



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.

Child Support

[Roughan and Child Support Registrar](#) (Child support) [2018] AATA 352 (26 February 2018); Senior Member A Poljak

CHILD SUPPORT – Departure Prohibition Order (“DPO”) – child support debt –satisfactory arrangement in place for debt to be wholly discharged – debt not irrecoverable – discretion to revoke or vary – basis for revocation of DPO – decision under review set aside

[Terim and Child Support Registrar](#) (Child support) [2018] AATA 354 (28 February 2018); Senior Member A Poljak

CHILD SUPPORT – Departure Prohibition Order (“DPO”) – child support debt – whether satisfactory arrangement in place for debt to be wholly discharged – debt not irrecoverable – discretion to revoke or vary – no basis for revocation of DPO – decision under review affirmed

Citizenship

[Al-Debes and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 298 (15 February 2018); Senior Member Mrs JC Kelly

CITIZENSHIP – refusal of application for citizenship via conferral – whether Applicant is of good character – whether Applicant has enduring moral qualities – conviction in two offences – good behaviour bonds for convictions – application of Citizenship Policy – Tribunal not satisfied that the Applicant is of good character – decision affirmed

[Bowdler and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 347 (2 March 2018); Senior Member Chris Puplick AM

CITIZENSHIP – application for citizenship by conferral – whether applicant of good character – attempt to conceal relevant and material facts – lengthy traffic record – criminal record – road safety as a community concern – decision under review affirmed

Compensation

[Balit and Australian Postal Corporation](#) (Compensation) [2017] AATA 3055 (30 October 2017); Senior Member MJ McGrowdie

WORKERS COMPENSATION – fall causing injury to right knee - whether effects of injury continue – whether effects of the injury continue - aggravation/acceleration of an underling osteoarthritic

condition of the right knee – establishment of entitlement to compensation for incapacity and medical expenses – decision under review set aside and substituted

[Black and Comcare](#) (Compensation) [2017] AATA 3056 (22 September 2017); Senior Member MJ McGrowdie

WORKER'S COMPENSATION – psychological injuries – whether the applicant was incapacitated from work as a result of psychological injuries – applicant suffered an incapacity – whether the respondent is liable to pay applicant's medical expenses – respondent not liable to pay medical expenses – decision under review

[Cavanagh and Comcare](#) (Compensation) [2017] AATA 3057 (29 September 2017); Senior Member NA Manetta

COMPENSATION – Safety, Rehabilitation and Compensation Act 1988 – claim for cognitive impairment – no medical opinion supporting link between employment injuries or medication and impairment – necessity for inferences to be supported by appropriate evidence – decision affirmed – travel claim – spouse travel – no liability in Comcare to pay for spouse's travel under s 16 – consent determinations in this Tribunal allowing spouse travel not binding – decision affirmed – household and care-attendant services – number of hours increased by reference to the facts – decision set aside and new hours determined and substituted

[Hewett and Comcare](#) (Compensation) [2008] AATA 302 (4 January 2018); Ms A Burke, Member

WORKERS' COMPENSATION – aggravation of degenerative changes in cervical spine – aggravation of major depressive disorder – whether ongoing entitlement to medical expenses – whether permanent impairment arose as a result of surgery – conflicting medical evidence – decisions affirmed

[Miles and Comcare](#) (Compensation) [2018] AATA 349 (26 February 2018); Miss EA Shanahan, Member

WORKERS COMPENSATION – motor vehicle accident – soft tissue injuries – dental damage claimed – subsequent development of post-traumatic stress disorder – denial of liability for injury to the teeth or bruxism secondary to PTSD as specified – decision affirmed

[Molina and Comcare](#) (Compensation) [2018] AATA 345 (28 February 2018); Deputy President Dr P McDermott RFD

COMPENSATION – claim for compensation for lower back injuries – accepted conditions – whether applicant continues to suffer from the effects of compensable injury – whether applicant presently entitled to medical expenses or incapacity payments – decision under review affirmed

[Stephen and Comcare](#) (Compensation) [2018] AATA 344 (28 February 2018); Deputy President Dr P McDermott RFD

