



Administrative
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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.

Aviation

[Edwards and Civil Aviation Safety Authority](#) [2017] AATA 1068 (21 June 2017); The Hon. Dennis Cowdroy OAM QC, Deputy President

CIVIL AVIATION – suspension of licence – private pilot licence – commercial pilot licence – suspension of grade 2 flight instructor rating – whether failure by applicant in duty regarding safe operation of aircraft – whether applicant is a fit and proper person to hold a private and commercial pilot licence – conduct concerning crash of aircraft – whether applicant's pilot log book contained anomalies – whether applicant conducted unauthorised commercial operations – decisions varied

Citizenship

[GZQZ and Minister for Immigration and Border Protection \(Citizenship\)](#) [2017] AATA 1052 (5 July 2017); Ms R Perton, Member

CITIZENSHIP – citizenship by conferral – applicant aged under 16 when application made – whether discretion to refuse citizenship should be exercised – application of Australian Citizenship Instructions – permanent resident – whether significant hardship or disadvantage – best interests of the child – whether unusual circumstances – decision affirmed

Compensation

[Baker and Comcare \(Compensation\)](#) [2017] AATA 1050 (4 July 2017); Ms R Perton, Member

COMPENSATION – employment by Australian Competition & Consumer Commission – major depressive disorder – refusal of application for studies assistance – whether injury occurred as a result of reasonable administrative action taken in a reasonable manner – whether applicant entitled to compensation for incapacity – decision affirmed

[McGowan and Telstra Corporation Limited \(Compensation\)](#) [2017] AATA 1053 (7 July 2017); Ms K Parker, Member

WORKERS' COMPENSATION – claim for injury to cervical spine – disease or injury – whether pre-existing degenerative condition was an ailment – whether there was an aggravation of an ailment – whether liability under s 14 of the *Safety, Rehabilitation and Compensation Act 1988* to pay compensation – contribution to a significant degree – whether the exclusion in s 53 of the *Safety, Rehabilitation and Compensation Act 1988* applies – whether employee gave notice of injury to employer as soon as practicable – decision affirmed

[Ranger and Comcare \(Compensation\)](#) [2017] AATA 1054 (30 June 2017); Ms R Perton, Member
COMPENSATION – injury – whether liability still exists – compensation ceased after medical evidence suggested fresh diagnosis – household and gardening services – medical and incapacity payments – where medical experts differ significantly in opinion as to correct diagnosis – decisions set aside

Migration

[Moss and Minister for Immigration and Border Protection](#) [2017] AATA 1062 (12 July 2017); The Hon. Dennis Cowdroy OAM QC, Deputy President

MIGRATION – mandatory cancellation of visa – request for revocation of cancellation – character test – substantial criminal record – sentence of imprisonment of 12 months or more – protection of the Australian community – best interests of minor children – expectations of the Australian community – other considerations – decision affirmed

[SUN](#) (Migration) [2017] AATA 973 (14 June 2017); R Chenoweth, Member

Migration – Cancellation – Spouse visa – Subclass 820 – Bogus document/incorrect information – Condition precedent to the grant of visa – Applicant’s visa cancelled subsequent to mother-in-law’s visa cancellation – Applicant sponsored by mother-in-law’s son on spouse visa – No criterion for spouse visa requiring mother-in-law to hold a visa – Decision under review set aside

[Surya](#) (Migration) [2017] AATA 976 (16 June 2017); M Cooper, Member

Migration – Business Skills (Provisional) visa – Subclass 188 – Ownership interest in main business – Held for at least 2 of the 4 fiscal years immediately before application date – Transfer of shares from father to applicant – Declaration of trust – Concept of trust/trustee not recognised in Indonesia – Ownership less than 30% – Decision under review affirmed

[Tomas](#) (Migration) [2017] AATA 968 (16 June 2017); A Mercer, Member

Migration – Training and Research (Class GC) visa – Subclass 402 – Occupational Trainee stream – Subject of an approved nomination – Nominating organisation no longer an approved sponsor – Subclass closed to new applications – Decision under review affirmed

