



Administrative
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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.

Child Support

[Bettison and Child Support Registrar](#) (Child support second review) [2016] AATA 592 (11 August 2016); Senior Member Tavoularis

Departure prohibition order – departure authorisation certificate – child support debt – where applicant has outstanding child support debt – where child support debt is of great magnitude – where child support debt is longstanding – where no security has been offered – where applicant has aging parents – whether applicant is likely to return to Australia in reasonable period – whether liability would become completely irrecoverable – whether departure authorisation certificate should be granted on humanitarian grounds – decision under review affirmed

[GWNS and Child Support Registrar](#) (Child support second review) [2016] AATA 576 (5 August 2016); Senior Member AC Cotter

Child Support Registrar – percentage of care – pattern of care – factors relevant to determination of percentage of care – date of effect of the care determination – decision under review affirmed

Citizenship

[Lo and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 579 (8 August 2016); Senior Member CR Walsh

Whether applicant met the general residence requirement at the time he applied for Australian citizenship – whether the applicant is likely to reside, or to continue to reside, in Australia or to maintain a close and continuing relation with Australia if his citizenship application were to be approved – decision under review affirmed

[Pathan and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 589 (10 August 2016); Deputy President JW Constance

Citizenship by conferral – good character – whether the Applicant satisfies the legislative requirement to be shown to be of good character – where application has previous convictions involving fraud – whether there are any mitigating circumstances – decision affirmed

Compensation

[Goodricke and Comcare](#) (Compensation) [2016] AATA 516 (20 July 2016); Mr S Webb, Member

Accepted injury – claim for compensation for injury resulting in death – claimant is not dead – meaning of 'death' – determination of entitlement cannot be made prospectively – no reasonable prospect of success – discretion – application dismissed

Corporations

[Sahay and Australian Securities and Investments Commission](#) [2016] AATA 583 (9 August 2016); Deputy President JW Constance

Banning order permanently prohibiting applicant from engaging in "credit activities" – fraud convictions – serious fraud - power to impose banning order enlivened – whether banning order should be imposed – appropriate period of banning order – decision under review affirmed

Banning order permanently prohibiting applicant from providing "financial services" – fraud convictions – serious fraud – power to impose banning order enlivened - whether banning order should be imposed – appropriate period of banning order – decision under review affirmed

Industrial Law

[Bates and Secretary, Department of Employment](#) [2016] AATA 577 (5 August 2016); Deputy President SA Forgie

Fair entitlements guarantee – employment entitlements – annual leave entitlement – long service leave entitlement – payment in lieu of notice entitlement – redundancy pay entitlement – wages entitlement – basis for calculation of advancements – meaning of ordinary hours of work – whether determined by reference to terms of employment at time of liquidation or whether regard may be had to terms of employment over many years before required by employer to reduce them – determined by reference to employment at time of liquidation – decision affirmed

Practice and procedure – INTERPRETATION – Enterprise Agreements – whether enterprise agreements legislative instruments – interpretation of terms of Enterprise Agreement approved by Fair Work Australia

Migration and Refugee

Migration

[Dick and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 590 (11 August 2016); Senior Member N Isenberg and Dr L Bygrave, Member

Citizenship – mandatory cancellation of visa – application for revocation of cancellation decision – failure to pass character test – substantial criminal record – discretion to refuse applicant's visa – Ministerial Direction No 65 applied – protection of the Australian community – seriousness and nature of the relevant conduct – the risk conduct may be repeated – expectations of Australian community – familial ties to Australia – few impediments to removal – decision under affirmed

[Nguyễn and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 580 (8 August 2016); Dr G Hughes, Member

Application for Student (Temporary) (Class TU) Visa – whether Applicant of good character – fraud and related offences – minor participant in sophisticated fraud – whether risk of engaging in further criminal conduct exists – decision substituted

[1504169](#) (Migration) [2016] AATA 4112 (20 July 2016); J Ciantar, Member

Nomination – Office manager – Need for position demonstrated – Tribunal had access to evidence not available to department – Decision under review set aside

[1511816](#) (Migration) [2016] AATA 4147 (20 July 2016); D Corrigan, Member

Cancellation – Class TU visa – Subclass 573 Higher Education Sector – Condition 8202(2) – s.116(1) – Not enrolled in registered course – Did not seek to defer – No hardship if visa cancelled – Decision under review affirmed

[1605074](#) (Migration) [2016] AATA 4125 (20 July 2016); G Cranwell, Member

Cancellation – Regional Sponsored Migration Scheme visa – Subclass 187 – s.137Q – Not commence employment within prescribed period – Incorrect nomination date provided by department – Applicant absent at three site visits – Reasons provided – Decision under review set aside

[1601652](#) (Migration) [2016] AATA 4149 (22 July 2016); G Bartley, Member

Child (Migrant) (Class AH) visa – Subclass 101 (Child) – cl.101.213 – 101.221(2)(b) – Not undertaken any study since turning 18 – Unable to re-enrol – No discretion to grant visa on compassionate grounds – Decision under review affirmed

[1607420](#) (Migration) [2016] AATA 4152 (25 July 2016); M Cooke, Member

Cancellation – Regional Sponsored Migration Scheme visa – Subclass 187 – s.137Q — Applicant had not commenced work within prescribed period – Failure of employer to provide a job – Resulted in significant hardship to applicant – Cancellation due to circumstances beyond applicant's control – Decision under review set aside

