



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.

## Citizenship

[Bhatia and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 192 (31 March 2016); Deputy President SE Frost

Whether Applicant of good character – traffic offence – seriousness of offence – weight given to character references – Applicant's acknowledgement of seriousness of offence – Tribunal satisfied of good character – decision set aside and remitted

## Compensation

[Ricaud and Linfox Australia Pty Ltd](#) (Compensation) [2016] AATA 202 (1 April 2016); Ms EA Shanahan, Member

Injury occurring at work and in the course of normal work activities – crush injury to the right upper arm – ulnar nerve neuropraxia – persistent paresis – secondary psychological injury – post-traumatic stress disorder – s 14 liability – effect of s 6(3) negating liability if the action was voluntarily and unreasonably submitted and involved abnormal risk of injury – Applicant conceded there was an abnormal risk of injury – not voluntary nor unreasonable in the circumstances – decision set aside

[Walker and Military Rehabilitation and Compensation Commission](#) (Compensation) [2016] AATA 179 (24 March 2016); Senior Member B McCabe

Whether involvement in previous case prejudiced decision maker – whether refusal to issue summons is indicative of bias – whether fair-minded lay observer might apprehend bias – no logical connection between involvement in previous case and current proceedings – mere disagreement with interlocutory rulings is not enough to establish apprehended bias – application to recuse is declined

[Wardle and Comcare](#) (Compensation) [2016] AATA 181 (24 March 2016); Senior Member JF Toohey and Dr W Isles, Member

Whether Respondent presently liable to compensate Applicant – thrombophlebitis – whether employment contributed to a significant degree to Achilles tendonitis – liability accepted – whether Respondent presently liable – whether Respondent liable for hip condition – decision under review concerning continuing effects of thrombophlebitis set aside – decision concerning Achilles tendonitis set aside – decision concerning right hip pain affirmed

## Employment Entitlements

[Carmody and Secretary, Department of Employment](#) [2016] AATA 191 (31 March 2016); Deputy President FJ Alpines

*Fair Entitlements Guarantee Act 2012* (Cth) – amount of advance – redundancy pay entitlement – whether includes amount of accrued personal leave payable on termination of employment under enterprise agreement – meaning of “redundancy pay” – principles of interpretation applicable to industrial agreements – decision affirmed

## Migration

[Haque and Migration Agents Registration authority](#) (Migration) [2016] AATA 186 (30 March 2016); Senior Member E Fice

Fit and proper person to provide immigration assistance – Relevant factors – Disclosure of criminal history – Convicted of the offence of Intentionally Cause Injury – Failure to disclose convictions – Psychological issues – Understanding of the English language – Decision affirmed

## Practice and Procedure

[Chen and Migration Agents Registration Authority](#) (Migration) [2016] AATA 188 (30 March 2016); Senior Member JF Toohey

Registration as migration agent – mandatory requirements for registration – application by respondent to dismiss on ground of no reasonable prospect of success – whether application has no reasonable prospect of success – English language proficiency exam – whether substantial compliance sufficient – mandatory requirements – Tribunal satisfied application has no reasonable prospect of success – application dismissed

[McNamara; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 189 (30 March 2016); Senior Member CR Walsh

Stay application – eligibility for family tax benefit supplements – reconciliation conditions – whether failure by Applicant’s accountant to lodge her and her partner’s tax returns in time constitute “special circumstances” – prospects of success or merits of application – prejudice – financial hardship – whether application will be rendered nugatory – public interest – decision under review stayed until review application decided

## Social Security

[Ashard and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 193 (31 March 2016); Deputy President Dr C Kendall

Request for order staying substantive applications in relation to extended portability period and eligibility for disability support pension – relevant factors – applicant has arguable case – evidence of financial hardship not sufficient to weigh in favour of granting a stay – respondent unlikely to recover monies paid to Applicant if stay order granted and substantive applications ultimately fail – stay order not appropriate for purpose of securing effectiveness of hearing and determination of substantive applications – Tribunal not of the opinion that desirable to make stay order – Applicant’s request for stay order refused

