



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](mailto:aatweb@aat.gov.au).

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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

[GXVX and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 829 (27 October 2015); Deputy President FJ Alpins

Citizenship by descent – eligibility – whether a “parent” of the Applicant was an Australian citizen at the time of her birth – claimed parent an Australian citizen but not biological parent of Applicant – whether claimed parent in fact Applicant’s parent – *Australian Citizenship Act 2007* (Cth) s 16(2)(a) - decision set aside and remitted

[Lokhi and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 839 (29 October 2015); Professor R McCallum, Member

Whether Applicant of good character – previous driving offences – minor offences – expired good behaviour bond – decision set aside and remitted

## Compensation

[Dennis and Comcare](#) (Compensation) [2015] AATA 835 (29 October 2015); Senior Member BJ McCabe

Lump sum payment – whether condition permanent – operation of transitional provisions – post-traumatic stress disorder with co-morbid major recurrent depressive disorder – condition permanent before commencement of new legislation – decision affirmed

[Tikoalu-Thorogood and Commonwealth Bank of Australia](#) (Compensation) [2015] AATA 840 (30 October 2015); Senior Member J Toohey and Dr Toh, Member

Knee injury – soft tissue – osteoarthritis – whether Applicant suffered acute aggravation of osteoarthritis – whether acute aggravation of osteoarthritis a disease – whether employment contributed to a significant degree – whether Applicant continues to suffer effects of injury – whether injury resulted in need for medical treatment – total knee replacement – decision under review set aside

[Toomey and Comcare](#) (Compensation) [2015] AATA 834 (29 October 2015); Deputy President JW Constance

Review of decision by Comcare to cease liability to compensate for incapacity – Applicant recovered from effects of injury – decision affirmed – review of decision to deny liability to pay compensation for permanent impairment – no permanent impairment – decision affirmed

## Practice and Procedure

[Buttriss and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 831 (22 October 2015); Deputy President G Humphries

Extension of time – application for review lodged outside prescribed period – apparent lack of merit of application for review – Tribunal not satisfied that reasonable in all the circumstances to grant extension of time – application for extension of time refused

[Taylor and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 821 (26 October 2015); Deputy President PE Hack SC

Summary dismissal – application for pension at special rate – where no reasonable prospects of success – hearing sought for other purposes – application dismissed

## Social Security

[De Jager; Secretary, Department of Social Services and](#) (Social services second review) [2015] AATA 828 (27 October 2015); Justice Kerr, President, Senior Member BJ McCabe

Family Assistance – Family Tax Benefit – where claimant not required to lodge a tax return – failure to notify Centrelink of non-lodger status – adjusted taxable income – timing of reconciliation event – date of effect – mandatory review – statutory interpretation – decision under review affirmed

[Eilbeck; Secretary, Department of Social Services and](#) (Social services second review) [2015] AATA 827 (27 October 2015); Senior Member AF Cunningham

Disability support pension – impairments of chronic lower back pain and depression – impairment rating – failure to meet required 20 points under the Impairment Tables – decision under review set aside

[HWNX and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 826 (27 October 2015); Senior Member N Isenberg

Pensions and Benefits – whether Respondent a Member of a couple – whether Respondent overpaid – marriage-like relationship – financial aspects – nature of the household – social aspects of the relationship – sexual relationship – nature of commitment to each other – not a member of a couple during relevant period – decision affirmed

[Kristoffersen and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 824 (27 October 2015); Dr P McDermott RFD, Senior Member

Pensions and benefits – family tax benefit – FTB Part B – whether tax free benefit a component of adjusted taxable income – decision under review affirmed

[Levao and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 830 (15 July 2015); Senior Member PW Taylor SC

Age Pension – reduction in rate of payment – effect of New Zealand superannuation – effect of international social security agreement – international agreement overrides social security law – decision affirmed

[McGann and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 823 (27 October 2015); Senior Member G Ettinger

Disability support pension – reviewable decisions of SSAT in 2013 and 2014 – Applicant suffers depression and anxiety – whether fully diagnosed, treated and stabilised – impairment points awarded in both applications – other conditions being carpal tunnel syndrome, hernia, plantar faciitis, hypertension – in Matter 2013/6066 the Applicant’s fibromyalgia attracted 10 impairment points – whether continuing inability to work – decision of 2013 affirmed – decision of 2014 affirmed

[Moshe and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 838 (29 October 2015); Dr I Alexander, Member

Disability support pension – spine, upper limb and mental health conditions – whether conditions fully diagnosed, treated and stabilised – impairment ratings – continuing inability to work – decision affirmed

[Wray and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 825 (27 October 2015); Mr S Webb, Member

Family Tax Benefit – change in pattern of care – assessment of percentage of care – change in percentage of care within percentage range – discretion to revoke previous care determination – determination revoked and new determination made to reflect actual care in a care period – threshold requirement for shared care percentage not met – decision affirmed

## **Veterans’ Affairs**

[Camilleri and Repatriation Commission](#) (Veterans’ entitlements) [2015] AATA 822 (26 October 2015); Senior Member AC Cotter

Disability pension – operational service – depressive disorder – alcohol abuse – whether defence caused – causal connection required – whether Depressive Disorder SoP upholds contention – “persistent pain” relevant factor – evidence to the contrary – medical reports suggest pain not interfering with work or leisure activities – Depressive Disorder SoP not satisfied – whether Alcohol Abuse SoP upholds contention – whether clinically significant psychiatric condition at relevant time – requirement not met – not service related and not defence-caused – decision under review affirmed

[Marchant and Repatriation Commission](#) (Veterans’ entitlements) [2015] AATA 837 (29 October 2015); Deputy President G Humphries

Entitlements – whether Applicant eligible for compensation under the Compensation (Japanese Internment) Act 2001 – whether veteran had been interned by Japanese military forces at any time during the designated war period – accuracy of service records – decision under review affirmed

[Saxton and Repatriation Commission](#) (Veterans’ entitlements) [2015] AATA 836 (29 October 2015); Senior Member N Isenberg

Disability pension — special rate — intermediate rate — accepted condition post traumatic stress disorder — whether veteran over 65 years of age is prevented from continuing to undertake the

remunerative work he was last undertaking — "alone" test — whether Applicant was working in the same role for a continuous period of 10 years before turning 65 —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>Commissioner of Taxation v Starbrake Holdings Pty Ltd as trustee for the Starbrake Holdings Trust and Others</b>	<a href="#">[2015] AATA 661</a>
<b>Uelese v Minister for Immigration and Border Protection</b>	<a href="#">[2015] AATA 740</a>

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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Gallacher v Secretary, Department of Social Services</b>	<a href="#">[2015] AATA 294</a>	<a href="#">[2015] FCA 1123</a>
<b>Daley v Secretary, Department of Social Services</b>	<a href="#">[2015] AATA 412</a>	<a href="#">[2015] FCA 1155</a>

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