



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.

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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

[Haskins and Comcare](#) (Compensation) [2017] AATA 8 (10 January 2017); Dr J Popple, Senior Member

Commonwealth employees – Applicant suffered psychological condition as result of counselling session – whether counselling session was reasonable administrative action taken in a reasonable manner in respect of the Applicant's employment – decision under review affirmed

[Walker and Military Rehabilitation and Compensation Commission](#) (Compensation) [2017] AATA 9 (9 January 2017); Senior Member J Sosso

Entitlements – whether Commission must accept liability – claimed conditions head/spinal injury – post traumatic stress disorder (PTSD) whether Applicant suffers from claimed conditions – where it is uncertain when claimed conditions commenced – where little evidence of triggering event decision under review affirmed

[WFLT and Military Rehabilitation and Compensation Commission](#) (Compensation) [2016] AATA 1072 (22 December 2016); Miss EA Shanahan, Member

Normal weekly earnings – Special Forces Disability Allowance – physical and mental injury sustained in the war in Afghanistan – desire to remain in special forces regiment until retirement age – unfit for active service – transfer to a division with no entitlement to SFDA – discharged on medical grounds – remains incapacitated – decision set aside

Immigration and Citizenship

[LQVM and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 7 (9 January 2017); Ms R Perton, Member

Refusal of protection visa – character test – substantial criminal record – discretion to refuse visa enlivened – drug cultivation and trafficking offences – protection of Australian community – risk to the Australian community should the conduct be repeated – whether risk of future harm acceptable – best interests of minor grand-daughter in Australia – international non-refoulement obligations – decision under review set aside

[Oswald and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 6
(12 January 2017); Dr C Kendall, Deputy President

Mandatory cancellation of applicant's visa – applicant has substantial criminal record and does not pass the character test – whether discretion to revoke mandatory cancellation should be exercised – primary and other relevant considerations considered – decision under review affirmed

Practice and Procedure

[Kraues and Migration Agents Registration Authority](#) [2016] AATA 1086 (23 December 2016);
Senior Member JF Toohey

Jurisdiction to review decision to cancel registration as migration agent – whether Tribunal has power to make declaration of invalidity – whether applicant denied procedural fairness – onus of proof in administrative proceedings

IMMIGRATION AND CITIZENSHIP – migration agent – cancellation of registration – whether applicant not a person of integrity or otherwise not a fit and proper person to give immigration assistance decision – whether applicant had not complied with the Code of Conduct – immigration assistance – decision under review affirmed

[Ristic and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 2 (11 January 2017); Brigadier AG Warner, Member

Reinstatement of application – whether original application dismissed in error – whether circumstances warrant exercise of discretion – Tribunal has no power to reinstate application – application for reinstatement of application refused

Social Security

[Curtis and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 14 (12 January 2017); Senior Member AC Cotter

Disability support pension – requirement that the person's impairment is of 20 points or more under the Impairment Tables not met – person has not actively participated in a program of support – requirement that the person has a continuing inability to work not met – decision under review affirmed

[Henein and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 10 (5 January 2017); Ms R Pertou, Member

Disability support pension – whether medical conditions fully diagnosed, treated and stabilised at time of claim or within 13 weeks of that date – points to be allocated – some conditions not fully diagnosed, treated and stabilized – insufficient points to qualify for disability support pension – resident for less than 10 years – whether medical conditions arose before or after migration – decision affirmed

[Jones and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 4 (6 January 2017); Deputy President K Bean and Senior Member P Britten–Jones

Disability support pension – Whether applicant actively participated in a program of support – Applicant enrolled in program but was exempted by a medical certificate – Consideration of Social Security (Requirements and Guidelines – Active Participation for Disability Support Pension) Determination 2011 – Whether requirements for active participation in subs 5(1) are satisfied – Decision under review affirmed

[Kazzi and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 3 (6 January 2017); Mrs JC Kelly, Senior Member

Disability support pension – multiple conditions – whether applicant's conditions were fully diagnosed, treated and stabilised – whether applicant's impairments are rated 20 points or more under the Impairment Tables – spinal condition awarded 10 points under Table 4 – decision affirmed

[Lemon and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 11 (4 January 2017); Member I Thompson

Disability support pension – whether applicant's medical conditions were fully diagnosed, fully treated and fully stabilised during the assessment period – whether the applicant has a severe impairment – decision under review affirmed

[Morgan and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 15 (11 January 2017); Member DK Grigg

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

[Murphy and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 16 (13 January 2017); Member DK Grigg

Austudy allowance – overpayment – where applicant did not notify of change of circumstances – where no administrative error – where no special circumstances – decision under review affirmed

[Pikoulas and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 12 (10 January 2017); Ms N Isenberg, Senior Member

Age pension – Dutch pension as income – estopped from reconsidering whether Dutch pension is income – intention to use proceeds of sale from former principal home towards a new principal home – homeowner – financial assets – decision set aside and remitted

[Smolski and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 13 (4 January 2017); 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 – not qualified for DSP – decision affirmed

[Triantafillou and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 5 (12 January 2017); Brigadier AG Warner, Member

Disability support pension – whether applicant’s impairments were fully diagnosed, treated and stabilised – whether applicant’s impairments attract 20 points under Impairment Tables – decision under review affirmed

Veterans' Affairs

[Scott and Repatriation Commission](#) (Veterans’ entitlements) [2017] AATA 1 (11 January 2017); Brigadier AG Warner, Member

War widow’s pension – operational service – whether death war-caused – Statement of Principles No. 75 of 2012 as amended by Amendment Instrument No. 37 of 2016, concerning acute lymphoblastic leukaemia – factor 6(b), being exposed to benzene as specified – whether reasonable hypothesis connecting death to service – material found not to raise reasonable hypothesis – veteran’s death not war-caused – decision affirmed

[Sheridan and Repatriation Commission](#) (Veterans’ entitlements) [2017] AATA 17 (12 January 2017); Dr D Cremean, Senior Member

Claim for diabetes mellitus (type 2) – accepted condition of lumbar spondylosis – whether such condition caused the Applicant’s obesity – whether diabetes caused by lumbar spondylosis – no connection – 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
Malek Fahd Islamic School Limited v Minister for Education and Training	[2016] AATA 1087
Australian Securities and Investment Commission v McCormack	[2016] AATA 1021

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
None finalised		

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