



Administrative  
Appeals Tribunal

# AAT Bulletin

**Issue No. 19/2016**

**9 May 2016**

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

[Demiri and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 279 (2 May 2016); Dr G Hughes Member

Permanent or enduring mental incapacity – whether cognitive difficulties attributable to lack of schooling – ability to hold down certain types or employment – no evidence of ongoing medical treatment – decision under review affirmed

[Khan and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 284 (4 May 2016); Deputy President G Humphries

Citizenship by conferral – residence requirement – consideration of discretion in section 22(9) – whether Applicant had a close and continuing association with Australia during periods of absence – decision under review affirmed

## Compensation

[Dimoff and Miclyn Express Offshore \(Australia\) Pty Ltd](#) (Compensation) [2016] AATA 269 (29 April 2016); Dr C Kendall, Deputy President

Whether workplace injury to right knee is an “injury” or a “disease” for the purposes of the Seafarers Rehabilitation and Compensation Act 1992 – extent of incapacity post workplace injury – decision under review set aside

[McKenzie and K & S Freighters Pty Limited](#) (Compensation) [2016] AATA 271 (29 April 2016); Deputy President Dr C Kendall

Applicant severely injured her colleague while driving a forklift at work – Applicant suffered stress related injury as a result of injury – whether Applicant denied compensation because her conduct resulted from her own serious and wilful misconduct pursuant to section 14(3) of the Safety, Rehabilitation and Compensation Act 1988 – Applicant found not to have engaged in serious and wilful misconduct – Applicant entitled to compensation for her injury – decision under review set aside

[Reid and Comcare](#) (Compensation) [2016] AATA 276 (29 April 2016); Deputy President B McCabe

Workplace injury – whether major depression arose out of, or in the course of, the Applicant's employment – whether workplace stressors contributed to injury – substantially more than material – decision under review is set aside and in substitution the Respondent is liable for the major depression condition

[Sommerville and Comcare](#) (Compensation) [2016] AATA 289 (5 May 2016); Deputy President K Bean

Liability for physiotherapy and hydrotherapy treatment obtained in relation to accepted back injury – Whether reasonable treatment for Applicant to obtain – Decision under review varied

## Customs

[DFS Australia Pty Limited and Comptroller General of Customs](#) [2016] AATA 277 (29 April 2016); Deputy President SE Frost

Import duty – claims for drawback of import duty on goods exported from Australia – whether duty drawback available to Applicant – whether Applicant ‘legal owner’ of goods at time of exportation – meaning of legal owner – decision affirmed

## Migration and Refugee

### Migration

[1515859](#) (Migration) [2016] AATA 3734 (1 April 2016); D Lucas, Member

Cancellation – Temporary Work (Skilled) visa – Subclass 457 – Condition 8107 – More than 90 days since the applicant ceased employment – Breach of sponsorship obligations – Applicant continued unpaid work for employer for a period – Applicant departed Australia with no re-entry permit – Decision under review affirmed

[1504246](#) (Migration) [2016] AATA 3710 (7 April 2016); K Raif, Senior Member

Partner (Temporary) (Class UK) visa – Subclass 820 – cl 820.211 – cl 820.221 – r 2.03A – Relationship existed for 12 months prior to the application – Commenced cohabitation after marriage due to religious beliefs – Joint household well established after marriage – Commitment socially acknowledged very early in the relationship – Marriage delayed to meet family after studies completed – Decision under review remitted

[1513689](#) (Migration) [2016] AATA 3730 (8 April 2016); R Homan, Member

Visitor (Class FA) visa – Iraq – Subclass 600 – cl 600.211 – Genuine temporary entrant – Applicant lives in Baghdad – Catholic – Present economic and security situation – Previous and further proposed visits to USA – Property and savings in USA – Secure employment in Iraq – Mother in Iraq – Strong incentives to return – Decision under review remitted

