



Administrative
Appeals Tribunal

AAT Bulletin

Issue No. 11/2017

13 March 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.

Contents

AAT Recent Decisions	3
Freedom of Information	3
Migration.....	3
Primary Industry	3
Professions and Trades	3
Veterans' Affairs	4
Appeals	5
Appeals lodged.....	5
Appeals finalised	5

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.

Freedom of Information

[Utopia Financial Services Pty Ltd and Australian Securities and Investments Commission](#)

[2017] AATA 269 (28 February 2017); Deputy President SA Forgie

Exemptions claimed under ss 42 (legal professional privilege), 45 (breach of confidence), 47C (deliberative processes) – 47E(d) (certain operations of agencies), 47F (personal privacy) and 47G (business interests) of the Freedom of Information Act 1982 – varied

Migration

[NRVC and Minister for Immigration and Border Protection](#) [2017] AATA 295 (3 March 2017);

Senior Member CR Walsh

Mandatory cancellation of applicant's visa – applicant has “substantial criminal record” and does not pass the “character test” – primary considerations and other relevant considerations considered – decision under review affirmed

Primary Industry

[Rust-Oleum Australia PTY LTD and Australian Pesticides & Veterinary Medicines Authority](#)

[2017] AATA 298 (9 March 2017); Deputy President SA Forgie

Agricultural and veterinary chemicals – Stay application – notice to recall and cease supply of product containing unregistered constituent – postponement of hearing – whether decision should continue to be stayed – partial stay ordered

Professions and Trades

[Kishore and Tax Practitioners Board](#) [2017] AATA 271 (28 February 2017); Deputy President

SE Frost

Tax Agents – Code of Professional Conduct – termination of tax agent registration – whether conduct constituted breach of the Code – whether tax agent registration should be terminated – whether an alternative sanction is appropriate – decision set aside – decision in substitution that the Applicant be given a written caution

Veterans' Affairs

[Donnan and Secretary, Department of Veterans' Affairs](#) [2017] AATA 296 (8 March 2017);

Mr C Ermert, Member

Aged care – assessment of assets for Aged Care – sale of properties – release of obligation to repay loans – deprived assets – disposal of assets – contracts for sale – contracts abandoned – disposition of assets included in asset calculations for period of five years after date of disposition – decision set aside

[French and Repatriation Commission](#) [2017] AATA 297 (8 March 2017); Deputy President

JW Constance

Veterans' Entitlements Act 1986 – service related-condition – war-caused injury – whether applicant rendered operational service – Statement of Principles – reasonable satisfaction – whether applicant suffered generalised anxiety disorder – decision affirmed

[Handley and Repatriation Commission](#) [2017] AATA 270 (28 February 2017);

Dr P McDermott RFD, Deputy President

Veteran deceased – claim for compensation by war widow – veteran's accepted war-caused conditions of posttraumatic stress disorder and sensorineural hearing loss – hypothesis connecting the death of the veteran with the circumstances of the service rendered – whether veteran's war-caused conditions caused him to not adequately respond to the presence of a motor vehicle which struck and killed him – decision under review set aside and substituted – war widow pension granted.

[Parkin and Repatriation Commission](#) [2017] AATA 272 (28 February 2017); Senior Member

JF Toohey

Whether veteran entitled to special rate of pension – whether veteran totally and permanently incapacitated by accepted conditions alone – whether veteran prevented from continuing in remunerative employment by accepted disabilities alone – intermediate rate of pension – decision under review 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

None lodged

Appeals finalised

CASE NAME

AAT REFERENCE

COURT REFERENCE

Blain v Repatriation Commission

[\[2016\] AATA 702](#)

[\[2017\] FCA 114](#)

© 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](https://creativecommons.org/licenses/by/3.0/au/). 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.

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](https://www.austlii.edu.au/au/other/dfat/page/aaat.html).