



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.

End of year arrangements

Many of our offices will close from 5:00pm on Thursday, 24 December 2015 and will reopen at 8:30am on Monday, 4 January 2016.

Registry services will be available between 8:30am and 5:00pm on **Tuesday, 29 December, Wednesday, 30 December 2015 and Thursday, 31 December 2015** at:

- Level 7, 55 Market Street, Sydney
- Level 16, 40 City Road, Southbank, Melbourne
- Level 5, 111 St Georges Terrace, Perth
- Level 11, 91 Grenfell Street, Adelaide
- Level 4, Harry Gibbs Building, Commonwealth Law Courts, 119 North Quay, Brisbane
- Level 8, 14 Moore Street, Canberra
- 39-41 Davey Street, Hobart

For more information visit our website, www.aat.gov.au or [contact us](#) on 1800 228 333.

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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.

Compensation

[Mayer and Comcare](#) (Compensation) [2015] AATA 925 (1 December 2015); Mr S Webb, Member

Accepted injuries – calculation of weekly compensation for incapacity – average weekly earnings pre injury – overtime – higher duties allowance – previous Tribunal decision – effect of industrial agreements on deemed employment level and normal weekly earnings amounts – adjustment of rate of weekly compensation – decisions varied

[Thelian and Comcare](#) (Compensation) [2015] AATA 943 (7 December 2015); Deputy President JW Constance

Injury – disease – ailment – whether the disease was contributed to, to a significant degree, by his employment – whether aggravation of disease contributed to, to a significant degree, by his employment – decision affirmed

[Wuth and Comcare](#) (Compensation) [2015] AATA 947 (9 December 2015); Dr J Poppo, Senior Member

Commonwealth employees – calculation of normal weekly earnings – effect of part-time working arrangements – applicant and employer understood that applicant would eventually return to full-time work – whether normal hours includes work in addition to agreed hours – decision affirmed

Commonwealth employees – permanent impairment – applicant suffers headaches – disease aggravated by work – assessment of permanent impairment – no applicable table under approved Guide – application of the AMA 5 – clinical judgment – decision set aside and substituted

Freedom of Information

[Cordover and Australian Electoral Commission](#) (Freedom of information) [2015] AATA 956 (11 December 2015); Deputy President G Melick, Ms S Taglieri, Member

Whether documents a trade secret – Definition of “trade secret” considered – Whether documents contained information having commercial value that could reasonably be expected to be diminished if information disclosed – Whether disclosure of business information could reasonably be expected to affect party adversely

[Francis and Australian Information Commissioner](#) (Freedom of information) [2015] AATA 936 (4 December 2015); Senior Member NA Manetta

Declaration of applicant as vexatious – whether access action abuse of process – previous applications for amendment of records and previous AAT decisions – held declaration appropriate

[Wood; Secretary, Department of Prime Minister and Cabinet and](#) [2015] AATA 945 (8 December 2015); Deputy President SA Forgie

Exemptions – deliberative processes – public interest – legal professional privilege decision affirmed

Migration and Refugee

Migration

[1415619](#) (Migration) [2015] AATA 3743 (11 November 2015); H Claringbold, Member

Other Family (Residence) (Class BU) visa – Subclass 835 (Remaining Relative) – cl 835.212 – Claimed adoptive mother – Availability of formal adoption in Fiji – Customary adoptions – Financial assistance to biological parent – Decision under review affirmed

[1414936](#) (Migration) [2015] AATA 3657 (12 November 2015); M Bourke, Member

Contributory Parent (Migrant) (Class CA) visa – Subclass 143 – r 1.05 – Balance of family test – Visa applicant married the step child's parent before the step child turned 18 – Decision under review remitted

[1419685](#) (Migration) [2015] AATA 3631 (12 November 2015); R Gagliardi, Member

Partner (Temporary) (Class UK) visa – Subclass 820 – Public Interest Criteria 4020 – Provided false information in preceding 3 years for skilled visa – Slow visa processing times – Retrospective application of PIC4020 – Traditional Nepalese concept of marriage – Applicant's home town affected by earthquakes – Sponsor's limited residence capacity in Nepal – Departmental recommendation for waiver – Decision under review remitted

[1421176](#) (Migration) [2015] AATA 3632 (16 November 2015); S Trotter, Member

Partner (Provisional) (Class UF) visa – Subclass 309 – cl 309.211 – cl 309.221 – Level of committed de facto relationship – Independent finances with shared expenses – Sponsor's overseas residence limits for taxation purposes – Significant period of time spent together in both countries – Relationship genuine and continuing – Decision under review remitted

[1511220](#) (Migration) [2015] AATA 3733 (17 November 2015); N McGowan, Member

Partner (Temporary) (Class UK) visa – Subclass 820 – cl 820.211(2)(d)(ii) – Compelling reasons for not applying Schedule 3 criteria – Longevity of the parties' relationship – Australian citizen child – Emotional support provided to the sponsor and her child – Decision under review remitted

