



Administrative  
Appeals Tribunal

# AAT Bulletin

**Issue No. 30/2015**

**27 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.

## Compensation

[Cantone and Telstra Corporation Limited](#) (Compensation) [2015] AATA 534 (22 July 2015); Miss EA Shanahan, Member

Intracerebral haemorrhage resulting in right hemiparesis – severe speech defect – complete spastic paralysis of the right arm – partial recovery of right lower limbs with spasticity and contractures – remedial massage – liability for cost of travel to relocated masseur denied – whether cost reasonably incurred – availability of alternative therapists within a 25 kilometre radius of the Applicant’s home – decision affirmed

[Parker and Military Rehabilitation and Compensation Commission](#) (Compensation) [2015] AATA 531 (21 July 2015); Deputy President SA Forgie

“Employee” – whether employed by the Commonwealth, Commonwealth authority or licensed corporation – member of Royal Navy attached to Royal Australian Navy 1962 to 1965 – whether “member of Defence Force ... taken to be employed by the Commonwealth” – whether deemed to be a member of the Defence Force when attached to Royal Australian Navy – whether privileges conferred on a member of a visiting force conferred entitlements to compensation under the legislation in force at the time – decision affirmed

[Topping and Comcare](#) (Compensation) [2015] AATA 525 (17 July 2015); Deputy President G Humphries, Dr B Hughson, Member

Whether massage and osteopathy constitute reasonable treatment for accepted condition of post-traumatic stress disorder – factors to be considered in determining this issue – decision affirmed

## Health

[Superior Care Group Pty Ltd and Chief Executive Officer, Australian Aged Care Quality Agency](#) [2015] AATA 529 (9 July 2015); The Hon Justice JA Logan RFD, Deputy President, Deputy President PE Hack SC

Re-accreditation of residential care service – compliance with Accreditation Standards – Quality of Care Principles – period of re-accreditation – whether three-year accreditation ought be granted – generally good performance history – demonstrated capacity to rectify failings promptly – met all expected outcomes during unannounced assessment – decision set aside and substituted

## Practice and Procedure

[Duerinckx Enterprises Pty Ltd and Australian Skills Quality Authority](#) [2015] AATA 526 (17 June 2015); Senior Member A Cunningham

Application for stay – compliance issues – stay granted subject to conditions

[Jeffers and Australian Securities and Investments Commission](#) [2015] AATA 537 (22 July 2015); Deputy President FJ Alpins

Stay application – banning order – Applicant prohibited from providing any financial services – proffered undertaking to Tribunal not to provide any financial services if stay granted and proposed same condition of stay – whether Tribunal of opinion that desirable to make orders sought – nature of public interest to be taken into account – whether stay would be for purpose of securing effectiveness of review – s 41(2) of *Administrative Appeals Tribunal Act 1975* (Cth) – application dismissed

Application for confidentiality orders – s 35 of *Administrative Appeals Tribunal Act 1975* (Cth) – application dismissed

[Seraphim \(Consulting\) Pty Ltd and Commissioner of Taxation](#) (Taxation) [2015] AATA 540 (22 July 2015); Deputy President PE Hack SC

Application for adjournment – inadequate reasons given – adjournment refused – failure to comply with directions – failure to attend resumed hearing – whether proceedings ought be dismissed – applications dismissed

## **Professionals and Trades**

[Thiel and Registrar of Marriage Celebrants](#) [2015] AATA 524 (17 July 2015); Mr S Webb, Member

Solemnisation – registration – meaning of ‘authorised celebrant’ – meaning of ‘minister of religion of a recognised denomination’ – registration as a marriage celebrant – celebrant registration charge – scope of discretion to give notice of deregistration on non-payment of charge – consequence of not paying charge within notified period – charge not paid within period – deregistration steps – no discretion – notice of deregistration invalid – decision set aside and remitted

PRACTICE AND PROCEDURE – jurisdiction – review of a decision to deregister a marriage celebrant – ‘decision’ includes determinative considerations in respect of issuing a notice of deregistration

## **Social Security**

[Cirillo and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 506 (14 July 2015); Senior Member PW Taylor SC

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

[Evetts and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 535 (22 July 2015); Professor R McCallum AO, Member

Age pension – portability – exceptions to general portability rule – no portability where claim based on short residence – whether Applicant departed Australia within two years of being granted age pension – Applicant departed Australia within two year period – decision under review affirmed

[Grimes and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 522 (17 July 2015); Mr S Webb, Member

Family tax benefit – percentage of care of a child – care period – change in pattern of care – revocation of previous determination – change in percentage of care – decision set aside

[Keir and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 523 (17 July 2015); Deputy President G Humphries

Disability support pension – whether conditions fully diagnosed, treated and stabilised – whether impairments attract a rating of 20 points or more under the Impairment Tables – decision affirmed

[Kornweibel and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 519 (16 July 2015); Mr S Webb, Member

Pension bonus scheme – meaning of non-accruing member – work test – requirement for consecutive bonus periods not met – claim time limits – incorrect advice – discretion to extend time exercised – decision set aside

[Saad and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 530 (21 July 2015); Dr I Alexander, Member

Disability support pension (DSP) – portability period – DSP cancelled – whether portability period should have been extended – no grounds for extending portability period – decision affirmed

[Seymour and Secretary, Department of Social Services](#) [2015] AATA 505; 19/6/2015; Professor R Deutsch, Deputy President

Disability support pension – whether income exceeded maximum allowable for payment – whether loan a deprived asset – derivation of income from trust – decision affirmed

[Thurecht and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 504 (13 July 2015); Deputy President JW Constance

Application for review of the start date noted on concession card – whether reviewable decision – meaning of ‘decision’ – whether decision made under social security law – decision affirmed

[Young and Secretary, Department of Employment](#) (Social services second review) [2015] AATA 528 (21 July 2015); Deputy President K Bean

Newstart allowance – backdating of start date – Applicant contends Centrelink failed to advise of potential entitlement to Newstart at an earlier date – Centrelink not obliged to provide specific advice – no legal basis upon which Applicant can be paid Newstart from any earlier date – decision under review affirmed

## **Superannuation**

[OEM Supplies Pty Ltd and Commissioner of Taxation](#) [2015] AATA 532 (21 July 2015); Deputy President JW Constance

Superannuation guarantee charge – employee – whether individual an employee of the Applicant – decision set aside

## **Taxation**

[EI Kordi and Commissioner of Taxation](#) (Taxation) [2015] AATA 527 (20 July 2015); Professor R Deutsch, Deputy President

Objection decisions – refusal to extend time to make objections against amended assessments – decision affirmed

## **Veterans' Affairs**

[Nelson and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 539 (23 July 2015); Deputy President IR Molloy

Disability pension and Attendant allowance – pension at the special rate – war caused conditions limiting capacity for work – Applicant capable of remunerative work on a part-time basis or intermittently – decision varied

[Rowe and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 541 (23 July 2015); Senior Member E Fice, Dr D Cremean, Senior Member

Veterans – Entitlements – Disability Pension – entitlement to Extreme Disablement Adjustment rate – lifestyle rating – decision under review set aside and substituted

[Thomas and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 514 (15 July 2015); Mr S Webb, Member

Claim for disability pension – Type 2 Diabetes Mellitus – operational and defence service – Statements of Principles – standards of proof – connection to service not made out – 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

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CASE NAME

AAT REFERENCE

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**None lodged**

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## Appeals finalised

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CASE NAME

AAT REFERENCE

COURT REFERENCE

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**None finalised**

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