



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.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

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.

Compensation

[Hawker and Comcare](#) (Compensation) [2016] AATA 1008 (29 November 2016); Professor. MJ McGrowdie, Senior Member

Medical treatment – ongoing massage therapy – whether treatment was reasonable for the employee to obtain – decision set aside and substituted

[Maybury and Australian Postal Corporation](#) (Compensation) [2016] AATA 994 (6 December 2016); Dr L Bygrave, Member

Injury or disease – ailment or aggravation of ailment – contributed to by employment to a significant degree – decision set aside and a decision made in substitution

Customs

[Sawtell Nominees Pty Ltd t/a H & R Schwarz and Comptroller-General of Customs](#) [2016] AATA 993 (6 December 2016); Senior Member E Fice

Tariff classification – whether or not subject goods are disinfectants – identification of essential character of goods – application of Harmonized Commodity Description and Coding System Explanatory Notes – chemical properties of subject goods – where subject goods alter processed meats to make environment less conducive to bacterial reproduction – appropriate classification of goods as food preservatives – decision set aside

Education and Research

[Nash and Secretary, Department of Education and Training](#) [2016] AATA 991 (5 December 2016); Professor R McCallum AO, Member

Higher education – VET FEE-HELP – enrolled in diploma at TAFE – no written request for withdrawal on or before census date – repayment of entire VET FEE-HELP balance required – whether grounds to re-credit the VET FEE-HELP balance – special circumstances – decision affirmed

Immigration and Citizenship

[Dhamija Pty Ltd and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 995 (6 December 2016); Professor MJ McGrowdie, Senior Member

Visa refusal – application for sponsor visa – failure to pass character test – criminal record – dangerous driving causing death – 18 month suspended sentence – high degree of moral culpability not present – 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 – expectations of Australian community – family of victim of applicant's criminal conduct, impact on – decision under review set aside

[Rabino and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 999 (7 December 2016); Deputy President SA Forgie

Revocation of mandatory visa cancellation for failure to pass character test – whether another reason why decision to cancel visa should be revoked – expectations of the Australian community – determined by reference to Principles in Ministerial Direction No. 65 – decision set aside and substituted with decision to revoke visa cancellation

[Konur and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 950 (17 October 2016); Senior Member W Stefaniak RFD

Application for Australian citizenship – whether applicant of good character – applicant found not to be of good character for the purposes of citizenship legislation – decision affirmed

[Oganesian and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 885 (9 November 2016); Senior Member A Poljak

Good character – enduring moral qualities – whether Applicant honest and financially responsible – whether Applicant has been untruthful and practised deception or fraud in dealings with Australian government – mitigating factors – decision set aside and substituted

Professions and Trades

[Jabbour and Director-General, Department of Finance, Services, and Innovation \(NSW Fair Trading\)](#) [2016] AATA 987 (5 December 2016); Senior Member A Poljak

Licensing – mutual recognition – ACT contractor licence – NSW contractor licence refused – directors duties – whether the applicant took all reasonable steps to avoid liquidation – whether the applicant is a fit and proper person – whether non-disclosure on application was deliberate – risk to the public – decision affirmed

Social Security

[Afaneh and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA1002 (8 December 2016); Mr C Ermert, Member

Disability Support Pension – relevant period – whether physical, intellectual or psychiatric impairment – whether conditions fully diagnosed, fully treated and fully stabilised, corroboration of self-report of symptoms – whether impairment rates 20 points under Impairment Tables – decision affirmed

[Akers and Secretary, Department of Employment](#) (Social services second review) [2016] AATA 990 (5 December 2016); Dr G Hughes, Member

Pensions, benefits, allowances – payment of Newstart allowance – assets test – loan to family trust – where applicant's loan to family trust an asset which exceeded assets value limit – asset hardship provisions – loan to family trust an unrealisable asset – where available funds exceeded annual maximum rate of newstart allowance – whether proceeds of loan drawdowns available to applicant – where applicant had capacity to access funds and/or remove trustee in his role as appointer – no severe financial hardship – decision affirmed

[Al Khudairy and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 986 (2 December 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 – awaiting surgery – not qualified for DSP – decision affirmed

