



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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# Contents

## **AAT Recent Decisions ..... 3**

Citizenship.....	3
Compensation .....	3
Migration.....	3
Migration and Refugee .....	4
Practice and Procedure.....	5
Social Security.....	6
Taxation.....	7
Veterans' Affairs .....	7

## **Appeals ..... 8**

Appeals lodged.....	8
Appeals finalised .....	8

## **AAT Recent Decisions ..... 3**

Citizenship.....	3
Compensation .....	3
Migration.....	3
Migration and Refugee .....	4
Practice and Procedure.....	5
Social Security.....	6
Taxation.....	7
Veterans' Affairs .....	7

## **Appeals ..... 8**

Appeals lodged.....	8
Appeals finalised .....	8

# 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.

## Citizenship

[Al Batat and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 726 (20 September 2016); Dr L Bygrave, Member

Good character – whether applicant satisfies the legislative requirement to be shown to be of good character – bad language – traffic offences – whether any mitigating factors or explanations outweigh the behaviour – set aside – remitted with direction that applicant is of good character

[Azimi and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 722 (20 September 2016); W Evans, Member

Citizenship by conferral – whether the applicant satisfies the legislative requirement showing that he is of good character – trafficking of documents proven to be counterfeit – consideration of mitigating circumstances – evidence establishes failure of Good Character requirements – decision under review affirmed

## Compensation

[Drummeay and Comcare](#) (Compensation) [2016] AATA 738 (23 September 2016); Deputy President IR Molloy

Compensation under the Safety, Rehabilitation and Compensation Act 1988 (Cth) – claims for massage therapy and pharmaceuticals – medical treatment obtained in relation to an injury – whether treatment was reasonable to obtain – decision under review affirmed

## Migration

[Appiah and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 720 (16 September 2016); Deputy President JW Constance

Citizenship by descent – whether at the time of the Applicant's birth his father was an Australian citizen – where date of birth in dispute – reliability of documents showing the Applicant's date of birth – decision under review affirmed

[Denizgezen and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 727 (20 September 2016); Ms R Perton, Member

Refusal of visa – character test – criminal record - protection of Australian community – risk to the Australian community should the conduct be repeated – whether risk of future harm acceptable – exercise of discretion – decision under review affirmed

[Divane and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 728 (21 September 2016); Senior Member Tavoularis

Temporary visa – Applicant is a New Zealand citizen – Applicant did not declare substantial criminal history upon arrival – s 501 character test – visa cancelled – whether primary considerations weigh against Applicant – discretion should be exercised against the Applicant – decision under review affirmed

## Migration and Refugee

### Migration

[1516540](#) (Migration) [2016] AATA 4313 (31 August 2016); L Mojsin, Member

Student – (Temporary) (Class TU) visa – Subclass 573 – cl 573.227 – Exceptional reasons – Excellent academic record in Australia – Personal references – Responsibility for taking over family business – Decision under review remitted

[1504100](#) (Migration) [2016] AATA 4320 (1 September 2016); D Dobell, Member

Nomination – Appropriate skill level – Financial viability – Terms and condition of employment – Decision under review affirmed

[1503094](#) (Migration) [2016] AATA 4333 (2 September 2016); A Millbank, Member

Partner (Temporary) (Class UK) visa – Subclass 820 – cl 820.211 – Genuine and continuing relationship – Combined family activities and travel – Shared household responsibilities – Combined financial arrangements – Decision under review remitted

[1602075](#) (Migration) [2016] AATA 4318 (2 September 2016); J Ciantar, Member

Cancellation – Subclass 457 (Temporary Work (Skilled)) visa – Condition 8107 – Ceased employment over 90 consecutive days – Sponsor closed business – Consideration of discretion – Positive skills assessment – New sponsor – Circumstances beyond applicant's control – Decision under review set aside

[1607499](#) (Migration) [2016] AATA 4314 (2 September 2016); M Cooper, Member

Confirmatory (Residence) (Class AK) visa – Subclass 808 – cl 808.211 – Applicants did not hold prescribed class visas – Request for Ministerial intervention – Unique or exceptional circumstances – Migration agent misconduct – No exceptional benefit demonstrated – Decision under review affirmed

## Refugee

[1419893](#) (Refugee) [2016] AATA 4338 (19 August 2016); N Burns, Member

Protection visa – Indonesia – Particular social group – Single disabled mother – Ethnic Chinese – Lack of services – No employment prospects – Limited support networks – Decision under review remitted

[1500095](#) (Refugee) [2016] AATA 4306 (23 August 2016); M Moustafine, Member

Protection visa – Egypt – Religion – Quranist beliefs – No longer practises Sunni Islam – Will be considered infidel – Current government more moderate – Decision under review affirmed

[1503327](#) (Refugee) [2016] AATA 4341 (24 August 2016); T Flood, Member

Protection visa – India – Social group – Widows – Social isolation – Stigmatised – Bad omen – Changing attitudes in the cities – Strengthening of legislation – Well educated – Owns her home – Decision under review affirmed

[1508271](#) (Refugee) [2016] AATA 4344 (29 August 2016); D Dragovic, Senior Member

