



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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# 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.

## Compensation

[Whiteman and Australian Postal Corporation](#) (Compensation) [2015] AATA 954 (11 December 2015); Senior Member G Ettinger

Applicant has accepted injury to left shoulder – surgery undergone – claim for ongoing incapacity and payments pursuant to sections 19 and 20 of the SRC Act – permanent impairment claim – previous decision by the Tribunal, and appeal to the Federal Court regarding the method of calculation of permanent impairment using AMA5 – decisions under review affirmed

## Migration and Refugee

[1416720](#) (Migration) [2015] AATA 3840 (1 December 2015); N McGowan, Member

Partner (Temporary) (Class UK) visa – Subclass 820 – cl 820.211(2)(d) – Applicant did not hold a substantive visa at time of application – Compelling reasons – Caring responsibilities for parents – Decision under review affirmed

[1503933](#) (Migration) [2015] AATA 3793 (1 December 2015); A Duri, Member

Other Family (Residence) (Class BU) visa – cl 835.212 – Near relative – Half-sister – Regulations make no distinction as to quality of relationship between near relatives – Decision under review affirmed

[1415958](#) (Migration) [2015] AATA 3839 (3 December 2015); M Cooper, Member

Distinguished Talent (Residence) (Class BX) – Subclass 858 – cl 858.212 – Internationally recognised record of exceptional and outstanding achievement – Synchronised swimmer and coach – Limited appearances in international competitions – Comparison of international rankings between Australia and Sri Lanka – Decision under review affirmed

[1503359](#) (Migration) [2015] AATA 3792 (3 December 2015); W Banfield, Member

Child (Residence) (Class BT) visa – Subclass 802 – cl 802.214(1)(c) – Over 18 criteria – Family members are Australian citizens – Applicant not working – Relies on family support – Not enrolled in and participating in full-time education at time of application – Not incapacitated for work – Decision under review affirmed

[1508727](#) (Migration) [2015] AATA 3852 (7 December 2015); A Younes, Senior Member

Cancellation – Skilled Independent (Permanent) visa – Subclass 189 – Incorrect information – No record of claimed skills assessment – No record of claimed IELTS English test – Non-compliance

with s 101(b) – Australian citizen child – Convention on the Rights of the Child – Decision set-aside and substituted with decision not to cancel applicant's visa

[1508832](#) (Migration) [2015] AATA 3862 (9 December 2015); D Morgan, Member

Visitor (Class FA) visa – Pakistan – Subclass 600 (Visitor) (Class FA) – cl 600.211 – Purpose of visit to assist with new grandchild and visit adult children – Affluent lifestyle in Pakistan and social connections – Past history of compliant visit to Finland – Incentives to return – Decision under review remitted

[1417959](#) (Migration) [2015] AATA 3868 (10 December 2015); G Cullen, Member

Student (Temporary) (Class TU) visa – Subclass 572 Vocational Education and Training Sector – Public Interest Criterion 4020 – cl 572.224 – Bogus bank statement – Compassionate and compelling circumstances – De-facto relationship with Australian citizen – Departure would create stress and unhappiness – Decision under review remitted

[1416601](#) (Migration) [2015] AATA 3866 (11 December 2015); L Lo Piccolo, Member

Contributory Aged Parent (Temporary) (Class UU) visa – Subclass 884 – cl 884.213 – Applicant acknowledges does not meet criteria but a means to seek ministerial intervention – Was unable to lodge aged dependent relative visa due to repeal – Tribunal support for ministerial intervention – Compassionate circumstances – Circumstances that the legislation did not anticipate or intend – Decision under review affirmed

[1410758](#) (Migration) [2015] AATA 3844 (14 December 2015); J Billings, Senior Member

Partner (Residence) (Class BS) visa – Subclass 801 – cl 801.211 – cl 801.221 – Genuine and continuing relationship – Evidence normally expected not available at outset as applicants were students – Longstanding friends in France – Misunderstanding from telephone interview – Plans to commence a family – Decision under review remitted

[1412301](#) (Migration) [2015] AATA 3845 (17 December 2015); H Sanderson, Member

Prospective Marriage (Temporary) (Class TO) visa – Subclass 300 – cl 300.222 – Sponsorship restriction – Sponsor sponsoring one spouse when commenced relationship with applicant – Did not advise department – Compelling circumstances – Not a genuine relationship – Decision under review affirmed – No jurisdiction with secondary applicants

[1500704](#) (Refugee) [2015] AATA 3767 (1 December 2015); S Webb, Member

Protection visa – Malaysia – Workplace theft – Accused by boss – Fear of harm from gang members – Came to Australia to escape and work – Credibility issues – Decision under review affirmed

[1416024](#) (Refugee) [2015] AATA 3842 (3 December 2015); C Keher, Member

Protection visa – Irregular maritime arrival – Bangladesh – Political opinion – Applicant claimed he and his father actively involved with the BNP – Fears reprisals from Awami League – Credibility issues – Bogus documents – Application for visa was opportunistic – Decision under review affirmed

[1408828](#) (Refugee) [2015] AATA 3875 (7 December 2015); S Pinto, Member

Protection visa – Pakistan – Imputed political opinion – Attempted kidnapping for not joining political parties – Other claim unrelated to Convention reasons – Personal vendetta – Informed against an illegal migrant – Fear of reprisals – Lack of state protection – Decision under review affirmed

