



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. This list also includes examples of recent decisions published by 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.

## Compensation

[Fischer and K & S Freighters Pty Ltd](#) (Compensation) [2016] AATA 610 (16 August 2016); Miss EA Shanahan, Member

Injury arising out of employment – significant contribution by employment to an ailment – compensable back/buttock injury in 2011- liability accepted and compensation paid – recurrence of symptoms 2014 – massive disc extrusion – surgical intervention required – s 14 liability found – decision set aside

[O'Loughlin and Linfox Australia Pty Ltd](#) (Compensation) [2016] AATA 606 (15 August 2016); Senior Member E Fice

Injury resulting from violence – whether injury arose in the course of employment – whether injury arose out of or in the course of employment – whether injury occurred in interval period – where injury arose in the course of employment – where injury resulted from voluntary exposure to an abnormal risk of injury – decision affirmed

## Corporations

[Holden and Australian Securities and Investments Commission](#) [2016] AATA 605 (15 August 2016); Deputy President SA Forgie

Disqualification order – applicant disqualified from managing corporations for a period of three years – decision affirmed

## Industrial Law

[Goodfellow and Secretary, Department of Employment](#) [2016] AATA 611 (17 August 2016); Ms K Millar, Member

Employment – Fair Entitlement Guarantee – claim for advance under Fair Entitlements Guarantee Act 2012 – whether applicant's employment with a particular employer – whether end of employment occurred less than 6 months before appointment of insolvency practitioner – decision set aside

## Migration

[Botha and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 614 (18 August 2016); Deputy President Dr P McDermott RFD

Cancellation of visa on character grounds – applicant does not pass the character test – sentenced to a term of imprisonment of 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 – decision under review affirmed

[Chen and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 620 (19 August 2016); Senior Member Mrs J C Kelly

Mandatory visa cancellation on character grounds – applicant requested revocation – decision not to revoke the visa cancellation – substantial criminal record – prison term of more than 12 months – whether the discretion should be exercised to revoke the cancellation – protection of Australian community – expectation of Australian community – applicant maintains ties with China – decision affirmed

[Latchman and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 608 (15 August 2016); Senior Member Professor M McGrowdie

Visa refusal – application for partner visa – 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 – impact on victims of applicant's criminal conduct – impact on applicant's family – evidence of rehabilitation achieved by time of the decision – applicant a positive force in the community – impact on family members – Tribunal satisfied that discretion should not be exercised – decision under review set aside and substituted

## **Migration**

[1603909](#) (Migration) [2016] AATA 4180 (1 August 2016); T Caravella, Member

New Zealand Citizen (Family Relationship) (Temporary) (Class UP) – Subclass 461 visa – cl 461.213 – Criterion 3004(f) – Had not yet become member of family unit – Not hold substantive visa at date of application – No compelling reasons – Decision under review affirmed

[1412960](#) (Migration) [2016] AATA 4193 (3 August 2016); S Forgie, Deputy President and M Holmes, Senior Member

Temporary Business Entry (Class UC) – Temporary Work (Skilled) (Subclass 457 visa) – application to review decision of Minister to refuse subclass 457 visa – whether applicant is a member of spouse's family unit – decision of Minister set aside and matter remitted to Minister for further consideration of application with direction that applicant meets cl 457.321 of Schedule 2 to the Migration Regulations

Practice and procedure – whether Tribunal has jurisdiction to consider application review – Tribunal has jurisdiction

Practice and procedure – doctrine of precedent – whether decisions of Federal Circuit Court binding on Tribunal when reviewing decision in Migration and Refugee Division – doctrine applies

[Mora](#) (Migration) [2016] AATA 4198 (15 August 2016); President D Kerr (Presiding), J Redfern, Deputy President and M Holmes, Senior Member

Application for a Temporary Business Entry (Class UC) Subclass 457 Visa – Reconsideration of earlier AAT decision – Where earlier decision relied on judicial authority which subsequently was

overturned – Where earlier decision was a ‘no jurisdiction’ decision – Where earlier tribunal performed no review on merits – Application of *Minister for Immigration and Multicultural Affairs v Bhardwaj* (2002) 209 CLR 597 – Whether AAT has power to reconsider its earlier decision affected by jurisdictional error – Whether AAT should exercise the power to reconsider its earlier decision – Consideration of wisdom in reopening required – AAT should exercise this power only in the rarest of cases – Considerations leading the tribunal to conclude that it should reconsider – Jurisdictional error in the earlier decision so obvious as to leave no real doubt – *Migration Act 1958* (Cth), ss 65, 66, 337, 338(2)(d)(ii), 347, 348, 368, 496 – *Acts Interpretation Act 1901* (Cth), s 33(1) – *Administrative Appeals Tribunal Act 1975* (Cth), s 2A – Australian *Constitution*, s 75(v)

## Refugee

[1500666](#) (Refugee) [2016] AATA 4200 (25 August 2016); S Roushan, Senior Member

Protection visa – Jordan – Particular social group – Divorced woman – Systemic discrimination against women – Honour killing – Lack of state protection – Credible witness – Decision under review remitted

[1601462](#) (Refugee) [2016] AATA 4199 (25 August 2016); J Jolliffe, Member

Protection visa – Pakistan – Particular social group – Interracial and interreligious marriage – Harm from family in Pakistan – Will be forced into arranged marriage – Relocation reasonable – Can return to Australia on another class of visa – Decision under review affirmed

