



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.

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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.

Aviation

[Barnes and Civil Aviation Safety Authority](#) [2016] AATA 256 (21 April 2016); Senior Member E Fice

Pilots – Civil Aviation Safety Authority – Class 2 medical certificate – Risk to the safety of air navigation – Type II diabetes mellitus – Right of review

Citizenship

[Ghamraoui and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 254 (21 April 2016); Professor R McCallum AO, Member

Eligibility – whether applicant of good character – possession of tainted property offence – traffic offences – applicant currently subject to voluntary good behaviour bond – applicant found not to have satisfied good character requirements – decision affirmed

Compensation

[Davidge and Comcare](#) (Compensation) [2016] AATA 225 (8 April 2016); Senior Member JF Toohey

Varicose veins – applicant worked as meat inspector – long hours standing – whether employment contributed to a significant degree – expert opinions – decision under review set aside

[Murray and Swire Pacific Ship Management \(Australia\) Pty Ltd](#) (Compensation) [2016] AATA 251 (19 April 2016); Deputy President B McCabe

Application of an extension of time – where confusion exists between applicant and respondent over the status of a reconsideration decision – whether applicant's request for reconsideration was valid – where respondent failed to comply with a valid reconsideration request – extension of time granted

[Smith and Comcare](#) (Compensation) [2016] AATA 229 (8 April 2016); Senior Member JF Toohey

Adjustment disorder – whether massage medical treatment – whether reasonable treatment for adjustment disorder – whether yoga medical treatment – whether reasonable treatment for adjustment disorder – whether applicant refused or failed to undertake a rehabilitation program without a reasonable excuse – decisions under review affirmed

Defence

[Aleksic and Secretary, Department of Defence](#) [2016] AATA 239 (15 April 2016); The Hon. Justice Stevenson

Compensation – reasonable compensation for loss, injury or damage – residential properties in vicinity of defence practice area – use of land for the purposes of defence operation and practice – claim for economic loss – claim for loss of amenity and enjoyment – claim for stress, anxiety and depression – claim for travel costs – claim for business loss – claim for legal costs – defence practice area declared prior to acquisition of property and/or experience of impact – question whether applicant suffered actual loss or damage – whether loss or damage sustained by reason of use of land for the purposes of a defence operation or practice authorised pursuant to the regulation – no claims satisfied – decision under review affirmed

Industrial Law

[Kita and Secretary, Department of Employment](#) [2016] AATA 214 (6 April 2016); Deputy President SE Frost

Fair Entitlements Guarantee – redundancy payment – entitlement to payment prior to 1 January 2010 – whether conditions of employment provided entitlement – whether applicant covered by award – principal purpose of employment – decision under review set aside

[Seymour and Secretary, Department of Employment](#) [2016] AATA 255 (21 April 2016); Ms E A Shanahan, Member

Provision of advances to workers whose employer has become insolvent or bankrupt – the entitlements guarantee scheme – application defective as copy of passport not certified – certified document allegedly sent within requisite timeframe – not received by the respondent – resent certified copy of passport received twelve days after statutory timeframe – no discretion to extend time or waive requirements – no provision of special circumstance clauses – decision affirmed

Practice and Procedure

[Bates and Secretary, Department of Employment](#) [2016] AATA 250 (19 April 2016); Deputy President SA Forgie

Jurisdiction – application for review of quantum of advance made under Fair Entitlements Guarantee Act 2012 – death of applicant – principles of devolution do not apply – no chose in action created by statutory right in an administrative tribunal.

