



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 information about decisions of interest recently published in the AAT's Migration & Refugee 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 Divisions as well as about select decisions recently published in 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

[Corcoran and Comcare](#) (Compensation) [2015] AATA 776 (6 October 2015); Senior Member CR Walsh

Applicant has "bilateral sensorineural hearing loss" condition – whether Applicant's hearing loss condition an "injury" or a "disease" – whether Applicant's Commonwealth employment contributed to his hearing loss condition "to a material degree" or "to a significant degree" – date of disease (injury) – decision under review affirmed

[HYJZ and Comcare](#) (Compensation) [2015] AATA 766 (30 September 2015); Senior Member BJ McCabe

Accepted psychiatric condition – whether applicant was incapacitated where applicant continued full-time employment in the period in question – whether condition aggravated by employment – decision under review affirmed

Freedom of Information

[Park-Kang and Secretary, Department of Foreign Affairs and Trade](#) (Freedom of information) [2015] AATA 703 (11 September 2015); Mr S Webb, Member

Jurisdiction – request for access to information – records not within 'open access period' under the *Archives Act 1983* at time of request – some information determined to be exempt from release – deemed internal review decision – delay – application for review by tribunal – records within 'open access period' at time of review – jurisdiction to determine access to information at time of request

Migration and Refugee

[Ueese and Minister for Immigration and Border Protection](#) (Migration) [2015] AATA 740 (23 September 2015); Deputy President JW Constance

Class TY Subclass 444 Special Category (Temporary) visa – criminal offences – cancellation of visa – Direction 65 – character test – protection of Australian community – best interests of minor children – whether risk of future harm to Australian community unacceptable – history of violent criminal conduct – significant risk of reoffending – lack of rehabilitation – countervailing considerations of children – decision affirmed

[1414531](#) (Migration) [2015] AATA 3345 (01 September 2015); M Kennedy, Member

Employer Nomination (Migrant) (Class AN) – Subclass 119 (Regional Sponsored Migration Scheme) – cl 119.211(3)(b)(iii) – No relevant diploma – Exceptional circumstances – Applicant has specialised skills – Decision under review remitted.

[1506503](#) (Migration) [2015] AATA 3395 (17 August 2015); K Synon, Member

Visitor (Class FA) – Subclass 600 – cl 600.211 – Ongoing residency in secondary country – Accommodation provided – Genuine temporary entrant – Decision under review remitted.

[1505800](#) (Migration) [2015] AATA 3317 (30 July 2015); M A Cooper, Member

Visitor (Class FA) – Subclass 600 – cl 600.211 – Family member with Saudi Arabian scholarship – Mandatory accompaniment by a male family member – Genuine temporary entrant – Decision under review remitted.

[1419244](#) (Migration) [2015] AATA 3391 (18 August 2015); B Mericourt, Member

Other Family (Residence) (Class BU) – Subclass 835 – cl 835.211 – *Claridge v MIBP* [2013] FCCA 1953 – Near relative – Applicant has half-brother in United States – Decision under review affirmed.

[1409592](#) (Migration) [2015] AATA 3355 (20 August 2015); C Smolicz, Member

Direct Entry Nomination – r 5.19(4) – Arts Manager nomination – Can be classified as ANZSCO Skill Level 1 – Decision under review set aside and substituted with a decision approving the nomination.

[1408845](#) (Migration) [2015] AATA 3307 (21 August 2015); M Kennedy, Member

Temporary Business Entry (Class UC) – Temporary Work (Skilled) Subclass 457 – *Noorani v MIBP* [2015] FCCA 1551 – *Damore v MIBP* [2015] FCCA 1289 – *Singh v MIBP* [2015] FCCA 1465 – No approved nomination at time of review application – No jurisdiction.

[1420002](#) (Migration) [2015] AATA 3343 (10 September 2015); S Raymond, Member

Other Family (Migrant) (Class BO) – Subclass 114 – cl 114.211 – cl 114.221 – *Fernandez v MIBP* [2015] FCCA 1698 – Not an aged dependent relative – Decision under review affirmed.

[1501366](#) (Refugee) [2015] AATA 3338 (18 August 2015); M Kennedy, Member

Protection visa – Albania – *SZGIZ v MIAC* [2013] FCAFC 71; (2013) 212 FCR 235 – s 91WA – Provision of bogus identity document – Lack of judicial guidance – Decision made on literal meaning and broadest scope of s 91WA – Decision under review set aside and substituted with refusal to grant Temporary Protection (Class XD) visa.

[1413824](#) (Refugee) [2015] AATA 3334 (13 August 2015); R Homan, Member

Protection visa – China – *SZGIZ v MIAC* (2013) 212 FCR 235 – s 36(2)(aa) – Complementary protection provisions – Religion – Yiguan Dao – Significant harm – Decision under review remitted.

