



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.

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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.

Aviation

[Courtney and Civil Aviation Safety Authority](#) [2016] AATA 755 (28 September 2016); Miss EA Shanahan, Member

Air Safety Regulation – experienced pilot with 30 year history of flying – holder of pilot's registration United States of America and South Africa – complex cardiological history – fully treated and stabilised – significance of small area of abnormal perfusion in left ventricle debateable – present for over 12 months without ill-effect – expert evidence and treating doctor evidence as to significance of radio nuclear scan findings – reviewable decision set aside with proviso

Citizenship

[Donnelly and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 752 (2 September 2016); Brigadier AG Warner, Member

Citizenship – application for Australian citizenship by conferral – application refused – period as unlawful non-citizen – whether administrative error caused period as unlawful non-citizen – administrative error not established – discretion-administrative error not enlivened – general residence requirement not satisfied – decision under review affirmed

Compensation

[Freeman and Military Rehabilitation and Compensation Commission](#) (Compensation) [2016] AATA 741 (23 September 2016); Deputy President SA Forgie

Melanoma – whether applicant's melanoma a disease or an injury (other than a disease) – whether occupational disease specified by the Minister – presumption of material contribution rebutted – whether applicant's service materially contributed to malignant melanoma – reviewable decision affirmed

[Hopkins and Comcare](#) (Compensation) [2016] AATA 742 (23 September 2016); Dr C Kendall, Deputy President

Applicant made claim in 1992 for neck injury and associated headaches – applicant medically retired in 2002 – applicant received compensation payments from that date on – on basis of new medical report respondent determined in 2014 that applicant suffers from a constitutionally-based problem and that condition is no longer work related – whether accepted condition materially contributed to in a material degree by applicant's employment with the Commonwealth – applicant found to have

suffered an injury that has resulted in incapacity such that applicant is entitled to ongoing compensation – decision under review set aside

[Kelso and Comcare](#) (Compensation) [2016] AATA 750 (27 September 2016); Mrs JC Kelly, Senior Member

Commonwealth employee – anxiety and stress secondary to bullying and harassment – definition of “injury” - whether employment contributed ‘to a significant degree’ – whether reasonable administrative action – decision under review affirmed

[McGree and Comcare](#) (Compensation) [2016] AATA 756 (29 September 2016); Deputy President K Bean

Commonwealth employees – Calculation of normal weekly earnings – Decisions under review set aside and remitted

[Murphy and Comcare](#) (Compensation) [2016] AATA 744 (26 September 2016); Miss EA Shanahan, Member

Accepted liability for ganglion of the right wrist – multiple recurrences following surgical excision of the ganglion – five operations in total – neuropathic pain syndrome following surgery – alternative diagnosis of carpal tunnel syndrome – evidence of treating surgeon decisive – continuing liability – all decisions under review set aside

Corporations

[Clemente Group Holdings Pty Ltd and Australian Securities and Investments Commission](#) [2016] AATA 758 (29 September 2016); Senior Member JF Toohey

Licensing – application for financial services licence – whether licence should be granted – whether Tribunal has ‘no reason to believe’ applicant will not comply with obligations – decision under review affirmed

[Strata Community Insurance Agencies Pty Ltd and Australian Securities & Investments Commission](#) [2016] AATA 768 (30 September 2016); Senior Member Mr PW Taylor SC

Australian Financial Services licence – “authorised representative” – cross endorsement of licensees – whether refusal to cross endorse was reasonable – impact of refusal to cross endorse – whether applicant should be exempted under s 926A from requirement for cross endorsement from incumbent licensees – decision affirmed

Migration

[HNNM and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 761 (30 September 2016); Deputy President Professor R Deutsch

Decision to not revoke a mandatory cancellation of Applicant’s Class BF Transitional (permanent) visa – character test – substantial criminal record – primary considerations – protecting the Australian community from harm – the seriousness and nature of the conduct – the risk that the conduct may be

repeated – strength, duration and nature of ties to Australia – other considerations – effect on members of family – decision under review affirmed

[Neilson and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 747 (31 August 2016); Deputy President Dr P McDermott RFD

Cancellation of visa on character grounds – applicant has a serious criminal record – the protection of the Australian community from criminal or other serious conduct relevant – best interests of minor children relevant – expectations of Australian community not met – decision under review affirmed

Practice and Procedure

[Kishore and Tax Practitioners Board](#) [2016] AATA 764 (30 September 2016); Deputy President SE Frost

Tax agents – Code of Professional Conduct – tax agent registration terminated – whether conduct complained of by Respondent is a ‘tax agent service’ – whether the identified conduct, even if not a ‘tax agent service’, can amount to a breach of the Code of Professional Conduct – whether Board’s power delegated properly – whether committee of the Board acting with appropriate delegation – threshold questions dealt with by Tribunal

[VDRZ and Innovation Australia](#) [2016] AATA 729 (21 September 2016); President Justice Duncan Kerr

Administrative Appeals Tribunal – where parties informed the Tribunal they expect the matter to settle – where the Tribunal made a series of consent directions to facilitate parties’ settlement discussions – where the Commissioner of Taxation, not the respondent, has been the primary entity negotiating with the applicant – where negotiations “in substance” tripartite – where the matter has not settled – where the applicant has sought an ADR process at which a non-party likely to be helpful in that regard be authorised to attend – whether permissible – whether there would be utility in directing proceedings be referred to conciliation – directions made

