



AAT Bulletin

ISSUE NO. 19/2015

11 MAY 2015

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.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

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

Contents

AAT Recent Decisions	2
Civil Aviation	2
Compensation.....	2
Education and Research	3
Health.....	3
Immigration and Citizenship	3
Practice and Procedure	4
Social Security	4
Taxation	6
Appeals	7
Appeals lodged	7
Appeals finalised.....	7
Statements of Principles	8
New Statements of Principles.....	8

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

[Marsh and Civil Aviation Safety Authority](#) [2015] AATA 308; 8/5/2015; Deputy President PE Hack SC

Cheating by examination candidates – whether Applicant gave another person information about questions contained in examination paper being information that might give anyone unfair advantage in examination – decision under review affirmed

Suspension of licence – whether Applicant is not fit and proper person to have responsibilities and exercise and perform functions and duties of holder of licence – decision under review set aside

Compensation

[Farrell and Comcare](#) [2015] AATA 268; 28/4/2015; Dr J Popple, Senior Member

Commonwealth employees – whether Comcare liable for permanent impairment and non-economic loss – application of tables in approved Guide – preclusions in Table 9.14 – whether table available under clinical judgment – whole person impairment assessed at less than 10% – decision affirmed

Commonwealth employees – whether Comcare liable for cervicobrachial syndrome – whether related to employment – diagnosis of non-specific neck pain – decision affirmed

[Lewis and Comcare](#) [2015] AATA 285; 30/4/2015; Deputy President JW Constance and Deputy President G Humphries

Injury – claim for compensation for injury to right knee – whether Applicant suffered an injury to right knee – decision affirmed

Permanent impairment – injuries to hands – no finding of resultant permanent impairment – decision affirmed

Jurisdiction – whether jurisdiction to consider claim based on nature and conditions of work – no claim lodged in respect of an injury arising out of nature and conditions of work

[Stanton and Comcare](#) [2015] AATA 297; 5/5/2015; Dr J Popple, Senior Member

Commonwealth employees – ongoing liability for accepted condition – whether Applicant continues to suffer effects of condition – decision affirmed

[Westrupp and BIS Industries Ltd](#) [2015] AATA 298; 5/5/2015; The Hon. R Nicholson, Deputy President

Employee injured during visit to tavern in mining town in which he resided – employee assaulted by co-worker in relation to employee's farewell hug to female – employee between definite

periods of engagement overnight – whether an interval within overall period of work – whether employees injuries arose out of or in the course of his employment – whether assault would not have occurred but for employee’s employment – whether employee at place of work for the purposes of his employment or was temporarily absent from that place during an ordinary recess in that employment – decision affirmed

[Bui and Linfox Australia Pty Ltd](#) [2015] AATA 301; 6/5/2014; Ms R Perton, Member

Whether conditions caused or aggravated through employment – back condition – depression/anxiety – whether or when effects of aggravation ceased – whether secondary mental illness arising out of back condition – decision affirmed

Education and Research

[RAMC Pty Ltd and Australian Skills Quality Authority](#) [2015] AATA 306; 7/5/2015; Deputy President K Bean

Vocational Education and Training – Application for renewal of registration as NVR registered training organisation – Non-compliance with 2015 Standards – decision under review affirmed

Health

[Rice and Minister for Health](#) [2015] AATA 312; 8/5/2015; Deputy President PE Hack SC

Therapeutic goods – access to unapproved therapeutic goods – approval for human growth hormone – whether clinical justification for use of product – whether efficacy and safety of product established – weighed against seriousness of condition – off-label prescription – no evidence of therapeutic benefit – no objective clinical justification – efficacy and safety of product unknown – decision under review affirmed

Immigration and Citizenship

[Zhang and Minister for Immigration and Border Protection](#) [2015] AATA 176; 26/3/2015; The Hon. B Tamberlin QC, Deputy President

