



Administrative
Appeals Tribunal

AAT Bulletin

Issue No. 44/2016

31 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.

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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.

Citizenship

[Abourbakar Kabamba and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 832 (24 October 2016); Ms A Goodier, Member

Good character – whether Applicant satisfies the legislative requirement to be shown to be of good character – previous convictions – family violence – traffic convictions – whether any mitigating factors or explanations outweighs the behaviour – decision affirmed

Compensation

[Maakasa and Comcare](#) (Compensation) [2016] AATA 840 (25 October 2016); Miss EA Shanahan, Member

Back injury – termed sacroiliac ligament strain left – payment of compensation in accordance with s 16, s 19 and s 29 of the SRC Act since 14 June 2008 – denial of ongoing claim for household assistance – subsequent cessation of liability for medical treatment incapacity and household assistance 3 March 2015 – temporary incapacity resolved – change in diagnosis to spondylolisthesis – degenerative osteoarthritis – spinal canal stenosis – unrelated to past work – requirement for household assistance – decision with respect to s 29 affirmed – decision relating to ongoing liability in accordance s 14, s 16 and s 19 remitted to respondent for reconsideration

[Maloinato and Australian Postal Corporation](#) (Compensation) [2016] AATA 834 (25 October 2016); Senior Member A Poljak

Degenerative changes in lower lumbar spine – osteoarthritis and secondary spondylolisthesis – whether spine conditions can be considered separately – no improvement when applicant ceased work – employment did not contribute significantly to the condition or to aggravation of the condition – decision affirmed

Education

[PJPF and Secretary, Department of Education and Training](#) [2016] AATA 833 (25 October 2016); Dr L Bygrave, Member

Remission of debt – special circumstances – whether the applicant's circumstances were beyond his control – whether the applicant's circumstances made their full impact on or after the census date – medical evidence – Tribunal does not find special circumstances – decision affirmed

Migration and Refugee

Migration

[Dauvou and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 836 (25 October 2016); Deputy President SE Frost

Mandatory cancellation of visa – application for revocation of cancellation decision – character test – substantial criminal record – driving offences – alcohol use – discretion to revoke mandatory cancellation – Ministerial Direction No 65 applied – protection of the Australian community – seriousness and nature of the relevant conduct – expectations of Australian community – best interests of minor children in Australia – other considerations – unborn child – employment prospects – decision under review set aside

[Gundesen and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 831 (24 October 2016); Deputy President IR Molloy

Cancellation of visa on character grounds – applicant does not pass the character test – sentenced to a term of imprisonment of 15 months – the protection of the Australian community from criminal or other serious conduct – expectations of Australian community – reasons why the original decision should be revoked

[1611253](#) (Migration) [2016] AATA 4519 (6 October 2016); D Morgan, Member

Visitor (Class FA) visa – Turkey – Subclass 600 – cl 600.211 – Genuine temporary entrant – Immediate family in Australia – Volatile general security situation in Turkey – Intention to visit is not genuine – No jurisdiction with secondary applicants – Decision under review affirmed

[1604506](#) (Migration) [2016] AATA 4516 (7 October 2016); J Ciantar, Member

Cancellation – Temporary Business Entry (Class UC) visa – Subclass 457 (Temporary Work (Skilled)) – Condition 8107 – Ceased employment with the sponsor for more than 90 days – Required to work on duties other than approved occupation – Failed to contact the Department – New sponsor in approved occupation – Decision under review set aside

[1511580](#) (Migration) [2016] AATA 4494 (10 October 2016); K Raif, Senior Member

Partner (Provisional) (Class UF) visa – Subclass 309 – cl 309.211 – Invalid marriage – Not of marriageable age – Review applicant domiciled in Australia – Not in de facto relationship for 12 months – No compelling and compassionate circumstances – Decision under review affirmed

[1607307](#) (Migration) [2016] AATA 4517 (12 October 2016); M Cooper, Member

Regional Employer Nomination (Permanent) (Class RN) – Subclass 187 – cl 187.221 – Age requirement – Class of persons specified in IMMI 15/083 – Not earning at the Fair Work High Income Threshold – Valuable specialised skills – Ministerial Intervention referral – Decision under review affirmed

[1607269](#) (Migration) [2016] AATA 4495 (13 October 2016); G Bartley, Member

Partner (Provisional) (Class UF) visa – Subclass 309 – cl 309.211 – Member of family unit – Sponsor's altered employment contract – Temporarily residing in separate countries – Not usually resident in sponsor's household – Decision under review affirmed

Refugee

[1606601](#) (Refugee) [2016] AATA 4488 (14 September 2016); C Smolicz, Member

Protection visa – Stateless – Race – Rohingya – Ability to obtain citizenship in Bangladesh – Countries of habitual residence – Credible witness – Decision under review remitted

