



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 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

[Van Haltren and Child Support Registrar](#) (Child support second review) [2016] AATA 649; Senior Member A Poljak

Departure prohibition order (DPO) – child support debt – objects of the Child Support (Registration and Collection) Act 1988 (Cth) – no basis for revocation of DPO – no security offered by applicant – decision under review affirmed

Citizenship

[Mana and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 639 (26 August 2016); Senior Member PW Taylor SC

Application for Australian citizenship – conviction for offences – whether applicant of 'good character' – offences found by Minister's delegate to be "at the high range of seriousness" – offending linked to excessive alcohol consumption – insufficient time passed to demonstrate applicant is currently of good character – decision affirmed

[Ferguson and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 678 (2 September 2016); Senior Member N Isenberg

Eligibility – whether applicant is of good character – decision under review set aside and remitted

Compensation

[Demasi and Comcare](#) (Compensation) [2016] AATA 644 (26 August 2016); Deputy President SE Frost

Claim for compensation – applicant working from home on day of injury – applicant injured whilst running, during a break from work – whether injury arose out of, or in the course of, employment – meaning of place of work – whether home is the applicant's place of work – working from home accepted practice – employer approval to work from home on day of injury – home found to be applicant's place of work – whether injury sustained when applicant was temporarily absent from work during an ordinary recess in that employment – flexible work arrangements – meaning of ordinary recess – meaning of ordinary – whether break was an ordinary recess from applicant's employment – plain reading of legislation – decision affirmed

[Emery and Comcare](#) (Compensation) [2016] AATA 647 (27 July 2016); Senior Member T Tavoularis

Extension of Time – Application for Review filed out of time – What is the correct Reviewable Decision – Application for Extension of Time considered – Extension of Time Refused

[Chambers and Comcare](#) (Compensation) [2016] AATA 615 (18 August 2016); Senior Member JF Toohey and Senior Member A Poljak

Adjustment disorder with depression and anxiety – epilepsy – stress – whether employment contributed to significant degree – whether reasonable administrative action taken in a reasonable manner – decision under review set aside and substituted

[Georgakopoulos and Telstra Corporation Limited](#) (Compensation) [2016] AATA 666 (31 August 2016); Senior Member E Fice

Workers' compensation – permanent impairment claim in respect of psychiatric condition – whether applicant has undertaken all reasonable rehabilitative treatment – likelihood of improvement of condition – whether impairment is properly classified as permanent and results in more than 10% whole person impairment – quantum of assessment regarding non-economic loss – decision set aside and substituted

[Giardina and Comcare](#) (Compensation) [2016] AATA 626 (23 August 2016); Dr I Alexander, Member

Compensable injury – household services applicant reasonably requires – number of hours of assistance reasonably required – whether reasonable to expect family members to provide the assistance – decision set aside and remitted

[Haywood and Comcare](#) (Compensation) [2016] AATA 667 (31 August 2016); Senior Member Dr J Popple

Commonwealth employees – Applicant suffered psychological condition as result of counselling session – whether counselling session was reasonable administrative action taken in a reasonable manner in respect of the Applicant's employment – decision under review affirmed

Practice and procedure – whether counselling session tainted by bias – no actual bias – content of rules of procedural fairness that apply to counselling session – whether fair-minded observer could reasonably apprehend that decision maker did not bring an impartial mind to decision to counsel Applicant – no apprehended bias

[Sullivan and TNT Australia Pty Ltd](#) (Compensation) [2016] AATA 643 (26 August 2016); Senior Member JF Toohey

Normal Weekly Earnings – whether calculation of Normal Weekly Earnings correct – Industrial Agreement – Transport Industry Award – special expenses – decision under review varied

Corporations

[Rainbow Legend Group Pty Ltd and Australian Securities and Investments Commission](#) [2016] AATA 665 (31 August 2016); Deputy President SE Frost

Financial Services and Markets – Australian Financial Services Licence – Cancellation – Whether applicant breached obligations of financial service licensee – Decision set aside – Decision in substitution that licence suspended subject to conditions

Freedom of Information

[The Wilderness Society South Australia Inc. and Department of the Environment](#) (Freedom of information) [2016] AATA 653 (30 August 2016); Deputy President K Bean

Access – Exemptions – Documents disclosing trade secrets or commercially valuable information – Decision under review affirmed

Migration

[Peipi– Tepou and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 635 (24 August 2016); Senior Member JF Toohey

Mandatory cancellation of visa – request for revocation of cancellation – character test – substantial criminal record – primary and other considerations – prospects of rehabilitation – unacceptable risk of harm – decision under review affirmed

Practice and Procedure

[St Mary Health & Community Services Pty Ltd and Australian Community Pharmacy Authority](#) [2016] AATA 673 (1 September 2016); Senior Member Dr J Popple

