



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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Contents

AAT Recent Decisions	3
Citizenship.....	3
Compensation	3
Employment	4
Migration and Refugee	4
National Disability Insurance Scheme	5
Practice and Procedure	5
Social Security.....	6
Taxation	7
Veterans' Affairs	7
Appeals	9
Appeals lodged.....	9
Appeals finalised	9
Statements of Principles	10
New Statements of Principles.....	10

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

[Hasan and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 470 (4 July 2016); Senior Member AF Cunningham

Whether applicant of good character – identity fraud – fraudulent and misleading information in dealings with government – lack of insight and remorse – no evidence of rehabilitation – decision under review affirmed

Compensation

[Bromham and Comcare](#) (Compensation) [2016] AATA 484 (8 July 2016); Deputy President JW Constance and Senior Member WG Stefaniak AM, RFD

Worker's compensation – entitlement to compensation for medical expenses – entitlement to incapacity payments – psychological injury - adjustment disorder with depressed mood – where there is a compensable injury – whether Applicant continued to be entitled to compensation for the cost of medical treatment obtained in relation to compensable injury – whether Applicant continued to be incapacitated from work as a result of the compensable injury – whether psychological condition had resolved – where conflicting medical evidence – decision set aside and remitted

[Sedaitis and Comcare](#) (Compensation) [2016] AATA 465 (1 July 2016); Senior Member Dr J Pople

Commonwealth employee – claim for psychological condition as a result of bullying and harassment – whether accepted disease suffered as a result of reasonable administrative action taken in a reasonable manner in respect of employment – decision under review affirmed

[McCarthy and K & S Freighters Pty Limited](#) (Compensation) [2016] AATA 476 (5 July 2016); Senior Member CR Walsh

Applicant sustained “musculoligamentous strain lower back” injury on 3 May 2012 – Applicant's employment with the Respondent terminated on 9 December 2013 – decision made by Respondent that it has no present liability, as at 23 November 2014, to pay Applicant compensation for medical and like expenses and weekly compensation payments – decision under review set aside and remitted for reconsideration in accordance with direction and recommendation

[Nicholas and Go Offshore Pty Ltd](#) (Compensation) [2016] AATA 473 (5 July 2016); Senior Member Ms AF Cunningham

Seafarers Rehabilitation and Compensation Act 1992 – application to dismiss pursuant to s 42B(1)(b) of the *Administrative Appeals Tribunal Act 1975* – claim not accompanied by required medical certificate – claim taken not to have been made – application for review dismissed

Employment

[Pace and Secretary, Department of Employment](#) [2016] AATA 474 (5 July 2016); Senior Member A Poljak

Fair Entitlements Guarantee – claim for advance under Fair Entitlements Guarantee Act 2012 – whether applicant supplied documents in support of his claim within relevant time period – no discretion to extend time period – decision affirmed

Migration and Refugee

[MKKR and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 458 (30 June 2016); Deputy President SA Forgie

Failure to pass character test – whether discretionary power to refuse grant of visa should be exercised – decision affirmed

Practice and procedure – opinion evidence – facts on which an expert bases an opinion and upon which that opinion depends must be agreed or proven – opinion not relevant evidence to extent to which facts not agreed are not ultimately found by Tribunal

[Sadiq and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 463 (1 July 2016); Deputy President Dr P McDermott RFD

Whether applicant is of good character – applicant had previously committed offences – applicant had made false statements – decision affirmed under review

Migration

[1603301](#) (Migration) [2016] AATA 4030 (27 June 2016); D Dimitriadis, Member

Cancellation – Subclass 457 (Business (Long Stay) visa – Condition 8107 – Applicant ceased employment with the sponsor for a period exceeding 90 consecutive days – Company sold and renamed – Nominations of further sponsor were not approved – Applicant undertook English language studies – Decision under review affirmed

[1511722](#) (Migration) [2016] AATA 4032 (22 June 2016); A Wallace, Member

Cancellation – Student (Temporary) (Class TU) visa – Subclass 573 Higher Education Sector visa – Spouse of primary applicant – Couple lived apart interstate for two years for employment reasons – Couple resumed living together – Shared plans for the future – Decision under review set aside

Refugee

[1416858](#) (Refugee) [2016] AATA 4039 (28 June 2016); F Syme, Member

Protection visa – Irregular Maritime Arrival – Bangladesh – Political opinion – Jamaat-e-Islami member – Persecution by Awami League supporters – Witness to corruption by Awami League – Business owner – Extortion – Land dispute – Bombing of business – Decision under review affirmed

[1318846](#) (Refugee) [2016] AATA 4038 (28 June 2016); F Syme, Member

Protection visa – Irregular Maritime Arrival – Sri Lanka – Political – Imputed pro-LTTE political opinion – Race – Tamil from Eastern province – Wealthy businessman – Threats from certain political

groups – Siblings killed by Sri Lankan army – Credibility issues – Illegal departure – Failed asylum seeker – Decision under review affirmed