[1508766](#) (Migration) [2016] AATA 3715 (11 April 2016); B Henry, Member

Business Skills (Provisional) visa – Subclass 188 Business Innovation and Investment (Class EB) – Investor stream – cl 188.243 – Three years’ experience of direct involvement in managing one or more qualifying businesses or eligible investments – Whether the applicant demonstrated a high level of management skill – Ownership and directorship of the business limited to less than three years in the required period – Decision under review affirmed

[1510441](#) (Migration) [2016] AATA 3719 (12 April 2016); A Younes, Senior Member

Cancellation – Student (Temporary) (Class TU) visa – Subclass 572 Vocational Education and Training Sector – Genuine student – Applicant disputed college’s attendance records – Turbulent

history as a student – Poor school management – Evidence of satisfactory course progress – Decision under review set aside

## **Refugee**

[1500075](#) (Refugee) [2016] AATA 3667 (31 March 2016); G Cullen, Member

Protection visa – China – Religion – Local Church – Claims mistreated by police – Agreed no longer an issue – No fear of persecution – Decision under review affirmed

[1500481](#) (Refugee) [2016] AATA 3669 (4 April 2016); B Henry, Member

Protection visa – Bangladesh – s 91WA(1) – Bogus identity document – Birth certificates – No reasonable explanation for provision of bogus document – Decision under review affirmed

[1316262](#) (Refugee) [2016] AATA 3691 (8 April 2016); M Moustafine, Member

Protection visa – Afghanistan – Race – Tajik – Religion – Shia – Particular social group – Minor males – Dispossession from family lands – Family links for internal relocation – Decision under review affirmed

[1512282](#) (Refugee) [2016] AATA 3676 (11 April 2016); R Shanahan, Member

Protection visa – Lebanon – Federal Circuit Court remittal – Particular social group – Divorced women – Children of divorced marriages – Custody disputes – Financial hardship — Rejection by family – Lack of registration of divorce – Credibility issues – Decision under review affirmed

[1419000](#) (Refugee) [2016] AATA 3686 (12 April 2016); A Paxton, Member

Protection visa – China – Religion – Local Church – Imprisonment of family and church members – Fear of harm from authorities – Credibility issues – Decision under review affirmed

## **Practice and Procedure**

[Australian Taxation Office and Comcare & Anor](#) [2016] AATA 280 (2 May 2016); Deputy President G Humphries

Application for declaration that other party has reasonable excuse not to attend medical appointment – Tribunal's jurisdiction to direct attendance – Tribunal's discretion to determine procedure – application for declaration refused

[Jandakot Airport Chamber of Commerce Inc and Minister for Infrastructure and Regional Development](#) [2016] AATA 270 (29 April 2016); The Honourable Justice ML Barker, Deputy President

Summons to produce documents – application to have summons set aside – whether summonsed documents relevant to matters in issue – summons set aside

[Lumona and Secretary, Department of Social Services](#) [2016] AATA 287 (5 May 2016); Mr I Thompson, Member

Cancellation of parenting payment – extension of time – application for extension of time – whether reasonable in all the circumstances to extend time – application refused

[PPZF and Child Support Registrar](#) [2016] AATA 261 (9 March 2016); Ms R Perton, Member

Extension of time for lodgement of application for review – relevant considerations – application refused

[O’Sullivan and P & O Maritime Services Pty Ltd](#) [2016] AATA 283 (3 May 2016); Senior Member CR Walsh

Dismissal of application for failure to comply with a direction of the Tribunal within a reasonable time – Applicant appealed decision to dismiss application to Federal Court of Australia – reasons for decision requested by the Applicant

[QQNH and National Disability Insurance Agency](#) [2016] AATA 220 (23 February 2016); Deputy President K Bean

Jurisdiction – Whether internal review conducted – Consideration of when statement of participant supports was in fact approved by CEO – Internal review of reviewable decision by “reviewer” not completed at time of application for review – Tribunal does not have jurisdiction – Application dismissed

## **Refugee**

[XTVC and Minister for Immigration and Border Protection](#) (Refugee) [2016] AATA 278 (2 May 2016); Ms A Goodier, Member

