



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 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](mailto: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 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.

## Child Support

[JBRJ and Child Support Registrar](#) (Child support second review) [2016] AATA 27 (27 January 2016); Senior Member BJ McCabe

Percentage of care – amount payable – grandparents provided support – factors relevant to determination of percentage of care – decision set aside and remitted

## Compensation

[Banwell and Comcare](#) (Compensation) [2016] AATA 30 (28 January 2016); Ms R Perton, Member

Whether mental health condition arose out of or in the course of employment – whether the result of reasonable administrative action in a reasonable manner – decision affirmed

[Elborough and Comcare](#) (Compensation) [2016] AATA 29 (28 January 2016); Deputy President K Bean

Commonwealth employees – Whether applicant's claimed conditions caused by exposure to ionising radiation at Maralinga – Whether conditions contributed to by applicant's employment with Postmaster-General's Department – Low-level radiation exposure did not make any contribution to conditions – Decision under review affirmed

[GTSQ and Military Rehabilitation and Compensation Commission](#) (Compensation) [2016] AATA 35 (29 January 2016); Deputy President JW Constance

VETERANS AFFAIRS – entitlements – psychological injury – whether the Commission must accept liability for disease contracted – whether disease is a service disease – whether Applicant made wilful and false representation that he did not previously suffer from the disease – decision affirmed

[Muscat and Australian Postal Corporation](#) (Compensation) [2016] AATA 13 (19 January 2016); Senior Member D Cremean

Ailments – plantar fasciitis – osteoarthritis – whether compensable – aggravation – significant – decisions under review set aside

## Export Market Development

[Doble Telescopic Lighting Pty Ltd and Australian Trade Commission](#) [2015] AATA 1014 (23 December 2015); Senior Member AC Cotter

EXPORT MARKET DEVELOPMENT – grant – substantiation of expenses – agreement reached between parties as to certain expenses – effect given to agreement between the parties pursuant to

s 42C(3) *Administrative Appeals Tribunal Act 1975* – insufficient evidence to substantiate remaining expenses – remainder of decision under review affirmed

## Migration and Refugee

### Migration

[1418266](#) (Migration) [2015] AATA 3909 (21 December 2015); D Dimitriadis, Member

Temporary Work (Long Stay Activity) (Class GB) visa — Subclass 401 — Religious Worker stream – cl 401.214 — Genuine Temporary Entrant — Applicant in Australia over 4 years on temporary visas — Arrived as a trainee then religious worker — Tribunal not satisfied that applicant genuinely intends to stay temporarily — Decision under review affirmed

[1502444](#) (Migration) [2016] AATA 3009 (4 January 2016); D Connolly, Member

Employer Nomination (Permanent) (Class EN) Visa — Subclass 186 — cl 186.234 — No suitable skills assessment — Not exempt person — No discretion for exceptional circumstances — Decision under review affirmed

[1509158](#) (Migration) [2016] AATA 3022 (11 January 2016); B MacCarthy, Member

Cancellation — Skilled Independent (Permanent) visa — Subclass 189 — s 107 non-compliance with s 101(b) — Incorrect answers in application — Skills assessment — No jurisdiction with secondary applicants — Decision under review affirmed

### Refugee

[1417088](#) (Refugee) [2016] AATA 3012 (5 January 2016); L Hardy, Member

Protection visa — Turkey — Particular social group — Alevi minority religious sect — Imputed political opinion — Credibility issues – Decision under review affirmed

[1416987](#) (Refugee) [2016] AATA 3011 (6 January 2016); P Windsor, Member

Protection visa — India — Particular social group — Inter-caste relationships — Fear of honour killing — Revenge — Fear of physical harm — Decision under review affirmed

[1414394](#) (Refugee) [2016] AATA 3013 (6 January 2016); A Paxton, Member

Protection visa — India — Particular social group — Homosexual — Fears harassment and discrimination — Mental health issues — Relocation unreasonable due to psychological condition — Decision under review remitted

