



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

[Vizman and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 328 (20 May 2016); Deputy President Dr C Kendall

Whether citizenship should be conferred – applicant aged 4 was born in Australia and has permanent residency – Applicant now residing with mother in Israel but spends considerable amount of time with father both in and outside of Australia – Applicant satisfied citizenship requirements but Department denied Applicant citizenship on basis that he was not living with father who was an Australian citizen – whether, as per Australian Citizenship Instructions, it can be found that Applicant “living with a responsible adult who is an Australian citizen” and/or whether citizenship “in best interest of the child” – decision set aside and remitted with a direction that citizenship be approved

## Compensation

[Applicant and Australian Offshore Solutions Pty Ltd](#) (Compensation) [2016] AATA 331 (20 May 2016); Senior Member CR Walsh and Brigadier AG Warner, Member

Claim for seafarers compensation – whether claimed injury (stress and digestive disruption) arose out of applicant's employment as an Integrated Rating with the respondent – whether sign-off incident on board the vessel caused the claimed injury – no causal connection between alleged injury and the applicant's employment with the respondent – decision under review affirmed

[Sastre and Military Rehabilitation and Compensation Commission](#) (Compensation) [2016] AATA 335 (24 May 2016); Deputy President B McCabe

Liability claim for psychiatric condition – whether applicant suffered from adjustment disorder – whether related to employment in the military – Tribunal cannot be satisfied alleged events contributed to the applicant's condition – decision under review affirmed

## Corporations

[Chong and Australian Securities and Investments Commission](#) [2016] AATA 338 (26 May 2016); Senior Member CR Walsh

Decision by Australian Securities and Investments Commission to make banning order prohibiting applicant from providing “financial services” for five years – whether power to impose a banning order enlivened – whether banning order should be imposed in the applicant's case – period of banning order – decision under review affirmed

## Freedom of Information

[Taggart and Civil Aviation Safety Authority](#) (Freedom of information) [2016] AATA 327 (20 May 2016); Deputy President SA Forgie

Exemption – legal professional privilege – in-house agency legal services division – whether appropriately independent of remainder of agency – whether communications between legal services division and another division within the agency – made for the dominant purpose of giving or obtaining legal advice – whether waiver of privilege – decision varied

[Jones and Australian Federal Police](#) (Freedom of information) [2016] AATA 329 (20 May 2016); Senior Member Dr J Popple

Request for access to documents relating to Australian Federal Police Professional Standards Investigation – whether documents conditionally exempt from disclosure – whether disclosure would have substantial adverse effect on the proper and efficient conduct of the operations of the agency – whether disclosure would be contrary to the public interest – decision under review affirmed

[Leigh and Australian Federal Police](#) (Freedom of information) [2016] AATA 330 (20 May 2016); Senior Member Dr J Popple

Request for access to names of former staff of the Minister for Foreign Affairs contained in Australian Federal Police report – whether staff names are conditionally exempt from disclosure – whether disclosure would involve unreasonable disclosure of personal information – whether disclosure would be contrary to the public interest – decision varied

Whether applicant can rely on Parliamentary proceedings and media references to Parliamentary proceedings – whether reliance on material would invite the drawing of inferences or conclusions contrary to s 16(3)(c) of the *Parliamentary Privileges Act 1987* – applicant cannot rely on material

## Migration and Refugee

[Marzella and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 339 (27 May 2016); Deputy President B McCabe

Bridging visa – s 501 discretion to refuse visa application – where applicant convicted of fraud – character test – whether primary considerations weigh against applicant – discretion should be exercised against the applicant – decision under review affirmed

### Migration

[1504541](#) (Migration) [2016] AATA 3757 (23 April 2016); S Georgiadis, Member

Visitor (Class FA) visa – Japan – Subclass 600 (Visitor) – cl 600.215(b) – Exceptional circumstances for stay of more than 12 consecutive months – Wife is seasonal worker – To be in an English-speaking environment – Studying snails and their impact on viticulture – Not formal study or research – No hardship on wife's employer – Only chance to tour Australia with wife – Decision under review affirmed

[1506913](#) (Migration) [2016] AATA 3796 (26 April 2016); S Webb, Member

Cancellation – TU Student (Temporary) – 573 Higher Education Sector – s 116(1)(a) – Fact or circumstances for the grant of the visa no longer exists – Separated from primary visa applicant – Vague and unformulated plans for future – Decision under review affirmed

