



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.

Contents

| | |
|-----------------------------------|----------|
| AAT Recent Decisions | 3 |
| Child Support..... | 3 |
| Compensation | 3 |
| Social Security..... | 4 |
| Taxation | 5 |
| Veterans' Affairs | 5 |
| Appeals | 7 |
| Appeals lodged..... | 7 |
| Appeals finalised | 7 |

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

[Botel and Child Support Registrar](#) (Child support second review) [2016] AATA 53 (3 February 2016); Senior Member BJ McCabe

Departure prohibition order – Applicant applied for departure authorisation certificate – circumstances in which the Registrar must issue certificate – whether Applicant is an unacceptable “flight risk” – whether Applicant likely to return in reasonable time frame – whether Applicant able to discharge liability in reasonable time frame – small amount of money offered as security for large amount of liability – decision under review affirmed

Compensation

[Bayley and Comcare](#) (Compensation) [2016] AATA 39 (29 January 2016); Deputy President Gary Humphries

Commonwealth employees – claim for trigger thumb – whether injury or disease – Applicant had accepted carpal tunnel syndrome – whether contributed to, to a significant degree, by employment – decision under review affirmed

[Carney and Comcare](#) (Compensation) [2016] AATA 36 (29 January 2016); Deputy President Gary Humphries

Commonwealth employees – injury caused by work – date of injury – whether reasonable administrative action – whether action in respect of employment – whether carried out in a reasonable manner – decision set aside and substituted

[Gilmour and Comcare](#) (Compensation) [2016] AATA 54 (3 February 2016); Senior Member N Isenberg

Adjustment reaction with depressive reaction – whether injury the result of reasonable administrative action – performance appraisal – performance appraisal rating – higher duties – decision affirmed

[Honchera and Comcare](#) (Compensation) [2016] AATA 33 (29 January 2016); Deputy President Gary Humphries

Commonwealth employees – claim for hearing loss and tinnitus – whether injury or disease – whether contributed to, to a significant degree, by employment – decision under review affirmed

[Muhlhan and K & S Freighters Pty Limited](#) (Compensation) [2016] AATA 42 (1 February 2016); Miss E A Shanahan, Member

Pre-existing physical and psychiatric conditions – persisting symptoms – escalation of symptoms whilst in the employ of the respondent – claimed further injury – failure to reveal past history and workers' compensation claims – question of wilful and false representation and s24 liability – decision affirmed

[Peti and Comcare](#) (Compensation) [2016] AATA 50 (2 February 2016); Dr I Alexander, Member

Claim for pain in the left ear, tinnitus – whether Applicant suffered an injury arising out of, or in the course of, the employee's employment – insufficient evidence of diagnosis or causal connection to employment – decision under review affirmed

Social Security

[Beaumont and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 41 (1 February 2016); Senior Member AC Cotter

Debt Recovery and Waiver – failure to notify of Income – disability support pension – overpayment due to undeclared income – debt of disability support pension occurred – knowingly – decision under review affirmed

[Dunn and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 37 (29 January 2016); Senior Member BJ McCabe

Benefits and entitlements – Newstart allowance – newly arrived resident's waiting period – whether applicant exempt – applicant entered Australia before 1 January 1993 – Applicant held permanent entry visa before last departure – exception to newly arrived resident's waiting period applies – decision under review is set aside and substituted

[Jamal and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 43 (1 February 2016); Prof R McCallum AO, Member

Pensions – disability support pension – suspension – extension of six week portability period – whether Applicant's injury prevented him from returning to Australia – decision under review affirmed

[Magor and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 51 (2 February 2016); Ms EA Shanahan, Member

Pensions benefits and allowances – disability support pension claim – severely symptomatic – diagnosis dilated cardiomyopathy – cause of condition unknown – certified as incapacitated for 3 to 12 months with an uncertain prognosis – investigation incomplete – appropriate expert opinion and treatment lacking – treatment to date ineffective – decision affirmed

[Maguire and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 44 (2 February 2016); Senior Member AC Cotter

Income maintenance period – classification of termination payment – lump sum payments arising from termination of employment – long service leave – financial hardship – decision affirmed

[O'Chee and Secretary, Department of Employment](#) (Social services second review) [2016] AATA 58 (5 February 2016); Senior Member N Isenberg

Pensions, benefits and allowances – newstart allowance – whether Applicant entitled to newstart allowance whilst absent from Australia – definition of ‘family acute crisis’ – definition of ‘family member’ – grandmother of the Applicant – visiting grandmother overseas – decision affirmed

[Parkinson and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 49 (2 February 2016); Mr S Webb, Member

Disability support pension – conditions affecting lumbar spine, pelvis, hips and lower limbs – chronic pain – rating of impairments – singular assessment of multifactorial and common impairments – meaning of ‘severe impairment’ – impairments attract a rating of 20 points under a single Impairment Table – continuing inability to work – decision set aside and remitted

[Samuel and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 47 (2 February 2016); Mr S Webb, Member

Disability support pension – income maintenance period – termination payment – redundancy payment does not include ‘directed termination payment’ – payment not a directed termination payment – meaning of ‘severe financial hardship’ – financial hardship not due to unavoidable and reasonable expenditure incurred – discretion to reduce income maintenance period not enlivened – decision affirmed

[Tukana and Secretary, Department of Employment](#) (Social services second review) [2016] AATA 45 (13 January 2016); Senior Member JF Toohey

Parenting Payment – overpayment raised – no argument that overpayment properly raised – Applicant contended that debt had been repaid in full – whether the Tribunal has jurisdiction to review dispute concerning repayment – decision under review affirmed

Taxation

[Lau and Commissioner of Taxation](#) (Taxation) [2016] AATA 46 (2 February 2016); Deputy President Dr P McDermott RFD

Application for release from taxation debts – significant hardship – no reduction in hardship – exercise of Commissioner’s discretion – incomplete disclosure – poor compliance – preference to other creditors – decision under review affirmed

Veterans' Affairs

[Amourous and Repatriation Commission](#) (Veterans’ entitlements) [2016] AATA 40 (29 January 2016); Deputy President Dr P McDermott RFD

Veterans’ entitlements – rate of disability pension – special rate – whether war-caused injury or war-caused disease “alone” prevented veteran from continuing to undertake remunerative work – accepted conditions of Posttraumatic Stress Disorder, Ischaemic Heart Disease, Sensorineural Hearing Loss, Tinnitus, Alcohol Abuse/Dependency and Lumbar Spondylosis – no evidence accepted conditions played any part in preventing Applicant from engaging in remunerative work – “alone” test not satisfied – whether Extreme Disablement Adjustment – special rate decision affirmed – matter remitted to Respondent for consideration of Extreme Disablement Adjustment

[Whittet and Repatriation Commission](#) (Veterans’ entitlements) [2016] AATA 38 (29 January 2016); Deputy President J W Constance

Entitlements – war-caused injury – macular degeneration – whether Applicant suffered macular degeneration – whether there is a hypothesis connecting the injury with the circumstances of the operational service – 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

CASE NAME

AAT REFERENCE

Commissioner of Taxation v Townsing & Ors

[\[2015\] AATA 976](#)

Appeals finalised

CASE NAME

AAT REFERENCE

COURT REFERENCE

None finalised

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