



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

[GMZK and Child Support Registrar](#) (Child support second review) [2017] AATA 141 (10 February 2017); Dr L Bygrave, Member

Child support – percentage of care – whether new family assistance care determination – whether existing percentages of care attributable – decision affirmed

Compensation

[Boots and Military Rehabilitation and Compensation Commission](#) [2017] AATA 177 (3 February 2017); Deputy President K Bean and Dr L Stephan, Member

Military rehabilitation and compensation – Adjustment disorder with elements of PTSD – Concession by respondent as to liability – Whether Tribunal has jurisdiction to consider other psychiatric conditions subsequently suffered – Whether employment made a material contribution to relevant conditions – Jurisdiction with respect to some subsequent conditions, but no material contribution – Decision under review varied

[Cho and Comcare](#) [2017] AATA 175 (10 February 2017); Senior Member N Isenberg

Commonwealth Employees – nature of injury – adjustment disorder with mixed emotional features – whether disease – date of injury – whether caused by employment – whether pre-existing condition – decision under review affirmed

[Lockwood and Comcare](#) [2017] AATA 159 (10 February 2017); Dr J Pople, Senior Member

Applicant made representation in compensation claim form that he had never previously suffered similar symptoms in the context of disease for which he claimed compensation — whether Applicant's representation was made for purposes connected with his employment — whether Applicant's representation was wilfully false — whether s 7(7) of the Safety, Rehabilitation and Compensation Act 1988 applied to Applicant's representation, so that his disease was not an injury for the purposes of that Act — decision under review affirmed — decision under review set aside and substituted

[O'Connell and Comcare](#) [2017] AATA 178 (14 February 2017); Deputy President K Bean and Senior Member S Raymond

Commonwealth employee – Significant contribution from employment to adjustment disorders conceded – Whether adjustment disorders resulted from reasonable administrative action, taken in a

reasonable manner – Administrative actions not reasonable – Whether evidence also supports liability for “elevated stress” – Decisions under review set aside

[Scully and BIS Industries Ltd](#) [2017] AATA 185 (16 February 2017); Senior Member J Sosso

Applicant employed as a fly in/fly out worker - whether the Applicant suffered an injury – whether work resulted in an aggravation of pre-existing ailment – suddenness of physiological change – overall period or episode of work – the decision under review is set aside and remitted

[Zenelovski and Comcare](#) [2017] AATA 188 (17 February 2017); Miss EA Shanahan, Member

De Quervain’s tenosynovitis of the right wrist and secondary sprains and strains of carpometacarpal (right thumb) – liability for osteoarthritis of metacarpocarpal joint of right thumb denied – conflicting medical reports and opinions – multiple interventions and treatment of right thumb condition - De Quervain’s tendonitis diagnosed definitively 2016 and treated surgically without benefit – no significant contribution by employment – decisions affirmed

Education and Research

[Western Institute of Technology Pty Ltd and Australian Skills Quality Authority](#) [2017] AATA 187 (16 February 2017); Deputy President SA Forgie and Senior Member A Nikolic

Vocational Education and Training – suspension of part of scope of registration – parties in agreement that decision should be set aside – respondent requested that suspension be set aside and that registration be subject to condition that the applicant retain and present on request to the respondent all completed assessment tasks for two year period – condition not imposed

National Disability Insurance Scheme

[Kilgallin and National Disability Insurance Agency](#) [2017] AATA 186 (19 January 2017); Deputy President G Humphries and Senior Member J Toohey

Whether applicant has substantially reduced functional capacity to undertake certain activities – meaning of ‘substantially reduced’ – s 24(1)(c) criteria – psychosocial functioning – social interaction – certain personality disorders – whether applicant requires supports – whether activities undertaken by applicant rule out qualification for supports – financial sustainability of scheme – meaning of s 24(1)(e) of Act unclear – ex tempore oral decision – written reasons – decision affirmed

Social Security

[Abdul-Wahed and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 181 (15 February 2017); Senior Member A Nikolic

