



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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Enquiries regarding this publication may be directed to 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. 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.

Citizenship

[Judd and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 239 (28 February 2017), Senior Member Mrs JC Kelly

General residence requirements – ministerial discretion where general residence requirements not met – close and continuing association with Australia – family connection – return visits – intention to reside in Australia – assets remaining in Australia – community participation – decision affirmed

Compensation

[Cook and Comcare](#) (Compensation) [2017] AATA 227 (23 February 2017); Senior Member S Raymond

Rehabilitation program – alteration – whether extension of program available – voluntary redundancy – where employee no longer incapacitated – exercise of discretion as to whether program should be extended and its contents altered – decision under review affirmed

[Kovac and TNT Australia Pty Ltd](#) (Compensation) [2017] AATA 234 (28 February 2017); Senior Member W Stefaniak AM RFD, Dr M Couch, Member

Workers compensation – entitlement to compensation for medical expenses – entitlement to incapacity payments – back injury – whether nature and conditions of the Applicant's work contributed to a significant degree to ongoing back condition – whether Applicant presently suffers from the effect of the injury – where conflicting medical evidence – decisions set aside and substituted

[Oliver and Comcare](#) (Compensation) [2017] AATA 252 (28 February 2017); Deputy President G Humphries

Whether physiotherapy treatment 'in relation to' accepted condition – fibromyalgia – regional pain syndrome – upper body – not reasonable to obtain ongoing treatments – where treatment of no long term benefit to worker – where no transition to self-management undertaken – worker 'dependent' on treatment – ongoing medical treatment by physiotherapist questioned – incomplete or irregular medical evidence – irregular accounting records – where no ongoing entitlement to treatment under s 16 – decision set aside and substituted.

[Pickering and Australian Postal Corporation](#) (Compensation) [2017] AATA 241 (28 February 2017); Senior Member Mrs JC Kelly

Aggravation of degenerative changes in lumbar spine - whether ongoing incapacity or entitlement to medical expenses – conflicting medical evidence - decision affirmed

[Thompson and Comcare](#) (Compensation) [2017] AATA 259 (28 February 2017): Senior Member JF Toohey

Psychological injury – accepted that employment contributed to significant degree – whether Comcare not liable by reason of reasonable administrative action taken in a reasonable manner in respect of employee’s employment – decision under review affirmed

Freedom of Information

[Brooks and Secretary, Department of Defence](#) (Freedom of information) [2017] AATA 258 (14 February 2017); Deputy President JW Constance

Request for access – refusal to confirm or deny existence of document – exempt document under section 33 – security of the Commonwealth – defence of the Commonwealth – international relations of the Commonwealth – mosaic theory – whether section 25(2) notice can be given only if exempt document in existence – whether section 25(2) only requires consideration of a hypothetical document – decision affirmed

Migration

[ETWK and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 228 (23 February 2017); Deputy President SA Forgie

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

Evidence – relevance of doli incapax principle – weight that should be assigned to evidence of uncharged acts - Tribunal able to take into consideration evidence from investigations into uncharged acts of a child as indicative of behavioural history

Practice and Procedure – confidentiality - publication of name of person dealt with in youth justice system as a child prohibited by State legislation – whether Tribunal subject to prohibition – Tribunal subject to prohibition – confidentiality order made

[Hodson and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 254 (1 March 2017); Senior Member T Tavoularis

Visa refusal – Applicant is a citizen of the United Kingdom – Applicant applied for a student visa – s 501 character test – Applicant has a history of offending in the UK – should discretion to refuse visa be exercised – whether primary considerations weigh against or in favour of exercising the discretion – discretion to refuse Applicant’s visa should not be exercised – decision under review is set aside and substituted - Applicant’s visa should be granted

[Miller and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 256 (28 February 2017); Deputy President Dr P McDermott RFD

Cancellation of visa on character grounds – applicant does not pass the character test – sentenced to a term imprisonment totalling more than 12 months – the protection of the Australian community from criminal or other serious conduct relevant – expectations of Australian community not met – no other reason why the original decision should be revoked - decision under review affirmed

[Samson and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 257 (1 March 2017); Deputy President Dr P McDermott RFD

Cancellation of visa on character grounds – applicant does not pass the character test – sentenced to a term imprisonment totalling more than 12 months – the protection of the Australian community from criminal or other serious conduct relevant – expectations of Australian community not met – no other reason why the original decision should be revoked - decision under review affirmed

[Usoalli and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 260 (3 March 2017); Deputy President JW Constance

Visa cancellation – character test – protection of the Australia community – serious conduct – robbery in company – assault – best interests of minor children – expectations of Australian community – strength, nature and duration of ties to Australia – decision affirmed

National Disability Insurance Scheme

[Nairn and National Disability Insurance Scheme Agency](#) [2017] AATA 242 (28 February 2017); Deputy President SA Forgie

Characterisation of decision made by delegate of Chief Executive Officer – whether decision not to review plan or decision approving statement of participant supports – decision not to review plan.