## **Refugee**

[1514881](#) (Refugee) [2016] AATA 3790 (20 April 2016); S Carlton, Member

Protection visa – Albania – Bogus documents – s 91WA – Fraudulently altered passport – Applied for various Australian onshore visas – Purchased Australian driver's licence in another identity – False and misleading statements – No reasonable explanation for bogus documents or delay in protection application – Decision under review affirmed

[1314887](#) (Refugee) [2016] AATA 3766 (23 April 2016); G Haddad, Senior Member

Protection visa – Sri Lanka – Political – Supporter of UNP – Social group – Failed asylum seeker – Participated in political activities – Experienced economic problems – Father and brother suffered mistreatment – Not a high profile person and of no interest to authorities – Short term detention on return not persecution – Decision under review affirmed

[1500142](#) (Refugee) [2016] AATA 3781 (27 April 2016); A Younes, Senior Member

Protection visa – Mexico – Particular social group – Wealthy middle class family – Sur place events – Violent crime – Drug cartels – Family subjected to incidents of harm – Authorities implicated in human rights abuses – Internal relocation unreasonable – Decision under review remitted

[1418066](#) (Refugee) [2016] AATA 3805 (28 April 2016); R Shanahan, Member

Protection visa – Jordan – Forced marriage – Forced conversion to Islam – Assaulted and detained for a lengthy period – Credibility issues – Decision under review affirmed

[1603711](#) (Refugee) [2016] AATA 3793 (28 April 2016); D Corrigan, Member

Protection visa – Iraq – Political opinion – Former member of Iraqi military – Religion – Christian – Argument with powerful senior militia member – Continued threats to kill applicant – Fears harm from military for deserting his post – Abandoned Islam and converted to Christianity – Fear of reprisals for becoming an apostate – Decision under review remitted

[1413076](#) (Refugee) [2016] AATA 3769 (2 May 2016); M Moustafine, Member

Protection visa – Nepal – Social group – Unmarried women – Claims will be forced into an arranged marriage – Credibility – Inconsistent and contradictory evidence – Decision under review affirmed

[1501217](#) (Refugee) [2016] AATA 3782 (2 May 2016); S Roushan, Senior Member

Protection visa – Lebanon – Political opinion – Low level supporter of Future Movement – Participated in anti-Syria and Hezbollah demonstrations – Detained and mistreated for some hours – Conceded to have been in the wrong place at the wrong time – Remained for 3 years after the incident – Delay in departing Lebanon and applying for protection – General security situation not faced by applicant – Decision under review affirmed

[1505996](#) (Refugee) [2016] AATA 3806 (4 May 2016); G Cranwell, Member

Protection visa – Ukraine – Religion – Christian – Political opinion – Opposed to war and general civil unrest in Ukraine – Economic difficulties – War not within applicant’s home region – Applicant returned to Ukraine – Request for withdrawal of application not accepted – Decision under review affirmed

## Practice and Procedure

[Brockhurst and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 326 (20 May 2016); Deputy President Dr C Kendall and Brigadier AG Warner, Member

Application for dismissal of substantive application – whether Tribunal satisfied that substantive application has no reasonable prospect of success – whether Tribunal lacks jurisdiction to review merits of original decision – substantive application dismissed pursuant to sections 42B and 42A(4) of the *Administrative Appeals Tribunal Act 1975 (Cth)*

## Social Security

[Centkowska and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 342 (27 May 2016); Senior Member AC Cotter

Debt recovery – parenting payment – whether overpayment – waiver – write off – whether sole administrative error – whether special circumstances – where lengthy burden on family – decision under review varied

[Dawson and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 332 (23 May 2016); Mr S Webb, Member

Disability support pension – impairments – assessment of functional impact of impairments – construction of Impairment Tables and ancillary rules – mental health function impairment assessment rules under Table 5 – meaning of ‘with evidence from a clinical psychologist’ – requirement for 20 or more points not met – decision under review affirmed

[Isele and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 340 (27 May 2016); Deputy President B McCabe

Age pension entitlement – extent to which issue estoppel applies – no application made under s 42B – previous decision by consent – whether applicant entitled to age pension – decision under review affirmed

[Megens and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 336 (27 April 2016); Miss EA Shanahan, Member

Claim for disability support pension – meningioma at skull base involving middle cranial fossa and compressing optic nerve, bone and veins – loss of vision left eye – loss hearing and balance left ear – tumour not resectable – treatment aimed at debulking – impairment rating increased to 20 points – program of support not completed – decision that not qualified for DSP affirmed

[Mongan and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 344 (27 May 2016); Deputy President B McCabe

