



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](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 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

[Mikajlo and Comcare](#) (Compensation) [2016] AATA 157 (18 March 2016); Deputy President K Bean

Commonwealth employees – Applicant injured in full-time employment – whether Applicant's part-time Army Reserve earnings should be included in the calculation of his normal weekly earnings – whether Applicant's compensation entitlements should be offset against award of damages at common law – whether Tribunal has jurisdiction to consider entitlement to compensation for medical expenses – no claim for medical treatment made by Applicant – decisions under review affirmed

## Freedom of Information

[Duncan and Secretary, Department of Human Services](#) (Freedom of information) [2016] AATA 152 (15 March 2016); Senior Member Dr J Popple

Access to documents – variation of access refusal decision – whether original decision can be varied under Freedom of Information Act 1982, s 55G if revised decision does not give access to requested document in full – whether reference to document (singular) includes documents (plural) – interlocutory question – what is decision under review in the Tribunal – decision under review is an access refusal decision, as varied by three subsequent decisions

## Migration and Refugee

[Van Rooyen and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 165 (29 February 2016); Deputy President JW Constance

Bridging Visa – cancellation of visa under *section 501(3A) of Migration Act* – Applicant sought revocation of cancellation – was the discretion to consider revocation enlivened – should the discretion be exercised given the specific circumstances of the case – primary considerations – protection of the Australian community from criminal or other serious conduct – risk of non-citizen engaging in further criminal or serious conduct – expectations of Australian community – other considerations – strength, nature and duration of non-citizen's ties to Australia – decision set aside and substituted – decision to cancel visa revoked

## Migration

[1420151](#) (Migration) [2016] AATA 3335 (18 February 2016); C Wall, Member

Prospective Marriage (Temporary) (Class TO) visa – Subclass 300 – cl 300.216 – cl 300.221 – Genuine intention to marry – Limited opportunities to socialise in Afghanistan – Long term exclusive relationship – Decision under review remitted

[1509102](#) (Migration) [2016] AATA 3349 (18 February 2016); J Kelly, Senior Member

Visitor (Class FA) visa – Thailand – Subclass 600 (Visitor) – cl 600.211 – Whether the applicant genuinely intends to stay temporarily – Previous student visa application unsuccessful – Prepared to relinquish duties at home and family - Concerns with intention – Decision under review affirmed

[1416768](#) (Migration) [2016] AATA 3329 (23 February 2016); I Garnham, Member

Partner (Provisional) (Class UF) visa – Subclass 309 – cl 309.211 – cl 309.221 – Definition of spouse – Relationship commenced while visa applicant was unlawful – Couple retained limited but independent finances – Genuine intention to carry on long-term relationship – Decision under review remitted

[1506109](#) (Migration) [2016] AATA 3346 (25 February 2016); C Carney-Orsborn, Member

Child (Migrant) (Class AH) Visa – Subclass 101 – cl 101.213 – Full-time course of studies – Studies delayed due to injury – Enrolled in a full-time English course during rehabilitation – Undertaking full-time study since turning 18 – Decision under review remitted

[1506034](#) (Migration) [2016] AATA 3345 (26 February 2016); H Sanderson, Member

Contributory Parent (Migrant) (Class CA) visa – Subclass 143 – cl 143.213 – Balance of family test – Enforcing access rights – Shared rights and responsibilities – Joint custodians and guardians – by adoption or by operation of law (other than in consequence of marriage) – Decision under review affirmed

## **Refugee**

[1413480](#) (Refugee) [2016] AATA 3370 (21 February 2016); L Symons, Member

Protection visa – Fiji – Complementary protection – Applicant has been in Australia since a young child – Australian citizen child – Ministerial intervention referral – Decision under review affirmed

[1411598](#) (Refugee) [2016] AATA 3368 (24 February 2016); C Cody, Member

Protection visa – Lebanon – Social group – Bisexuals – Credibility issues – Inconsistency with claimed bisexuality – Family and Social intolerance – Activities in Australia to strengthen application – Decision under review affirmed

[1415560](#) (Refugee) [2016] AATA 3429 (29 February 2016); N Burns, Member

Protection visa (Class XA) – Cambodia – Political opinion – Opposition to government – Enhanced claims – Physical and mental harm – Pregnant without husband – Decision under review affirmed

[1313776](#) (Refugee) [2016] AATA 3430 (2 March 2016); A Goodier, Member

Protection visa – Afghanistan – Race – Religion – Shia Hazara – Particular social group – Aligned with west – Fear of abduction and killing by Taliban or IS forces – Lack of state protection – Absence of family and social links for internal relocation – Decision under review remitted

