



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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# 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.

## Aviation

[Barnes and Civil Aviation Safety Authority](#) [2016] AATA 401 (17 June 2016); Senior Member E Fice

Private Pilot License – safety-relevant medical condition – refusal to extend Class 2 medical certificate – whether safety of air navigation is adversely affected – applicant provided inaccurate or unreliable information to medical practitioners – issue of new medical certificates while an existing medical certificate was in force – decision affirmed

## Citizenship

[Tsai and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 411 (22 June 2016); Senior Member A Poljak

Eligibility – whether applicant of good character – traffic offences – question of disclosure of traffic offences in citizenship application – applicant found not to be of good character for the purposes of citizenship legislation – decision affirmed

## Compensation

[Bailey and Military Rehabilitation and Compensation Commission](#) (Compensation) [2016] AATA 415 (22 June 2016); Senior Member CR Walsh

Whether the Respondent must accept liability for the Applicant's compensation claim for "Morton's metatarsalgia" – whether injury a service injury – standard of proof – peacetime service – reasonable satisfaction to be assessed by reference to relevant Statement of Principles – material before the Tribunal does not raise a connection between the injury and the Army services rendered by the Applicant – the material before the Tribunal and the relevant SOP does not uphold the contention that the injury is, on the balance of probabilities, connected with the Applicant's Army service – decision under review affirmed

[Clarisse and Comcare](#) (Compensation) [2016] AATA 404 (17 June 2016); Senior Member JF Toohey

Psychological condition – aggravation – whether employment contributed to a significant degree – whether reasonable administrative action – decision under review set aside

[Cleary and Comcare](#) (Compensation) [2016] AATA 402 (17 June 2016); Deputy President JW Constance

Workers compensation matter – whether application should be dismissed by reason of the Applicant's failure to proceed with the application in a reasonable time – whether discretion to

dismiss application should be exercised – where applicant refuses to or fails to attend medical appointments – application dismissed

[De Tarle and Comcare](#) (Compensation) [2016] AATA 409 (14 April 2016); Deputy President JW Constance

Reinstatement – workers compensation matter – whether application should be reinstated – where application dismissed by reason of the Applicant’s failure to appear at a directions hearing by telephone – where Applicant failed to attend medical appointments – application for reinstatement refused

[GGJS and Comcare](#) (Compensation) [2016] AATA 400 (17 June 2016); Deputy President Dr C Kendall

Household services – amount of compensation available – decision under review varied

[Wild and Comcare](#) (Compensation) [2016] AATA 423 (24 June 2016); Deputy President Melick & Mr D Morris, Member

Ailment – bilateral carpal tunnel syndrome – bilateral subacromial bursitis – whether employment aggravated ailment – whether employment contributed to aggravation of an ailment to a significant degree – decision under review affirmed

## **Education and Research**

[Tralongo and Secretary, Department of Education](#) [2016] AATA 393 (20 May 2016); Senior Member PA Britten-Jones

Higher education support – HECS-HELP – debt remission – special circumstances – whether circumstances were beyond the control of the applicant – decision under review is affirmed

## **Migration and Refugee**

[Tran and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 413 (22 June 2016); Deputy President SA Forgie

Whether discretion to refuse to grant a visa should be exercised for failure to pass the character test – decision set aside

### **Migration**

[1600502](#) (Migration) [2016] AATA 3941 (2 June 2016); J Ciantar, Member

Cancellation – Temporary Work (Skilled) visa – Subclass 457– Applicant worked for an employer other than the approved sponsor – Voluntary work driving a taxi for a week – Employment in approved position continued – Negative impact on the sponsoring employer – Decision under review set aside

[1513419](#) (Migration) [2016] AATA 3938 (3 June 2016); D Dimitriadis, Senior Member

Return (Residence) (Class BB) visa – Subclass 155 (Five Year Resident Return) – Applicant not a permanent resident or citizen – Arrived as a stowaway – Applicant has remained in Australia for 35 years – Applicant retains no contact with family in China – Decision under review affirmed

## **Refugee**

[1500436](#) (Refugee) [2016] AATA 3918 (30 May 2016); J Jolliffe, Member

Protection visa – India – Political opinion – Indian National Congress Party supporter – Ram Rahim religious group supporter – Persecution by Alkali Dal party supporters – False murder charge – Business rivalry – Credibility issues – Decision under review affirmed

