



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.

Child Support

[GGPC and Child Support Registrar](#) (Child support second review) [2016] AATA 395 (2 June 2016); Senior Member AF Cunningham

Extension of time – decision under review affirmed

Citizenship

[Al-Hadethi and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 447 (30 June 2016); Professor R Deutsch, Deputy President

General residency requirement – whether the applicant had a close and continuing association with Australia in the 4 years prior to citizenship application – discretion to treat periods of absence as periods of presence in Australia as a permanent resident – whether close and continuing association with family members in Australia is sufficient – tribunal does not find a close and continuing association with Australia – decision affirmed

[Bashi and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 453 (30 June 2016); Deputy President FJ Alpins

Acquisition of Australian citizenship by application – citizenship by conferral – cancellation of approval given to a person becoming an Australian citizen – whether person is not of good character – decision under review affirmed

[Chaudhry and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 439 (2 June 2016); Dr P McDermott RFD, Deputy President

Application for citizenship by conferral – applicant did not satisfy residence requirement – applicant's spouse is an Australian citizen – applicant does not have a continuing association with Australia – decision under review affirmed

[Skaf and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 429 (24 June 2016); Senior Member N Isenberg

Citizenship test exemption – whether the applicant suffered from a permanent or enduring physical or mental incapacity – evidence of mental incapacity – medical and psychologist reports with contradictory diagnoses – tribunal not satisfied that there is evidence of mental incapacity – decision affirmed

Compensation

[Blake and Military Rehabilitation and Compensation Commission](#) (Compensation) [2016] AATA 434 (28 June 2016); Deputy President G Humphries

Service in the Royal Australian Navy – extension of liability under accepted condition for degenerative disc disease causing low back pain – whether service contributed to condition to a significant degree – insufficient medical evidence – decision under review affirmed

[DJLK and Comcare](#) (Compensation) [2016] AATA 457 (30 June 2016); Ms R Perton, Member

Whether accepted shoulder condition still affecting applicant – whether current shoulder condition is still the result of the accepted injury in 2010 – decision affirmed

Whether mental health condition arose out of or in the course of employment – whether the result of reasonable administrative action in a reasonable manner – decision affirmed

[Howes and Comcare](#) (Compensation) [2016] AATA 448 (30 June 2016); Dr J Popple, Senior Member

Remittal from Federal Court for reconsideration according to law – liability accepted for physical injuries – breast reduction surgery – whether surgery was medical treatment – whether relationship required between surgical treatment and a particular injury for that treatment to be medical treatment – whether surgery obtained in relation to accepted injuries – whether surgery could have affected the accepted injuries or their symptoms – decision under review affirmed

[MMYB and Comcare](#) (Compensation) [2016] AATA 405 (17 June 2016); Senior Member CR Walsh

Aggravation of chronic post-traumatic stress disorder (PTSD) – aggravation of ailment – disease – contributed to, to a significant degree – exclusionary provision – whether aggravation of disease suffered as a result of “reasonable administrative action” – aggravation not suffered as a result of the administrative action – decision under review set aside and substituted

[Pedersen and Comcare](#) (Compensation) [2016] AATA 449 (30 June 2016); Deputy President AG Melick AO RFD SC

Whether disease significantly contributed to by Applicant’s employment – whether arising from employment – whether ‘reasonable administrative action’- decisions under review affirmed

[Prain and Comcare](#) (Compensation) [2016] AATA 459 (30 June 2016); Deputy President G Humphries

Commonwealth employee – whether injury or disease – whether applicant continues to suffer from condition – decisions under review affirmed

Employment

[Mi and Secretary, Department of Employment](#) [2016] AATA 419 (24 June 2016); Professor R Deutsch, Deputy President

Fair entitlements guarantee – entitlement to redundancy payment – whether Applicant was employed by a small business – decision affirmed

Freedom of Information

[Prinn and Department of Defence](#) (Freedom of Information) [2016] AATA 445 (29 June 2016); Deputy President SA Forgie

Whether documents, or parts of documents exempt under s 33(a)(i) – whether disclosure would, or could reasonably be expected to, cause damage to the security of the Commonwealth – decision affirmed

Practice and Procedure

[Breust and Comcare](#) (Compensation) [2016] AATA 430 (15 June 2016); Mr S Webb, Member

Jurisdiction – compensation claim for permanent impairment resulting from accepted injury – interpretation of claim - respiratory impairment claim does not extend to include thrombotic impairment – no claim, determination or reconsideration of thrombotic impairment – no jurisdiction in respect of thrombotic impairment

[CPAC Residential Pty Ltd and Australian Securities and Investments Commission](#) [2016] AATA 428 (24 June 2016); Deputy President BJ McCabe

Jurisdiction – whether reviewable decision – ASIC decision to register Form 504 appointment of receiver – administrative process – not reviewable – Extension of time request refused – Stay request refused

[Hicks and Minister for Infrastructure and Regional Development](#) [2016] AATA 437 (28 June 2016); Deputy President BJ McCabe

Standing – Minister’s decision to approve Major Development Plan – Gold Coast Airport – Instrument Landing System – whether applicant’s interests are affected – whether applicant has ‘special interest’ – whether other parties’ interests are affected – applicant has no standing – all other parties joined

Stay – whether stay required to secure effectiveness of hearing – where construction may cause contamination of surrounding soil – interim stay order may be appropriate

Confidentiality – Where large volume of public submissions – whether authors personal details should be redacted – process of redaction already commenced – application for s 35 order granted

Access to documents – non-party request for access to Tribunal documents – no reason to depart from usual rule – access to Tribunal documents is refused

[Spence and Commissioner of Taxation](#) (Taxation) [2016] AATA 403 (17 June 2016); Deputy President SE Frost