Refugee

[1415219](#) (Refugee) [2016] AATA 4167 (13 July 2016); F Gelev, Member

Protection visa – Afghanistan – Particular social group – Westernized returnees – Imputed political opinion – Worked for western agency – Anti-Taliban – Credibility issues – Identifiable Western family – Internal relocation unreasonable – Decision under review remitted

[1502598](#) (Refugee) [2016] AATA 4164 (13 July 2016); T Flood, Member

Protection visa – South Korea – No Convention reason – Victim of money lenders – Threats of harm – Financial hardship – Complementary protection – State protection – Decision under review affirmed

[1414986](#) (Refugee) [2016] AATA 4154 (18 July 2016); R Westaway, Member

Protection visa – China – Religion – Christian – Local church – Detention – Illegal exit – Laws of general application – Decision under review affirmed

[1514860](#) (Refugee) [2016] AATA 4160 (19 July 2016); N Burns, Member

Protection visa – Malaysia – Particular social group – Victim of money lenders – Extortion – Threats of harm – Police inaction – Decision under review affirmed

[1500034](#) (Refugee) [2016] AATA 4171 (21 July 2016); R Shanahan, Member

Protection visa – Stateless – Social group – Illegitimate child of single mother – Mother is Lebanese citizen - Credibility issues – family support available – No risk of harm – Decision under review affirmed

Practice and Procedure

[Habibi and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 584 (10 August 2016); Senior Member A Poljak

Extension of time application – disability support pension – reasons for delay – prospects of success – Agreement on Social Security between the Government of Australia and the Government of New Zealand – whether “totally unable” to work for the next two years – extension of time refused

[Wang and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 595 (12 August 2016); Ms S Taglieri, Member

Application to extend time to review – prior application of same nature regarding reviewable decision – whether jurisdiction – abuse of process and application dismissed – section 42B(1)(c)

Social Security

[Auelua and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 585 (10 August 2016); Dr L Bygrave, Member

Disability support pension – impairment tables – whether applicant had impairment rating of 20 points – whether conditions fully diagnosed, treated and stabilised – 5 points awarded for lower back condition – decision affirmed

[Fox and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 581 (8 August 2016); Senior Member E Fice

Lodgement of income tax return – family tax benefit – allowable statutory period – special circumstances – decision under review affirmed

[Franklin and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 596 (12 August 2016); Mr DJ Morris, Member

Disability Support Pension (DSP) – whether qualified – whether impairments fully diagnosed, fully treated and fully stabilised – whether impairments attract 20 points or more on Impairment Tables – not qualified for DSP – decision affirmed

[Karaman and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 597 (12 August 2016); Senior Member Ms N Isenberg

Disability support pension – multiple impairments – whether spine condition fully treated and stabilised – whether failure to undergo recommended treatment precludes a finding condition is “fully treated” – reasonableness of refusing treatment – combined impairment rating of 25 points – continuing inability to work – whether applicant actively participated in a program of support at the date of claim – decision affirmed

[Kruusamagi; Secretary, Department of Social Services and](#) [2016] AATA 561 (2 August 2016); Dr L Bygrave, Member

Seniors health card – seniors supplement payments – whether seniors health card was correctly cancelled because applicant did not satisfy the income test – whether automatic cancellation on cessation of qualification – application of s106A of Social Security (Administration) Act 1999 – interpretation of s 123(2) of the Act – found that seniors health card was cancelled by force prior to decision by department – whether debt can be written off – whether debt can be waived – whether special circumstances exist – lack of knowledge of income test calculator – lack of understanding about nature of payment – special circumstances not found – decision under review set aside and substituted

[Radhi and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 582 (6 July 2016); Senior Member E Fice

Newstart allowance – carer payment – overpayment of benefit – whether correct information provided by applicant – where no evidence in support of information provided by applicant – where no adequate explanation for information provided by applicant – decision affirmed

[Smith and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 578 (5 August 2016); Deputy President BJ McCabe and Senior Member T Tavoularis

Pension Bonus Scheme – administration – 13 week period to seek review – no jurisdiction to review decision outside of 13 week period – notice requirements satisfied – decision affirmed under review

[Trajcevski and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 593 (11 August 2016); Professor R McCallum AO, Member

Compensation preclusion period – disability support pension – compensation for car accident – discretion to waive all or part of the preclusion period – whether special circumstances exist to warrant the exercise of the discretion – the tribunal finds no special circumstances exist – decision affirmed

Taxation

[Ogden and Commissioner of Taxation](#) (Taxation) [2016] AAT 574 (4 August 2016); Deputy President SE Frost

Administrative penalty – primary tax issue decided – Commissioner given opportunity to reconsider the amount of penalty imposed on the taxpayer – overstated claims – certain expenditure not claimable – lack of evidence for some claims – whether failure to take reasonable care – whether reckless – whether intentional disregard for the law – portions of the tax shortfall amount resulting from each level of behaviour – different revised amounts depending on severity of behaviour – avoidance of expending too many Commonwealth resources in line by line calculations – adjustment of revised amount to accommodate certain claims – decision under review set aside and remitted

Veterans' Affairs

[Roberts and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 587 (10 August 2016); Miss EA Shanahan, Member

Disability pension claim – accepted condition of chondromalacia patellae – aggravation by a fall in August 2000 during operational service – claim for major depressive disorder and generalised anxiety disorder arising from persistent knee pain – past and pre-service psychiatric history – failed claims for aggravation of pre-existing psychiatric disorder under the Military Rehabilitation and Compensation Act 2004 – decision affirmed

[Whitney and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 586 (10 August 2016); Senior Member E Fice

Disability pension – special rate – prevented from continuing to undertake remunerative work – redundancy – decision set aside

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

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