



AAT Bulletin

Issue No. 48/2015

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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 information about decisions of interest recently published in the AAT's Migration & Refugee 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.

End of year arrangements

Many of our offices will close from 5:00pm on Thursday, 24 December 2015 and will reopen at 8:30am on Monday, 4 January 2016.

Registry services will be available between 8:30am and 5:00pm on **Tuesday, 29 December, Wednesday, 30 December 2015** and **Thursday, 31 December 2015** at:

- Level 7, 55 Market Street, Sydney
- Level 16, 40 City Road, Southbank, Melbourne
- Level 5, 111 St Georges Terrace, Perth
- Level 11, 91 Grenfell Street, Adelaide
- Level 4, Harry Gibbs Building, Commonwealth Law Courts, 119 North Quay, Brisbane
- Level 8, 14 Moore Street, Canberra
- 39-41 Davey Street, Hobart

For more information visit our website, www.aat.gov.au or [contact us](#) on 1800 228 333.

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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 Divisions as well as about select decisions recently published in 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

[Blackwell and Comcare](#) (Compensation) [2015] AATA 911 (27 November 2015); Deputy President PE Hack SC

Household services – what is reasonably required – respondent accepts liability for household services – extent of entitlement in issue – circumstances of other members of household relevant – reasonable to expect those members to contribute to household – decision under review affirmed.

[Jones and Comcare](#) (Compensation) [2015] AATA 906 (25 November 2015); Deputy President JW Constance

Injury – disease – ailment – whether ailment contributed to, to a significant degree, by his employment – whether aggravation of ailment contributed to, to a significant degree, by his employment

Corporations

[Wittensleger and Australian Securities and Investments Commission](#) [2015] AATA 902 (24 November 2015); Senior Member CR Walsh

CREDIT ACTIVITIES – FINANCIAL SERVICES – Australian Securities and Investments Commission's (ASIC's) power to make a banning order permanently prohibiting applicant from engaging in any "credit activities" and providing any "financial services" – applicant convicted of 86 counts of gaining benefit by fraudulent means under s 409(1) of the Criminal Code (WA) – Tribunal cannot go behind a conviction – decisions under review affirmed

Migration and Refugee

[1405952](#) (Migration) [2015] AATA 3476 (7 October 2015); D Connolly, Member

Business Skills (Residence) (Class DF) visa – Subclass 890 (Business Owner) – cl 890.211 – Did not maintain direct and continuous involvement in management of the business – Did not meet two year ownership interest requirement – Decision under review affirmed

[1504035](#) (Migration) [2015] AATA 3474 (7 October 2015); F Syme, Member

Regional Employer Nomination (Permanent) (Class RN) – Subclass 187 (Regional Sponsored Migration Scheme) – cl 187.222 – Vocational English requirement – Exempt applicant – Whether five years fulltime education was delivered in English – Decision under review affirmed

[1411902](#) (Migration) [2015] AATA 3538 (9 October 2015); G Bartley, Member

Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – cl 309.311 – cl 309.321(a) – Member of the family unit – Wholly or substantially reliant for financial support – Dependent for a substantial period – Decision under review remitted

[1407227](#) (Migration) [2015] AATA 3480 (13 October 2015); J Ciantar, Member

Nomination – Standard Business Sponsor – s140M(1)(d) – Failed to ensure equivalent terms and conditions of employment – Failed to provide information to department – Provided false or misleading information – Delegate barred sponsor from making future applications for approval for 4 years – Decision under review varied barring applications from sponsor from 31 March 2014 until 13 October 2015

[1412796](#) (Migration) [2015] AATA 3481 (13 October 2015); C Bostock, Member

Child (Migrant) (Class AH) visa – Subclass 101 (Child) – cl 101 213(1)(c) – *Opoku-Ware v MIBP* [2015] FCCA 1638 – Not continuously studying since 18 – Unreasonable gaps – Decision under review affirmed

[1508660](#) (Migration) [2015] AATA 3484 (14 October 2015); M Cameron, Member

Child (Migrant) (Class AH) visa – Subclass 117 (Orphan Relative) – cl 117.211 – cl 117.221 – Claimed disappearance of a mother – Planned unlawful marriage of a child – Visa applicants not the orphan relatives of review applicant – Decision under review affirmed

