



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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# Contents

<b>AAT Recent Decisions .....</b>	<b>3</b>
Citizenship.....	3
Compensation .....	3
Corporations.....	3
Customs .....	3
Freedom of Information .....	4
National Disability Insurance Scheme .....	4
Practice and Procedure .....	4
Social Security.....	5
Taxation .....	6
Veterans' Affairs .....	6
<b>Appeals .....</b>	<b>8</b>
Appeals lodged.....	8
Appeals finalised .....	8
<b>Statements of Principles .....</b>	<b>9</b>
New Statements of Principles.....	9

# 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

[Anarene and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 671 (4 September 2015); Deputy President JW Constance

Citizenship by conferral – good character – whether the Applicant satisfies the legislative requirement to be shown to be of good character – finding of guilt for common assault – provision of documents containing false personal information – consideration of mitigating factors – decision set aside and remitted

[Kazmi and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 642 (27 August 2015); Deputy President SE Frost

Citizenship by conferral – character – whether Applicant of good character – previous convictions for assault – failure to disclose convictions in application – decision affirmed

[Khattouch and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 717 (16 September 2015); Professor R Deutsch, Deputy President

Applicant present in Australia as an unlawful non-citizen – whether period Applicant present in Australia as an unlawful non-citizen the result of administrative error – no administrative error – decision affirmed

## Compensation

[Onassys and Comcare](#) (Compensation) [2015] AATA 677 (8 September 2015); Dr I Alexander, Member

Attendant care services – whether services obtained were required as a result of a compensable injury – whether fortnightly professional pedicures were "attendant care services" for the purposes of the Act – whether services obtained were reasonably required – decision under review set aside and substituted

## Corporations

[Amargianitakis and Australian Securities and Investments Commission](#) [2015] AATA 720 (17 September 2015); Professor R Deutsch, Deputy President

Banning order – length of ban – decision varied

## Customs

[Holc and Comptroller-General of Customs](#) [2015] AATA 722 (17 September 2015); Deputy President SA Forgie

Customs broker's licence – acquired experience – relevance of examination – National Customs Broker Licensing Advisory Committee' report considered as part of evidentiary material – decision affirmed

PRACTICE AND PROCEDURE – distinction between merits review and judicial review

## **Freedom of Information**

[Ransley and Commissioner of Taxation](#) (Freedom of information) [2015] AATA 728 (18 September 2015); The Hon. B Tamberlin QC, Deputy President

Whether documents exempt from production – legal professional privilege – privilege has not been waived – parties have agreed on some documents – remainder of documents before the Tribunal – documents exempt – decision under review affirmed

## **National Disability Insurance Scheme**

[Fear by his mother Vanda Fear and National Disability Insurance Agency](#) [2015] AATA 706 (14 September 2015); Senior Member J Toohey, Ms R Perton, Member

Acquired brain injury – Applicant cared for at home – participant in the NDIS – reasonable and necessary supports – whether a pulse oximeter a reasonable and necessary support – whether bedside and portable oral suctioning machine a reasonable and necessary support – whether most appropriately funded under the NDIS – whether more appropriately funded under the general health system – decision under review affirmed

## **Practice and Procedure**

[Bassanese and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 700 (11 September 2015); Deputy President K Bean

Application for extension of time – Application for registration as a member of the social security pension bonus scheme – Applicant in receipt of age pension – Applicant previously received pension bonus payment – Consideration of Hunter Valley principles – No merit in substantive application – Extension of time refused

[Gomez-Mears and Comcare](#) (Compensation) [2015] AATA 718 (8 September 2015); Dr P McDermott RFD, Senior Member

Extension of time – application for review out of time – whether explanation for delay – whether Respondent prejudiced – whether Tribunal satisfied extension reasonable in all the circumstances – extension granted

[Hrvat and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 719 (17 September 2015); Senior Member JF Toohey

Reinstatement – Applicant withdrew application – whether error on the part of the Tribunal – reinstatement refused

[Spells and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 716 (1 September 2015); Deputy President K Bean

Application for dismissal on the basis of no reasonable prospect of success – Applicant unable to establish that her impairments attracted a rating of 20 points or more under the Impairment Tables for the purposes of disability support pension – No reasonable prospect of establishing an entitlement to disability support pension during the relevant period – Application for review dismissed

[Walls and Comcare](#) (Compensation) [2015] AATA 697 (10 September 2015); Deputy President G Humphries

Application to reinstate dismissed application – whether “dismissed in error” – meaning of “error” in s 42A(10) – provision of incorrect legal advice – application to reinstate allowed

## **Social Security**

[Butler; Secretary, Department of Social Services and](#) (Social services second review) [2015] AATA 707 (14 September 2015); Professor R McCallum AO, Member

