



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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Changes to AAT decision numbering and titling from 1 January 2017

From 1 January 2017 the AATA decision number will no longer be included on the copy of the decision sent by the Tribunal to the parties for applications dealt with in the General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions.

All AAT decisions made from 1 January 2017 will be allocated consecutive AATA numbers when published.

This replaces the system which operated between 1 July 2015 to 31 December 2016 where separate decision number ranges were used for the medium neutral citation for different divisions: 0-2000 for the General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions; 2001-3000 for the Social Services & Child Support Division; and 3000+ for the Migration & Refugee Division.

In addition, the title of decisions made in the Migration & Refugee Division from 1 January 2017 will include the applicant's family name or organisation name where a name can be published, rather than the file number. Decisions relating to protection visas made in the Migration & Refugee Division will continue to include the file number in the title.

These changes are part of the AAT's strategy of harmonising our processes. If you have any questions or comments about the changes, please contact the Publications Team at publications.team@aat.gov.au.

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.

Child Support

[Rodgers and Child Support Registrar](#) (Child support second review) [2016] AATA 1064 (21 December 2016); Dr P McDermott RFD, Deputy President

Percentage of care – other party had less than regular pattern of care – decision under review set aside and substituted

Education and Research

[Malek Fahd Islamic School Limited and Minister for Education and Training](#) [2016] AATA 1087 (23 December 2016); Deputy President BJ McCabe

Education funding – approved authority – where approval revoked – whether requirements for commonwealth funding under the act satisfied – whether not for profit – whether fit and proper person – where commonwealth financial assistance used for inappropriate expenditure – uncommercial transactions – where efforts to rectify made – where continued non-compliance with the act inevitable – decision under review affirmed

Immigration and Citizenship

[Allan and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 1077 (23 December 2016); Senior Member JF Toohey

Mandatory cancellation of visa – request for revocation of cancellation – character test – substantial criminal record – drug and alcohol abuse – Ministerial Direction No. 65 applied – whether another reason why original decision should be revoked – primary and other considerations – prospects of rehabilitation – best interests of child – employment prospects – decision under review set aside

[Anees and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 1090 (23 December 2016); Dr D Cremean, Senior Member

Application for Partner (Temporary) (Class UK) visa refused – failure to satisfy character test – applicant convicted of various violent and other crimes – whether serious risk to Australian community if applicant re-offended – whether Australian community would expect application to be refused – decision affirmed

Practice and Procedure

[TFS Manufacturing Pty Limited and Minister for Health](#) [2016] AATA 1069 (16 December 2016); Deputy President K Bean

Request to issue summons directed to third party material held by respondent – Respondent objection to issue of summons – Third parties' opposition to summons being issued – Applicable principles – Potential forensic purpose of summons – Request to issue summons declined

Social Security

[Arnold and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 1080 (23 December 2016); Senior Member P Britten-Jones

Eligibility for family tax benefit – FTB child ceasing to be in individual's care without consent – exercise of discretion to shorten qualifying period where special circumstances exist – determination of percentage of care – relationship between sections 23 and 35C of the A New Tax System (Family Assistance) Act 1999 – decision affirmed

[Bell and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 1088 (23 December 2016); Professor R McCallum AO, Member

Disability support pension – application rejected by Centrelink – whether applicant's conditions were fully diagnosed, treated and stabilised – whether applicant's impairments are rated 20 points or more under the Impairment Tables – continuing inability to work – decision affirmed

[Conroy and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 1089 (23 December 2016); Mr C Ermert, Member

Cancellation of Disability Support Pension – relevant date – whether person has a physical, intellectual or psychiatric impairment – whether the impairment is of 20 points or more under the Impairment Tables – mental health condition not diagnosed by psychiatrist or with evidence from clinical psychologist – mental health condition not fully diagnosed – unable to assign impairment rating – not qualified for Disability Support Pension – decision affirmed

[Finelli and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 1065 (22 December 2016); Senior Member RW Dunne

Family tax benefit – claim for payment of family tax benefit for a past period – whether special circumstances exist to extend the claim period – special circumstances found not to exist – decision under review affirmed

[Hansen and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 1091 (23 December 2016); Senior Member T Tavoularis

Disability support pension – whether Applicant had conditions that were fully diagnosed, treated and stabilised during relevant period – whether Applicant had 20 impairment points – Applicant has 20 impairment points – where impairments not severe – continuing inability to work – program of support – whether s 7 of the Active Participation Guidelines applies – s 7(3) does not apply – s 7(4) does not apply – where Applicant is prevented from completing a program of support solely because of her impairments – where s 7(5) of the Active Participation Guidelines applies – whether Applicant has a continuing inability to work – where Applicant has a continuing inability to work – decision under review set aside

