



## 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.

### Child Support

[BDPD and Child Support Registrar and Anor](#) [2015] AATA 376; 29/5/2015; Dr J Pople, Senior Member

Determination of percentage of care – whether mother had full care of daughter – effect of nights away from home on percentage of care – financial independence of child – decision set aside and substituted

### Civil Aviation

[Broome Helicopter Services Pty Ltd and Civil Aviation Safety Authority](#) [2015] AATA 390; 3/6/2015; Senior Member E Fice

Air Operator's Certificate (AOC) – cancellation – order of Tribunal staying cancellation decision until hearing of the application for review – application to extend term of stay order beyond expiry date of AOC – no power to extend term of AOC – application to extend stay refused

[Coptercam Pty Limited and Civil Aviation Safety Authority](#) [2015] AATA 387; 28/4/2015; Senior Member RW Dunne

Application for extension of time in which to lodge application for review – length of delay – whether acceptable explanation for delay – significant issue to be determined – prejudice to the Respondent or other persons affected by decision – merits of the substantive application – balancing the various considerations – application for extension of time refused

### Compensation

[Goodricke and Comcare](#) [2015] AATA 323; 13/5/2015; Dr J Pople, Senior Member

Commonwealth employees – jurisdiction – whether reviewable decision – whether second determination a reconsideration – application dismissed

[Kelso and Telstra Corporation Limited](#) [2015] AATA 403; 5/6/2015; Senior Member AC Cotter, Dr M Sullivan, Member

Liability accepted for workplace injury to back – whether liability to be accepted for associated psychological injury – Adjustment Disorder – Depression – whether “injury” or “disease” under the *Safety, Rehabilitation and Compensation Act 1988* (Cth) – decision under review set aside

[Stacey and Comcare](#) [2015] AATA 386; 2/6/2015; Deputy President G Humphries

Commonwealth employee – Applicant suffered stroke at work – whether costs of medical treatment in relation to injury suffered at work – medical treatment prescribed for purposes other than treatment of stroke – decision under review affirmed

[Young and TNT Australia Pty Ltd](#) [2015] AATA 385; 2/6/2015; Senior Member BJ McCabe

Claim for compensation in respect of injury to left shoulder – inconsistent accounts of events surrounding injury – medical evidence of underlying non-work-related condition – decision under review affirmed

## Customs

[Frances and Collector of Customs](#) [2015] AATA 384; 29/5/2015; Senior Member BJ McCabe

Dutiable cigarettes subject to control of Customs – cigarettes lost – cigarettes in control of applicant – failure to keep goods safely – no satisfactory explanation – failure to account for goods to satisfaction of Collector – decision under review affirmed

## Immigration and Citizenship

[Patel and Minister for Immigration and Border Protection](#) [2015] AATA 378; 29/5/2015; Senior Member JF Toohey

Whether Applicant of good character – conviction in Australia for larceny – Applicant's husband placed on good behaviour bond – legal proceedings pending in India concerning both Applicants – dishonoured cheques – decisions under review affirmed

[VLWP and Minister for Immigration and Border Protection](#) [2015] AATA 375; 29/5/2015; Senior Member G Ettinger

Good character – two year bond imposed following charge of assault of wife in 2012 – Applicant and his representative focused on explaining the assault was due to back pain and a fever – no medical evidence to substantiate back pain and fever – little indication of regret expressed – citizenship refused – decision under review affirmed

## Practice and Procedure

[Arkolette Pty Ltd \(trading as Riverside Veterinary Products\) and Australian Pesticides & Veterinary Authority](#) [2015] AATA 388; 7/5/2015; Deputy President SE Frost

VETERINARY MEDICINES – application for registration – notice to Applicant of proposal to treat application, on a nominated future date, as having been withdrawn – that proposal not a decision reviewable by the Tribunal – future date arrives but proposal not acted upon on that date – proposal does not have the effect of deeming the proposed outcome to have occurred on the nominated date – both applications preceded the making of a reviewable decision – legislation amended with effect on a date after the application was lodged – new law applies – actual decision not reviewable under the new law – dismissed for lack of jurisdiction

