



# AAT Bulletin

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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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Enquiries regarding this publication may be directed to [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

## End of year arrangements

Many of our offices will close from 5:00pm on Thursday, 24 December 2015 and will reopen at 8:30am on Monday, 4 January 2016.

Registry services will be available between 8:30am and 5:00pm on **Tuesday, 29 December, Wednesday, 30 December 2015** and **Thursday, 31 December 2015** at:

- Level 7, 55 Market Street, Sydney
- Level 16, 40 City Road, Southbank, Melbourne
- Level 5, 111 St Georges Terrace, Perth
- Level 11, 91 Grenfell Street, Adelaide
- Level 4, Harry Gibbs Building, Commonwealth Law Courts, 119 North Quay, Brisbane
- Level 8, 14 Moore Street, Canberra
- 39-41 Davey Street, Hobart

For more information visit our website, [www.aat.gov.au](http://www.aat.gov.au) or [contact us](#) on 1800 228 333.

# Contents

<b>Contents .....</b>	<b>2</b>
<b>AAT Recent Decisions .....</b>	<b>3</b>
Citizenship.....	3
Compensation .....	3
Personal Property Securities .....	4
Practice and Procedure .....	4
Social Security.....	4
Taxation .....	5
<b>Appeals .....</b>	<b>7</b>
Appeals lodged.....	7
Appeals finalised .....	7

# 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.

## Citizenship

[Karim and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 916 (27 November 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 – previous convictions – domestic violence – failure to disclose convictions – decision affirmed

## Compensation

[DNJN and Comcare](#) (Compensation) [2015] AATA 928 (2 December 2015); Deputy President JW Constance

Compensation for injuries – aggravation of chronic fatigue syndrome – whether aggravation contributed to, to a significant degree by the applicant's employment – whether the aggravation was suffered as a result of reasonable administrative action taken in a reasonable manner in respect of employment – decision set aside and substituted

[Meadows and Military Rehabilitation and Compensation Commission](#) (Compensation) [2015] AATA 913 (27 November 2015); Deputy President K Bean and Professor D Ben-Tovim, Member

Military rehabilitation and compensation – Liability for PTSD and depression – Whether arose from a serious breach of discipline – Consideration of Statements of Principles – Conditions not compensable – Whether applicant incapacitated for work as a result of compensable back condition – Whether applicant's failure to seek suitable work reasonable in all the circumstances – Applicant entitled to incapacity payments – Assessment of degree of permanent impairment suffered by applicant as a result of his compensable back condition.

[Read and Military Rehabilitation and Compensation Commission](#) (Compensation) [2015] AATA 930 (2 December 2015); Senior Member CR Walsh

Liability for claimed asthma condition and type II diabetes condition – whether the claimed conditions injuries or diseases – whether applicant's cigarette smoking contributed, in a "material degree", to the onset or aggravation of either or both of the claimed conditions – whether there is a connection between the applicant's commencement and continuation of cigarette smoking and his army service – decisions under review affirmed

[Scuderi and Comcare](#) (Compensation) [2015] AATA 921 (30 November 2015); Senior Member G Ettinger

Workers' compensation – 1990 and 1993 injury – liability accepted – Applicant applies for domestic and attendant care – querying reasonableness of the rehabilitation program – Applicant self-funded retraining as a School Support Officer and is working 20 hours a week – two decisions under review affirmed; one varied to permit one off laser treatment for the Applicant's legs.

[Weedon and Comcare](#) (Compensation) [2015] AATA 931(2 December 2015); Deputy President Dr P McDermott RFD

Whether entitled to compensation – hand and wrist conditions – clerical duties – whether significantly contributed to by employment – insufficient evidence to establish significant contribution – other factors present – decision under review affirmed

## **Personal Property Securities**

[Denbride Pty Ltd and Registrar of Personal Property Securities](#) [2015] AATA 938 (4 December 2015); Senior Member BJ McCabe

PERSONAL PROPERTY SECURITIES REGISTER – register amendment – franchise agreement – franchise agreement obligations secured through fixed and floating charges – options – financing change statement – decision affirmed

## **Practice and Procedure**

[Benjamin and Commissioner of Taxation](#) (Taxation) [2015] AATA 923 (30 November 2015); Senior Member E Fice

Procedure and evidence – applications – time for application – extension of time – objection decision concerned amounts received pursuant to a Deed – delay – unsatisfactory reason for delay – merits – contemporaneous evidence supports objection decision – prejudice to the respondent – relevant documents unable to be located – extension of time refused

## **Social Security**

[Beasley; Secretary, Department of Social Services and](#) (Social services second review) [2015] AATA 924 (1 December 2015); Senior Member BJ McCabe

Pensions, benefits and allowances – Disability Support Pension – 20 points or more under the Impairment Tables – Spinal injury – Whether fully treated and fully stabilised within relevant period – Relevance of pain management referral – Decision under review affirmed.

