



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.

Citizenship

[Kazan and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 539 (28 July 2016); Deputy President JW Constance

Good character – whether Applicant satisfies the legislative requirement to be shown to be of good character – previous convictions – domestic violence – traffic offences – whether any mitigating factors or explanations outweigh the behaviour – decision affirmed

[Long and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 530 (29 June 2016); Dr P McDermott RFD, Deputy President

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

[Mukerji and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 542 (28 July 2016); Senior Member E Fice

Residence requirement – no close and continuing association with Australia – decision affirmed

Compensation

[Duffy and Comcare](#) (Compensation) [2016] AATA 546 (29 July 2016); Deputy President JW Constance

Workers compensation – aggravation of mental injury – major depressive disorder – whether aggravation was a result of reasonable administrative action taken in respect of the Applicant's employment – whether the administrative action contributed to the aggravation to a significant degree – decision set aside and substituted

[Kulas and Prosecur Australia Pty Ltd](#) (Compensation) [2016] AATA 538 (27 July 2016); Dr D Cremean, Senior Member

Initial back injury – rehabilitation program – refusal or failure to undertake rehabilitation program – whether reasonable excuse or not – decision affirmed

[Pangratis and Comcare](#) (Compensation) [2016] AATA 524 (25 July 2016); Miss EA Shanahan, Member

Tables – Comcare Guide to Assessment of the Degree of Permanent Impairment Edition 2.1 – AMA Tables for Permanent Impairment Edition No 5 – Comcare Table 9.14 not appropriate

[YYSW and Comcare](#) (Compensation) [2016] AATA 533 (26 July 2016); Deputy President JW Constance

Workers compensation – injury – liability to compensate – generalised anxiety and post-traumatic stress disorder – whether Applicant suffered an aggravation of an ailment – whether aggravation contributed to, to a significant degree by the employment – decision affirmed

Freedom of Information

[Smith and Australian Federal Police](#) (Freedom of Information) [2016] AATA 531 (25 July 2016); Dr James Popple, Senior Member

Request for access to documents – whether disclosure would, or could reasonably be expected to, prejudice the maintenance or enforcement of lawful methods for the protection of public safety – whether disclosure would involve the unreasonable disclosure of personal information – whether disclosure would be contrary to the public interest – whether disclosure would disclose information irrelevant to request – whether all reasonable steps taken to find documents – decision under review affirmed

Health

[Wells and Secretary, Department of Health](#) [2016] AATA 528 (25 July 2016); Deputy President BJ McCabe

Aged care assessment – entitlement to assistance – value of assets attributed to Applicant – designated private trust – control test – where controlled private trust – whether Applicant attributable stakeholder – decision under review affirmed

Industrial Law

[Simpson and Secretary, Department of Employment](#) [2016] AATA 526 (25 July 2016); Deputy President SA Forgie

Employment – claim for advance under Fair Entitlements Guarantee Act 2012 (Cth) in respect of annual leave, payment in lieu of notice, redundancy and long service leave – whether applicant a casual employee – meaning of “casual employee” – decision concerning annual leave, payment in lieu of notice and redundancy payment affirmed – decision concerning long service leave set aside and substituted with decision that applicant is eligible for advance in respect of long service leave – decision in respect of long service leave remitted to respondent to calculate amount of advance payable

Migration and Refugee

Migration

[Sharma and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 537 (27 July 2016); Senior Member E Fice

Application for Student (Temporary) (Class TU) dependant visa refused – failure to satisfy character test – applicant found guilty of a sexually based offence involving a child – indecent act in presence child under 16 – applicant discharged without conviction – where sexual crime committed against a

vulnerable member of the community – where serious risk to Australian community if applicant re-offended – where Australian community would expect application to be refused – decision affirmed

[Stretch and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 548 (29 July 2016); Dr P McDermott RFD, Deputy President

Cancellation of visa on character grounds – applicant does not pass the character test – sentenced to a term of imprisonment of more than 12 months – the protection of the Australian community from criminal or other serious conduct relevant – expectations of Australian community not met – no other reason why the original decision should be revoked