## Practice and Procedure

[1419015](#) (Migration) [2016] AATA 3075 (29 January 2016); Kerr J, President

PRACTICE AND PROCEDURE - application for reconstitution of Tribunal under s 19D(2)(a)(iii) of the *Administrative Appeals Tribunal Act 1975* (Cth) - after hearing of a proceeding commences and before the Tribunal determines the proceeding - matter capable of being advanced as basis for

application for member's recusal - asserted basis not sufficient for reconstitution - direction that Tribunal remain as constituted

[Mclean and Australian Securities and Investments Commission](#) [2016] AATA 22 (22 January 2016); Prof R Deutsch, Deputy President

Application for stay of decision – decision to impose banning order – relevant principles – prospects of success – consequences for Applicant – consequences for Respondent in carrying out its functions – application granted

Confidentiality orders – suppression orders – proceedings generally held in public – open administration of justice – request for suppression orders refused

## **Social Security**

[Anderson and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 21 (22 January 2016); Senior Member AC Cotter

Disability support pension – whether 20 points or more under the impairment tables during the relevant period – continuing inability to work – value of medical evidence – decision under review affirmed

[Fairthorne and Secretary, Department of Social Services](#) [2016] AATA 34 (29 January 2016); Ms R Perton, Member

Lump sum compensation – preclusion period – whether special circumstances – decision under review set aside and remitted

[Idlabi and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 20 (21 January 2016); Senior Member N Isenberg

Parenting Payment – Austudy payment – Newstart allowance – applicant paid at the single rate – whether applicant was a 'member of a couple' – whether existence of a marriage like relationship – shared access to applicant's home for caring for children – social aspects of relationship – whether any reason the applicant should not be treated as a 'member of a couple' – whether debt could be written off or waived – decision under review affirmed

[Kocwin and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 28 (27 January 2016); Senior Member BJ McCabe

Disability support pension – medical criteria – whether applicant should be allocated 20 points or more under impairment tables – applicant's conditions do not satisfy medical criteria – 20 points not allocated under impairment tables – decision under review affirmed

[Trajcevski and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 15 (20 January 2016); Prof R McCallum AO, Member

Pensions – disability support pension – cancellation – whether Applicant terminally ill – decision under review set aside and remitted

## Taxation

[Bhatti and Commissioner of Taxation](#) (Taxation) [2016] AATA 24 (22 January 2016); Senior Member G Lazanas

Income tax – deductions – employee – work-related travel expenses – self education expenses – home office expenses – occupancy costs – running costs – objection decision relating to income tax set aside and matter remitted to Commissioner – administrative penalty – whether failure to take reasonable care – question of remission – objection decision relating to administrative penalty affirmed

[Ogden and Commissioner of Taxation](#) (Taxation) [2016] AATA 32 (29 January 2016); Deputy President SE Frost

Income tax – deductions – employee – work-related travel expenses – home office expenses – occupancy costs – running costs – objection decision relating to income tax set aside and matter remitted to Commissioner – administrative penalty – further submissions

## Veterans' Affairs

[Harmer and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 26 (25 January 2016); Senior Member BJ McCabe

Benefits and entitlements – special rate pension – whether applicant incapable of undertaking remunerative work for periods aggregating more than 8 hours per week – qualified maintenance fitter – applicant would be unable to undertake a physically demanding role for more than eight hours per week – decision under review is set aside and substituted

[Sypher and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 14 (20 January 2016); Senior Member N Isenberg,

Disability pension – application for increase in pension – intermediate rate of pension – whether veteran's war-caused incapacity renders the Applicant incapable of undertaking remunerative work other than on a part-time basis or intermittently – whether veteran capable of undertaking work for 20 or more hours per week – 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

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CASE NAME

AAT REFERENCE

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**None lodged**

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## Appeals finalised

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CASE NAME

AAT REFERENCE

COURT REFERENCE

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**Automotive Components Limited  
(Receivers and Managers appointed) (in  
liquidation) v Secretary, Department of  
Industry and Science**

[\[2015\] AATA 79](#)

[\[2016\] FCAFC 6](#)

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