Protection visa – refusal to grant – applicant a citizen of Cuba – Applicant convicted of sex offence in 2011 and sentenced to 4 years imprisonment – Applicant does not pass character test – discretion to refuse visa – primary consideration of protection of Australian community outweighs other relevant considerations including international non-refoulement obligations – risk of future harm to Australian community by Applicant unacceptable – preferable decision is that visa be refused – decision under review affirmed

## **Social Security**

[Ireland and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 281 (3 May 2016); Brigadier AG Warner, 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 – continuing inability to work – decision under review affirmed

[MQVR and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 268 (29 April 2016); Brigadier AG Warner, 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 has severe impairment – continuing inability to work – decision under review set aside

[Pignat and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 273 (29 April 2016); Deputy President B McCabe

Disability support pension – whether Applicant’s impairments were fully diagnosed, fully treated and fully stabilised at the relevant time – whether permanent impairments can be allocated 20 points or more under the impairment tables – decision under review affirmed

[Bleeker; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 290 (5 May 2016); Dr P McDermott RFD, Deputy President

Family Tax Benefit – late lodgement of taxation return – failure of Respondent’s accountants to lodge income tax return – whether special circumstances – decision of Social Security Appeals Tribunal set aside

[Treter; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 292 (5 May 2016); Professor R McCallum AO, Member

Disability support pension – DSP cancellation set aside at tier 1 review – multiple impairments, below left knee amputation, skin irritation and depression – whether impairments were fully diagnosed, treated and stabilised at the time of DSP cancellation – whether the Respondent has an impairment rating of 20 points or more under the impairment tables – statutory interpretation of section 96 – decision under review set aside

[Hicks; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 291 (1 April 2016); Senior Member NA Manetta

Disability support pension – whether impairments arising from condition eligible to be considered – whether condition fully diagnosed and fully treated and fully stabilised – no history of Applicant having regular consultations with medical specialists – condition not fully diagnosed and fully treated nor was condition fully stabilised – condition ineligible to be considered – decision set aside

[Tillman and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 274 (29 April 2016); Senior Member Dr T Nicoletti

Family Tax Benefit – School Kids Bonus – whether child in Applicant’s care for relevant period – overpayment of FTB and debt incurred – relevance of evidence that FTB used to child’s benefit – no evidence of special circumstances to waive the debt – decisions affirmed

[Van Der Kruys and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 282 (3 May 2016); Mr C Ermert, Member

Disability Support Pension – review of continuing qualification to receive DSP – cancellation of DSP payments – relevant date – instrument in force at the relevant date – whether conditions fully diagnosed, treated and stabilised – whether cancellation decision correct – decision affirmed

[Winch and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 286 (4 May 2016); Senior Member CR Walsh

Age pension – assets test – financial hardship rules – whether \$50,000 gift (being a deprived asset) can be disregarded in determining rate of age pension – severe financial hardship – unrealisable assets – decision under review affirmed

## **Veterans' Affairs**

[Smith and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 258 (22 April 2016); Senior Member JF Toohey

Multiple sclerosis – cigarette smoking – whether related to service – decision under review affirmed

[Tirris and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 272 (29 April 2016); Deputy President B McCabe and Dr M Sullivan, Member

Whether depressive disorder is defence-caused – whether incidents occurring during service contributed to major depression – whether chronic pain contributed to chronic depression – decision under review set aside and remitted to the Respondent

[YZJT and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 288 (5 May 2016); Senior Member AC Cotter

Disability pension – whether post-traumatic stress disorder related to service – whether depressive disorder related to service – reasonable satisfaction of Tribunal – where Tribunal not satisfied post-traumatic stress disorder was defence-caused – where Tribunal satisfied depressive disorder was defence-caused – decision under review is 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

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**None lodged**

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## Appeals finalised

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CASE NAME

AAT REFERENCE

COURT REFERENCE

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**None finalised**

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