[1415229](#) (Refugee) [2015] AATA 3874 (7 December 2015); R Homan, Member

Protection visa – China – Family member of non-citizen who holds protection visa – Mother granted protection visa following remittal – Applicant sought to be included in mother’s application before visa grant – Mother unaware of procedures – Level of dependency based on applicant’s work and living arrangements – Decision under review remitted

[1402904](#) (Refugee) [2015] AATA 3895 (8 December 2015); R Homan, Member

Protection visa – Unauthorised Maritime Arrival – Sri Lanka – Race – Tamil – Particular social group – Family member of Liberation Tigers of Tamil Eelam combatant – Imputed political opinion – Support for the Liberation Tigers of Tamil Eelam – Sri Lankan national who has never lived in Sri Lanka – Family’s illegal exit from Sri Lanka – Decision under review affirmed

[1314268](#) (Refugee) [2015] AATA 3894 (9 December 2015); F Syme, Member

Protection visa – Unauthorised Maritime Arrival – Afghanistan – Religion – Non-practising Shia – Race – Hazara – Imputed political opinion – Employment at foreign company – Asylum seeker – Fear of harm from Islamic State – Decision under review affirmed

[1402036](#) (Refugee) [2015] AATA 3877 (9 December 2015); S Roushan, Senior Member

Protection visa – Irregular Maritime Arrival – Sri Lanka – Race – Tamil – Imputed political opinion – Liberation Tigers of Tamil Eelam – Abduction by Karuna group – Investigations by Criminal Investigation Department – Unable to relocate – Decision under review remitted

[1417326](#) (Refugee) [2015] AATA 3897 (10 December 2015); P Hunter, Member

Protection visa – India – Political opinion – Congress party supporter – Harm from Akali Dal party supporters – Victim of kidnapping – Divorced – Fear of honour killing from ex-wife’s family – Decision under review affirmed

## **Social Security**

[Francis and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 6 (13 January 2016); Deputy President J W Constance

Disability support pension – overpayment of disability support pension – whether Applicant liable to repay debt caused by overpayment – whether overpayment caused solely by administrative error – whether overpayment received in good faith – decision affirmed

[Gavranic and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 934 (3 December 2015); Prof R McCallum AO, Member

Payments – family tax benefit – application for family tax benefit out of time – whether special circumstances exist to extend the claim period – held special circumstances exist – decision set aside and substituted

[Love and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 8 (14 January 2016); Deputy President Dr P McDermott RFD

Debt recovery and waiver – failure to notify of income – disability support pension – overpayment due to undeclared income – debt of disability support pension occurred – knowingly – special circumstances – more appropriate to waive the debt than to write it off – decision set aside

[Macartney and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 957 (11 December 2015); Senior Member G Ettinger

Lump sum compensation payments – preclusion period imposed – Applicant seeks to have preclusion waived or reduced due to financial hardship – whether special circumstances – decision under review affirmed.

[Nicholls and Secretary, Department of Social Services](#) (Social services second review) [2015] AATA 1030 (22 December 2015); Senior Member BJ McCabe

Benefits and entitlements – means test – beneficiaries of testamentary trust – whether trust is designated private trust – whether excluded trust – trust not designated private trust nor excluded trust – no special circumstances – discretion not exercised – decisions under review affirmed

## **Veterans' Affairs**

[Robinson and Repatriation Commission](#) (Veterans' entitlements) [2016] AATA 7 (14 January 2016); Miss EA Shanahan, Member

Widow's claim for pension – death from metastatic carcinoma of the prostate – hypothesis raised linking carcinoma of the prostate to excessive alcohol intake – operational service in the United Kingdom in 1944 and 1945 – no active service – claims relating to increased fat in diet and cigarette smoking abandoned – no material pointing to a causal relationship between service and alcohol intake – 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
<b>Solu Pty Ltd v Chief Executive Officer of Customs</b>	<a href="#">[2015] AATA 953</a>
<b>Crown Estates (Sales) Pty Ltd &amp; Anor v Commissioner of Taxation</b>	<a href="#">[2015] AATA 949</a>
<b>Francis v AAT</b>	<a href="#">[2015] AATA 936</a>
<b>Vestas – Australian Wind Technology Pty Ltd v Comptroller-General of Customs</b>	<a href="#">[2015] AATA 348</a>
<b>Privacy Commissioner v Telstra Corporation Ltd</b>	<a href="#">[2015] AATA 991</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>None finalised</b>		

# 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 25 January 2016.

### **Ischaemic heart disease (Reasonable Hypothesis) - No. 1 of 2016**

<http://www.comlaw.gov.au/Details/F2016L00001>

### **Ischaemic heart disease (Balance of Probabilities) - No. 2 of 2016**

<http://www.comlaw.gov.au/Details/F2016L00003>

### **Peritoneal adhesions (Reasonable Hypothesis) - No. 3 of 2016**

<http://www.comlaw.gov.au/Details/F2016L00004>

### **Peritoneal adhesions (Balance of Probabilities) - No. 4 of 2016**

<http://www.comlaw.gov.au/Details/F2016L00006>

### **External bruise (Reasonable Hypothesis) - No. 5 of 2016**

<http://www.comlaw.gov.au/Details/F2016L00008>

### **External bruise (Balance of Probabilities) - No. 6 of 2016**

<http://www.comlaw.gov.au/Details/F2016L00005>



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