



Administrative
Appeals Tribunal

AAT Bulletin

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The *AAT Bulletin* is a weekly publication containing information about recently published decisions and appeals against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions. The Bulletin also regularly includes information about decisions of interest recently published in the AAT's Migration & Refugee Division. It 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 all decisions recently published in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions as well as about select decisions recently published in the Migration & Refugee Division. 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

[Jiang and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 597 (14 August 2015); Senior Member E Fice

Grant of citizenship – eligibility and refusal generally – good character – Applicant had prior criminal record but no convictions recorded – insufficient time to demonstrate reformed character – decision under review affirmed

[Sharma and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 608 (19 August 2015); Deputy President JW Constance

Good character – previous convictions – domestic violence – whether Applicant has reformed – decision affirmed

Compensation

[Ceric and Prosecur Australia Pty Ltd](#) (Compensation) [2015] AATA 590 (14 August 2015); Senior Member N Isenberg

Neck and lower back injury – whether Applicant continues to suffer the effects of the injury – entitlement to incapacity payments and medical expenses – decision affirmed

[Schodde and Comcare](#) (Compensation) [2015] AATA 598 (17 August 2015); Deputy President K Bean

Disc degenerative changes in lower lumbar spine – Applicant attributes to prolonged sitting at work – employment did not make significant contribution to degenerative condition – no evidence of disc prolapse, protrusion or disturbance at work – limited jurisdiction to consider aggravation of degenerative condition – decision under review affirmed

[Elliott and Linfox Australia Pty Ltd](#) (Compensation) [2015] AATA 602 (18 August 2015); Senior Member N Isenberg

Employee of licensed corporation – injuries to lower back, left knee and left ankle – whether entitlement to compensation for medical expenses, incapacity, permanent impairment and non-economic loss – decision varied

[Attalla and Comcare](#) (Compensation) [2015] AATA 611 (19 August 2015); Deputy President JW Constance

Injury – disease – ailment – reasonable administrative action – whether condition a result of reasonable administrative action taken in a reasonable manner in respect of the Applicant's employment – decision set aside and substituted

[Hodgson and Military Rehabilitation and Compensation Commission](#) (Compensation) [2015] AATA 610 (19 August 2015); Deputy President Dr C Kendall

Applicant was a soldier who was injured in a car accident when returning to military base in 1965 – no claim for compensation was made until 2014 – consideration of whether notice of the injury had been given in accordance with s 16 of the 1930 Act – consideration of whether the failure to make a claim for compensation before 2014 resulted in prejudice to the Commonwealth or resulted from ignorance, from mistake or from any other reasonable cause – consideration of whether Applicant satisfies section 9A of the 1930 Act in relation to whether Applicant was returning to military base for the purposes of his employment – decision under review affirmed

[Muir and Comcare](#) (Compensation) [2015] AATA 612 (19 August 2015); Deputy President G Humphries

Commonwealth employees – injury caused by work – date of injury – whether reasonable administrative action – whether carried out in a reasonable manner – decision set aside and substituted

[Blade and Comcare](#) (Compensation) [2015] AATA 615 (19 August 2015); Dr P McDermott RFD, Senior Member

Permanent impairment – whether entitled to compensation – knee conditions accepted – whole person impairment – whether Applicant entitled to compensation for permanent impairment resulting from shoulder injury – no foundation for distinction between an injury and consequential or secondary injury – separate assessment of each shoulder required – single shoulder does not meet or exceed threshold percentage – decision under review affirmed

Freedom of Information

[Walker and Secretary, Department of Health](#) (Freedom of information) [2015] AATA 606 (18 August 2015); Deputy President JW Constance

Whether document exempt – whether disclosure prohibited – *Health Insurance Act* – whether prohibition extends to professional information – decision affirmed

Practice and Procedure

[Fiorentino and Members of the Companies Auditors and Liquidators Disciplinary Board](#) [2015] AATA 607 (19 August 2015); Professor R Deutsch, Deputy President

Administrative Appeals Tribunal – power to dismiss – application for review of decision to cancel registration as liquidator – Applicant has become an undischarged bankrupt since application was commenced – no reasonable prospect of success – application dismissed

[Rossi and Commissioner of Taxation](#) (Taxation) [2015] AATA 601 (10 July 2015); Deputy President SA Forgie

Whether reviewable objection decision – whether objection decision – no provision permitting Applicant to request review of garnishee notice

LEGAL PRINCIPLES – right to apply for review cannot be drawn from international law unless incorporated in Australian domestic law

