



Administrative
Appeals Tribunal

AAT Bulletin

Issue No. 17/2017

24 April 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
Compensation	3
Conflict of laws	3
Freedom of information	3
Industrial law	3
Migration.....	4
Practice and Procedure.....	4
Social Security.....	4
Appeals	7
Appeals lodged.....	7
Appeals finalised	7

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

[Dabbs and Comcare](#) (Compensation) [2017] AATA 518 (20 April 2017); Ms R Perton, Member

Extension of time for lodgement of application for reconsideration of respondent's original decision – relevant considerations

Conflict of laws

[Hanna and Building Practitioners Board](#) [2017] AATA 481 (13 April 2017); Deputy President SA Forgie

Building Practitioners – registration refused by Building Practitioners Board of Victoria on basis the applicant failed to satisfy the Board that he was of good character for the purposes of s 170(1)(c) of the Building Act 1993 – decision affirmed

Freedom of information

[Fitzgibbon and Prime Minister of Australia](#) (Freedom of information) [2017] AATA 502 (23 March 2017); Dr J Popple, Senior Member

Access to documents – whether Tribunal has power to order that applicant's legal representatives can inspect document in dispute – whether inspection order required to ensure that every party is given a reasonable opportunity to present his or her case – whether Tribunal can “have regard” to a document without inspecting it – order not made

Industrial law

[Klemm and Secretary, Department of Employment](#) [2017] AATA 507 (13 April 2017); Ms K Millar, Member

Employment – Fair Entitlement Guarantee – claim for advance under Fair Entitlements Guarantee Act – insolvency event – whether entitled to a redundancy pay entitlement – termination of employment – applicants employment terminated because of his conduct – decision under review affirmed

Migration

[Intesir and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 503 (19 April 2017); Deputy President JW Constance

Visa refusal – bridging visa – failure to pass the character test – whether to exercise s501(1) discretion to refuse of character grounds – multiple convictions relating to driving offences – protection of the Australian community – expectations of the Australian community – decision affirmed

[MCRL and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 505 (19 April 2017); Dr C Kendall, Deputy President

Mandatory cancellation of applicant's visa – applicant has substantial criminal record and does not pass the character test – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – protection of the Australian community from criminal or other serious conduct – expectations of the Australian community – other considerations – strength, nature and duration of ties – impact on victims – extent of impediments if removed – decision under review affirmed

Practice and Procedure

[Australian Tertiary Academy Pty Ltd and Australian Skills Quality Authority](#) [2017] AATA 480 (12 April 2017); Deputy President BJ McCabe

Practice and procedure – cancellation of training organisation registration – application to dismiss application for review on ground of no reasonable prospect of success – Tribunal not satisfied application has no reasonable prospect of success – application refused

Social Security

[Abbas and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 501 (12 April 2017); Dr I Alexander, Member

Disability support pension – whether applicant's impairments are fully diagnosed, treated and stabilised – severe impairment – continuing inability to work – Impairment tables – cerebral palsy – asthma – vision – Table 2 – Table 3 – Table 8 – decision affirmed

[Adams and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 504 (19 April 2017); Ms R Perton, Member

Parenting payment (single) – whether applicant is a member of a couple – where parents live separately under same roof – where parents' finances generally separate – where utility costs shared – where some household duties shared – where parents jointly accompany children on holidays and at school functions – where parents no longer have a sexual relationship – where parents still hold themselves out to be a couple in certain social settings – where parents share use of a motor vehicle – balance of considerations indicates applicant is part of a couple as defined in social security law – decision affirmed

[Brewer; Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 506 (13 April 2017); Ms K Millar, Member

Disability support pension – whether respondent's medical conditions are fully diagnosed, fully treated and fully stabilised within 13 weeks of the claim – whether respondent's conditions warrant a rating of 20 points under the Impairment Tables – decision under review set aside

[Bridson and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 516 (24 March 2017); Mr N Gaudion, Member

Age Pension – date on which the applicant provided notification of a change in circumstances – decision under review set aside and remitted for reconsideration

[East and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 473 (12 April 2017); Senior Member P Nolan

Disability support pension – cancellation of pension – spinal condition – lower limb condition – requirement that a person's impairment rating is of 20 points or more under the Impairment Tables – decision under review affirmed

[Elphick and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 477 (13 April 2017); Dr L Bygrave, Member

Disability support pension – whether applicant qualified for disability support pension – mental health conditions – whether applicant's medical conditions rated at 20 points or more under Impairment Tables – whether applicant had a continuing inability to work – decision set aside and decision made in substitution

[Ighani and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 476 (13 April 2017); Mr C Ermert, Member

Extension to portability period – jurisdiction to review original decision – Disability Support Pension – qualification period – whether physical, intellectual or psychiatric – whether impairments attract 20 or more impairment points – decision affirmed

[Mariadas and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 474 (12 April 2017); Dr L Bygrave, Member

Disability Support Pension – lower limb condition – upper limb condition – spinal condition – mental health condition – diabetes – medical conditions rated more than 20 points under the Impairment Tables – applicant has a continuing inability to work – decision under review set aside and substituted

[Morgan and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 482 (13 April 2017); Senior Member T Tavoularis

Disability Support Pension – whether Applicant had conditions that were fully diagnosed, treated and stabilised during the relevant period – Accepted Applicant had/has a chronic back pain condition – whether Applicant's condition(s) rated 20 impairment points – Applicant's condition rated 20 impairment points under Table 4 – had continuing inability to work – decision under review set aside and substituted

[Muranovic and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 475 (21 March 2017); Dr P McDermott RFD, Deputy President

Disability support pension – physical and psychiatric impairments – whether applicant’s conditions are permanent – whether applicant’s impairment is of 20 points or more under the Impairment Tables – whether applicant has a continuing inability to work – decision affirmed under review

[Prescott and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 515 (20 April 2017); Senior Member T Tavoularis

Youth allowance – Dependant rate was reduced upon reassessment of parents’ income – Application for independent rate of payment was rejected – Tribunal to consider whether special or other exceptional circumstances exist – whether extreme family breakdown – whether other similar exceptional circumstances – none apply – Decision under review affirmed

[Sesay and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 483 (13 April 2017); Mr DJ Morris, Member

Disability Support Pension (DSP) – whether qualified – whether impairments fully stabilised – whether conditions have functional impact – reasonable treatment recommended but not undertaken – not qualified for DSP – decision affirmed

[Thomas and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 479 (18 April 2017); Senior Member JF Toohey

Disability support pension – remitting and relapsing multiple sclerosis – depression and anxiety – osteoarthritis of knees – emphysema – right wrist – whether impairments fully diagnosed during claim period – whether impairments fully treated and stabilised during claim period – program of support – whether applicant had continuing inability to work – decision under review set aside

[Walters and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 517 (28 March 2017); Dr P McDermott RFD, Deputy President

Baby bonus – claim made after legislation repealed – application dismissed

[Zielke and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 478 (13 April 2017); Ms S Taglieri, Member

Age pension – disposal of assets – value of assets – overpayment debt – decision under review set aside – remitted to Respondent for recalculation

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
Judd v Minister for Immigration and Border Protection & Anor	[2017] AATA 239
National Disability Insurance Agency v McGarrigle	[2016] AATA 498
Usualii v Minister for Immigration and Border Protection & Anor	[2017] AATA 260

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Repatriation Commission v Sharp	[2016] AATA 719	[2017] FCA 350
Walker v Military Rehabilitation and Compensation Commission	[2017] AATA 9	[2017] FCA 386

© 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).