



Administrative
Appeals Tribunal

AAT Bulletin

Issue No. 30/2016

25 July 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.

Contents

AAT Recent Decisions	3
Citizenship.....	3
Compensation	3
Freedom of Information	4
Practice and Procedure	4
Social Security.....	4
Taxation	7
Appeals	8
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

[Bayunus and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 507 (20 July 2016); Dr L Bygrave, Member

Application for Australian citizenship – whether applicant of good character – where applicant's conviction was not recorded under s 10 – where applicant failed to declare his offences – where failure to declare was in good faith – where applicant had a number of traffic offences – where applicant was subject to a recent AVO – decision affirmed

[Haidari and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 513 (21 July 2016); Senior Member RW Dunne

Cancellation of approval for Australian citizenship by conferral – whether the applicant is not of good character – credibility – whether the application for citizenship made by the applicant should be approved – decision under review set aside and remitted

[Khan and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 480 (7 July 2016); Senior Member Ms AF Cunningham

Whether applicant of good character – series of driving offences over many years – number of offences suggests disregard for Australian laws – insufficient time passed since last offence – lack of evidence to establish rehabilitation – lack of acknowledgement of risk posed to other road users – applicant failed to establish his good character – decision under review affirmed

Compensation

[D'Lima and Australian Postal Corporation](#) (Compensation) [2016] AATA 495 (15 July 2016); Deputy President Dr C Kendall

Degenerative shoulder pathology – whether a disease or an injury (other than a disease) – whether aggravation of shoulder ailments substantially contributed to by employer – whether any aggravation resulted in incapacity or impairment – decisions under review set aside

[Hobday and Comcare](#) (Compensation) [2016] AATA 504 (19 July 2016); Deputy President JW Constance

Reduction in amount of weekly compensation payable – calculation of normal weekly earnings – where employee is incapacitated for work – where there is a change in the employee's classification of employment – decision affirmed

[McQueen-Thomson and K&S Freighters Pty Ltd](#) (Compensation) [2016] AATA 510 (20 July 2016); Senior Member Dr D Cremean

Left shoulder injury – injury or injury (other than a disease) – disease – ailment or aggravation of an ailment – meaning of aggravation – meaning of significant – whether false and wilful statement – decision under review set aside

[Voss and Comcare](#) (Compensation) [2016] AATA 515 (21 July 2016); Deputy President Dr P McDermott

Major depressive disorder – Whether reasonable administrative action – Whether taken in a reasonable manner – Employment contributed to injury – Not reasonable administrative action – Not taken in a reasonable manner – Decision under review set aside – Applicant entitled to compensation

Freedom of Information

[MacTiernan and Secretary, Department of Infrastructure and Regional Development](#) (Freedom of Information) [2016] AATA 506 (19 July 2016); Senior Member CR Walsh

Whether the contested documents are conditionally exempt because their disclosure: (i) would, or could reasonably be expected to, cause “damage” to relations between the Commonwealth and the State of Western Australia; (ii) would divulge information or matter communicated “in confidence” by the State of Western Australia or Main Roads WA to the Commonwealth or the Department; (iii) would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the “deliberative processes” involved in the functions of the Commonwealth (the Department); and (iv) would, or could reasonably be expected to, have a “substantial adverse effect” on the proper and efficient conduct of the operations of an agency (the Department) – if any of the contested documents are conditionally exempt, whether it would be contrary to the “public interest” for access to be given to those documents – decision under review set aside and substituted

Practice and Procedure

[Batros and Australian Securities and Investments Commission](#) [2016] AATA 519 (22 July 2016); Deputy President The Hon D Cowdroy OAM QC

Application for stay of decision – banning order prohibiting Applicant from providing any financial services – prospects of success of substantive application – financial hardship caused to Applicant – public interest – application refused

[Dominello and Linfox Australia Pty Ltd](#) [2016] AATA 483 (8 July 2016); Senior Member A Poljak

Extension of time – delay on part of solicitor – whether applicant rested on his rights – whether prejudice to respondent – whether application has prospects of success – extension of time granted

Social Security

[Ammar and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 493 (15 July 2016); Professor R McCallum AO, Member

Age pension – carer payment – rate of pension - whether applicants are members of a couple – applicants married – pooling of finances – shared accommodation – joint assets – whether applicants meet special reason discretion – difficult financial situation – decision under review affirmed

[Ashard and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 497 (15 July 2016); Senior Member Ms AF Cunningham and Mr DJ Morris, Member

Disability Support Pension – cancellation – portability beyond 28 days – absence from Australia triggers medical review – whether impairments attract 20 points or more under Impairment Tables – reviewable decisions affirmed

[De Jong and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 503 (19 July 2016); Miss EA Shanahan, Member

