



Administrative  
Appeals Tribunal

# AAT Bulletin

**Issue No. 4/2018**

**5 February 2018**

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](mailto:aatweb@aat.gov.au).

# Contents

<b>AAT Recent Decisions .....</b>	<b>3</b>
Migration.....	3
Practice and Procedure.....	3
Professions and Trades .....	3
Social Security .....	4
Veterans' Affairs.....	4
<b>Appeals.....</b>	<b>5</b>
Appeals lodged .....	5
Appeals finalised.....	5
<b>Jurisdiction and legislative changes .....</b>	<b>Error! Bookmark not defined.</b>

# 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.

## Migration

[CBYQ and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 91 (31 January 2018); Deputy President JW Constance and Senior Member C Puplick AM

MIGRATION – visa – refusal – character test – consideration of past and present criminal conduct – consideration of past and present general conduct – whether there is a risk the Applicant would engage in criminal conduct if allowed to remain in Australia – offences – unlawful assault – breaches of Family Violence Order – unlawfully residing in Australia and two other countries – must consider all relevant circumstances of the particular case – no more than minimal or remote risk of engaging in criminal conduct – Applicant passes the character test – consideration of whether the discretion to refuse to grant the visa should be exercised – protection of Australian community – no more than a minimal or remote risk of re-offending – expectations of Australian community – genuine fears for life and physical safety if returned to country of birth – international non-refoulement obligations owed – decision set aside and remitted for reconsideration

## Practice and Procedure

[Francis and Inspector-General in Bankruptcy](#) [2018] AATA 92 (31 January 2018); Deputy President SA Forgie

BANKRUPTCY – PRACTICE AND PROCEDURE – directions hearing – request for reasons – no direction made – matter adjourned to allow discussions – explanation given but no obligation to give reasons for a decision made on a procedural step in the proceedings that does not resolve an issue.

[Western Institute of Technology Pty Ltd and Australian Skills Quality Authority](#) [2018] AATA 94 (25 January 2018); Senior Member DJ Morris

PRACTICE AND PROCEDURE – application to vary stay order provisions – Tribunal's discretion wide – principles to take into account – principles of Acts under which original decision made relevant – hearing not considering substantive review of original decision – steps towards compliance relevant to substantive review – application to vary stay order refused

## Professions and Trades

[Peterson and Tax Practitioners Board](#) [2018] AATA 93 (31 January 2018); Deputy President SA Forgie

TAX AGENT – registration – whether breaches of code of professional conduct – decision affirmed

## **Social Security**

[Hawkins and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 108 (1 February 2018); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY – carer payment – whether Applicant provides constant care – whether Applicant provides constant care in a private residence that is the home of the care receiver – Applicant ‘on-call’ – reviewable decision set aside.

[Hughson and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 89 (30 January 2018); Ms A Wood, Member

SOCIAL SECURITY – disability support pension – impairment - whether disability is fully treated and fully stabilised – application fails – decision affirmed

[Kirwan and Secretary, Department of Health](#) (Social services second review) [2018] AATA 109 (31 January 2018); Deputy President J Sosso

HEALTH – aged care – assessment of value of Applicant’s assets – were the premises the Applicant’s principal home – close relation – whether premises occupied for past five years – whether close relation had life interest in the premises – decision under review affirmed

## **Veterans' Affairs**

[Manwaring and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 88 (30 January 2018); Deputy President J Sosso

VETERANS AFFAIRS – war widow’s pension – whether death of veteran was war caused – prostate cancer – claim that veteran’s service led to change in diet and to continuing high animal fat intake – relevant service – no evidence linking increased intake to operational service – decision under review 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
<b>McDonald and Secretary, Department of Social Services</b>	<a href="#">[2017] AATA 2282</a>
<b>Sheehan and Comcare</b>	<a href="#">[2017] AATA 2777</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>KRJF v Minister for Immigration and Border Protection and Anor</b>	<a href="#">[2017] AATA 1223</a>	<a href="#">[2018] FCCA 150</a>
<b>Migration Agents Registration Authority v Frugtniet</b>	<a href="#">[2016] AATA 299</a>	<a href="#">[2018] FCAFC 5</a> <a href="#">[2017] FCA 537</a>
<b>Saltmarsh v Repatriation Commission</b>	<a href="#">[2016] AATA 178</a>	<a href="#">[2018] FCA 28</a>

© 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](mailto: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).