



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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Enquiries regarding this publication may be directed to [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

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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.

## Compensation

[Clarke and Military Rehabilitation and Compensation Commission](#) (Compensation) [2016] AATA 697 (9 September 2016); Senior Member A Cunningham and R Walters, Member

Compensation - Safety Rehabilitation and Compensation Act 1988 - claim for psychological disability caused by sexual and other abuse at HMAS Leeuwin – weight of medical evidence confirmed diagnosis of bipolar affective disorder, (cyclothymic personality) – constitutional in nature and cannot be connected with service – decision under review affirmed

## Corporations

[Mehajer and Australian Securities and Investments Commission](#) [2016] AATA 621 (19 August 2016); Deputy President JW Constance

Disqualification from managing companies – power to disqualify enlivened – where two companies wound up – where companies were related – whether disqualification justified – failure to exercise due care and diligence as a director – failure to keep adequate company records – hindering and delaying liquidation process – whether disqualification in the public interest – length of disqualification – reviewable decision affirmed

## Environment

[Drew and Minister for Communications and the Arts](#) [2016] AATA 601 (15 August 2016); The Hon. D Cowdroy OAM QC and Senior Member JF Toohey

Application for permit to export work of art – cultural heritage object – whether grant of permit would significantly diminish Australia's cultural heritage – decision under review affirmed

## Industrial Law

[Bi and Secretary, Department of Employment](#) [2016] AATA 690 (8 September 2016); Senior Member J Sosso

Fair Entitlements Guarantee Act – where an insolvency event occurs – where a liquidator was appointed – where employment of applicant had ceased less than six months before the appointment of a liquidator – whether applicant an 'excluded employee' for the purposes of the relevant legislation – where the applicant had been married to a director of the liquidated company – whether the applicant was a spouse of a director of the company in the relevant period – decision under review affirmed

## Intellectual Property

[AbbVie Biotechnology Ltd Commissioner of Patents](#) [2016] AATA 682 (5 September 2016); Deputy President The Hon. D Cowdroy OAM QC

Patents – request for extension of the term of patents – “Swiss style” claims – whether a pharmaceutical substance, when produced by a process that involves the use of recombinant DNA technology, in substance falls within the scope of the claims of the patents which are capable of extension within the meaning of the Patents Act – interpretation of section 70(2)(b) of the Patents Act – origins of the words ‘per se’ – whether Applicant’s applications for extension disqualified on basis that “Swiss style” claims – decision set aside

Patents – request for extension of the term of patents – “Swiss style” claims – whether first relevant inclusion of goods in the Australian Register of Therapeutic Goods was inclusion of pharmaceutical substance, rather than first inclusion of pharmaceutical substance characterised by its method of production and intended use – decision affirmed

## Migration and Refugee

[Anaki and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 693 (8 September 2016); Mr S. Webb, Member

Mandatory visa cancellation – discretion to revoke – substantial criminal record – character test not satisfied – discretion to revoke visa cancellation if another reason – primary and other considerations – decision set aside

[Lim and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 692 (8 September 2016); Deputy President Dr P McDermott RFD

Application for visa refused on character grounds – applicant does not pass the character test – sentenced to two terms of imprisonment totalling 12 months – conduct to date not highly serious – low risk to Australian community – expectations of Australian community met – impact on Australian business interests relevant – decision set aside and substituted

[Nigam and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 613 (18 August 2016); Senior Member A Poljak

Application for visa refused – Partner (Temporary) (Class UK) visa – character test – substantial criminal record – Direction 65 – protection of the Australian community – seriousness and nature of the relevant conduct – the risk conduct may be repeated – best interests of minor children in Australia – expectations of Australian community – decision affirmed

## Migration

[1607479](#) (Migration) [2016] AATA 4261 (5 August 2016); A Mercer, Member

Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 – Dependent applicant separated from primary applicant – Primary applicant refused visa but did not apply for review - not meet cl 187.311(a) – Decision under review affirmed

