant has a severe impairment – whether Applicant has impairment rating of 20 points or more under single Impairment Table – decision affirmed

[Pabbi and Secretary, Department of Social Services](#) [2015] AATA 264; 7/4/2015; Dr I Alexander, Member

Application for Commonwealth Seniors Health Card – newly arrived resident’s waiting period – whether Applicant was both an Australian resident and present in Australia during the relevant period – meaning of “resides in Australia” – decision affirmed

[Salim and Secretary, Department of Social Services](#) [2015] AATA 284; 30/4/2015; Professor R McCallum AO, Member

Disability support pension – whether Applicant’s conditions were fully diagnosed, treated and stabilised – whether Applicant’s impairment rated 20 points or more under the Impairment Tables – decision under review affirmed

[Williams and Secretary, Department of Social Services](#) [2015] AATA 262; 28/4/2015; Deputy President PE Hack SC

Benefits and entitlements – carer payment – whether Applicant required to serve newly arrived resident’s waiting period – whether Applicant should be treated as “family member” of Australian citizen – daughter of Australian citizen – not “dependent child” or “partner” – discretion confined to relationships analogous to “dependent child” or “partner” – Applicant not a family member for exercise of discretion – decision under review affirmed

## **Superannuation**

[Shaw and Commissioner of Taxation](#) [2015] AATA 288; 1/5/2015; Senior Member AF Cunningham

Self-managed superannuation fund – disqualification from acting as trustee for conviction of offences involving dishonesty – application for waiver – whether “highly unlikely” to be a prudential risk to a superannuation entity – high threshold test not satisfied – decision under review affirmed

## **Taxation**

[Andrew Garrett in his capacity as an Authorised Officer of the OenoViva \(Australia & New Zealand\) Plant & Equipment Trust No 2 and as Authorised Officer of the Andrew Garrett Family Trust No 4 as the Sole Unit Holder of the OenoViva \(Australia & New Zealand\) Plant & Equipment Trust \(No 2\) and Anor and Commissioner of Taxation](#) [2015] AATA 247; 24/4/2015; Deputy President SA Forgie

GOODS AND SERVICES TAX – extension of time – whether applicant has standing to seek review of reviewable objection decisions – no standing – application refused in any event

[Creation Ministries International Ltd and Screen Australia](#) [2015] AATA 250; 24/4/2015; Deputy President PE Hack SC

Refundable tax offsets – “qualifying Australian production expenditure” – definition of production expenditure – whether expenditure “incurred” – “presently existing liability” – “definitively committed” and “completely subjected” – identity of entity that incurred liabilities – incorporation of “stalking horse” entity – relationship of “lender” and “borrower” – decision under review affirmed

[Devuba Pty Limited and Commissioner of Taxation](#) [2015] AATA 255; 24/4/2015; Professor R Deutsch, Deputy President

Capital gains tax – capital gains tax business concession – whether share sale gave rise to capital gain – impact of dividend access share – small business participation percentage – decision set aside

[Excellar Pty Ltd and Commissioner of Taxation](#) [2015] AATA 282; 30/4/2015; Senior Member G Lazanas

Capital Gains Tax (CGT) – disposal of a CGT asset – maximum net asset value test – market value of assets – whether market value of property is price for which property sold or as per valuation evidence – whether cash at bank is a CGT asset – whether GST component of liabilities to be included – whether liabilities in existence just before the CGT event – meaning of small business CGT affiliate – assets used solely for personal use and enjoyment – whether guarantees are liabilities to be included in maximum net asset value test – penalties – failure to take reasonable care – remission of penalties – remission of shortfall interest charge – objection decisions affirmed

## **Veterans' Affairs**

[Chaney and Repatriation Commission](#) [2015] AATA 286; 1/5/2015; The Hon B Tamberlin QC, Deputy President

Widow's pension – whether veteran's death was connected to service – decision under review affirmed

[Redden and Repatriation Commission](#) [2015] AATA 273; 29/4/2015; Deputy President FJ Alpins

Application for increase in pension – special rate of pension – ss 24(1)(c) and 24(2) of *Veterans' Entitlements Act 1986* (Cth) – whether veteran prevented by incapacity from war-caused conditions alone from continuing to undertake remunerative work – whether veteran suffering a financial loss he would not be suffering if free of that incapacity – decision under review varied

[Trinder and Repatriation Commission](#) [2015] AATA 230; 17/4/2015; Senior Member N Isenberg

Operational service – claim that veteran's death from metastatic prostate cancer was war-caused – consideration of Statement of Principles – decisions 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>Elbehidi v Secretary, Department of Employment</b>	<a href="#">[2015] AATA 228</a>

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### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Dunkerley v Comcare</b>	<a href="#">[2014] AATA 381</a>	<a href="#">[2015] FCA 392</a>
<b>Luy v Minister for Immigration and Border Protection</b>	<a href="#">[2014] AATA 23</a>	<a href="#">[2015] FCA 405</a>

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