



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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Enquiries regarding this publication may be directed to aatweb@aat.gov.au.

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Practice Updates

Coordinated action on non-compliance

Paragraphs 4.57 to 4.64 of the AAT's [General Practice Direction](#) deal with non-compliance and include a range of consequences that can apply for representatives with a history of repeat non-compliance. Coordinated action is being taken on non-compliance by representatives in the following divisions:

- General Division
- Freedom of Information Division
- National Disability Insurance Scheme Division
- Security Division
- Taxation & Commercial Division
- Veterans' Appeals Division.

Practitioners' attention is drawn to the subsection 33(1AB) of the *Administrative Appeals Tribunal Act 1975* which requires all parties and their representatives to assist the Tribunal to fulfil its statutory objectives. This requirement is in addition to the existing obligation for the decision-maker to assist the Tribunal to make its decision: subsection 33 (1AA).

Non-compliance with AAT directions or legislative requirements is a serious matter. Non-compliance causes delays in the progress of matters, increases the costs to the parties, and creates unnecessary work for AAT members, officers and staff. Repeat non-compliance by party representatives falls well short of the obligation to assist the Tribunal and may also fail to meet professional conduct standards. Non-compliance by representatives is monitored on a national basis and instances of repeat non-compliance will be escalated for further action.

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

[Alothman and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 644 (28 August 2015); Senior Member JF Toohey

Whether applicant of good character – assault on wife – assault charge dismissed – breach of apprehended domestic violence order – good behaviour bond – decision under review affirmed

[KCRG and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 635 (27 August 2015); Deputy President SE Frost

Eligibility – statelessness – whether the applicant is not entitled to acquire the nationality or citizenship of a foreign country – decision set aside

[Rasiah and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 630 (25 August 2015); Ms S Taglieri, Member

Application by spouse of Australian Citizen; failure to meet general residency requirements; whether discretion should be exercised to treat periods of absence from Australia as being present in Australia; preferable to exercise discretion and grant Citizenship – decision set aside

Compensation

[Costantine and Comcare](#) (Compensation) [2015] AATA 645 (28 August 2015); Senior Member P Taylor SC

"Injury" – definition – exclusionary provision – reasonable administrative action taken in a reasonable manner in respect of employee's employment – aggravation of pre-existing major depressive disorder – multiple causes – changes to workplace team and employee duties – failure to obtain higher duties opportunities – whether any of causes capable of falling within exclusionary provision – decision under review affirmed

[Horner; Military Rehabilitation and Compensation Commission and](#) (Compensation) [2015] AATA 618 (21 August 2015); Deputy President K Bean

Military compensation – Determination of normal earnings – Meaning of reasonable expectation of promotion – Where promotion would almost certainly have occurred but for compensable injury – Provision intended to exclude from normal earnings any promotion that had not yet actually occurred – Decision under review set aside

[Kennedy and Comcare](#) (Compensation) [2015] AATA 643 (27 August 2015); Dr J Popple, Senior Member

Commonwealth employees – Applicant requested extension of time to request reconsideration by Respondent – application for review of refusal to grant extension of time – whether application has no reasonable prospect of success – Applicant made wilful and false representations – Applicant declined to proceed at hearing – hearing proceeded in absence of Applicant – application dismissed

National Disability Insurance Scheme

[McCutcheon and National Disability Insurance Agency](#) [2015] AATA 624 (21 August 2015); Senior Member JF Toohey

Reasonable and necessary supports – spina bifida – scoliosis – whether chiropractic treatment a reasonable and necessary support – whether chiropractic treatment will be, or is likely to be, effective and beneficial having regard to current good practice – whether most appropriately funded through the NDIS – whether more appropriately funded through general health system – decision under review set aside

Practice and Procedure

[The Father and Child Support Registrar](#) (Child support second review) [2015] AATA 632 (31 July 2015); Senior Member JF Toohey

Extension of time – factors to be considered – application lodged one day late – whether acceptable explanation for the delay – merits of substantive application – Tribunal satisfied extension of time reasonable in all the circumstances – extension of time granted

Social Security

[Ascic and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 637 (27 August 2015); Dr C Kendall, Deputy President

Carer Payment – DSP – whether payments made are “compensation payments” – whether there are “special circumstances” such that all or part of payments can be treated as not having been paid – whether couple’s combined income exceeds allowable limit – decision under review affirmed

[Bluemore and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 623 (12 August 2015); Ms R Perton, Member

Late lodgement of application for review – whether reasonable in all the circumstances to extend time – length of delay – reasons for delay – whether applicant rested on her rights – merits of applicant’s case – prospects of success – extension of time refused.

