



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

[Al Hellani and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 562 (2 August 2016); Senior Member RW Dunne

Application for Australian citizenship by conferral – whether applicant had a permanent or enduring physical or mental incapacity at the time she made the application – decision under review affirmed

[HSXY and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 560 (2 August 2016); Senior Member AC Cotter

Where application for Australian citizenship refused – good character requirements – domestic violence – where limited mitigating factors – where inconsistent evidence – decision under review affirmed

## Compensation

[Cawthorne and Comcare](#) (Compensation) [2016] AATA 285 (4 May 2016); Senior Member Ms N Isenberg

Commonwealth employees – whether Applicant suffered disease – whether Applicant suffered injury – adjustment reaction with anxious mood – workplace harassment and bullying – reasonable administrative action – whether counselling action reasonable administrative action – decision affirmed

[Colley and Comcare](#) (Compensation) [2016] AATA 573 (4 August 2016); Deputy President BJ McCabe

Workplace injury – whether applicant suffered from secondary weight gain – whether the weight gain of the applicant is an ailment – whether the employment of the applicant significantly contributed to the onset of the condition – whether medication is reasonably required – decision under review affirmed

[O'Hara and Telstra Corporation Limited](#) (Compensation) [2016] AATA 310 (13 May 2016); Senior Member Ms JC Kelly and Dr W Isles, Member

Whether applicant suffers an impairment – whether impairment is permanent – degree of permanent impairment assessed – whether applicant satisfies 10% whole person impairment – workplace accident – psychological injury – decision set aside

[Moore and John Holland Pty Ltd](#) (Compensation) [2016] AATA 571 (3 August 2016); Senior Member Dr D Cremean

Injury – injury simpliciter – disease – pre-existing osteoarthritis – aggravation” – “significant” – incapacity for work – decision affirmed

## **Education and Research**

[Zabaneh and Secretary, Department of Education and Training](#) [2016] AATA 569 (3 August 2016); Deputy President SA Forgie and Mr AG Cameron, Member

FEE-HELP assistance – debt – whether possible to have made application for re-crediting of FEE-HELP balance in application period – made in application period – whether special circumstances – decision affirmed

## **Migration**

[BPWZ and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 557 (1 August 2016); Senior Member CR Walsh

Mandatory visa cancellation – applicant fails character tests as he has a substantial criminal record – applicant serving prison sentence of 12 months or more – whether there is another reason why mandatory visa cancellation should be revoked – Practice Direction No 65 – primary considerations considered – other relevant considerations considered – decision under review set aside and substituted

## **Practice and Procedure**

[Amjad and Registrar, Administrative Appeals Tribunal](#) [2016] AATA 444 (29 June 2016); Senior Member JF Toohey

Whether filing fee for the application for review should be reduced – whether payment of the fee would cause financial hardship – decision affirmed

[Essambo and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 572 (4 August 2016); Brigadier AG Warner, Member

Application for extension of time to lodge application for review of decision of Department of Immigration and Border Protection dated 3 February 2016 – explanation for delay not satisfactory – lack of merit of applicant’s application for review – applicant can re-apply – Tribunal not satisfied that reasonable in all the circumstances to grant extension of time – application for extension of time refused

[Ishack and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 334 (6 May 2016); Senior Member JF Toohey

Extension of time – factors to be considered – whether acceptable explanation for the delay – merits of substantive application – extension of time refused

[Krivoshev and Secretary, Department of Employment](#) [2016] AATA 568 (4 March 2016); Deputy President JW Constance

Reinstatement – application dismissed due to failure to attend hearing – whether there is a reasonable excuse – whether there are reasonable prospects of success – application for reinstatement refused

[Sydney Sterile Compounding Pty Limited and Minister for Health](#) [2016] AATA 549 (29 July 2016); Deputy President The Hon. D Cowdroy OAM QC

Application for confidentiality order by respondent – request for order over certain documents produced under s 37 of the Administrative Appeals Tribunal Act 1975 – respondent requests for orders restricting or prohibiting the disclosure of particular content of documents to any person including the applicant – applicant requests orders allow disclosure to applicant's legal representatives – claim on the grounds of common law public interest immunity – documents relating to DIBP processes and intelligence capabilities – no certificate pursuant to s 36 of AAT Act – affidavit of DIBP employee relied upon – sensitivity of information requires that it not be disclosed to any other person – request for confidentiality orders granted

## **Social Security**

[Al Shamri; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 566 (2 August 2016); Dr I Alexander, Member

Disability support pension – cancellation of payment – time of cancellation – whether medical conditions were fully diagnosed, treated and stabilised – impairment rating of less than 20 points – decision under review set aside and substituted

[Bnauman and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 570 (3 August 2016); Senior Member WG Stefaniak AM RFD

Carer payment – carer allowance – whether applicant provided constant care – whether applicant provided care for at least 20 hours per week – assistance with bodily functions – assistance with care to sustain life – decision to reject carer payment affirmed – decision to reject carer allowance set aside and substituted

[Dunford; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 567 (3 August 2016); Senior Member S Raymond

Family Tax Benefit – late lodgement of taxation return – income tax return lodged late by accountant – whether special circumstances prevented applicant from lodging income tax return – decision set aside

[Fraser and Secretary, Attorney-General's Department](#) (Social services second review) [2016] AATA 555 (29 July 2016); Deputy President JW Constance

Australian Victim of Terrorism Overseas Payment – whether applicant qualified for payment – declared overseas terrorist act – whether Applicant is a primary victim – whether Applicant was in the place where the terrorist act occurred – whether applicant was harmed – reviewable decision set aside and substituted