Social Security

[Assaf and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 748 (27 September 2016); Senior Member A Poljak

Disability support pension – cancellation of applicant’s pension – whether applicant’s impairments are rated 20 points or more under the Impairment Tables – myotonic dystrophy awarded 5 points under Table 1 – decision affirmed

[Brassaud and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 751 (28 September 2016); Dr L Bygrave, Member

Disability support pension – cancellation of applicant’s pension – whether applicant’s impairments are rated 20 points or more under the Impairment Tables – skin condition awarded 20 points under Table 14 – depression and bipolar disorder awarded 10 points under Table 5 – chronic right knee pain awarded 5 points under Table 3 – continuing inability to work – decision set aside and decision made in substitution

[Kartman and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 770 (30 September 2016); Mr DJ Morris, Member

Disability Support Pension (DSP) – whether qualified – congenital condition – what is functional impact – program of support requirements not met – not qualified for DSP – decision affirmed

[Kalokerinos and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 745 (26 September 2016); Dr L Bygrave, Member

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

[Kettul and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 760 (29 September 2016); Senior Member A Poljak

Disability support pension – cancellation of applicant’s pension – whether applicant’s conditions were fully diagnosed, treated and stabilised – whether applicant’s impairments are rated 20 points or more under the Impairment Tables – depression and PTSD – diabetes – osteoarthritis – shoulder condition – whether criteria for unlimited portability are met – decision affirmed

[Kuzmanovic and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 749 (27 September 2016); Senior Member CR Walsh

Disability support pension (DSP) – applicants impairments did not attract 20 points under the Impairment Tables on the date she claimed DSP or within 13 weeks of that claim – no “continuing inability to work” – decision under review affirmed

[Powell and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 759 (29 September 2016); Deputy President FJ Alpins

Disability support pension – mental health condition – whether applicant’s impairment was of 20 points or more under the Impairment Tables during the relevant period – whether applicant’s condition permanent – whether applicant’s condition had been fully stabilised – whether a medical or other compelling reason for applicant not to undertake reasonable treatment – whether pharmaceutical treatment of mental health condition reasonable

[Tisdell and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 762 (30 September 2016); Senior Member A Poljak

Disability support pension – depression – post traumatic stress disorder – whether conditions were fully treated and stabilised – whether reasonable treatment was undertaken – meaning of reasonable treatment – ability to maintain therapeutic relationships – conditions not fully treated – decision affirmed

[Vass and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 746 (27 September 2016); Senior Member A Poljak

Disability support pension – whether applicant’s conditions were fully diagnosed, treated and stabilised – whether applicant’s impairments are rated 20 points or more under the Impairment Tables – ischaemic heart disease awarded 5 points under Table 1 – decision affirmed

[Whillier and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 769 (30 September 2016); Dr L Bygrave, Member

Disability support pension – application rejected by Centrelink – whether impairments permanent – whether impairments fully diagnosed, treated and stabilised – impairment tables – applicant suffers from chronic fatigue syndrome – applicant awarded 10 points under Table 1 – decision affirmed

Taxation

[G J Brown & Co Pty Ltd and Tax Practitioners Board](#) [2016] AATA 740 (23 September 2016); Senior Member AC Cotter

TAX AGENTS – renewal of registration – termination of registration – eligibility for registration -- whether individual applicant is a fit and proper person – good fame, integrity and character – where individual applicant is sole director of corporate applicant – compliance with taxation laws – where individual applicant lodged own income tax returns late – where individual applicant guilty of offences against taxation laws – where corporate applicant has either lodged late or not lodged income tax returns, FBT returns and BAS – where entities controlled by the individual applicant also lodged returns late or not at all – decisions under review affirmed

[Landy and Commissioner of Taxation](#) (Taxation) [2016] AATA 754 (28 September 2016); Senior Member FD O’Loughlin

Income tax – whether applicant a resident of Australia – whether applicant had Australian domicile – whether applicant had permanent place of abode outside Australia – whether applicant was taxed overseas in respect of foreign earning – deductions for meals and incidental expenses – whether expenses incurred, whether expenses private in nature – Medicare Levy – No basis for reducing Medicare Levy – shortfall interest charge – No basis for reducing charge

Veterans' Affairs

[Gault and Repatriation Commission](#) (Veterans’ entitlements) [2016] AATA 622 (19 August 2016); Mr S Webb, Member

Service pension – ordinary income – company income – attribution – notice requirement to provide company annual financial statements within 14 days of finalisation – meaning of ‘should’ – failure to comply with notice – company income not taken into account when determining rate of pension – reduction in rate of pension from date of event – overpayment – no jurisdiction in respect of overpayment debt, recovery or waiver – rate reduction decision varied

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 |
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| Nigram v Minister for Immigration and Border Protection | [2016] AATA 613 |
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| Botha v Minister for Immigration and Border Protection | [2016] AATA 614 |
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Appeals finalised

| CASE NAME | AAT REFERENCE | COURT REFERENCE |
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None finalised

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