[Booth and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 1000 (8 December 2016); Dr P McDermott RFD, Deputy President

Disability support pension – physical and psychiatric impairments – whether applicant's conditions are permanent – whether applicant's impairment is of 20 points or more under the Impairment Tables – whether applicant has a continuing inability to work – decision affirmed under review

[Hasic and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 1006 (9 December 2016); Professor MJ McGrowdie, Senior Member

Disability Support Pension – cancellation of payment – Mental Health Function – Spinal Function – whether conditions fully diagnosed, treated and stabilised – whether conditions rated 20 points or more under Impairment Tables - continuing inability to work – decision under review set aside and substituted

[Ho and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 997 (7 December 2016); Professor MJ McGrowdie, Senior Member

Application for Special Benefit – Long Term Available Funds Test – interest in property overseas – applicant's realisable assets exceed \$5000 – decision affirmed

[Osborne and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 988 (5 December 2016); Mr C Ermert, Member

Disability Support Pension – relevant period – mental health condition – whether fully diagnosed, fully treated and fully stabilised – relevance of medical report outside relevant period – whether Applicant has a continuing inability to work – severe impairment – exemption from Program of Support – work capacity assessment – inability to work – inability to undertake training – decision set aside and substituted

[Prince and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 992 (6 December 2016); Mr DJ Morris, Member

Disability Support Pension (DSP) – Whether qualified – whether impairments are fully diagnosed, fully treated and stabilised – whether impairments attract 20 points or more on Impairment Tables – inoperable brain lesion – other conditions – effect on functional ability – not qualified for DSP – decision affirmed

[Shore and Secretary, Department of Employment](#) (Social services second review) [2016] AATA 998 (7 December 2016); Mr C Ermert, Member

Newstart Allowance cancellation – non-attendance of appointment with employment provider – activity test – whether exempt from activity test – medical certificate of capacity for work – whether notice received – notice deemed to be received – whether actively seeking work – decision affirmed

Taxation

[Thambiannan and Commissioner of Taxation](#) (Taxation) [2016] AATA 1004 (8 December 2016); Ms G Lazanas, Senior Member

Deductions for work related travel expenses and medical insurance – losses or outgoings of a private nature – objection decision affirmed

Veterans' Affairs

[Whitehouse and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 996 (7 December 2016); Senior Member AF Cunningham

Intermediate rate of pension – veteran over 65 years of age – meaning of “last paid work” before claim made – reduction from full-time work as a legal practitioner – not prevented from continuing to undertake last paid work before making claim – 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
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Ellis v Secretary, Department of Social Services

[\[2016\] AATA 490](#)

[\[2016\] FCA 1469](#)

Chen v Secretary, Department of Social Services

[\[2016\] AATA 109](#)

[\[2016\] FCA 1474](#)

AAT 2016 End of Year Arrangements

The Administrative Appeals Tribunal will be operating at limited capacity over the Christmas and New Year period.

Some of our offices, including all corporate areas, will close from 5.00pm, Friday 23 December 2016 and will reopen at 8.30am on Tuesday 3 January 2017.

The following offices will be open from 8.30am to 5.00pm from Wednesday 28 December 2016 to Friday 30 December 2016:

- Level 8, 14 Moore Street, **Canberra**, ACT
- Level 6, 83 Clarence Street, **Sydney**, NSW
- Level 4, Harry Gibbs Building, Commonwealth Law Courts, 119 North Quay, **Brisbane**, QLD
- Level 2, 1 King William Street, **Adelaide**, SA
- Edward Braddon Building, Commonwealth Law Courts, 39 – 41 Davey Street, **Hobart**, TAS
- Level 10, 120 Spencer Street, **Melbourne**, VIC
- Level 5, 111 St Georges Terrace, **Perth**, WA

We will respond to telephone enquiries and accept applications, fee payments and submissions over the counter on the days that we are open.

We recommend that you consider lodging applications or documents using our [online lodgement facilities](#) or [by email](#) to ensure that you lodge within statutory timeframes.

If you intend to send any documents by post, please be aware there may be delays in postal delivery during this period.

Please [contact us](#) on 1800 228 333 if you have any questions.

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