Jurisdiction – whether person whose interests are affected by decision permitted to be joined as a party under FEG Act – whether provision in s 40(2) that s 40(1) of FEG Act has effect despite s 27(1) of the AAT Act should be read as excluding personal representative of deceased applicant (or person in like position) from being joined as a party – s 40(2) should not be given that restrictive interpretation

[Kweifio-Okai and Inspector-General of Intelligence and Security](#) [2016] AATA 248 (14 April 2016); Deputy President SA Forgie

Jurisdiction – applicant seeking review of decision of Inspector-General of Intelligence and Security declining to investigate alleged activities of intelligence agencies in relation to applicant's employment – no jurisdiction to review decisions made by the Inspector-General of Intelligence and Security

Jurisdiction – applicant seeking order to require Inspector-General of Intelligence and Security to investigate allegations that intelligence agencies influencing those determining his employment opportunities – no jurisdiction to direct Inspector-General of Intelligence and Security

Jurisdiction – no evidence that ASIO has made adverse or qualified security assessments regarding applicant - no jurisdiction

[LZ15 and Australian Securities and Investments Commission](#) [2016] AATA 247 (1 March 2016); Senior Member RW Dunne

Applicant for stay of decision – relevant considerations – prospects of success – public interest – stay granted

Social Security

[Atmar and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 232 (12 April 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

[Giacomin and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 227 (8 April 2016); Senior Member JF Toohey

Age pension – carer payment – allowable assets – whether father's assets exceeded allowable limit for age pension – family trust – attribution of trust income – attributable stakeholders – controlled private trust – whether family trust a special disability trust – whether father's assets affected son's carer payment – decisions under review affirmed

[Hill and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 242 (18 April 2016); Senior Member AC Cotter

Disability Support Pension – whether 20 points or more under impairment tables during the relevant period – whether fully diagnosed treated and stabilised – whether severe impairment – continuing inability to work – where applicant has not completed a program of support – decision under review affirmed

[Jones and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 180 (24 March 2016); Deputy President JW Constance

Disability support pension – refusal of disability support payment application – whether person's impairment is of 20 points under Impairment Tables – relevant assessment period – whether conditions fully diagnosed, fully treated and fully stabilised – whether Applicant has continuing inability to work – decision affirmed

[Keast and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 246 (19 April 2016); Senior Member RW 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 – reports of medical practitioner and psychologist considered – Job Capacity Assessment report considered – decision under review affirmed

[Lual and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 252 (20 April 2016); Dr I Alexander, Member

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

[Sambevski and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 259 (22 April 2016); Mr C Ermert, Member

Family Tax Benefits – top-up payment – supplement payment – late lodgement of partner's tax return – no special circumstances – decision affirmed

[Seyfang; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 243 (18 March 2016); Deputy President K Bean

Disability support pension – Whether respondent's back condition fully treated and stabilised as at assessment period – Whether impairment attracted 20 points under Impairment Tables – Whether Table 1 or Table 4 applicable – 20 point criteria not met – Decision under review set aside and substituted

[Totten and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 240 (15 April 2016); Senior Member PW Taylor SC

Pensions – carer payment – concession by Secretary – date of effect provisions – statutory interpretation – Tribunal's power to otherwise order – Tribunal's power to otherwise order should be exercised – decision under review set aside and substituted

Veterans' Affairs

[Horsington and Repatriation Commission](#) (Veterans' Entitlements) [2016] AATA 223 (8 April 2016); Senior Member JC Kelly

Rate of pension – whether Applicant eligible for special rate – whether Applicant eligible for intermediate rate – alone test – Applicant entitled to payment at intermediate rate – decision set aside and substituted

[Moffett and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 249 (19 April 2016); Deputy President IR Molloy

Whether conditions defence-caused – whether smoking habit arose out of or was attributable to defence service – prior history of smoking cigarettes – decision of the Repatriation Commission as varied by the Veterans' Review Board 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

CASE NAME	AAT REFERENCE
Jamal v Secretary, Department of Social Services	[2016] AATA 43

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Agapis v A Deputy President of the Administrative Appeals Tribunal at Perth & Ors	[2013] AATA 187	[2016] HCASL 66 [2015] HCATrans 246 [2014] FCA 400 [2014] FCA 1045 [2013] FCA 1221
Jagroop v Minister for Immigration and Border Protection & Administrative Appeals Tribunal	[2015] AATA 751	[2016] FCAFC 48
Melvin v Secretary, Department of Social Services	[2015] AATA 248	[2016] FCA 375
Commissioner of Police, New South Wales v Guo & Minister for Immigration and Border Protection & Administrative Appeals Tribunal	[2016] AATA 125	[2016] FCAFC 62

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