



Administrative  
Appeals Tribunal

# AAT Bulletin

**Issue No. 16/2016**

**18 April 2016**

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.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

Enquiries regarding this publication may be directed to [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

# Contents

<b>AAT Recent Decisions</b> .....	<b>3</b>
Citizenship.....	3
Compensation .....	3
Freedom of Information .....	4
Migration and Refugee .....	4
Social Security.....	5
Tax Agents .....	7
Veterans' Affairs .....	7
<b>Appeals</b> .....	<b>8</b>
Appeals lodged.....	8
Appeals finalised .....	8

# 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

[Musawi and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 231 (14 March 2016); Professor R Deutsch, Deputy President

Eligibility – applicant suffering permanent or enduring physical or mental incapacity – whether capable of demonstrating basic knowledge of the English language – decision affirmed

## Compensation

[Anderson and Australian Postal Corporation](#) (Compensation) [2016] AATA 228 (8 April 2016); Dr Damien Cremean, Senior Member

Ailment – osteoarthritis left thumb – whether compensable – “aggravation” – “significant” – whether notice required – whether false and wilful statement – decision under review set aside

[Chaudhri and Comcare](#) (Compensation) [2016] AATA 222 (8 April 2016); Deputy President JW Constance

Workers Compensation for injuries – adjustment reaction with mixed emotional features – whether injury suffered as a result of reasonable administrative action taken in a reasonable manner in respect of employment – decision set aside and substituted

[Chesterfield and Military Rehabilitation and Compensation Commission](#) (Compensation) [2016] AATA 224 (8 April 2016); Deputy President SA Forgie

Notice – notice of injury – whether notice was given as soon as practicable – whether failure to give notice would prejudice MRCC – whether applicant failed to give notice by reason of ignorance, mistake or other reasonable cause – decision of MRCC affirmed

[Walton and Comcare \(Compensation\)](#) [2016] AATA 70 (11 February 2016); Senior Member JF Toohey

Practice and Procedure – reinstatement – application for review withdrawn – application for reinstatement – whether application could be reinstated – whether application dismissed in error – application to reinstate refused

[Winzar and Australian Postal Corporation](#) (Compensation) [2016] AATA 238 (14 April 2016); Miss EA Shanahan, Member

Workers' Compensation – claim for left foot plantar spur – evolving diagnosis – left plantar fasciitis – surgery following reviewable decision resulting in deep vein thrombosis and chronic pain syndrome – resulting incapacity due to surgical treatment – decision affirmed

## Freedom of Information

[De Tarle and Australian Securities and Investments Commission](#) (Freedom of information) [2016] AATA 230 (8 April 2016); Senior Member N Isenberg

Request for access to documents – conditional exemptions claimed – certain operations of agencies – personal privacy – whether documents exempt – whether, on balance, access would be contrary to public interest – whether all reasonable steps taken to locate documents – decision varied

## Migration and Refugee

### Migration

[1502621](#) (Migration) [2016] AATA 3513 (8 March 2016); H Sanderson, Member

Partner (Provisional) (Class UF) visa – Subclass 309 – cl 309.211(2) – cl 309.221 – Marriage ceremony affected by mourning period for Prime Minister of Ethiopia – Consistent information on each other's lives – Applicant's child granted Australian citizenship by descent – Established a household together during visit to Ethiopia – Relationship recognised by friends and relatives – Decision under review remitted

[1513241](#) (Migration) [2016] AATA 3508 (9 March 2016); M McAdam, Member

Visitor (Class FA) visa – Zimbabwe – Subclass 600 – cl 600.211 – Genuine misunderstanding with previous application – Owns property – Income from farm and building a house – Some responsibility for grandchildren – Comfortable life without harm or security concerns – Demonstrated strong family and property ties – Strong incentive for return – Decision under review remitted

[1513328](#) (Migration) [2016] AATA 3493 (9 March 2016); S Carlton, Member

Working Holiday (Temporary) (Class TZ) visa – Subclass 417 (Working Holiday) – cl 417.221(2)(b) – PIC 4020 – Number of days of specified work – Applicant amended start date of work on form – False or misleading information – No compelling reasons – Decision under review affirmed

[1511340](#) (Migration) [2016] AATA 3497 (10 March 2016); K Raif, Senior Member

Other Family (Migrant) (Class BO) visa – Subclass 114 (Aged Dependent Relative) – cl 114.211 – cl 114.221 – Applicant's assets and ability to provide for her own basic needs – Policy inconsistent with legislation – Reliance on sponsor is greater than reliance on income of assets and other daughter – Decision under review remitted

[1510918](#) (Migration) [2016] AATA 3505 (15 March 2016); C Wilson, Member

Employer Nomination (Permanent) (Class EN) Visa – Subclass 186 – cl 186.222 – Applicant did not have Vocational English for position as Metal Fabricator – Poor IELTS test results – Claims to have

completed Master of Arts in English – Issuing institution unable to be verified – Unable to recall details of course – Not an exempt person – Decision under review affirmed

## **Refugee**

[1414627](#) (Refugee) [2016] AATA 3535 (4 March 2016); P Windsor, Member

Protection visa – Pakistan – Religion – Ahmadiyya – Particular social group – Women from Pakistan – Restrictions on religious practice – Son’s activities in Ahmadi group – Credible witness – Real chance of serious harm – Decision under review remitted