Jurisdiction – Tribunal’s jurisdiction to review decisions under the National Disability Insurance Scheme Act 2013 limited to those made by a reviewer under s 100(6) and so to operative decisions described as “reviewable decisions” in s 99.

Practice and Procedure

[Phillips and Comcare](#) (Compensation) [2016] AATA 1063 (22 December 2016); Deputy President G Humphries

Extension of time application under section 29(7) – application 14 months out of time – application has merit – where applicant provides acceptable explanation for delay – where no prejudice to other party – extension of time granted

Social Security

[Brittain and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 253 (28 February 2017); Senior Member PE Nolan

Pensions – disability support pension – shoulder condition – back condition – lower limb condition – mental health condition - morbid obesity – whether 20 points under the Impairment Tables – decision under review affirmed

[Impiombato and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 237 (27 February 2017); Senior Member DR Davies

Carer's Pension and Disability Support Pension – debt to Commonwealth – basis to write off or waive recovery of debt – “knowingly” make false or misleading statements - special circumstances.

[Morgan and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 236 (24 February 2017); Senior Member J Sosso

Disability support pension – cancellation – whether Applicant's conditions attract 20 points or more – whether conditions fully diagnosed, treated and stabilised – whether conditions permanent – impairment ratings – continuing inability to work – decision under review affirmed

[Thomson and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 255 (1 March 2017); Mr C Ermert, Member

Disability Support Pension and Age Pension payments - whether member of a couple - whether a de facto relationship - financial aspects - nature of the household - social aspects - sexual relationship - nature of commitment to each other - assessment of overall relationship - failure to call witnesses - whether open to conclude evidence not favourable - decision set aside - relationship not de facto - no overpayment - no debt - remit for recalculation of benefits and payments

[Towner; Secretary, Department of Social Services and](#) (Social services second review) [2017] AATA 240 (24 February 2017); Dr L Bygrave, Member

Disability support pension – multiple conditions – whether applicant's impairments are rated 20 points or more under the Impairment Tables – whether Applicant has a continuing inability to work – spine condition – upper limb condition – other conditions - decision set aside and substituted

[Wu; Secretary, Department of Social Services and](#) (Social services second review) [2017] AATA 235 (7 February 2017); Senior Member JF Toohey

Disability Support Pension – whether applicant qualified – first tribunal satisfied applicant qualified – additional medical information available on review – whether applicant's impairments fully diagnosed treated and stabilised during claim period – whether impairments rated 20 points or more – program of support – Tribunal not satisfied applicant qualified during claim period – decision under review set aside

Taxation

[RGGW and Commissioner of Taxation](#) (Taxation) [2017] AATA 238 (20 February 2017); Deputy President SE Frost

Carry forward losses – whether tax losses available – continuity of ownership – multiple formulations of test – continuity of ownership period – same business test – same business test period – complex family corporate structure – tax shortfalls – intentional disregard – recklessness – objection decisions in relation to income tax assessments affirmed – objection decisions in relation to administrative penalty set aside and remitted in part

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
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None lodged

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
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Comcare v Bromham	[2016] AATA 484	[2017] FCA 174
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Charan & Anor v Secretary, Department of Social Services	[2015] AATA 760	[2016] FCA 486 [2016] FCAFC 175 [2017] HCASL 35
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Fard v Secretary, Department of Immigration and Border Protection	[2015] AATA 790	[2016] FCA 417 [2016] FCAFC 155 [2017] HCASL 30
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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 27 March 2017.

Presbyopia (Balance of Probabilities) - No. 23 of 2017

<https://www.legislation.gov.au/Details/F2017L00173>

Presbyopia (Reasonable Hypothesis) - No. 22 of 2017

<https://www.legislation.gov.au/Details/F2017L00172>

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. They take effect from 27 March 2017.

Suicide and attempted suicide (Balance of Probabilities) - No. 27 of 2017

<https://www.legislation.gov.au/Details/F2017L00175>

Suicide and attempted suicide (Reasonable Hypothesis) - No. 26 of 2017

<https://www.legislation.gov.au/Details/F2017L00174>

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