[LLFJ and Chief Executive Officer of Customs](#) [2015] AATA 397; 1/5/2015; Deputy President SE Frost

Application for stay – warehouse licence – applicant's licence varied so as to remove the approval to receive, store or move under bond customable tobacco and tobacco products – interim stay ordered as a matter of urgency – consideration of whether to extend the stay – identification of the persons who may be affected by the review – weighing of the interests of those persons – whether desirable to extend the stay – securing the effectiveness of the hearing and determination of the application for review – stay not extended, subject to one exception

## Social Security

[Benjamin and Secretary, Department of Social Services](#) [2015] AATA 398; 4/6/2015; Mr S Webb, Member

Age Pension – Pension Bonus Scheme – qualification for pension bonus payment – meaning of ‘pension age’ – payment of Age Pension prior to claim for pension bonus payment – decision affirmed

[BXWL and Secretary, Department of Social Services](#) [2015] AATA 381; 29/5/2015; Dr P McDermott RFD Senior Member

Disability Support Pension (DSP) – whether Applicant had relevant impairment – whether impairment rating of at least 20 points – whether continuing inability to work – decision under review affirmed

[Fisher and Secretary, Department of Social Services](#) [2015] AATA 399; 4/6/2015; Dr P McDermott RFD, Senior Member

Pensions, benefits and allowances – disability support pension – whether 20 impairment points – whether continuing inability to work – decision under review affirmed

[Gizycki and Secretary, Department of Social Services](#) [2015] AATA 382; 29/5/2015; Deputy President FJ Alpins

Youth allowance – automatic cancellation for failure to provide statement by operation of s 95(1) of the *Social Security (Administration) Act 1999* – discretion to determine that s 95(1) does not apply – whether “special circumstances” – whether appropriate to exercise discretion – decision under review affirmed

[Hoschke and Secretary, Department of Social Services](#) [2015] AATA 394; 4/6/2015; Senior Member BJ McCabe

Disability support pension (DSP) – decision to cancel payments – insufficient points allocated under Impairment Tables at the relevant time – psychological impairment not fully diagnosed by appropriately qualified medical practitioner – lower limb impairment not fully treated and stabilised – upper limb impairment allocated 10 points – no entitlement to DSP at time of cancellation – decision under review affirmed

[Khorramdel and Secretary, Department of Social Services](#) [2015] AATA 383; 29/5/2015; Senior Member J Toohey and Dr J Popple, Senior Member

Newstart allowance – whether Applicant was employed while receiving payment – whether debts incurred by Applicant – whether Applicant failed to declare income – whether documents in other names in fact concerned the Applicant – procedural fairness – Tribunal satisfied Applicant was employed and not qualified for newstart allowance during the relevant period – whether any special circumstances – no reason debts should not be recovered in full – decision under review affirmed

[Sanal and Secretary, Department of Social Services](#) [2015] AATA 389; 3/6/2015; Dr I Alexander, Member

Compensation affected payments – Newstart allowance – disability support pension – lump sum preclusion period – compensation part of lump sum – discretion to disregard some or all of compensation payment – special circumstances – gambling addiction – legal costs – amount not recoverable or available – unfair and unjust result – decision under review is set aside and remitted

[Sparshott and Secretary, Department of Social Services](#) [2015] AATA 396; 18/5/2015; Senior Member J Handley

Application for disability support pension – multiple injuries and illnesses – most not fully treated and not fully stabilised – some serious illnesses not disclosed to Centrelink – qualification not achieved within 13 weeks of date of claim – decision affirmed

[Testar and Secretary, Department of Social Services](#) [2015] AATA 322; 14/5/2015; Dr I Alexander, Member

Pensions – 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

## **Taxation**

[Falk and Commissioner of Taxation](#) [2015] AATA 392; 4/6/2015; Justice D Kerr, President and Deputy President SE Frost

INCOME TAX – Assessable recoupment - whether amount received by the Applicant having regard to legal costs incurred by the Applicant was an amount received as an 'ex gratia/act of grace' payment – 'character' of payment - whether 'by way of indemnity' within the meaning of subclause (a) of s 20-20(2) of the *Income Tax Assessment Act 1997* (Cth) – decision under review affirmed

