



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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# 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.

## Child Support

[PTKW and Child Support Registrar](#) (Child support second review) [2015] AATA 889 (20 November 2015); Deputy President PE Hack SC

Percentage of care – child “S” engages with both parents – “S” lives with both parents – “S” will be in each residence three to four times per day – nights in care calculation not possible – determination of equal care – evident pattern one of equality – decision under review set aside and substituted

## Citizenship

[Muhammad and Minister for Immigration and Border Protection](#) (Citizenship) [2015] AATA 861 (11 November 2015); Senior Member PW Taylor SC

Whether applicant of good character – false information in previous visa applications – false claims in previous protection visa application – previously in Australia as unlawful non-citizen – absence of persuasive evidence of subsequent good behaviour – Tribunal finds that past dishonesty was serious and sustained – decision under review affirmed

## Compensation

[Higgins and Linfox Australia Pty Ltd](#) (Compensation) [2015] AATA 843 (30 October 2015); Deputy President J W Constance

Claim for shoulder injury – Tribunal found that applicant did not suffer a discrete injury nor an aggravation of a pre-existing condition – pain suffered whilst performing work activity found not to be an aggravation – decision under review affirmed

[Meakin and Military Rehabilitation and Compensation Commission](#) (Compensation) [2015] AATA 880 (16 November 2015); Senior Member CR Walsh

Liability for “amblyopia blind left eye” condition having regard to “physical/physiological/organic factors” only and not “psychiatric/psychological factors” – applicant suffered a fall from a submarine bunk at sea whilst employed by the Royal Australian Navy – “disease” versus “injury” – no clinical medical evidence of damage to left optic nerve – decision under review affirmed

[Yanda and Military Rehabilitation and Compensation Commission](#) (Compensation) [2015] AATA 873 (13 November 2015); Senior Member JF Toohey

Asthma – obstructive airways disease – whether respondent liable to compensate applicant – whether applicant's conditions caused by his employment – exposure to cigarette smoke – decision under review affirmed

## Practice and Procedure

[Paraponiaris and Secretary, Department of Employment](#) [2015] AATA 895 (20 November 2015); Deputy President FJ Alpins

Application for dismissal of application for review – whether Tribunal satisfied that application “has no reasonable prospect of success” – general principles – application for review of decision that applicant not eligible for advance under *Fair Entitlements Guarantee Act 2012* (Cth) as failed to make “effective claim” – application for review dismissed – *Administrative Appeals Tribunal Act 1975* (Cth), s 42B(1)(b)

[Rzepecki and John Holland Group Pty Ltd](#) (Compensation) [2015] AATA 876 (13 November 2015); Senior Member JF Toohey

Jurisdiction – notice under s 58 of the *Safety Rehabilitation and Compensation Act 1988* requiring the applicant to provide information – information not provided – refusal to deal with applicant’s claim – whether Tribunal has jurisdiction to review refusal to deal with claim – no jurisdiction

## Social Security

[Alex and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 888 (20 November 2015); Deputy President PE Hack SC

Disability support pension – upper back condition – whether applicant’s impairment fully diagnosed, treated and stabilised – applicant’s condition referred for further investigation – not fully treated and fully stabilised – decision under review affirmed

[Birch and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 881 (17 November 2015); Senior Member R W Dunne

Pensions, benefits and allowances – claim for disability support pension rejected – physical, intellectual or psychiatric impairment – whether impairment rating of 20 points or more existed under the Impairment Tables – whether there was a “continuing inability to work” – reports of medical practitioners considered – Job Capacity Assessment conducted – decision under review affirmed

[Cecil and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 877 (13 November 2015); Senior Member A Cotter

PENSION BONUS SCHEME – Rate of annual Age Pension – Value of person’s assets – Treatment of investment loans – Calculation of entitlement to Pension Bonus

[Pirotta and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 874 (13 November 2015); Senior Member JF Toohey

Disability support pension – overpayment – whether special circumstances – whether recovery fee should be imposed – whether applicant had reasonable excuse – decision under review set aside and remitted

[Wilson and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 882 (17 November 2015); Mr S. Webb, Member

Disability Support Pension – impairments – rating of impairments under the Impairment Tables – multiple conditions causing a common impairment – 20 point threshold not met – decision affirmed

## **Taxation**

[Priestley and Commissioner of Taxation](#) (Taxation) [2015] AATA 893 (20 November 2015); Deputy President PE Hack SC

Assessable income – capital gains tax – whether a capital loss incurred – applicant claimed capital losses offset capital gain – net capital loss made from “personal use asset” disregarded – whether original “loans” on capital account extinguished as “unrecoverable” – Tribunal not satisfied of existence of claimed debt – Tribunal not satisfied applicant incurred claimed capital losses – no grounds for remission of administrative penalty – decisions under review affirmed

## **Veterans' Affairs**

[Elliott and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 894 (20 November 2015); Senior Member E Fice

Pensions – rates – special rate – qualification – veterans over 65 – requirement to work for a continuous period of at least 10 years – change in employer – Applicant engaged by labour hire agency and contracted out to previous employer – one week gap in employment due to relocation – decision under review set aside and substituted

# 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>TRHL v Minister for Immigration and Border Protection &amp; AAT</b>	<a href="#">[2015] AATA 803</a>
<b>Delis &amp; Delis Enterprises Pty Ltd v Tax Practitioners Board</b>	<a href="#">[2015] AATA 820</a>

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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Military Rehabilitation and Compensation Commission v May</b>	<a href="#">[2011] AATA 886</a>	<a href="#">[2015] HCATrans 302</a> <a href="#">[2015] FCAFC 93</a> <a href="#">[2014] FCA 406</a>
<b>Rosgoe Pty Ltd v Commissioner of Taxation</b>	<a href="#">[2015] AATA 130</a>	<a href="#">[2015] FCA 1231</a>

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