[Woodroffe](#) (Migration) [2017] AATA 1033 (21 June 2017); A McMurrin, Member

Migration – Temporary Business Entry (Class UC) visa – Subclass 457 – Skills, qualifications and employment background – Supply and Distribution Manager – No bachelor degree or higher qualification – 5 years’ prior experience – Decision under review remitted

[Chinhema](#) (Migration) [2017] AATA 1034 (30 June 2017); M Cooper, Member

Migration – Skilled Regional Sponsored (Provisional) visa – Subclass 489 – First Provisional Visa Stream – Points test – Remitted by consent – Tribunal failed to consider applicant’s employment – Achieved qualifying and invitation score – Decision under review remitted

Practice and Procedure

[BXCD and Commissioner of Taxation](#) [2017] AATA 1067 (28 June 2017); Deputy President BJ McCabe

PRACTICE AND PROCEDURE – application for proceedings to be heard concurrently – consideration of the commonality of witnesses, evidence and issues – consideration of unfairness or prejudice to the parties – where savings in time and cost is uncertain – where application made for proceedings to be heard in private pursuant to section 14ZZE *Taxation Administration Act 1953* (Cth) – application for concurrent hearing refused – matters to be heard consecutively before the same presiding member on dates to be fixed.

[Martin and Comcare](#) [2017] AATA 1070 (2 June 2017); Deputy President JW Constance

PRACTICE AND PROCEDURE – matter remitted by the High Court – whether parties be permitted to provide further evidence for the hearing on remittal – parties to be given reasonable opportunity to present their case – parties are permitted to provide further evidence on which the parties intend to rely at the hearing on remittal

Refugee

[1703405](#) (Refugee) [2017] AATA 983 (5 June 2017); S Pinto, Member

Refugee – Cancellation – Protection visa – Pakistan – Provision of incorrect information – Ahmadiyya – Khatam-E-Nabuwat – Muslim extremists – Imprisonment or execution – No intention to re-avail himself of his country of nationality's protection – Titre de Voyage – Visiting ill family members – Family plans for applicant's marriage – Modifying behaviour to avoid persecution – Decision under review set aside

[1700991](#) (Refugee) [2017] AATA 1013 (8 June 2017); M McAdam, Member

Refugee – Protection visa – China – Land acquired for highway – Inadequate compensation – Petitioning bureau – Threats from village committee – Credibility – Inconsistent evidence – Decision under review affirmed

[1507734](#) (Refugee) [2017] AATA 1048 (13 June 2017); F Gelev, Member

Refugee – Protection visa – Ethiopia – Political opinion – Oromo Liberation Front supporter – Detention – Interrogation – Decision under review remitted

[1703990](#) (Refugee) [2017] AATA 1014 (13 June 2017); S Roushan, Senior Member

Refugee – Protection visa – Vietnam – Social group – Transgender persons – Societal discrimination, ridicule and verbal abuse – Fear of violence and abuse – Did not amount to persecution – Country information indicates general acceptance and support of transgender people – Decision under review affirmed

[1518018](#) (Refugee) [2017] AATA 1047 (20 June 2017); C Packer, Member

Refugee – Protection visa - India – Religion – Hindu – Relationship with Muslim man – Fears forced marriage to Hindu man – Divorced woman in India – Social stigma – Can relocate – Decision under review affirmed

Social Security

[Barron and Secretary, Department of Social Services \(Social services second review\)](#) [2017]

AATA 1039 (8 June 2017); Mr N Gaudion, Member

SOCIAL SECURITY – asset–test exempt income stream – provision of actuarial certificate out of time – application of guidelines – whether actuarial certificate was certified no later than 26 weeks after the beginning of the relevant financial year – whether actuarial certificate was provided to the Respondent no later than 29 weeks after the beginning of the relevant financial year – whether to apply discretion to depart from guidelines – decision affirmed

[Charalambous and Secretary, Department of Social Services \(Social services second review\)](#)

[2017] AATA 1049 (26 June 2017); Senior Member E Fice

SOCIAL SECURITY – parenting payment single – extension of time to lodge application – five years and four months delay in bringing application – no satisfactory explanation – no objective evidence which might provide applicant with success if matter were to proceed to a substantive hearing– extension of time application refused

[Corstens and Secretary, Department of Social Services \(Social services second review\)](#) [2017]

