



AAT Bulletin

ISSUE NO. 26/2015

29 JUNE 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 |
| Child Support | 2 |
| Compensation | 2 |
| Corporations | 2 |
| Practice and Procedure | 3 |
| Social Security | 3 |
| Veterans' Affairs..... | 4 |
| Appeals | 5 |
| Appeals lodged | 5 |
| Appeals finalised..... | 5 |
| Statements of Principles | 6 |
| New Statements of Principles..... | 6 |
| Jurisdiction and legislative changes | 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.

Child Support

[Mr L, the father and Child Support Registrar and Ms C, the mother \(Joined Party\)](#) [2015] AATA 450; 26/6/2015; Senior Member G Ettinger

Shared care of a child by parents who live separated – method of calculation of care – whether to depart from general count of nights the child spends with each to a count of the hours – Tribunal affirms the decision of the SSAT to count nights

[PJCW and Child Support Registrar and Anor](#) [2015] AATA 443; 24/6/2015; Ms R Perton, Member

Meaning of care under legislation – no definition of care in legislation – statutory guidelines – whether joined party had actual care of the child while child was overseas and mother in Australia – relevance of child's age in relation to what constitutes care – decision set aside and substituted

Compensation

[Fletcher and Comcare](#) [2015] AATA 430; 18/6/2015; Deputy President G Humphries

Commonwealth employees – bilateral forearm condition – whether employment contributed to a significant degree – whether aggravation – whether applicant has a compensable injury as defined by the *Safety, Rehabilitation and Compensation Act 1988* – decision set aside and substituted

[Loving and Programmed Marine Pty Ltd](#) [2015] AATA 433; 19/6/2015; The Hon. B Tamberlin QC, Deputy President

Seafarers Compensation – injury sustained whilst undergoing training when on leave – training not approved or paid for by employer – same training previously approved by employer – whether employee's injury were sustained 'arising out of, or in the course of, employment' – decision under review set aside

Corporations

[NHPT and Members of the Companies Auditors and Liquidators Disciplinary Board and Australian Securities & Investments Commission \(Joined Party\)](#) [2015] AATA 447; 25/6/2015; The Hon. B Tamberlin QC, Deputy President

Auditor's registration – whether original decision maker's decision should be publicised – whether there is a difference between the findings of original decision maker and the Tribunal on review – decision under review affirmed

PRACTICE AND PROCEDURE – jurisdiction – whether Applicant should pay costs for proceedings before Respondent – decision dismissed by consent for lack of jurisdiction

Practice and Procedure

[NHPT and Members of the Companies Auditors and Liquidators Disciplinary Board and Australian Securities & Investments Commission \(Joined Party\)](#) [2015] AATA 445; 25/6/2015; The Hon. B Tamberlin QC, Deputy President

Application under s 43AA – "slip rule" – whether inconsistency or obvious error – date of effect of suspension of applicant's registration as an auditor – effect of stay – inconsistency between intention of reasons and decision – application granted

[People with Disability Australia and Australian Human Rights Commission and AED Legal Centre and National Disability Services and Secretary, Department of Social Services \(Joined Parties\)](#) [2015] AATA 416; 5/6/2015; Deputy President JW Constance

Application for stay of a decision – factors relevant to stay order – question of status quo – stay likely to cause uncertainty – application for stay order refused

Social Security

[Austin; Secretary, Department of Social Services and](#) [2015] AATA 441; 24/6/2015; Deputy President K Bean

Disability support pension – whether Respondent's lumbar spine condition and depression fully diagnosed, treated and stabilised – whether impairments attract a rating of 20 points or more under the Impairment Tables – Respondent did not participate in program of support – whether severe impairment – need for corroborating evidence of impairment – decision under review set aside

[Colley and Secretary, Department of Social Services](#) [2015] AATA 439; 24/6/2015; Dr I Alexander, Member

Pension bonus – work test – bonus period – date ceased work – whether claim for age pension and pension bonus made in prescribed time – whether special circumstances to extend time for lodging claim – claim not made in time – no special circumstances – decision affirmed

[Leiva and Secretary, Department of Social Services](#) [2015] AATA 437; 23/6/2015; Dr G Hughes, Member

Disability support pension (DSP) – Applicant continued working until dismissed for misconduct – whether at the time of making claim for DSP or within three months thereafter he was suffering an impairment – whether impairment had been diagnosed by an appropriately qualified medical practitioner – whether impairment assessment was at least 20 points – Applicant able to work prior to termination – Applicant has not sought specialist treatment – decision affirmed

[Nejasmic and Secretary, Department of Social Services](#) [2015] AATA 440; 24/6/2015; 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

[Ross and Secretary, Department of Social Services](#) [2015] AATA 434; 22/6/2015; Senior Member BJ McCabe

Disability support pension – whether conditions fully diagnosed, treated and stabilised – Borderline personality disorder, depression and agoraphobia – decision remitted to Respondent for reconsideration

