



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 information about decisions of interest recently published in the AAT's Migration & Refugee 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 Divisions as well as about select decisions recently published in 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

[Haidari and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 128 (3 March 2016); Professor R McCallum AO, Member

Eligibility – whether applicant satisfied the awareness, English and knowledge criteria for Australian citizenship – whether the applicant was suffering from a permanent or enduring physical or mental incapacity – Tribunal not satisfied that applicant's limited English language abilities a result of mental incapacity – decision under review affirmed

[Jackson and Minister for Immigration and Border Protection](#) (Citizenship) [2016] AATA 133 (29 February 2016); Deputy President SE Frost

Whether Tribunal satisfied that the applicant is of good character – multiple traffic offences – drug offence – failure to provide candid responses in citizenship application form – decision affirmed

Compensation

[Bui and Australian Postal Corporation](#) (Compensation) [2016] AATA 135 (8 March 2016); Deputy President SA Forgie

Whether injury or aggravation of injury in relevant period – decision affirmed

Migration and Refugee

Migration

[1507309](#) (Migration) [2016] AATA 3285 (11 February 2016); M Holmes, Senior Member

Student (Temporary) (Class TU) visa Subclass 572 – cl 572.223 – Whether genuine intention to stay in Australia temporarily – Applicant undertook a series of unrelated courses – Limited ties to Korea – Plans to settle in Australia – Using student visa program to remain in Australia – Decision under review affirmed

[1515763](#) (Migration) [2016] AATA 3281 (17 February 2016); M Grau, Member

Visitor (Class FA) visa – Japan – Subclass 600 (Visitor) – cl 600.211 – Whether applicant intends to stay temporarily – Limited ties and incentive to return to Japan – Moved his belongings to Australia – Seeking an alternative life in Australia – Previously held Student and Visitor visas – Lack of funds – May work or study in breach of visa conditions – Decision under review affirmed

[1515847](#) (Migration) [2016] AATA 3361 (22 February 2016); M Bourke, Member

Cancellation – Subclass 100 (Spouse) visa – s 101(b) – provision of incorrect information in application – Sponsor and applicant relationship has ended – Decision under review affirmed

[1512427](#) (Migration) [2016] AATA 3309 (24 February 2016); S Georgiadis, Member

Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – cl 187.233 – No approved nomination – Nominator employer did not appear for scheduled review hearing – Nominator refusal matter finalised prior to hearing of visa application – Decision under review affirmed

[1505465](#) (Migration) [2016] AATA 3312 (24 February 2016); M Cooke, Member

Child (Migrant) (Class AH) visa – Subclass 101 (Child) – cl 101.213 – cl 101.221 – Whether applicant undertook full-time study at educational institution leading to award of professional, trade or vocational qualification – Delegate's definition of educational institution restrictive according to departmental policy – Continuous full-time study after completing year 12 – Institution awards diplomas and certificates – Decision under review remitted

Refugee

[1416750](#) (Refugee) [2016] AATA 3318 (12 February 2016); C Carney, Member

Protection visa – Tonga – Fears harm by relative – Threats from rival gangs and criminals – Credibility issues – Decision under review affirmed

[1417971](#) (Refugee) [2016] AATA 3319 (15 February 2016); P Hunter, Member

Protection visa – China – Religion – Shouters – Committed and active members of the Local Church – Church considered an evil cult – Imprisonment of family and church members – Decision under review remitted

[1501250](#) (Refugee) [2016] AATA 3323 (16 February 2016); T Caravella, Member

Protection visa – China – Complementary protection provisions – Religion – Christianity – Catholic – Property dispute – Credibility issues – Inconsistent and fabricated evidence – Unlawful in Australia for many years – Decision under review affirmed

[1419064](#) (Refugee) [2016] AATA 3324 (17 February 2016); S Pinto, Member

Protection visa – Pakistan – Imputed political opinion – Refused to help Taliban – Refusal to recruit young men to join Taliban – Credibility issues – Numerous trips to and from Pakistan without experiencing harm – Delay in applying for protection – Decision under review affirmed