[1513084](#) (Migration) [2016] AATA 4113 (20 July 2016); K Synon, Member

Cancellation – Subclass 457 (Temporary Work (Skilled)) visa – Condition 8107(3)(b) – Ceased employment with sponsor for more than 90 consecutive days – First sponsor closed business – Unaware of visa conditions – Consideration of discretion – Applicant earnestly sought alternative employment – Evidence of new approved nomination – Significant hardship for new sponsor – No jurisdiction with secondary applicants – Decision under review set aside

[1605532](#) (Migration) [2016] AATA 4101 (13 July 2016); M Holmes, Senior Member

New Zealand Citizen (Family Relationship) (Temporary) (Class UP) visa – Subclass 461 – PIC 3004 – cl 461.213 – Application lodged one day after last substantive visa 461 ceased – Due to factors beyond applicant's control – Compelling reasons – Decision under review remitted

[1601796](#) (Migration) [2016] AATA 4087 (13 July 2016); A Dronjic, Member

Cancellation – Subclass 457 (Temporary Work (Skilled)) visa – Condition 8107(3)(b) – Ceased employment with sponsor for more than 90 consecutive days – First employer closed business – Applicant given reasonable opportunity to secure employment with approved sponsor – No jurisdiction with secondary applicants – Decision under review affirmed

[1510384](#) (Migration) [2016] AATA 4104 (13 July 2016); R Chenoweth, Member

Partner (Residence) (Class BS) visa – Subclass 801 (Partner) – cl 801.221 – Withdrawal of sponsorship – Claims to have reunited – No joint assets or liabilities – Considerable conflict between sponsor and applicant – Absence of mutual commitment to a shared life as husband and wife – Decision under review affirmed

[1505557](#) (Migration) [2016] AATA 4086 (13 July 2016); D Dimitriadis, Member

Nomination of an occupation – Regulation 2.72 – Question of suitability as approved sponsor – Breaches of *Fair Work Act* – Timeframe for imposed bar ceased – Complying with Commonwealth workplace laws and instruments – Reasonable to disregard adverse information – Decision under review set aside

Refugee

[1604829](#) (Refugee) [2016] AATA 4054 (5 July 2016); D Corrigan, Member

Protection visa – Afghanistan – Federal Circuit Court remittal – Race – Hazara – Religion – Shia – Travel on roads outside Kabul – Kidnappings – Internal relocation unreasonable – Decision under review remitted

[1502343](#) (Refugee) [2016] AATA 4053 (6 July 2016); B Mericourt, Member

Protection visa – Fiji – Race – Ethnic Indians – Religion – Hindus – Political opinion – Fiji First Party – Threats of harm – Preferential treatment within occupation based on race – Verbal abuse and sexual harassment – Decision under review affirmed

[1501466](#) (Refugee) [2016] AATA 4052 (6 July 2016); T Eteuati, Member

Protection visa – India – Political opinion – Bhujan Samaj Party – Social group – Panchal Caste – Money lenders – Physical assault – Decision under review affirmed

[1506945](#) (Refugee) [2016] AATA 4064 (6 July 2016); S Baker, Member

Protection visa – Sri Lanka – Political opinion – Supporter of UNP – Catholic convert – Failed asylum seeker – Involved in election activities – Threats and violence – Credibility – Inconsistent evidence – No real risk of harm – Decision under review affirmed

[1502282](#) (Refugee) [2016] AATA 4062 (7 July 2016); J Godfrey, Member

Protection visa – Uzbekistan – Imputed political opinion – Opposed to the regime – Particular social group – Sheltering Muslims at risk of persecution – Assault during interrogation – Time limit on exit visas – Failed asylum seeker – Decision under review remitted

Practice and Procedure

[Douglas; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 522 (11 July 2016); Dr L Bygrave, Member

Stay application – application to cease DSP payments reinstated at first review – no evidence of financial hardship to the respondent – stay granted

[Nguyen and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 521 (7 July 2016); Senior Member A Poljak

Application for stay of decision – prospects of success of the substantive application – whether there will be prejudice to the parties if a stay were not granted – whether there is evidence of financial hardship – stay refused