[Gazawe and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 303 (12 May 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 – decision affirmed

[Ghazavi-Afousi and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 564 (17 June 2016); Deputy President JW Constance

Dismissal – no reasonable prospects of success – registration for pension bonus scheme rejected – where application for review received out of time – where Applicant claims no notices were received – notices taken to have been received – where positive outcome would have no effect – application dismissed

[Haidari; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 418 (24 June 2016); Mr I Thompson, Member

Disability support pension – whether respondent's medical conditions are fully diagnosed, fully treated and fully stabilised within 13 weeks of the claim – whether respondent's conditions warrant a rating of 20 points under the Impairment Tables – decision under review set aside

[Jones and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 534 (27 July 2016); Mr S Webb, Member

Claim for disability support pension – physical and psychological impairments – assessment and rating of impairments – physical impairments related to subjective experience of pain – pain not consistent with objective evidence – psychiatric conditions – treatment affected by drug dependency – not fully treated and fully stabilised – minimum requirement for 20 impairment points not established – decision affirmed

[Kuljanin and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 553 (29 July 2016); Senior Member Ms AF Cunningham and Senior Member W Stefaniak AM RFD

Disability support pension – chronic spine pain, shoulder elbow pain and depression – impairment rating – severe impairment – indefinite portability – decision under review varied and remitted

[Lahz and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 558 (1 August 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 – applicant not found to have a severe impairment within one impairment table – decision under review affirmed

[Meagher and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 563 (2 August 2016); Senior Member DR Davies

Disability support pension – neurological conditions – whether applicant's conditions are permanent – level of impairment – decision under review affirmed

[Nguyen and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 556 (1 August 2016); Senior Member A Poljak

Disability support pension – impairment rating of multiple conditions causing common impairment for accepted conditions; lupus and shoulder condition – multiple impairments including skin condition, depression, neck disorder – whether there is evidence multiple impairments have been fully treated, diagnosed and stabilised – applicant does not have an impairment rating of at least 20 points – decision affirmed

[Sirett and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 559 (1 August 2016); Ms DK Grigg, Member

Disability support pension – DSP – whether 20 points or more under the impairment tables during the relevant period – decision under review affirmed

[Stevens and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 544 (28 July 2016); Mr S Webb, Member

Age pension claim – residence test – meaning of ‘Australian resident’ – absence from Australia – assessment of ties to Australia – real and enduring connection with Australia – decision set aside

[Tran and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 550 (29 July 2016); Dr I Alexander, Member

Newstart allowance – cancellation of newstart allowance – applicant refused to enter employment pathway plan – failure to enter employment pathway plan resulted in connection failure – no reasonable excuse for connection failure – decision affirmed

[Twiss and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 545 (28 July 2016); Mr S Webb, Member

Disability support pension claim – impairment – medical conditions not ‘permanent’ – requirement for a rating of 20 points under the Impairment Tables not met – decision affirmed

## **Taxation**

[Taxology Pty Ltd and Commissioner of Taxation](#) (Taxation) [2016] AATA 565 (2 August 2016); Senior Member RW Dunne

Goods and services tax – private ruling – attribution – function of the Tribunal – consideration of the facts comprising the scheme the subject of the ruling – objection decision under review affirmed

[T T Lam and HT Ngo and Commissioner of Taxation](#) (Taxation) [2016] AATA 552 (29 July 2016); Deputy President FJ Alpins

Administrative penalties – Pay As You Go (PAYG) withholding – penalty for failure to withhold amounts from payments made under labour hire arrangement – whether applicant liable to penalty – whether further remission of penalty warranted - whether applicant discharged burden of proof – Taxation Administration Act 1953 (Cth) – decision affirmed

Practice and procedure – jurisdiction of Tribunal – Part IVC of Taxation Administration Act 1953 (Cth) – whether jurisdiction to determine validity of notice given to the applicant of liability to pay penalty

## Veterans' Affairs

[Hunt and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 554 (29 July 2016); Mr C Ermert, Member

Operational service – Hereditary Neuropathy with predisposition to Pressure Palsy (HNPP) – Carpal Tunnel Syndrome – whether caused by war–service – whether aggravated by war –service – satisfied beyond reasonable doubt – decision affirmed

[Turner-Dauncey and Military Rehabilitation and Compensation Commission](#) (Compensation) [2016] AATA 551 (29 July 2016); Deputy President B McCabe

Compensation – whether applicant's surfing injury arose out of or in the course of employment – where physical activity encouraged by RAN – whether applicant's injury was an unintended consequence of treatment provided – 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
<b>Sharman v Secretary, Department of Social Services</b>	<a href="#">[2016] AATA 441</a>
<b>Howes v Comcare</b>	<a href="#">[2016] AATA 448</a>
<b>Secretary, Department of Infrastructure and Regional Development v Mactiernan &amp; AAT</b>	<a href="#">[2016] AATA 506</a>
<b>Ellis v Secretary, Department of Social Services</b>	<a href="#">[2016] AATA 490</a>
<b>Comcare v Bromham</b>	<a href="#">[2016] AATA 484</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Chen v Migration Agents Registration Authority &amp; AAT (No 2)</b>	<a href="#">[2016] AATA 188</a>	<a href="#">[2016] FCA 865</a>
<b>Negri v Secretary, Department of Social Services</b>	<a href="#">[2015] AATA 179</a>	<a href="#">[2016] FCA 879</a>

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