



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).

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# Recent Developments

## Co-location of AAT services in Sydney

We are co-locating our offices over time, so that all services will eventually be provided from one office in each state or territory in which the Tribunal currently has offices.

In accordance with our relocation plan, the AAT's 580 George Street, Sydney office has closed, and our 55 Market Street, Sydney office will close at 5.00pm on 20 May 2016.

All AAT services in Sydney will be provided from our office at **level 6, 83 Clarence Street, Sydney**.

Please check the [Contact us](#) page on our website, [www.aat.gov.au](http://www.aat.gov.au), for up-to-date information and contact details.

Information about the co-location of our offices in other locations will be made available on our website and through AAT Alerts. We encourage you to [subscribe to AAT Alerts](#) if you have not done so already so that you can receive future updates.

# 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

[Joseph and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 293 (6 May 2016); Senior Member RW Dunne

Applicant approved for conferral of Australian citizenship – applicant overseas caring for person critically ill – cancellation of approval when applicant failed to make a pledge of commitment within 12 months after date of approval – decision under review affirmed

[Saeidi Shoeili and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 182 (29 March 2016); Senior Member RW Dunne

Application for Australian Citizenship – application refused on character grounds – criminal record – whether applicant has reformed and is now of good character – decision under review set aside and remitted

## Education and Research

[Malek Fahd Islamic School Limited and Minister for Education and Training](#) [2016] AATA 300 (28 April 2016); Deputy President JW Constance

Independent school – funding provided by Commonwealth – where Minister revoked approval of Applicant as an approved authority under the Australian Education Act 2013 – where Applicant sought stay of decision – whether Tribunal has jurisdiction to grant a stay – whether the Tribunal should use its discretion to grant a stay – stay granted

## Migration

[De Los Santos-Aguilar and Migration Agents Registration Authority](#) [2016] AATA 295 (9 May 2016); Senior Member AC Cotter

Regulation of migration agents – Fit and proper person to provide immigration assistance – whether breaches of code of conduct – whether penalty excessive – decision under review affirmed

[Frugtniet and Migration Agents Registration Authority](#) [2016] AATA 299 (11 May 2016); Deputy President SA Forgie

Review of respondent's decision to cancel applicant's registration as migration agent – whether applicant knew application for registration was false or misleading in a material particular – whether applicant is not a person of integrity or otherwise not a fit and proper person to provide immigration assistance – whether applicant failed to comply with the Migration Agents' Code of Conduct – decision affirmed

## Social Security

[Bisceglie and Secretary, Department of Social Services](#) (Social services second review) [2016]  
AATA 294 (6 May 2016); Senior Member CR Walsh

Family tax benefit – entitlement to “top up” payment for 2012/2013 financial year – applicant and her husband failed to lodge income tax return for 2012/2013 year with ATO by due date – no “special circumstances” which prevented this occurring – decision under review affirmed

[Carpenter and Secretary, Department of Social Services](#) (Social services second review) [2016]  
AATA 307 (13 May 2016); Mr C Ermert, Member

Age pension – details of income stream – non-disclosure of income from superannuation fund – age pension debt – whether debt due solely to an administrative error made by the Commonwealth – whether special circumstances – decision affirmed

[Dennis and Secretary, Department of Social Services](#) (Social services second review) [2016]  
AATA 296 (9 May 2016); Miss EA Shanahan, Member

Pensions, benefits, allowances – application for disability support pension – nominated conditions of back, neck, knee pain and depression – lack of objective evidence – all conditions are not fully diagnosed, treated and stabilised – no impairment rating attracted – decision affirmed

[Dunn; Secretary, Department of Social Services and](#) (Social services second review) [2016]  
AATA 302 (12 May 2016); Deputy President K Bean

Disability support pension – Continuing inability to work – Whether respondent had actively participated in a program of support – Decision under review set aside and substituted

[Irvine; Secretary, Department of Social Services and](#) (Social services second review) [2016]  
AATA 306 (13 May 2016); Deputy President Dr P McDermott RFD

Family tax benefit – late lodgement of taxation return – failure of respondent’s accountants to lodge income tax return – whether special circumstances – decision under review set aside and substituted

[Johnson; Secretary, Department of Social Services and](#) (Social services second review) [2016]  
AATA 304 (12 May 2016); Deputy President B McCabe

Family tax benefit – late lodgement of taxation return – failure of respondent’s accountants to lodge income tax return – whether special circumstances prevented applicant from lodging income tax return – decision under review is set aside and substituted

[Nosek and Secretary, Department of Social Services](#) (Social services second review) [2016]  
AATA 199 (1 April 2016); Senior Member RW Dunne

Austudy – qualification for Austudy payment – assets test – value of property – principles of valuation – different valuations – decision under review affirmed

[Quinn and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 308 (13 May 2016); Senior Member AC Cotter

Disability support pension – cancellation – whether 20 points or more under impairment tables – whether conditions fully treated and fully stabilised – where less than 20 points under relevant impairment tables – decision under review affirmed

[ZHYL and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 305 (12 May 2016); Mr C Ermert, Member

Disability Support Pension – partner receipt of employment termination payment – application of income maintenance period – severe financial hardship – whether expenditure is unavoidable or unreasonable – decision affirmed

## **Taxation**

[Paul J Castan & Son Pty Ltd ATF Castan Investments Unit Trust and Commissioner of Taxation](#) (Taxation) [2016] AATA 298 (11 May 2016); Senior Member E Fice

GST – private binding ruling – agency - taxable supply – supply of accommodation – provision of accommodation – commercial residential premises – decision affirmed

## **Veterans' Affairs**

[Stevens and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 297 (10 May 2016); Lt Col R Ormston (Rtd), Member

Eligibility for extreme disability adjustment rate – Whether the applicant meets the lifestyle rating criterion of at least 6 points – Personal relationships – Recreational and community activities – Domestic activities – 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
<b>Maletic v Comcare</b>	<a href="#">[2016] AATA 210</a>

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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Charan &amp; Charan v Secretary, Department of Social Services</b>	<a href="#">[2015] AATA 760</a>	<a href="#">[2016] FCA 486</a>
<b>Military Rehabilitation and Compensation Commission v May</b>	<a href="#">[2011] AATA 886</a>	<a href="#">[2016] HCA 19</a> <a href="#">[2015] FCAFC 93</a> <a href="#">[2014] FCA 406</a>

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