



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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Recent developments

Changes to AAT application fees on 1 July 2016

The fees payable to lodge certain types of applications with the General and Other Division will increase on 1 July 2016.

The standard application fee will increase to \$884.

The fee payable for certain taxation decisions will increase to \$87.

The Tribunal's fees are revised every two years in accordance with the *Administrative Appeals Tribunal Regulations 2015* to take into account changes in the Consumer Price Index.

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.

Bankruptcy

[Levitan and Inspector-General in Bankruptcy](#) [2016] AATA 356 (31 May 2016); Deputy President B McCabe

Bankruptcy – decision not to cancel objection – whether applicant had interest in South African property – whether applicant intentionally provided false and misleading information to trustee – whether applicant failed to disclose beneficial interest in any property – decision under review affirmed

Compensation

[Benussi and Comcare](#) (Compensation) [2016] AATA 354 (30 May 2016); Senior Member JF Toohey and Dr I Alexander, Member

Whether effects of aggravation of vasomotor rhinitis had ceased – exposure to air-conditioning – enhanced sensitivity – decision under review affirmed

[Cakany and Australian Postal Corporation](#) (Compensation) [2016] AATA 314 (16 May 2016); Senior Member JF Toohey and Dr S Toh, Member

Musculoskeletal strain lumbar spine – liability accepted – lumbar disc bulge – incapacity – medical treatment – whether respondent has present liability – decision under review set aside

[Kingsbury and Australian Postal Corporation](#) (Compensation) [2016] AATA 346 (27 May 2016); Deputy President B McCabe

Liability for permanent impairment compensation – whether whole person impairment is less than 10% - applicant satisfies at least two descriptors – decision under review set aside and remitted to the respondent for further assessment

[Kleidon and Military Rehabilitation and Compensation Commission](#) (Compensation) [2016] AATA 369 (3 June 2016); Dr P McDermott RFD, Deputy President

Nervous/anxiety disorder – *Compensation (Commonwealth Government Employees) Act 1971* applicable – failure to satisfy notification requirements – respondent would be prejudiced by the delay in lodging the claim – delay not found to be occasioned from ignorance, from a mistake or from any other reasonable cause – decision affirmed under review

[Moore and Comcare](#) (Compensation) [2016] AATA 350 (30 May 2016); Senior Member A Cunningham

Workers Compensation – claim of tinnitus from faulty headset – whether an “injury” or “disease” within s4(1) – no sudden or identifiable physiological change arising out of or in course of employment – no evidence of contribution by employment – decision under review affirmed

[Lieschke and Telstra Corporation Limited](#) (Compensation) [2016] AATA 351 (30 May 2016); Deputy President K Bean

Normal weekly earnings – Whether period of 2 weeks before date of injury fairly represents weekly rate of payment – whether ‘at risk’ component of remuneration payable in addition to fixed remuneration – whether ‘at risk’ component properly regarded as an allowance – characterisation of payment makes no difference to calculation of normal weekly earnings – decision under review set aside

Customs

[Amoena Australia Pty Ltd and Chief Executive Officer of Customs](#) [2016] AATA 357 (31 May 2016); Senior Member E Fice

Identification of imported goods – classification of goods under appropriate heading – whether items in question constitute orthopaedic appliances or are part of orthopaedic appliances – Items found to be accessories to orthopaedic appliances – decision under review set aside

Practice and Procedure

[Crick and Prosecur Australia Pty Ltd](#) [2016] AATA 313 (16 May 2016); Senior Member JF Toohey

Extension of time – extension granted previously – whether reasonable to grant second extension – delay on part of solicitor – whether applicant rested on his rights – whether prejudice to respondent – extension of time application refused

[Singh and Administrative Appeals Tribunal](#) (Social services second review) [2016] AATA 368 (2 June 2016); Deputy President SA Forgie

Social security – application dismissed as frivolous or vexatious and applicant directed not to make certain applications without leave of the Tribunal – direction limited to applications to Tribunal – whether direction should be discharged or varied – Tribunal decides not to discharge or vary direction

Practice and procedure – power to revoke or vary a direction that applicant must not without leave of the Tribunal make certain applications – whether power removed on repeal of provision expressly conferring that power – need to construe section in light of *Acts Interpretation Act 1901*

[Von Stieglitz and Comcare](#) (Compensation) [2016] AATA 366 (1 June 2016); Deputy President G Humphries

