



Administrative  
Appeals Tribunal

# AAT Bulletin

**Issue No. 42/2016**

**17 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.

## Compensation

[Atkinson and Comcare](#) (Compensation) [2016] AATA 804 (13 October 2016); Dr J Popple, Senior Member

Liability previously accepted for upper limb injuries – determination ceasing liability to pay compensation for incapacity and medical treatment expenses – whether Applicant continued to suffer from the effects of his accepted injuries on and after date of determination – surveillance material shows Applicant undertaking some activities that are inconsistent with him suffering from his accepted injuries – medical evidence supports finding that Applicant did not suffer from the effects of his accepted injuries on or after date of determination – decision under review affirmed

## Freedom of Information

[EQ and Office of the Australian Information Commissioner](#) (Freedom of information) [2016] AATA 785 (6 October 2016); Deputy President AG Melick AO RFD SC

Privacy – *Privacy Act 1988* – Compensation – Decision to award compensation for interference with privacy of individual – Disclosure of personal information by Commonwealth officers to third parties – Jurisdiction over State officers acting under Commonwealth law – Amount of compensation – Decision affirmed but compensation amount varied

## Immigration and Citizenship

### Citizenship

[Muhammad and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 795 (11 October 2016); Deputy President SE Frost

Good character – whether Tribunal satisfied the Applicant is of good character – previous convictions – traffic offences – whether Applicant reformed – Applicant found to be of good character – decision set aside and remitted

[Wachsberger and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 808 (14 October 2016); Deputy President JW Constance and Dr L Bygrave, Member

General residence requirements – ministerial discretion where general residence requirements not met – close and continuing association with Australia – family connection – return visits – intention to

reside – ownership of property in Australia – community participation – decision under review affirmed

## **Migration**

[Weti-Safwan and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 797 (12 October 2016); Dr L Bygrave, Member

Mandatory visa cancellation under s 501CA – discretion to revoke – substantial criminal record – character test not satisfied – discretion to revoke mandatory visa cancellation if another reason – primary and other considerations – decision under review set aside

[1502205](#) (Migration) [2016] AATA 4426 (15 September 2016); R Skaros, Member

Business Skills (Residence) (Class DF) visa – Subclass 890 (Business Owner) – cl 890.212 – Net value of assets – Loans to business from applicants' accounts – Decision under review remitted

[1505748](#) (Migration) [2016] AATA 4399 (15 September 2016); A Mercer, Member

Skilled – Independent (Permanent) (Class SI) visa – cl 189.212 – Architect – Skills assessment expired – Registered Architect at time of application – Decision under review affirmed

[1513355](#) (Migration) [2016] AATA 4425 (19 September 2016); R Skaros, Member

Employer Nomination (Permanent) visa – cl 186.213(1) – PIC 4020 – Bogus documents relating to employment — No compelling or compassionate circumstances – Decision under review affirmed

[1600181](#) (Migration) [2016] AATA 4401 (19 September 2016); A Younes, Senior Member

Skilled (Residence) (Class VB) visa – 886 (Skilled – Sponsored) – cl 886.213 – Competent English – No evidence provided – Extension provided to sit test – Decision under review affirmed

[1603830](#) (Migration) [2016] AATA 4432 (21 September 2016); S Georgiadis, Member

Visitor (Class FA) visa – Subclass 600 – Philippines – cl 600.232 – Eligible sponsor – Cousin not a close relative – Visa applicant's spouse related to sponsor – Sponsor is a settled Australian citizen aged over 18 years – Decision under review remitted

## **Refugee**

[1420100](#) (Refugee) [2016] AATA 4383 (6 September 2016); D Corrigan, Member

Protection visa – Sudan – Race – Darfuris – Particular social group – Returned asylum seekers from an African tribe – Imputed political opinion – Tribal conflict – Perceived support for rebel groups – State protection – Decision under review remitted

[1601328](#) (Refugee) [2016] AATA 4385 (6 September 2016); A Goodier, Senior Member

Protection visa – Malaysia – Social group – Transgender – Religion – Muslim – Threats by employer – Fatwa – No state protection – Decision under review remitted

[1609717](#) (Refugee) [2016] AATA 4386 (6 September 2016); G Short, Senior Member

Protection visa – Vietnam – Religion – Catholic – Imputed political opinion – Victim of migration fraud – Visa cancelled – Detention in Australia – State protection – Decision under review remitted

[1417350](#) (Refugee) [2016] AATA 4420 (13 September 2016); N Burns, Member

Protection visa – Pakistan – Imputed political opinion – Anti-Taliban views – Peace committee member – Race – Pashtun – Threats of physical violence – State protection – Internal relocation – Decision under review affirmed

[1505987](#) (Refugee) [2016] AATA 4384 (13 September 2016); S Muling, Member

Protection visa – Pakistan – Social group – Failed asylum seeker returning from western country – Victims of robberies – Fears of general unrest – Decision under review affirmed

## **Practice and Procedure**

[Lavin and Inspector-General in Bankruptcy](#) [2016] AATA 798 (12 October 2016); Mrs JC Kelly, Senior Member

