



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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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.

Compensation

[Easton and Comcare](#) (Compensation) [2016] AATA 69 (11 February 2016); Deputy President K Bean

Commonwealth employees – Whether applicant's skin cancers caused by exposure to ionising radiation at Maralinga – No known association between melanoma and ionising radiation – Conditions not compensable – Decision under review affirmed

[Keane and Telstra Corporation Limited](#) (Compensation) [2016] AATA 76 (16 February 2016); Senior Member Dr D Cremean

Rehabilitation program – “aids or appliances” – vehicle hoist and quad bike – rejection of application – decision affirmed

[Saari and Comcare](#) (Compensation) [2016] AATA 77 (16 February 2016); Deputy President Dr C Kendall

Review by the Tribunal – Costs – Calderbank offer – Discretion under 67(8) of *Safety, Rehabilitation and Compensation Act 1988* – Amount of costs reduced due to failure to accept compromise offer not substantially different than final Tribunal decision

[Scotney and Australian Postal Corporation](#) (Compensation) [2016] AATA 72 (12 February 2016); Deputy President Dr C Kendall

Injury to right lower back with groin strain and labral tear to right hip in workplace – multiple medical and surgical procedures – severe pain continuing – claim for costs of hip replacement – reasonableness of costs associated with total hip replacement in woman of relatively young age – costs found to be reasonable in the circumstances – decision under review set aside

Customs

[Newbridge Civil Pty Ltd and Comptroller-General of Customs](#) [2016] AATA 81 (17 February 2016); Deputy President SA Forgie

Application for Tariff Concession Order – description of goods – amendment of description proposed – whether amendment did otherwise than narrow the description of the goods as set out in the application – whether use of goods may form part of description – decision affirmed

[Sulo MGB Australia Pty Ltd and Chief Executive Officer of Customs](#) [2016] AATA 78 (17 February 2016); Senior Member E Fice

Tariff classification of goods under *Customs Tariff Act 1995* – correct classification of wheels on wheelie bins manufactured by Sulo MGB Australia Pty Ltd – whether bins are properly classified as non-mechanically propelled vehicles – whether the wheels are suitable for use solely or principally with Sulo’s wheelie bins – Decision set aside and substituted

Social Security

[Akay and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 84 (18 February 2016); Dr I Alexander, Member

Disability support pension – whether Applicant qualifies for unlimited portability – whether Applicant has a severe impairment – whether Applicant has impairment rating of 20 points or more under single Impairment Table – decision affirmed

[Ayoub and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 71 (27 January 2016); Senior Member JF Toohey

Disability support pension – lower back condition – diffuse idiopathic skeletal hyperostosis (DISH) – lower limb condition – osteoarthritis of knees – diabetes – high blood pressure – high cholesterol – conditions fully diagnosed, treated and stabilised – whether conditions rated 20 or more points – program of support – decision under review affirmed

[Gee and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 87 (18 February 2016); Senior Member Dr D Cremean

Disability support pension – whether statutory requirements satisfied – Impairment Tables – no participation in program of active support – decision affirmed

[Norton and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 79 (17 February 2016); Ms EA Shanahan, Member

Disability support pension – Reiter’s Syndrome – Psoriatic arthritis – paucity of medical evidence and expert opinion – whether fully diagnosed, treated and stabilised – impairment rating – whether 20 points attracted – capacity for work – decision affirmed

[O'Brien and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 90 (19 February 2016); Mr S Webb, Member

Age pension – residence requirements – meaning of ‘resides in Australia’ – portability – two year bar on portability following resumption of residence – suspension – cancellation – no discretion – decision affirmed

[Rahem and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 83 (18 February 2016); Dr I Alexander, Member

Disability support pension – multiple conditions – whether condition is fully diagnosed, treated and stabilised – whether applicant’s impairments rated 20 points or more under the Impairment Tables – decision affirmed

Taxation

[Miley and Commissioner of Taxation](#) (Taxation) [2016] AATA 73 (15 February 2016); Deputy President SE Frost

Income tax – capital gains tax – disposal of a CGT asset – maximum net asset value test – whether CGT liability should be reduced because maximum net asset value test met immediately before sale – determining market value of assets – determining market value of percentage of shares in a sale of all shares – meaning of ‘market value’ – construction of s 152- 20 *Income Tax Assessment Act 1997* – whether selling price best evidence of market value at relevant date – discount for lack of control – maximum net asset value test met – decision set aside

Veterans' Affairs

[Devenish-Meares and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 75 (16 February 2016); Deputy President Dr P McDermott RFD

Disability pension – whether malignant neoplasm of prostate was war-caused – application of Statement of Principles for malignant neoplasm of prostate – cumulative period of at least 30 days – decision 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 finalised

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Linwood v Repatriation Commission	[2015] AATA 704	[2016] FCA 90

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