Social Security

[Smith; Secretary, Department of Social Services and](#) (Social services second review) [2015] AATA 578 (14 July 2015); Deputy President K Bean

Disability support pension – whether Respondent’s heart condition fully diagnosed, treated and stabilised during assessment period – whether impairments attract a rating of 20 points or more under the Impairment Tables – whether continuing inability to work – decision under review affirmed

[Daccache and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 596 (14 August 2015); Senior Member CR Walsh

Qualification for unlimited portability of disability support pension – none of Applicant’s impairments is a “severe impairment” which attracts 20 points on a single impairment table – decision under review affirmed

[Oliver; Secretary, Department of Social Services and](#) (Social services second review) [2015] AATA 593 (14 August 2015)

Disability support pension – meaning of “the Relevant Period” – whether there is a physical, intellectual or psychiatric impairment – whether impairment is of 20 points or more under the Impairment Tables in Schedule 1B of the *Social Security Act 1991* – whether Applicant has a continuing inability to work – decision under review set aside

[Taube and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 591 (14 August 2015); Deputy President SE Frost

Overpayment of disability support pension – whether bank account deposits were “income” for the purposes of the Act – whether receipt of money from family members considered “loans” – whether debt can be written off or waived – decision affirmed

[Isitt and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 592 (14 August 2015); Deputy President, Dr C Kendall

Carer payment – pension income test – amending legislation from 20 September 2009 – calculations under current and transitional rules for pension income test – effect of error on part of Applicant in reporting correct income – Decision under review set aside – matter remitted to Centrelink for re-assessment

[Goldsmith and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 613 (19 August 2015); Senior Member PW Taylor SC

Age Pension – residence requirements – Applicant resides in Norfolk Island – whether Applicant meets Australian residence requirements for age pension – external territory – decision affirmed

[Mancia and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 609 (31 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

[McDonald and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 604 (18 August 2015); Dr I Alexander, Member

Disability support pension (DSP) – whether the Applicant is eligible to receive DSP – whether the Applicant has 20 points under the Impairment Tables – decision under review affirmed

[Henderson and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 599 (17 August 2015); Dr M Denovan, Member

Disability support pension – less than 20 points under the Impairment Tables – decision affirmed

[Johnson and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 617 (20 August 2015); Senior Member CR Walsh

Disability support pension – Applicant's impairments (hyper somnolence/narcolepsy/sleep apnoea, rheumatoid arthritis, ischaemic heart disease, hypertension, kidney disorder, gout, depression and hypothyroidism) did not attract at least 20 points under the impairment tables as at the relevant period – decision under review affirmed

Taxation

[Marwood and Secretary, Department of Agriculture](#) [2015] AATA 594; 14/8/2015; Deputy President FJ Alpins

Income tax – whether taxpayer entitled to tax offset under subdivision 385-J (repealed) of *Income Tax Assessment Act 1997* (Cth) – conservation tillage offset – Secretary of Department of Agriculture refused to issue Research Participation Certificate – not satisfied that taxpayer completed conservation tillage survey at any time during income year – taxpayer completed survey after income year ended – whether any power or discretion by which Secretary or Tribunal could extend time within which to complete survey – relevance of statements made in approved application form inconsistent with statutory provisions – decision under review affirmed

Veterans' Affairs

[Campbell and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 605 (18 August 2015); Senior Member G Ettinger

Disability pension – PTSD and/or Generalised Anxiety Disorder – Applicant subjected to three major stressors, being an incident of arrest and inappropriate treatment during service (1990), a motor vehicle accident in which the driver, his fiancée, was killed (1986), and an assault at the Dapto Leagues Club (1993) whether psychiatric conditions are defence-caused – Tribunal gives effect to the Respondent's concession that osteoarthritis of both feet and both knees is service related – Tribunal affirms the decision of the VRB that the Applicant's psychiatric conditions are not related to service

Appeals

This section of the Bulletin provides information about appeals that have been lodged or finalised against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions. Information is only included about appeals relating to AAT decisions that have been published on [AustLII](#). Full copies of the decisions can be accessed through the hyperlinks provided below.

Appeals lodged

CASE NAME	AAT REFERENCE
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None lodged

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Deslandes v Repatriation Commission	[2013] AATA 800	[2015] FCCA 1786
Secretary, Department of the Prime Minister and Cabinet & Secretary, Department of Infrastructure and Regional Development v Sanderson	[2015] AATA 361	ACD62/2015
Cameron v Secretary, Department of Human Services	[2015] AATA 62	[2015] FCA 875
Revulge v Secretary, Department of Education & Administrative Appeals Tribunal	[2015] AATA 70	[2015] FCA 895

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