



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.

Citizenship

[Khaustova and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 101 (25 February 2016); Deputy President JW Constance

Citizenship by conferral – good character – whether the applicant satisfies the legislative requirement to be shown to be of good character – previous offences – domestic violence – mitigating factors – whether applicant accepted responsibility and shown remorse for actions – decision set aside and remitted

[KRWV and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 110 (26 February 2016); Senior Member JF Toohey

Citizenship – whether applicant had a permanent or enduring mental or physical incapacity at the time of his application – whether incapacity meant the applicant was not capable of demonstrating a basic knowledge of the English language – decision under review affirmed

Corporations

[Callychurn and Australian Securities and Investments Commission](#) [2016] AATA 114 (29 February 2016); Professor R Deutsch, Deputy President

Consumer credit – banning order – whether contravention of credit act – whether fit and proper person to engage in credit activities – whether likely to contravene credit act in future – decision set aside and substituted

Compensation

[Raman and Comcare](#) (Compensation) [2016] AATA 122 (2 March 2016); Ms R Pertou, Member

Whether shoulder condition arose out of or in the course of employment – whether condition aggravated by employment – decision affirmed

Migration

[1415344](#) (Migration) [2016] AATA 3231 (4 February 2016); R Skaros, Member

Employer Nomination (Permanent) (Class EN) visa – Subclass 186 (Employer Nomination Scheme) – Temporary Residence Transition stream – cl 186.223(1)(a) – Error in nomination application – Number of qualifications in Australia – Significant contribution to the Australian Community – Registered nurse with specialist skills – Unique or exceptional circumstances warrant referral to Minister for s 351 consideration – Decision under review affirmed

[1420927](#) (Migration) [2016] AATA 3233 (4 February 2016); M Kennedy, Member

Distinguished Talent (Residence) (Class BX) visa – Subclass 858 – cl 858.212(2)(a) – Internationally recognised record of exceptional and outstanding achievement in the arts – Samba musician, dancer and pandeiro maker – Elite musician of Beja Flor Samba School in Brazil – Decision under review remitted

[1419028](#) (Migration) [2016] AATA 3198 (9 February 2016); G Bartley, Member

Child (Migrant) (Class AH) Visa – Subclass 101 – cl 101.211 – cl 101.221 – Visa applicant not wholly or substantially dependent on the review applicant – Failure to declare applicant as a dependant on previous application – Power of Attorney prior to migration to Australia – Review applicant's evidence inconsistent – Decision under review affirmed

[1414693](#) (Refugee) [2016] AATA 3235 (1 February 2016); L Symons, Member

Protection Visa – Egypt – Political opinion – Muslim Brotherhood member – Political activity in Australia – Credibility issues – Applicant may now be of adverse interest to authorities – Decision under review remitted

[1400369](#) (Refugee) [2016] AATA 3244 (4 February 2016); J Jolliffe, Member

Protection Visa – Sri Lanka – Race – Tamil – Imputed political opinion – LTTE supporter – Political opinion – Akhila Ilankai Tamil United Front supporter – Social group – Failed asylum seeker – Decision under review affirmed

[1405982](#) (Refugee) [2016] AATA 3243 (4 February 2016); S Webb, Member

Protection visa – Pakistan – Religion – Shia – Imputed political opinion – Assisted NGOs – Father a "Malik" – Relocation unreasonable – Decision under review remitted

Practice and Procedure

[Mills and Secretary, Department of Employment](#) [2016] AATA 121 (29 January 2016); Dr C Kendall, Deputy President

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)* has failed to make "effective claim" – application for review dismissed pursuant to *Administrative Appeals Tribunal Act 1975 (Cth)*, s 42B(1)(b)

[Guo and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 125 (24 February 2016); The Hon Justice D Kerr, President, and Professor R Deutsch, Deputy President

Minister's decision to refuse the Applicant Class 815 (PRC (Permanent)) Entry Permit visa on character grounds – Confidential evidence – Intelligence holdings against the Applicant – Evidence of informers – *Migration Act 1958 (Cth)* s 501

PRACTICE AND PROCEDURE – Administrative Appeals Tribunal – Evidence relying upon undisclosed 'registered informants and reliable sources' – Common law public interest immunity – Attorney-General's public interest certificate – Relevance of s 130 of the *Evidence Act 1995 (Cth)*

and *Evidence Act 1995* (NSW) – Power of the Tribunal under s 35 – Operation of s 36D(6) – Legislative history of public interest immunity as relevant to the AAT – Principles governing adduction of evidence in the Tribunal – *Administrative Appeals Tribunal Act 1975* (Cth) ss 33, 35, 36, 36A, 36B, 36C, 36D(6), 37(3), 39(1) – *Evidence Act 1995* (Cth) s 130

