



Administrative  
Appeals Tribunal

# AAT Bulletin

**Issue No. 41/2016**

**10 October 2016**

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.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

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.

## Child Support

[LTRC and Child Support Registrar and TSVH](#) (Child support second review) [2016] AATA 782 (5 October 2016); Mr C Ermert, Member

Period of care – whether there is a pattern of care – percentage of care – decision varied and remitted to Respondent

## Compensation

[Anand and Comcare](#) (Compensation) [2016] AATA 766 (30 September 2016); Senior Member A Poljak

Workers compensation – claim for massage treatment – whether treatment is medical treatment for the purposes of the Act – whether treatment reasonable for the employee to obtain in the circumstances – decision set aside and substituted

[Francis and Comcare](#) (Compensation) [2016] AATA 772 (30 September 2016); Dr P McDermott RFD, Deputy President

Commonwealth employees – compensation for injuries – compensation for injuries resulting in incapacity – date of injury – injury caused by work – whether reasonable administrative action – whether action administrative – whether carried out in a reasonable manner – respondent ordered to pay the applicant's costs and disbursements – set aside and substituted

Assessment of incapacity payments – set aside and remitted

[Humphrey and Comcare](#) (Compensation) [2016] AATA 783 (6 October 2016); Deputy President SA Forgie

Whether applicant gave notice of injury as soon as practicable after becoming aware of it – whether respondent prejudiced if late notice treated as sufficient – whether applicant's failure to give notice resulted from ignorance, mistake or from any other reasonable cause – decision affirmed

[Khiyo and Australian Postal Corporation](#) (Compensation) [2016] AATA 736 (23 September 2016); Dr L Bygrave, Member, and Dr S Toh, Member

Safety, Rehabilitation and Compensation Act 1988 – whether applicant suffered 'injury' as defined under section 5A of Act – applicant claimed allergic sinusitis plus chronic sinusitis with saprophetic infection – applicant claimed organic solvent and ink burns to both eyes, allergic blepharitis, punctate keratitis – both conditions found to be continuation of symptoms applicant experienced prior

to employment – applicant failed to disclose history of symptoms – both conditions found not to be an ‘injury’ under section 5A of Act – decisions affirmed

[Te Wake and Australian Air Express Pty Ltd](#) (Compensation) [2016] AATA 771 (30 September 2016); Senior Member B Stefaniak AM RFD

Workers compensation – entitlements – compensation in relation to medical expenses – compensation for surgery – test to be applied – whether condition requiring surgery required in relation to compensable injury – whether condition requiring surgery an injury for the purposes of the Act – decision under review set aside and substituted

## **Freedom of Information**

[Bradford and Australian Federal Police](#) (Freedom of information) [2016] AATA 775 30 September 2016); Senior Member CR Walsh

Whether the contested documents are exempt as their disclosure would, or could reasonably be expected to, prejudice the proper administration of the law and prejudice the fair trial of a person or the impartial adjudication of a particular case – decision under review affirmed

## **Migration**

[Jal and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 789 (7 October 2016); Senior Member CR Walsh

Mandatory cancellation of applicant's visa – applicant does not pass the character test by reason of his substantial criminal record – whether mandatory cancellation of applicant's visa should be revoked – primary and other considerations considered – decision under review affirmed

[White and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 773 (30 September 2016); Senior Member Tavoularis

Citizenship – eligibility – where application for Australian citizenship refused – good character requirements – where Applicant has committed a number of minor offences over several years – where Applicant was addicted to pain killing medications – where offending was not disclosed – whether mitigating factors exist – where Applicant has not provided evidence of rehabilitation – decision under review affirmed

## **Practice and Procedure**

[Sydney Sterile Compounding Pty Ltd and Minister for Health](#) [2016] AATA 743 (26 September 2016); Deputy President The Hon. D Cowdroy OAM QC

Application to set aside summonses issued by the Respondent – issue in substantive proceedings concerns whether director of Applicant is a fit and proper person to import cannabidiol – whether summonses could result in documents being produced which are relevant to the substantive issue – evidence of Applicant unreliable – Respondent therefore entitled to test assertion that director of Applicant is a fit and proper person – validity of summonses upheld

## Professions and Trades

[Tran and Commissioner of Police \(NSW\)](#) [2016] AATA 774 (30 September 2016); Deputy President JW Constance and Senior Member Professor McGrowdie and Dr L Bygrave, Member

Licensing – mutual recognition – registration of security licence – whether revocation of a previous licence was a cancellation as a result of disciplinary action – where materially false or misleading information given – decision affirmed

## Social Security

[Anderson and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 784 (6 October 2016); Mr DJ Morris, Member

Disability Support Pension – request for unlimited portability – severe impairment – what is date to assess – whether 20 or more points under a single impairment table – ability to work – decision under review affirmed

[Bozdag and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 765 (30 September 2016); Senior Member A Poljak

Carer payment – rate of payment – whether overpayment of social security benefit – whether member of a couple – married during relevant period – debt – whether debt can be waived or written off – whether special circumstances – decision affirmed