[1609220](#) (Refugee) [2016] AATA 4423 (16 September 2016); A Younes, Senior Member

Cancellation – Protection visa – Iraq – s 109(1) – Religion – Sunni – Political opinion – Opposition to Al-Dawa party – Incorrect answers in protection visa application – Applicant returned to Iraq on two extended visits – Family emergencies – Medical conditions – Decision under review affirmed

[1605762](#) (Refugee) [2016] AATA 4499 (20 September 2016); A Younes, Senior Member

Cancellation – Protection visa – Egypt – s 109(1) – Non-compliance – Religion – Coptic Christian – Conversion of Muslim girlfriend – Death of brother – False claims – Decision under review affirmed

[1421338](#) (Refugee) [2016] AATA 4501 (3 October 2016); N Findson, Member

Protection visa – Pakistan – Actual and imputed political opinion – Anti-Taliban – Awami National Party member – Peace committee member – Race – Pashtun – Challenged a Taliban Leader at a Jirga meeting – Attempted kidnapping – Internal relocation possible – Decision under review affirmed

[1612905](#) (Refugee) [2016] AATA 4500 (3 October 2016); S Baker, Member

Protection visa – Egypt – Political opinion – Muslim Brotherhood supporter – Social group – Failed asylum seeker – Protests – Detentions – Credibility issues – Decision under review affirmed

Practice and Procedure

[Ghazzaoui and Tax Practitioners Board](#) [2016] AATA 839 (24 October 2016); Senior Member PW Taylor SC

Applicant's tax agent registration terminated – applicant prevented from applying for further registration for five years – applicant failed to appear at the hearing

[Saleh and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 841 (25 October 2016); Deputy President SA Forgie

Video conferencing – request by respondent for applicant to attend via video conferencing technology – circumstances of case required request to be considered in context of deciding appropriate venue for hearing – applicant an unlawful non-citizen detained in immigration detention in Perth Immigration Detention Centre – request declined – substantive application transferred to Perth

Registry with direction that applicant attend in person at a hearing conducted by a member located in the Perth Registry

Transfer of applications – principles relevant to deciding venue – venue transferred from Melbourne Registry to Perth Registry

Transfer of applications – directive issued by Principal Registry for transfer of applications from Perth Registry where applicant held in the Christmas Island or Yongah Hill Immigration Detention Centres and seeking review of a decision made under s 501 of the Migration Act 1958 – applicant's situation does not match profile of applications to be transferred from Perth Registry – administrative direction not made under s 18B of the Administrative Appeals Tribunal Act 1975 – administrative direction not made according to law

Extent of Tribunal's power – whether Tribunal has power to require the respondent to arrange for the applicant to attend the hearing in Melbourne – Tribunal's procedure is within discretion of Tribunal – limits on discretionary power – power to require a person to produce another person is in the nature of judicial power – Tribunal has no power to require the respondent to arrange for the applicant to attend hearing

[Scully and Secretary, Department of Employment](#) [2016] AATA 842 (4 October 2016); Professor R Deutsch, Deputy President

Interlocutory hearing – jurisdiction question – whether a decision of the Secretary to refuse a reconsideration request is reviewable – non reviewable decision – tribunal does not have jurisdiction to consider the application for review

Social Security

[Baker and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 850 (28 October 2016); Mr C Ermert, Member

Disability Support Pension – physical, intellectual and psychological impairments – whether conditions fully diagnosed, treated and stabilised – whether a rating of 20 impairment points – decision affirmed

[Cashmore and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 844 (26 October 2016); Dr L Bygrave, Member

Age pension – debt arising from overpayment – failure to notify Centrelink about change to circumstances – change to marital status – applicant paid single rate rather than partnered rate – whether grounds for writing off debt – whether grounds for waiving debt – no administrative error – no special circumstances – decision affirmed

[Brady and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 848 (27 October 2016); Dr P McDermott RFD, Deputy President

Portability – whether absence allowable – purpose relating to a death – applicant not found to be member of a couple – deceased not a family member of the applicant – inappropriate to exercise discretion in the circumstances – decision under review affirmed

[Elzey and Secretary, Department of Employment and Secretary, Department of Employment](#) (Social services second review) [2016] AATA 821 (18 October 2016); Dr L Bygrave, Member

Newstart allowance – termination payment – whether income maintenance period is correct – whether severe financial hardship exists due to unavoidable or reasonable expenditure – decision set aside and decision made in substitution

Newstart allowance – compensation payment – whether compensation preclusion period is correct – whether special circumstances exist under which the compensation preclusion period can be waived – decision affirmed

[Evans and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 846 (27 October 2016); Senior Member T Tavoularis

Disability support pension – Whether condition(s) fully treated, diagnosed and stabilised – whether Applicant has 20 points under tables – Applicant only has 10 points – decision under review affirmed

