



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.

Civil Aviation

[Daw and Civil Aviation Safety Authority](#) [2015] AATA 1002 (22 December 2015); Senior Member BJ McCabe and Dr M Sullivan, Member

Class 1 and Class 2 medical certificates – Left frontal subcortical intracerebral haematoma – Civil aviation authorisation – Applicant does not meet medical standard – Safety risk analysis – “1% rule” – recent relevant medical literature must inform assessment of risk – absolute risk – relative risk – whether Applicant likely to endanger the safety of air navigation – decision under review affirmed

[Pantovic and Civil Aviation Safety Authority](#) [2015] AATA 992 (18 December 2015); Senior Member BJ McCabe

Chief Pilot approval – flight crew licences – whether applicant fit and proper person – applicant failed to remain at controls of aircraft while engine running – applicant flew over water at 10-15 feet – applicant failed to ensure passengers wore life jackets – applicant consumed alcohol while piloting aircraft – sequence of events captured on video – applicant reckless and endangered lives of passengers – applicant not a fit and proper person to hold flight crew licences – period of suspension required – decision to cancel private helicopter pilot's licence varied – suspended for six months – suspension suspended after one month provided applicant enters into enforceable undertakings – decision to cancel approval to act as Chief Pilot affirmed.

Compensation

[Andrews and Repatriation Commission](#) (Compensation) [2015] AATA 1008 (22 December 2015); Senior Member BJ McCabe

VETERANS AFFAIRS – benefits and entitlements – special rate pension – whether non-service related factors contributed to inability to work – applicant stopped work because of service-related conditions alone – decision under review set aside and substituted

[Flanders and Repatriation Commission](#) (Compensation) [2015] AATA 1023 (24 December 2015); Senior Member BJ McCabe

VETERANS' AFFAIRS – benefits and entitlements – whether cervical spondylosis is connected with the applicant's service – onset of condition – suffering is operative word – applicant experienced symptomatic cervical spondylosis in 2004 and 2005 – decision under review set aside – applicant's condition is service related

[Gates and Military Rehabilitation and Compensation Commission](#) (Compensation) [2015] AATA 1018 (23 December 2015); Senior Member AC Cotter

VETERANS' ENTITLEMENTS – claim for compensation for back and hip injuries – motor vehicle accident – lack of evidence of accident – lack of medical evidence following accident – insufficient connection between injury and accident – decision under review affirmed

[Willmott and Repatriation Commission](#) (Compensation) [2015] AATA 1016 (23 December 2015); Deputy President J W Constance

VETERANS' AFFAIRS – war-caused injury – operational service – post-traumatic stress disorder – aggravation of war-caused injury – clinical onset of aggravation – is there a hypothesis connecting aggravation of post-traumatic stress disorder with the circumstances of the operational service – relevant statement of principles – amended statement of principles

[Sullivan and Repatriation Commission](#) (Compensation) [2015] AATA 1015 (23 December 2015); Senior Member BJ McCabe

VETERANS AFFAIRS – benefits and entitlements – cervical spondylosis – whether Applicant's cervical spondylosis is service related – Applicant does not meet factor 6(h) – decision under review affirmed

Corporations

[Hanlon and Assistant Treasurer](#) [2015] AATA 1019 (23 December 2015); Senior Member E Fice

BUSINESS NAME REGISTRATION – availability of business name for registration – proposed business name of 'Pommiebasher' – unavailability of business name from being of a kind that is undesirable – undesirability due to offensiveness – 'Pommiebasher' offensive when devoid of sporting or historical context – 'Pommiebasher' likely to be offensive to public or section of public – exercise of Ministerial discretion to make business name available for registration – no basis to exercise discretion – decisions under review affirmed

Freedom of Information

[Dreyfus and Attorney-General \(Commonwealth of Australia\)](#) (Freedom of Information) [2015] AATA 995 (22 December 2015); The Hon Justice J Jagot, Deputy President

Freedom of Information request – Request for access to diary of the Attorney-General – Whether practical refusal reason established – Whether request would constitute substantial and unreasonable interference with the performance of the Attorney-General's functions – Decision under review set aside.

