



Administrative
Appeals Tribunal

AAT Bulletin

Issue No. 15/2017

10 April 2017

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.

Contents

AAT Recent Decisions	3
Compensation	3
Freedom of information	3
Migration.....	3
Practice and Procedure.....	4
Social Security.....	4
Veterans' Entitlements	5
Appeals	6
Appeals lodged.....	6
Appeals finalised	6
Statements of Principles	7
New Statements of Principles	7
Amended Statements of Principles	7
Repealed Statements of Principles	7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. 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

[Cooper and Military Rehabilitation and Compensation Commission](#) (Compensation) [2017] AATA 429 (6 April 2017); Senior Member J Sosso

Compensation – claim for compensation of an injury – cancer condition a result of smoking while enlisted in the RAN – applicant did not smoke prior to enlisting in RAN – applicant was 15 years old when enlisted and served for 23 years – gave up smoking when retired from RAN – decision set aside and remitted

[Corbett and Australian Air Express Pty Ltd](#) (Compensation) [2017] AATA 430 (6 April 2017); Ms R Perton, Member

Aggravation of disease – whether liability still exists – whether evidence for fresh diagnosis – decisions affirmed

[Kovac and TNT Australia Pty Ltd](#) (Compensation) [2017] AATA 426 (6 April 2017); Senior Member W Stefaniak AM RFD, Dr M Couch, Member

Workers compensation – description of injury – whether injury should be described as lower back strain – whether injury should be described as lower back injury with left leg pain – whether previous determinations should be changed to reflect description – decision set aside and substituted

Freedom of information

[Farrell; Secretary, Department of Immigration and Border Protection](#) (Freedom of information) [2017] AATA 409 (31 March 2017); Deputy President, the Hon D Cowdroy OAM QC

Access to documents – whether exempt – 'public interest' – 'security of the Commonwealth' – power of the Commonwealth – watch officer logs from vessels involved in turnback activities – decision affirmed

Migration

[Tuimaseve and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 413 (31 March 2016); Deputy President SA Forgie, Senior Member A Nikolić and Ms A Burke, Member

Mandatory cancellation of visa as applicant failed to pass character test due to substantial criminal record – whether discretion to revoke mandatory cancellation of visa should be exercised – decision affirmed

Practice and procedure – administrative review – surveillance material – ongoing obligation imposed by s 38AA of the Administrative Appeals Tribunal Act 1975 – confidentiality application can be made over evidentiary material – application for confidentiality itself to be disclosed, not the material over which application for confidentiality is made and for which confidentiality is sought

[Zbib and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 412 (4 April 2017); Deputy President JW Constance

Immigration – partner visa refusal – failure to pass the character test – whether to exercise s 501(1) discretion to refuse on character grounds – applicant convicted of act of indecency against a minor prior to arriving in Australia – two years’ imprisonment – whether conviction subsequently ‘expunged’, ‘deleted’ or ‘removed’, effect of – protection of the Australian community – expectations of the Australian community – impact on family members – best interests of child – decision set aside and remitted

Practice and Procedure

[Tighe and Secretary, Department of Social Services](#) [2017] AATA 408 (31 March 2017); Senior Member Mrs JC Kelly

Practice and procedure – extension of time – application for review lodged out of time – whether satisfactory or acceptable explanation for delay – whether prejudice to the respondent – merits of substantive application – Tribunal not satisfied that reasonable in all the circumstances to grant extension of time – application for extension of time refused – reinstatement of application refused

Social Security

[Afghani and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 410 (4 April 2017); Mr DJ Morris, Member

Family Tax Benefit (FTB) – whether respondent entitled to FTB top ups and supplementary amounts – late lodgement of tax return – whether applicant’s husband prevented by special circumstances from lodging tax return in relevant income year – the test of ‘special circumstances’ – meaning of ‘prevent’ – original decision affirmed

[Harrison and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 411 (31 March 2016); Dr L Bygrave, Member

Family tax benefit – age pension – whether applicant is residentially qualified to receive the age pension – whether applicant an Australian resident to receive the family tax benefit – applicant found to be not residentially qualified or an Australian resident – applicant overpaid family tax benefit – whether debt to Commonwealth should be waived – decision affirmed

[Kertesz and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 423 (5 April 2017); Ms DK Grigg, Member

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

[Kruscic and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 427 (7 April 2017); Senior Member Mrs JC Kelly

Age pension – qualifying Australian residence – whether applicant was an Australian resident – Tribunal not satisfied applicant was an Australian resident – decision under review affirmed

[Quinn and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 431 (6 April 2017); Mr A Cameron, Member

Application for disability support pension – whether qualified – whether impairments attract a rating of 20 points or more under Impairment Tables – decision under review affirmed

[Sproule and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 424 (6 April 2017); Senior Member AF Cunningham

Cancellation of Disability Support Pension – qualification requirements – super ventricular tachycardia (SVT) condition – impairment rating of 20 points not satisfied – continuing inability to work provisions not satisfied – decision under review affirmed

[Williams and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 414 (4 April 2017); Ms A Burke, Member

Pensions benefits and allowances – family tax benefit – cancellation of benefit based on partner's income being in excess of the payment threshold – review of entitlement to family tax benefit – applicant in multiple relationship – member of a couple – decision affirmed

[Wise and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 428 (16 February 2017); Senior Member B Stefaniak AM RFD

Disability support pension – refused – whether qualified – whether impairments fully diagnosed, fully treated and fully stabilised – whether impairments attract 20 points or more on Impairment Tables – decision under review affirmed

Veterans' Entitlements

[Hardy and Repatriation Commission](#) (Veterans' Entitlements) [2017] AATA 425 (5 April 2017); Deputy President K Bean

Whether veteran aged over 65 entitled to pension at special rate – Whether by reason of incapacity resulting from his war-caused disabilities, veteran incapable of undertaking remunerative work for more than 8 hours per week – Whether veteran had been employed by same person for 10 years prior to ceasing employment – 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

None lodged

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, which **commenced** on **27 March 2017**:

Spondylolisthesis and spondylolysis (Balance of Probabilities) - No. 25 of 2017

<https://www.legislation.gov.au/Details/F2017L00167>

Spondylolisthesis and spondylolysis (Reasonable Hypothesis) - No. 24 of 2017

<https://www.legislation.gov.au/Details/F2017L00165>

Amended Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made amendments to the following Statements of Principles. The amendments **took effect** on **27 March 2017**:

Suicide and attempted suicide (Balance of Probabilities) - No. 66 of 2016

<https://www.legislation.gov.au/Details/F2016L01149>

Suicide and attempted suicide (Reasonable Hypothesis) - No. 65 of 2016

<https://www.legislation.gov.au/Details/F2016L01145>

Repealed Statements of Principles

The AAT has been advised that the following Statements of Principles determined by the Repatriation Medical Authority **ceased** on **27 March 2017**:

Presbyopia - No. 117 of 2007

<https://www.legislation.gov.au/Details/F2007L04292>

Presbyopia - No. 118 of 2007

<https://www.legislation.gov.au/Details/F2007L04293>

Spondylolisthesis and spondylolysis - No. 60 of 2015

<https://www.legislation.gov.au/Details/F2015L00263>

Spondylolisthesis and spondylolysis - No. 59 of 2015

<https://www.legislation.gov.au/Details/F2015L00262>

© Commonwealth of Australia 2016



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](https://creativecommons.org/licenses/by/3.0/au/). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <http://www.itsanhonour.gov.au/coat-arms/>.

Enquiries regarding the licence are welcome at aatweb@aat.gov.au.

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](https://www.austlii.edu.au/au/other/dfat/page/aaat.html).