



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.

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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.

Aviation

[Tickle and Civil Aviation Safety Authority](#) [2016] AATA 910 (16 November 2016); Deputy President JW Constance and Dr W Isles, Member

Civil aviation – pilot licensing – refusal of class 1 medical certificate – whether applicant meets the relevant medical standards – safety-relevant heart abnormality – abnormality in circulatory tree – diabetes – whether applicant's failure to meet medical standard not likely to endanger the safety of air navigation – decision affirmed

Compensation

[Henry and Comcare](#) (Compensation) [2016] AATA 912 (16 November 2016); Senior Member Mrs JC Kelly

Compensable condition of adjustment reaction with mixed emotional features – whether the applicant suffers from a permanent impairment resulting from the compensable condition – the effect of the applicant's alcohol consumption on his impairment – whether the degree of whole person impairment is 10% or more – whether the applicant is entitled to compensation under sections 24 and 27 of the Safety, Rehabilitation and Compensation Act 1988 – decision under review set aside and substituted

[LTLL and Comcare](#) (Compensation) [2016] AATA 913 (16 November 2016); Dr J Pople, Senior Member and Dr B Hughson, Member

Commonwealth employees – Applicant suffered relapse of previously diagnosed mental illness – Applicant suffered an aggravation of an ailment – appropriate diagnosis of Applicant's ailment – whether Applicant was subject to bullying and harassment in the workplace – whether aggravation of ailment was contributed to, to a significant degree, by employment – decision under review affirmed

[Nicholson and Comcare](#) (Compensation) [2016] AATA 905 (15 November 2016); Senior Member Mrs J C Kelly

Claim for further compensation – permanent impairment of left knee – whether there has been a subsequent increase in the degree of impairment of 10% – conflicting medical findings – ankylosis – Tribunal finds insufficient increase in degree of impairment – decision affirmed

[Stark and Military Rehabilitation and Compensation Commission](#) (Compensation) [2016] AATA 916 (17 November 2016); Senior Member AC Cotter

Military Rehabilitation and Compensation Act 2004 (MRC Act) – Chronic Inflammatory Demyelinating Polyneuropathy (CIDP) – whether disease aggravated by treatment provided by Commonwealth – whether “service disease” – whether liability exists under s 23(2) of the MRC Act – no liability found

Inflammatory Bowel Disease (ulcerative colitis) – whether CIDP service disease – whether liability exists under s 23(1) of the MRC Act – whether material before Tribunal and Statements of Principles uphold connection with service – no liability found – decision under review affirmed

Education and Research

[Jones and Secretary, Department of Education](#) [2016] AATA 909 (15 November 2016); Dr P McDermott RFD, Deputy President

Higher Education Support – FEE-HELP – application for re-crediting – special circumstances – circumstances not beyond the applicant’s control – decision under review affirmed

Immigration and Citizenship

[Fabb and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 894 (11 November 2016); Senior Member J Sosso

Refusal to grant a non-citizen’s visa on character grounds – applicant does not pass the character test – the protection of the Australian community from criminal or other serious conduct – expectations of Australian community – decision under review set aside and substituted

[KLLV and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 896 (11 November 2016); Senior Member E Fice

Application for Student (Temporary) (Class TU) visa refused – failure to satisfy character test – applicant pleaded guilty to a sexually based offence– indecent assault – where serious risk to Australian community if applicant re-offended – effect of mental illness – where Australian community would expect application to be refused – decision under review affirmed

[Te Kanawa and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 906 (15 November 2016); Dr G Hughes, Member

Exercise of discretion to revoke cancellation of visa – Applicant committed multiple crimes over 4 year period – personal circumstances of non-citizen – resided in Australia from the age of six years – limited family ties in New Zealand - drug addiction attributed to breakup of family unit – evidence of remorse and rehabilitation – evidence of family support – expectations of Australian community – decision under review set aside and substituted

[Oliver and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 895 (11 November 2016); Deputy President JW Constance

Citizenship by conferral - where applicant subject of good behaviour bond - whether applicant released by the court - decision affirmed

[Ralfe and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 898 (14 November 2016); Ms DK Grigg, Member

Citizenship by descent – applicant’s parents are not Australian citizens at time of her birth – decision under review affirmed

Social Security

[Balfour and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 904 (14 November 2016); Senior Member T Tavoularis

Disability support pension – Cancellation of Applicant’s pension – whether Applicant’s conditions were fully diagnosed, treated and stabilised – whether Applicant’s impairments could be rated 20 points or more under the Impairment Tables – spinal disorder – depression – hip and knee pain – Applicant did not meet criteria under s 94 – decision under review affirmed