[1502803](#) (Refugee) [2016] AATA 4172 (28 July 2016); B Darcy, Member

Protection visa – India – Religion – Tensions between Muslims and Hindus – Falsely accused of killing Muslim child – Delay in application – Credibility issues – Internal relocation reasonable – Third country protection – Decision under review affirmed

## Practice and Procedure

[Jaffarie and Australian Security Intelligence Organisation](#) [2016] AATA 616 (9 August 2016); Deputy President JW Constance

Jurisdiction – Freedom of Information – where information requested from ASIO – where ASIO is an exempt agency – Tribunal does not have jurisdiction

## Social Security

[Baban and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 619 (19 August 2016); Senior Member A Poljak

Family Tax Benefit – top-up payment and supplementary payments – where tax return not lodged by due date – whether special circumstances exist which prevented lodgement – financial hardship – decision affirmed

[Bohnstedt and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 599 (12 August 2016); Deputy President BJ McCabe

Family tax benefit – determination of shared care percentage – whether the applicant had more than 35% care in the relevant period – whether shared care should be determined by hours children spent

in the applicant's care – period for determination – whether two years can be considered one period – one period is one year – shared care to be determined by nights of custody per year – decision under review substituted – existing care determinations revoked – the applicant had less than 35% shared care in calendar year 2013 – the applicant had more than 35% shared care in the calendar year 2014 – decision under review set aside and substituted

[Bohnstedt and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 603 (15 August 2016); Deputy President BJ McCabe

Family tax benefit – repayment of debt – whether applicant owes a debt – whether debt should be written off – whether debt can be waived – severe financial hardship – special circumstances – decision under review set aside – debt to be recalculated

[Correos and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 617 (19 August 2016); Ms S Taglieri, Member

Disability Support Pension – whether qualified – impairment points applicable – absence of evidence relating to demonstrated continuing inability to work – International agreement not applicable to deem satisfaction of residency requirement – decision under review affirmed

[Hermann and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 602 (15 August 2016); Mr I Thompson, Member

Disability support pension – whether conditions fully diagnosed, treated and stabilised – requirements of a program of support – continuing inability to work – decision affirmed

[Herzog and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 609 (16 August 2016); Senior Member AC Cotter

Disability support pension – cancellation – whether condition fully treated – whether 20 points or more under the impairment tables – applicant did not qualify for DSP at the date of cancellation – decision under review affirmed

[Iliadis and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 612 (13 July 2016); Senior Member P Britten-Jones

Disability support pension – whether conditions fully diagnosed treated and stabilised – whether applicant has 20 points or more under the Impairment Tables – whether applicant has participated in a program of support – decision under review affirmed

[Leng and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 600 (11 July 2016); Deputy President FJ Alpins

Disability support pension – spinal condition - mental health condition – whether applicant's impairment was of 20 points or more under the Impairment Tables during the relevant period – decision under review affirmed

[Ismail and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 604 (15 March 2016); Mr S Webb, Member

Disability support pension – cancellation – impairments do not attract a rating of 20 or more points under the Impairment Tables – decision affirmed

[Murray; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 618 (19 August 2016); Miss EA Shanahan, Member

Pensions, allowances, benefits – disability support pension – cancellation of pension following review of eligibility – Bipolar Disorder – not fully treated – Social Security Appeals Tribunal restored the DSP – Impairment Rating of 20 points required – condition not fully treated – decision set aside and Secretary’s decision restored

[Savvas and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 591 (11 August 2016); Senior Member RW Dunne

Pensions, benefits and allowances – claim for age pension – whether assets exceeded allowable assets limit at the date of claim – whether applicant's assets have been correctly assessed – decision under review affirmed

[Slee and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 594 (12 August 2016); Senior Member RW Dunne

Disability support pension – Impairment Tables considered – whether the applicant has an impairment rating of 20 points or more under the Impairment Tables – medical report and job capacity assessment report considered – oral evidence of applicant's treating doctor – whether the applicant has a severe impairment – decision under review set aside

[Spratt and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 607 (15 August 2016); Senior Member DR Davies

Disability Support Pension – post traumatic stress disorder – hearing loss – tinnitus – whether conditions were permanent – whether fully diagnosed treated and stabilised – impairment tables – whether impairments of the applicants attracted ratings of 20 impairment points – level of impairment – some conditions not fully treated or stabilised – decision under review affirmed

## **Veterans' Affairs**

[Burgess and Repatriation Commission](#) (Veterans’ entitlements) [2016] AATA 598 (12 August 2016); Deputy President K Bean and Lt Col R Ormston (Rtd), Member

Veterans' entitlements – Jurisdiction to consider estoppel, breach of contract, breach of trust and constitutional validity arguments – Referral of questions of law to Federal Court – Where no statutory entitlement to service pension – 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

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CASE NAME	AAT REFERENCE
<b>Elton v Repatriation Commission</b>	<a href="#">[2016] AATA 479</a>
<b>McGarrigle v National Disability Insurance Agency &amp; Administrative Appeals Tribunal</b>	<a href="#">[2016] AATA 498</a>

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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>O'Sullivan v P &amp; O Maritime Services Pty Ltd</b>	<a href="#">[2016] AATA 283</a>	<a href="#">[2016] FCA 969</a>
<b>Luck v Secretary, Department of Human Services (No 4)</b>	<a href="#">[2010] AATA 6</a>	<a href="#">[2016] FCA 950</a>

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