



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.

Contents

AAT Recent Decisions	3
Citizenship	3
Compensation	3
Freedom of Information	4
Practice and Procedure	4
Social Security	5
Taxation	6
Appeals	7
Appeals lodged	7
Appeals finalised	7
Recent developments	8
The AAT's Adelaide office co-location	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

[BSYH and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 814 (17 October 2016); Deputy President JW Constance

Citizenship by descent – identity – where Applicant's father is Australian citizen – where identity of Applicant's mother is uncertain – where there are multiple personal identifiers – whether identity of mother is relevant consideration – decision set aside and substituted

[Dabbousi and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 812 (17 October 2016); Deputy President BJ McCabe

Good character requirement – where applicant has lengthy history of traffic offences – where applicant gave incorrect information in application – where positive character references – decision under review set aside and substituted

[Hamade and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 820 (18 October 2016); Senior Member A Poljak

Application for Australian citizenship – whether applicant of good character – traffic offences – question of disclosure of traffic offences in citizenship application – applicant found not to be of good character for the purposes of citizenship legislation – decision affirmed

[Sharma and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 816 (17 October 2016); Senior Member T Tavoularis

Eligibility – where application for Australian citizenship refused – good character requirement not satisfied – pattern of behaviour/ minor offending – decision under review affirmed

Compensation

[Christy and TNT Australia Pty Ltd](#) (Compensation) [2016] AATA 813 (17 October 2016); Deputy President JW Constance, Professor McGrowdie, Senior Member, and Senior Member A Poljak

Workers compensation – accepted lumbar spine injury – whether Applicant entitled to medical expense and incapacity payments – whether Applicant ceased to suffer the effects of the injury – decision set aside and remitted

Psychological injury – adjustment disorder with anxiety and depression – panic disorder – whether Applicant suffered a psychological injury – when injury taken to have been sustained – decision set aside and substituted – whether psychiatric injury resulted in permanent impairment – decision affirmed

Muscular-ligamentous contusion, aggravation of future degenerative change in thoracic and lumbar spine – whether separate injury to later accepted injury – decision affirmed

Accepted lumbar spine injury – whether injury resulted in permanent impairment – decision set aside and remitted

Accepted lumbar spine injury – whether liable to pay compensation for cost of capsular infiltration procedure – where claim not pressed by Applicant – decision affirmed

Normal weekly earnings – normal weekly earnings reduced – re-calculation of normal weekly earnings where there has been change in employer's circumstances – not for Tribunal to prescribe methodology of calculation – insufficient information – decision affirmed

[Evans and Comcare](#) (Compensation) [2016] AATA 827 (20 October 2016); Senior Member T Tavoularis

Medical Treatment – Therapeutic Relief – previously accepted injury of soft tissue strain to neck – physiotherapy treatment provided for over twenty-six years – compensation for continued physiotherapy ceased – decision under review affirmed

[Pryde and Telstra Corporation Limited](#) (Compensation) [2016] AATA 811 (14 October 2016); Senior Member E Fice and Miss EA Shanahan, Member

Workers' compensation – employee of Commonwealth telecommunications agencies – death resulting from lung cancer – where claimant exposed to asbestos fibres in course of work – where claimant a significant smoker over extended period of time – specified disease – whether presumption that specified disease caused by exposure to asbestos fibres rebuttable – conflicting evidence of exposure – insufficient biological evidence to conclude as to causation – epidemiological analysis applied – where epidemiological analysis indicates cancer caused more likely than not by smoking alone – presumption of causation rebutted – decision affirmed

Freedom of Information

[Parker and Australian Securities and Investments Commission](#) (Freedom of information) [2016] AATA 767 (30 September 2016); The Hon. D Cowdroy OAM QC, Deputy President

Exemptions claimed – whether documents exempt – prejudice to an investigation – disclosure of methods or procedures – legal professional privilege – deliberative matter – agency operations – prejudice supply of information – release of documents since decision under review – claims of exemption upheld – decision set aside and substituted

Practice and Procedure

[RBWJ and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 818 (18 October 2016); Dr L Bygrave, Member

Request for recusal of Tribunal member – no actual bias – no apprehended bias – request refused