[Prasad and Australian Securities and Investments Commission](#) [2016] AATA 547 (29 July 2016); Professor R Deutsch, Deputy President

Application for extension of time to lodge application for review – application for review lodged almost seven months after expiration of prescribed time – applicant did not give satisfactory explanation for

delay – applicant rested on rights – apparent lack of merit of applicant’s application for review – Tribunal not satisfied that reasonable in all the circumstances to grant extension of time – application for extension of time refused

[Zazzaro and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 540 (28 July 2016); Ms K Millar, Member

Extension of time to lodge application for review – whether acceptable explanation for delay – whether applicant rested on rights – merits of substantive application – extension of time granted

Public Service, Professions and Trades

[Walsh and Tax Practitioners Board](#) [2016] AATA 525 (25 July 2016); Senior Member Walsh

Tax agent services – whether Applicant eligible for registration as a BAS agent – whether the Applicant has successfully completed a course in basic GST/BAS taxation principles that is approved by the Respondent – decision under review affirmed

Social Security

[Bertram and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 518 (22 July 2016); Deputy President IR Molloy

Family tax benefit – FTB Child – percentage of care – where inconsistent evidence between parents – decision under review affirmed

[Chan and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 532 (26 July 2016); Dr I Alexander, Member

Disability support pension – pension not payable – workers’ compensation – periodic compensation payments – arrears – decision affirmed

[Germain and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 541 (28 July 2016); Ms DK Grigg, Member

Family tax benefit – applicant and his wife failed to lodge application for family tax benefit for 2013-2014 financial year by due date – no “special circumstances” which prevented this occurring – decision under review affirmed

[Le and Secretary, Department of Employment](#) (Social services second review) [2016] AATA 527 (4 July 2016); Senior Member JF Toohey

Newstart allowance – No Show No Pay Failure penalty – Employment Pathway Plan – whether applicant complied with requirements – whether reasonable excuse for not complying – meaning of between 9:30 am and 11:30 am – decision under review affirmed

[QGZY and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 523 (22 July 2016); Mr S Webb, Member

Disability support pension – cancellation following review of qualification for indefinite portability – assessment of qualification on cancellation day – impairments – rating of impairments – severe

impairment – continuing inability to work – qualification requirements satisfied – decision set aside and remitted

Practice and procedure – jurisdiction – original decision to cancel disability support pension and reject claim for indefinite portability – no reference to portability in formal notice of decision – portability not considered by authorised review officer or Tribunal on first review – jurisdiction not confined to matters considered on review – meaning of ‘decision’ – broad construction – scope of review includes qualification and portability for DSP

[Rech; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 543 (28 July 2016); Deputy President JW Constance

Family Tax Benefit – whether Applicant eligible for supplementary payment – tax return lodgement requirements not met – whether special circumstances exist to allow extension of time for tax return lodgement – decision set aside and substituted

[Whale and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 517 (22 July 2016); Deputy President IR Molloy

Family tax benefit – qualification – FTB child – percentage of care – where inconsistent evidence between parents – decision under review affirmed

[Wilkie and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 529 (25 July 2016); Mr C Ermert, Member

Disability Support Pension – relevant period – whether a physical, intellectual or psychiatric impairment – whether an impairment rating of 20 points – decision affirmed

[Willersdorf; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 535 (27 July 2016); Senior Member P Britten–Jones

Family Tax Benefit – claim lodged out of time by accountant – whether Tribunal should exercise discretion to allow claim out of time – whether "special circumstances" existed – decision under review is affirmed

Veterans' Affairs

[Chong and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 536 (27 July 2016); Deputy President K Bean and Lt Col R Ormston (Rtd), Member

Whether an allied veteran – whether appointed as a member of a defence force established by an allied country – meaning of ‘appointed’ – whether qualifying service has been rendered – 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

CASE NAME	AAT REFERENCE
Rowntree v Commissioner of Taxation	[2016] AATA 420
Prain v Comcare	[2016] AATA 459

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Mentink v Secretary, Department of Social Services	[2013] AATA 184	[2016] HCASL 168 [2016] FCAFC 39 [2015] FCA 473

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