



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

[DRRM and Child Support Registrar](#) (Child support second review) [2016] AATA 91 (19 February 2016); Senior Member Dr D Cremean

Pattern of care – whether actual care different – decisions affirmed

## Citizenship

[Kashkooli and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 105 (11 January 2016); Deputy President Dr P McDermott RFD

Visa – whether applicant is of good character – applicant had previously committed offences – failure to disclose previous offences – decision affirmed

[X1 and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 48 (2 February 2016); Deputy President Dr P McDermott RFD

Applications for citizenship by descent – whether satisfied of the identities of the applicants – whether satisfied applicants had a parent who was an Australian citizen at the time of their birth – insufficient evidence of biological parentage – decision under review affirmed

## Compensation

[Bernobich and Novion Property Group \(formerly Colonial First State Property Management Pty Ltd\)](#) (Compensation) [2016] AATA 92 (7 January 2016); Deputy President K Bean

Respondent refused to allow an extension of time for the applicant to request reconsideration – Consideration of principles which apply to extensions of time – Extension of time granted – Matter remitted to respondent for substantive reconsideration on the merits – Costs

[Ringshaug and Comcare](#) (Compensation) [2016] AATA 88 (18 February 2016); Deputy President G Humphries and Dr I Alexander, Member

Commonwealth employees – whether employee suffered an ailment – whether reasonable administrative action – whether acting in respect of employment – whether carried out in a reasonable manner – reviewable decision affirmed

## Professions and Trades

[ACN 147 341 991 Pty Ltd T/As DNV Accountants & Business Advisers and Tax Practitioners Board](#) [2016] AATA 86 (9 February 2016); Senior Member E Fice

Professional Code of Conduct – allegation of malpractice – termination of registration – harm or damage to applicant if stay not granted – consideration of public interest – stay order granted

## Social Security

[Allen and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 95 (23 February 2016); Senior Member AC Cotter

Pension bonus scheme – registration for pension bonus scheme – whether period for lodgement should be extended – discretion to extend period for lodgement – date registration takes effect if period for lodgement extended – reasonable basis for extension – period for lodgement extended – decision under review set aside

[Davis and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 82 (18 February 2016); Deputy President G Humphries

Application for Disability Support Pension barred by compensation preclusion period – whether preclusion period properly calculated – whether special circumstances exist to shorten preclusion period

[Fadel and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 93 (23 February 2016); Prof R McCallum AO, Member

Disability support pension – whether conditions fully diagnosed, treated and stabilised – impairment ratings – decision affirmed

[Fidge and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 89 (19 February 2016); Senior Member RW Dunne

Pensions, benefits and allowances – disability support pension – whether applicant had a severe impairment during the assessment period – whether Program of Support requirements met – whether applicant qualified for disability support pension during assessment period – decision under review affirmed

[Hurry; Secretary, Department of Social Services and](#) (Social services second review) [2016] AATA 94 (23 February 2016); Senior Member JF Toohey

Pension bonus scheme – late registration – meaning of gainful work – whether discretion to treat activity as gainful work should be exercised – whether respondent met record-keeping requirements – whether record-keeping requirements should be waived – decision under review set aside

[Jones and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 98 (23 February 2016); Mr C Ermert, Member

Disability support pension – qualification period – physical, intellectual or psychiatric impairments – whether impairments attract a rating of 20 points or more – participation in a program of support – decision affirmed

[KFNL and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 68 (9 February 2016); Dr I Alexander, Member

Carer payment – cancellation of carer payment – applicant exceeded allowed respite period – whether there is “for any special reason” another appropriate period – the meaning of “special reason” – applicant subject of a court order – applicant main care provider – care receivers suffer from autistic spectrum disorder – decision set aside

[Khalouf and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 100 (24 February 2016); Dr I Alexander, Member

Pensions – disability support pension – multiple conditions – whether condition is fully diagnosed, treated and stabilised – whether applicant’s impairments rated 20 points or more under the Impairment Tables – decision affirmed

[Posuniak and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 85 (18 February 2016); Dr I Alexander, Member

Disability support pension – whether conditions fully diagnosed, treated and stabilised – impairment ratings – continuing inability to work – decision affirmed

[Schramm and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 102 (25 February 2016); Senior Member N Isenberg

Pension bonus – registration – late applications – power to extend period within which applications for registration may be made – categories of membership of scheme – whether post 75 members are within non-accruing member category – whether applicant non-accruing member for all of the pre-application period – found post 75 membership separate from accruing and non-accruing membership – decision under review affirmed

[Yassine and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 103 (25 February 2016); Dr I Alexander, Member

Disability support pension – whether conditions are fully diagnosed, treated and stabilised – impairment ratings – whether applicant’s impairments rated 20 points or more under the Impairment Tables – decision affirmed

## **Taxation**

[Brady and Commissioner of Taxation](#) (Taxation) [2016] AATA 97 (23 February 2016); Senior Member G Lazanas

Superannuation – excess contributions tax – whether non-concessional excess contributions can be disregarded or allocated to another financial year – whether special circumstances – decision under review affirmed

[Evans and Commissioner of Taxation](#) (Taxation) [2016] AATA 80 (20 January 2016); Deputy President Professor R Deutsch

Amendment to income tax return – request for an extension of time to lodge objection – Commissioner’s discretion to treat objection valid – matters to be considered when exercising discretion – applicant has no arguable case

[Jarvis and Commissioner of Taxation](#) (Taxation) [2016] AATA 99 (24 February 2016); Deputy President SE Frost

Income tax – deductions – interest expenses – factual circumstances unclear – burden of proof not discharged – objection decisions affirmed

[Payne and Commissioner of Taxation](#) (Taxation) [2016] AATA 104 (25 February 2016); Senior Member CR Walsh

Applicant employer’s liability for superannuation guarantee charge (SGC) for relevant quarters – whether applicant employer made superannuation guarantee contributions to complying superannuation funds for the benefit of his employees in relation to the quarters concerned – no power to remit interest component or administration component of SGC – general interest charge – decision under review affirmed

## **Veterans' Affairs**

[Kies and Repatriation Commission](#) (Veterans’ entitlements) [2016] AATA 96 (23 February 2016); Senior Member B McCabe

Special rate pension – whether applicant incapable of undertaking remunerative work for periods aggregating more than 8 hours – “alone test” – applicant unlikely to experience reduction in pain – decision under review set aside

# 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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<b>Sandbach v Commissioner of Taxation</b>	<a href="#">[2015] AATA 1024</a>
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<b>Rus v Comcare</b>	<a href="#">[2016] AATA 18</a>
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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
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<b>None finalised</b>		
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# Jurisdiction and legislative changes

This section of the Bulletin provides information relating to legislative changes that affect the AAT, including changes to the AAT's jurisdiction to review decisions. Information about the AAT's jurisdiction can also be found on the [AAT website](#).

## Guide to the Assessment of Rates of Veterans' Pensions 2016

The Department of Veterans' Affairs has published the [Guide to the Assessment of Rates of Veterans' Pensions 2016](#) (GARP). It commenced with effect on **26 February 2016** and revoked the fifth edition of GARP. GARP sets out the criteria and methods for assessment of disability pensions under the *Veterans' Entitlements Act 1986*.

For any current applications in the AAT's Veterans' Appeals Division relating to entitlement to disability pension under the *Veterans' Entitlements Act 1986*, the 2016 GARP should be taken into account. A PDF version of the 2016 GARP can be accessed [here](#).



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