Social Security

[Berthimawos and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 116 (29 February 2016); Dr I Alexander, Member

Disability support pension – Complex Post Traumatic Stress Disorder – Conversion Disorder – whether conditions fully diagnosed, treated and stabilised – whether conditions rated 20 or more points – impairment ratings – continuing inability to work – decision under review affirmed

[Camm and Secretary Department of Social Services](#) (Social services second review) [2016] AATA 111 (26 February 2016); Deputy President FJ Alpins

Claim for disability support pension – compensation payment received for motor vehicle accident – preclusion period during which pension not payable – discretion to treat whole or part of compensation payment as not having been made – whether “special circumstances” – whether appropriate to exercise discretion – decision under review affirmed

[Ehlers and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 112 (26 February 2016); Dr C Kendall, Deputy President, Brigadier AG Warner, Member, and Mr W Evans, Member

Disability support pension – whether applicant's impairments were fully diagnosed, fully treated and fully stabilised – whether applicant's impairments attract 20 points under the Impairment Tables – whether applicant participated in a program of support for at least 18 months in the 3 years prior to his claim – continuing inability to work – decision under review affirmed

[Hamman and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 115 (29 February 2016); Dr I Alexander, Member

Disability support pension – whether conditions fully diagnosed, treated and stabilised – impairment ratings – continuing inability to work – decision affirmed

[Lee and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 124 (2 March 2016); Dr I Alexander, Member

Disability support pension – multiple conditions – whether condition is fully diagnosed, treated and stabilised – whether applicant's impairments rated 20 points or more under the Impairment Tables – decision affirmed

[Monteith and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 118 (2 March 2016); Dr D Cremean, Senior Member

Family tax benefit – Child care benefit – claims to be lodged on time – failure to do so – whether Applicant prevented from lodging on time by ‘special circumstances’ – special circumstances found – decision set aside

[QJPK and Secretary, Department of Social Services](#) (Social service second review) [2016] AATA 106 (26 February 2016); Senior Member JF Toohey

Disability support pension – bilateral Achilles tendonitis – plantar fasciitis – psychological condition – applicant granted DSP in August 2013 – whether applicant qualified when made earlier claim in February 2011 – whether conditions were fully diagnosed treated and stabilised during earlier claim period – decision under review affirmed

[Ralston; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 113 26 February 2016; Dr C Kendall, Deputy President, Brigadier AG Warner, Member, and Mr W Evans, Member

Pension Bonus Scheme (PBS) – Qualification for Aged Pension accepted – Pension Bonus refused on basis that Centrelink had no record of the respondent lodging the required registration form for PBS – Respondent seeks claim of Pension Bonus from date of alleged submission of registration forms – Sufficient evidence that required form was submitted – Decision affirmed and remitted to the Secretary for retrospective payment of Pension Bonus

[Ristovska and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 119 (2 March 2016); Miss EA Shanahan, Member

Pensions, benefits and allowances – claim for disability support pension – conditions not all fully diagnosed, treated and stabilised – impairment rating less than 20 points – decision affirmed

Taxation

[Zhang and Commissioner of Taxation](#) (Taxation) [2016] AATA 117 (2 March 2016); Deputy President SE Frost

Income tax – amended assessments for five income years – whether Commissioners amendments excessive – whether assessments amended within statutory time limit – whether evasion – amended assessments not out of time – objection decisions set aside and remitted – administrative penalty – penalty affirmed – no remission

Veterans' Affairs

[Higham and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 107 (26 February 2016); Miss EA Shanahan, Member

Extreme disablement allowance – pension at 100 per cent of the general rate – several accepted conditions that have resolved, have been negated by investigation or do not result in incapacity – lumbar vertebral disc prolapse post service was work related and the subject of workers' compensation payments – disc prolapse persists despite three spinal operations – applicant has not worked for 25 years – disablement primarily not war-caused

[Humble and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 123 (2 March 2016); Senior Member E Fice

Entitlements – war widow's pension – war caused condition – existence of reasonable hypothesis – sufficient ground for making determination – alcohol consumption – alcoholic cardiomyopathy – decision 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

CASE NAME

AAT REFERENCE

None lodged

Appeals finalised

CASE NAME

AAT REFERENCE

COURT REFERENCE

**Seymour & Seymour v Commissioner of
Taxation**

[\[2014\] AATA 788](#)

[\[2016\] FCAFC 18](#)

[\[2015\] FCA 320](#)

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