



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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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.

Compensation

[Hollis and Comcare](#) (Compensation) [2017] AATA 49 (24 January 2017); Mr PW Taylor SC, Senior Member

Anxiety and depression – ailment – pre-existing depressive condition – major depressive episode – whether “aggravation” of underlying condition – whether contributed to by employment – whether reasonable administrative action – meaning of “suffered as a result of” – code of conduct investigation – termination of employment – decision under review set aside and remitted for reconsideration

[Mikajlo and Comcare](#) (Compensation) [2017] AATA 61 (25 January 2017); Deputy President K Bean

Commonwealth employees – Injuries sustained to left and right shoulders – Whether ongoing entitlement to compensation under sections 16, 19 or 29 of the Safety, Rehabilitation and Compensation Act 1988 – Further claims for compensation in relation to a number of conditions and extent to which Tribunal had jurisdiction – Whether applicant continued to suffer from effects of compensable injury – Whether compensable left shoulder injury continued to result in incapacity, the need to obtain household services and/or treatment – Decision under review varied

Corporations

[TEC Pipe Pty Ltd and Clean Energy Regulator](#) [2017] AATA 48 (20 January 2017); Justice D Kerr, President and Senior Member CR Walsh

Renewable Energy Shortfall Charge – large-scale generation shortfall charge – meaning of the defined term “standby plant” – whether the six electricity generators owned and operated by the Applicant were “standby plant” for each of the “immediately preceding 3 years” – whether the Applicant’s “relevant acquisition” in the 2014 assessment year was not a “relevant acquisition” because it was delivered on a grid “that is not, directly or indirectly, connected to a grid that has a capacity of 100MW or more” – whether the Applicant was a “liable entity” in the 2014 assessment year – decision under review affirmed

[Davidof and Australian Securities and Investments Commission](#) [2017] AATA 37 (20 January 2017); Mrs JC Kelly, Senior Member

Corporations – financial services – banning order – applicant prohibited from providing any financial services – MINI warrants – whether a MINI warrant is a financial product – whether MINI warrants are derivatives – decision under review set aside

Freedom of Information

[Duncan and Secretary, Department of Human Services](#) [2017] AATA 52 (20 January 2017); Dr J Popple, Senior Member

Access to documents – whether agency’s decision that a practical refusal reason existed was validly made – whether agency impermissibly treated applicant’s separate requests as a single request – whether documents subject to legal professional privilege – decision under review affirmed

Immigration and Citizenship

[Djafari and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 42 (4 January 2017); Professor R Deutsch, Deputy President

Partner visa refusal – failure to pass the character test – whether to exercise s 501(1) discretion to refuse on character grounds – substantial criminal record – primary considerations – protection of the Australian community – expectations of the Australian community – impact on family members – primary considerations outweigh other considerations – whether applicant would re-offend – Tribunal not satisfied the grant of the visa would be consistent with expectations of the Australian community – decision affirmed

Practice and Procedure

[Benjamin and Commissioner of Taxation](#) (Taxation) [2017] AATA 39 (19 January 2017); Deputy President SA Forgie

Application for extension of time to apply for review – applicant’s previous application for an extension refused and appeal to Federal Court dismissed – whether principles of *functus officio*, *estoppel* or *res judicata* limit Tribunal’s jurisdiction to hear application – not applicable

Application to dismiss application for extension of time under s 42B of the Administrative Appeals Tribunal Act 1975 – power does not extend to applications for an extension of time

Whether first decision concerning extension of time application, or parts of it, can be adopted in second application for extension of time – application of principles in *Morales v Minister for Immigration and Multicultural Affairs* permits adoption in certain circumstances

[Bridgland and National Disability Insurance Agency](#) [2017] AATA 69 (16 January 2017); Senior Member JF Toohey and Ms D Connolly, Member

Jurisdiction – National Disability Insurance Scheme – whether Tribunal has jurisdiction to review decision concerning the applicant’s plan – whether internal review – no jurisdiction

[Lidgerwood and Repatriation Commission](#) [2017] AATA 51 (6 January 2017); Miss EA Shanahan, Member

Apprehension of bias – applicant’s request that Tribunal Member recuse herself on the basis of bias - hearing of matter completed – Tribunal had raised concerns regarding conflicting evidence – requirements of natural justice – applicant given opportunity to address areas of concern by submissions – recusal request refused

[New Access Investment Group Pty Ltd and Commissioner of Taxation](#) (Taxation) [2017] AATA 63 (25 January 2017); Deputy President JW Constance