[1414721](#) (Migration) [2015] AATA 3559 (16 October 2015); M Holmes, Senior Member

Temporary Business Entry (Class UC) visa – Subclass 457 – cl 457.223(4)(da) – Skills, qualification and employment background necessary for a Painting Trades Worker – Tribunal application of departmental policy – Relevant work experience – Decision under review remitted

[1415251](#) (Migration) [2015] AATA 3542 (23 October 2015); A Duri, Member

Other Family (Residence) (Class BU) visa – Subclass 838 (Aged Dependent Relative) – cl 838.212 – Not wholly or substantially reliant on the sponsor – Receiving financial assistance from other children – Decision under review affirmed

[1319635](#) (Migration) [2015] AATA 3588 (27 October 2015); R Gagliardi, Member

Partner (Residence) (Class BS) visa – Subclass 801 – cl 801.221 – Relationship ceased – Family violence allegations – Independent Expert opinions – Decision under review affirmed

[1507767](#) (Migration) [2015] AATA 3595 (4 November 2015); K Millar, Member

Extended Eligibility (Temporary) (Class TK) visa – Subclass 445 (Dependent Child) – cl 445.211 – cl 445.222 – Irregular financial arrangements – Dependent child of a visa-holding parent – Continuing to be a dependent child over 18 years – Decision under review remitted

[1406902](#) (Refugee) [2015] AATA 3520 (7 September 2015); P Millar, Member

Protection visa – Pakistan – Religion – Shia – Father Sunni extremist – Social group – Females – Risk to daughter's safety – Will not get proper treatment for psychological condition – Credibility concerns – Decision under review affirmed

[1501959](#) (Refugee) [2015] AATA 3514 (9 October 2015); J Kelly, Member

Protection visa – Lebanon – Religion – Baha'i – Conversion from Sunni – Issues with credibility – No jurisdiction with second and third applicants – Decision under review affirmed

[1310666](#) (Refugee) [2015] AATA 3524 (12 October 2015); S Pinto, Member

Protection visa – Irregular Maritime Arrival – Sri Lanka – Ethnicity – Tamil – Imputed political opinion – Father a supporter of LTTE – Young Tamil men – Refugee camps in India – Decision under review affirmed

[1313452](#) (Refugee) [2015] AATA 3530 (14 October 2015); A Goodier, Member

Protection visa – Afghanistan – Imputed political opinion – Forcibly recruited by Taliban to deliver Taliban letters – Non-cooperation – Relocation to Kabul unreasonable – Decision under review remitted

[1505935](#) (Refugee) [2015] AATA 3526 (15 October 2015); S Webb, Member

Protection visa – Malaysia – Race – Ethnic Chinese – Debt collectors – No state protection – Credibility issues – Decision under review affirmed

[1415208](#) (Refugee) [2015] AATA 3527 (16 October 2015); C Thwaites, Member

Protection visa – India – Second application – Political opinion – Bharatiya Janata Party member – Social group – Person of wealth – Memorandum of advice on *SZGIZ v MIAC* (2013) 212 FCR 235 – Assessed under complementary protection grounds – Credibility issues – Decision under review affirmed

[1412142](#) (Refugee) [2015] AATA 3566 (24 October 2015); R Titterton, Member

Protection visa – Turkey – Domestic violence – Social group – Women – Credible witness – Selective and discriminatory withholding of state protection for a Convention reason – Relocation unreasonable – Decision under review remitted

[1415903](#) (Refugee) [2015] AATA 3601 (27 October 2015); D McCulloch, Member

Protection visa – Nepal – Particular social group – Homosexuals – Forced marriage – Limited expressions of homosexuality – Decision under review affirmed

[1506280](#) (Refugee) [2015] AATA 3537 (28 October 2015); D McCulloch, Member

Protection visa – China – Religion – Eastern Lightning – Christian sect – Considered evil cult – Decision under review remitted

[1510961](#) (Refugee) [2015] AATA 3570 (2 November 2015); G Haddad, Senior Member

Protection visa – Malaysia – Police corruption – Applicant paid bribes to police – Imputed political opinion – Race – Ethnic Chinese – Credibility issues – Decision under review affirmed