AATA 1038 (9 June 2017); Senior Member Britten–Jones

SOCIAL SECURITY – Age pension – application to be treated as not being a member of a couple – requirement of special circumstance

[Ebady and Secretary, Department of Social Services \(Social services second review\)](#) [2017]

AATA 1040 (6 July 2017); Senior Member JF Toohey

SOCIAL SECURITY – whether applicant overpaid Disability Support Pension – whether applicant overpaid Newstart Allowance and Rent Allowance – whether applicant failed to declare income – whether applicant disposed of asset – whether applicant has debt – whether any reason any of debt should be written off or waived – whether special circumstances – decision under review affirmed

[Ghazzawie and Secretary, Department of Social Services \(Social services second review\)](#)

[2017] AATA 1051 (29 May 2017); Senior Member A Poljak

SOCIAL SECURITY – Disability Support Pension – cancellation – whether applicant qualified at date of cancellation – mental health condition – lower limb condition – endometriosis – whether fully diagnosed, treated and stabilised – decision under review affirmed

[Lozi and Secretary, Department of Social Services \(Social services second review\)](#) [2017]

AATA 1041 (6 July 2017); Dr I Alexander, Member

SOCIAL SECURITY – Disability Support Pension – 20 points or more under the Impairment Tables – mental health condition – spinal condition – other conditions – decision under review is affirmed

[McAuley and Secretary, Department of Social Services \(Social services second review\)](#) [2017]

AATA 1064 (16 June 2017); Dr I Alexander, Member

SOCIAL SECURITY – Disability Support Pension – chronic fatigue syndrome – Lyme Disease – applicant suffers an impairment – applicant’s impairments do not total 20 points or more under the impairment tables – decision under review affirmed

Robertson and Secretary, Department of Social Services (Social services second review)

[2017] AATA 1055 (15 June 2017); Mr S Webb, Member

SOCIAL SECURITY – disability support pension claim – impairments – assessment of impairments resulting from ‘permanent’ medical conditions – minimum requirement of 20 points satisfied – ‘severe impairment’ – continuing inability to work 15 or more hours per week – decision set aside

Struz and Secretary, Department of Social Services (Social services second review) [2017]

AATA 1037 (6 July 2017); Member DK Grigg

SOCIAL SECURITY – disability support pension – DSP – whether medical conditions fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the impairment tables during the relevant period – whether continuing inability to work – decision under review set aside

Von Sawilski and Secretary, Department of Social Services (Social services second review)

[2017] AATA 1056 (7 July 2017); Senior Member JC Kelly

SOCIAL SECURITY – disability support pension – physical, intellectual or psychiatric impairments – fully diagnosed, treated and stabilised – continuing inability to work – Job Capacity Assessment – impairment rating of at least 20 points – qualification period – decision affirmed

Wightman and Secretary, Department of Social Services (Social services second review)

[2017] AATA 1057 (30 June 2017); Senior Member E Fice

AGE PENSION – rate of payment – entitlement subject to income and assets test – failure to comply with guidelines for lodging information about income streams from superannuation fund – whether legislative provisions dealing with asset-test exempt income were correctly applied – actuarial certificate not provided within statutory time limit – no discretion existed to extend time – decision affirmed

Wissing and Secretary, Department of Social Services (Social services second review) [2017]

AATA 1058 (15 June 2017); Senior Member E Fice

SOCIAL SECURITY – special circumstance provision – notice of the provision – liability to recover Centrelink pension – discharge of liability – periodic compensation payments – notice of charge – notice of appeal rights

Yousif and Secretary, Department of Social Services (Social services second review) [2017]

AATA 1066 (11 July 2017); Senior Member L Kirk

SOCIAL SECURITY – disability support pension – spinal condition – depression – respiratory disorder – diabetes – peripheral neuropathy – gastro-oesophageal reflux – calcaneal spur – osteoarthritis – applicant has physical and psychiatric impairments – applicant’s impairments do not total 20 points or more under the Impairment Tables – decision under review affirmed

Taxation

[Amin and Commissioner of Taxation \(Taxation\)](#) [2017] AATA 1042 (30 June 2017); Senior Member G Lazanas