Application for an extension of time – reason for delay – prejudice to the respondent – reasonable prospects of success – extension granted

[Shales and Commonwealth Bank of Australia](#) [2017] AATA 53 (23 January 2017); Brigadier AG Warner, Member

Application for release from implied undertaking of confidentiality – requirements of Tribunal General Practice Direction Part 5 – whether special circumstances exist – assistance to the Tribunal - respondent released from the implied undertaking with respect to specified documents

Social Security

[Cichero and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 66 (25 January 2017); Senior Member T Tavoularis

Family tax benefit – late lodgement of claim - late lodgement of tax return – whether an extension of time can be granted – whether “special circumstances” prevented lodgement within time – where applicant did not know of legislative change – where applicant relied on incorrect professional advice – no special circumstances exist – no special circumstances prevented timely lodgement – decision under review affirmed

[Conaghan and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 64 (25 January 2017); Senior Member J Sosso

Disability support pension – cancellation – where Applicant has a number of somatoform conditions – 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

[Gartside and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 45 (20 January 2017); Senior Member J Sosso

Settlement of compensation for workplace injury – preclusion period – whether Applicant was subject to preclusion period – whether preclusion period was properly calculated – where the preclusion period was properly applied – whether special circumstances justified treating compensation payment as not having been made – where Applicant had some care of child – where Applicant had spent much of the compensation payment on drugs – whether financial hardship applied – insufficiently special circumstances for discretion to be used – decision under review affirmed

[Karaka and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 40 (23 January 2017); Mr C Emert, Member

Disability support pension – rent assistance component of disability support pension – request for review of determination – favourable determination made on review – entitlement to backdated payment of rent assistance – date of effect of favourable determination – deemed notice of determination – decision affirmed

[Kilvington and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 50 (24 January 2017); Senior Member RW Dunne

Disability support pension – physical, intellectual or psychiatric impairment – whether an impairment rating of 20 points or more existed under the Impairment Tables – reports of medical practitioner, psychologist and psychiatrist considered – Job Capacity Assessment report considered – whether continuing inability to work – whether applicant actively participated in a program of support – decision under review affirmed

[Perosh and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 44 (24 January 2017); Dr L Bygrave, Member

Age pension – rate of pension – change in applicant’s marital status – date of effect of favourable determination – where an applicant disposes of an asset – where the disposal directly or indirectly diminishes the value of the asset – where the applicant received no consideration for the diminution in value of the asset – where the amount constitutes a deprived asset – decision affirmed

[Prins and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 46 (20 January 2017); Deputy President K Bean

Disability support pension – Whether conditions fully diagnosed, treated and stabilised during assessment period – Whether applicant had an impairment rating of 20 or more points under the Impairment Tables – Decision under review affirmed

[Sharp and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 65 (25 January 2017); Mr DK Grigg, Member

Disability support pension – whether 20 points or more under the impairment tables during the relevant period – whether program of support completed – whether continuing inability to work – decision under review affirmed

[Sisalem and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 68 (25 January 2017); Senior Member A Poljak

Disability support pension – mental health condition – whether conditions fully diagnosed, treated and stabilised – allocation of impairment points – whether applicant suffered severe functional impact on activities – applicant found to have a severe impairment within one impairment table – whether applicant has a continuing inability to work – applicant unable to work separately from program of support – training activity unlikely to enable applicant to work separately from program of support – decision set aside

[Williams and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 47 (24 January 2017); Mr DJ Morris, Member

Disability Support Pension (DSP) – whether qualified – whether impairments fully treated and fully stabilised – application of Determination where reasonable treatment not undertaken but significant functional improvement not expected in 2 years – 2005 transitional provisions relevant – decision set aside – applicant qualified for DSP

Taxation

[Carioti and Commissioner of Taxation](#) (Taxation) [2017] AATA 62 (25 January 2017); Deputy President SE Frost

Loss – characterisation of ‘loan agreement’ – characterisation of ‘acknowledgement of debt’ – whether obligations as guarantors satisfied – whether notice of claim presented to guarantors – administrative penalty – whether Applicants’ conduct reckless or a failure to take reasonable care – objection decisions affirmed

[Kael and Commissioner of Taxation](#) (Taxation) [2017] AATA 38 (20 January 2017); Dr J Popple, Senior Member