[1417195](#) (Refugee) [2016] AATA 3325 (19 February 2016); T Flood, Member

Protection visa – Bangladesh – Political opinion – Extortion attempts by opposition party members – Animosity from other shop owners – Falsely accused of murder – Credibility issues – Decision under review affirmed

Practice and Procedure

[Coombs and Hartwig Air Group Pty Ltd](#) [2016] AATA 137 (15 February 2016); Deputy President K Bean

Jurisdiction – Request for re-crediting of VET FEE-HELP balance on the grounds of "special circumstances" – Where VET provider's decision has not been reconsidered by the Secretary – No jurisdiction – Further request for re-crediting on the basis that the VET provider ceased to provide the course – No decision made by VET provider – Enactment does not confer jurisdiction on Tribunal to review decisions of that kind – Application dismissed

[Dr Ageless Pty Ltd and Commissioner of Taxation](#) (Taxation) [2016] AATA 136 (8 March 2016); Deputy President SA Forgie

Fees – reduced fee – corporate applicant requested fee reduction on basis of financial hardship – request on basis of financial hardship not restricted to applicants who are individuals – request for reduction refused – no application for review of decision

Dismissal – prescribed fee not paid on lodgement or subsequently – request for reduced fee on basis of concessional circumstances refused – opportunity to provide further information to support request for reduced fee – further information provided relating to garnishee notice but not to financial circumstances – prescribed fee not paid – appropriate opportunity given to pay prescribed fee or provide further information – application dismissed

[Mitchell and Comcare](#) (Compensation) [2016] AATA 141 (11 March 2016); Deputy President SA Forgie

Conditional withdrawal – nature of withdrawal – whether conditional withdrawal constitutes a withdrawal – power of Tribunal to consider substantive issues without a hearing – failure of applicant to proceed with application or comply with direction within reasonable time – application dismissed

Social Security

[Fletcher and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 140 (9 March 2016); Senior Member AC Cotter

Disability support pension – DSP – whether 20 points or more under the impairment tables during the relevant period – whether conditions are fully diagnosed, treated and stabilised – value of medical evidence – whether continuing inability to work – decision under review affirmed

[Foote and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 131 (4 March 2016); Deputy President K Bean

Disability support pension – whether applicant's conditions fully diagnosed, treated and stabilised – Rateable impairments do not attract 20 points under Impairment Tables – decision under review affirmed

[Ryan and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 132 (4 March 2016); Mr C Ermert, Member

Disability Support Pension – qualification period – physical, intellectual or psychiatric impairments – whether impairments attracted a rating of 20 points or more – decision affirmed

[Tamay and Secretary, Department of Social Services](#) (Social services second review) [2016]
AATA 142 (11 March 2016); Mr C Ermert, Member

Disability Support Pension – unlimited portability – severe impairment – 20 impairment points under a single table – decision affirmed

[Zubac and Secretary, Department of Social Services](#) (Social services second review) [2016]
AATA 134 (7 March 2016); Dr I Alexander, Member

Disability support pension – whether conditions fully diagnosed, treated and stabilised – impairment ratings – continuing inability to work – “severe impairment” during claim period – lumbar spine condition – knee condition – chronic post-traumatic stress disorder – alcoholism – 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. They take effect from **4 April 2016**.

Non-melanotic malignant neoplasm of the skin (Reasonable Hypothesis) – No. 7 of 2016

<https://www.legislation.gov.au/Details/F2016L00239>

Non-melanotic malignant neoplasm of the skin (Balance of Probabilities) – No. 8 of 2016

<https://www.legislation.gov.au/Details/F2016L00241>

Myopia, hypermetropia and astigmatism (Reasonable Hypothesis) – No. 9 of 2016

<https://www.legislation.gov.au/Details/F2016L00245>

Myopia, hypermetropia and astigmatism (Balance of Probabilities) – No. 10 of 2016

<https://www.legislation.gov.au/Details/F2016L00246>

Malignant neoplasm of the endometrium (Reasonable Hypothesis) – No. 11 of 2016

<https://www.legislation.gov.au/Details/F2016L00243>

Malignant neoplasm of the endometrium (Balance of Probabilities) – No. 12 of 2016