[Claydon and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 636 (27 August 2015); Senior Member AC Cotter

Disability support pension – DSP – whether 20 points or more under the Impairment Tables – whether corroborating evidence of person’s impairment – insufficient evidence – decision under review affirmed

[Gowany and Secretary, Department of Social Services](#) (Social services second review) [2015]
AATA 633 (27 August 2015); Senior Member JF Toohey

Disability support pension – carer payment – portability period – whether payments should have been suspended after six weeks – discretion to extend – whether illness of family member was an event – whether applicants were unable to return to Australia by reason of event – decision under review set aside

[HZQF and Secretary, Department of Social Services](#) (Social services second review) [2015]
AATA 620 (21 August 2015); Dr C Kendall, Deputy President

Disability Support Pension – Whether applicant’s impairments attract 20 points or more under the Impairment Tables – Whether applicant has a “continuing inability to work” – Decision under review affirmed

[Lindsay and Secretary, Department of Social Services](#) (Social services second review) [2015]
AATA 622 (21 August 2015); Senior Member CR Walsh

Disability support pension – applicant’s impairments (bipolar affective disorder, temporal lobe epilepsy, degenerative disc disease, drug dependence and morbid obesity) did not attract at least 20 points under the impairment tables as at the relevant period – decision under review affirmed

[Loftus and Secretary, Department of Social Services](#) (Social services second review) [2015]
AATA 631 (25 August 2015); Deputy President SA Forgie

AGE PENSION – qualifications – Australian resident – agreement between Australia and United Kingdom regarding social security ameliorated qualifications for age pension – claim not made before agreement terminated – applicant must meet requirement to be Australian resident for ten years – Australian resident by virtue of being holder of permanent visa – requirement cannot be ameliorated by fact that quota restrictions on grant of permanent visa meant applicant had to wait some years – decision affirmed

[Madgwick and Secretary, Department of Social Services](#) (Social services second review) [2015]
AATA 626 (24 August 2015); Mr C Ermert, Member

Disability support pension – whether conditions fully diagnosed, treated and stabilised within the qualification period – decision affirmed

[Nielsen and Secretary, Department of Social Services](#) (Social services second review) [2015]
AATA 619 (21 August 2015); Senior Member AC Cotter

Disability support pension – DSP – whether 20 points or more under the impairment tables during the relevant period – value of medical evidence – evidence inconsistent or contradictory – decision under review affirmed

[Poulton and Secretary, Department of Social Services](#) (Social services second review) [2015]
AATA 629 (25 August 2015); Dr T Nicoletti, Senior Member

Lump sum compensation – compensation affected payment – preclusion period – whether special circumstances of the case enliven discretion to treat all or part of lump sum payment as not being made – whether disposal of lump sum reasonable – no special circumstances – decision affirmed

[QHBN and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 614 (19 August 2015); Dr J Popple, Senior Member

Compensation preclusion period – newstart allowance – whether special circumstances exist to shorten preclusion period – whether gambling a special circumstance – whether Applicant’s gambling is an addiction – financial hardship – Applicant has realisable assets – decision affirmed

[Siljanovski and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 646 (28 August 2015); Mr C Ermert, Member

Disability support pension – whether conditions fully diagnosed, treated and stabilised within the qualification period – whether conditions permanent – a continuing inability to work – decision set aside

[Singh and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 638 (27 August 2015); Miss EA Shanahan, Member

Pensions, benefits and allowances – disability support pension application – illnesses not fully diagnosed, treated and stabilised – no impairment rating attracted – decision affirmed

