



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 a sample of decisions recently published in the AAT's Migration & Refugee Division and Social Services & Child Support 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](mailto: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. This list also includes selected child support decisions published by the Social Services & Child Support Division and examples of recent decisions published by 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.

## Aviation

[Jandakot Airport Chamber of Commerce Inc and Minister for Infrastructure and Regional Development](#) [2016] AATA 705 (12 September 2016); The Honourable Justice ML Barker, Deputy President

Airports – decision by Minister to approve draft master plan under s 81 of the Airports Act 1996 (Cth) – application by Jandakot Airport Chamber of Commerce for review of decision – whether position of proposed runway increases risk to safety – whether position of proposed runway limits ability to meet future aviation needs – compatibility of commercial and non-aviation developments with aviation needs – whether master plan covers required 20 year period – whether sufficient consultation about draft master plan – whether timetable for development required – decision under review affirmed

## Child Support

[RRBK and Child Support Registrar](#) (Child support second review) [2016] AATA 575 (5 August 2016); Senior Member A Poljak

Social Security – child support – percentage of care – actual care – care period – whether changes to care arrangement affected calculation of nights of care – inconsistent evidence establishing nights of care – no change to cost percentage – decision under review affirmed

## Citizenship

[Brinkman and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 716 (16 September 2016); Mr W Evans, Member

Application for grant of Australian citizenship by descent – insufficient evidence of parental relationship prior to birth of applicant - evidence fails to establish positive biological parenthood – decision under review affirmed

## Employment

[Harris and Secretary, Department of Employment](#) [2016] AATA 706 (12 September 2016); Miss EA Shanahan, Member

*Fair Entitlements Guarantee Act 2012* – company insolvency – advance paid in accordance with the Act – original decision reviewed – debt raised – applicant subject to a stand down

period of six weeks – no work during stand down period – no unpaid leave – decision under review affirmed

## **Migration**

[Vatubuli and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 695 (9 September 2016); Deputy President SE Frost

Mandatory cancellation of visa – application for revocation of cancellation decision – failure to pass character test – substantial criminal record – discretion to revoke mandatory cancellation – Ministerial Direction No 65 applied – protection of the Australian community – seriousness and nature of the relevant conduct – the risk conduct may be repeated – expectations of Australian community – familial ties to Australia – few impediments to removal – decision under review affirmed

[Singh and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 714 (31 August 2016); Professor M McGrowdie, Senior Member

Visa refusal – application for partner visa – failure to pass character test – substantial criminal record – discretion to refuse Applicant's visa – Ministerial Direction no 65 applied – protection of the Australian community – seriousness and nature of the relevant conduct – the risk conduct may be repeated – expectations of Australian community – impact on victims of Applicant's criminal conduct – impact on Applicant's family – decision under review affirmed

## **Practice and Procedure**

[Loseby and Secretary, Department of Social Services](#) [2016] AATA 709 (15 September 2016); Brigadier AG Warner, Member

Application for extension of time to lodge application for review of decision of the Social Services and Child Support Division of Administrative Appeals Tribunal dated 22 February 2016 – length of delay significant – explanation for delay not satisfactory – limited prospects of success of applicant's substantive application – Tribunal not satisfied that reasonable in all the circumstances to grant extension of time – application for extension of time refused

[Panganiban and Australian Securities & Investments Commission](#) [2016] AATA 703 (9 September 2016); Mr PW Taylor SC, Senior Member

Stay application – confidentiality orders sought - banning order – applicant prohibited from providing any financial services – whether applicant of good fame or character – utility of granting stay - prospects of success – public interest – consequences on application for review – application for stay dismissed – application for confidentiality orders dismissed

## Social Security

[Arsenin and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 712 (9 September 2016); Senior Member JF Toohey

Lump sum compensation – preclusion period – whether any of preclusion period should be waived – whether special circumstances – decision under review affirmed

[Bushell and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 710 (15 September 2016); Dr L Bygrave, Member

Disability support pension – application rejected by Centrelink – whether impairments permanent – whether impairments fully diagnosed, treated and stabilised – impairment tables – mental health condition awarded 10 points under Table 5 – spinal condition not permanent – decision under review affirmed

[Hadley and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 637 (25 August 2016); Mr S Webb, Member

Social Security – carer payment – motor vehicle accident – lump sum compensation – compensation part of lump sum – lump sum preclusion period – compensation affected payments – recovery – discretion – no special circumstances – decision varied

[Ibrahim and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 704 (12 September 2016); Senior Member CR Walsh

Whether applicant is subject to a compensation preclusion period – whether there is a recoverable amount – whether “special circumstances” exist such that it is appropriate that part or all of the compensation payment received by the applicant be treated as not having been made – decision under review affirmed

[Jaeger and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 641 (26 August 2016); Professor R McCallum AO, Member

Disability support pension – whether applicant suffers an impairment – applicant suffers from a spinal condition and benign paroxysmal positional vertigo – spinal condition fully diagnosed, treated and stabilised – spinal condition has moderate functional impact – decision under review affirmed

[Nicholson and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 630 (23 August 2016); Senior Member B Stefaniak AM RFD

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 – applicant unaware of changes to application period - decision under review affirmed

[Ramsay and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 715 (16 September 2016); DJ Morris, Member

Disability Support Pension (DSP) – whether qualified – whether impairments fully diagnosed, fully treated and fully stabilised – whether impairments attract 20 points or more

on Impairment Tables – reasonable treatment still being undertaken – conditions not stabilised – not qualified for DSP – decision under review affirmed

[Reihana and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 711 (15 September 2016); Senior Member J Sosso

Disability support pension – eligibility for arrears of payment – occurrence of an event or change of circumstances – cessation of paid employment – decision under review affirmed

## **Taxation**

[PBKQ and Commissioner of Taxation](#) (Taxation) [2016] AATA 681 (5 September 2016); Ms G Lazanas, Senior Member

Taxation and Revenue – income tax – default assessment – deductibility of service charge – objection decision relating to tax set aside and remitted to Commissioner – administrative penalty – failure to provide document as required – question of remission – objection decision relating to penalty affirmed

## **Veterans' Affairs**

[Kelly and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 642 (26 August 2016); Ms AF Cunningham, Senior Member

Claim for war widows pension – operational service – kind of death – Alzheimer-type dementia – post-traumatic stress disorder – whether war caused – reasonable hypothesis raised on the material – decision under review set aside

[Linwood and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA (15 September 2016); Deputy President BJ McCabe

Administrative Law – Veterans' Affairs - veterans' entitlements – pension - pension in respect of psychiatric condition - rate of pension - date of effect of liability decision – 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>Comcare v Chambers</b>	<a href="#">[2016] AATA 615</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Ascic v Secretary, Department of Social, Services</b>	<a href="#">[2015] AATA 637</a>	<a href="#">[2016] FCA 1122</a>
<b>Comcare v Farrell</b>	<a href="#">[2015] AATA 268</a>	<a href="#">[2016] FCAFC 115</a>
<b>Lokanc v Secretary, Department of Social Services</b>	<a href="#">[2016] AATA 195</a>	<a href="#">[2016] FCA 1134</a>

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