Deductions and penalties — whether taxpayer entitled to deductions for overtime meal expenses — whether taxpayer received an allowance under an industrial instrument — whether amount identified by employer as being for overtime meals, but which was carved out of taxpayer’s gross salary, can be an allowance — whether taxpayer liable to administrative penalties due to failure to take reasonable care — whether administrative penalties should be remitted — decisions under review affirmed

Veterans' Affairs

[Agius and Repatriation Commission](#) (Veterans’ entitlements) [2017] AATA 41 (19 January 2017); Miss EA Shanahan, Member

Disability pension – claim for special rate – disabling condition PTSD – ceased work of financial advising at age 54 – farming pursuits – considerable income from investments and company directorships – whether prevented from continuing to undertake remunerative work – non war-caused preventative factors of sleep apnoea and nocturia - alone test not satisfied – decision affirmed

[Larter and Military Rehabilitation and Compensation Commission](#) (Veterans’ entitlements) [2017] AATA 67 (25 January 2017); Mr DJ Morris, Member

Compensation – Military Rehabilitation and Compensation Act 2004 – Myofascial strain of the cervical spine and cervical spondylosis – whether symptoms or signs aggravated by military service – whether liability exists under s 30 of Act – lack of medical evidence – no liability found – 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
Comcare v Parton	[2016] AATA 1076
Kraues v Office of the Migration Agents Registration Authority & Administrative Appeals Tribunal	[2016] AATA 1086

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Privacy Commissioner v Telstra Corporation Limited	[2015] AATA 991	[2017] FCAFC 4
Callychurn v Unique Mortgage Services Pty Ltd & Australian Securities and Investments Commission	[2016] AATA 114	[2017] FCA 29

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 took effect from **23 January 2017**.

Cirrhosis of the liver (Reasonable Hypothesis) – No. 1 of 2017

<https://www.legislation.gov.au/Details/F2017L00002>

Cirrhosis of the liver (Balance of Probabilities) – No. 2 of 2017

<https://www.legislation.gov.au/Details/F2017L00003>

Haemorrhoids (Reasonable Hypothesis) – No. 3 of 2017

<https://www.legislation.gov.au/Details/F2017L00004>

Haemorrhoids (Balance of Probabilities) – No. 4 of 2017

<https://www.legislation.gov.au/Details/F2017L00005>

Relapsing polychondritis (Reasonable Hypothesis) – No. 5 of 2017

<https://www.legislation.gov.au/Details/F2017L00006>

Relapsing polychondritis (Balance of Probabilities) – No. 6 of 2017

<https://www.legislation.gov.au/Details/F2017L00008>

Hookworm disease (Reasonable Hypothesis) – No. 7 of 2017

<https://www.legislation.gov.au/Details/F2017L00010>

Hookworm disease (Balance of Probabilities) – No. 8 of 2017

<https://www.legislation.gov.au/Details/F2017L00012>

Ascariasis (Reasonable Hypothesis) – No. 9 of 2017

<https://www.legislation.gov.au/Details/F2017L00015>

Ascariasis (Balance of Probabilities) – No. 10 of 2017

<https://www.legislation.gov.au/Details/F2017L00016>

Hepatitis D (Reasonable Hypothesis) No. 11 of 2017

<https://www.legislation.gov.au/Details/F2017L00020>

Hepatitis D (Balance of Probabilities) – No. 12 of 2017

<https://www.legislation.gov.au/Details/F2017L00021>

Hepatitis B (Reasonable Hypothesis) – No. 13 of 2017

<https://www.legislation.gov.au/Details/F2017L00001>

Hepatitis B (Balance of Probabilities) – No. 14 of 2017

<https://www.legislation.gov.au/Details/F2017L00007>

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 took effect from **23 January 2017**.

Otitic barotrauma – No. 15 of 2017

<https://www.legislation.gov.au/Details/F2017L00009>

Otitic barotrauma – No. 16 of 2017

<https://www.legislation.gov.au/Details/F2017L00011>

Sinus barotrauma – No. 17 of 2017

<https://www.legislation.gov.au/Details/F2017L00013>

Sinus barotrauma – No. 18 of 2017

<https://www.legislation.gov.au/Details/F2017L00014>

Malignant neoplasm of the prostate – No. 19 of 2017

<https://www.legislation.gov.au/Details/F2017L00017>

Malignant neoplasm of the oesophagus (Reasonable Hypothesis) – No. 21 of 2017

<https://www.legislation.gov.au/Details/F2017L00018>

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