[1410810](#) (Refugee) [2015] AATA 3339 (20 August 2015); F Gelev, Member

Protection visa – Afghanistan – Ethnicity – Imputed political opinion – Work as translator – Resident of Kabul – No history of harm in Kabul – Unlikely to suffer harm – Decision under review affirmed.

[1501298](#) (Refugee) [2015] AATA 3325 (28 August 2015); A Paxton, Member

Protection visa – India – *MIAC v MZYLL* [2012] FCAFC 147 – Particular social group – Inter-gotra/intra-village marriage in Punjab – Can relocate within India – Decision under review affirmed.

Practice and Procedure

[Chen and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 780 (8 October 2015); Senior Member JF Toohey

Reinstatement of application – application reinstated – social security – special benefit – payment cancelled when application received substantial lump sum compensation payment – applicant accepted cancellation correct – decision under review affirmed

[Nozohoor Mehrabad and Secretary, Department of Immigration and Border Protection](#) (Freedom of information) [2015] AATA 790 (9 October 2015); Dr J Popple, Senior Member

Whether application has reasonable prospect of success – whether Tribunal bound by findings of Federal Court – whether issue estoppel prevents findings contrary to Federal Court – “fresh evidence” filed by Applicant – whether Tribunal could make findings required for Applicant to succeed – application for review dismissed.

Social Security

[Alcock and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 775 (6 October 2015); Senior Member BJ McCabe

Disability support pension – whether applicant had a severe impairment of 20 points or more under a single table at the relevant time – whether continuing inability to work – no program of support completed – decision under review affirmed.

[Francis and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 784 (9 October 2015); Dr D Cremean, Senior Member

Disability Support Pension – suspension of payments – delay - whether applicant in custody – pending trial – decision set aside

[Hayek and Secretary, Department of Social Services](#) (Social Services second review) [2015] AATA 778 (8 October 2015); Dr I Alexander, Member

Pensions – disability support pension – whether applicant’s conditions were fully diagnosed, treated and stabilised – whether applicant’s impairment is rated 20 points or more under the Impairment Tables – decision affirmed

[Rawson and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 791 (9 October 2015); Senior Member AF Cunningham

Disability support pension – failure to meet qualification requirements – decision under review affirmed

[Scott and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 779 (8 October 2015); Dr I Alexander, Member

Pensions – disability support pension – whether applicant’s conditions were fully diagnosed, treated and stabilised – whether applicant’s impairment is rated 20 points or more under the Impairment Tables – decision affirmed

[Thornley and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 782 (8 October 2015); Dr I Alexander, Member

Pensions – disability support pension – whether applicant’s conditions were fully diagnosed, treated and stabilised – whether applicant’s impairment is rated 20 points or more under the Impairment Tables – decision affirmed

Taxation

[Amies and Commissioner of Taxation](#) (Taxation) [2015] AATA 777 (2 October 2015); Deputy President PE Hack SC

Taxation administration – departure prohibition order – request for departure authorisation certificate – interim freezing orders in place – whether applicant is able to give satisfactory security for return to Australia – risk that applicant may not return is slight – considerable family ties, new business, considerable real property – highly unlikely applicant will fail to return – decision under review set aside and substituted.

Veterans' Affairs

[Smith and Repatriation Commission](#) (Veterans’ entitlements) [2015] AATA 774 (6 October 2015); Dr D Cremean, Senior Member

War-caused injury or disease – Extreme Disablement Allowance – Impairment Tables

[Smith and Repatriation Commission](#) (Veterans’ entitlements) [2015] AATA 786 (9 October 2015); Senior Member BJ McCabe

Veterans’ entitlements – disability pension – defence service with Royal Australian Navy – posttraumatic stress disorder accepted – whether causal link between PTSD and defence service – “test of attributability” – applicant “induced or encouraged” to be at place – injury attributable to defence service – decision under review set aside and substituted

[Van As and Repatriation Commission](#) (Veterans’ entitlements) [2015] AATA 789 (9 October 2015); Dr D Cremean, Senior Member

War-caused injury or disease – Emphysema – Special Rate – alone – substantial cause

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	COURT REFERENCE	APPEAL DETAILS
Iliopoulos v Repatriation Commission	[2015] AATA 670	VID623/2015	Section 44 appeal lodged 6/10/2015

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE	APPEAL DETAILS
Dunkerley v Comcare	[2014] AATA 381	[2015] FCA 1076	Appeal dismissed; Flick J; 8/10/2015
Howes v Comcare	[2015] AATA 39	[2015] FCA 1078	Appeal allowed; Griffiths J; 7/10/2015

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