



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.

Child Support

[GYJV and Child Support Registrar](#) (Child support second review) [2017] AATA 595 (3 May 2017);
Dr L Bygrave, Member

Percentage of care – existing care percentage attributable – whether existing care percentage determination must be revoked – decision affirmed

Citizenship

[Ahoru and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 601 (5 May 2017); Senior Member J Sosso

Eligibility – where application for Australian citizenship refused – good character requirements – where Applicant has history of road traffic offences – where Applicant breached domestic violence order – whether mitigating factors exist – decision under review affirmed

Compensation

[de Leon and Comcare](#) (Compensation) [2017] AATA 563 (28 April 2017); Senior Member B Stefaniak AM RFD

Further claim for compensation – permanent impairment and non-economic loss – aggravation of major depressive disorder – whether applicant continues to suffer an aggravation of major depressive disorder compensable by respondent – whether applicant suffers a permanent impairment as a result of the injury – decision affirmed

[Ryan and Comcare](#) (Compensation) [2017] AATA 561 (27 April 2017); Mrs JC Kelly, Senior Member

Claim for further compensation – permanent impairment and non-economic loss – medical expenses and incapacity payments – upper shoulder – upper arm – elbow – other conditions – whether applicant continues to suffer from the effects of the conditions compensable by respondent – conflicting medical evidence – decision affirmed

Conflict of laws

[Rafferty and Building Professionals Board](#) [2017] AATA 574 (2 March 2017);
Professor MJ McGrowdie, Senior Member

Building Practitioners – mutual recognition – surveyor – activities – New South Wales – Victoria – certificate of accreditation – conditions – decision affirmed

Freedom of Information

[Toe and Secretary, Department of Immigration and Border Protection](#) (Freedom of information) [2017] AATA 572 (14 March 2017); Miss EA Shanahan, Member

Application to amend year of birth and add middle name to records – Liberian citizen – refugee – humanitarian visa – claim of age discrimination – Liberian birth documentation determined by Forensic Examiner to be counterfeit – decision affirmed

Health

[Seed and Australian Community Pharmacy Authority](#) [2017] AATA 575 (27 April 2017); Deputy President BJ McCabe

Health and Community Services – pharmaceutical benefits – application for approval to supply pharmaceutical benefits – whether the proposed premises ‘are not directly accessible by the public from within a supermarket’ – whether the proposed premises is a supermarket – statutory interpretation – primary business – decision under review is set aside and the Tribunal decides in substitution to recommend to the Secretary of the Department of Health that approval to supply pharmaceutical benefits from the proposed premises be granted

Migration and Refugee

Migration

[Bernard and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 597 (3 May 2017); Senior Member E Fice

Mandatory visa cancellation – character grounds – substantial criminal record – applicant convicted of various criminal offences involving obtaining property by deception – best interests of minor children in Australia – where serious risk to Australian community if applicant re-offended – where Australian community would expect application to be refused – decision affirmed

[Buday](#) (Migration) [2017] AATA 493 (27 March 2017); RC Titterton, Member

Migration – Employer Nomination (Permanent) (Class EN) Visa – Subclass 186 Employer Nomination Scheme – Temporary Residence Transition stream – cl 186.222(a) – Vocational English for position of Cook – Evidence of undertaking English-language test – Class 3 exemption – Completion of secondary or higher education in English – Definition of higher education institution and education – Education systems – Decision under review affirmed

[Hong](#) (Migration) [2017] AATA 512 (30 March 2017); P Hunter, Member

Migration – Student (Temporary) (Class TU) visa – Subclass 573 Higher Education Sector visa – cl 572.223(1) – Relevance of course to academic or employment background – Incentive to return to China – Completion of 5 courses – Excellent progress in degree course – Family business employment prospects – Decision under review remitted

[Odunbaku](#) (Migration) [2017] AATA 511 (29 March 2017); G Cullen, Member

Migration – Student (Temporary) (Class TU) visa – Subclass 572 Vocational Education and Training Sector – cl 572.223 – Genuine temporary entrant – Current enrolment – Funds from an acceptable

source – Acceptable individual – Funds held for 3 months before application – Decision under review affirmed

[Sadranu](#) (Migration) [2017] AATA 558 (20 April 2017); D Dimitriadis, Member

Migration – Temporary Business Entry (Class UC) visa – Subclass 457 – No substantive visa – Failed to lodge 457 visa before cessation of previous substantive visa – Employer's error – No compelling reasons – Factors within applicant's control – Decision under review affirmed

[Zhang](#) (Migration) [2017] AATA 551 (21 April 2017); Senior Member M Holmes

Migration – Skilled (Provisional) (Class VC) visa – Subclass 485 – Graduate (Post Study Work) stream – Australian study requirements – Course not completed 6 months preceding visa application date – Graduate Diploma in Education – Not higher level qualification – Decision under review affirmed