[Cole and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 700 (9 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 – common impairments only attract ratings under one Impairment Table – not qualified for DSP – decision affirmed

[Dowker and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 763 (25 August 2016); Senior Member Britten-Jones

Application for crisis payment – claim for forced departure from home – whether applicant meets qualifications for crisis payment – decision under review affirmed

[Ibrahim and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 780 (5 October 2016); Dr L Bygrave, Member

Disability support pension – mental health conditions – migraines – whether applicant had impairment rating of at least 20 points – whether conditions permanent – whether conditions fully diagnosed, treated and stabilised – decision affirmed

[Kormali and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 734 (23 September 2016); Senior Member A Poljak

Disability support pension – start date – whether pension should be payable from a date before the date of claim – decision under review affirmed

[MacDonald and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 776 (3 October 2016); Dr G Hughes, Member

Eligibility for pension bonus – previous receipt of Newstart allowance – decision to grant Newstart allowance correct – decision to refuse pension bonus correct – applicant provided with incomplete advice by Centrelink as to the effect of Newstart allowance on pension bonus – possible claim under Compensation Detriment caused by Defective Administration (CDDA) Scheme

[Sharkey and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 733 (23 September 2016); Senior Member A Poljak

Eligibility – age pension – whether applicant was an Australian resident and in Australia at the time claim lodged – determined applicant overseas when claim was lodged online – decision under review affirmed

[Sinnott and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 777 (4 October 2016); Senior Member J Sosso

Disability support pension – DSP – whether 20 points or more under the impairment tables during the relevant period – value of medical evidence – decision under review affirmed

[Tamua and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 757 (29 September 2016); Deputy President FJ Alpins

Disability support pension – eligibility – applicant did not meet residence requirements in s 94 of Social Security Act 1991 (Cth) – whether entitled to disability support pension under Agreement on Social Security between the Government of Australia and the Government of New Zealand – whether also required to satisfy s 94(1)(a) to (c) of Act – whether overridden by operation of s 6 of Social Security (International Agreements) Act 1999 (Cth) – bilateral carpal tunnel syndrome, diabetes and morbid obesity – whether applicant “severely disabled” under Article 2(2) of Agreement – whether “severe impairment” under s 94 of Act – whether had “a continuing inability to work”

## **Taxation**

[Edwards and Commissioner of Taxation](#) (Taxation) [2016] AATA 781 (5 October 2016); Senior Member AC Cotter

Assessable income – lump sum payment for arrears of workers’ compensation – lump sum payment in arrears (LSPIA) tax offset – whether lump sum payment was assessable income for the income year it was received rather than the years to which it related – whether LSPIA tax offset was correctly calculated – whether the applicant is entitled to interest on the lump sum payment – lump sum payment was ordinary income derived and assessable in the year it was received – LSPIA tax offset was correctly calculated – decision under review is affirmed

## **Veterans' Affairs**

[Sharp and Repatriation Commission](#) (Veterans’ entitlements) [2016] AATA 719 (16 September 2016); Senior Member Ms N Isenberg

Disability pension – rate of pension payable – special rate – intermediate rate – the alone test – whether veteran incapable of undertaking remunerative work for eight or more hours per week –

whether veteran prevented by accepted disabilities alone from continuing in remunerative work – decision under review set aside and substituted

[Wilson and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 659 (31 August 2016);  
Mr PW Taylor SC, Senior Member

War widow's pension – operational service – whether death war- caused – aortic aneurysm – hypertension – whether reasonable hypothesis connecting death to service – statement of principles concerning aortic aneurysm – statement of principles concerning hypertension – material found not to point to a reasonable hypothesis – alternative argument – whether alcohol consumption related to operational service – found that veterans death not war caused – 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

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CASE NAME	AAT REFERENCE
<b>Dowker v Secretary, Department of Social Services</b>	<a href="#">[2016] AATA 763</a>
<b>Hindmarsh Retirement Pty Limited v Commissioner of Taxation</b>	<a href="#">[2016] AATA 687</a>

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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Ward v Commissioner of Taxation</b>	<a href="#">[2015] AATA 919</a>	<a href="#">[2016] FCAFC 132</a>

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# Recent developments

## The AAT's Adelaide office co-location

The AAT is in the process of co-locating our offices so that all services will eventually be provided from one location in each state or territory in which the Tribunal currently has offices.

From **Monday 24 October 2016**, all AAT services in **Adelaide** will be provided from our office on **level 2, 1 King William Street, Adelaide**.

The AAT's Adelaide offices at 45 Grenfell Street and 91 Grenfell Street will close at 5.00pm on Friday, 21 October 2016.

Please check the [Contact us](#) page on our website, [www.aat.gov.au](http://www.aat.gov.au), for up-to-date information and contact details.

Information about the co-location of our offices will be made available on our website and through AAT Alerts. We encourage you to [subscribe to AAT Alerts](#) if you have not done so already so that you can receive future updates.

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