[1503293](#) (Migration) [2016] AATA 4248 (9 August 2016); A Dronjic, Member

Business Skills - Established Business (Residence) (Class BH) visa – Subclass 845 – cl 845.221 – Business nominated is 'main' business – Ownership interest in one or more established businesses preceding application – Net assets – Successful business career – Decision under review remitted

[1505896](#) (Migration) [2016] AATA 4251 (9 August 2016); J Ciantar, Member

Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – cl 187.234 – Applicant's qualifications relevant to occupation – Relevant work experience – Decision under review remitted

[1602926](#) (Migration) [2016] AATA 4260 (9 August 2016); G Cranwell, Member

Cancellation – Subclass 457 (Temporary Work (Skilled)) visa – Condition 8107 – Ceased employment in a nominated occupation for more than 90 consecutive days – Non-attendance at hearing – Decision under review affirmed

[1610265](#) (Migration) [2016] AATA 4265 (11 August 2016); B Henry, Member

Cancellation – Employer Nomination (Permanent) visa – s 347(1)(b) – r 4.10 – Review application within 7 working days – Review application not lodged within required timeframe – Applicant properly notified – Decision under review affirmed

## **Refugee**

[1417566](#) (Refugee) [2016] AATA 4246 (1 August 2016); L Nicholls, Senior Member

Protection visa – Bangladesh – Political opinion – BNP Party member – False criminal charges – Credibility issues – Decision under review affirmed

[1500288](#) (Refugee) [2016] AATA 4237 (2 August 2016); J Jolliffe, Member

Protection visa – Malaysia – Race – Chinese – Religion – Buddhist – Threats and harassment – Disadvantage to Australian born children – Decision under review affirmed

[1502215](#) (Refugee) [2016] AATA 4274 (3 August 2016); R Shanahan, Member

Protection visa – Jordan – Religion – Jehovah's Witness – Unable to practice his faith openly – Discrimination in education and employment – Credibility issues – Fabricated much of his claim – Given benefit of the doubt on core claim – Decision under review remitted

[1416155](#) (Refugee) [2016] AATA 4278 (5 August 2016); N Burns, Member

Protection visa – Pakistan – Imputed political opinion – Anti-Taliban opinions – Peace committee member – Militancy in Swat Valley – Internal relocation unreasonable – Mental health conditions – Decision under review remitted

[1502689](#) (Refugee) [2016] AATA 4283 (15 August 2016); R Shanahan, Member

Protection visa – Lebanon – Particular Social group – Homosexuals – Credibility issues – Unreliable witnesses and evidence – Delay in protection visa application – Decision under review affirmed

## Practice and Procedure

[Morris and Director-General, National Archives of Australia](#) [2016] AATA 679 (2 September 2016); Deputy President Dr P McDermott RFD

Jurisdiction and powers – Review of decision – Applicant sought access to records on file – File did not contain records that he believes exist – Decision did not refer to records that the applicant believes exist – No provision in *Archives Act 1983 (Cth)* for review of such decision – Tribunal does not have jurisdiction – *Archives Act 1983 (Cth)* s 43(1) – Tribunal cannot exercise power under s 44(1) of the *Archives Act 1983 (Cth)* without having jurisdiction – application dismissed under s 42A(4) of the *Administrative Appeals Tribunal Act 1975 (Cth)*

[Menzies and Australian Securities and Investments Commission](#) [2016] AATA 699 (9 September 2016); Senior Member E Fice

Stay application – ASIC Banning Order – financial services industry – MINI warrant trading – market manipulation – creating an artificial price – maintaining an artificial price level – creation of false or misleading appearance of active trading – applicant's prospects of success in application for review – consequences for applicant – review application rendered nugatory – whether deterrent – stay granted subject to conditions

## Social Security

[Abdalla and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 701 (9 September 2016); R Perton, Member