COMPENSATION – claim for compensation for disease – depressive disorder and generalised anxiety disorder – where the applicant alleged bullying and harassment against his colleague – where the applicant accidentally injured his colleague – where the applicant claimed to fear for his job and to have been ostracised – whether the injuries were caused by his employment – whether disease was suffered as a result of reasonable administrative action taken in a reasonable manner in

respect of the employee's employment – action taken in a reasonable manner – disorders not caused by employment – decision under review affirmed

Education and Research

[McNally and Secretary, Department of Education and Training](#) [2018] AATA 341 (29 January 2018); Senior Member MJ McGrowdie

HIGHER EDUCATION – applicant enrolled in diploma at TAFE – no request for withdrawal on or before census date – repayment of VET FEE-HELP balance required – whether grounds to re-credit the VET FEE-HELP balance – special circumstances – decision affirmed

Migration

[Ayache and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 310 (22 February 2018); Deputy President SA Forgie

MIGRATION – refusal to grant visa as failed character test because has substantial criminal record – decision affirmed

[Duar Te Do Pateo Fernandes and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 348 (28 February 2018); Deputy President JW Constance

MIGRATION – visa – non-revocation of cancellation – character test – substantial criminal record – serious conduct to date – low risk of re-offending – best interests of minor children in Australia – seven year-old daughter – Australian community would not expect the applicant to be deported – decision set aside and decision made in

[Irani and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 3051 (7 December 2017); Senior Member Bill Stefaniak AM RFD

MIGRATION – visa refusal – character test – risk that person would engage in criminal conduct in Australia – whether unacceptable risk of harm – prospect of rehabilitation – primary and other considerations – decision set aside and remitted

[Jones and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 346 (1 March 2018); Senior Member DJ Morris

MIGRATION – request for revocation of mandatory cancellation of Applicant's visa – Applicant has substantial criminal record and does not pass character test – discretion to revoke mandatory cancellation – primary considerations – protection of the Australian community from criminal or other serious conduct – best interest of minor children in Australia – expectations of Australian community – other considerations – decision under review affirmed

[JSQF and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 305 (24 January 2018); Deputy President BW Rayment

MIGRATION – mandatory visa cancellation – applicant does not pass character test – whether there is another reason why the mandatory visa cancellation should be revoked – insufficient evidence before Tribunal regarding Applicant's prospects of rehabilitation – decision set aside and remitted

[Khalil and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 311 (26 February 2018); Deputy President S Boyle

MIGRATION – decision to refuse a visa – failure to pass character test – where applicant has substantial criminal record – primary considerations weigh in favour of refusing visa – risk of reoffending – best interests of minor children – expectations of the Australian community – other considerations – decision under review is affirmed

National Disability Insurance Scheme

[Munday and National Disability Insurance Agency](#) [2018] AATA 355 (2 March 2018); Professor R McCallum AO, Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – hereditary spasticity paraplegias – powered wheelchair/mobility device – whether applicant’s preferred device can be used on public footpaths – whether support represents value for money – whether support is effective and beneficial having regard to current good practice – whether support is likely to cause harm to the participant or pose a risk to others – decision under review varied

[ZCPY and National Disability Insurance Agency](#) [2017] AATA 3052 (4 December 2017); K Parker, Member

NATIONAL DISABILITY INSURANCE SCHEME – review of statement of supports in NDIS participant’s plan – reviewable decision relates to supports in an NDIS plan that has been replaced by subsequent plans – the NDIS plan under review no longer exists – decision of the Tribunal will have no practical effect or operation – NDIA provided an undertaking to reflect the Tribunal’s decision in the pending new NDIS plan – dispute about whether additional supports should be provided – request for an urgent decision in relation to whether a specified literacy program should be added as an additional support – whether the literacy program was a reasonable and necessary support – whether the literacy program represented value for money – whether the literacy program assisted in undertaking activities to facilitate social and economic participation – whether the literacy program was effective and beneficial – whether the literacy program is most appropriately funded through the NDIA – whether support is most appropriately funded through the education system – consideration of Victorian Government’s Program for Students with Disabilities – distinction between intended educational attainment for a student at senior secondary level in contrast to a student at primary level – decision to vary to add specialised literacy program as a support to the plan under review – further non-binding observations and recommendations made about the literacy program in the context of the pending new NDIS plan for the Applicant – recommendations for interim progress testing half way through implementation of the program