Protection visa – China – Religion – Jehovah's Witness – Social group – Parents counter to ideals of Cultural Revolution – Converted in Australia – Jehovah's Witnesses not on list of banned cults – No risk of harm – Decision under review affirmed

[1603640](#) (Refugee) [2016] AATA 4347 (30 August 2016); G Cranwell, Member

Protection visa – Malaysia – Ethnicity – Bugis – Age discrimination – Owes debts – Not mentioned in protection application – Delay in application – Decision under review affirmed

## Practice and Procedure

[Australian Careers Institute Pty Ltd and Australian Skills Quality Authority](#) [2016] AATA 730 (21 September 2016); Senior Member E Fice

Confidentiality order – applicant request for non-publication and non-disclosure of information tending to reveal the identity of applicant – general principle that hearings before Tribunal be held in public and that evidence before the Tribunal be made available to the public – whether the circumstances justify a departure from the general principle – media coverage concerning the applicant and the decisions and operations of the respondent – whether current and prospective students have a right to be informed of respondent's decision – whether possibility of adverse publicity sufficient to justify granting confidentiality order – whether order will have wide or narrow application – request for confidentiality order refused

## Social Security

[Abdulrahman and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 723 (20 September 2016); Senior Member W Stefaniak AM RFD

Disability support pension – cancellation – whether impairments permanent – whether impairments fully diagnosed, treated and stabilised – impairment tables – Applicant claims to suffer from an ankle injury, hypercalcemia and depression – decision affirmed

[Clacy and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 718 (16 September 2016); Mr DJ Morris, Member

Disability Support Pension – rejection – whether conditions fully diagnosed, fully treated and fully stabilised – impairments only to be assigned under one Impairment Table – medical practitioner’s general description of condition - do impairments attract 20 points or more under Impairment Tables – not qualified – later submissions point to further deterioration in condition – reviewable decision affirmed

[Gill and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 739 (23 September 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 – recent injury – treatment recommended but not yet undertaken – not qualified for DSP – decision affirmed

[Hadley and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 637 (25 August 2016); Mr S Webb, Member

Carer payment – motor vehicle accident – lump sum compensation – compensation part of lump sum – lump sum preclusion period – compensation affected payments – recovery – discretion – no special circumstances – decision varied

[Iskenderian and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 717 (16 September 2016); Senior Member CR Walsh

Whether the applicant was entitled to a reconciled amount of FTB for the 2012/2013 financial year – failure by the applicant and her partner to lodge their income tax returns for the 2012/2013 financial year by 30 June 2014 – no “special circumstances” prevented this from happening – decision under review affirmed

[Makki and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 731 (21 September 2016); Senior Member JF Toohey

Disability support pension – cancellation – portability period – whether conditions fully diagnosed treated and stabilised – whether rated 20 points or more – whether applicant had continuing inability to work – applicant had not actively participated in program of support – none of applicant’s impairments severe – decision under review affirmed

[Nelson and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 721 (20 September 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 – 20 points under two Impairment Tables – no participation in a program of support – not qualified for DSP – decision affirmed

[Rees and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 732 (21 September 2016); Senior Member T Tavoularis

Disability Support Pension – International Agreement – Unlimited Portability – Applicant moved to New Zealand – Does not meet criteria - Decision affirmed

[Woinar and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 737 (23 September 2016); Mr DJ Morris, Member

Disability Support Pension (DSP) – whether qualified – injury after claim lodged – whether impairments fully diagnosed, fully treated and fully stabilised – no impairment points able to be assigned – not qualified for DSP – decision affirmed

## **Taxation**

[Silver Mines Limited and Minister for Infrastructure and Regional Development](#) [2016] AATA 707 (13 September 2016); Deputy President Professor R Deutsch

Industry Research and Development Act 1986 – research and development tax concessions – registration for concessions – applicant lodged applications for 2010/2011 and 2011/2012 income years out of time – whether exceptional circumstances exist – death of a director not an exceptional circumstance – tax agent failing to provide relevant advice held to be an exceptional circumstance – further delay caused in lodging applications fault of the applicant – decisions affirmed

## **Veterans' Affairs**

[Derry and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 724 (20 September); Ms EA Shanahan, Member

Right shoulder injury during service – right shoulder injury accepted as defence caused – left shoulder osteoarthritis/rotator cuff syndrome – no episode of trauma – does not satisfy the SoP – 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
<b>Singh v Minister for Immigration and Border Protection &amp; AAT</b>	<a href="#">[2016] AATA 628</a>
<b>O'Loughlin v Linfox Australia Pty Ltd</b>	<a href="#">[2016] AATA 606</a>
<b>Commissioner of Patents v Abbvie Technology Ltd</b>	<a href="#">[2016] AATA 682</a>
<b>Carr v Commissioner of Taxation</b>	<a href="#">[2016] AATA 638</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Murray v Repatriation Commission</b>	<a href="#">[2015] AATA 364</a>	<a href="#">[2016] FCA 1150</a>
<b>Benjamin v Commissioner of Taxation</b>	<a href="#">[2015] AATA 923</a>	<a href="#">[2016] FCA 1157</a>



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