Disability support pension – whether medical conditions fully diagnosed, treated and stabilised at time of claim or within 13 weeks of that date – points to be allocated - some conditions not fully diagnosed, treated and stabilized - insufficient points to qualify for disability support pension - decision affirmed

[Aziz and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 588 (10 August 2016); Senior Member Ms N Isenberg

Disability support pension – cancellation – whether Applicant qualified at date of cancellation – whether impairments rated 20 points or more – decision under review affirmed

[Catterall; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 691 (8 September 2016); Senior Member RW Dunne

Pensions, benefits and allowances – Newstart Allowance – age pension – travel overseas – extension of deeming rules – purchase of asset-tested income stream – amending Act – continuously receiving income support payment – statutory interpretation – decision under review set aside

[Campbell and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 694 (8 September 2016); Senior Member JF Toohey

Disability Support Pension – multiple disabilities – whether conditions fully treated and stabilised – program of support – decision in absence of hearing – decision under review affirmed

[Heazlewood and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 688 (7 September 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

[Hobson and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 651 (29 August 2016); Senior Member A Poljak

Family Tax Benefit – tax return not filed within the 12 month period – whether there are special circumstances that prevented the applicant from filing her tax return – no special circumstances found – decision affirmed

[Karezi and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 686 (6 September 2016); Dr L Bygrave, Member

Disability support pension – cancellation of payment – whether conditions permanent – fully diagnosed – fully treated – fully stabilised – whether Applicant has 20 points under the Impairment Tables – decision affirmed

[McNamara; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 689 (7 September 2016); Senior Member CR Walsh

Family tax benefit (FTB) – whether respondent entitled to FTB supplements and top-up for the 2012/2013 financial year – failure by respondent and her partner to lodge their income tax returns for the year ended 30 June 2013 year by 30 June 2014 – no “special circumstances” – decision set aside and substituted

[Saleeba and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 674 (2 September 2016); 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 – surgery to a cited condition – medical reports after relevant period – not qualified for DSP – decision affirmed

[Scott and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 698 (9 September 2016); DJ Morris, Member

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

[Walton and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 680 (2 September 2016); Ms R Perton, Member

Disability support pension – whether medical conditions diagnosed, fully treated and stabilised at time of claim or within 13 weeks of that date – points to be allocated – decision affirmed

## Taxation

[DTMP and Commissioner of Taxation](#) (Taxation) [2016] AATA 684 (6 September 2016); Senior Member FD O'Loughlin

Expansion of grounds of objection – prejudice to the Commissioner – grounds expansion declined – procedural request for further hearing – procedural request declined

[RSPG and Commissioner of Taxation](#) (Taxation) [2016] AATA 687 (7 September 2016); Deputy President IR Molloy

GST – input taxed supplies – creditable acquisitions – where applicant built a new retirement village – whether construction costs could be claimed as input tax credits – apportionment – where applicant proposed an apportionment methodology – whether proposed apportionment methodology reflects a fair and reasonable apportionment of acquisitions – whether applicant was engaged in the supply of residential premises – objection decision affirmed

## Veterans' Affairs

[Blain and Repatriation Commission \(Veterans' entitlements\)](#) [2016] AATA 702 (9 September 2016); Deputy President Dr P McDermott RFD

Veteran deceased – claim for compensation by war widow – hypothesis connecting the death of the veteran with the circumstances of the service rendered – Statement of Principles concerning Diabetes Mellitus (Instrument No. 89 of 2011 as amended by Instrument No. 27 of 2016) in force – Statement of Principles does not uphold a hypothesis that the diabetes condition is related to service – 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>Roberts v Repatriation Commission</b>	<a href="#">[2016] AATA 587</a>

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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Attorney-General for the Commonwealth of Australia v The Honourable Mark Dreyfus MP</b>	<a href="#">[2015] AATA 995</a>	<a href="#">[2016] FCAFC 119</a>
<b>Ceric v Prosegr Australia Pty Ltd</b>	<a href="#">[2015] AATA 590</a>	<a href="#">[2016] FCA 1068</a>

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