



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 a sample of decisions recently published in the AAT's Migration & Refugee Division and Social Services & Child Support 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. This list also includes selected child support decisions published by the Social Services & Child Support Division and 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.

Child support

[Saville and Lowe](#) (Child support) [2016] AATA 2002 (25 January 2016)

Child Support - Departure determination - Income and financial resources of parent - Business income - Proper needs of the child - Decision under review set aside and substituted

[Attard and Olan](#) (Child support) [2016] AATA 2003 (18 March 2016)

Child Support - Departure determination - Income and financial resources of parent - Cash income from business - Proper needs of the child - Decision under review set aside and substituted

[Murphy and Murphy](#) (Child support) [2016] AATA 2001 (13 May 2016)

Child Support - Departure determination - School fees - Income and financial resources of parent - Liquid assets - Decision under review set aside and substituted

[Rimmer and Marrow](#) (Child support) [2016] AATA 2004 (27 May 2016)

Child Support - Percentage of care - Determination of primary care - No change in pattern of care - Decision under review set aside and substituted - Late application for review - Date of effect of Tribunal's decision - No special circumstances - Refusal to make determination

Citizenship

[Neoh Weng Fei and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 624 (19 August 2016); Mr S Webb, Member

Application for conferral of Australian citizenship – general residence requirements – construction of legislation – requirement for person to be 'present in Australia' for 4 years prior to application – deeming provision – taken to be present if absent from Australia for less than 12 months in the 4-year period – meaning of 'absent from Australia' and 'absence' – applicant not present in Australia 4 years before application lodged – prior presence in Australia – 'absence' from Australia not made out at commencement of the 4-year period – not present in Australia for 4 years prior to application – decision affirmed

Industrial Law

[Lepore and Secretary, Department of Employment](#) [2016] AATA 631 (23 August 2016); Dr G Hughes, Member

Fair entitlements guarantee – sale of business – employment contracts transferred to third party – third party became insolvent – whether statutory responsibility for long service leave effectively transferred by original employer to third party – whether Applicant entitled to an advance under the FEG Act in respect of long service leave accrued with the original employer when the third party became insolvent

Migration

[Singh and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 628 (23 August 2016); Dr L Bygrave, Member

Visa refusal and cancellation – character test – where applicant has substantial criminal record – whether discretion should be exercised – where primary considerations weigh against applicant – decision under review affirmed

Migration

[1604359](#) (Migration) [2016] AATA 4214 (3 August 2016); L Lo Piccolo, Member

Skilled (Provisional) (Class VC) visa – Subclass 485 – cl 485.212 – Language test – Passport type – Unable to upload evidence – Application not accompanied by evidence – Ministerial intervention – Decision under review affirmed

[1503218](#) (Migration) [2016] AATA 4208 (4 August 2016); D Dimitriadis, Member

Standard business sponsor – r 2.59(d) – Training benchmarks – Training Benchmark A – Recent expenditure to the equivalent of 2% to a recognised Australian scholarship fund – Term of approval 5 years – Decision under review set aside

[1601798](#) (Migration) [2016] AATA 4210 (5 August 2016); M Holmes, Senior Member

Temporary Business Entry (Class UC) visa – Subclass 457 – cl 457.223(4)(a) – Federal Circuit Court remittal – Tribunal declined indefinite adjournment of decision – No approved nomination – Decision under review affirmed

[1608657](#) (Migration) [2016] AATA 4211 (8 August 2016); D Dimitriadis, Member

Skilled (Provisional) (Class VC) visa – Subclass 485 – cl 485.215 – No evidence of health insurance in Australia – Decision under review affirmed

[1514849](#) (Migration) [2016] AATA 4227 (10 August 2016); K Malyon, Member

Cancellation – Subclass 457 (Business (Long Stay)) visa – Subclass 457 – Condition 8107(3)(b) – Ceased employment with sponsor exceeding 90 consecutive days – No new nomination approved – Termination of employment beyond applicant's control – Misguided by agent – Decision under review set aside

Refugee

[1419983](#) (Refugee) [2016] AATA 4236 (13 July 2016); R Homan, Member

Protection visa – Nepal – Political opinion – Member of Maoist hard–line faction – Significant harm – Defector – Perceived as wealthy – Claims seem improbable – Decision under review affirmed

[1419387](#) (Refugee) [2016] AATA 4234 (2 August 2016); B Henry, Member

Protection visa – Bangladesh – Particular Social Group – Victim of extortion – Links to criminal networks – Credibility issues – Decision under review affirmed

[1514049](#) (Refugee) [2016] AATA 4243 (1 August 2016); R H MacKinnon, Member

Cancellation – Protection visa – Iraq – Particular social group – Security officers – s 101(b) – Incorrect answers in form – Returned to Iraq on several occasions – Invalid s 107 notice – Power to exercise s 109 did not arise – Decision under review set aside

Social Security

[Edwards and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 625 (22 August 2016); Ms DK Grigg, Member

Family tax benefit – late lodgement of taxation return – failure of applicant’s accountants to lodge income tax return – no “special circumstances” which prevented this occurring – decision under review affirmed

[Hewett and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 629 (23 August 2016); Miss EA Shanahan, Member

Disability support pension – portability – overseas for more than 28 days – disability support pension cancelled – does not meet the definition of severe impairment – seeking treatment for glaucoma – not advised by or supervised by an Australian medical practitioner – pension cancelled – decision affirmed

[Holt and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 633 (24 August 2016); Senior Member AC Cotter

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

[Konopka; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 627 (23 August 2016); Deputy President K Bean

Disability support pension – Whether respondent satisfies qualification requirements for DSP – Whether respondent had a continuing inability to work within the meaning of section 94 of the Social Security Act 1991 – Definition of “designated provider” – Whether treatment to maintain self-employment amounts to “program of support” – Decision under review set aside

[Morton and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 634 (24 August 2016); Mr DJ Morris, Member

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

[Sami and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 636 (24 August 2016); Senior Member A Poljak

Family tax benefit – claim for lump sum family tax benefit – where claim filed out of time – whether special circumstances – where applicant suffered combination of serious circumstances – decision under review set aside and substituted.

[Sriharan and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 632 (23 August 2016); Dr L Bygrave, Member

Disability support pension – Eligibility for – New Zealand citizen – residential qualifications satisfied – whether ‘severely disabled’ – decision affirmed

[Wilson and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 623 (19 August 2016); Senior Member AC Cotter

Disability support pension – where applicant has bipolar affective disorder – where applicant has bilateral knee condition – whether conditions are permanent – whether conditions are fully diagnosed treated and stabilised – impairment tables – whether twenty points can be awarded – whether applicant has a continuing inability to work – applicant cannot be awarded twenty impairment points – applicant does not have a continuing inability to work – decision under review affirmed

Taxation

[Carr and Commissioner of Taxation](#) (Taxation) [2016] AATA 638 (25 August 2016); Deputy President SE Frost

Default assessments – whether assessments excessive – whether taxpayer discharged burden of proving assessment excessive – limited evidence of actual taxable income – decision 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
Secretary Department of Employment v Simpson	2016 AATA 526
Hunt v Repatriation Commission	2016 AATA 554
Kulas v Prosegur Australia Pty Ltd	2016 AATA 538
Comcare v Duffy	2016 AATA 546

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Frugtniet v Australian Securities and Investments Commission	[2015] AATA 128	[2016] FCA 995



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