[1514913](#) (Migration) [2015] AATA 3656 (17 November 2015); A Ho, Member

Visitor (Class FA) visa – Kenya – Subclass 600 – cl 600.211 – cl 600.212 – Genuine temporary entrant – Adequate means to support the visit – Family members' earlier visits were visa condition compliant – Purpose of visit to attend family events and celebrations – Decision under review remitted

[1415696](#) (Migration) [2015] AATA 3709 (18 November 2015); D Dimitriadis, Member

Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 – cl 187.234 – Welfare worker – ANZSCO qualifications to perform the nominated occupation – Applicant does not hold a

bachelor degree or higher qualification – Applicant does not have five years of relevant experience – Decision under review affirmed – No jurisdiction with third named applicant

[1419717](#) (Migration) [2015] AATA 3713 (18 November 2015); A Mercer, Member

Student (Temporary) (Class TU) – Subclass 572 – cl 572.223(1)(a) – Genuine temporary entrant criterion – Failed to complete engineering degree – Undertook Diploma of Management course – Intention to commence a business – Limited incentive to return to Sri Lanka – Decision under review affirmed

[1501161](#) (Migration) [2015] AATA 3698 (18 November 2015); S Webb, Member

Cancellation – [s 116\(1\)\(b\)](#) – Student (Temporary) (Class TU) visa – Subclass 573 Higher Education Sector visa – cl 573.231 – cl 573.223(1A) – Applicant failed to complete pre-requisite English courses – Non-enrolment in higher degree course – Not a genuine student – Decision under review affirmed

[1500111](#) (Migration) [2015] AATA 3711 (23 November 2015); C Smolicz, Member

Distinguished Talent (Residence) (Class BX) visa – Subclass 858 – cl 858.212(2)(a) – Futsal player – Whether the applicant has an internationally recognised record of exceptional and outstanding achievement – Not demonstrated exceptional and outstanding achievement in Futsal – Not internationally recognised – Decision under review affirmed

Refugee

[1504780](#) (Refugee) [2015] AATA 3604 (2 November 2015); T Eteuati, Member

Protection visa – India – Family dispute over land – Applicant and agent did not respond to tribunal hearing invitation – Applicant given 14 days to reinstate application – Inappropriate to reinstate application – Decision under review affirmed

[1404321](#) (Refugee) [2015] AATA 3663 (6 November 2015); R Shanahan, Member

Protection visa – Egypt – Religion – Coptic Christian – Attacks and attempted religious conversion by Muslims – Hiding Christian girls – Credibility issues – Decision under review affirmed

[1501978](#) (Refugee) [2015] AATA 3672 (8 November 2015); G Short, Senior Member

Protection visa – Zimbabwe – Federal Circuit Court remittal – Jurisdictional error of first tribunal – Relevant country information not considered – Imputed political opinion – Low level supporter of Movement for Democratic Change (MDC) – Relative's connection with MDC – Social group – Returnees from West – Single female with no family – Decision under review remitted

[1503197](#) (Refugee) [2015] AATA 3621 (9 November 2015); S Pinto, Member

Protection visa – Malaysia – Race – Ethnic Chinese – Reprisal for arrest of drug dealer – Delay in lodging visa application – State protection – Credibility issues – Decision under review affirmed

[1503801](#) (Refugee) [2015] AATA 3679 (9 November 2015); A Paxton, Member

Protection visa – China – Religion – Falun Gong – Introduced to Falun Gong by mother – Commenced practice in 2010 – Detained by police – Genuine practitioner – Relocation unreasonable – Decision under review remitted

[1406336](#) (Refugee) [2015] AATA 3673 (10 November 2015); S Webb, Member

Protection visa – Irregular Maritime Arrival – Afghanistan – Race – Hazara – Religion – Shia – Jaghori District – Reasonableness of internal relocation – Access to social networks – Decision under review remitted

[1410197](#) (Refugee) [2015] AATA 3674 (10 November 2015); D McCulloch, Member

Protection visa – Nepal – Complementary Protection Criterion – Political opinion – Rastriya Prajantra Party – Pro-monarchists – Targeted by Maoists – Abduction of co-worker – Credibility issues – Decision under review affirmed

[1402684](#) (Refugee) [2015] AATA 3667 (12 November 2015); L Symons, Member

Protection visa – Irregular Maritime Arrival – Bangladesh – Parents born in Burma – Stateless Rohingya – Unregistered refugee in Bangladesh – Discrimination in employment – Credibility issues – Decision under review affirmed

[1411787](#) (Refugee) [2015] AATA 3686 (12 November 2015); D Corrigan, Member

Protection visa – Papua New Guinea – Tribal groups – Tribal warfare – Particular social group – Teachers – Wealthy persons – Decision under review affirmed

