



Administrative
Appeals Tribunal

AAT Bulletin

Issue No. 27/2015

6 July 2015

The *AAT Bulletin* is a weekly publication containing a list of recently published AAT decisions and information relating to appeals against AAT decisions. The Bulletin also 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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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.

Citizenship

[Saleem Al-Khalidi and Minister for Immigration and Border Protection](#) [2015] AATA 438; 24/6/2015; Deputy President SE Frost

Eligibility – citizenship by conferral – general residence requirement – non citizen Applicant spouse of Australian citizen – spousal discretion under s 22(9) of *Australian Citizenship Act 2007* – whether the Applicant was a permanent resident during period of absence – whether the Applicant held a permanent visa immediately before last leaving Australia – decision under review affirmed

Compensation

[Alarcon and Australian Postal Corporation \(Compensation\)](#) [2015] AATA 475 (2 July 2015), Senior Member JF Toohey, Dr M Couch, Member

Compensation – disease – psychological condition – diagnosis – personality disorder with paranoid ideation – whether events complained of occurred – Applicant's perception – whether employment contributed to a significant degree to exacerbation – Tribunal not satisfied events occurred as Applicant claimed – not satisfied condition exacerbated by employment – decisions under review affirmed

[Altemuhl and Comcare](#) [2015] AATA 452; 26/6/2015; Dr P McDermott RFD, Senior Member

Whether Applicant suffered an injury – whether aggravation of degenerative condition contributed to, to a significant degree by employment – decision under review affirmed

[Maalouf and Australian Postal Corporation](#) [2015] AATA 461; 30/6/2015; Senior Member J Handley

Applicant is 65 years of age and employed by the respondent for 43 years – duties within the employment had been undertaken repetitively and rapidly – full thickness tear of the supraspinatus tendon of each shoulder – applicant continues to work reduced hours and performing modified duties – decisions concerning compensation entitlements for lost overtime, physiotherapy treatment, permanent impairment of left shoulder and non-economic loss for each shoulder set aside and substituted – decision concerning permanent impairment of right shoulder affirmed

[Power and Comcare](#) [2015] AATA 471; 30/6/2015; Dr J Popple, Senior Member

Commonwealth employees – whether Applicant continues to suffer effects of injury – whether fall an aggravation – Applicant exaggerates symptoms – reliance on analgesics and 'TENS' machine – whether Applicant has psychiatric disorder – whether contributed to, to a significant degree, by employment – Applicant entitled to compensation for medical expenses – whether Applicant entitled to compensation for incapacity for work – remitted to Comcare – decision under review set aside

Corporations

[Lantern Hotel Group and Australian Securities and Investments Commission](#) [2015] AATA 458; 30/6/2015; Senior Member PW Taylor SC

Buy back from security holders – ASIC refusal to grant exemption from buy back provision in *Corporations Act* – exemption only sought in relation to a particular transaction independently assessed as reasonable and fair – decision under review set aside – decision subsequently remitted to ASIC

Freedom of Information

[Rovere and Secretary, Department of Education and Training](#) [2015] AATA 462; 30/6/2015; Dr J Popple, senior Member

Exempt documents – whether documents conditionally exempt – whether documents contain deliberative matter – whether modelling is purely factual material – public interest test – whether frankness and candour can be factor against access – whether fact that document is question time brief is factor against access – disclosure would damage operation of deregulated market – disclosure could adversely affect markets and financial frameworks – access at this time would, on balance, be contrary to the public interest – decision under review affirmed

Practice and Procedure

[Issa and Migration Agents Registration Authority](#) [2015] AATA 451; 26/6/2015; The Hon B Tamberlin QC, Deputy President

INTERLOCUTORY DECISION – whether the Tribunal has jurisdiction to hear the matter – whether Tribunal can review an invalid decision – preliminary questions of law – clarifying issues before the Tribunal – whether a referral was made under section 319 of the *Migration Act* – referral of the conduct of a migration agent to an authority responsible for disciplining lawyers – the Tribunal has jurisdiction to hear the substantive matter

[Killoch and Van Oord Australia Pty Limited](#) [2015] AATA 457; 30/6/2015; Senior Member JF Toohey

Extension of time – whether acceptable explanation for delay – delay on part of solicitor – prejudice – merits of the substantive application – public interest – Tribunal satisfied it is reasonable in all the circumstances to grant the extension of time

[PZVS and Secretary, Department of Social Services and Anor](#) [2015] AATA 460; 19/6/2015; Dr P McDermott RFD, Senior Member

Extension of time – application for extension of time – whether reasonable in all the circumstances to extend time – application refused

Social Security

[Abraha and Secretary, Department of Social Services](#) [2015] AATA 472; 20/5/2015; 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

