



# 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).

## 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.

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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

[Hassan and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 961 (14 December 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 – prior offences – whether any mitigating factors apply – decision affirmed

[Onyeaka and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 960 (14 December 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 – prior offences – breach of protection order – good behaviour bond – decision to refuse citizenship set aside

[Patel and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 966 (15 December 2015); Professor R Deutsch, Deputy President

Whether applicant of good character – series of driving offences – no extenuating circumstances – insufficient time passed since last offence – applicant subject to good behaviour bond – lack of evidence to establish rehabilitation – applicant not of good character at the time of the Tribunal's decision – decision affirmed

## Compensation

[Chand and Telstra Corporation Limited](#) (Compensation) [2015] AATA 980 (17 December 2015); Deputy President Dr P McDermott RFD

Claim for upper limb conditions – “left wrist flexor carpal ulnaris tendonitis and soft tissue strain to right forearm” – previous acceptance of liability – whether present entitlement to compensation – medical evidence suggests claimed conditions not related to employment – condition constitutional not work-related – decision under review affirmed

[Coathup and Comcare](#) (Compensation) [2015] AATA 988 (18 December 2015); Miss EA Shanahan, Member

Multiple claims for thrombosis of superficial leg veins and separate episodes of thrombophlebitis – acute stress – depressive disorder – ganglion/cyst or tumour of left thumb – chronic pain syndrome aggravation – prior acceptance of most conditions by Department of Veterans' Affairs (DVA) – in receipt of DVA disability pension – current part-time employee of the Australian Federal Police – decisions under review affirmed

[Coleman and Military Rehabilitation and Compensation Commission](#) (Compensation) [2015] AATA 955 (11 December 2015); Deputy President Dr C Kendall

MILITARY COMPENSATION – injury to shoulders – member of Australian Army Reserves – peacetime service – whether injury attributable to defence service – lack of evidence in relation to occurrence and circumstances of injury – decision under review affirmed

[Cremona and Comcare](#) (Compensation) [2015] AATA 971 (16 December 2015); Senior Member BJ McCabe

Somatization disorder – whether physiotherapy is compensable medical treatment – compensable treatment must have therapeutic purpose – physiotherapy not obtained in relation to the injury

[Murphy and Military Rehabilitation and Compensation Commission](#) (Compensation) [2015] AATA 967 (15 December 2015); Senior Member BJ McCabe

VETERANS' AFFAIRS – service pension – condition must be connected with defence service – deep vein thrombosis – not satisfied applicant meets requirements of the relevant statement of principles – decision under review affirmed

## Corporations

[Bolton and Australian Securities and Investments Commission](#) [2015] AATA 977 (17 December 2015); Deputy President SA Forgie

Disqualification order – applications for order staying operation or implementation of the disqualification order and for order prohibiting publication of information tending to identify the applicant – applications refused

## Freedom of Information

[Dreyfus and Secretary Attorney-General's Department](#) (Freedom of information) [2015] AATA 962 (14 December 2015); The Hon Justice A Bennett AO, Deputy President

Incoming government brief prepared for party that formed government – whether the document contains deliberative matter for a deliberative process and is conditionally exempt – whether the document could reasonably be expected to have a substantial adverse effect on the operations of an agency – whether it is contrary to the public interest to allow access to conditionally exempt material 26 months after the 2013 Federal election – whether it is reasonably practicable to prepare an edited copy of the document

## National Disability Insurance Scheme

[Mulligan and National Disability Insurance Agency](#) [2015] AATA 974 (17 December 2015); Senior Member JF Toohey and Professor R McCallum AO, Member

Access — ischaemic heart disease – cardiomyopathy – Conn's syndrome – lumbar disc injury – sciatica – whether applicant satisfies disability requirements – whether applicant has a disability attributable to an impairment – chronic health conditions – whether applicant's impairments permanent or likely to be permanent – whether impairments result in substantially reduced functional capacity in one or more relevant activities – whether applicant's impairments affect his capacity for

social or economic participation – whether applicant requires support from the NDIS for his lifetime – decision under review affirmed

## Practice and Procedure

[Browne and Secretary, Department of Employment](#) [2015] AATA 978 (2 December 2015); Deputy President Dr C Kendall

Application for dismissal of application for review – whether Tribunal satisfied that application “has no reasonable prospect of success” – general principles – application for review of decision that applicant not eligible for advance under *Fair Entitlements Guarantee Act 2012* (Cth) has failed to make “effective claim” – application for review dismissed pursuant to *Administrative Appeals Tribunal Act 1975* (Cth), s 42B(1)(b)

## Social Security

[Almosawi and Secretary, Department of Social Services](#) [2015] AATA 968 (30 November 2015); Senior Member E Fice