Jurisdiction – preliminary questions – Inspector-General’s refusal to review decision of trustee in bankruptcy to make an “assessment” – whether the tribunal has power to review the trustee’s decision – characterisation of the decision – whether in this case the decision to refuse was a decision to review the original decision – where Inspector-General refuses to review trustee’s decision, tribunal does not have power to review trustee’s decision – the Inspector-General’s decision was a decision to refuse to review the trustee’s decision

[Greenhow and Commonwealth Superannuation Corporation](#) [2016] AATA 791 (7 October 2016); Brigadier AG Warner, Member

Application for extension of time for review of decision of Defence Force Retirement & Death Benefits Scheme of 11 March 1988 – length of delay excessive – explanation not satisfactory – poor prospects of success for applicant’s application for review – prejudice to respondent – potential for inequitable treatment of other applicants - Tribunal not satisfied that reasonable in all the circumstances to grant extension of time – application for extension of time refused

[Hayman and Military Rehabilitation and Compensation Commission](#)) [2016] AATA 790 (7 October 2016); Senior Member E Fice

Compensation – right shoulder injury secondary to PTSD – nightmares – original PTSD claim withdrawn – no claim lodged for PTSD – whether the Tribunal has jurisdiction to hear claim – Tribunal has jurisdiction

## Social Security

[Khoury and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 806 (13 October 2016); Mrs J C Kelly, Senior Member

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 – spinal condition awarded 10 points under Table 4 – decision under review affirmed

[Megalokonomos and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 799 (12 October 2016); Senior Member PW Taylor SC

Overpayment of ABSTUDY – applicant indicated to Centrelink he was commencing full time study – applicant subsequently entered full time employment – applicant continued to receive ABSTUDY whilst in full time employment – applicant failed to notify Centrelink in change of circumstances and incurred a debt – whether applicant had disclosed change of circumstances at an earlier time – decision under review affirmed

[Mills and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 805 (13 October 2016); Ms D Grigg, Member

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

[Noble and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 801 (12 October 2016); Mr DJ Morris, Member

Austudy – whether allowable study time exceeded – whether austudy payment correctly cancelled – whether studying prerequisite course – initial administrative errors by Department – decision under review affirmed

[Simms and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 800 (12 October 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 – program of support – not qualified for DSP – decision under review affirmed

[Stuart; Secretary, Department of Social Services](#) and (Social services second review) [2016] AATA 787 (7 October 2016); Mr I Thompson, Member

Disability support pension – whether conditions attracted 20 points or more under the Impairment Tables – applicant has a severe impairment – decision under review affirmed

## Taxation

[Moriarty and Commissioner of Taxation](#) (Taxation) [2016] AATA 796 (11 October 2016); Deputy President IR Molloy

Application for release from taxation debts – serious hardship – exercise of Commissioner's discretion – disposal of funds or assets without making proper provision to meet tax liabilities – poor compliance – decision under review affirmed

[Three Wickets Pty Ltd and Tax Practitioners Board](#) [2016] AATA 786 (7 October 2016); Senior Member RW Dunne

Termination of tax agent registration – renewal of registration – whether applicant is a fit and proper person – good fame, integrity and character – decisions under review affirmed

[ZDCW and Commissioner of Taxation](#) (Taxation) [2016] AATA 788 (7 October 2016); Deputy President IR Molloy

Application for release from taxation debts – serious hardship – assets available to meet tax liability – exercise of Commissioner's discretion – poor compliance – preference to other creditors – decision under review affirmed

## Veterans' Affairs

[Armstrong and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 792 (10 October 2016); Deputy President SA Forgie

Widow's pension – death due to ischaemic heart disease contributed to in part by hypertension - whether death defence caused - whether veteran consumed, on average, at least 50 standard drinks per week in six month period prior to clinical onset of hypertension – decision under review affirmed

[Sparks and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 793 (11 October 2016); Deputy President IR Molloy

Pensions and benefits - whether condition defence-caused – whether bipolar disorder defence – caused injury or disease under the Act – whether within relevant period of clinical onset – decision of the Commission as varied by the Board 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 |
|-----------|---------------|
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|--|---------------------------------|
| <b>Blain v Repatriation Commission</b> | <a href="#">[2016] AATA 702</a> |
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## Appeals finalised

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| CASE NAME | AAT REFERENCE | COURT REFERENCE |
|-----------|---------------|-----------------|
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|-----------------------|--|--|
| <b>None finalised</b> |  |  |
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## Recent developments

This section of the *Bulletin* contains information about recent legal or other developments that may be of interest to members and staff. Please forward any contributions you wish to be included in the *Bulletin* or suggestions for topics to [LegalAndPolicy@aat.gov.au](mailto:LegalAndPolicy@aat.gov.au).

### 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.

## Jurisdiction and legislative changes

This section of the *Bulletin* provides a summary of significant legislative changes that affect the AAT, including changes and potential changes to the AAT's jurisdiction to review decisions. The summaries are prepared by [Legal & Policy](#).

### **Amendments to the *Military Rehabilitation and Compensation Act 2004* and the family assistance laws**

The *Budget Savings (Omnibus) Act 2016* was introduced to the House of Representatives on 31 August 2016 and the Act assented to on 16 September 2016. The Act amends a number of Acts that confer jurisdiction on the AAT and includes provisions that have some peripheral and some more substantive effect on the AAT's jurisdiction.

Please see the [Budget Savings \(Omnibus\) Act 2016](#) for further information.

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