TAXATION AND REVENUE – income tax – deductions – employee – work-related motor vehicle expenses – work-related travel expenses – self-education expenses – other work-related expenses – objection decision relating to income tax set aside and matter remitted to Commissioner – administrative penalty – whether failure to take reasonable care – question of remission – objection decision relating to administrative penalty affirmed

[GH1 Pty Ltd, in Liquidation and Commissioner of Taxation \(Taxation\)](#) [2017] AATA 1063 (5 July 2017); Deputy President BJ McCabe, Senior Member CR Walsh

GOODS AND SERVICES TAX – whether Applicant entitled to input tax credits claimed for creditable acquisitions – existence of tax invoices insufficient to prove taxable supplies were made – objection decision affirmed

Veterans' Affairs

[Bell and Repatriation Commission \(Veterans entitlements\)](#) [2017] AATA 1065 (11 July 2017); Senior Member JC Kelly

VETERAN'S AFFAIRS – assessment of rate of pension — applicant in receipt of pension at 80% of the general rate – a person with the applicant's skills and incapacity is able to work for more than eight hours a week – a person with the applicant's skills and incapacity is able to work more than part-time hours – the applicant is not eligible for the pension at the special or intermediate rate – decision under review is affirmed

[Ducat and Repatriation Commission \(Veterans entitlements\)](#) [2017] AATA 1061 (6 July 2017); Senior Member N Isenberg

VETERANS AFFAIRS – disability pension – application for increase in pension – intermediate rate of pension – whether veteran's defence-caused incapacity renders the Applicant incapable of undertaking remunerative work other than on a part-time basis or intermittently – whether veteran capable of undertaking work for 20 or more hours per week – decision under review set aside and substituted

[McCool and Repatriation Commission \(Veterans' entitlements\)](#) [2017] AATA 1071 (10 July 2017); Deputy President Dr P McDermott RFD, Dr G Maynard, Member

VETERAN'S ENTITLEMENTS – Rate of pension – Whether Applicant eligible for special rate – Whether Applicant eligible for intermediate rate – Consideration of "Alone test" in ss 23 and 24 – Medical evidence insufficient to satisfy alone test – Applicant not entitled to payment at the special rate or intermediate rate – 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
Redzic and Minister for Immigration & Border Protection	[2017] AATA 445
QKJY and Minister for Immigration & Border Protection	[2017] AATA 820

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 **commence** on **31 July 2017**:

Accommodation disorder (Reasonable Hypothesis) - No. 38 of 2017

<https://www.legislation.gov.au/Details/F2017L00888>

Accommodation disorder (Balance of Probabilities) - No. 39 of 2017

<https://www.legislation.gov.au/Details/F2017L00889>

Femoroacetabular impingement syndrome (Reasonable Hypothesis) - No. 42 of 2017

<https://www.legislation.gov.au/Details/F2017L00883>

Femoroacetabular impingement syndrome (Balance of Probabilities) - No. 43 of 2017

<https://www.legislation.gov.au/Details/F2017L00884>

Labral tear (Reasonable Hypothesis) - No. 36 of 2017

<https://www.legislation.gov.au/Details/F2017L00885>

Labral tear (Balance of Probabilities) - No. 37 of 2017

<https://www.legislation.gov.au/Details/F2017L00886>

Sickle-cell disorder (Reasonable Hypothesis) - No. 40 of 2017

<https://www.legislation.gov.au/Details/F2017L00879>

Sickle-cell disorder (Balance of Probabilities) - No. 41 of 2017

<https://www.legislation.gov.au/Details/F2017L00881>

Statements of Principles to be Repealed

The following Statements of Principles will be **revoked** on **31 July 2017**:

Accommodation disorder - No. 5 of 2009

<https://www.legislation.gov.au/Details/F2008L04750>

Accommodation disorder - No. 6 of 2009

<https://www.legislation.gov.au/Details/F2008L04751>

Labral tear - No. 94 of 2010

<https://www.legislation.gov.au/Details/F2010L02850>

Labral tear - No. 95 of 2010

<https://www.legislation.gov.au/Details/F2010L02851>

Sickle-cell disorder - No. 43 of 2008

<https://www.legislation.gov.au/Details/F2008L02196>

Sickle-cell disorder - No. 44 of 2008

<https://www.legislation.gov.au/Details/F2008L02197>

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