



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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# 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

[Dale and BIS Industries Limited](#) (Compensation) [2016] AATA 862 (31 October 2016);  
Dr P McDermott RFD, Deputy President

Compensation for injuries resulting in incapacity – injury suffered by employee – rehabilitation program not suitable employment – decision set aside and remitted

Compensation in respect of medical expenses – applicant does not require further medical treatment – decision affirmed under review

[Miller and Comcare](#) (Compensation) [2016] AATA 854 (28 October 2016); Deputy President  
G Humphries

Commonwealth employees – scope of claim for compensation – whether Tribunal has jurisdiction to consider and determine claim for psychological condition

[Mitchell and Comcare](#) (Compensation) [2016] AATA 871 (4 November 2016); Dr L Bygrave,  
Member, and Dr M Couch, Member

Liability initially accepted for aggravation of adjustment disorder with anxious and depressed mood – later determination found condition was a result of a pre-existing, constitutional personality disorder – whether applicant remains presently entitled to compensation under ss 16 and 19 of the Safety, Rehabilitation and Compensation Act 1988 – decision set aside

[O'Sullivan and P & O Maritime Service Pty Ltd](#) (Compensation) [2016] AATA 865 (10 October 2016); Mr S Webb, Member

Seafarer compensation – previous accepted injury – compensation paid by previous employer – termination of employment – fresh injury in the form of an 'aggravation' – employment relationship with previous employer not established

[Speakman and Telstra Corporation Limited](#) (Compensation) [2016] AATA 856 (31 October 2016);  
Dr P McDermott RFD, Deputy President

Whether applicant has an ongoing entitlement to compensation – applicant previously granted compensation for medical expenses and incapacity for work – determination later made that respondent no longer liable – decision under review affirmed

[Wisniewski and Comcare](#) (Compensation) [2016] AATA 660 (21 July 2016); Deputy President SE Frost

Workers compensation – Injuries claimed to have been sustained before the commencement day of the *Safety, Rehabilitation and Compensation Act 1988* – success of claim depends on whether the applicant was entitled to compensation under the *Compensation (Commonwealth Employees) Act 1971* (the 1971 Act) – applicant needed to establish he had been employed by the Commonwealth or by a prescribed authority of the Commonwealth – employed by Commonwealth Accommodation and Catering Services Limited (CACSL) – CACSL not the Commonwealth – CACSL not a prescribed authority of the Commonwealth – no entitlement to compensation under the 1971 Act – application has no prospect of success – application dismissed under s 42B(1)(b) of the *Administrative Appeals Tribunal Act 1975*

## Migration

[Burton and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 870 (3 November 2016); Brigadier AG Warner, Member

Mandatory visa cancellation – discretion to revoke – substantial criminal record – character test not satisfied – discretion to revoke visa cancellation if another reason – primary and other considerations – considerations weigh against revocation – decision under review affirmed

[Callaghan and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 713 (15 August 2016); Senior Member W Stefaniak AM RFD

Mandatory cancellation of visa – application for revocation of cancellation decision – failure to pass character test – substantial criminal record Ministerial Direction No 65 applied – protection of the Australian community – seriousness and nature of the relevant conduct – the risk conduct may be repeated – expectations of Australian community – best interests of minor children – decision affirmed

[Rodchompoo and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 872 (4 November 2016); Senior Member CR Walsh

Mandatory cancellation of visa by respondent – applicant has substantial criminal record and does not pass the character test – primary and other considerations considered – decision under review affirmed

[Saha and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 319 (17 May 2016); Senior Member PW Taylor SC

Visa refusal – application for partner visa – failure to pass character test – substantial criminal record – discretion to refuse applicant's visa – Ministerial Direction no 65 applied – protection of the Australian community – seriousness and nature of the relevant conduct – the risk conduct may be repeated – expert evidence of risk of reoffending and rehabilitative prospects – expectations of Australian community – best interests of minor children – impact on victims of applicant's criminal conduct – impact on applicant's family – decision under review set aside and substituted

[Tumaialu and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 863 (31 October 2016); Senior Member B Stefaniak AM RFD

Mandatory visa cancellation under section 501CA – discretion to revoke – substantial criminal record – character test not satisfied – discretion to revoke mandatory visa cancellation if another reason – primary and other considerations – serious violent offences – low to medium risk of reoffending – strength, nature and duration of ties - decision set aside

## **Practice and Procedure**

[Myers and Australian Postal Corporation](#) (Compensation) [2016] AATA 858 (31 October 2016); Deputy President JW Constance

Jurisdiction – workers compensation – whether Tribunal has jurisdiction to review – whether Respondent's decision is a reviewable decision – whether there was a determination purported to be made under enactment – Tribunal found to have jurisdiction