[Karagiannis and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 917 (27 November 2015); Miss EA Shanahan, Member

Claim for disability support pension – chronic fatigue syndrome and sleep apnoea with symptomatic overlap – impairment rating of 10 points attracted – other conditions not fully diagnosed, treated and stabilised – decision affirmed

[McLean and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 940 (5 November 2015); Deputy President K Bean

Disability Support Pension – Whether applicant had a severe impairment – Whether program of support requirements met – Applicant commenced program of support outside assessment period – Decision under review affirmed

[Nelson and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 933 (3 December 2015); Senior Member AC Cotter

Disability support pension – DSP – whether 20 points or more under the impairment tables during the relevant period – whether conditions are fully diagnosed, treated and stabilised – value of medical evidence – decision under review affirmed

[Scott and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 926 (2 December 2015); Dr M Couch, Member

Disability support pension – spine condition – whether applicant had 20 points under Impairment tables – whether single condition causing multiple impairments – whether rating can be assigned – whether program of support completed – decision under review affirmed

[Smith and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 929 (2 December 2015); Deputy President R Deutsch and N Gaudion, Member

Asset test – newstart allowance – disability support pension – whether applicant failed the asset test limit when receiving payments – whether applicant failed to declare assets – whether debts incurred by applicant – valuation of assets – whether debt could be written off – whether debt could be waived – whether any special circumstances – no reason debts should not be recovered in full – decision under review affirmed

[Terzic and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 935 (20 October 2015); Dr D Cremean, Senior Member

Disability support pension – Impairment Tables – permanent injury – decision affirmed

[Uranek and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 918 (26 October 2015); Dr P McDermott RFD, Senior Member

Benefits and allowances – youth allowance – overpayment – period of absence – not for medical treatment or acute family crisis – overpayment of youth allowance – whether applicant undertaking full-time study – question of fact – whether special circumstances – no special circumstances found – decisions under review affirmed

## **Taxation**

[Ward and Commissioner of Taxation](#) (Taxation) [2015] AATA 919 (30 November 2015); Deputy President G Humphries

Excess contributions tax – non-concessional contributions to superannuation – bring forward rule – excess contributions made – whether special circumstances – no special circumstances – decision affirmed

[Harding and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 920 (30 November 2015); Senior Member BJ McCabe

Widow's pension entitlement – whether stressors arose in veteran's operational service – material does not support applicant's hypothesis – decision under review affirmed

[Howard and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 922 (30 November 2015); Deputy President J W Constance

Pension – special rate of pension – whether veteran prevented by war-caused incapacity alone from continuing to undertake remunerative work – whether post-traumatic stress disorder, depressive disorder and alcohol use disorder are separate conditions

Pension – extreme disablement adjustment – whether veteran has an impairment rating of at least 70 points and a lifestyle rating of at least 6 points – decision set aside and new decision is substituted

[Hyland and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 927 (6 November 2015); Senior Member E Fice

Entitlements – Repatriation Commission – decision to refuse application for increase in disability pension – Veterans' Review Board – reviewable decisions – requirement to apply for review of decision by VRB within three months after service – application for review made one day after expiry of three month appeal period – no jurisdiction held by VRB or AAT to review decision

# 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

CASE NAME	AAT REFERENCE
<b>Saxton v Repatriation Commission</b>	<a href="#">[2015] AATA 836</a>
<b>Dennis v Comcare</b>	<a href="#">[2015] AATA 835</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Commissioner of Taxation v Devuba Pty Ltd</b>	<a href="#">[2015] AATA 255</a>	<a href="#">[2015] FCAFC 168</a>
<b>Farrell v Comcare</b>	<a href="#">[2015] AATA 268</a>	<a href="#">[2015] FCA 1337</a>
<b>Macoun v Commissioner of Taxation</b>	<a href="#">[2014] AATA 155</a>	<a href="#">[2015] HCA 44</a> <a href="#">[2014] FCAFC 162</a>
<b>Martin v Comcare</b>	<a href="#">[2014] AATA 553</a>	<a href="#">[2015] FCAFC 169</a> <a href="#">[2015] FCA 4</a>

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