



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](mailto:aatweb@aat.gov.au).

# Contents

<b>AAT Recent Decisions .....</b>	<b>3</b>
Aviation .....	3
Compensation .....	3
Freedom of Information .....	3
Practice and Procedure .....	3
Social Security .....	4
Transport .....	5
Veterans' Affairs .....	5
<b>Appeals .....</b>	<b>6</b>
Appeals lodged .....	6
Appeals finalised .....	6

# 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.

## Aviation

[MacNeall and Civil Aviation Safety Authority](#) [2016] AATA 209 (4 April 2016); Senior Member CR Walsh

S 42B(1) dismissal application on basis that review application is futile or lacking in any further utility – applicant's conditional Class 2 Civil Aviation Medical Certificate, the subject of the application, expired on 30 December 2015 – consideration of when Civil Aviation Safety Authority medical certificates come into force and how long they can remain in force – application dismissed

## Compensation

[Maletic and Comcare](#) (Compensation) [2016] AATA 210 (05 April 2016); Deputy President B McCabe

Aggravated psychiatric condition – interaction with superior – whether reasonable administrative action or operational action – whether interaction concerned “conditions in” which the employee worked – decision under review affirmed

## Freedom of Information

[Luchanskiy and Secretary, Department of Immigration and Border Protection](#) (Freedom of information) [2016] AATA 184 (29 March 2016); Deputy President SE Frost

Freedom of Information – exemptions claimed – intelligence agency document – summary of an intelligence agency document – information communicated in confidence – whether documents exempt – decision under review varied

## Practice and Procedure

[Homeowner 1 and Commissioner of Taxation](#) (Taxation) [2016] AATA 162 (18 March 2016); Deputy President Professor R Deutsch

Practice and Procedure – private rulings – whether Tribunal has jurisdiction to review applications – applicants do not seek review of relevant legislation set out in the question for the private ruling – Tribunal does not have jurisdiction

[Pedreiro and Building Practitioners Board](#) [2016] AATA 201 (1 April 2016); Deputy President SA Forgie

Fees – whether Tribunal has power to review Registrar's decision refusing to certify that the proceeding had terminated in a manner favourable to the applicant – no power

[Driscoll and Commissioner of Taxation](#) (Taxation) [2016] AATA 206 (7 March 2016); Deputy President Prof R Deutsch

Extension of time to lodge application for review – extension of time refused

## **Social Security**

[André and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 205 (9 February 2016); Senior Member RW Dunne

Pensions, benefits and allowances – Family Tax Benefit – Top-up payments – Whether applicant eligible for top-up payment – Whether effective claim made for Family Tax Benefit for the 2012/2013 financial year – Whether "special circumstances" exist that prevented the applicant from making a claim for Family Tax Benefit – Decision under review affirmed

[El Hawli; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 197 (31 March 2016); Dr I Alexander, Member

Disability support pension – whether conditions fully diagnosed, treated and stabilised – impairment ratings – continuing inability to work – whether mental health condition 20 points under the Impairment Tables – decision set aside

[Fedigan and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 211 (5 April 2016); Mr C Ermert, Member

Family Tax Benefits – top up and supplement payments – late lodgement of partner tax return - whether special circumstances exist – decision affirmed

[Hills and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 161 (18 March 2016); Deputy President IR Molloy

Recovery of debt – Austudy overpayment – waiver – whether administrative error – whether special circumstances – where applicant failed to notify Centrelink of change in circumstances – decision affirmed

[HYCJ and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 171 (3 March 2016); Senior Member JF Toohey

Disability support pension – post traumatic stress disorder with depression and anxiety – whether fully diagnosed treated and stabilised – applicant did not appear at the hearing – decision under review affirmed

[Kojcic and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 200 (1 April 2016); Senior Member NA Manetta

Assessable assets for sickness allowance – application for financial hardship declaration – earlier commencement – s1131 – decision affirmed but directions set aside and substituted

[Linguey and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 219 (7 April 2016); Senior Member AC Cotter

Disability Support Pension – Impairment ratings – Does not attract 20 points under Impairment Tables – Continuing Ability to work – Insufficient participation in Program of Support – Decision under review affirmed

[Malian and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 208 (5 April 2016); Ms S Taglieri, Member

Age Pension – Portability rate payable when applicant left Australia – amendment to Social Security Act 1991 commencing 1 July 2014 applies – Decision under review affirmed

[Nabhani and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 204 (1 April 2016); Mr C Ermert, Member

Disability support pension – qualification period – whether physical, intellectual or psychiatric impairments – whether impairments attract 20 or more impairment points – decision affirmed

[Snodgrass and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 185 (30 March 2016); Deputy President Prof R Deutsch

Disability support pension – carer payment – cancellation – asset limit – loan as asset – decision affirmed

## **Transport**

[Kennard and Minister for Infrastructure and Regional Development](#) [2016] AATA 212 (6 April 2016); Deputy President SE Frost

Transport – motor vehicle standards – import of nonstandard vehicle – discretion to approve application to import nonstandard vehicle – emotional attachment to car – unique car – decision set aside and remitted

[Zegaj and Commissioner of Taxation](#) (Taxation) [2016] AATA 218 (06 April 2016); Senior Member E Fice

Income tax and related legislation – Capital gains tax – Assessments – Objections, reviews and appeals – Penalties, offences and prosecutions – Particular penalties – Tax evasion – Shortfall interest charges – Evidence – Onus of proof that taxation decision excessive or incorrect – Taxpayer to prove assessment excessive – Failure to discharge onus – Decision under review affirmed

## **Veterans' Affairs**

[CFJX and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 207 (4 April 2016); Deputy President G Melick

Special rate of pension under s24(1)(c) of the *Veterans' Entitlements Act 1986* (Cth) – whether Applicant alone prevented from engaging in remunerative working by war-caused injuries – decision 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

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CASE NAME

AAT REFERENCE

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**None lodged**

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## Appeals finalised

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CASE NAME

AAT REFERENCE

COURT REFERENCE

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**Crown Estates (Sales) Pty Ltd v  
Commissioner of Taxation**

[\[2015\] AATA 949](#)

[\[2016\] FCA 335](#)

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