Permanent resident – whether of good character – alleged offences committed overseas – decision affirmed

[Neama and Minister for Immigration and Border Protection](#) [2015] AATA 305; 7/5/2015; Senior Member CR Walsh

Eligibility for citizenship by conferral – “good character” requirement – Applicant convicted in December 2010 of 51 counts of “Gaining Benefit by Fraud” and 18 counts of “forgery”, being “serious” offences under the Australian Citizenship Instructions – offences committed over a 12 month period – insufficient period has passed since Applicant free of his obligation to court – decision under review affirmed

[Dhayakpa and Minister for Immigration and Border Protection](#) [2015] AATA 310; 8/5/2015; The Hon. R Nicholson, Deputy President

Applicant a Tibetan refugee – awarded a humanitarian visa – application for citizenship refused – Applicant guilty of prior serious criminal conduct – also of subsequent criminal conduct of a lesser nature – Applicant lives alone avoiding any financial involvements – Applicant assists in the community – ten years since last offence – whether Applicant of ‘good’ character – whether Tribunal satisfied of identity of Applicant

Practice and Procedure

[JQCC and Secretary, Department of Social Services](#) [2015] AATA 300; 8/4/2015; Deputy President SA Forgie

SOCIAL SERVICES – disability support pension – Applicant seeks to have date of entitlement backdated – powers of review exhausted – no jurisdiction

[Confidential and Principal Member, Social Security Appeals Tribunal](#) [2015] AATA 287; 21/4/2015; Senior Member AF Cunningham

Application for extension of time – application granted

[SRBP and Tax Practitioners Board](#) [2015] AATA 302; 6/5/2015; Justice D Kerr, President

Application for reconstitution of Tribunal under s 21A of *Administrative Appeals Tribunal Act 1975* (Cth) – President’s consideration of submissions - no sufficient basis for reconstitution – direction that Tribunal remain as constituted

[WNRW; Department of Human Services and](#) [2015] AATA 304; 7/5/2015; Deputy President JW Constance

Alleged inadequate statement of reasons in support of application – whether Tribunal has jurisdiction to hear an application for review where supporting reasons are decision not correct and preferable – consideration of section 29(1)(c) of the *Administrative Appeals Tribunal Act 1975* (Cth) – Tribunal has jurisdiction

Social Security

[Rodriguez and Secretary, Department of Social Services](#) [2015] AATA 211; 10/4/2015; The Hon. B Tamberlin QC, Deputy President

Disability support pension – Applicant overseas at time of claim – decision affirmed

[Kallidis and Secretary, Department of Social Services](#) [2015] AATA 216; 13/4/2015; Dr I Alexander, Member

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

[Houben and Secretary, Department of Social Services](#) [2015] AATA 217; 13/4/2015; The Hon. B Tamberlin QC, Deputy President

Age pension – asset attribution – grounds for attributing less than 100% of shareholding – decision affirmed

[Uyanik and Secretary, Department of Social Services](#) [2015] AATA 221; 14/4/2015; Dr I Alexander, Member

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

[Devi and Secretary, Department of Social Services](#) [2015] AATA 222; 14/4/2015; Dr I Alexander, Member

Disability support pension – Applicant not Australian resident – Australia’s social security agreement with New Zealand – whether Applicant severely disabled – whether Applicant’s condition rated 20 points or higher under the Impairment Tables – decision affirmed

[Lamb and Secretary, Department of Social Services](#) [2015] AATA 290; 1/5/2015; Senior Member J Popple

Disability support pension – whether conditions fully diagnosed, treated and stabilised – assessment of impairment rating – assessment cannot be made without corroborating evidence – evidence before or after relevant period – moderate impact on spinal function – decision affirmed

[Bidenko and Secretary, Department of Social Services](#) [2015] AATA 291; 1/5/2015; Senior Member AC Cotter

