



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

This section of the *Bulletin* contains information about recent legal or other developments that may be of interest to members and staff. Please forward any contributions you wish to be included in the *Bulletin* or suggestions for topics to LegalAndPolicy@aat.gov.au.

Changes to AAT application fees

The fees payable to lodge certain types of applications with the General, Freedom of Information, Security and Taxation & Commercial Divisions 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 Regulation 2015* to take into account changes in the Consumer Price Index.

For further information, please contact [Legal and Policy](#).

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

[Fahiye and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 374 (3 June 2016); Dr C Kendall, Deputy President and Brigadier AG Warner, Member

Criminal offences – whether applicant of good character – meaning of good character – meaning of lasting or enduring period of time – decision under review affirmed

[Kumar and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 337 (26 May 2016); Professor R McCallum AO, Member

Eligibility – whether applicant of good character – assault occasioning actual bodily harm – fishing offence – domestic violence incidents – applicant found not to have satisfied good character requirements – decision affirmed

[Qasimi and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 378 (7 June 2016); Senior Member R W Dunne

Application for Australian citizenship by conferral – application refused as delegate not satisfied as to applicant's true identity or country of citizenship – DNA evidence further considered – decision under review set aside and remitted

Compensation

[Adams and Comcare](#) (Compensation) [2016] AATA 275 (29 April 2016); Senior Member JF Toohey

Adjustment disorder – no dispute that employment contributed to a significant degree – whether compensation excluded because condition was a result of reasonable administrative action in respect of employment – whether taken in a reasonable manner – operative cause – decision under review affirmed

[Cantwell-Zeb and Comcare](#) (Compensation) [2016] AATA 379 (7 June 2016); Dr P McDermott RFD, Deputy President

Application for compensation for injury – alleged workplace bullying and harassment – major depression – decision affirmed

Corporations

[Prasad and Australian Securities and Investments Commission](#) [2016] AATA 384 (8 June 2016); Professor R Deutsch, Deputy President

Providing financial services – banning order – failure to provide statement of advice – lack of detail in statement of advice – applicant not adequately trained to provide financial services – seriousness of breaches – length of ban varied – decision varied and affirmed

Education

[Williams and Secretary, Department of Education and Training](#) [2016] AATA 377 (6 June 2016); Dr D Cremean, Senior Member

Debt remission – special circumstances – application period requirement – waiver – decision set aside

Migration

[LQVM and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 388 (10 June 2016); Senior Member E Fice

Application for bridging visa – where applicant has substantial criminal record – where applicant fails character test – where discretion to reject application enlivened – whether discretion should be exercised in accordance with ministerial direction – where applicant convicted of drug related offences involving minors – where applicant provided significant assistance with police investigations – where sentence significantly reduced due to co-operation – where expectation of Australian community would be to refuse application – decision affirmed

[NSWQ and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 373 (3 June 2016); Dr C Kendall, Deputy President

Whether applicant passes character test – whether Tribunal should exercise its direction to deny visa – criminal record – protection of the Australian community from criminal and other serious conduct – expectations of the Australian community – impact on family members – discretion to deny visa exercised – decision under review affirmed

Migration and Refugee

Migration

[1510225](#) (Migration) [2016] AATA 3853 (4 May 2016); A Mullin, Member

Student (Temporary) (Class TU) visa – Subclass 573 Higher Education Sector visa – Dismissal decision – Reinstatement of application – Inability to attend Tribunal hearing – No supporting evidence – Decision under review affirmed

[1603912](#) (Migration) [2016] AATA 3854 (19 May 2016); R Skaros, Member

Cancellation – Temporary Business Entry (Class UC) – Subclass 457 (Business (Long Stay)) visa – Condition 8107(3) breached – Ceased employment with initial employer – Current approved nomination by an approved business sponsor – New sponsor may face hardship due to workload – Genuine need to fill nominated position – Circumstances in favour of not cancelling the visa outweigh

those in favour of cancelling – Decision under review set aside substituting a decision not to cancel visa

Refugee

[1418802](#) (Refugee) [2016] AATA 3829 (3 May 2016); F Simmons, Member

Protection visa – Bangladesh – Political opinion – Imputed political opinion – Bangladesh National Party supporter – Political Activist – False charges – Political involvement in Australia – Credibility issues – Decision under review affirmed

[1601346](#) (Refugee) [2016] AATA 3826 (4 May 2016); N Burns, Member

Protection visa – Vietnam – Particular social group – Homosexuals – Verbal abuse and bullying – Threats of violence – Forced marriage – Ostracised by society – Will face discrimination – Decision under review affirmed

[1418645](#) (Refugee) [2016] AATA 3828 (5 May 2016); J Jolliffe, Member

Protection visa – India – Religion – Christian – Will be disowned by family and divorced by wife for converting – Failed business in another country – Blacklisted for owing money – Fears harm from brother-in-law – Credibility issues – Conversion to Christianity after protection visa application – Vague and inconsistent evidence regarding Christianity – Christian activities to strengthen protection visa application – Decision under review affirmed

[1319856](#) (Refugee) [2016] AATA 3830 (5 May 2016); S Muling, Member

Protection visa – Irregular Maritime Arrival – Sri Lanka – Race – Tamil – Religion – Hindu – Imputed political opinion – Perceived involvement with LTTE – Detention and threats by security agencies – Refusing forced recruitment into armed forces – Illegal exit from Sri Lanka – Decision under review affirmed

