



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

[Moore and Military Rehabilitation and Compensation Commission](#) (Compensation) [2017] AATA 532 (24 April 2017); Senior Member T Tavoularis

Veterans' Affairs – entitlement to compensation – causal relation between injury and employment – whether application constitutes re-litigation of consent decision – previous consent decision was correct decision – application dismissed

Practice and procedure – re-litigation of issues – former resolution of matters of record – effect of an earlier consent decision

Migration

[Candemir and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 531 (21 April 2017); Dr L Bygrave, Member

Visa – cancellation – character test – substantial criminal record – drug offences – protection of the Australian community – best interests of minor children – expectations of the Australian community – strength nature and duration of ties to Australia – long residency – extent of impediments if removed from Australia – medical conditions – dependent family – disabled son – decision under review set aside and decision made in substitution

[KCFS and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 539 (26 April 2017); Ms K Parker, Member

Visa refusal on character grounds – nature and seriousness of conduct – risk of engaging in criminal conduct if allowed to remain in Australia – discretion to refuse visa enlivened – where applicant convicted of multiple offences – need to protect Australian community from criminal misconduct – expectations of Australian community not met – applicant suffered hardship in childhood – strength, nature and duration of ties to Australia – impact on applicant and family if visa refused – impact on victims – decision affirmed

Practice and Procedure

[James and Secretary, Department of Social Services](#) [2017] AATA 523 (19 April 2017); Ms K Parker, Member

Social security – application for dismissal of substantive application – whether Tribunal satisfied that substantive application has “no reasonable prospect of success” – substantive application concerns

eligibility for disability support pension – whether the applicant had a “continuing inability to work” – application for dismissal refused

[Richards and Secretary, Department of Social Services](#) [2017] AATA 522 (14 March 2017); Senior Member T Tavoularis

Interlocutory proceeding – Application for Stay of Decision – cancellation of Disability Support Pension – whether desirable or appropriate to stay decision under review – refusal to stay the operation or implementation of the decision under review

Social Security

[Alicier and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 538 (26 April 2017); Deputy President FJ Alpins

Disability support pension – application for unlimited portability period under s 1218AAA of Social Security Act 1991 (Cth) – whether applicant’s impairment a severe impairment – whether impairment of 20 points or more under a single Impairment Table – date at which eligibility for unlimited portability period to be assessed

[Allen and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 526 (21 April 2017); Ms DK Grigg, Member

Assurance of Support – applicant should not be released from assurance of support before end of ten year period – no “special circumstances” – decision under review affirmed

[Armstrong and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 534 (26 April 2017); Professor R McCallum AO, Member

Family Tax Benefit (FTB) – assessment of care percentages – applicant’s care percentage below 35 per cent – decision under review affirmed

[Burgess and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 525 (21 April 2017); Ms DK Grigg, Member

Family tax benefit – late lodgement of taxation return – failure to lodge income tax returns on time – no “special circumstances” which prevented this occurring – decision under review affirmed

[CPJP and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 533 (6 March 2017); Mr DJ Morris, Member

Disability Support Pension (DSP) – whether qualified – whether impairments fully diagnosed, fully treated and fully stabilised – neurological disorder with mental health side effects – where applicant suffers from single condition causing multiple functional impairments – barrier to assessing under Table 5 without proximate diagnosis – not qualified for DSP – decision affirmed – written reasons requested – written reasons may elaborate on oral reasons given

[Kouriefs and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 536 (26 April 2017); Senior Member A Poljak

Disability support pension – Impairment Tables – whether conditions fully diagnosed, treated and stabilised – International Agreement – residency – severe disability – decision affirmed

[Morcos and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 530 (21 March 2017); Senior Member B Stefaniak AM RFD

Disability support pension – portability period – request for extension – gastroenteritis – neck and back problems – reasonable efforts to return to Australia – first available opportunity – decision set aside and a decision made in substitution

[Smith and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 529 (21 April 2017); Mr S Webb, Member

Disability support pension claim – impairments resulting from multiple conditions – some conditions not ‘permanent’ – meaning of ‘fully treated’ and ‘fully stabilised’ – rating of impairments resulting from opiate dependence, Hepatitis C, spine condition – assessment of physical and cognitive functional impacts under Impairment Tables – consideration of descriptors of cognitive impairment in Tables 5, 6, 7 and 10 – same impairment cannot be rated twice – no ‘severe impairment’ – assessment of continuing inability to work – meaning of ‘program of support’ – requirement for evidence – quarterly Centrelink interviews – placement referrals to Job Service providers – effect of suspension or exemption from compulsory participation – requirement for active participation in a ‘program of support’ not met – decision affirmed

[Tosi and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 527 (21 April 2017); Senior Member J Sosso

Disability support pension – Impairment Tables – where Applicant has several conditions – whether conditions are fully diagnosed, treated and stabilised – points allocation – whether conditions attract points under the Impairment Tables – relevant period – where conditions were aggravated after the relevant period – decision under review affirmed

Taxation

[Carter and Tax Practitioners Board](#) (Taxation) [2017] AATA 528 (21 April 2017); Deputy President G Humphries

Tax agents – Code of Professional Conduct – registration of applicant’s company as tax agent terminated – registration of applicant as tax agent terminated – applicant banned from reapplying as tax agent for one year – applicant fails to meet ‘fit and proper person’ requirements under relevant Act – multiple breaches of Code – conflict of interest – where large unsecured loans made to applicant by client – renting property from client not a conflict – lack of competency – tax return of clients made to personal account – failure to forward tax return monies to client – honesty and integrity – late stage contrition insufficient for substituted decision in favour of applicant – decision of Tax Practitioners Board to terminate and ban affirmed

Veterans' Affairs

[CVZG and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 537 (27 April 2017); Brigadier AG Warner, Member

Veterans' Affairs – eligibility for service pension – whether applicant as an allied veteran incurred danger during a period of hostilities – whether applicant rendered qualifying service – 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
Commissioner of Taxation v Primary Health Care Limited	[2017] AATA 393
Nairn v National Disability Insurance Agency & Anor	[2017] AATA 242

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Comcare v Wuth	[2015] AATA 947	[2017] FCA 433
Lim v Comcare	[2015] AATA 189	[2017] FCAFC 64 [2016] FCA 709

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