



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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# 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

[Krecu and Linfox Australia Pty Ltd](#) (Compensation) [2015] AATA 769 (1 October 2015); Deputy President K Bean

Liability accepted for left shoulder, right hip, and thoracic back injuries – Whether shoulder symptoms properly regarded as a disease or an aggravation of a pre-existing disease – Whether wilful and false representation provision applies – Whether applicant continues to require medical treatment in relation to compensable injuries – Whether applicant continues to be incapacitated for work as a result of compensable injuries – Description of accepted conditions amended – Decision under review varied.

[RLDZ and Comcare](#) (Compensation) [2015] AATA 735 (21 September 2015); Dr J Pople, Senior Member

Commonwealth employees – Applicant suffered psychological condition – whether condition an injury – whether condition the result of reasonable administrative action – applicant claims to have suffered injury during a meeting – applicant's performance discussed at meeting – meeting was an administrative action – whether meeting conducted in a reasonable manner – decision affirmed.

## Corporations

[Boyce and Australian Securities and Investments Commission](#) [2015] AATA 768 (30 September 2015); Senior Member AC Cotter

BUSINESS NAME REGISTRATION – objection to registration of business name – availability of business names that are “identical” or “nearly identical” – legislation provides precise and exhaustive test for determining whether names are identical or nearly identical – no further enquiries outside legislative framework necessary or warranted – decision under review affirmed

## Freedom of Information

[De Tarle and Australian Securities and Investments Commission](#) (Freedom of information) [2015] AATA 770 (2 October 2015); Senior Member N Isenberg

Access to documents – whether the respondent has taken all reasonable steps to find the documents falling within the scope of the request – whether documents cannot be found or do not exist – decision varied

## Migration and Refugee

[Jagroop and Minister for Immigration and Border Protection](#) (Migration) [2015] AATA 751 (25 September 2015); Deputy President SA Forgie

IMMIGRATION – whether discretion to cancel visa should be exercised for failure to pass the character test – decision affirmed

PRACTICE AND PROCEDURE – Tribunal’s task on remittal – Ministerial Direction No 55 revoked and replaced with No 65 between time of delegate’s decision and time of hearing on remittal – direction not a legislation instrument – no modification of the operation of the law – concerned with exercise of discretion in administering the law – rights or privileges not accrued – Direction 65 in force at time of review applicable

PRACTICE AND PROCEDURE – application of ss 500(6A) to (6L) of the *Migration Act 1958* on remittal – other than s 500(6L) apply on remittal

PRACTICE AND PROCEDURE – requirements of ss 500(6H) and (6J) of the *Migration Act 1958*

## Practice and Procedure

[Folker and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 765 (30 September 2015); Senior Member BJ McCabe

Extension of time – limited prospects of success – extension of time not granted.

## Social Security

[Barr; Secretary, Department of Social Services and](#) (Social services second review) [2015] AATA 763 (30 September 2015); Dr I Alexander, Member

Pensions – disability support pension – whether the respondent has a continuing inability to work – whether respondent had a severe impairment – decision set aside

[Brumley and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 767 (30 September 2015); Dr P McDermott RFD, Senior Member

Family tax benefit – FTB – adjusted taxable income – net rental property loss – overpayment of benefit – waiver – write off – special circumstances – decision under review affirmed

[Khan and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 773 (2 October 2015); Dr M Denovan, Member

Pensions, benefits and allowances – Applicant in receipt of Disability Support Pension – Applicant wishes to remain overseas for more than usual portability period – Whether portability can be extended – Whether applicant suffers “severe impairment” – Decision under review affirmed

[LXHB and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 750 (25 September 2015); Senior Member AF Cunningham

Disability support pension – failure to satisfy qualification requirements – decision under review affirmed

[Nikopoulos and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 762 (30 September 2015); Dr I Alexander, Member

Debt – whether debt should be written off or waived – whether there were special circumstances – decision set aside and remitted

[Shields and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 759 (28 September 2015); Deputy President FJ Alpins

Disability support pension – spinal condition – spinal canal stenosis – whether applicant’s impairment was of 20 points or more under the Impairment Tables during the relevant period – whether applicant’s condition permanent – whether applicant’s condition had been fully treated and fully stabilised – decision under review affirmed