[1503329](#) (Refugee) [2016] AATA 4037 (24 June 2016); T Caravella, Member

Protection visa – China – Complementary protection – Religion – Catholic – Organising illegal church gatherings – Threats from police – Imprisonment – Catholic Church involvement in Australia – Land dispute encroachment – Credibility issues – Decision under review affirmed

[1506185](#) (Refugee) [2016] AATA 4033 (24 June 2016); F Syme, Member

Protection visa – Irregular Maritime Arrival – Bangladesh – Political opinion – Jamaat-e-Islami supporter – Opposition to Awami League – Relationship with sister of Awami League supporter – Persecution by Awami League supporters – Illegal departure – Credibility issues – Decision under review affirmed

[1418945](#) (Refugee) [2016] AATA 4027 (23 June 2016); S Roushan, Senior Member

Protection visa – Lebanon – Religion – Judaism – Jewish ancestry – Registered as Sunni to avoid persecution – Practised Judaism covertly – Will suffer serious harm if openly practiced Judaism – No state protection – Relocation unreasonable – Decision under review remitted

[1411916](#) (Refugee) [2016] AATA 4026 (23 June 2016); J Jolliffe, Member

Protection visa – India – Political opinion – Congress party member – Persecution from BJP party members – Credibility issues – Evidence and supporting documents lacking in detail – Prevalence of fraudulent documents – Decision under review affirmed

[1511528](#) (Refugee) [2016] AATA 4034 (22 June 2016); S Panagiotidis, Member

Protection visa – Malaysia – No convention claims – Family disagreement – Family do not approve of his choice of wife – May be pressured to leave his wife – Wife's family accepted marriage – Relocation is possible – Decision under review affirmed

National Disability Insurance Scheme

[JQJT and National Disability Insurance Agency](#) [2016] AATA 478 (6 July 2016); Senior Member J F Toohey, Professor R McCallum AO, Member and Dr L Bygrave, Member

Child – severe intellectual disability, autism, attention deficit hyperactivity disorder – participant in the NDIS – reasonable and necessary supports – transport costs – what it is reasonable to expect families, carers, informal networks and the community to provide – day-to-day living costs – decision under review varied

Practice and Procedure

[Tuji and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 467 (4 July 2016); Mr C Ermert, Member

Refusal of application for Australian citizenship – notification of refusal – delay in application for review – application for extension of time – no explanation of delay – no other action taken – prejudice to respondent – merits of substantive case – fairness to other persons – extension of time refused

[Vaughan and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 482 (8 July 2016); Ms S Taglieri, Member

Reinstatement application – where application dismissed by reason of the Applicant’s failure to appear at a hearing by telephone – substantive application without arguable merit – application for reinstatement refused

[Wirski and Comcare](#) (Compensation) [2016] AATA 461 (1 July 2016); Deputy President Dr C Kendall and Brigadier AG Warner, Member

Requests for order staying determinations ceasing treatments for compensable conditions – relevant factors – applicant has arguable case – financial hardship not sufficient to weigh in favour of granting stays – limited hardship other than financial – no evidence of urgent medical requirement for proposed arthroscopy – applicant’s requests for stay orders refused

Social Security

[Askandr and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 469 (4 July 2016); DJ Morris, Member

Disability Support Pension (DSP) – qualifying period – whether impairments fully diagnosed, fully treated and fully stabilised – whether impairments are permanent – congenital condition assigned impairment rating – oral medical condition linked to undiagnosed mental health condition – not qualified for DSP – decision affirmed

[Dockerty; Secretary, Department of Social Services](#) and (Social services second review) [2016] AATA 477 (5 July 2016); Senior Member Dr James Popple

Pensions – disability support pension – whether claimant had a physical, intellectual or psychiatric impairment – whether impairment of 20 points or more under the Impairment Tables – decision set aside and substituted

[Fredrick and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 475 (5 July 2016); DK Grigg, Member

Age pension – whether member of a couple – consideration of special circumstances and whether they exist – Tribunal decides that Mr Fredrick is a member of a couple – decision under review affirmed

[Kandasamy and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 468 (4 July 2016); Miss EA Shanahan, Member

Disability Support Pension – eligibility review following request/enquiry regarding travel overseas for longer than six weeks – reassessment of qualifications for Disability Support Pension – medical conditions of vasovagal syncope and migraine unchanged – impairment rating total of 15 points under the current tables – Disability Support Pension cancelled – decision affirmed

[Kubbere and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 471 (4 July 2016); Deputy President G Humphries

Disability support pension – whether impairments fully diagnosed, fully treated and fully stabilised – rating of impairments – continuing inability to work – program of support requirements not met – decision under review affirmed