Reinstatement application – applications originally dismissed for lack of jurisdiction – applications not dismissed 'in error' – application for reinstatement refused

Social Security

[Barnard and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 436 (28 June 2016); Deputy President JW Constance

Seniors health card – energy supplement payment – cancellation of card where applicant does not meet income test – whether cards automatically cancelled by force of section 106A – debt arising due to overpayment of benefit – whether debt should be waived by reason of special circumstances – decision set aside and remitted

Seniors health card – whether application for card should be rejected – where there has been a change in legislation – where applicant unaware of change in legislation – decision affirmed

[Cirillo and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 442 (29 June 2016); Ms R Perton, Member

Disability support pension – whether medical conditions diagnosed, fully treated and stabilised at time of claim or within 13 weeks of that date – points to be allocated – decision affirmed

[Clifford and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 432 (27 June 2016); Senior Member JF Toohey

Disability support pension – cancellation – whether applicant qualified at date of cancellation – whether impairments rated 20 points or more – decision under review affirmed

[Hancock and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 435 (28 June 2016); Deputy President G Humphries

Disability support pension – upper limb, lower limb and cognitive impairments – rating of impairments – rating of 20 points under a single Impairment Table – continuing inability to work – decision under review set aside and remitted

[Malcolm and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 440 (29 June 2016); Dr L Bygrave, Member

Disability support pension – multiple conditions – whether medical conditions were fully diagnosed, treated and stabilised – impairment rating of more than 20 points – whether continuing inability to work – program of support completed – applicant has a continuing inability to work – decision set aside and substituted

[Mortimer and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 443 (29 June 2016); Miss EA Shanahan, Member

Pensions, allowances and benefits – recipient of disability support pension – maximum portability period 28 days – overseas stay exceeding portability period by 19 days – pension cancelled – payment of disability support pension reinstated from 15 August 2015 – hospitalisation in Hong Kong – hospitalisation after portability period had been exceeded – decision affirmed

[Parsa and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 431 (27 June 2016); Dr I Alexander, Member

Disability support pension – whether conditions fully diagnosed, treated and stabilised – impairment ratings – continuing inability to work – whether applicant suffered severe functional impact on activities – insufficient corroborating evidence of applicant’s impairments – decision affirmed

[Sharman and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 441 (29 June 2016); Mr C Ermert, Member

Disability Support Pension – cancellation – assessment date – whether qualified – physical, intellectual or psychiatric impairments – whether impairments attract 20 points or more on Impairment Tables – reviewable decision affirmed

Taxation

[Anjum’s Air-conditioning & Refrigeration Service Pty Ltd and Commissioner of Taxation](#) (Taxation) [2016] AATA 433 (28 June 2016); Senior Member G Lazanas

Administrative penalties – undisclosed income in income tax returns – undisclosed taxable supplies in Business Activity Statements – whether voluntary disclosure made about the shortfall amounts – question of remission – objection decisions relating to administrative penalties affirmed

[H J International Trade Group Pty Ltd and Commissioner of Taxation](#) (Taxation) [2016] AATA 450 (30 June 2016); Senior Member FD O’Loughlin

Income tax and GST and Penalty – Whether assessments are excessive – income tax and associated penalty decisions affirmed – GST and associated penalty decisions varied

[Rowntree and Commissioner of Taxation](#) (Taxation) [2016] AATA 420 (24 June 2016); Professor R Deutsch, Deputy President

Loan agreements – whether funds received under loan agreements income – existence of loan agreement – objective assessment of advances made under loan agreement – taxpayer entered into enforceable voluntary undertaking – operation of Income Tax Assessment Act 1936 Division 7A and loan agreements – administrative penalty applied – decision affirmed

[SRBP and Tax Practitioners Board](#) [2016] AATA 456 (30 June 2016); Senior Member FD O’Loughlin

Tax agents’ code of conduct – breach of TASA Code of Professional Conduct – tax agent registration terminated – Applicant experienced personal and health problems – appropriate sanction – comparison with registration and regulation of legal practitioners – decision set aside and substituted

Veterans' Affairs

[Carnes and Repatriation Commission](#) (Veterans’ entitlements) [2016] AATA 460 (1 July 2016); Miss EA Shanahan, Member

Vietnam Veteran – claim for increase in disability pension – special rate – over 65 at date of application – non war-caused condition – alone test of s 24(1)(c) satisfied – decision set aside and substituted

[Hartland and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 452 (30 June 2016);
Dr P McDermott RFD, Deputy President and Dr Sullivan, Member

Defence service – major depressive disorder and post-traumatic stress disorder – not satisfied conditions were defence-caused – decision affirmed under review

[Lee and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 438 (28 June 2016);
Senior Member N Isenberg

Pension bonus scheme – qualification – application lodged out of time – decision affirmed

[Thompson and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 462 (1 July 2016);
Senior Member N Isenberg

Defence service – claim that bilateral rotator cuff syndrome was defence-caused – consideration of Statement of Principles concerning rotator cuff syndrome – clinical onset – repetitive or sustained activities – decision under review set aside and substituted

[Voelker and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 427 (24 June 2016);
Deputy President K Bean and Lt Col R Ormston (Rtd), Member

Veterans' entitlements – Operational service in Vietnam – Whether veteran suffers from PTSD – No evidence of traumatic event – Deledio steps – Whether veteran suffers from generalised anxiety disorder and alcohol use disorder – Whether conditions war-caused – Decision under review 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
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None lodged

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
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Iliopoulos v Repatriation Commission	[2015] AATA 670	[2016] FCA 756
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Shord v Commissioner of Taxation	[2015] AATA 355	[2016] FCA 761
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