Pensions, payments and allowances – aged pension – entitlement – requirement to inform Centrelink of income and assets – Centrelink requested information regarding private family trust – applicant did not provide requested information – aged pension suspended – decision under review affirmed

[Aljashaam and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 965 (14 December 2015); Senior Member PW Taylor SC

Pensions – disability support pension – whether applicant’s conditions permanent – whether applicant’s conditions fully diagnosed, treated and stabilised during the qualification period – whether applicant’s conditions rated 20 points or more under the Impairment Tables – decision affirmed

[Attard and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 990 (18 December 2015); Dr G Hughes, Member

Newstart allowance – liquidated assets waiting period – loan funds deposited in applicant’s bank account – applicant asserted that funds were surplus to his requirements

[Bakelmun and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 969 (16 December 2015); Deputy President SA Forgie

AGE PENSION – ten years qualifying Australian residence – regard cannot be had to period of residence in the United Kingdom as provisions of Australia United Kingdom agreement not applicable – decision affirmed

[Brackenreg and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 987 (18 December 2015); Senior Member BJ McCabe

Benefits and entitlements – overpayment – applicant not entitled to receive – debt raised by the Commonwealth – whether debt should be waived because of administrative error – whether debt should be waived because of special circumstances – discretion to waive not exercised – decision under review affirmed

[Carroll and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 982 (27 November 2015); Dr J Popple, Senior Member

Pensions – disability support pension – residence requirement – continuing inability to work – applicant must meet residency requirement when he first had continuing inability to work – applicant suffered severe impairments prior to becoming an Australian resident – decision affirmed

[Coelho and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 964 (14 December 2015); Ms R Perton, Member

Disability support pension – whether accepted medical conditions attract 20 points on the date of cancellation of DSP – reasonable treatment – other possible treatments later identified – decision affirmed

[Fortescue and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 970 (8 December 2015); Senior Member BJ McCabe

Wife pension payment – debt raised – whether debt recoverable from person who obtained the benefit – debts due to the Commonwealth – decision under review varied

[Krebs; Secretary, Department of Social Services and](#) (Social services second review) [2015] AATA 963 (14 December 2015); Senior Member G Ettinger

Compensation – Department appeal from the SSAT – lump sum payment received after age pension had been paid – preclusion period applied – charge raised – whether special circumstances – whether unfairness a special circumstance – no special circumstances – decision under review set aside

[Ryan and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 983 (17 December 2015); Senior Member BJ McCabe

Disability support pension – medical criteria – whether applicant's impairments can be awarded 20 points – applicant unable to satisfy medical criteria – decision under review affirmed

[Stephenson and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 975 (17 December 2015); Senior Member RW Dunne

Pensions, benefits and allowances – Pension Bonus Scheme – whether allowable gifting threshold was exceeded – whether non-accruing period should be applied – applicant found to be subject to a preclusion period for non-accruing membership – gifts made prior to date of registration – circumstances in which person disposes of assets – reduced pension bonus payment due to application of the assets test – decision under review affirmed.

## **Taxation**

[Docklands Science Park Pty Ltd and Innovation Australia](#) [2015] AATA 973 (16 December 2015); Senior Member E Fice

INNOVATION – registration of activities of applicant as core research and development activities – activities of nanoparticle production, geopolymer engineered products and development of

environmental engine – insufficient evidence to establish activities conducted were core research and development activities – decision under review affirmed

PRACTICE AND PROCEDURE – Administrative Appeals Tribunal – statutory requirement to conduct private hearing – private hearing requirement does not automatically prohibit publication of name of parties or witnesses

[PFGG and Commissioner of Taxation](#) (Taxation) [2015] AATA 972 (16 December 2015); The Hon Justice AN Siopis, Deputy President and Senior Member CR Walsh

INCOME TAX – small business entities – tax concessions – 50% capital gains tax “active assets” reduction – aggregated turnover – annual turnover – company “connected with” the applicant – fuel disbursements – “ordinary income” – meaning of “in the ordinary course of carrying on a business” – meaning of “sales of retail fuel” – objection decision affirmed

[Pilmora Pty Ltd as Trustee of the Townsing Family Trust and Commissioner of Taxation](#) (Taxation) [2015] AATA 976 (17 December 2015); The Hon Justice RF Edmonds, Deputy President

# 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>Wu v Commissioner of Taxation</b>	<a href="#">[2015] AATA 78</a>
<b>Comcare v Farrell</b>	<a href="#">[2015] AATA 268</a>

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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Comptroller-General of Customs v Vestas – Australian Wind Technology Pty Ltd</b>	<a href="#">[2015] AATA 348</a>	<a href="#">[2015] FCAFC 185</a>

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