HEALTH LAW — Pharmacies — application for approval to supply pharmaceutical benefits at specified premises — whether, at all relevant times, located in the same town as the proposed premises there were at least the equivalent of four full– time prescribing medical practitioners practising — whether, at all relevant times, located in the same town as the proposed premises there were one or two supermarkets which occupied a combined total gross leasable area of at least 2500 square metres — decision under review affirmed

Admissibility of evidence — hearsay evidence — whether unfair to admit hearsay evidence — evidence admitted

[Davies and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 657 (31 August 2016); Ms DK Grigg, Member

Application for dismissal on the basis of no reasonable prospect of success – Applicant unable to establish that his impairments attracted a rating of 20 points or more under the Impairment Tables for the purposes of disability support pension – No reasonable prospect of establishing an entitlement to disability support pension during the relevant period – Application to dismiss refused – Decision under review affirmed

[Hutchinson and Comcare](#) [2016] AATA 650 (29 August 2016); Brigadier AG Warner, Member

Application for extension of time to lodge application for review of a Comcare decision of 17 September 2013 – explanation not satisfactory – lack of merit of applicant's application for review – significant delay – Tribunal not satisfied that reasonable in all the circumstances to grant extension of time – application for extension of time refused

[IMS FX Services Pty Ltd and Australian Securities and Investments Commission](#) [2016] AATA 664 (31 August 2016); Senior Member Ms G Lazanas

Application for stay of decision – decision to cancel Australian financial securities licence – relevant principles – prospects of success – consequences for Applicant – public interest and consequences

for Respondent in carrying out its functions – whether application would be rendered nugatory without stay – request for stay order refused

Suppression orders – proceedings generally held in public – open administration of justice – request for suppression orders refused

Social Security

[Bagorski and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 656 (31 August 2016); Ms DK Grigg, Member

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

[Gaiter; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 668 (1 September 2016); Senior Member P Britten– Jones

Disability support pension – whether respondent's conditions are fully diagnosed, fully treated and fully stabilised – whether respondent's conditions attract 20 points or more on the Impairment Tables – whether respondent has a severe impairment – respondent does not have a severe impairment – decision under review is set aside.

[Mills and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 671 (10 August 2016); DJ Morris, Member

Disability Support Pension (DSP) – whether qualified – whether impairments fully diagnosed, fully treated and fully stabilised – long– standing but fluctuating condition with changing medication – assignment of 20 or more points under Impairment Tables – not qualified for DSP – decision affirmed – written reasons requested – written reasons may elaborate on oral reasons given

[Mohamud and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 663 (31 August 2016); Senior Member Mrs JC Kelly

Carer payment – Cancellation – Meaning of “constant care” – Whether applicant provides “constant care” for his mother– Applicant did not provide “constant care” at the time of the cancellation – undisclosed financial circumstance – Decision affirmed

[Murdoch and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 669 (1 September 2016); Ms S Taglieri, Member

Family tax benefit – shared care of teenage child – whether change in percentage of care – no change in care period – dissection into shorter care period not warranted – decision under review set aside and remitted

[Okungbowa and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 648 (29 August 2016); Senior Member AC Cotter

Disability support pension – severe impairment – whether 20 points or more under the impairment tables – indefinite portability of DSP – decision under review affirmed.

[O'Rourke and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 645 (26 August 2016); Senior Member JF Toohey

Pension bonus scheme – whether discretion to allow late claim should be exercised – whether special circumstances – decision under review affirmed

[Sams and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 654 (30 August 2016); Deputy President JW Constance

Lump sum compensation preclusion period – disability support pension – lump sum compensation payments and periodic compensation payments – length of the preclusion period – whether special circumstances exist to reduce the preclusion period – decision affirmed

[Shanhun; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 675 (2 September 2016); DJ Morris, Member

Family Tax Benefit (FTB) – whether respondent entitled to FTB top ups and supplementary amounts – late lodgement of tax return – failure by respondent's accountants – whether respondent prevented from lodging tax return in relevant income year – whether special circumstances applicable – the test of 'special circumstances' – what is meant by 'prevent' – decision of SSCSD Division set aside and new decision made – not entitled to FTB – original decision affirmed

[St Clair; Secretary, Department of Social Services and](#) [2016] AATA 640 (26 August 2016); Senior Member RW Dunne

Disability support pension (DSP) – Impairment Tables considered – DSP claim rejected – on review by Social Security Appeals Tribunal (SSAT), decision of Authorised Review Officer set aside – SSAT found that respondent qualified for DSP – reports of medical practitioners and Job Capacity Assessors analysed – decision under review set aside

[Swift and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 670 (1 September 2016); Senior Member P Nolan

Disability support pension – whether applicant's conditions are permanent – applicant does not have a severe impairment – applicant has a continuing capacity for work – applicant has not participated in a program of support – decision under review affirmed