Social Security

[Bolland and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 891 (20 November 2015); Mr I Thompson, Member

Pensions benefits and allowances – disability support pension – decision set aside

[Field; Secretary, Department of Social Services and](#) (Social services second review) [2015] AATA 903 (25 November 2015); Deputy President SA Forgie

FAMILY TAX BENEFIT– change in period of time allowed to lodge claim – whether any requirement to notify of change in law – no requirement – whether special circumstances – no special circumstances – decision set aside

PRACTICE AND PROCEDURE – WORDS AND PHRASES – “have regard to”

[Foran and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 912 (27 November 2015); Ms S Taglieri, Member

Refusal of Disability Support Pension; psychotic illness; Order confining applicant to secure psychiatric facility; participation in rehabilitation and condition in remission; medical condition accepted to be permanent but impairment not severe at time of claim; conceded impairment prior to written claim made; requirement for claim in writing and jurisdiction of Tribunal

[Hammelswang and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 905 (12 November 2015); Deputy President PE Hack SC

Application for disability support pension – compensation for workplace accident – compensation preclusion period – whether special circumstances exist – whether discretion should be exercised to treat payment as not being made – applicant did not comprehend what he agreed to at settlement – applicant spent lump sum – applicant under financial strain – circumstances not out of the ordinary – decision under review affirmed

[Kooistra; Secretary, Department of Social Services and](#) (Social services second review) [2015] AATA 897 (24 November 2015); Senior Member RW Dunne

Disability support pension (DSP) – Impairment Tables considered – claim rejected – on review by Social Security Appeals Tribunal (SSAT), decision of Authorised Review Officer set aside – SSAT found that respondent qualified for DSP – reports of medical practitioners and Job Capacity assessor analysed – decision under review set aside

[Martin and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 904 (12 November 2015); Deputy President PE Hack SC

Disability support pension – spondylolisthesis – whether applicant’s impairments fully diagnosed, treated and stabilised – application lodged short time after back surgery – applicant’s condition still

being treated – not fully treated and fully stabilised – insulin dependence of minor significance – decision under review affirmed.

[Packer and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 907 (25 November 2015); Dr P McDermott RFD, Senior Member

Disability support pension – DSP – whether impairments totalling at least 20 points – question of severe impairment – continuing inability to work – decision affirmed

[Peters and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 896 (20 November 2015); Ms R Perton, Member

Disability support pension – whether accepted medical conditions attracted 20 points within 13 weeks of the claim – rigidity of hearing impairment table – program of support – decision affirmed

[Simonelli; Secretary, Department of Social Services and](#) (Social services second review) [2015] AATA 901 (24 November 2015); Senior Member AC Cotter

Rate of age pension – income and assets – whether disposal of asset for no or inadequate consideration – where bank guarantee secured by real property provided by mother for daughter's business loans – guarantee called upon – real property voluntarily sold to satisfy the debts owing – inadequate consideration – decision under review affirmed

Veterans' Affairs

[Burridge and Repatriation Commission](#) (Veterans entitlements) [2015] AATA 887 (20 November 2015); Senior Member JF Toohey

Whether veteran entitled to special rate of pension – multiple medical conditions – accepted and non-accepted conditions – accepted condition of both knees – non-accepted condition of both knees – whether veteran prevented by reason of accepted conditions alone from engaging in remunerative employment – decision under review affirmed

[Ducat and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 909 (26 November 2015); Deputy President J W Constance

Jurisdiction – whether the AAT has jurisdiction to review – interim decision made by Veterans' Review Board under section 152(2) of *Veterans' Entitlement Act 1986* – interim decision not within power – validity of subsequent decision made by Veterans' Review Board – Tribunal has jurisdiction to review

[Hoare and Repatriation Commission](#) (Veterans' entitlements) [2015] AATA 899 (24 November 2015); Deputy President JW Constance

Special rate – whether veteran prevented by incapacity from war-caused conditions “alone” from continuing to undertake remunerative work – whether veteran worked in profession for a period of 10 years – veteran eligible for pension at the special rate – decision set aside

[Williams and Repatriation Commission](#) (Veterans entitlements) [2015] AATA 910 (27 November 2015); Deputy President PE Hack SC

Service pension – whether “special reason” not to be treated as member of a couple – applicant aged 90 and in poor health – applicant needed full-time carer – applicant would not cohabit outside marriage – no suggestion relationship not genuine – 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
Bornecrantz v Secretary, Department of Social Services	[2015] AATA 814

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Beezley v Repatriation Commission	[2014] AATA 495	[2015] FCAFC 165 [2015] FCA 78

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. Information about the AAT's jurisdiction can also be found on the [AAT website](#).