Disability support pension – whether applicant has 20 impairment points under one table – whether applicant has continuing inability to work – applicant has 25 points under multiple tables – applicant has continuing inability to work – decision under review set aside

[Seymour and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 343 (27 May 2016); Senior Member AC Cotter

Family tax benefit – rent assistance – arrears payment – whether rent assistance could be back dated – powers of the Tribunal – where no special circumstances – decision under review affirmed

## **Veterans' Affairs**

[Polglaze and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 324 (20 May 2016); Brigadier AG Warner, Member

s 42B(1) dismissal application on the basis that application is frivolous or vexatious – alternative position that application has no reasonable prospect of success – whether criteria for Extreme Disablement Adjustment are satisfied – section 42B application successful – substantive application dismissed

[Clark and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 333 (23 May 2016); Mr C Ermert, Member

Extreme Disablement Adjustment – impairment rating 70 points – whether lifestyle rating six points – decision 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

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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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<b>Delis v Tax Practitioners' Board</b>	<a href="#">[2015] AATA 820</a>	<a href="#">[2016] FCA 570</a>
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<b>Commissioner of Taxation v AP Energy Investments Pty Ltd</b>	<a href="#">[2013] AATA 626</a>	<a href="#">[2016] FCA 577</a>
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# Statements of Principles

This section of the *Bulletin* provides information on recent developments in relation to Statements of Principles made by the Repatriation Medical Authority for the purposes of the [Veterans' Entitlements Act 1986](#) and the [Military Rehabilitation and Compensation Act 2004](#).

## New Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made the following new Statements of Principles. They commenced with effect from 23 May 2016.

**Benign neoplasm of the eye and adnexa (Reasonable Hypothesis) – No. 41 of 2016**

<https://www.legislation.gov.au/Details/F2016L00565>

**Benign neoplasm of the eye and adnexa (Balance of Probabilities) – No. 42 of 2016**

<https://www.legislation.gov.au/Details/F2016L00569>

**Intervertebral disc prolapse (Reasonable Hypothesis) – No. 43 of 2016**

<https://www.legislation.gov.au/Details/F2016L00563>

**Intervertebral disc prolapse (Balance of Probabilities) – No. 44 of 2016**

<https://www.legislation.gov.au/Details/F2016L00564>

**Opisthorchiasis (Reasonable Hypothesis) – No. 45 of 2016**

<https://www.legislation.gov.au/Details/F2016L00579>

**Opisthorchiasis (Balance of Probabilities) – No. 46 of 2016**

<https://www.legislation.gov.au/Details/F2016L00584>

**Clonorchiasis (Reasonable Hypothesis) – No. 47 of 2016**

<https://www.legislation.gov.au/Details/F2016L00561>

**Clonorchiasis (Balance of Probabilities) – No. 48 of 2016**

<https://www.legislation.gov.au/Details/F2016L00562>

**Malignant neoplasm of the urethra (Reasonable Hypothesis) – No. 49 of 2016**

<https://www.legislation.gov.au/Details/F2016L00580>

**Malignant neoplasm of the urethra (Balance of Probabilities) – No. 50 of 2016**

<https://www.legislation.gov.au/Details/F2016L00581>

**Cholelithiasis (Reasonable Hypothesis) – No. 51 of 2016**

<https://www.legislation.gov.au/Details/F2016L00557>

**Cholelithiasis (Balance of Probabilities) – No. 52 of 2016**

<https://www.legislation.gov.au/Details/F2016L00558>

**Cut, stab, abrasion and laceration (Reasonable Hypothesis) – No. 53 of 2016**

<https://www.legislation.gov.au/Details/F2016L00567>

**Cut, stab, abrasion and laceration (Balance of Probabilities) – No. 54 of 2016**

<https://www.legislation.gov.au/Details/F2016L00571>

**Parkinson's disease and secondary parkinsonism (Reasonable Hypothesis) – No. 55 of 2016**

<https://www.legislation.gov.au/Details/F2016L00560>

**Parkinson's disease and secondary parkinsonism (Balance of Probabilities) – No. 56 of 2016**

<https://www.legislation.gov.au/Details/F2016L00570>

**Optochiasmatic arachnoiditis (Reasonable Hypothesis) – No. 57 of 2016**

<https://www.legislation.gov.au/Details/F2016L00566>

**Optochiasmatic arachnoiditis (Balance of Probabilities) – No. 58 of 2016**

<https://www.legislation.gov.au/Details/F2016L00568>

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