[1404819](#) (Refugee) [2016] AATA 3531 (12 March 2016); L Symons, Member

Protection visa – Cambodia – Particular social group – Single mothers – Unmarried women – Sexual violence – Prostitution – No family support – Assistance of NGOs available – Father of children willing to provide support – Ministerial intervention – Australian citizen children – Convention on the Rights of the Child – Decision under review affirmed

[1418185](#) (Refugee) [2016] AATA 3541 (14 March 2016); T Flood, Member

Protection visa – Bangladesh – Political opinion – Jamaat-e-Islami supporter – Persecution by Awami League members – False drug charges – Internal relocation reasonable – Decision under review affirmed

[1417248](#) (Refugee) [2016] AATA 3539 (15 March 2016); C Thwaites, Member

Protection visa – Lebanon – Religion – Alawites – Interfaith marriage – Communal violence – Witnesses of truth – Internal relocation unreasonable – Real chance of serious harm – Decision under review remitted

[1419277](#) (Refugee) [2016] AATA 3602 (16 March 2016); S Kamand, Member

Protection visa – Nepal – Political opinion – Nepali Congress Party – Tarun Dal member – Perceived wealth – Threats from underground Madhesi groups – Credibility issues – Decision under review affirmed

## **Social Security**

[Brosnan and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 241 (15 April 2016); Mr C Ermert, Member

Family Tax Benefits – late lodgement of tax returns – whether special circumstances exist – decision affirmed

[Davidson and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 183 (29 March 2016); Dr I Alexander, Member

Disability support pension – eligibility – upper limb function – lower limb function – spinal function – program of support not completed – severe impairment rating not found under any impairment table – decision affirmed

[Henden and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 234 (7 April 2016); Mr W. Evans, Member

Disability Support Pension (DSP) – Qualification for DSP accepted – Overpayment of Pension – paid at Single Rate when Couples Rate was appropriate – recovery of overpayment – decision affirmed

[Kopanja and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 233 (1 March 2016); Deputy President JW Constance

Disability Support Pension – application for indefinite portability of pension – whether impairment fully diagnosed, treated and stabilised – whether impairment attracts rating of 20 points under Impairment Tables – decision affirmed

[Lowe and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 236 (14 April 2016); Senior Member AC Cotter

Disability Support Pension – cancellation – intellectual impairment – mental health function – whether condition permanent – whether fully diagnosed – whether fully treated – whether fully stabilised – where condition not fully diagnosed at date of cancellation – decision under review affirmed

[QZBQ and Child Support Registrar](#) (Child support second review) [2016] AATA 215 (6 April 2016); Senior Member AF Cunningham

Child support – pattern of care of care – parties living under same roof – little agreement between parties regarding care pattern – evidence of other party preferred – decision under review affirmed

[Raeth and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 235 (14 April 2016); Senior Member AC Cotter

Parenting Payment – assets value limit – whether loan to company included in assets value – whether loan could be deemed to no longer exist – where loan deemed to be recoverable – assets value limit exceeded – decision affirmed

[Wu and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 226 (8 April 2016); Mr C Ermert, Member

Disability Support Pension – inquiry re indefinite portability – review of qualification for DSP – relevant date – cancellation of DSP payments – whether cancellation decision correct – decision affirmed

[Yousif and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 149 (15 March 2016); Dr I Alexander, Member

Disability support pension – whether conditions fully diagnosed, treated and stabilised – impairment ratings – continuing inability to work – visual function – neurological function – mental health condition – 20 point impairment rating not reached- decision under review affirmed

## **Tax Agents**

[Oleshko and Tax Practitioners Board](#) [2016] AATA 237 (8 April 2016); Senior Member CR Walsh

Tax agents – application for registration as a tax agent rejected by Board – applicant did not satisfy eligibility requirements for registration as a tax agent – applicant not engaged in equivalent of two years full-time “relevant experience” in the preceding 5 years – decision under review affirmed

## **Veterans' Affairs**

[Nguyen and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 221 (7 April 2016); Senior Member N Isenberg

Qualifying service – whether applicant rendered qualifying service – whether applicant allied veteran – whether applicant rendered service during period of hostilities as defined – whether applicant incurred danger in service – applicant served in the defence force of South Vietnam during the Vietnam War – applicant found to have met the criteria for qualifying service on the reasonable satisfaction/balance of probabilities – decision set aside and substituted

# 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
-----------	---------------

---

**None lodged**

---

## Appeals finalised

---

CASE NAME	AAT REFERENCE	COURT REFERENCE
-----------	---------------	-----------------

---

**Uelese v Minister for Immigration and Border Protection**

[\[2015\] AATA 740](#)

[\[2016\] FCA 348](#)

---

**Comcare v Muir**

[\[2015\] AATA 612](#)

[\[2016\] FCA 346](#)

---

© Commonwealth of Australia 2016



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](https://creativecommons.org/licenses/by/3.0/au/). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website:

<http://www.itsanhonour.gov.au/coat-arms/>.

Enquiries regarding the licence are welcome at [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](https://www.austlii.edu.au/au/other/dfat/special/aat/).