[1414739](#) (Refugee) [2015] AATA 3690 (16 November 2015); C Thwaites, Member

Protection visa – Bangladesh – Imputed political opinion – Bangladesh National Party supporter – Forced donations to Awami League Party supporters – Complaints to police – Credibility issues – Decision under review affirmed

Practice and Procedure

[DVVT and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 951 (3 December 2015); Senior Member AC Cotter

Application for adjournment – Late application – Where adjournment previously granted – Proportionality considered – Minor dispute – Narrow issue – Insufficient medical evidence to support inability to appear – Application for adjournment refused

Social Security

[Barzanji and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 879 (13 November 2015); Dr I Alexander, Member

Disability support pension – spinal condition – mental health condition – whether conditions fully diagnosed, treated and stabilised – impairment ratings – continuing inability to work – decision affirmed

[Collins and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 948 (10 December 2015); Deputy President Dr P McDermott RFD

Disability support pension – DSP – whether applicant had relevant impairment – conditions of lateral epicondylitis, plantar fasciitis, vitamin D deficiency, fibromyalgia, osteoarthritis, depression – whether “permanent” – whether applicant’s impairment fully diagnosed, treated and stabilised – conditions

“likely to improve” or “fluctuate” – conditions have limited impact on ability to function – decision under review affirmed

[Galbraith and Secretary, Department of Social Services \(Social services second review\)](#) [2015]

AATA 950 (10 December 2015); Mr C Ermert, Member

Disability support pension – whether conditions are severe – 20 impairment points – decision affirmed

[Gordon and Secretary, Department of Social Services](#) (Social services second review) [2015]

AATA 937 (4 December 2015); Senior Member NA Manetta

Pensions, benefits and allowances – disability support pension – whether applicant has severe impairment attracting 20 point rating– decision under review affirmed

[Hollis; Secretary, Department of Social Services and](#) (Social services second review) [2015]

AATA 941 (4 December 2015); Deputy President G Humphries

Benefits – eligibility for childcare benefit – whether application effective – whether time can be extended beyond the following income year – whether special circumstances exist that prevented Applicant making a claim within time – decision under review set aside and substituted

[Moharos and Secretary, Department of Social Services](#) (Social services second review) [2015]

AATA 958 (11 December 2015); Senior Member AC Cotter

Disability Support Pension – Review of qualification – Cancellation of entitlement – Whether applicant has 20 points or more under the Impairment Tables in force at the time of cancellation – Decision under review affirmed

[SBWN; Secretary, Department of Social Services and](#) (Social services second review) [2015]

AATA 946 (9 December 2015); Miss EA Shanahan, Member

Pensions, benefits and allowances – new start allowance – full disclosure of assets not made – claim of domestic violence in the form of financial control of both income and Trust assets – claimed ignorance of such financial matters – questions of witnesses’ credit – assets estimated at \$867,666.40 – decision of the Social Security Appeals Tribunal set aside

[Westcott and Secretary, Department of Social Services](#) (Social services second review) [2015]

AATA 959 (11 December 2015); Senior Member AC Cotter

Overpayment of Carer’s Pension – Pension paid at single rate – Whether applicant was a “member of a couple” at the relevant time – Failure to disclose relationship status – Evidence of marriage-like relationship – Decision under review affirmed

Taxation

[Crown Estates \(Sales\) Pty Ltd and Commissioner of Taxation](#) (Taxation) [2015] AATA 949 (10

December 2015); Senior Member BJ McCabe

Goods and Services Tax – agency relationships – input tax credits – property management business – provision for goods and services – whether taxpayer companies made “creditable acquisitions” and “taxable supply” – were taxpayer companies acting as principal or agent – taxpayer companies in

position to “create or affect legal rights and duties” – taxpayer companies acted as agents – not entitled to claim input tax credits – no creditable acquisitions – objection decisions affirmed

Veterans' Affairs

[Hill and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 952 (10 December 2015); Deputy President Dr P McDermott RFD

Qualifying service – whether service rendered by applicant was qualifying service – decision affirmed

[Lingard and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 939 (4 December 2015); Deputy President Dr C Kendall

VETERANS SERVICE PENSION – Informal claim – Notification of informal claim – Claim returned after three month statutory period – Request for backdating of claim date to date of informal claim on basis that veteran did not understand or notice dates noted on claim form or on basis of compassionate ground due to ill health – decision under review affirmed

[Medlow and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 932 (12 November 2015); Senior Member NA Manetta

Veterans' Entitlements Act – preliminary question – application lodged electronically but in an unapproved way – whether s 5T(4) required the Tribunal to reject applicants' application for review – held s 119(1)(g) required Commission and Tribunal to ignore informality of electronic lodgement as mere technicality

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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Westrupp v BIS Industries Limited & Comcare

[\[2015\] AATA 298](#)

[\[2015\] FCAFC 173](#)

Levao v Secretary, Department of Social Services

[\[2015\] AATA 830](#)

[\[2015\] FCA 1396](#)

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