Amendments to the *Administrative Appeals Tribunal Act 1975*

The [Civil Law and Justice \(Omnibus Amendments\) Act 2015](#) (Omnibus Amendments Act) has amended five sections of the *Administrative Appeals Tribunal Act 1975* (AAT Act). The Omnibus Amendments Act commenced on 13 October 2015 and the amendments to the AAT Act commenced on **14 October 2015**. The current compilation of the AAT Act on [ComLaw](#) incorporates the amendments to the following five sections.

29AC Notice of application

Subsection 29AC(1) was amended by inserting paragraph "(c) any other person who is made a party to the review by the enactment that authorised the application". This amendment corrects an omission by requiring that all parties to a review receive notice of an application.

35 Public hearings and orders for private hearings, non-publication and non-disclosure

Subsection 35(4) was amended by omitting "another party or parties" and substituting "some or all of the parties". This amendment clarifies that the Tribunal can make orders that the information must not be disclosed to any or all of the parties.

39A Procedure in Security Division review of security assessment

Subsection 39A(18) was amended by omitting "a presidential member or senior member, on behalf of the Tribunal," and substituting "the President or an authorised member". This amendment gives the President the flexibility to authorise not only presidential or senior members but other members to dismiss an application for review of a security assessment for failure to proceed or non-compliance.

42A Discontinuance, dismissal, reinstatement etc. of application

Subsections 42A(8) and (8A) were repealed and substituted by subsections 42A(8), (8A) and (8B):

(8) If the Tribunal is taken to have dismissed an application under subsection (1B), a party to the proceeding (other than the applicant) may, within the period referred to in subsection (8B), apply to the Tribunal for reinstatement of the application.

(8A) If the Tribunal dismisses an application under subsection (2) (other than an application in respect of a proceeding in which an order has been made under subsection 41(2)), a party to the proceeding may, within the period referred to in subsection (8B), apply to the Tribunal for reinstatement of the application.

(8B) For the purposes of subsections (8) and (8A), the period is:

- (a) 28 days after the party receives notification that the application has been dismissed; or
- (b) if the party requests an extension—such longer period as the Tribunal, in special circumstances, allows.

This amendment addresses a proceeding where the applicant withdraws the application, but there remains another interested party who does not want the proceeding to cease. This is particularly relevant to applications with more than one non-governmental party, such as child support and family

tax benefit reviews. Under subsection 42A(8A) if the applicant withdraws the application, another party may seek to have it reinstated.

68 Giving documents

Section 68 was repealed and substituted:

(1) A document or thing that is required or permitted by this Act or another enactment to be lodged with, or given to, the Tribunal must be lodged or given in accordance with:

- (a) any direction under section 18B; or
- (b) regulations made under this Act or the other enactment.

(2) A document that is required or permitted by this Act or another enactment to be given to a person for the purposes of a proceeding before the Tribunal must be given to the person in accordance with:

- (a) any direction under section 18B; or
- (b) regulations made under this Act or the other enactment.

(3) A direction given under section 18B for the purposes of paragraph (1)(a) or (2)(a) must not be inconsistent with regulations in force for the purposes of paragraph (1)(b) or (2)(b).

(4) Subsections (1) and (2) do not apply to the extent to which this Act or another enactment specifies how a document or thing is to be lodged with or given to the Tribunal, or given to a person, for the purposes of a proceeding before the Tribunal.

The purpose of this provision is to enable the Tribunal to set out the ways that documents and things can be given to the Tribunal in either a Practice Direction or by the regulations.

Further information about the amendments can be found in the [Explanatory Memorandum](#) to the Civil Law and Justice (Omnibus Amendments) Bill 2015.

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