



Administrative  
Appeals Tribunal

# AAT Bulletin

**Issue No. 7/2017**

**13 February 2017**

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.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

Enquiries regarding this publication may be directed to [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

# Contents

|                                   |          |
|-----------------------------------|----------|
| <b>AAT Recent Decisions</b> ..... | <b>3</b> |
| Aviation.....                     | 3        |
| Child Support.....                | 3        |
| Citizenship.....                  | 3        |
| Migration.....                    | 3        |
| Social Security.....              | 4        |
| <b>Appeals</b> .....              | <b>6</b> |
| Appeals lodged.....               | 6        |
| Appeals finalised .....           | 6        |

# 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

[Morey–Hype and Civil Aviation Safety Authority](#) [2017] AATA 125 (6 February 2017); Senior Member A Poljak

License conditions – class 1 and class 2 medical certificates – medical certificates issued with conditions – relevant medical standard – safety of air navigation – chronic pain syndrome – opiate based medication – decision affirmed

## Child Support

[NMDC and Child Support Registrar](#) (Child support second review) [2017] AATA 139 (31 January 2017); R Perton, Member

Percentage of care– whether calculation should be based on nights of care or hours of care.

## Citizenship

[Karatunov and Minister for Immigration and Border Protection](#) [2017] AATA 132 (8 February 2017); Senior Member T Tavoularis

Eligibility – where application for Australian citizenship refused – good character requirements – where Applicant breached Domestic Violence Order – where offending was not disclosed – whether mitigating factors exist – decision under review affirmed

## Migration

[Laupata and Minister for Immigration and Border Protection](#) [2017] AATA 124 (2 February 2017); Senior Member A Poljak

Visa cancellation – character grounds – substantial criminal record – cancellation decision not revoked – whether another reason cancellation should be revoked – decision affirmed

[Lau and Minister for Immigration and Border Protection](#) [2017] AATA 138 (10 February 2017); Dr C Kendall, Deputy President and Ms L Gallagher, Member

Request for Bridging E (Class WE) visa – exercise of discretion to refuse visa pursuant to s 501 (1) of the Migration Act 1958 – “character test” – “substantial criminal record” – Direction No 65 – primary and other relevant considerations – protection of the Australian community from criminal or

other serious conduct – best interests of minor children in Australia (applicant's daughter) – expectation of the Australian community – other relevant considerations – impact on wife – decision under review

## **Social Security**

[Mosavi and Secretary, Department of Social Services](#) [2017] AATA 126 (3 February 2017); Professor R McCallum AO, Member

Carer payment and carer allowance – diabetes mellitus type 1 – behavioural issues – whether qualifying rating of 'intense' under determination – whether ACL questionnaire score of 85 or more – decision affirmed

[Ristevski and Secretary, Department of Social Services](#) [2017] AATA 127 (3 February 2017); Mrs JC Kelly, Senior Member

Disability support pension – compensation affected payment – preclusion period – whether preclusion period correctly calculated – whether special circumstances – decision under review set aside and remitted

[Sciarrotta and Secretary, Department of Social Services](#) [2017] AATA 136 (9 February 2017); I Thompson, Member

Disability support pension – whether the applicant's medical conditions were fully diagnosed, fully treated and fully stabilised within 13 weeks of the claim (the assessment period) – whether conditions attract 20 points or more under the Impairment Tables – whether applicant's conditions warrant a rating of 20 points or more under a single impairment table – applicant not qualified for DSP in the assessment period – decision under review affirmed

[Skiba and Secretary, Department of Employment](#) [2017] AATA 133 (8 February 2017); Mrs JC Kelly, Senior Member

Newstart allowance – connection failure – failure to enter into job plan – no reasonable excuse – decision affirmed

[Slamkova and Secretary, Department of Social Services](#) [2017] AATA 137 (10 February 2017); Senior Member JF Toohey

Newstart allowance – whether applicant's assets exceeded allowable limit – whether property registered in applicant's name should be excluded – whether applicant held property on trust for her son – express or implied trust – constructive trust – Tribunal not satisfied applicant held property on trust for her son – property to be included in assessing value of the applicant's assets – decision under review affirmed

**Smith and Secretary, Department of Social Services** (Social services second review)  
[2017] AATA 135 (8 February 2017); Mr DJ Morris, Member

Family Tax Benefit (FTB) – whether applicant Australian resident at time of claim – whether FTB child in applicant's care – factors to have regard to in determining Australian residency – FTB child – original decision affirmed

**Star and Secretary, Department of Social Services** (Social services second review)  
[2017] AATA 134 (8 February 2017); Mr C Ermert, Member

Disability Support Pension – cancellation – relevant date – whether conditions attract 20 impairment points – whether conditions fully diagnosed at the relevant date – decision affirmed

**Zirilli and Secretary, Department of Social Services** (Social services second review)  
[2016] AATA 1093 (22 December 2016); Senior Member NA Manetta

Disability support pension – whether applicant's medical conditions were fully diagnosed, fully treated and fully stabilised – held – they were not – 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>Walker v Military Rehabilitation and Compensation Commission</b> | <a href="#">[2017] AATA 9</a> |

---

## Appeals finalised

---

| CASE NAME  | AAT REFERENCE                   | COURT REFERENCE   |
|--|---------------------------------|---|
| <b>Haque v Migration Agents Registration Authority</b>         | <a href="#">[2016] AATA 186</a> | <a href="#">[2016] FCA 1249</a><br><a href="#">[2017] HCASL 3</a> |
| <b>Ringshaug v Comcare</b>                                     | <a href="#">[2016] AATA 88</a>  | <a href="#">[2017] FCA 48</a>                                     |
| <b>Turaga v Minister for Immigration and Border Protection</b> | <a href="#">[2010] AATA 270</a> | <a href="#">[2017] FCA 58</a>                                     |
| <b>Chen v Minister for Immigration and Citizenship and AAT</b> | <a href="#">[2016] AATA 620</a> | <a href="#">[2017] FCA 46</a>                                     |
| <b>Kulas and Prosegur Australia Pty Ltd (Compensation)</b>     | <a href="#">[2016] AATA 538</a> | <a href="#">[2017] FCA 85</a>                                     |

---

© Commonwealth of Australia 2016



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](#). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <http://www.itsanhonour.gov.au/coat-arms/>.

Enquiries regarding the licence are welcome at [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](#).