Practice and Procedure

[Barque Institute Pty Ltd and Tertiary Education Quality and Standards Agency](#) [2018] AATA 314 (8 February 2018); Senior Member Mrs JC Kelly

PRACTICE AND PROCEDURE – jurisdiction – whether Tribunal has jurisdiction to consider application for review – longer period determination made by TEQSA – whether TEQSA’s decision to extend the period was valid – strict compliance with notification period provisions – jurisdiction found

[CSRN and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 301 (19 January 2018); Brigadier AG Warner, Member

PRACTICE AND PROCEDURE – application for extension of time to lodge application for review of decision of the Social Services and Child Support Division of Administrative Appeals Tribunal dated 12 April 2017 – length of delay significant – reasonable explanation – limited prospects of success for substantive application – Tribunal not satisfied that reasonable in all the circumstances to grant extension of time – application for extension of time refused

[Dorward and Secretary, Department of Employment](#) [2017] AATA 3040 (6 December 2017); Senior Member Dr D Cremean

PRACTICE AND PROCEDURE – Fair Entitlements Guarantee Act 2012 (Cth) – claim by spouse of director of claimant’s former employer – extension of time to lodge application – no reasonable prospects of success in a substantive application for review – claimant ineligible for an advance under Act for unpaid employment entitlements – extension of time application refused

[Johnson and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 351 (9 February 2018); Deputy President K Bean

PRACTICE AND PROCEDURE – Veteran’s entitlements – Peripheral neuropathy of the left ankle – Applicant already in receipt of special rate of pension and gold card – Whether there is utility in the application for review – Whether factors in the relevant Statement of Principles can be made out – Whether application for review has a reasonable prospect of success – Application for review dismissed

[Smith and Thales Australia Limited](#) [2018] AATA 3042 (1 December 2017); Senior Member DJ Morris

PRACTICE AND PROCEDURE – Application for extension of time – Long delay since reviewable decision made – matters to take into account – application refused – written reasons requested for oral decision

[Treloar and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 339 (21 February 2018); Deputy President K Bean

PRACTICE AND PROCEDURE – Application for dismissal pursuant to section 42B of the Administrative Appeals Tribunal Act 1975 – Decision relates to whether a debt was recoverable from the applicant – Issues have been previously considered and determined by Tribunal in an earlier matter – Whether there was a decision made under the social security law – Whether application for review has reasonable prospects of success – Application for review dismissed

[Veeravarman and Comcare](#) [2018] AATA 3038 (27 November 2017); Senior Member DJ Morris

PRACTICE AND PROCEDURE – Application for extension of time – significant delay since reviewable decision made – matters to take into account – relevance of other matters before the Tribunal – application refused – written reasons requested for oral decision

Social Security

[Amun and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 299 (20 February 2018); Ms DK Grigg, Member

SOCIAL SECURITY – age pension – overpayment - whether solely attributable to administrative error – consideration of special circumstances and whether they exist – decision under review affirmed

[Bajouri and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 350 (19 January 2018); Dr I Alexander, Member

SOCIAL SECURITY – Disability Support Pension – lower limb condition - upper limb condition – type one diabetes mellitus – mental health condition – the applicant has a physical and psychological impairment – the applicant's impairments do not total twenty points or more under the Impairment Tables – decision affirmed

[Baker and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 3054 (24 October 2017); Senior Member Mrs JC Kelly

SOCIAL SECURITY – Disability Support Pension – cervical spine condition – rotator cuff disease - epicondylitis – applicant has a physical impairment – applicant's impairments cannot be rated under the Impairment Tables – applicant's impairments are not fully treated and stabilised – decision under review affirmed

[Boschma and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 300 (20 February 2018); Ms DK Grigg, Member

SOCIAL SECURITY – age pension – date of effect of favourable determination – whether section 43(6) of the Administrative Appeals Tribunal Act 1975 applies – decision under review affirmed

[Covenden and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 353 (2 March 2018); Senior Member Chris Puplick AM

SOCIAL SECURITY – refusal of disability support pension – whether conditions fully diagnosed, treated and stabilised – whether conditions 20 points or more under the Impairment tables – gastrointestinal conditions – upper limb – spinal condition – other conditions – decision affirmed