[Ye and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 761 (30 September 2015); Dr I Alexander, Member

Pensions – 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

[Zohar and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 772 (23 September 2015); Senior Member CR Walsh

Whether applicant overpaid age pension during relevant debt period – whether overpayment of age pension a debt due to the Commonwealth – whether all or part of the debt should be waived – whether debt due solely to administrative error by Centrelink – whether “special circumstances” exist – whether debt should be written-off – decision under review affirmed

## **Taxation**

[Lipton and Commissioner of Taxation](#) (Taxation) [2015] AATA 754 (25 September 2015); Senior Member G Lazanas

Application for release from tax debt refused – whether applicants would suffer serious hardship if required to satisfy tax debts – whether applicants able to redraw loan facility – whether discretion to release debts in part or in full should be exercised – decisions under review affirmed

[Sunraysia Harvesting Contractors Pty Ltd as trustee of the Sunraysia Harvesting Contractors Trust and Commissioner of Taxation \(Taxation\) \[2015\] AATA 764](#) (30 September 2015); Deputy President PE Hack SC

Income tax – assessable income – amended assessments – creditable acquisitions – amounts paid not allowable deductions – whether taxpayers entered into a sham arrangement – onus on taxpayer to prove assessments excessive – whether subcontracting companies genuine and real – arrangements never intended to create legally enforceable obligation – companies not making supply for consideration or carrying on enterprise – companies players in elaborate charade – evidence of applicant unimpressive and unconvincing – failure to show assessments excessive – objection decisions affirmed.

[Taxpayer-1 & Taxpayer-2 and Commissioner of Taxation](#) (Taxation) [2015] AATA 737 (22 September 2015); Senior Member G Ettinger

Whether the Taxpayers were carrying on an enterprise – Commissioner carried out three audits – no business plan – input credits not substantiated – no enterprise – objection decisions under review affirmed

## **Veterans' Affairs**

[Coleman and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 757 (28 September 2015); Senior Member G Ettinger

Claim for widow's pension – operational service – kind of death – hypertension – salt intake – reasonable hypothesis – decision under review set aside – death of Veteran was war-caused

[Lonergan and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 747 (24 September 2015); The Hon. B Tamberlin QC, Deputy President

Ischaemic heart disease – whether applicant has been diagnosed with ischaemic heart disease – whether condition war caused – whether applicant is entitled to pension at the special rate – alone test – decisions 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

CASE NAME	AAT REFERENCE	COURT REFERENCE	APPEAL DETAILS
<b>NR Allsopp Holdings Pty Ltd as General Partner of Q Uniform Partnership &amp; Ors v Commissioner of Taxation</b>	<a href="#">[2015] AATA 654</a>	QUD895/2015	Section 44 appeal lodged; 28/9/2015
<b>D Marks Partnership by its General Partner Quintaste Pty Ltd &amp; Ors v Commissioner of Taxation</b>	<a href="#">[2015] AATA 651</a>	QUD896/2015	Section 44 appeal lodged; 28/9/2015
<b>Ana Ascic &amp; Anor v Secretary, Department Social Services</b>	<a href="#">[2015] AATA 637</a>	WAD562/2015	Section 44 appeal lodged; 29/9/2015
<b>Linfox Australia Pty Ltd v John Rogers</b>	<a href="#">[2015] AATA 673</a>	WAD569/2015	Section 44 appeal lodged; 2/10/2015

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE	APPEAL DETAILS
<b>James v Repatriation Commission</b>	<a href="#">[2013] AATA 700</a>	[2015] FCCA 2644	Appeal dismissed; Jarrett J; 25/9/2015
<b>Frugtniet v Tax Practitioners Board</b>	<a href="#">[2014] AATA 766</a>	[2015] FCA 1066	Appeal allowed; Jessup J; 1/10/2015
<b>Kelly v Australian Postal Corporation</b>	<a href="#">[2014] AATA 779</a>	[2015] FCA 1064	Appeal dismissed; Griffiths J; 2/10/2015

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