[Jonshagen and Commissioner of Taxation](#) [2015] AATA 380; 29/5/2015; Senior Member CR Walsh

Application for extension of time to lodge objection against amended assessments refused – general anti-avoidance provisions (Part IVA) applied to disallow deductions for up-front fees paid relating to winery project – reason for failure to object in time – circumstances of the delay – whether taxpayer has an arguable case – other relevant factors (fairness and prejudice to parties) – decision under review affirmed

## **Veterans' Affairs**

[Baird and Repatriation Commission](#) [2015] AATA 393; 4/6/2015; Ms R Perton, Member

Defence service – osteoarthritis of the knees – lumbar spondylosis whether conditions related to service – decisions affirmed

[Craig and Repatriation Commission](#) [2015] AATA 400; 5/6/2015; Deputy President PE Hack SC

Disability pension – pleural plaque – interstitial pulmonary fibrosis – asbestosis – whether conditions are war-caused – whether hypothesis is reasonable – whether Statement of Principles upholds hypothesis – evidence does not rise above a possibility – hypothesis not reasonable – conditions not war-caused – decision under review affirmed

[Cunningham and Repatriation Commission](#) [2015] AATA 391; 4/6/2015; Senior Member G Ettinger

Disability pension – Special rate of pension – whether the Applicant is prevented from continuing to participate in remunerative work for more than eight hours a week due to his accepted conditions alone – whether loss of salary, wages or earnings suffered – Veteran not eligible for pension at the Special rate – decision under review affirmed

[Lee and Repatriation Commission](#) [2015] AATA 371; 28/5/2015; Deputy President JW Constance

Pension – special rate of pension – lumbar spondylosis – whether condition of itself alone renders Applicant totally or permanently incapacitated

Pension – intermediate rate of pension – lumbar spondylosis – whether condition of itself alone renders Applicant incapable of working part-time or intermittently – non-accepted condition of obesity – whether accepted conditions alone prevent from continuing to undertake remunerative work – decision under review affirmed

[Mahoney and Repatriation Commission](#) [2015] AATA 379; 29/5/2015; Senior Member BJ McCabe, Dr M Denovan, Member

Application for widow's pension – claim that veteran's death was war-caused – contention that veteran's bowel cancer result of exposure to radiation while serving in Japan – exposure of tissue within veteran's colon to radiation – Tribunal not satisfied beyond reasonable doubt that death was not war-caused – decision that veteran's death was war-caused – decision under review set aside and substituted

[McKinnon \(as legal personal representative of the estate of Charles Thomas McKinnon\) and Repatriation Commission](#) [2015] AATA 395; 4/6/2015; Senior Member J Handley

Application for pension at the rate of Extreme Disablement Adjustment – accepted disabilities of bilateral osteoarthritis of hips and hearing loss – deceased veteran was assessed at 100 per cent – 95 years at application date – diagnosed also with multiple myeloma – admitted to palliative care about two months before commencement of the assessment period – died about four months later – application of Chapter 19 of Guide to the Assessment of Rates of Veterans' Pensions (GARP) – contribution to impairment by the osteoarthritis about one third – 70 impairment points not achieved – decision 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>Westrupp v BIS Industries Ltd</b>                           | <a href="#">[2015] AATA 298</a> |
| <b>Mentink v Secretary, Department of Human Services</b>       | <a href="#">[2015] AATA 316</a> |
| <b>Linfox Australia Pty Ltd v Bui</b>                          | <a href="#">[2015] AATA 301</a> |
| <b>Curtis-Smith v Secretary, Department of Social Services</b> | <a href="#">[2015] AATA 152</a> |

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### Appeals finalised

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| CASE NAME   | AAT REFERENCE                   | COURT REFERENCE                 |
|---|---------------------------------|---------------------------------|
| <b>Minister for Immigration and Border Protection v Han &amp; Administrative Appeals Tribunal</b> | <a href="#">[2014] AATA 846</a> | <a href="#">[2015] FCAFC 79</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 took 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 2014**

<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>

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