Benefits – Paid Parental Leave – Child placed into care of Applicant by Child Safety Services – Whether “exceptional circumstances” exist to entitle Applicant to Paid Parental Leave – Carers appointed pursuant to child protection legislation expressly excluded from “exceptional circumstances” by the Paid Parental Leave Rules 2010 – decision under review affirmed

[Gallacher and Secretary, Department of Social Services](#) [2015] AATA 294; 5/5/2015; Mr I Thompson, Member

Disability support pension – whether Applicant has severe impairment – no impairment attracting 20 point rating – decision under review affirmed

[Trinh and Secretary, Department of Social Services](#) [2015] AATA 295; 5/5/2015; Professor R McCallum AO, Member

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 set aside

[Awad and Secretary, Department of Social Services](#) [2015] AATA 299; 6/5/2015; 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

[Bee and Secretary, Department of Social Services](#) [2015] AATA 303; 7/5/2015; Dr I Alexander, Member

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

[Glass and Secretary, Department of Social Services](#) [2015] AATA 311; 8/5/2015; Senior Member JF Toohey and Dr C Kendall, Member

Family tax benefit – overpayment – Centrelink error – whether Applicant should have to repay the overpayment – whether Applicant would suffer severe financial hardship if debt were not waived – whether any special circumstances – decision under review affirmed

Taxation

[Sharratt and Commissioner of Taxation](#) [2015] AATA 293; 1/5/2015; Senior Member CR Walsh

INCOME TAX – GOODS AND SERVICES TAX – PENALTIES – whether proceeds allegedly from the sale of an unlicensed bus, furniture imported from the UK and discarded, repaired and on-sold curb side furniture and gambling winnings constitute taxable supplies made by the Applicant in the course of carrying on his small scale building works business and/or assessable income of the Applicant – Applicant’s explanation of source of proceeds not credible or corroborated by objective evidence – shortfall penalty for “intentional disregard of a tax law” correctly imposed – no grounds for remission of shortfall penalties – objection decision 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
Lopez Avila v K & S Freighters Pty Ltd	[2015] AATA 197

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Nelson v Commissioner of Taxation	[2012] AATA 579	[2015] HCASL 58 [2014] FCAFC 163 [2014] FCA 57
Uelese v Minister for Immigration and Border Protection & Administrative Appeals Tribunal	[2012] AATA 793	[2015] HCA 15 [2013] FCAFC 86 [2013] FCA 342

Statements of Principles

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 **1 June 2015**.

Gastric ulcer and duodenal ulcer – No. 61 of 2015

<http://www.comlaw.gov.au/Details/F2015L00657>

Gastric ulcer and duodenal ulcer – No. 62 of 2015

<http://www.comlaw.gov.au/Details/F2015L00658>

Hepatitis A – No. 63 of 2015

<http://www.comlaw.gov.au/Details/F2015L00645>

Hepatitis A – No. 64 of 2015

<http://www.comlaw.gov.au/Details/F2015L00648>

Cerebrovascular accident – No. 65 of 2015

<http://www.comlaw.gov.au/Details/F2015L00652>

Cerebrovascular accident – No. 66 of 2015

<http://www.comlaw.gov.au/Details/F2015L00653>

Hereditary spherocytosis – No. 67 of 2015

<http://www.comlaw.gov.au/Details/F2015L00649>

Hereditary spherocytosis – No. 68 of 2015

<http://www.comlaw.gov.au/Details/F2015L00650>

Malignant neoplasm of the bile duct – No. 69 of 2015

<http://www.comlaw.gov.au/Details/F2015L00654>

Malignant neoplasm of the bile duct – No. 70 of 2015

<http://www.comlaw.gov.au/Details/F2015L00655>

© Commonwealth of Australia 2015



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](#). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <http://www.itsanhonour.gov.au/coat-arms/>.

Enquiries regarding the licence are welcome at aatweb@aat.gov.au.

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](#). Those terms provide that section 182A of the *Copyright Act 1968* applies.