[1417831](#) (Refugee) [2016] AATA 3456 (2 March 2016); A Goodier, Member

Protection visa – Zimbabwe – Social group – Homosexuals – Divorced with child – Had one lesbian relationship – Credibility issues – Decision under review affirmed

## Practice and Procedure

[Zou and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 160 (18 March 2016); Deputy President Dr C Kendall

Application for extension of time to lodge application for review of decision of respondent dated 11 February 2008 – notice of Respondent’s decision despatched to Applicant on the same day – applicant lodged application for review of Respondent’s decision on 18 November 2015 – Applicant did not give satisfactory explanation for delay – Tribunal not satisfied that reasonable in all the circumstances to grant extension of time – application for extension of time refused

## Social Security

[Al Ateyeh and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 166 (21 March 2016); Ms EA Shanahan, Member

Disability support pension – portability of the pension – cancellation of pension payments due to prolonged overseas absence – review of portability and entitlement to the disability support pension conducted – unlimited portability denied – ability to work 2 hours per week – decision affirmed

[Buck; Secretary, Department of Employment and](#) (Social services second review) [2016] AATA 167 (22 March 2016); Senior Member NA Manetta

Parenting payment – when income derived by beneficiary from a family trust – withdrawals of money from trust’s bank account in the course of a financial year – held withdrawals represented distribution of income from Trust – decision varied

[Confidential and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 158 (18 March 2016); Professor R McCallum AO, Member

Disability Support Pension – cancellation of payment – Applicant did not reply to notices – notices sent to last known address – decision affirmed

Age Pension – application rejected – Applicant not in Australia when claim made – decision affirmed

[Elrington; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 169 (22 March 2016); Deputy President SA Forgie

Family tax benefit – respondent’s entitlement to family tax benefit top up and supplement amounts – late lodgement of taxation return – failure of respondent’s accountants to lodge income tax return – whether special circumstances – decision of Social Security Appeals Tribunal set aside

[Gillespie and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 164 (18 March 2016); Senior Member CR Walsh

Disability support pension – applicant’s impairments (being epilepsy, ADHD, depression/anxiety and hepatitis C) were fully diagnosed, but not fully treated and fully stabilised in the qualification period – applicant’s impairments did not attract 20 points or more under the Impairment Tables in the qualification period – decision under review affirmed

[Krishna; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 172 (23 March 2016); Deputy President JW Constance

Disability support pension – cancellation of disability support payment – whether person's impairment is of 20 points under Impairment Tables – whether conditions fully diagnosed, fully treated and fully stabilised – decision set aside and substituted

[La'Brooy and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 159 (18 March 2016); Deputy President Dr C Kendall

Age pension – Member of a couple – Pension reduced to partner rate due to de facto relationship and marriage – Department not advised of relationship or marriage – Debt accruing due to overpayment of age pension – Whether discretion in section 24 of Social Security Act should be exercised – Whether debt is debt to the Commonwealth – Whether debt should be waived due to special circumstances or written off

[Nedelkovski and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 163 (18 March 2016); Mr C Ermert, Member

Disability support pension – qualification period - physical, intellectual or psychiatric impairments – whether impairments attracted a rating of 20 points or more – continuing inability to work – program of support not completed – decision affirmed

[Screen and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 173 (23 March 2016); Professor R McCallum AO, Member

Disability Support Pension – DSP – review conducted – Applicant did not have 20 points under current Impairment Tables – DSP cancelled – whether Applicant has 20 points under the Impairment Tables – decision affirmed

[Sisalem and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 170 (22 March 2016); Senior Member Dr D Cremean

Disability support pension – suspension – cancellation – absence from Australia – eligible medical treatment – whether requirements for DSP met – Impairment Tables – indefinite portability – decisions affirmed

[Whiterod and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 168 (22 March 2016); Senior Member NA Manetta

Age Pension – Pension Bonus Scheme – international agreement with New Zealand – whether applicant's spouse's entitlement to a New Zealand social security benefit should be taken into account in calculating applicant's pension bonus – 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

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CASE NAME	AAT REFERENCE
<b>Comptroller-General of Customs v Sulo MGB Australia Pty Ltd</b>	<a href="#">[2016] AATA 78</a>
<b>Ringshaug v Comcare</b>	<a href="#">[2016] AATA 88</a>

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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Mladenov v Secretary, Department of Social Services</b>	<a href="#">[2015] AATA 99</a>	<a href="#">[2016] FCA 274</a>
		<a href="#">[2015] FCA 1472</a>

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