[Latimer and Australian Federal Police](#) (Freedom of Information) [2015] AATA 994 (21 December 2015); Mr S Webb, Member

Exemption from release – meaning of 'would, or could reasonably be expected to' – disclosure 'reasonably likely to' prejudice the effectiveness of lawful methods or procedures – grounds for conditional exemption – effect of disclosure on Commonwealth State relations – information communicated in confidence – effect of disclosure on the proper and efficient conduct of the operation of an agency' – personal information – public interest – decision varied

Health

[Chhaya and Secretary, Department of Health](#) [2015] AATA 1013 (23 December 2015); Senior Member BJ McCabe

PHARMACEUTICAL BENEFITS – supply – practice location – convenient and efficient pharmaceutical service – whether joined parties provide convenient and efficient service – decision under review affirmed

Privacy

[Telstra Corporation Limited and Privacy Commissioner](#) [2015] AATA 991 (18 December 2015); Deputy President SA Forgie

National Privacy Principles – personal information – access sought to mobile network data including metadata – when information is about an individual – when the identity of an individual is apparent or can reasonably be ascertained – determination set aside.

Professions and Trades

[Gylman and Tax Practitioners Board](#) [2015] AATA 1012 (23 December 2015); Senior Member PW Taylor SC

Tax Practitioners – tax practitioners board – registration as a tax agent – whether applicant is a fit and proper person – applicant trustee of a self-managed superannuation fund – improper release of superannuation benefits – applicant not a reliable witness – decision affirmed

Social Security

[Belal and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 1006 (22 December 2015); Dr I Alexander, Member

Disability Support Pension – portability period – permanent health condition – whether the applicant was suffering a serious illness – unexpected and acute onset of symptoms – unable to return to Australia – decision set aside and substituted

[Bulot and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 1010 (23 December 2015); Ms R Perton, Member

Pension Bonus – date of lodgement of claim – special circumstances for late lodgement

[Burling and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 1020 (23 December 2015); Senior Member AC Cotter

Disability Support Pension – debt raised – failure to disclose additional bank accounts by recipient – significant unexplained deposits in accounts – whether amounts properly classified as “ordinary income” – no reasonable explanation for transactions provided – debt properly raised – whether special circumstances warrant waiver – no special circumstances made out – decision under review affirmed

[Carmody and Secretary, Department of Social Services](#) (Social services second review) [2015]
AATA 1011 (23 December 2015); Dr T Nicoletti, Senior Member

Disability Support Pension – whether applicant was eligible to receive DSP during claim period – whether applicant has 20 points under the impairment tables – whether applicant has a continuing inability to work – decision affirmed

[Collins and Secretary, Department of Social Services](#) (Social services second review) [2015]
AATA 1022 (24 December 2015); Mr S Webb, Member

Family Tax Benefit – school kids bonus – overpayment debt – recovery – administrative error – meaning of ‘good faith’ and ‘severe financial hardship’ – decision under review varied

[Grasso and Secretary, Department of Social Services](#) (Social services second review) [2015]
AATA 1017 (23 December 2015); Senior Member AC Cotter

Family Tax Benefit – failure to lodge income tax returns by the required date – whether special circumstances “prevented” the applicant from lodging returns – incorrect advice regarding requirements – information regarding requirements otherwise available – prevention not made out – decision under review affirmed

[Ljubic and Secretary, Department of Social Services](#) (Social services second review) [2015]
AATA 1003 (22 December 2015); Senior Member E Fice

Disability Support Pension – impairment assessment – conditions of renal failure, systemic lupus erythematosus, depression and spinal issues – whether conditions fully diagnosed, fully treated and fully stabilised during qualifying period – conditions verified by medical reports – decision under review set aside and substituted