[Kali and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 1078 (23 December 2016); Senior Member PE Nolan

Disability Support Pension – where application rejected - whether impairment rating of 20 points – whether fully diagnosed, fully treated and fully stabilised – whether continuing inability to work – relevant period – decision under review affirmed

[Woods and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 1092 (23 December 2016); Senior Member T Tavoularis

Centrelink overpayment – where Applicant had received benefits and payments as a single person – where Applicant had been married – whether Applicant was in a de facto relationship before marriage – whether Applicant was a member of a couple – special reason – whether there was a special reason for discretion to be exercised – whether Applicant should be considered a member of a couple – financial difficulty – unable to pool resources – wife subject to a NARWP – wife had to care for her family – 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

CASE NAME	AAT REFERENCE
Asian Food Creations Pty Ltd and Ors v Commissioner of Taxation	[2016] AATA 954
Rybarczyk v Secretary, Department of Social Services	[2016] AATA 1066
Whitehouse v Repatriation Commission	[2016] AATA 996
Lewski v Commissioner of Taxation	[2016] AATA 1010

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
None finalised		

Statements of Principles

This section of the *Bulletin* provides information on recent developments in relation to Statements of Principles made by the Repatriation Medical Authority for the purposes of the [Veterans' Entitlements Act 1986](#) and the [Military Rehabilitation and Compensation Act 2004](#).

New Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made the following new Statements of Principles. They take effect from **23 January 2017**.

Cirrhosis of the liver (Reasonable Hypothesis) – No. 1 of 2017

<https://www.legislation.gov.au/Details/F2017L00002>

Cirrhosis of the liver (Balance of Probabilities) – No. 2 of 2017

<https://www.legislation.gov.au/Details/F2017L00003>

Haemorrhoids (Reasonable Hypothesis) – No. 3 of 2017

<https://www.legislation.gov.au/Details/F2017L00004>

Haemorrhoids (Balance of Probabilities) – No. 4 of 2017

<https://www.legislation.gov.au/Details/F2017L00005>

Relapsing polychondritis (Reasonable Hypothesis) – No. 5 of 2017

<https://www.legislation.gov.au/Details/F2017L00006>

Relapsing polychondritis (Balance of Probabilities) – No. 6 of 2017

<https://www.legislation.gov.au/Details/F2017L00008>

Hookworm disease (Reasonable Hypothesis) – No. 7 of 2017

<https://www.legislation.gov.au/Details/F2017L00010>

Hookworm disease (Balance of Probabilities) – No. 8 of 2017

<https://www.legislation.gov.au/Details/F2017L00012>

Ascariasis (Reasonable Hypothesis) – No. 9 of 2017

<https://www.legislation.gov.au/Details/F2017L00015>

Ascariasis (Balance of Probabilities) – No. 10 of 2017

<https://www.legislation.gov.au/Details/F2017L00016>

Hepatitis D (Reasonable Hypothesis) – No. 11 of 2017

<https://www.legislation.gov.au/Details/F2017L00020>

Hepatitis D (Balance of Probabilities) – No. 12 of 2017

<https://www.legislation.gov.au/Details/F2017L00021>

Hepatitis B (Reasonable Hypothesis) – No. 13 of 2017

<https://www.legislation.gov.au/Details/F2017L00001>

Hepatitis B (Balance of Probabilities) – No. 14 of 2017

<https://www.legislation.gov.au/Details/F2017L00007>

Amended Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made the following instruments amending the Statements of Principles for the specified conditions:

Malignant neoplasm of the prostate – No. 2 of 2017 (took effect on **21 September 2016**)

<https://www.legislation.gov.au/Details/F2017L00019>

The following Amendment Statements of Principles they take effect from **23 January 2017**:

Otitic barotrauma – No. 15 of 2017

<https://www.legislation.gov.au/Details/F2017L00009>

Otitic barotrauma – No. 16 of 2017

<https://www.legislation.gov.au/Details/F2017L00011>

Sinus barotrauma – No. 17 of 2017

<https://www.legislation.gov.au/Details/F2017L00013>

Sinus barotrauma – No. 18 of 2017

<https://www.legislation.gov.au/Details/F2017L00014>

Malignant neoplasm of the prostate – No. 19 of 2017

<https://www.legislation.gov.au/Details/F2017L00017>

Malignant neoplasm of the prostate – No. 19 of 2017

<https://www.legislation.gov.au/Details/F2017L00017>

Malignant neoplasm of the oesophagus (Reasonable Hypothesis) – No. 21 of 2017

<https://www.legislation.gov.au/Details/F2017L00018>

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