[Stojanovic and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 625 (24 August 2015); Senior Member D Cremean

Age Pension – Portability – Suspension – Absence from Australia for 26 weeks or more – decision affirmed

[Thornley and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 621 (21 August 2015); Senior Member E Fice

Pensions, payments and allowances – Disability Support Pension – Impairment assessment – Whether applicant had 20 impairment points – Continuing ability to work – Participation in program of support – Decision under review affirmed

Taxation

[Breakwell and Commissioner of Taxation](#) (Taxation) [2015] AATA 628 (25 August 2015); Senior Member RW Dunne

Capital gains tax – maximum net value asset test – entitlement to small business CGT concessions – inclusion of loans – whether statute-barred loan – objection decision under review affirmed

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
Luck v Secretary, Department of Human Services	[2010] AATA 6	[2015] FCAFC 111 [2014] FCA 798
Luck v Chief Executive Officer of Centrelink (No 2)	[2008] AATA 718	[2015] FCAFC 112 [2008] FCA 1506

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 AAT has been advised that the Repatriation Medical Authority has made the following new Statements of Principles. They take effect from **21 September 2015**.

Fracture (Reasonable Hypothesis) – No. 94 of 2015

<http://www.comlaw.gov.au/Details/F2015L01340>

Fracture (Balance of Probabilities) – No. 95 of 2015

<http://www.comlaw.gov.au/Details/F2015L01343>

Achilles tendinopathy and bursitis (Reasonable Hypothesis) – No. 96 of 2015

<http://www.comlaw.gov.au/Details/F2015L01336>

Achilles tendinopathy and bursitis (Balance of Probabilities) – No. 97 of 2015

<http://www.comlaw.gov.au/Details/F2015L01337>

Hallux valgus (Reasonable Hypothesis) – No. 98 of 2015

<http://www.comlaw.gov.au/Details/F2015L01334>

Hallux valgus (Balance of Probabilities) – No. 99 of 2015

<http://www.comlaw.gov.au/Details/F2015L01335>

Lipoma (Reasonable Hypothesis) – No. 100 of 2015

<http://www.comlaw.gov.au/Details/F2015L01315>

Lipoma (Balance of Probabilities) – No. 101 of 2015

<http://www.comlaw.gov.au/Details/F2015L01316>

Malignant melanoma of the skin (Reasonable Hypothesis) – No. 102 of 2015

<http://www.comlaw.gov.au/Details/F2015L01317>

Malignant melanoma of the skin (Balance of Probabilities) – No. 103 of 2015

<http://www.comlaw.gov.au/Details/F2015L01318>

Mesothelioma (Reasonable Hypothesis) – No. 104 of 2015

<http://www.comlaw.gov.au/Details/F2015L01319>

Mesothelioma (Balance of Probabilities) – No. 105 of 2015

<http://www.comlaw.gov.au/Details/F2015L01320>

Ingrowing nail (Reasonable Hypothesis) – No. 106 of 2015

<http://www.comlaw.gov.au/Details/F2015L01326>

Ingrowing nail (Balance of Probabilities) – No. 107 of 2015

<http://www.comlaw.gov.au/Details/F2015L01327>

Meniere’s disease (Reasonable Hypothesis) – No. 108 of 2015

<http://www.comlaw.gov.au/Details/F2015L01328>

Meniere’s disease (Balance of Probabilities) – No. 109 of 2015

<http://www.comlaw.gov.au/Details/F2015L01329>

External burn (Reasonable Hypothesis) – No. 110 of 2015

<http://www.comlaw.gov.au/Details/F2015L01330>

External burn (Balance of Probabilities) – No. 111 of 2015

<http://www.comlaw.gov.au/Details/F2015L01331>

Hepatitis E (Reasonable Hypothesis) – No. 112 of 2015

<http://www.comlaw.gov.au/Details/F2015L01332>

Hepatitis E (Balance of Probabilities) – No. 113 of 2015

<http://www.comlaw.gov.au/Details/F2015L01333>

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