[Tierney and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 677 (2 September 2016); Senior Member A Cunningham

Disability support pension – qualification requirements – claimed conditions of lumbosacral back pain with bilateral sciatica – mixed anxiety and depression – total impairment rating of 10 points – decision and review affirmed

[Thompson and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 661 (18 July 2016); Senior Member JF Toohey

Age pension – New Zealand superannuation benefit – effect on Australian Age Pension – exchange rate – decision under review affirmed

Taxation

[Reany and Commissioner of Taxation](#) (Taxation) [2016] AATA 672 (1 September 2016); Senior Member CR Walsh

Income Tax – whether deductions claimed for certain work related travel expenses deductible – whether applicant required by employer to transport of bulky tools and equipment from home to work – whether secure storage provided to the applicant by his employer at his workplace – work related travel expenses “private” in nature – decision under review affirmed in part

[Zhang and Commissioner of Taxation](#) (Taxation) [2016] AATA 662 (31 August 2016); Deputy President SE Frost

Taxation and revenue – income tax – unexplained deposits to bank accounts – some deposits now explained – reduction in assessments – Commissioner's opinion that the taxpayer had evaded tax – Tribunal satisfied on the balance of probabilities that evasion was not present – some amended assessments therefore out of time – administrative penalties reduced from 50 per cent to 25 per cent – objection decisions set aside

Veterans' Affairs

[McNair and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 676 (2 September 2016); Senior Member E Fice

Disability pension – application for increase in rate of pension – eligibility for Intermediate Rate of pension – eligibility for Special Rate of pension – whether veteran had capacity to undertake remunerative work – where misinformed medical evidence suggested capacity – where no capacity to work for more than 8 hours per week – where incapacity caused by war– caused conditions alone – veteran eligible for pension at Special Rate – decision set aside

[Pepper and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 652 (30 August 2016); Senior Member JF Toohey

Special rate – intermediate rate – whether veteran incapable of undertaking remunerative work for eight or more hours per week – whether veteran incapable of undertaking part– time or intermittent remunerative work – whether veteran prevented by accepted disabilities alone from continuing in remunerative work – whether veteran ceased to engage in remunerative work for reasons other than his accepted conditions – decision under review affirmed

[Reidlinger and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 646 (26 August 2016); Deputy President Dr P McDermott RFD

Application for pension at the special rate – applicant was not prevented from continuing to undertake remunerative work because of incapacity from war– caused injury or war– caused disease alone – financial considerations found to be a factor – injury that was not war– caused not found to be a factor – decision affirmed under review

[Zielinski and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 655 (30 August 2016); Deputy President FJ Alpins

Disability pension – incapacity from defence– caused injury or defence– caused disease – whether veteran incapacitated from psychological condition – whether such a condition or veteran's lumbar

spondylosis “defence– caused” – whether either condition arose out of or was attributable to defence service – meaning of “defence service” – Statement of Principles concerning lumbar spondylosis – 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
K & S Freighters Pty Ltd v McQueen-Thomson	[2016] AATA 510

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Wu v Secretary, Department of Social Services	[2016] AATA 226	[2016] FCA 1061
Secretary, Department of Health (as successor to the Secretary, Department of Social Services) v DLW Health Services Pty Ltd	[2015] AATA 796	[2016] FCAFC 108

Statements of Principles

This section of the *Bulletin* provides information on recent developments in relation to Statements of Principles made by the Repatriation Medical Authority for the purposes of the [Veterans' Entitlements Act 1986](#) and the [Military Rehabilitation and Compensation Act 2004](#).

New Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made the following new Statements of Principles. They take effect from **26 September 2016**.

Antiphospholipid syndrome (Reasonable Hypothesis) – No. 69 of 2016

<https://www.legislation.gov.au/Details/F2016L01348>

Antiphospholipid syndrome (Balance of Probabilities) – No. 70 of 2016

<https://www.legislation.gov.au/Details/F2016L01352>

Ganglion (Reasonable Hypothesis) – No. 71 of 2016

<https://www.legislation.gov.au/Details/F2016L01356>

Ganglion (Balance of Probabilities) – No. 72 of 2016

<https://www.legislation.gov.au/Details/F2016L01353>

Incisional hernia (Reasonable Hypothesis) – No. 73 of 2016

<https://www.legislation.gov.au/Details/F2016L01350>

Incisional hernia (Balance of Probabilities) – No. 74 of 2016

<https://www.legislation.gov.au/Details/F2016L01349>

Scheuermann's disease (Reasonable Hypothesis) – No. 75 of 2016

<https://www.legislation.gov.au/Details/F2016L01344>

Scheuermann's disease (Balance of Probabilities) – No. 76 of 2016

<https://www.legislation.gov.au/Details/F2016L01343>

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