## **Social Security**

[Beard and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 859 (31 October 2016); Senior Member AC Cotter

Pensions, benefits and allowances – age pension – extension of deeming rules – asset-tested income stream – amending Act – “grandfathering” provisions – superannuation account-based income stream – adding a new beneficiary – continuously receiving income support payment – statutory interpretation – decisions under review affirmed

[Boughen and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 867 (1 November 2016); Senior Member T Tavoularis

Disability support pension – whether Applicant has 20 impairment points – Applicant only has 10 impairment points – decision under review is affirmed

[Brady and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 852 (28 October 2016); Ms S Taglieri, Member

Disability Support Pension (DSP) – whether qualified – whether impairments fully diagnosed, fully treated and stabilised – whether impairments attract 20 points or more on Impairment Tables – emphysema – osteoarthritis - bursitis– not qualified for DSP – decision affirmed

[Brien; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 869 (2 November 2016); Dr L Bygrave, Member

Disability support pension – cancellation – whether conditions fully diagnosed treated and stabilised – whether rated 20 points or more – none of respondent's impairments severe – mental health conditions – chronic polysubstance dependence – decision under review set aside and substituted

[Drake and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 683 (6 September 2016); Dr I Alexander, Member

Disability support pension – application rejected by Centrelink – whether applicant suffers an impairment – whether impairment is fully diagnosed, treated and stabilised – impairment tables – heart condition permanent – heart condition awarded 10 points under Impairment Table 1 – no evidence of depression and chronic sinusitis – decision affirmed

[Gordon and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 874 (4 November 2016); Mr C Ermert, Member

Qualifications for Disability Support Pension – physical, intellectual or psychiatric impairments – Impairment Tables – impairment rating of 20 points – whether continuing inability to work – impairments not severe – not participated in program of support – not qualified for DSP – decision affirmed

[Hallowell and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 851 (28 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 – medical report outside relevant period but referable to it – 20 points under two Tables – no program of support completed – not qualified for DSP – decision affirmed

[Hmura and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 866 (1 November 2016); Dr L Bygrave, Member

Disability support pension – application for the disability support pension refused – whether applicant's conditions were fully diagnosed, treated and stabilised – whether applicant's impairments are rated 20 points or more under the Impairment Tables – coronary artery disease awarded 10 points under Table 1 – upper limb condition awarded 5 points under Table 2 – decision affirmed

[Katte; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 860 (31 October 2016); Dr L Bygrave, Member

Aged pension – overpayment of aged pension – rate of pension – where change in assets and income not declared – whether debt should be written off – whether debt should be waived due administrative error – whether debt should be waived due to special circumstances – decision set aside and substituted

[Khan and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 873 (4 November 2016); Senior Member CR Walsh

Newstart Allowance debt – whether debt should be written-off or waived due to “special circumstances” – insufficient evidence of applicant's mental health condition in the relevant debt period – whether debt must be waived due to sole administrative error by Centrelink – decision under review affirmed

[Kusuma and Secretary, Department of Social Services](#) (Social services second review) [2016]  
AATA 868 (2 November 2016); Professor R McCallum AO, Member

Parenting payment (partnered) – over-payment – change in circumstances – whether a debt is owed to the Commonwealth – whether Centrelink was informed of partners continual earnings – not unreasonable for partner to act as agent of the applicant – whether Centrelink made an administrative error continuing payments after being informed of partners earnings – meaning of attributable “solely to an administrative error” – no special circumstances exist to waive all or part of the debt – decision varied

[McKeough and Secretary, Department of Social Services](#) (Social services second review) [2016]  
AATA 855 (31 October 2016); Deputy President I R Molloy

Family tax benefit – shared care – determining percentage of care – record keeping issues – whether inconsistent evidence between parents – decision under review affirmed

[McLeod and Secretary, Department of Social Services](#) (Social services second review) [2016]  
AATA 853 (28 October 2016); Mr S Webb, Member

Age pension – compensation – meaning of ‘lump sum payment’, ‘lump sum compensation payment’ and ‘arrear of periodic compensation payments’ – lump sum compensation payment does not include a payment of arrears of periodic compensation payments – no lump sum compensation payment – no lump sum preclusion period barring payment of a compensation affected payment – decision set aside

[Mitchell and Secretary, Department of Social Services](#) (Social services second review) [2016]  
AATA 779 (5 October 2016); Dr L Bygrave, Member

Disability support pension – application rejected by Centrelink – whether impairments permanent – whether impairments fully diagnosed, treated and stabilised – impairment tables – continuing inability to work – spinal condition awarded 10 points under Table 4 – lower limb condition awarded 5 points under Table 3 – upper limb condition awarded 5 points under Table 2 – coronary artery disease awarded 5 points under Table 1 – applicant failed to complete program of support – decision affirmed