[Boyle and Secretary, Department of Social Services](#) (Social service second review) [2016] AATA 177 (24 March 2016); Mr S Webb, Member

Request for extension of time in which to lodge an application – general rule in respect of prescribed time limit – consideration of circumstances – short delay – explanation – health conditions – prospect of success – no prejudice – reasonable in all the circumstances to grant extension of time

[Dann and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 196 (31 March 2016); Senior Member AC Cotter

Family Tax Benefit – Late lodgement of Claim - Whether special circumstances – Duty to inform of changes to legislation – Whether wrong information given by the Department – decision affirmed

[Drewett and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 203 (1 April 2016); Brigadier AG Warner, Member

Disability support pension – whether Secretary can review disability support pension entitlement – whether Applicant's impairments were fully diagnosed, fully treated and fully stabilised – whether Applicant's impairments attract 20 points under the Impairment Tables – continuing inability to work – decision under review affirmed

[Foley and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 74 (1 February 2016); Deputy President JW Constance

Disability support pension – mobility allowance – extension of time application – whether Applicant should be granted an extension of time for a second review – whether Applicant has reasonable prospects of success – application refused

[Gaul and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 190 (31 March 2016); Dr I Alexander, Member

Disability support pension – multiple conditions – whether medical conditions were fully diagnosed, treated and stabilised – impairment rating of less than 20 points – decision affirmed

[Kallios and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 175 (24 March 2016); Senior Member NA Manetta

Receipt by Applicant of lump sum damages including amount for future loss of earning capacity – age pension preclusion period imposed and debt raised – Applicant claiming solicitors had not followed instructions – Applicant claiming refund of debt as of right or in exercise of Secretary's discretion- s 1184K(1) – decision affirmed

[Jackson and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 198 (31 March 2016); Brigadier AG Warner, Member

Application for extension of time to lodge application for review of decision of Social Security Appeals Tribunal (SSAT) dated 7 May 2015 – Applicant took no action until 15 January 2016 to make the Respondent aware that she contested the SSAT decision – Applicant's explanation for delay not satisfactory – lack of merit of Applicant's application for review – alternative avenue of relief – Tribunal not satisfied that reasonable in all the circumstances to grant extension of time – application for extension of time refused

[Lokanc and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 195 (22 March 2016); Senior Member E Fice

Continuing inability to work – severe impairment – impairment rating – Applicant allocated 20 impairment points under two impairment tables – program of support – no active participation in program of support – decision under review affirmed

[Martin and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 176 (24 March 2016); Senior Member B McCabe

Disability support pension – medical criteria – allocation of impairment points – Applicant does not reach 20 impairment points – no continuing inability to work – decision under review affirmed

[Ray and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 187 (30 March 2016); Ms R Perton, Member

Disability support pension – whether grounds to extend portability period – decision affirmed

[Thomson and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 194 (31 March 2016); Deputy President Dr C Kendall

Disability Support Pension – meaning of "the Relevant Period" – whether there is a physical, intellectual or psychiatric impairment – whether impairment is of 20 points or more under the Impairment Tables – whether Applicant has a continuing inability to work – decision under review affirmed

## **Veterans' Affairs**

[Saltmarsh and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 178 (24 March 2016); Deputy President SA Forgie

Applicant's claim for pension and medical treatment for incapacity – whether Applicant's condition war-caused – decision of Veterans' Review Board 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

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CASE NAME	AAT REFERENCE
<b>Callychurn &amp; Unique Mortgage Services Pty Ltd v Australian Securities and Investments Commission</b>	<a href="#">[2016] AATA 114</a>

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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Kumar v Secretary, Department of Social Services</b>	<a href="#">[2014] AATA 442</a>	<a href="#">[2016] FCCA 640</a>
<b>Telstra Corporation Limited v Hunter</b>	<a href="#">[2015] AATA 218</a>	<a href="#">[2016] FCA 318</a>

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