Summons – Tribunal’s power to issue summons – test of relevance – summons not issued

[Von Stieglitz and Comcare](#) (Compensation) [2016] AATA 367 (1 June 2016); Deputy President G Humphries

Application for recusal on grounds of apprehended bias – application refused

Summons to produce documents – legal professional privilege attaching to certain documents – whether legal professional privilege waived

Social Security

[Al Ali; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 355 (31 May 2016); Senior Member E Fice

Social security payments – appeal by Secretary against decision of Social Services & Child Support Division – overpayments – whether a debt owed to the Commonwealth – definition of income – whether payments constituted a loan – where insufficient evidence to prove payments were loans – where undeclared income – decision set aside – overpayment recoverable as a debt to the Commonwealth

[Beattie and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 363 (1 June 2016); Senior Member AC Cotter

Carer payment – overpayment – where applicant did not disclose earnings – where no administrative error – where no special circumstances – decision under review affirmed

[Hamcho; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 361 (31 May 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 under review set aside

[Kelly and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 320 (9 May 2016); Senior Member JF Toohey

Paid parental leave – whether applicant met the work test – work test period – termination of employment – workers compensation – whether applicant on paid leave during work test period – permissible break – decision under review affirmed

[Kokinovic and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 322 (20 May 2016); Senior Member JF Toohey

Disability support pension – left elbow injury – psychological conditions – chronic tinnitus – chronic pain syndrome – subsequent ankle injury – whether conditions fully diagnosed treated and stabilised during claim period – impairment ratings – decision under review affirmed

[Mostovoy and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 323 (20 May 2016); Senior Member JF Toohey

Disability support pension – whether applicant overpaid – whether applicant failed to declare income – whether gambling receipts income – exempt lump sum – whether any special reason applicant should be not treated as a member of a couple – whether debt should be waived – whether special circumstances – decision under review affirmed

[Nash and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 345 (27 May 2016); Deputy President B McCabe

Lump sum compensation – discretion to waive preclusion period – special circumstances – disability discrimination – no special circumstances existed – decision under review affirmed

[Root and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 364 (1 June 2016); Mr S Webb, Member

Cancellation of Disability Support Pension – qualification – impairments – rating of impairments resulting from permanent conditions – meaning of ‘assistance with day to day activities’ – continuing inability to work – assessment of work capacity – decision set aside

[Simmonds and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 358 (31 May 2016); Senior Member CR Walsh

Newstart allowance – whether applicant was overpaid newstart allowance during relevant debt period – whether overpayment of newstart allowance a debt due to the Commonwealth – whether debt should be written-off – whether all or part of the debt should be waived – whether debt due solely to administrative error by Centrelink – whether “special circumstances” exist – decision under review affirmed

[Simmonds and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 360 (31 May 2016); Senior Member CR Walsh

Age pension – whether applicant overpaid age pension during relevant debt period – whether overpayment of age pension is a debt due to the Commonwealth – whether debt should be written-off – whether all or part of the debt should be waived – whether debt due solely to administrative error by Centrelink – whether “special circumstances” exist – decision under review affirmed

[Vidakovic and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 372 (3 June 2016); Senior Member AF Cunningham

Age pension – overseas applicant – application for review dismissed

[Xue and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 365 (1 June 2016); Miss EA Shanahan, Member

Disability support pension – portability of DSP – eligible medical treatment delivered overseas – treatment in China not recommended or overseen by a general practitioner – treatment received not eligible medical treatment – suspension of applicant’s DSP – decision under review affirmed – compensation for detriment caused by defective administration recommended

[Zivkovic and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 362 (22 April 2016); Senior Member NA Manetta

Austudy allowance – activity test – undertaking qualifying study – progress rules – tertiary students – whether applicant had used up allowable study time – whether failed part years of study should be disregarded “because of” applicant’s illness – held they should be disregarded – decision of SSAT set aside and substituted

Veterans' Affairs

[Braid and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 352 (30 May 2016);
Deputy President B McCabe

Special rate pension – applicant receives pension paid at the Extreme Disablement Adjustment rate
– Applicant unable to satisfy criteria for Special rate pension – decision under review is 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
Pignat v Secretary, Department of Social Services	[2016] AATA 273
DFS Australia Pty Ltd v Comptroller-General of Customs	[2016] AATA 277

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
None finalised		

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