[Sastre and Secretary, Department of Social Services](#) [2015] AATA 449; 22/6/2015; Senior Member BJ McCabe

Disability support pension – application for unlimited portability – whether Applicant is prevented from performing any work independently of a program of support in the next five years – decision under review affirmed

[The Applicant 0108 of 2014 and Secretary, Department of Social Services](#) [2015] AATA 446; 22/6/2015; Dr C Kendall and Dr W Isles, Members

Disability support pension – portability of payments – whether Applicant qualifies for unlimited portability – severe impairment – whether no future work capacity – whether prevented from undertaking any work independent of a program of support because unable to work for two hours per week or more – decision affirmed

[Thompson and Secretary, Department of Social Services](#) [2015] AATA 435; 23/6/2015; 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

[Yu and Secretary, Department of Social Services](#) [2015] AATA 444; 25/6/2015; Senior Member D Cremean

Special Benefit – failure to complete required form – Applicant absent from address – decision affirmed

Veterans' Affairs

[Smith and Repatriation Commission](#) [2015] AATA 448; 25/6/2015; Senior Member BJ McCabe

Application for intermediate rate of pension – accepted psychiatric and cardiac conditions – assessment of veteran's capacity to work more than 20 hours per week – medical evidence does not support finding that war-caused conditions alone prevent continuance of remunerative work – 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 |
|---|---------------------------------|
| Shord v Commissioner of Taxation & Administrative Appeals Tribunal | [2015] AATA 355 |

Appeals finalised

| CASE NAME | AAT REFERENCE | COURT REFERENCE |
|---|---------------------------------|---------------------------------|
| MYVC v Director-General of Security & Minister for Foreign Affairs | [2014] AATA 511 | [2014] FCA 1447 |

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 **20 July 2015**.

Acute myeloid leukaemia – No. 71 of 2015

<http://www.comlaw.gov.au/Details/F2015L00903>

Acute myeloid leukaemia – No. 72 of 2015

<http://www.comlaw.gov.au/Details/F2015L00904>

Arachnoid cyst – No. 91 of 2015

<http://www.comlaw.gov.au/Details/F2015L00924>

Arachnoid cyst – No. 92 of 2015

<http://www.comlaw.gov.au/Details/F2015L00925>

Cardiomyopathy – No. 85 of 2015

<http://www.comlaw.gov.au/Details/F2015L00917>

Cardiomyopathy – No. 86 of 2015

<http://www.comlaw.gov.au/Details/F2015L00918>

Chickenpox – No. 87 of 2015

<http://www.comlaw.gov.au/Details/F2015L00919>

Chickenpox – No. 88 of 2015

<http://www.comlaw.gov.au/Details/F2015L00920>

Depressive disorder – No. 83 of 2015

<http://www.comlaw.gov.au/Details/F2015L00915>

Depressive disorder – No. 84 of 2015

<http://www.comlaw.gov.au/Details/F2015L00916>

Malignant neoplasm of the gallbladder – No. 89 of 2015

<http://www.comlaw.gov.au/Details/F2015L00921>

Malignant neoplasm of the gallbladder – No. 90 of 2015

<http://www.comlaw.gov.au/Details/F2015L00922>

Myasthenia gravis – No. 75 of 2015

<http://www.comlaw.gov.au/Details/F2015L00907>

Myasthenia gravis – No. 76 of 2015

<http://www.comlaw.gov.au/Details/F2015L00908>

Myelodysplastic syndrome – No. 73 of 2015

<http://www.comlaw.gov.au/Details/F2015L00905>

Myelodysplastic syndrome – No. 74 of 2015

<http://www.comlaw.gov.au/Details/F2015L00906>

Trigeminal neuralgia – No. 77 of 2015

<http://www.comlaw.gov.au/Details/F2015L00909>

Trigeminal neuralgia – No. 78 of 2015

<http://www.comlaw.gov.au/Details/F2015L00910>

Trigeminal neuropathy – No. 79 of 2015

<http://www.comlaw.gov.au/Details/F2015L00911>

Trigeminal neuropathy – No. 80 of 2015

<http://www.comlaw.gov.au/Details/F2015L00912>

Tuberculosis – No. 81 of 2015

<http://www.comlaw.gov.au/Details/F2015L00913>

Tuberculosis – No. 82 of 2015

<http://www.comlaw.gov.au/Details/F2015L00914>

Jurisdiction and legislative changes

This section of the Bulletin provides a summary of legislative changes that affect the AAT, including changes to the AAT's jurisdiction to review decisions. Information about the AAT's jurisdiction can also be found on the [AAT website](#).

[Administrative Appeals Tribunal Regulation 2015](#)

This regulation prescribes certain matters that are necessary or convenient to be prescribed under the *Administrative Appeals Tribunal Act 1975* to support the operation of the Administrative Appeals Tribunal and provides transitional arrangements relating to the *Tribunals Amalgamation Act 2015*. This regulation commences on **1 July 2015**.

© 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.