



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

[THTC and Comcare](#) (Compensation) [2016] AATA 884 (8 November 2016); Senior Member CR Walsh and Brigadier AG Warner, Member

Recurrent major depressive disorder – whether applicant made a wilful and false representation that he did not suffer, or had not previously suffered, from the claimed condition – whether the applicant's claimed condition was contributed to, to a significant degree, by his employment – date of injury of applicant's claimed condition – whether applicant's claimed condition was as a result of reasonable administrative action taken in a reasonable manner in respect of his employment – decision under review affirmed

## Corporations

[Abichandani and Australian Securities and Investments Commission](#) [2016] AATA 879 (8 November 2016); Senior Member PW Taylor SC

Registered SMSF auditor – “fit and proper person” – audits signed by applicant – whether audits were done by the applicant – ASIC's findings and submissions of misleading and deceptive conduct – assertions of false evidence in the course of proceedings – applicant found to be a fit and proper person – decision set aside

## Health

[May and Secretary, Department of Health](#) [2016] AATA 881 (8 November 2016); Deputy President K Bean

Aged care – Residential care recipient – Fees and charges payable to approved aged care service provider – Assessment of value of applicant's assets – Where applicant's interest in a property as a joint tenant treated as an assessable asset – Where applicant did not make any financial contributions in respect of the property – Consideration of family arrangement/agreement – Intention that applicant would have legal and beneficial interest in property – Decision under review varied

## Immigration and Citizenship

### Citizenship

[Ji and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 887 (9 November 2016); Mr C Ermert, Member

Citizenship by conferral – exercise of ministerial discretion – residence requirement – whether applicant has a close and continuing association with Australia – decision affirmed

### Migration

[Wills and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 794 (12 October 2016); Dr P McDermott RFD, Deputy President

Application for visa refused on character grounds – applicant does not pass the character test – sentenced to a term imprisonment totalling more than 12 months – the protection of the Australian community from criminal or other serious conduct relevant – expectations of Australian community not met – other considerations relevant – decision under review affirmed

[1513037](#) (Migration) [2016] AATA 4544 (17 October 2016); C Kannis, Member

Partner (Temporary) (Class UK) visa – Subclass 820 – cl 820.211 – r 2.03A – De facto relationship – 12 month rule – Genuine and continuing spousal relationship – Shared financial commitments – Relationship less than 12 months – Decision under review affirmed

[1514458](#) (Migration) [2016] AATA 4537 (17 October 2016); K Raif, Senior Member

Partner (Migrant) (Class BC) visa – Subclass 100 – cl 100.221 – Genuine relationship – Couple married for seven years – Lack of companionship and emotional support – Inconsistent evidence of plans for children – Limited awareness of each other's commitments – Decision under review affirmed

[1606942](#) (Migration) [2016] AATA 4547 (17 October 2016); D Connolly, A/g Senior Member

Cancellation – Temporary Business Entry (Class UC) visa – Subclass 457 (Temporary Work (Skilled)) – Condition 8107 – Ceased employment with the sponsor exceeded 90 consecutive days – Established own business – Nominee in different role refused – Decision under review affirmed

[1605714](#) (Migration) [2016] AATA 4540 (21 October 2016); G Bartley, Member

Prospective Marriage (Temporary) (Class TO) visa – Subclass 300 – cl 300.215 – cl 300.216 – cl 300.22 – Extensive knowledge of each other's families – Genuine intention to live together – Consistent evidence of future intentions – Engagement held in Vietnam – Decision under review remitted

[1609897](#) (Migration) [2016] AATA 4548 (21 October 2016); K Malyon, Member

Cancellation – Temporary Business Entry (Class UC) visa – Subclass 457 (Temporary Work (Skilled)) – Condition 8107 – Ceased employment with the sponsor for over 90 days – New sponsor – Approved nomination – Decision under review set aside

## Refugee

[1609600](#) (Refugee) [2016] AATA 4558 (4 October 2016); G Short, Senior Member

Protection visa – Turkey – Federal Circuit Court Remittal – Actual and imputed political opinion – Pro-Kurds – Social group – Activist – Ethnicity – Kurdish – Relocation unreasonable – Decision under review remitted

[1611309](#) (Refugee) [2016] AATA 4526 (5 October 2016); C Wilson, Member

Protection visa – Vietnam – Particular social group – Women – Religion – Catholic – Family violence – Threats of physical assault – Delay in applying for protection – Decision under review affirmed