[GCMC and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 830 (21 October 2016); Senior Member AC Cotter

Pensions, benefits and allowances – applicant applied for special benefit – whether applicant able to earn a sufficient livelihood – whether applicant is a SPB homeless person – whether unreasonable to live with parents – decision affirmed

[Haje-Obeid and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 835 (25 October 2016); Dr L Bygrave, Member

Disability support pension – cancellation – intellectual impairment – diagnosis of ‘Moderate Mental Retardation’ – inconsistent medical evidence – Job Capacity Assessments – debt raised – whether special circumstances – decision under review set aside

[Hodges-Fong and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 815 (17 October 2016); Dr I Alexander, Member

Disability support pension – application rejected by Centrelink – whether impairment is fully diagnosed, treated and stabilised – impairment tables – decision affirmed

[Kang and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 829 (21 October 2016); Mr DJ Morris, Member

Disability Support Pension (DSP) – medically qualified with severe and permanent impairment – whether attributable stakeholder of trust – whether assets exceed asset test threshold for DSP – percentage of attribution – debt payable – grounds for writing off or waiver – original decision not qualified for DSP affirmed, amount of debt remitted for recalculation

[Marinellis and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 843 (26 October 2016); Dr L Bygrave, Member

Overpayment – whether any grounds for waiving all or part of debt – where write off not applicable – where waiver in relation to an offence not applicable – where no special circumstances – decision under review affirmed

[Ozanic and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 838 (25 October 2016); Mr W Evans, Member

Disability support pension – whether Applicant's impairments attract 20 points under the Impairment Tables – whether Applicant has severe impairment – continuing inability to work – decision under review affirmed

[Schultz and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 837 (25 October 2016); Mr DJ Morris, Member

Pension Bonus – Calculation of correct amount – principal home – whether proceeds of sale of house properly regarded in assets test – contentions about advice from Department officer – reviewable decision affirmed

[Thomas and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 847 (27 October 2016); Senior Member J Sosso

Parenting Payment – Overpayment – Debt – portability – Australian residence – whether applicant exceeded maximum portability period – whether special circumstances – calculation of six week period – fractions of a day – whether administrative error – decision affirmed

[Torpy and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 845 (27 October 2016); Mr C Ermert, Member

Newstart Allowance – allowance subject to an income maintenance period – start date of period – duration of period – whether period should be reduced on the basis of severe financial hardship – whether severe financial hardship due to unavoidable and reasonable expenditure – whether the whole or part of the period does not apply – matter remitted for recalculation of benefits

[Yousif and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 849 (27 October 2016); Dr I Alexander, Member

Disability support pension – application rejected by Centrelink – whether applicant's impairments are fully diagnosed, treated and stabilised – whether applicant's impairments are rated 20 points or more under the Impairment Tables – hearing loss – mental health condition – fibromyalgia – decision affirmed

Sports anti-doping

[Graham and Anti-Doping Rule Violation Panel](#) [2016] AATA 807 (14 October 2016); Deputy President SE Frost

Sport – anti-doping – refusal to grant entry to ASADA officers – possible anti-doping rule violation – whether Applicant was 'support person' for purposes of the National Anti-Doping Scheme – whether participants in bodybuilding competition were 'athletes' for purpose of National Anti-Doping Scheme – decision under review 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

| CASE NAME | AAT REFERENCE |
|---|---------------------------------|
| Kishore v Tax Practitioners Board | [2016] AATA 764 |
| Tisdell v Secretary, Department of Social Services | [2016] AATA 762 |

Appeals finalised

| CASE NAME | AAT REFERENCE | COURT REFERENCE |
|--|---------------------------------|---------------------------------|
| Haque v Migration Agents Registration Authority | [2016] AATA 186 | [2016] FCA 1249 |

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.

Amendments to the *Narcotic Drugs Act 1967*

The [*Narcotic Drugs Amendment Act 2016*](#) (the amending Act) received Royal Assent on 29 February 2016. The relevant amendments commenced on 30 October 2016. The amending Act confers jurisdiction on the AAT to review several decisions made under the [*Narcotic Drugs Act 1967*](#) and the [*Narcotic Drugs Regulation 2016*](#) relating to medicinal cannabis permits and licences, cannabis research permits and licences, and manufacture permits and licences.

From the [*Explanatory Memorandum*](#):

The Narcotic Drugs Amendment Bill 2016 will provide a legislative framework that will enable cannabis cultivation in Australia and provide Australian patients in need with access to medicinal cannabis for therapeutic purposes. These amendments will also ensure that when cultivation and production of cannabis and manufacture of cannabis products for medicinal purposes begin, Australia will remain compliant with its international treaty obligations as defined in the United Nations *Single Convention on Narcotic Drugs, 1961* (the Single Convention).

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