[Fardell and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 340 (26 February 2018); Deputy President J Sosso

SOCIAL SECURITY – disability support pension – 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

[Fishlock and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 3041 (24 November 2017); Senior Member RW Dunne

SOCIAL SECURITY – pensions, benefits and allowances – claim for disability support pension – physical, intellectual or psychiatric impairment – whether an impairment rating of 20 points or more under the Impairment Tables – medical reports – Job Capacity Assessment reports – whether continuing inability to work – whether applicant actively participated in a program of support – decision under review affirmed

[Hewawasam Revulge and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 303 (9 February 2018); Senior Member E Fice

SOCIAL SECURITY – qualification and payability of social security benefit – entitlement to Special Benefit, Austudy, and Student Start-up Scholarship payments – failure to disclose income – debts due to the Commonwealth – no grounds for waiver of debt – decision affirmed

[Jori and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 304 (19 February 2018); Miss EA Shanahan, Member

SOCIAL SECURITY – disability support pension – diagnoses of fibromyalgia and ankylosing spondylitis – ankylosing spondylitis a likely but not proven diagnosis – treatment impacted on by pregnancies – medication side effects – five dependent children under the age of eight – conditions not fully diagnosed treated and stabilised – no impairment rating attracted – not qualified in 2016 as 10 year residency in Australia not met – medical condition deteriorating – proposed treatment withdrawn – new application advised – decision affirmed

[Kalepo and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 313 (26 February 2018); Ms DK Grigg, Member

SOCIAL SECURITY – disability support pension – overpayment - whether member of a couple – decision under review affirmed

[Larkin and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 342 (30 January 2018); Brigadier AG Warner, Member

SOCIAL SECURITY – disability support pension - whether Applicant's conditions were fully diagnosed, treated and stabilised – whether Applicant's impairments attract 20 points under Impairment Tables – whether Applicant has severe impairment – continuing inability to work – whether Applicant actively participated in program of support - decision under review affirmed

[LZBW and Secretary, Department of Health](#) (Social services) [2018] AATA 312 (23 February 2018); Senior Member R W Dunne

AGED CARE – Aged Care fees – assessment of assets for aged care purposes – refundable accommodation deposit – effect of loan and whether a charge or encumbrance – decision under review affirmed

[Mowbray and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 3053 (8 December 2017); Miss EA Shanahan, Member

SOCIAL SECURITY – claim for disability support pension – Australian residency requirements not met – impairment rating less than 20 points – claim rejected – review by AAT Tier 1 affirmed – hearing on papers – decision affirmed

[Rostom and Secretary, Department of Health](#) (Social services) [2018] AATA 337 (25 January 2018); LM Gallagher, Member

SOCIAL SECURITY – residential aged care – basic daily fee – other supplements – whether eligible for hardship supplement – subsidy principles – whether care recipient has access to financial assistance from any other source – other relevant matters – assurance of support – whether change in assurer's financial circumstances – evidence supports assurer has capacity to provide financial support – determination of hardship not made – decision under review affirmed

[Sneesby and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 3059 (11 November 2017); Senior Member MJ McGrowdie

SOCIAL SECURITY – Family Tax Benefits – whether Family Tax Benefits are payable for financial years ended June 2014 and June 2015 – whether there are special circumstances – special circumstances exist for June 2015 income year - family tax benefit is payable for income year ended June 2015 – decision regarding 2014 income year affirmed – decision regarding 2015 income year set aside and substituted

[Strang and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 3039 (21 December 2017); Deputy President AG Melick AO SC

SOCIAL SECURITY – family tax benefit – FTB – whether applicant or other party had care of child – percentage of care decision – finding of fact in relation to plausible care of child – decision under review set aside

[Vorhauer and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 338 (26 February 2018); J Quinlivan, Member

SOCIAL SECURITY – disability support pension – impairment – whether disability is fully diagnosed, treated and fully stabilised – whether applicant's impairments attract 20 points or more under the Impairment Tables – lower limb disorder – decision under review affirmed

[Zamora and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 309 (9 February 2018); Ms A Burke, Member

SOCIAL SECURITY – age pension – member of a couple – separated but living under the same roof – ability to pool resources – decision set aside and remitted