[1416535](#) (Refugee) [2016] AATA 4552 (7 October 2016); F Gelev, Member

Protection visa – Afghanistan – Actual or imputed political opinion – Pro-Western – Race – Pashtun – Religion – Sunni – Particular social group – Returnees from Western countries – Perceived as supportive of the Government and International Community – Credibility issues – Decision under review affirmed

[1607767](#) (Refugee) [2016] AATA 4559 (13 October 2016); D Corrigan, Member

Cancellation – Protection visa – Pakistan – s 101 – s 103 – Incorrect answers in application – Bogus document – Race – Hazara – Religion – Shi'a – Claimed Afghan citizenship – Non-refoulement obligations – Decision under review set aside

[1506602](#) (Refugee) [2016] AATA 4554 (25 October 2016); T Flood, Member

Protection visa – Bangladesh – Political opinion – Bangladesh National Party Supporter – Social group – Wealthy business family – Credibility issues – Decision under review affirmed

## Industrial Law

[Azizi and Secretary, Department of Employment](#) [2016] AATA 890 (10 November 2016); FJ Alpins, Deputy President

Fair entitlements guarantee – application for review of decision that applicant not eligible for advance under Fair Entitlements Guarantee Act 2012 (Cth) as failed to make “effective claim” – whether documents required by Secretary must be provided within prescribed period for making of claim – whether documents provided by applicant before expiry of prescribed period satisfied Secretary’s requirements – decision under review affirmed

## Social Security

[Devlin and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 875 (4 November 2016); Mr C Ermert, Member

Court Orders – non-compliance – reasonable action to comply – interim period – percentages of care – whether Family Tax Benefit child – decision affirmed

[Kontossis and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 892 (10 November 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 – historical impairment assessment under State legislation not relevant – diagnosis after relevant period – not qualified for DSP – decision affirmed

[Lababidi and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 888 (9 November 2016); Mr C Ermert, Member

Qualification for Carer Allowance and Carer Payment – the relevant period – Adult Disability Assessment Tool (ADAT) – self-assessment ADAT score – professional ADAT score – medical report not an accurate reflection of disability, emotional state, behaviour and special care needs – replacement professional questionnaire by another treating health professional – ADAT scores not sufficient to satisfy qualification requirements – decision affirmed

[MPNM and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 891 (10 November 2016); Mr DJ Morris, Member

Parenting Payment – Family Tax Benefit – principle carer – entitlement – shared parental care – percentage of care – calculation of debt – writing off or waiver of debt – decision set aside and substituted – Applicant not entitled to Parenting Payment – Family Tax Benefit remitted for recalculation

[O'Cass and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 876 (4 November 2016); Mr S Webb, Member

Disability support pension claim – impairments – rating of permanent impairments – rating of functional impairment of lumbar spine and functional impairment of cervical spine arising from separate conditions – insufficient evidence to establish severe impairment – active participation in a program of support – program of support taken to be terminated when indefinite suspension continues without action after a reasonable period – meaning of ‘participating in a program of support’ – participation may include period of temporary medical incapacity exemption – continuing inability to work – decision set aside

[Ollershaw and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 883 (8 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 – spinal condition awarded 10 points under Table 4 – decision affirmed

## **Veterans' Affairs**

[Hansell and Repatriation Commission](#) (Veterans’ entitlements) [2016] AATA 893 (11 November 2016); Senior Member E Fice

Disability pension – operational service in Royal Australian Navy – posttraumatic stress disorder – evidentiary issues regarding expert opinions – need for collaborating evidence in establishing

posttraumatic stress disorder – where Tribunal not satisfied of accuracy diagnosis – where assumption of accurate diagnosis leads to reasonable hypothesis upholding statement of principles – inconsistent and illogical evidence – where Tribunal satisfied beyond reasonable doubt that there is no sufficient ground for determining that condition is 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>York v Secretary, Department of Social Services</b>	<a href="#">[2016] AATA 802</a>

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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Comcare v Martin</b>	<a href="#">[2014] AATA 553</a>	<a href="#">[2016] HCA 43</a> <a href="#">[2015] FCAFC 169</a> <a href="#">[2015] FCA 4</a>
<b>Kishore v Tax Practitioners Board</b>	<a href="#">[2016] AATA 764</a>	<a href="#">[2016] FCA 1328</a>
<b>Dunkerley v Comcare</b>	<a href="#">[2014] AATA 381</a>	<a href="#">[2016] HCASL 272</a> <a href="#">[2015] FCA 1076</a> <a href="#">[2015] FCA 392</a>

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