Refugee

[1504221](#) (Refugee) [2017] AATA 541 (21 March 2017); S Baker, Member

Refugee – Protection visa – Japan – Political opinion – Opposing gender inequality – Opposing human trafficking in Japan – Particular social group – Women – Non-conventional life choices – Request for Ministerial Intervention – Decision under review affirmed

[1509551](#) (Refugee) [2017] AATA 521 (17 March 2017); D McCulloch, Member

Refugee – Protection visa – Nigeria – Religion – Christian – Political opinion – Refusal of custodianship of local oracle – Attacks by oracle members – Speaking out against oracle – Opposition to government corruption – Decision under review affirmed

[1509650](#) (Refugee) [2017] AATA 540 (17 March 2017), F Gelev, Member

Refugee – Protection visa – Ethiopia – Political opinion – Oromo – Opposed to ruling party - Anti-government protests and other activities – Publicly advocated for Oromo cause – Risk of harm on return – Decision under review remitted

[1513679](#) (Refugee) [2017] AATA 543 (21 March 2017); Senior Member S Roushan

Refugee – Protection visa – Lebanon – Political – General instability – Threats of harm from Islamic radicals – Complaint to authorities – Relocation in Lebanon possible – Decision under review affirmed

[1517181](#) (Refugee) [2017] AATA 544 (21 March 2017); S Rice, Member

Refugee – Protection visa – Nepal – Political opinion – Maoist demand for donation – Communist Party member – Delay in protection application – Credibility issues – Can relocate to India – Decision under review affirmed

Practice and Procedure

[DZXP, KRQD and QJJS and Innovation and Science Australia](#) [2017] AATA 576 (19 April 2017);
Senior Member CR Walsh

Dismissal application – applications frivolous, vexatious, misconceived or lacking in substance or have no reasonable prospects of success – applications for R&D tax incentive advance/overseas findings made by wholly-owned subsidiary members of MEC groups rather than by head entities of the MEC groups – registrations and findings not effective for subsidiary members for MEC group R&D activities – application of the “single entity rule” for consolidated tax groups considered – R&D tax incentive scheme for claimed overseas R&D activities considered – powers of the Board to do all things necessary and convenient to be done for or in connection with the performance of its functions – applications dismissed

[Frugtniet and Secretary, Department of Social Services](#) [2017] AATA 577 (19 April 2017);
Ms A Burke, Member

Practice & Procedure – extension of time – delay of almost one year in lodging application – whether reasonable excuse for delay – no reasonable excuse for extensive delay – where prejudice would be incurred by respondent and public by allowing extension of time – where prospects of success do not weigh in favour of either party – not reasonable in all the circumstances to allow extension of time

[Girdlestone and Secretary, Department of Social Services](#) [2017] AATA 573 (28 April 2017);
Brigadier AG Warner, Member

Social security – Pension Bonus Scheme – whether applicant submitted an application for registration to the Pension Bonus Scheme prior to cut-off date – application out of time – no discretion in legislation – application for review dismissed

[Morton and Minister for Immigration and Border Protection](#) [2017] AATA 582 (1 May 2017);
Senior Member A Poljak

Practice & Procedure – application for dismissal of substantive application – whether Tribunal satisfied that substantive application has no reasonable prospect of success – substantive application concerns citizenship residence requirement – substantive application dismissed

[MSQT and Child Support Registrar](#) [2017] AATA 583 (2 May 2017); Senior Member A Poljak

Practice & Procedure – Jurisdiction – whether Tribunal has jurisdiction to review decision of the Social Security and Child Support Division refusing an extension of time request to lodge an objection with the Child Support Registrar – no jurisdiction – application dismissed

Social Security

[Al Obaidi and Secretary, Department of Social Services](#) (Social services second review)
[2017] AATA 580 (2 May 2017); Senior Member A Poljak

Disability support pension – whether Applicant was a member of a couple – whether Applicant was overpaid disability support pension – whether debt due to the Commonwealth – whether debt can be waived or written off – decision affirmed

[Alhajal and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 567 (28 April 2017); Senior Member JF Toohey

Carer payment – carer allowance – cancellation – whether applicant qualified for carer payment and carer allowance at date of cancellation – whether applicant’s husband in need of required level of care – whether applicant provided constant care at the date of cancellation – decision concerning cancellation of carer’s payment affirmed – decision concerning cancellation of carer’s allowance set aside and remitted for reconsideration in accordance with these reasons

[Andrews and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 570 (21 March 2017); Senior Member P Britten-Jones

Disability support pension – whether medical conditions fully diagnosed, fully treated and fully stabilised during the relevant period – whether applicant has a severe impairment – whether continuing inability to work – application for review affirmed

[Born and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 600 (5 May 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 – decision under review affirmed

[Boscolo and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 598 (3 May 2017); Senior Member JF Toohey