[1414536](#) (Refugee) [2016] AATA 3827 (8 May 2016); M Moustafine, Member

Protection visa – Nepal – Complementary protection – Religion – Conversion to Christianity – Separated women – Family violence – Hindu extremists – Credibility issues – Decision under review affirmed

[1512699](#) (Refugee) [2016] AATA 3820 (9 May 2016); A Paxton, Senior Member

Protection visa – India – Overseas student – Failure to meet family expectations – Blamed for father's health issues – Financial and emotional pressures – Decision under review affirmed

[1319759](#) (Refugee) [2016] AATA 3858 (10 May 2016); R Hearn Mackinnon, Member

Protection visa – Irregular Maritime Arrival – Afghanistan – Race – Hazara – Religion – Shia – Death of relative – Lack of family or tribal links – Prior asylum claims in another country – Insurgent attacks in Kabul – Decision under review remitted

[1511185](#) (Refugee) [2016] AATA 3832 (12 May 2016); C Cody, Member

Protection visa – China – Religion – Xiang Gong – Christianity – Currently not practicing Xiang Gong – Xiang Gong not illegal in China – Credibility issues – Delay in protection application – Evasive, inconsistent and changing evidence – Decision under review affirmed

Practice and Procedure

[Cook and Comcare](#) (Compensation) [2016] AATA 371 (6 May 2016); Deputy President K Bean

Application for dismissal pursuant to section 42B – Decisions relating to rehabilitation programs implemented pursuant to section 37 of the Safety, Rehabilitation and Compensation Act 1988 – No practical purpose served by review of expired rehabilitation programs – Overtaken by more recent rehabilitation program which is before the Tribunal – Applicant seeking higher amount of incapacity payments – Tribunal does not have jurisdiction with respect to incapacity payments – Applications dismissed

[Jandakot Airport Chamber of Commerce Inc and Minister for Infrastructure and Regional Development](#) [2016] AATA 385 (3 June 2016); The Honourable Justice ML Barker, Deputy President

Application to stay any applications and acts of approval concerning development of subject matter airport – whether stay orders would affect operation or implementation of decision under review – whether stay orders appropriate to secure the effectiveness of the hearing of the review application

[MASU Financial Management Pty Ltd and Australian Securities and Investments Commission](#) [2016] AATA 380 (20 May 2016); Professor R Deutsch, Deputy President

Application to stay decision of ASIC – decision suspended applicant's financial service license – prospects of success – stay granted with conditions

Privacy

[Freelancer International Pty Ltd and Australian Information Commissioner](#) [2016] AATA 349 (27 May 2016); Senior Member Mr P W Taylor SC

Jurisdiction – determination of Australian Information Commissioner – breach of National Privacy Principles – whether Tribunal has jurisdiction to review specific findings contained in determination – interpretation of 'act or practice' – what constitutes a determination – whether determination must be wholly dismissed or wholly substantiated – no justification for confining the Tribunal's jurisdiction – application refused

Social Security

[Harafias and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 265 (28 April 2016); Dr T Nicoletti, Senior Member

Newstart allowance – cancellation of newstart allowance – eligibility for newstart allowance – activity test – whether Applicant satisfies the activity test – whether Applicant should be exempt from the activity test – Applicant on bail – definition of unemployed – decision affirmed

[Harley and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 370 (3 June 2016); Senior Member NA Manetta

Pension Bonus – applicant delaying application for over a year – special circumstances to permit late lodgement – no special circumstances found to exist

[Petrella and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 267 (15 March 2016); Professor R McCallum AO, Member

Disability support pension – whether condition fully diagnosed, treated and stabilised – impairment ratings – continuing inability to work – whether spinal condition 20 points under the Impairment Tables – spinal condition awarded 10 points under the Impairment Tables – decision under review affirmed

[Rylance and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 383 (8 June 2016); Miss EA Shanahan, Member

Pensions – benefits – allowances – application for sickness allowance – failure to apply within five weeks of becoming incapacitated – referred to Centrelink by Applicant's superannuation fund – question as to sole or principal cause of failure to claim within legislative timeframe – refusal to answer questions related to medical conditions – decision affirmed

[Tanoski and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 353 (30 May 2016); Professor R McCallum AO, Member

Family tax benefit – application made out of time – whether special circumstances prevented applicant from making claim – applicant unaware of changes to application period – decision affirmed

[Wharton and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 386 (16 May 2016); Deputy President B McCabe

Disability support pension – medical criteria – whether applicant's conditions were fully diagnosed, treated and stabilised at the date of cancellation – where no treatment available within reasonable time period – decision under review set aside

Veterans' Affairs

[Large and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 381 (7 June 2016); Dr P McDermott RFD, Deputy President

Application for special rate pension – applicant currently in receipt of pension at 100% of general rate for accepted conditions – not satisfied that any accepted condition prevented the applicant from working – applicant to be assessed for eligibility for the Extreme Disablement Adjustment – decision remitted

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
Frugtniet v Migration Agents Registration Authority	[2016] AATA 299

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Francis v Administrative Appeals Tribunal	[2015] AATA 936	[2016] FCA 639
Commissioner of Taxation v Jayasinghe	[2015] AATA 456	[2016] FCAFC 79

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