Pensions, benefits and allowances – disability support pension – reassessment of qualification for disability support pension – incapacitating condition–epilepsy – application of Table 15 – impairment rating of 10 points – requirements of s 94(1)(b) not satisfied – decision affirmed

[Donaldson and Secretary, Department of Employment](#) [2016] AATA 512 (21 July 2016); Deputy President Dr C Kendall

Newstart Allowance – whether dividends and franking credits constitute income – date applicant deemed to have become “entitled” to income – period during which income should be applied – whether total income during that period exceeds allowable income threshold for Newstart Allowance – decision under review affirmed

[Farah and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 496 (15 July 2016); Senior Member Ms AF Cunningham and Mr DJ Morris, Member

Disability Support Pension – whether qualified – spinal impairments – immigration status of applicant – New Zealand citizen – definition of “Australian resident” under International Agreements Act – aggregate period of residency – definition of “severely disabled” – reviewable decision affirmed

[Farres and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 500 (18 July 2016); Miss EA Shanahan, Member

Pensions, benefits and allowances – disability support pension – multiple medical conditions – impairment rating of 15 points reconsidered and 25 points assigned – definition of severe disability not satisfied – incapacity for work – participation in a program of support not satisfied – decision affirmed

[Hussein and Secretary, Attorney-General’s Department](#) (Social services second review) [2016] AATA 501 (30 June 2016); Deputy President JW Constance

Australian Victim of Terrorism Overseas Payment – where the event is not a declared overseas terrorist act – decision affirmed

[Le and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 511 (21 July 2016); Senior Member JF Toohey

Disability support pension – cancellation – whether applicant qualified at date of cancellation – whether impairments rated 20 points or more – decision under review affirmed

Masri and Secretary, Department of Social Services (Social services second review) [2016] AATA 488 (12 July 2016); Dr I Alexander, Member

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

Mehrjerdi and Secretary, Department of Social Services (Social services second review) [2016] AATA 505 (9 June 2016); Senior Member RW Dunne

Pensions, benefits and allowances – disability support pension – physical, intellectual or psychiatric impairment – whether impairment rating of 20 points or more existed under the Impairment Tables – reports of medical practitioners considered – Job Capacity Assessment report considered – decision under review affirmed

Noall and Secretary, Department of Social Services (Social services second review) [2016] AATA 509 (20 July 2016); Miss EA Shanahan, Member

Application for disability support pension – impairment rating of 35 points – severe disability definition not met – continuing incapacity for work – program of support not undertaken – rejected by Job Services Australia for program of support schemes – impairment rating for pulmonary disease questionably underrated – decision set aside and substituted – Applicant qualified for disability support pension as of 30 July 2014

Obst and Secretary, Department of Social Services (Social services second review) [2016] AATA 508 (20 July 2016); Deputy President K Bean

Disability support pension – Whether conditions fully diagnosed, treated and stabilised – Unable to assign any impairment ratings – Decision under review affirmed

Ong and Secretary, Department of Social Services (Social services second review) [2016] AATA 502 (31 May 2016); Senior Member RW Dunne

Pensions, benefits and allowances – disability support pension – maximum portability period – illness overseas – suspension and cancellation of disability support pension – maximum portability period not extended and discretion not exercised – decision under review affirmed.

Provencal and Secretary, Department of Social Services (Social services second review) [2016] AATA 494 (15 July 2016); Senior Member A Poljak

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

Reinke and Secretary, Department of Social Services (Social services second review) [2016] AATA 520 (22 July 2016); Ms DK Grigg, Member

Disability support pension – DSP – whether 20 points or more under the impairment tables during the relevant period – decision under review affirmed

[Rockingham and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 499 (15 July 2016); Ms DK Grigg, Member

Disability support pension – DSP – whether 20 points or more under the impairment tables during the relevant period – decision under review affirmed

[Strbac and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 491 (13 July 2016); Mr S Webb, Member

Disability support pension claim – physical and psychological impairments – treatment yet to be undertaken or completed – cost factors in not obtaining treatment – assessment of permanent impairments and rating of functional loss – rating of 10 points not sufficient to meet minimum threshold – decision affirmed

Taxation

[Hill and Commissioner of Taxation](#) (Taxation) [2016] AATA 514 (21 July 2016); Senior Member Ms G Lazanas

Income tax – deductions – employee – work-related travel expenses – work-related car expenses – whether itinerant worker – whether taxpayer able to rely on public rulings – objection decision affirmed

[SHTX and Tax Practitioners Board](#) [2016] AATA 451 (30 June 2016); Senior Member F D O'Loughlin

Tax agents' code of conduct – breach of TASA Code of Professional Conduct – tax agent registration terminated – Applicant experienced personal and health problems – appropriate sanction – comparison with registration and regulation of legal practitioners – Decision under review varied

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

None finalised

© 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.

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/page/aaat.html).