Disability support pension – psychological impairment – post traumatic stress disorder – schizophrenia/psychosis – substance abuse – whether applicant’s impairments fully diagnosed during claim period – whether impairments fully treated and stabilised during claim period – Tribunal not satisfied any impairment fully treated and stabilised during claim period – decision under review affirmed

Practice and Procedure – application for adjournment – whether hearing should be adjourned – Tribunal satisfied applicant had reasonable opportunity to obtain legal advice or representation and to prepare for hearing – adjournment refused

[Douglas; Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 581 (3 May 2017); Professor R McCallum AO, Member

Disability Support Pension – Chronic Fatigue Syndrome – respondent has a physical, intellectual or psychiatric impairment – respondent’s condition not fully treated, diagnosed and stabilised – decision under review set aside and substituted

[Ellison and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 578 (2 May 2017); Ms DK Grigg, Member

Disability support pension – DSP – whether 20 points or more under the impairment tables during the relevant period – whether continuing inability to work – decision under review affirmed

[Geddes and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 568 (24 April 2017); Mrs JC Kelly, Senior Member

Disability support pension – whether the impairment was fully diagnosed, treated and stabilised – Job Capacity Assessment Report – Table 2 – Upper limb function – functional impairment – decision affirmed

[Gibson and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 599 (4 May 2017); Dr L Bygrave, Member

Disability support pension – multiple conditions – whether applicant's impairments are rated 20 points or more under the Impairment Tables – spinal condition – lower limb condition – hearing loss – diabetes – other conditions – decision affirmed

[Hyde and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 569 (27 April 2017); Deputy President G Humphries

Disability Support Pension – lower back/spine condition – inability to work – where condition not sufficient to reach 20 points under one table – contradictory evidence regarding mobility of Applicant – decision affirmed

[Lange and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 596 (3 May 2017); Ms R Perton, Member

Disability support pension – whether medical conditions fully diagnosed, treated and stabilised at time of claim or within 13 weeks of that date – impairment points to be allocated – where 20 points requirement satisfied – where applicant does not have a severe impairment – whether applicant has a continuing inability to work – requirement for program of support not satisfied – decision affirmed

[Morunga and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 562 (28 April 2017); Senior Member A Poljak

Disability Support Pension – bilateral knee pain – anxiety – depression – applicant has a physical and psychiatric impairment – the impairments do not total more than 20 points under the Impairment Tables – decision under review affirmed

[Oklobdzija and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 579 (2 May 2017); Miss EA Shanahan, Member

Disability support pension – primary pulmonary hypertension – gross cardiomegaly and right heart failure – oxygen dependant – condition attracts an impairment rating of 20 or more points – decision set aside and substituted

[Scott; Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 564 (19 April 2017); Mrs JC Kelly, Senior Member

Disability support pension – whether the impairment was fully diagnosed, treated and stabilised – mental health condition – depression – post-traumatic stress disorder – Impairment tables – Table 5 Mental Health Function – decision affirmed

[Towle and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 565 (28 April 2017); Senior Member RW Dunne

Pensions, benefits and allowances – payment of disability support pension ("DSP") to applicant at single rate – applicant living with non-residential partner – decision made to suspend DSP – whether DSP was correctly suspended – decision under review affirmed

[Treloar and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 571 (5 April 2017); Senior Member P Britten-Jones

Sickness allowance – overpayment – whether overpayment is a legally recoverable debt – whether all or part of the debt should be waived or written off – whether special circumstances – whether eligible for a disability support pension from an earlier date – decision under review affirmed

Taxation

[Rowsthorn and Commissioner of Taxation](#) (Taxation) [2017] AATA (5 May 2017); Deputy President SA Forgie

Deductibility of capital expenditure – applicant holder of a depreciating asset in form of a stallion – applicant established corporate structure – stallion used within that structure – whether applicant used stallion for a taxable purpose – whether for the purpose of gaining or producing his assessable income – applicant kept no records as to income and expenses of stallion – distinct legal entities – income of applicant as an individual is distinct from the income of a company – decision affirmed

Veterans' Affairs

[Poulton and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 566 (24 April 2017); Dr L Bygrave, Member

Veterans' affairs – entitlements – war widow's pension – hypertension causing death – where hypertension caused by consumption of alcohol – whether there is a causal connection between consumption of alcohol and operational service – decision affirmed

[Richards and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 560 (27 April 2017); Miss EA Shanahan, Member

Repatriation – Application for an increase in pension to either intermediate or extreme disablement adjustment rate – Veteran deceased in the course of the assessment period – wife as personal legal representative continuing claim – cause of death widespread metastatic carcinoma of the colon – claim that the terminal back pain was due to accepted condition of lumbar spondylosis – chemotherapy, radiotherapy plus further surgical intervention over a period of three and a half years – criteria for extreme disablement rate not met – 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 |
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| Repatriation Commission v Bertram | [2017] AATA 25 |
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Appeals finalised

| CASE NAME | AAT REFERENCE | COURT REFERENCE |
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None finalised

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