[Lynch and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 455 (30 June 2016); Mr S Webb, Member

Newstart allowance claim following claims for disability support pension – application of liquid assets waiting period and ordinary waiting period – assessment of liquid assets – date on which liquid assets are to be assessed – duration of liquid assets waiting period – determination of start date of waiting period – meaning of ‘ceased work’ – self-employment in owner operated business – actual or deemed ‘unemployment’ – qualification for newstart allowance not established at dates of claim for disability support pension – newstart allowance claim cannot be back-dated to date of disability support pension claim – partner ceased work – partner served liquid assets waiting period commencing more than 12 months prior to Applicant’s newstart allowance claim – liquid assets waiting period applies from date Applicant ceased work – decision under review affirmed

[Mala and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 464 (20 May 2016); Deputy President Dr P McDermott RFD

Parenting payment – debt due to the Commonwealth – whether recovery of debt should be written off or waived – debt not attributable solely to error made by Centrelink – no finding of special circumstances – decision affirmed under review

Taxation

[Azer and Commissioner of Taxation](#) (Taxation) [2016] AATA 472 (1 June 2016); Senior Member FD O’Loughlin

Excess contributions – special circumstances – decision affirmed

[XLpz and Commissioner of Taxation](#) (Taxation) [2016] AATA 466 (1 July 2016); Deputy President G Humphries

Application for release from taxation liabilities – whether applicant would suffer serious hardship if required to satisfy the liabilities – no significant hardship – discretion to release the applicant from his liabilities not exercised – decision under review affirmed

Veterans' Affairs

[Elton and Repatriation Commission](#) (Veterans’ entitlements) [2016] AATA 479 (6 July 2016); Miss EA Shanahan, Member

Disability pension – claim for post-traumatic stress disorder, major depressive disorder, lumbar spondylosis and spondylolisthesis as being war-caused – operational service of 35 days in Vietnamese waters over two periods in 1969 and 1970 – in receipt of disability pension for various physical conditions – alcohol dependency and cannabis dependency both in remission – absence of any corroborating evidence regarding stressors – credit of the applicant – unreliability of evidence and conflict of evidence – satisfied beyond reasonable doubt – decision affirmed

[Pamela Norton as Personal Legal Representative of the late Kenneth Norton and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 481 (7 July 2016); Senior Member Ms N Isenberg

Review of VRB decision – applicant seeks payment at the Special Rate under s 24 of the Veterans' Entitlements Act 1986 – whether genuinely seeking to engage in remunerative work – whether applicant made a reasonable assessment of their disabilities – whether reasonably concluded that they could only be employed in a particular type of work – decision under review 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
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None lodged

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
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Millar v Commissioner of Taxation

[\[2015\] AATA 114](#)

[\[2016\] FCAFC 94](#)

[\[2015\] FCA 1104](#)

Engida v Linfox Australia Pty Ltd

[\[2014\] AATA 912](#)

[\[2016\] FCA 793](#)

Statements of Principles

This section of the *Bulletin* provides information on recent developments in relation to Statements of Principles made by the Repatriation Medical Authority for the purposes of the [Veterans' Entitlements Act 1986](#) and the [Military Rehabilitation and Compensation Act 2004](#).

New Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made the following new Statements of Principles. They take effect from **25 July 2016**.

Sarcoidosis (Reasonable Hypothesis) – No. 59 of 2016

<https://www.legislation.gov.au/Details/F2016L01144>

Sarcoidosis (Balance of Probabilities) – No. 60 of 2016

<https://www.legislation.gov.au/Details/F2016L01143>

Otosclerosis (Reasonable Hypothesis) – No. 61 of 2016

<https://www.legislation.gov.au/Details/F2016L01152>

Otosclerosis (Balance of Probabilities) – No. 62 of 2016

<https://www.legislation.gov.au/Details/F2016L01154>

Spasmodic torticollis (Reasonable Hypothesis) – No. 63 of 2016

<https://www.legislation.gov.au/Details/F2016L01136>

Spasmodic torticollis (Balance of Probabilities) – No. 64 of 2016

<https://www.legislation.gov.au/Details/F2016L01139>

Suicide and attempted suicide (Reasonable Hypothesis) – No. 65 of 2016

<https://www.legislation.gov.au/Details/F2016L01145>

Suicide and attempted suicide (Balance of Probabilities) – No. 66 of 2016

<https://www.legislation.gov.au/Details/F2016L01149>

Barrett's oesophagus (Reasonable Hypothesis) – No. 67 of 2016

<https://www.legislation.gov.au/Details/F2016L01135>

Barrett's oesophagus (Balance of Probabilities) – No. 68 of 2016

<https://www.legislation.gov.au/Details/F2016L01137>

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