[1514798](#) (Refugee) [2016] AATA 3892 (30 May 2016); D Corrigan, Member

Protection visa – Malaysia – Social group – Homosexual – Race – Tamil – Loan sharks – Claims of owing debt to loan sharks – Claims that police do not adequately assist to protect and take bribes – Claims of homosexuality raised only at second Tribunal hearing – Credibility issues – Decision under review affirmed

[1403517](#) (Refugee) [2016] AATA 3922 (1 June 2016); J Kelly, Senior Member

Protection visa – Sri Lanka – Race – Tamil – Imputed political opinion – LTTE – Made representations on behalf of Tamil fisherman - Particular social group – Failed asylum seeker – Interrogation and detention from Sri Lankan authorities – Decision under review remitted

[1500501](#) (Refugee) [2016] AATA 3925 (1 June 2016); D McCulloch, Member

Protection visa – China – Complementary protection – Religion – Catholic – Land resumption – Disputed compensation – Physical assault by Chinese authorities – Business property used for religious meetings – Forcible closure of business – Credibility issues – Decision under review affirmed

[1421124](#) (Refugee) [2016] AATA 3926 (2 June 2016); G Cullen, Member

Protection visa – Bangladesh - Irregular Maritime Arrival – Political opinion – Jamaat-e-Islami activists – Opposition to Awami League Government – Business owner – Extortion – Threats of violence – Decision under review affirmed

[1501754](#) (Refugee) [2016] AATA 3927 (3 June 2016); C Wilson, Member

Protection visa – Italy – Complementary protection – Reporting child abuse – Threats of violence – Loss of employment – Third country protection – European Union residence – Decision under review affirmed

[1503022](#) (Refugee) [2016] AATA 3957 (3 June 2016); C Thwaites, Member

Protection visa – Malaysia – Race – Chinese – Business owners – Protection money – Differences in applicants' oral evidence – Poor reflection on applicant's credibility – Decision under review affirmed

[1507870](#) (Refugee) [2016] AATA 3928 (6 June 2016); A Paxton, Member

Protection visa – India – Political opinion – All India Sikh Student Federation (AISSF) member – Religion – Sikh – Decision under review affirmed

## Practice and Procedure

[Seymour and Commissioner of Taxation](#) (Taxation) [2016] AATA 397 (16 June 2016); Deputy President SE Frost

Application for Applicants' evidence to be taken in Singapore – whether Tribunal should exercise evidence power outside Australia – application to exercise discretion made conditional upon payment of Tribunal's expenses by Applicants – disruption to Tribunal manageable in context of application – whether exercise of evidence power should be subject to any limitations or restrictions – whether Applicants should meet reasonable expenses of Commissioner – expenses characterised as disbursements – whether Applicants should be required to pay, or provide security for, the primary tax – proper administration of justice – application granted subject to conditions

[Sooaemalelagi and Bruce Hartwig Flying School Pty Ltd](#) [2016] AATA 412 (22 June 2016); Deputy President K Bean

Jurisdiction – Re-crediting of VET FEE-HELP balance on the grounds of “special circumstances” – No valid request for re-crediting in writing – No primary or reconsideration decisions – Tribunal does not have jurisdiction – Application dismissed

[Watson and Comcare](#) (Compensation) [2016] AATA 422 (24 June 2016); Senior Member JF Toohey

Claims for compensation – application by respondent to dismiss on ground of no reasonable prospect of success – Tribunal satisfied application has no reasonable prospect of success – application dismissed

## Social Security

[Al Yasir and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 392 (15 June 2016); Dr I Alexander, Member and Dr L Bygrave, Member

Disability support pension – whether conditions fully diagnosed, treated and stabilised – impairment ratings – continuing inability to work – whether applicant suffered severe functional impact on activities – applicant not found to have a severe impairment within one impairment table – decision affirmed

[Barba and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 425 (24 June 2016); Ms R Perton, Member

Assets – value of assets underestimated when recipient of newstart allowance, partner allowance and disability support pension respectively – refusal of age pension due to value of assets – validity and source of valuations – debts to Commonwealth – decisions affirmed

[Chant and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 410 (27 May 2016); Deputy President Dr P McDermott RFD