Taxation

[LLUN and Commissioner of Taxation](#) (Taxation) [2017] AATA 3058 (15 June 2017); Deputy President SE Frost

TAXATION AND REVENUE – income tax – burden of proof – where applicants have fully disclosed their worldwide, tax-related affairs – statutory time limits for amended assessments – where applicants engaged in evasion

TAXATION AND REVENUE – income tax – whether fund is a superannuation fund for tax purposes – meaning of superannuation fund – where fund is not a scheme for the payment of superannuation benefits upon retirement or death – where fund constitutes a trust and applicants are presently entitled to a share of net income – where 'rollover' of amounts from one fund to another constitutes a distribution to the applicants – whether amount used for the purchase of property is properly characterised as a loan – where property is held on resulting trust for applicant – whether assets held on trust for a fund or for the applicant individually – whether misapplication of trust funds – whether amount paid to applicant constituted a loan

TAXATION AND REVENUE – income tax – administrative penalty – intentional disregard – penalty uplift – where reduction is not appropriate in the circumstances

TAXATION AND REVENUE – income tax – shortfall interest charge – where it is not fair and reasonable to remit shortfall interest

[MWYS and Commissioner of Taxation](#) (Taxation) [2017] AATA 3037 (22 December 2017); Deputy President The Hon Justice JA Logan RFD

TAXATION – income tax – Controlled Foreign Companies – tainted income – whether taxpayer “sufficiently influenced” – whether taxpayer accustomed to act in accordance with another person’s instructions or wishes – whether so acting “might reasonably be expected” – wish of taxpayer’s board to benefit taxpayer inconsistent with being “sufficiently influenced by another person” – Income Tax Assessment Act 1936 (Cth), Part X, ss 340, 384, 386, 456

Veterans' Affairs

[Bloomer and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 308 (22 February 2018); Senior Member D Cremean

Veterans' Entitlements – Injury or disease – Lyme disease – Lyme-like disease – reasonable satisfaction – no onus to name disease

[Simpson and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 343 (28 February 2018); Senior Member T Tavoularis

VETERANS' ENTITLEMENTS – where Applicant is in receipt of the pension at 100% of the General Rate – where Applicant seeks to claim new conditions – post-traumatic stress disorder – epilepsy – alcohol abuse – where Applicant seeks the pension at the Special Rate or the Intermediate Rate – where Applicant had previously claimed post-traumatic stress disorder – traumatic event – where Applicant relies on a traumatic event not mentioned before – whether Applicant suffers from post-traumatic stress disorder – whether post-traumatic stress disorder causally linked to Applicant’s service – whether Applicant suffers from epilepsy – whether epilepsy causally linked to Applicant’s service – whether Applicant suffers from alcohol abuse – whether alcohol abuse causally linked to Applicant’s service – “alone” test – whether Applicant prevented from undertaking work due to accepted conditions alone – whether ameliorating provisions apply – decision under review affirmed

[Sizmur and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 306 (20 February 2018); Deputy President BJ McCabe

VETERANS' AFFAIRS – pension at the general rate – where increase to special or intermediate rate sought – extent of incapacitation – criteria governing pension award – PTSD – whether applicant can undertake remunerative work for more than 8 hours per week – ischaemic heart disease – emphysema condition – attempts to find remunerative work – history taken by reporting doctor

[Summers and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 315 (23 February 2018); Deputy President SA Forgie

VETERANS' ENTITLEMENTS – remittal - application for Special Rate of pension – alone test – alcohol dependence – decision set aside and substituted

[The Estate of the Late Muriel Linigen and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 307 (5 February 2018); Senior Member Mrs JC Kelly

VETERANS' AFFAIRS – War Widow's Pension – whether veteran's death was war caused – kind of death – hypothesis connecting the death with the circumstances of the service rendered by the veteran – consideration of relevant Statements of Principles – hypothesis does not connect the kind of death to service - 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
Egan and Minister for Immigration and Border Protection	[2017] AATA 2705

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Andriotis v Victorian Building Authority	[2017] AATA 378	[2018] FCAFC 24
Rowntree v Commissioner of Taxation	[2016] AATA 420	[2018] FCA 182

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