Disability support pension – whether Respondent’s conditions were fully diagnosed, treated and stabilised – whether Respondent’s impairment is rated 20 points or more under the Impairment Tables – whether Respondent had a severe impairment – decision set aside and substituted

[Christanty and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 627 (7 August 2015); Deputy President JW Constance

Widow allowance – assurance of support – whether assurance of support in force – whether grounds for cessation – whether precluded from receiving widow allowance – decision affirmed

[El Osman; Secretary, Department of Social Services and](#) (Social services second review) [2015] AATA 708 (15 September 2015); Senior Member JF Toohey

Carer payment – cancellation – whether payment should have been cancelled – whether mother provided constant care – whether provision of constant care severely restricted mother’s capacity to undertake paid employment – decision under review affirmed

[Kramar and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 680 (8 September 2015); Professor R McCallum AO, Member

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

[Martinez and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 692 (22 July 2015); Senior Member JF Toohey

Age pension – start date – whether payment can be backdated – dismissal of application – no reasonable prospect of success – application for review dismissed

[MDMH and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 715 (15 September 2015); Senior Member CR Walsh

Disability support pension (DSP) – Applicant in receipt of DSP for a mental health condition prior to being imprisoned – following his release from prison the Applicant lodged a fresh claim for DSP –

Applicant's DSP claim rejected – whether Applicant's mental health condition fully treated and stabilised – meaning of "reasonable treatment" – whether "compelling reason" for failure to undertake reasonable treatment – whether Applicant's mental health condition attracted at least 20 points under the Impairment tables as at the relevant period – decision under review affirmed

[Pender and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 711 (15 September 2015); The Hon. B Tamberlin QC, Deputy President

Pension bonus scheme – work test – when Applicant ceased to satisfy the work test – whether claim lodged in applicable time frame – whether special circumstances exist to extend time for lodging claim – decision under review affirmed

[Smalldon and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 710 (15 September 2015); Senior Member BJ McCabe

Disability support pension – medical criteria – allocation of impairment points – Applicant does not reach 20 points under one table – Applicant did not actively participate in program of support – decision affirmed

[Tila and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 714 (15 September 2015); Dr I Alexander, Member

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

[Van-Oostveen and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 713 (15 September 2015); Senior Member BJ McCabe

Disability support pension – medical criteria – allocation of impairment points – whether Applicant's conditions were fully diagnosed, fully treated and fully stabilised – continuing inability to work – whether Applicant ought to be excused – decision remitted

## **Taxation**

[Kelly and Tax Practitioners Board](#) [2015] AATA 712 (15 September 2015); Professor R Deutsch, Deputy President

Registration as a tax agent – whether Applicant is a fit and proper person to be registered as a tax agent – failure to lodge tax returns – decision affirmed

## **Veterans' Affairs**

[Beale and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 725 (17 September 2015); Dr J Popple, Senior Member

Disability pension – special rate of pension – whether injuries were war-caused – whether veteran by reason of war-caused injury alone prevented from undertaking remunerative work – whether veteran ceased to engage in remunerative work for any other reason than war-caused injury – decision set aside and substituted

[Cameron and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 705 (14 September 2015); Senior Member JF Toohey

Special rate of pension – veteran over 65 at date of claim – whether veteran incapable by reason of accepted conditions alone from undertaking remunerative work of eight or more hours a week – whether veteran prevented from continuing in the last paid work that he was undertaking by reason of accepted conditions alone – whether veteran had been working on his own account for a continuous period of 10 years – decision under review affirmed

[Gallagher and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 709 (15 September 2015); The Hon. B Tamberlin QC, Deputy President

Widow's pension – whether veteran's death was war-caused – post-traumatic stress disorder – relevant Statement of Principles – decision set aside

[Hammond and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 723 (17 September 2015); Dr G Hughes, Member

Claim for pension in respect of war-caused death – alternative possible causes of death – conflicting opinions of medical experts – burden of proof – standard of proof – decision affirmed

[Linwood and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 704 (11 September 2015); Senior Member BJ McCabe

Claim that asthma and major depression are connected to service – application of relevant Statements of Principles – requirements not made out – 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

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CASE NAME	AAT REFERENCE
<b>Walker v Secretary, Department of Health</b>	<a href="#">[2015] AATA 606</a>
<b>Comcare v Muir</b>	<a href="#">[2015] AATA 612</a>
<b>QHBN v Secretary, Department of Social Services</b>	<a href="#">[2015] AATA 614</a>

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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Gaffey v Comcare</b>	<a href="#">[2014] AATA 659</a>	<a href="#">[2015] FCA 1024</a>

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# 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**.

### Lipoma (Reasonable Hypothesis) – No. 100 of 2015

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

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

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

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