[Ljubovic and Secretary, Department of Social Services](#) (Social services second review) [2015]
AATA 1025 (24 December 2015); Senior Member E Fice

Disability Support Pension – qualification – requirement that applicant be an Australian resident at time of developing a continuing inability to work – post-traumatic stress disorder (PTSD) – domestic violence and marriage breakdown – PTSD arose after applicant acquired permanent residency – decision under review set aside and substituted

[Packett and Secretary, Department of Social Services](#) (Social services second review) [2015]
AATA 1009 (23 December 2015); Senior Member Dr T Nicoletti

Age Pension – ineligible homeowner – property held on trust – whether Applicant is an ineligible homeowner – ordinary income – whether payments received from a lodger constitute ordinary income – decision affirmed.

[Shaer and Secretary, Department of Social Services](#) (Social services second review) [2015]
AATA 1005 (22 December 2015); Mr C Ermert, Member

Disability Support Pension – whether condition is severe – 20 impairment points – whether there is a continuing ability to work – decision affirmed

[Slim and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 998 (21 December 2015); Deputy President Dr P McDermott RFD

Family Tax Benefit – percentage of care – evidence – decision under review set aside.

Taxation

[Hughes and Commissioner of Taxation](#) (Taxation) [2015] AATA 1007 (22 December 2015); Senior Member BJ McCabe

Whether Applicant was an Australian resident in the years of income – Pilot employed overseas – ‘resides’ bears ordinary English meaning – Ordinary concepts test – domicile test – transient living arrangements – decision under review affirmed

[The Trustees of the WT & A Norman Superannuation Fund and Commissioner of Taxation](#) (Taxation) [2015] AATA 914 (27 November 2015); Senior Member F D O’Loughlin

Dividend washing – whether s 177EA can apply to deny imputation benefits – whether the requisite more than incidental purpose of enabling the relevant taxpayer to obtain an imputation benefit existed

Dividend: whether imputation credits form part of a dividend.

S 177EA (5)(b) determinations – whether a s 177EA (5)(b) determination can be made in conjunction with an objection decision.

Transport

[Fullerton and Minister for Infrastructure and Regional Development](#) [2015] AATA 989 (18 December 2015); Mr S Webb, Member

Motor vehicle importation – road vehicle with no identification plate – gift – sentimental attachment – Registered Automotive Workshop scheme – discretion – no sufficient reason to exercise discretion – decision affirmed

Veterans' Affairs

[Dodd and Repatriation Commission](#) (Veterans’ entitlements) [2015] AATA 1004 (22 December 2015); Senior Member JF Toohey

Extreme disablement adjustment rate – claim for increase to special rate – whether applicant continued in remunerative employment after the age of 65 – decision under review set aside

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
Ward v Commissioner of Taxation	[2015] AATA 919	ACD141/2015	Section 44 appeal lodged; 22/12/2015
Benjamin v Commissioner of Taxation	[2015] AATA 923	VID928/2015	Section 44 appeal lodged; 16/12/2015

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE	APPEAL DETAILS
Breakwell v Commissioner of Taxation	[2015] AATA 628	[2015] FCA 1471	Appeal dismissed; White J; 22/10/2015
Mladenov v Secretary, Department of Social Services	[2015] AATA 99	[2015] FCA 1472	Appeal dismissed; North J; 22/12/2015
Mladenov v Secretary, Department of Social Services	[2015] AATA 99	[2015] FCA 1472	Purported appeal struck out as incompetent; North J; 22/12/2015
Newport v Australian Postal Corporation	[2015] AATA 261	[2015] FCAFC 194	Appeal dismissed; Allsop, Besanko and Flick JJ; 23/12/2015
Kocharyan v Commissioner of Taxation	[2014] AATA 32	[2015] FCAFC 196	Appeal dismissed; Gilmour, Murphy and Mortimer JJ; 23/12/2015

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