



Administrative
Appeals Tribunal

AAT Bulletin

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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

[Bates and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 492 (8 July 2015); Professor R McCallum AO, Member

Eligibility – citizenship by conferral – whether the applicant satisfied s 21(2)(g) of the *Australian Citizenship Act 2007* – whether the applicant is likely to reside, or continue to reside, in Australia or to maintain a close and continuing association with Australia – decision under review affirmed

[Daood and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 481 (6 July 2015), Senior Member JF Toohey

Whether applicant of good character – minor offences – driving convictions – pattern of disregard for law – favourable employment history – insufficient time passed for Tribunal to be satisfied applicant of good character – decision under review affirmed

[Koul and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 485 (7 July 2015); Senior Member G Ettinger

Whether Applicant of good character – Applicant's wife has returned to India – family law proceedings underway in India – proceedings in civil and criminal jurisdiction – not yet resolved – Tribunal unable to find that the Applicant is of good character – decision under review affirmed

Civil Aviation

[Archerfield Airport Chamber of Commerce Inc and Minister for Infrastructure and Regional Development](#) [2015] AATA 489 (8 July 2015); Deputy President PE Hack SC

Airports – decision by Minister to approve draft master plan – application by airport chamber of commerce for review of decision – compatibility of commercial and non-aviation developments with aviation needs – whether re-alignment would limit aviation useability – consistency of draft master plan with planning laws – provision for further development and growth of aviation – whether increase risk to air safety – airport design requirements of ICAO and US FAA – consistency with lease obligations – needs of existing users – sufficiency of consultation process – re-alignment will likely improve useability – satisfies present and future requirements of users – process of consultation appropriate – applicant's witnesses lack objectivity – applicant's witnesses demonstrably partial – no substance in applicant's criticisms – decision under review affirmed

Compensation

[Precup and ASP Ship Management](#) [2015] AATA 467; 30/6/2015; Deputy President JW Constance

Seafarers – medical treatment – whether treatment reasonable to obtain in the circumstances – relevance of cost of different forms of the same treatment – compensation of such amount as is appropriate – decision set aside and remitted

Practice and Procedure

[Novosel and Comcare](#) (Compensation) [2015] AATA 476 (2 July 2015), Dr J Popple, Senior Member

Proceedings – whether application is an abuse of process – whether application has no reasonable prospect of success – whether Applicant may relitigate issues – prior applications finalised by consent – no new evidence to suggest result would be different – application dismissed – whether direction should be made that no further application be made without leave of Tribunal – no direction made

[Whiteman and Australian Postal Corporation](#) (Compensation) [2015] AATA 486 (7 July 2015); Senior Member G Ettinger

Jurisdiction – compensation – injury to left shoulder – claim – whether Tribunal has jurisdiction to consider entitlement to compensation under section 19 and 20 during period Applicant was part-time – no particular claim made – contents of application before original decision maker – Tribunal does not have jurisdiction

Social Security

[Djokovic and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 479 (3 July 2015), Dr P McDermott RFD, Senior Member

Recovery of debt – overpayment – parenting payment – whether debt should be written off – whether debt should be waived – whether debt is attributable solely to an error of the Commonwealth – whether special circumstances exist – decision affirmed

[Jouda and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 484 (7 July 2015); Dr Ion Alexander, Member

SOCIAL SECURITY – 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

[Natoli and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 495 (10 July 2015), Senior Member E Fice

Disability Support Pension (DSP) – whether applicant has 20 impairment points – continuing inability to work – decision affirmed

[Owen and Secretary, Department of Employment](#) (Social services second review) [2015] AATA 477 (3 July 2015); Ms S Taglieri, Member

Newstart Employment Pathway Plan – Applicant refused to sign new Plan – failed to comply with plan – whether requirement to enter plan breaches Australia's Constitution or international obligations – he had no reasonable excuse pursuant to the legislation – decision under review affirmed

[Singh and District Registrar, Administrative Appeals Tribunal](#) (Social services second review) [2015] AATA 493 (9 July 2015)

Question of jurisdiction – matter litigated on numerous occasions since the year 2000 – appeals to Federal Magistrates Court, Federal Court, Full Court of the Federal Court, High Court of Australia – all appeals dismissed

[The Estate of Maria Kozak and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 480 (3 July 2015); Dr J Popple, Senior Member

Benefits – cancellation of benefit – whether Secretary cancelled benefit in error – construction of *Social Security (Administration) Act 1999*, s 80 – benefit was not payable – Secretary had power to cancel payment – no discretion to vary date when payment recommenced – decision under review affirmed

[Walda and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 482 (6 July 2015); Senior Member Cunningham

Lump-sum compensation payment – preclusion period – special circumstances – decision under review affirmed

[WMKR and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 483 (7 July 2015); Mr S Webb, Member

Disability support pension – portability – rules governing unlimited portability – preconditioning circumstances necessary for exercise of discretion not met – decision affirmed

Taxation

[Criterion Prestige Pty Ltd and Commissioner of Taxation](#) [2015] AATA 468; 30/6/2015; Senior Member BJ McCabe

Purchase of Lamborghini – no luxury car tax paid upon purchase – increasing luxury car tax adjustment – administrative penalty imposed – purchase of vehicle was not a creditable acquisition – vehicle was not purchased as trading stock – applicant was not carrying on a business – applicant reckless in respect of tax shortfall – reviewable decision affirmed

[XGYV and Commissioner of Taxation](#) (Taxation) [2015] AATA 478 (3 July 2015)

Deductions and penalties – whether taxpayer entitled to interest deductions for loan to company – whether taxpayer liable to administrative penalties due to recklessness or failure to take reasonable care – taxpayer bears onus of proof – taxpayer gave conflicting evidence – taxpayer estimated amounts of deductions – taxpayer was grossly indifferent as to entitlement for deductions – decisions under review affirmed

Veterans' Affairs

[Boyle and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 488 (8 July 2015); Deputy President K Bean

VETERANS' AFFAIRS – Pension Bonus Scheme – late application for registration – whether discretion to extend period for lodgement can be exercised – effect of repeal of relevant provisions –

consideration of principles relevant to exercise of broad discretion to extend time – inadequate explanation for delay – fairness as between applicant and others – decision under review affirmed

[Hoang and Repatriation Commission](#) [2015] AATA 470; 30/6/2015; Deputy President JW Constance

Qualifying service – allied veteran – whether applicant served with defence force of an allied country during a period of hostilities – whether applicant incurred danger from hostile forces of the enemy

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
Hansell v Repatriation Commission	[2015] AATA 377
Smith v Military Rehabilitation and Compensation Commission	[2015] AATA 343

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Munswamy v Australian Postal Corporation	[2014] AATA 757	[2015] FCA 678
Darnell v Australian Community Pharmacy Authority & Sammut	[2015] AATA 263	QUD407/2015

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