Disability support pension – whether applicant’s conditions are permanent – applicant does not have a severe impairment – applicant has a continuing capacity for work – applicant has not participated in a program of support – decision under review affirmed

[Chen and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 414 (22 June 2016); Mr C Ermert, Member

Disability Support Pension (DSP) – qualifying period – whether impairments fully diagnosed, fully treated and fully stabilised – whether impairments are permanent – nil impairment rating – not qualified for DSP – decision affirmed

[Hambrook and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 424 (24 June 2016); Senior Member Ms AF Cunningham

Parenting payment – family tax benefit – whether applicant principal carer of daughter R during relevant period – whether reasonable steps taken to have child returned to care – overpayments – whether debts are recoverable – administrative or determinative error – decision varied in part – remitted to respondent

[Hussein and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 426 (6 June 2016); Miss EA Shanahan, Member

Pensions, allowances and benefits – disability support pension – bronchiectasis secondary to tuberculosis – surgical treatment and embolization of bronchial arteries – continuing chronic cough and daily haemoptysis – dyspnoea on exertion – paucity of medical data – decision affirmed

[Kenyon and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 417 (22 June 2016); Mr C Ermert, Member

Social security payments – request for stay of decision – whether desirable to grant stay application – whether grant of stay would be prejudicial to the parties – where prospects of success unlikely – where grant of stay would be against public interest – where grant of stay would cause hardship – where refusal of stay would not render application for review nugatory – request refused

[Little and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 399 (17 June 2016); Ms S Taglieri, Member and Mr DJ Morris, Member

Enquiry as to portability of pension resulting in medical review and then cancellation of Disability Support Pension – whether cancellation of pension was correct or preferable decision – change in applicable Impairment Tables and applicant no longer satisfying qualification requirements – decision to cancel affirmed

[Neasham and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 398 (17 June 2016); Mr AG Warner, Member

Disability support pension – whether applicant’s impairments attract 20 points under the Impairment Tables – whether applicant has severe impairment – continuing inability to work – program of support – decision under review affirmed

## Taxation

[Jayaretnam and Tax Practitioners Board](#) [2016] AATA 421 (24 June 2016); Senior Member Mr PW Taylor SC

Tax practitioners board – registration as a tax agent – whether applicant satisfied relevant experience criteria – decision under review affirmed

[The Executors of the Estate of the late Peter Fowler and Commissioner of Taxation](#) (Taxation) [2016] AATA 416 (22 June 2016); Deputy President SE Frost

Capital gains tax – entitlement to small business CGT exemptions – whether small business entity – active asset test – main use – penalties – failure to take reasonable care – objection decision in relation to primary tax affirmed – objection decision in relation to administrative penalty set aside and objection allowed in full

## Veterans' Affairs

[Graham and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 376 (3 June 2016); Senior Member JF Toohey

Special rate – intermediate rate – whether veteran incapable of undertaking remunerative work for eight or more hours per week – whether veteran incapable of undertaking remunerative work for 20 or more hours per week – whether veteran ceased to engage in remunerative work for reasons other than his accepted conditions – decision under review affirmed

[Linwood and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 407 (20 June 2016); Deputy President B McCabe

Remittal from Federal Court – ankle condition withdrawn before review – no reference to asthma in notice of appeal – psychiatric condition remitted to Tribunal for reconsideration according to law – respondent conceded psychiatric condition – decision under review remitted to the respondent for reconsideration



# 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 AND COURT REFERENCE
<b>Delis &amp; Delis Enterprises Pty Ltd v Tax Practitioners' Board</b>	<a href="#">[2016] FCA 570</a> <a href="#">[2015] AATA 820</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Long v Comcare</b>	<a href="#">[2014] AATA 975</a>	<a href="#">[2016] FCA 737</a>
<b>D Marks Partnership by its General Partner Quintaste Pty Ltd v Commissioner of Taxation</b>	<a href="#">[2015] AATA 651</a>	<a href="#">[2016] FCAFC 86</a>
<b>NR Allsop Holdings Pty Ltd as General Partner of Q Uniform Partnership v Commissioner of Taxation</b>	<a href="#">[2015] AATA 654</a>	<a href="#">[2016] FCAFC 87</a>
<b>Ralph v Repatriation Commission</b>	<a href="#">[2013] AATA 948</a>	<a href="#">[2016] FCAFC 89</a> <a href="#">[2015] FCA 165</a>

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