Disability support pension – whether qualified – whether impairments fully diagnosed, fully treated and fully stabilised – whether impairments attract 20 points or more on Impairment Tables – 10 impairment points assigned – certain conditions diagnosed but not fully treated or stabilised in relevant period – decision under review affirmed

[Brundish and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 180 (15 February 2017); Brigadier AG Warner, Member

Age pension – date of effect – Secretary’s request to dismiss application for review – Tribunal’s power to otherwise order – Tribunal not satisfied that application has no reasonable prospects of success – request for dismissal refused

[Chok and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 160 (10 February 2017); Dr L Bygrave, Member

Disability support pension – multiple conditions – whether applicant’s conditions were fully diagnosed, treated and stabilised – whether applicant’s impairments are rated 20 points or more under the Impairment Tables – thyroid condition – mental health – spinal condition – other conditions – decision affirmed

[Evans and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 183 (16 February 2017); Senior Member RW Dunne

Pensions benefits and allowances – claim for disability support pension rejected – review of decision at first review requested – physical, intellectual or psychiatric impairment – whether an impairment rating of 20 points or more existed under the Impairment Tables – reports of treating doctor, pain management specialist and neurologists considered – Job Capacity Assessment report considered – whether continuing inability to work – decision under review affirmed

[Liu; Secretary, Department of Social Services and](#) (Social services second review) [2017] AATA 176 (10 February 2017); Miss EA Shanahan, Member

Parenting payment partnered – overpayment claimed – attribution of assets from family trust to respondent’s trustee husband – whether determination to be made that trustee husband is not attributable stakeholder – whether relevant circumstances – whether effective control of the trust – contribution to the trust by the respondent’s husband zero – power of appointor overriding all other interests – bona fide loan to trust by appointor – husband not attributable stakeholder – no overpayment of parenting payment partnered – decision affirmed

[Thornton and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 184 (16 February 2017); Mr DJ Morris, Member

Disability Support Pension (DSP) – whether qualified – whether impairments fully stabilised – condition fully diagnosed, but treatment still continuing in claim period – not qualified for DSP – decision affirmed

[Ward and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 179 (15 February 2017); Mr DK Grigg, Member

Disability support pension – DSP – whether mental health condition 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

[Whalen and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 182 (16 February 2017); Senior Member AC Cotter

Pensions – disability support pension – whether applicant qualifies for DSP – whether 20 points or more under Impairment Tables – anxiety - panic attacks – whether condition fully treated and stabilised – Table 5 – whether severe impairment – whether continuing inability to work within two years of the relevant period – decision affirmed

Jurisdiction and legislative changes

This section of the *Bulletin* provides a summary of significant legislative changes that affect the AAT, including changes and potential changes to the AAT's jurisdiction to review decisions. Information about the AAT's jurisdiction can also be found on the [AAT website](#).

Migration Amendment (Character Cancellation Consequential Provisions) Bill 2016

The [Migration Amendment \(Character Cancellation Consequential Provisions\) Bill 2016](#) was passed by Parliament on **Monday, 13 February 2017**. Schedule 1 of the amending Act will commence on the day after Royal Assent, which is likely to occur this week.

The Act will amend the expedited review provisions in subsections 500(6A) to 500(6L) of the [Migration Act 1958](#) to apply to **section 501CA decisions made on or after the commencement of Schedule 1**, as well as section 501 decisions.

Expedited s501CA reviews

On and from the commencement date of Schedule 1, the expedited review provisions apply to a delegate's decision made under **section 501CA(4)** to not revoke a mandatory cancellation of a visa on character grounds under section 501(3A), if a person in Australia applies to the AAT for review of the decision.

Expedited review procedures

The expedited review procedures include:

- a **9-day time limit for lodging an application** for review with the AAT which cannot be extended (subs 500(6B)), and
- a requirement that **the Tribunal must make its decision within 84 days** of the applicant being notified of the decision, otherwise the delegate's decision is taken to have been affirmed under s43 of the AAT Act (subs 500(6L)).

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
Agius v Repatriation Commission	[2017] AATA 41
Australian Securities and Investments Commission v Davidof	[2017] AATA 37

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
None finalised		

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