[Bennett and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 899 (14 November 2016); Dr P McDermott RFD, Deputy President

Disability support pension – cancellation – severe intellectual impairment – continuing inability to work – ability to work in the future but not within two years of cancellation – decision set aside and substituted

[Ciammaruconi and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 908 (15 November 2016); Senior Member AF Cunningham

Age pension – overseas applicant – applicant not an Australian resident at time of claim – decision under review affirmed

[Fothergill and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 920 (18 November 2016); Ms R Perton, Member

Benefits payable to a third party wrongly paid into applicant’s bank account – administrative error on the respondent’s part – debt imposed for overpayment – whether waiver available due to administrative error – good faith – whether severe financial circumstances – whether waiver due to special circumstances – decision affirmed

[Mashhour and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 911 (16 November 2016); Mr C Ermert, Member

Disability Support Pension – whether applicant has physical, intellectual or psychiatric impairments – whether impairments attract 20 or more points under Impairment Tables – whether applicant has a continuing inability to work – whether applicant has actively participated in a Program of Support – decision affirmed

[Nicholls and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 907 (15 November 2016); Mr C Ermert, Member

Disability Support Pension – relevant period for qualification – whether conditions were fully diagnosed, fully treated and fully stabilised – whether impairments attracted 20 or more points under the Impairment Tables – requirement for 20 impairment points not met – decision affirmed

[Stratford and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 886 (9 November 2016); Senior Member P Nolan

Disability support pension – Applicant’s condition not fully diagnosed - Applicant’s condition not permanent – unable to assign impairment rating – decision under review affirmed

Taxation

[Gupta and Commissioner of Taxation](#) (Taxation) [2016] AATA 914 (16 November 2016); Mr PW Taylor SC, Senior Member

Assessable income – negotiated settlement awarding lump sum payment for arrears of workers’ compensation – whether lump sum payment was assessable income – private tax ruling that weekly compensation payments were primarily compensation for loss of income – Workers Compensation Act 1987 (NSW) – compensation payments had character of “income support” not compensation “for” injury or incapacity – lump sum nature of payment not significant in characterisation – lump sum payments amounted to ordinary income – decision under review affirmed

[McKinnon Holdings \(NSW\) Pty Ltd as Trustee for the McKinnon Equipment Trust and Commissioner of Taxation](#) (Taxation) [2016] AATA 917 (17 November 2016); Professor R Deutsch, Deputy President

Goods and Services Tax – input tax credits – agreement for the sale and purchase of assets – liabilities on the assets exceed the value of the assets – whether consideration paid for the assets – whether the liabilities on the assets were assumed by the Applicant – decision under review affirmed

Veterans' Affairs

[Kidner and Repatriation Commission](#) (Veterans’ entitlements) [2016] AATA 915 (17 November 2016); Dr P McDermott RFD, Deputy President

Application for pension at the special rate – applicant not prevented from continuing to undertake remunerative work because of incapacity from war-caused injury or war-caused disease alone – condition that was not war-caused found to be a factor – ameliorating provisions not satisfied – applicant has not been genuinely seeking to engage in remunerative work – decision affirmed under review

[Richwood and Repatriation Commission](#) (Veterans’ entitlements) [2016] AATA 900 (14 November 2016); Dr C Kendall, Deputy President

Special rate – intermediate rate – whether veteran incapable of undertaking remunerative work for eight or more hours per week – whether veteran incapable of undertaking remunerative work for twenty or more hours per week – the “alone” test – accepted and non-accepted medical conditions – decision under review affirmed

[Thomas and Repatriation Commission](#) (Veterans’ entitlements) [2016] AATA 902 (14 November 2016); Dr C Kendall, Deputy President and Brigadier AG Warner, Member

Entitlement – lumbar spondylosis – whether defence caused – Statement of Principles, No. 63 of 2014 – factor 6(k), obesity – insufficient evidence to find connection between lumbar spondylosis and defence service – 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
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None lodged

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Millar & Millar v Commissioner of Taxation	[2015] AATA 114	[2016] HCASL 293 [2016] FCAFC 94 [2015] FCA 1104
Luck v Chief Executive Officer of Centrelink (Freedom of Information Principal Officer)	[2008] AATA 718	[2016] HCASL 283 [2015] FCAFC 112 [2008] FCA 1506
Fard v Secretary, Department of Immigration and Border Protection	[2015] AATA 790	[2016] FCAFC 155 [2016] FCA 417

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