



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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# 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](mailto:LegalAndPolicy@aat.gov.au).

## New SSCSD fact sheets

New fact sheets have been developed to answer questions about common types of review in the Social Services and Child Support Division of the Tribunal:

- Disability Support Pension
- Centrelink Debts
- Member of a Couple
- Family Tax Benefit care decisions
- Child Support care decisions

The [fact sheets](#) are publicly available on the Tribunal's website.

# 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.

## Compensation

[De La Paz and Comcare](#) (Compensation) [2016] AATA 925 (21 November 2016); Mrs JC Kelly, Senior Member

Sprain of right shoulder – injury to fourth finger of left hand – whether claimed injuries caused by increased workload or constant use of computer mouse – whether claimed injuries were contributed to by increased workload or constant use of computer mouse – evidence of specialist medical practitioners – increased workload and use of computer mouse are not contributing factors to claimed injuries – decision affirmed

[Rutter and Linfox Australia Pty Ltd](#) (Compensation) [2016] AATA 938 (25 November 2016); Senior Member A Poljak

Workers compensation – claim for lower back injury – whether Applicant entitled to medical treatment expenses and incapacity benefits – treatment including physical therapy, hydrotherapy and Pilates – decision affirmed – whether injury resulted in permanent impairment – whole person impairment rating – non-economic loss scores – decision set aside and remitted

## Education and Research

[Chow and Secretary, Department of Education and Training](#) [2016] AATA 880 (8 November 2016); K Millar, Member

Higher Education – student assistance – HECS-HELP – application for repayment of student contribution – period for valid application – whether special circumstances – decision under review is affirmed

## Immigration and Citizenship

[Maali and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 927 (22 November 2016); Mr W Evans, Member

Citizenship by conferral – Applicant living outside Australia for extended period – whether the Applicant meets the eligibility requirement – whether the Applicant meets the residence requirement – whether the Applicant is likely to reside or continue to reside, in Australia or to maintain a close and continuing association with Australia – whether the Applicant was a spouse of an Australian Citizen during the time of absence from Australia – decision affirmed

[Chander and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 929 (22 November 2016); Ms R Perton, Member

Refusal of visa – character test – criminal record – discretion to refuse visa enlivened – protection of Australian community – risk to the Australian community should the conduct be repeated – whether risk of future harm acceptable – exercise of discretion – decision under review set aside

[HYPR and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 864 (31 October 2016); Deputy President SE Frost

Visa refusal – application for Protection 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 – broad middle ground of Australian community – non-refoulement obligations – decision under review affirmed

[LMYW and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 936 (24 November 2016); Deputy President BJ McCabe

Visa cancellation – mandatory cancellation – where applicant has substantial criminal record – drug trafficking – protection of the Australian community – expectations of the Australian community – where applicant likely to face discrimination in home country if visa cancelled because he is homosexual – where evidence of rehabilitation – where serious impediments to applicant if they were to be removed – decision under review set aside – decision in substitution that cancellation decision revoked

[1508718](#) (Migration) [2016] AATA 4567 (24 October 2016); R Skaros, Member

Employer Nomination (Permanent) (Class EN) Visa – Subclass 186 – cl 186.223 – no approved employer nomination – minister of religion – nomination refusal affirmed – request to vacate primary decision on nomination – requested information provided outside prescribed time – Judicial review application lodged – decision under review affirmed

[1603886](#) (Migration) [2016] AATA 4598 (25 October 2016); M McAdam, Member

Working Holiday (Temporary) (Class TZ) visa – Subclass 417– cl 417.221 – public interest criterion 4019 – failed to complete the Australian Values Statement – decision under review remitted

[1516890](#) (Migration) [2016] AATA 4613 (31 October 2016); D Morgan, Member

Child (Migrant) (Class AH) visa – Subclass 101 – cl 101.213 – Applicant over 18 years –study since leaving school not continuous – periods of employment – lodgement delayed by migration agent – caring for family members – decision under review affirmed

[1602021](#) (Migration) [2016] AATA 4617 (1 November 2016); C Cody, Member

Visitor (Class FA) visa – Subclass 600 – cl 600.211 – genuine temporary entrant – non-dependent children in Peru – previous visa applications refused – false documents in past applications – decision under review affirmed

[1513941](#) (Migration) [2016] AATA 4607 (2 November 2016); S Carlton, Member

Partner (Temporary) (Class UK) visa – Subclass 820 – cl 820.211 – de facto relationship not existing for 12 months prior to application – limited evidence of joint finances and joint household – evidence as to the nature of the relationship – compelling and compassionate circumstances – genuine continuing relationship – responsibility for caring for sponsor’s child – decision under review remitted

[1502751](#) (Refugee) [2016] AATA 4648 (25 October 2016); J Silva, Member

Protection visa – Bahrain – political opinion – anti-government protests – religion – Shi’a – race – Part-Bahraini ethnicity – police assaults on protesters – third country protection – civil unrest and political tension – decision under review affirmed

[1609943](#) (Refugee) [2016] AATA 4611 (25 October 2016); P Vlahos, Member

Protection visa – India – imputed political opinion – political activists – land dispute – physical assault – internal relocation – decision under review affirmed

[1502525](#) (Refugee) [2016] AATA 4612 (30 October 2016); R Titterton, Member

Protection visa – Turkey – race – Kurdish – political opinion – pro-Kurdish independence – detentions – decision under review remitted

[1610889](#) (Refugee) [2016] AATA 4565 (31 October 2016); B Henry, Member

Protection visa – irregular maritime arrival – Afghanistan – jurisdiction – Class XA visa refused by delegate – High Court remittal – temporary protection (Class XD) visa granted – conversion regulation – prescribed applicant for r 2.08F – no refusal decision – no jurisdiction