<https://www.legislation.gov.au/Details/F2016L00244>

Eating disorder (Reasonable Hypothesis) – No. 13 of 2016

<https://www.legislation.gov.au/Details/F2016L00261>

Eating disorder (Balance of Probabilities) – No. 14 of 2016

<https://www.legislation.gov.au/Details/F2016L00264>

Diverticular disease of the colon (Reasonable Hypothesis) – No. 15 of 2016

<https://www.legislation.gov.au/Details/F2016L00265>

Diverticular disease of the colon (Balance of Probabilities) – No. 16 of 2016

<https://www.legislation.gov.au/Details/F2016L00266>

Benign prostatic hyperplasia (Reasonable Hypothesis) – No. 17 of 2016

<https://www.legislation.gov.au/Details/F2016L00240>

Benign prostatic hyperplasia (Balance of Probabilities) – No. 18 of 2016

<https://www.legislation.gov.au/Details/F2016L00242>

Polymyalgia rheumatica (Reasonable Hypothesis) – No. 19 of 2016

<https://www.legislation.gov.au/Details/F2016L00249>

Polymyalgia rheumatica (Balance of Probabilities) – No. 20 of 2016

<https://www.legislation.gov.au/Details/F2016L00259>

Systemic lupus erythematosus (Reasonable Hypothesis) – No. 21 of 2016

<https://www.legislation.gov.au/Details/F2016L00262>

Systemic lupus erythematosus (Balance of Probabilities) – No. 22 of 2016

<https://www.legislation.gov.au/Details/F2016L00274>

Adjustment disorder (Reasonable Hypothesis) – No. 23 of 2016

<https://www.legislation.gov.au/Details/F2016L00269>

Adjustment disorder (Balance of Probabilities) – No. 24 of 2016

<https://www.legislation.gov.au/Details/F2016L00270>

Lyme disease (Reasonable Hypothesis) – No. 25 of 2016

<https://www.legislation.gov.au/Details/F2016L00254>

Lyme disease (Balance of Probabilities) – No. 26 of 2016

<https://www.legislation.gov.au/Details/F2016L00255>

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 **4 April 2016**.

Diabetes mellitus – No. 27 of 2016

<https://www.legislation.gov.au/Details/F2016L00276>

Diabetes mellitus – No. 28 of 2016

<https://www.legislation.gov.au/Details/F2016L00278>

Depressive disorder (Reasonable Hypothesis) – No. 29 of 2016

<https://www.legislation.gov.au/Details/F2016L00257>

Depressive disorder (Balance of Probabilities) – No. 30 of 2016

<https://www.legislation.gov.au/Details/F2016L00258>

Aplastic anaemia – No. 31 of 2016

<https://www.legislation.gov.au/Details/F2016L00260>

Aplastic anaemia – No. 32 of 2016

<https://www.legislation.gov.au/Details/F2016L00267>

Acute myeloid leukaemia (Reasonable Hypothesis) – No. 33 of 2016

<https://www.legislation.gov.au/Details/F2016L00250>

Acute myeloid leukaemia (Balance of Probabilities) – No. 34 of 2016

<https://www.legislation.gov.au/Details/F2016L00251>

Myelodysplastic syndrome (Reasonable Hypothesis) – No. 35 of 2016

<https://www.legislation.gov.au/Details/F2016L00252>

Myelodysplastic syndrome (Balance of Probabilities) – No. 36 of 2016

<https://www.legislation.gov.au/Details/F2016L00253>

Acute lymphoblastic leukaemia – No. 37 of 2016

<https://www.legislation.gov.au/Details/F2016L00263>

Chronic lymphocytic leukaemia/small lymphocytic lymphoma – No. 38 of 2016

<https://www.legislation.gov.au/Details/F2016L00273>

Myeloma – No. 39 of 2016

<https://www.legislation.gov.au/Details/F2016L00277>

Non-Hodgkin's lymphoma – No. 40 of 2016

<https://www.legislation.gov.au/Details/F2016L00280>

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