[Borkovic and Secretary, Department of Social Services \(Social services second review\)](#) [2015] AATA 474; 1/7/2015; Miss EA Shanahan, Member

Disability support pension claim – predominant medical condition degenerative disease of lumbar spine, hips and knees – other conditions fully diagnosed, treated and stabilised – impairment rating attracted 10 points – recent diagnosis and treatment of depression – decision affirmed

[Confidential and Secretary, Department of Social Services](#) [2015] AATA 454; 29/6/2015; Senior Member BJ McCabe

Overpayments and debt recovery – parenting payment – dispute regarding accuracy of payroll records – no corroborating evidence to suggest employer’s records incorrect – Applicant not entitled to payments received – no administrative error made by the Commonwealth – good faith – no special circumstances – no discretion to waive debt – reviewable decision affirmed

[Helm and Secretary, Department of Social Services](#) [2015] AATA 466; 30/6/2015; Senior Member BJ McCabe

Disability Support Pension – whether conditions fully diagnosed, fully treated and fully stabilised at the relevant time – whether Applicant has a continuing inability to work – program of support not completed – whether Applicant has a “severe impairment” – decision under review affirmed

[JGJC and Secretary, Department of Social Services](#) [2015] AATA 459; 30/6/2015; Senior Member BJ McCabe

Disability Support Pension – Program of support not completed – whether Applicant had a “severe impairment” during the assessment period – whether 20 impairment points can be allocated under a single table – decision under review affirmed

[MacDonald and Secretary, Department of Social Services](#) [2015] AATA 465; 26/5/2015; Dr P McDermott, Senior Member

Disability Support Pension – whether Applicant had relevant impairment – whether impairment rating of at least 20 points – decision under review affirmed

Taxation

[Baker and Commissioner of Taxation](#) [2015] AATA 469; 30/6/2015; Senior Member FD O’Loughlin

Superannuation fund, foreign superannuation fund – Whether a USA Individual Retirement Account or IRA is a foreign superannuation fund – Whether a proposed payment from an IRA would be a payment from a scheme for the payment of benefits in the nature of superannuation upon retirement or death – decision affirmed

[Bennett and Ors and Commissioner of Taxation](#) [2015] AATA 455; 29/6/2015; The Hon B Tamberlin QC, Deputy President

Income tax – where Commissioner has formed an opinion there was fraud or evasion – whether assessments were default assessments – determination of outstanding tax-related liabilities after taxpayer’s death – onus of proof – decisions under review affirmed

[Jayasinghe and Commissioner of Taxation](#) [2015] AATA 456; 29/6/2015; The Hon B Tamberlin QC, Deputy President

Income tax – whether foreign income exempt – whether Applicant engaged by the UNOPS as an employee – whether Applicant held an office while engaged with UNOPS – decision under review set aside

[Prasad Business Centres Pty Ltd and Commissioner of Taxation](#) [2015] AATA 411; 11/6/2015; Professor R Deutsch, Deputy President

Income Tax – personal services income – personal services entity – personal services business determination – results test – whether a personal services business determination should be made – whether Applicant’s income was for producing a result – decision affirmed

Veterans’ Affairs

[Germain and Repatriation Commission](#) [2015] AATA 473; 23/6/2015; Senior Member AC Cotter

Claim for travel expenses for partner – whether partner “participated” in the veteran’s treatment – decision under review affirmed

[Herrod and Repatriation Commission](#) [2015] AATA 464; 30/6/2015; Ms R Perton, Member

Veterans’ entitlements – alcohol abuse disorder – hypertension – sleep apnoea – stressors – date of clinical onset – whether conditions war-caused – 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
Lim v Comcare	[2015] AATA 189
Rekic v Secretary, Department of Social Services	[2015] AATA 369
Darnell v Australian Community and Pharmacy Authority & Sammut	[2015] AATA 263
Comcare v Reardon	[2015] AATA 360
Secretary, Department of the Prime Minister and Cabinet v Sanderson & Secretary, Department of Infrastructure and Regional Development	[2015] AATA 361

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Byrt v Deputy Commissioner for Taxation	[2014] AATA 30	[2015] FCCA 1761 [2015] FCCA 1762
May v Military Rehabilitation and Compensation Commission	[2011] AATA 886	[2015] FCAFC 93 [2014] FCA 406
Minister for Immigration and Border Protection v Farag & Administrative Appeals Tribunal	[2014] AATA 927	[2015] FCA 646
Clare v Australian Community Pharmacy Authority	[2014] AATA 932	[2015] FCA 653
Haritos & Kyritsis v Commissioner of Taxation	[2013] AATA 112	[2015] FCAFC 92 [2014] FCA 96

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