[1506100](#) (Refugee) [2016] AATA 4647 (1 November 2016); J Jolliffe, Member

Protection visa – Pakistan – particular social group – inter-caste/sect marriage – honour killings – threats of physical harm – internal relocation unreasonable – decision under review remitted

## **Industrial Law**

[O’Farrell and Secretary, Department of Employment](#) [2016] AATA 921 (18 November 2016); Deputy President JW Constance and Dr L Bygrave, Member

Employment – Fair Entitlement Guarantee – wages entitlement – wages entitlement period – when Applicants’ employment ended – whether certain payments taken to be taken into account when calculating wages entitlement – payment for annual leave and long service leave – decisions set aside and remitted

## **Practice and Procedure**

[Cuthbertson; Secretary, Department of Immigration and Border Protection and](#) [2016] AATA 930 (22 November 2016); Deputy President SA Forgie

Application for extension of time to apply for review – applicant mistakenly closed file after decision of acting Australian Information Commissioner (AIC) – application for review not lodged within time period – respondent requested documents from applicant five months after AIC decision – principles relevant to extension of time to apply are no different from application by non-agency party –

substantial delay in seeking to review decision – no evidence of intentional delay on part of applicant – no prejudice for respondent if extension of time were to be granted – review raises significant issues of public interest – extension granted

[Tuimaseve and Minister for Immigration and Border Protection](#) [2016] AATA 924 (18 November 2016); Deputy President SA Forgie

Video conferencing – request by respondent for applicant to attend via video conferencing technology – request declined

## **Social Security**

[Carey and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 926 (21 November 2016); Professor R McCallum AO, Member

Age Pension – cancellation of Age Pension – applicant failed to notify Centrelink of changed address – Age Pension later reinstated – correct start date of age pension – whether applicant entitled to arrears of Age Pension – decision remitted

[Coolwell and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 933 (23 November 2016); Senior Member DR Davies

Debt recovery – overpayments – recovery of parenting payment – recovery of penalty amount – recklessly provided false information in relation to income – decision under review affirmed

[Eisapourpouri and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 934 (23 November 2016); Senior Member A Poljak

Disability support pension – eligibility – relevant period – physical intellectual or psychiatric impairments – whether impairments rate 20 points under Impairment Tables – whether conditions fully diagnosed, treated and stabilised – decision affirmed

[Kirby and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 928 (22 November 2016); Senior Member T Tavoularis

Disability support pension – whether Applicant had conditions that were fully diagnosed, treated and stabilised during relevant period – whether Applicant had 20 impairment points – Chronic Fatigue Syndrome – Asthma – Fibromyalgia – Multiple Chemical Sensitivities – Electromagnetic Hypersensitivity Syndrome – Mental Health – Applicant only has 10 impairment points – decision under review affirmed

[Mojaeva and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 931 (23 November 2016); Ms N Isenberg, Senior Member

Disability support pension – maximum portability period exceeded – whether the applicant travelled overseas to seek eligible medical treatment – whether the treatment was of a kind that is not available to the applicant in Australia – whether the applicant had a severe impairment – decision affirmed

[Rade and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 919 (18 November 2016); Mr I Thompson, Member

Disability support pension – whether applicant’s medical condition was fully diagnosed, fully treated and fully stabilised during the assessment period – whether the applicant has a severe impairment – decision under review set aside

[TLCC and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 922 (18 November 2016); Senior Member JF Toohey

Carer payment – carer allowance – two children – cancellation – whether applicant qualified for carer payment at date of cancellation – whether applicant provided constant care at the date of cancellation – whether applicant’s capacity for employment severely restricted by provision of constant care – whether children required constant care – decision under review affirmed

## **Veterans' Affairs**

[Austen and Repatriation Commission](#) (Veterans’ entitlements) [2016] AATA 923 (18 November 2016); Senior Member JF Toohey

Claim by widow – whether veteran’s death related to service – kind of death – whether ischaemic heart disease was veteran’s kind of death – whether ischaemic heart disease hastened death – whether ischaemic heart disease played any real role in pathological changes – decision under review affirmed

[Stafford and Repatriation Commission](#) (Veterans’ entitlements) [2016] AATA 935 (23 November 2016); Senior Member N Isenberg

Disability pension – special rate – increase beyond general rate sought – whether war-caused conditions alone render veteran incapable of working more than 8 hours per week – professional skills, qualifications and experience – kinds of remunerative work suitable – impact of mental condition on ability to work – decision under review affirmed

[Straker and Repatriation Commission](#) (Veterans’ entitlements) [2016] AATA 937 (12 October 2016); Senior Member T Tavoularis

Pension bonus scheme – Application for registration rejected – did Applicant satisfy work test – whether work performed outside Australia could be treated as gainful work performed within Australia – work outside Australia did not meet special circumstances requirements – work test does not appear to be satisfied – decision under review affirmed in part and remitted in part



# 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

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CASE NAME	AAT REFERENCE
<b>Kang v Secretary, Department of Social Services</b>	<a href="#">[2016] AATA 829</a>

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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Commissioner of Taxation v Jayasinghe</b>	<a href="#">[2015] AATA 456</a>	<a href="#">[2016] HCATrans 275</a> <a href="#">[2016] FCAFC 79</a>
<b>Sami v Minister for Immigration and Border Protection, and Secretary, Department of Immigration and Border Protection</b>	<a href="#">[2013] AATA 445</a>	<a href="#">[2016] FCA 1405</a> <a href="#">[2015] FCA 1496</a>

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