[RBWJ and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 819 (18 October 2016); Dr L Bygrave, Member

Conduct of proceedings – Tribunal requires parties to appear by telephone at the hearing

[Zaburoni and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 725 (20 September 2016); Dr L Bygrave, Member

Application for extension of time – whether reasonable in the circumstances – explanation of delay – prejudice to the respondent – merits of the substantial application – extension refused

Social Security

[D’Ambrosio and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 828 (9 September 2016); Senior Member Dr J Popple

Disability support pension – cancellation of payment – whether applicant qualified to receive DSP on cancellation date – impairments do not attract a rating of 20 or more points under the Impairment Tables – decision under review affirmed

[Edwards and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 809 (14 October 2016); Mr DJ Morris, Member

Age Pension – Debts incurred from earnings overseas – administrative error by Centrelink – overseas employment over several years – whether whether debts repayable – question of good faith – do special circumstances exist for writing off or waiving all or part of debts – decision affirmed

[Fajloun and Secretary, Department of Social Services](#) [2016] AATA 753 (28 September 2016); Senior Member Mr W Stefaniak AM RFD

Disability support pension – cancellation – whether criteria met for disability support pension at time of cancellation- whether a debt is owed to the Commonwealth – calculation of debt – whether debt can be waived or written off – decision to cancel the disability support pension affirmed – decision regarding debt set aside and substituted

[Jackson and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 823 (5 October 2016); Senior Member Britten-Jones

Carer allowance – whether able to backdate

[Jovanovic and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 822 (19 October 2016); Senior Member B Stefaniak AM RF

Disability Support Pension – request for indefinite portability – whether ‘severe impairment’ – review of qualification for DSP under social security law provisions – assessment of conditions and impairments – portability eligibility requirements met – decision set aside and substituted

[Karamanlidis and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 817 (18 October 2016); Senior Member RW Dunne

Family Tax Benefit – top-up payments – late lodgement of tax return – whether special circumstances prevented applicant from lodging tax return within time – whether appropriate to grant an extension of time for lodgement of the tax return – decision under review set aside

[Tran and Secretary, Department of Social Services](#) [2016] AATA 826 (20 October 2016); Mr I Thompson, Member

Disability support pension – whether respondent's medical conditions were fully diagnosed, fully treated and fully stabilised during the assessment period – whether respondent's impairments attract 20 points under the Impairment Tables – decision under review set aside

Taxation

[NZWINEIMPORTS Pty Ltd and Commissioner of Taxation](#) (Taxation) [2016] AATA 824 (19 October 2016); Deputy President SE Frost

Wine Equalisation Tax – Goods and Services Tax – applicant operated a business of purchasing wine from a related entity based in New Zealand and selling it to Australian customers – identification of correct assessable dealing for the purposes of A New Tax System (Wine Equalisation Tax) Act 1999 – indirect marketing sale – retail sale by an entity that obtained the wine under quote – notional wholesale selling price – 'half retail price method' – identification of retail price – objection decisions set aside and remitted to Commissioner for reconsideration

[FKYL and Commissioner of Taxation](#) (Taxation) [2016] AATA 810 (14 October 2016); Senior Member E Fice

GST – residential premises – application of 'margin scheme' to sale of residential premises – where no agreement between buyer and applicant to apply 'margin scheme' – claim for income tax credits – whether expenses incurred for a creditable purpose – where expenses incurred in making income taxed supply – where insufficient evidence to establish expenses incurred for a creditable purpose – assessment not excessive – penalties – failure to take reasonable care in completing business annual statements – no legal or financial advice sought by applicant – no grounds for remission established

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
Repatriation Commission v Sharp	[2016] AATA 719
Linwood v Repatriation Commission	[2016] AATA 708
Freeman v Military Rehabilitation and Compensation Commission	[2016] AATA 741

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
None finalised		

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.

The AAT's Adelaide office co-location

We are co-locating our offices over time, so that all services will eventually be provided from one office in each state or territory in which the Tribunal currently has offices. The AAT's **Adelaide** office is now located at **Level 2, 1 King William Street, Adelaide**. Our 45 Grenfell Street and 91 Grenfell Street offices are now closed.

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

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