[Noonan and Secretary, Department of Social Services](#) (Social services second review) [2016]  
AATA 803 (13 October 2016); Senior Member Dr T Nicoletti

Youth allowance – applicant appointed as correspondence and payment nominee for son – son cancelled applicant’s appointment as correspondence and payment nominee – whether nominee arrangement was correctly cancelled by the Department – whether applicant entitled to son’s youth allowance payments prior to cancellation as nominee – appointment as nominee doesn’t entitle applicant to receive son’s payments for own benefit – decision affirmed

[Sharafdine and Secretary, Department of Social Services](#) (Social services second review) [2016]  
AATA 685 (6 September 2016); Dr L Bygrave, Member

Disability support pension – claim rejected by Centrelink – whether impairments permanent – whether impairments fully diagnosed, treated and stabilised – impairment tables – upper limb

condition awarded 5 points under Table 2 – spinal condition awarded 10 points under Table 4 – lower limb condition not fully treated and stabilised – decision affirmed

[Stegnjaic and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 658 (31 August 2016); Dr L Bygrave, Member

Disability support pension – cancellation – impairment tables – whether impairments fully diagnosed, treated and stabilised – spinal condition has moderate functional impairment – lower limb condition has mild functional impairment – decision affirmed

[York and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 802 (13 October 2016); Dr L Bygrave, Member

Disability support pension – extension of portability period – whether an event prevented the applicant from returning to Australia – applicant travelled to India for leg lengthening and correction procedure – hospitalisation and recovery found to be events preventing return – whether the hospitalisation and recovery occurred or began during period of absence – event of procedure initiated before period of absence – decision affirmed

## **Taxation**

[DHDF and Commissioner of Taxation](#) (Taxation) [2016] AATA 778 (1 September 2016); Deputy President Professor R Deutsch

Income tax – employer contributions – concessional contributions – taxable contributions – concessional contributions cap – whether the notice of assessment was excessive – decision affirmed

[Silver Mines Limited and Innovation Australia](#) (Taxation) [2016] AATA 707 (13 September 2016); Deputy President Professor R Deutsch

Industry Research and Development Act 1986 – research and development tax concessions – registration for concessions – applicant lodged applications for 2010/2011 and 2011/2012 income years out of time – whether exceptional circumstances exist – death of a director not an exceptional circumstance – tax agent failing to provide relevant advice held to be an exceptional circumstance – further delay caused in lodging applications fault of the applicant – decisions affirmed

## **Veterans' Affairs**

[Baker and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 857 (31 October 2016); Deputy President JW Constance

Entitlements – ischaemic heart disease – whether disease is defence-caused – clinical onset of disease – whether disease connected to the service rendered – decision set aside and substituted.

Entitlements – disability pension – claim for payment at the special rate – whether war-caused disease alone rendered the veteran incapable of undertaking remunerative work for more than 8 hours per week – claim for payment at the intermediate rate – whether war-caused disease alone



rendered the veteran incapable of undertaking remunerative work other than part-time or intermittently – decision set aside and remitted

# 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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**Australian Air Express Pty Ltd v Te Wake**

[\[2016\] AATA 771](#)

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## Appeals finalised

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CASE NAME

AAT REFERENCE

COURT REFERENCE

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**None finalised**

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# Statements of Principles

This section of the *Bulletin* provides information on recent developments in relation to Statements of Principles made by the Repatriation Medical Authority for the purposes of the [Veterans' Entitlements Act 1986](#) and the [Military Rehabilitation and Compensation Act 2004](#).

## New Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made the following new Statements of Principles. They take effect from **28 November 2016**..

**Malignant neoplasm of the brain (Reasonable Hypothesis) – No. 85 of 2016**

<https://www.legislation.gov.au/Details/F2016L01692>

**Malignant neoplasm of the brain (Balance of Probabilities) – No. 86 of 2016**

<https://www.legislation.gov.au/Details/F2016L01693>

**Acquired cataract (Reasonable Hypothesis) – No. 87 of 2016**

<https://www.legislation.gov.au/Details/F2016L01694>

**Acquired cataract (Balance of Probabilities) – No. 88 of 2016**

<https://www.legislation.gov.au/Details/F2016L01695>

## Amendment Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made the following instruments amending the Statements of Principles for the specified conditions. They took effect on **28 November 2016**.

**Anxiety disorder – No. 99 of 2016**

<https://www.legislation.gov.au/Details/F2016L01697>

**Anxiety disorder – No. 100 of 2016**

<https://www.legislation.gov.au/Details/F2016L01698>

**Panic disorder – No. 102 of 2016**

<https://www.legislation.gov.au/Details/F2016L01668>

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