



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.

Citizenship

[Raveendran and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 653 (5 May 2017); Professor R McCallum AO, Member

Application for Australian citizenship by conferral – whether the applicant satisfies the general residence requirement – ministerial discretion – decision set aside

Compensation

[Chin and Comcare](#) (Compensation) [2017] AATA 634 (10 May 2017); Dr J Pople, Senior Member

Claims management – implied undertaking – whether implied undertaking applies to party compelled to produce documents – whether implied undertaking applies in relation to use of documents for claims management purposes —release from implied undertaking required where documents used for collateral or ulterior purposes – claims management purposes not collateral or ulterior to purpose for which documents were produced where they relate to the same person and the same injuries – no release required

[Yunupingu and Comcare](#) (Compensation) [2017] AATA 622 (3 May 2017); Deputy President K Bean

Workers' compensation – Major depression – Whether contributed to by employment – Whether condition arose as a result of reasonable administrative action taken in a reasonable manner – Meaning of “as a result of” – Decision under review set aside and substituted

[Zdziarski and Telstra Corporation Limited](#) (Compensation) [2017] AATA 637 (10 May 2017); Deputy President JW Constance

Workers' compensation – fall at work in 2001 – injuries to lower back, left shoulder and knees – paid compensation until August 2015 – determined no longer suffering effects of back and shoulder injuries – whether entitlement to medical expenses – whether entitlement to incapacity payments – has not ceased to suffer the effects of the injuries – continues to reasonably require treatment – continues to be totally incapacitated for work – decision set aside and decision made in substitution

Major depressive disorder – ailment – result of physical injuries sustained during workplace fall – onset in early 2004 – decision set aside and decision made in substitution

Pharmaceutical expenses – medication prescribed by general practitioner – Valium – Pristiq – Endep – Quinbisul – treatment for injuries arising from workplace fall – whether Employer liable to reimburse

expenses – whether the expenses reasonable in the circumstances – decision set aside and remitted for reconsideration

Corporations

[O'Sullivan and Australian Securities and Investments Commission](#) [2017] AATA 644 (2 May 2017); Professor R Deutsch, Deputy President

Director – company – debentures – loans – construction loan – arrears – disqualified from managing corporations – failed to discharge duty with required degree of care and diligence – failure to obtain up to date valuations of property – excessive loan to valuation ratio – capitalised interest – changed maturity date of loan – lack of provisioning – misleading or deceptive conduct – disclosure requirements – prospectuses and reports – loan not identified as in arrears or default – material prejudice to debenture holders – failure to ensure information in reports accurate and complete – gained an advantage – release from guarantee – disqualification period appropriate – whether leave to manage certain companies – companies involving immediate family members – banning order – prohibited from providing financial services – failed to comply with financial services law – misleading or deceptive conduct – prospectuses and reports – period of ban appropriate – decision affirmed and decision set aside and decision made in substitution

Practice and Procedure – application to re-open proceedings – application to summons production of Statements of Facts, Issues and Contentions in related proceedings – applications refused

Health

[Wong and Australian Community Pharmacy Authority](#) [2017] AATA 646 (9 May 2017); Dr C Kendall, Deputy President and Ms LM Gallagher, Member

PHARMACIST – application for approval to supply pharmaceutical benefits at particular premises – review sought in Administrative Appeals Tribunal of recommendation by Australian Community Pharmacy Authority not to approve application – requirement for at least 4 full-time or equivalent prescribing medical practitioners practising not satisfied – decision affirmed

Migration

[BNVM and Minister for Immigration and Border Protection](#) [2017] AATA 621 (5 May 2017); Dr C Kendall, Deputy President

Request for Bridging (Class WE) visa – visa refusal pursuant to s 501(1) of the Migration Act 1958 – “character test” – “sexually based offences involving a minor” – Direction No 65 – primary and other relevant considerations – protection of the Australian community from criminal or other serious conduct – expectation of the Australian community – other relevant considerations – international non-refoulement obligations – impact on victims – decision under review affirmed

National Disability Insurance Scheme

[King and National Disability Insurance Agency](#) [2017] AATA 643 (4 May 2017); Ms K Parker, Member

Participant's plan – application for amendment of plan to include additional supports – gymnasium membership – physiotherapy sessions – whether supports reasonable and necessary – whether supports represent value for money – whether supports assist in undertaking activities to facilitate social and economic participation – whether supports effective and beneficial – consideration of other support available – whether supports most appropriately funded through agency – decision under review set aside

Social Security

[Erceg; Secretary, Department of Social Services and](#) (Social services second review) [2017] AATA 641 (10 May 2017); Mr DJ Morris, Member

Newstart allowance – debt – is debt recoverable – sole administrative error not found – whether severe financial hardship – whether special circumstances – Department lost records – decision set aside and remitted to Secretary for recalculation of debt

[Farrell and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 633 (9 May 2017); Ms A Burke, Member

Disability support pension – whether qualified – lumbar spine disorder fully diagnosed, treated and stabilised – depression not fully diagnosed, treated and stabilised – gout not fully treated and stabilised – impairment attracts rating of 20 points or more under impairment tables – applicant has a continuing inability to work – decision set aside and substituted

[Hurst and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 605 (8 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

[Issa and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 654 (5 May 2017); Professor R McCallum AO, Member

Disability support pension – Impairment Tables – functional impact – Job Capacity Assessment – fully diagnosed, treated and stabilised – continuing inability to work – lumbar spine condition – congenital heart disease – gynaecological disorder – endometriosis – irritable bowel syndrome – endocrine system dysfunction – asthma – chromosomal/syndromic condition – sciatica – Table 1 Functions requiring Physical Exertion and Stamina – Table 10 Digestive and Reproductive function – Table 5 Mental Health Function – decision affirmed

[Kopanja and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 652 (11 May 2017); Senior Member A Poljak

Disability Support Pension – whether conditions fully diagnosed, treated and stabilised at date of cancellation – whether applicant's impairments are rated 20 points or more under the Impairment Tables – mental health function – lower back and neck pain – other conditions – conditions fully diagnosed – conditions not fully treated and stabilised – decision affirmed

[McLean and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 640 (10 May 2017); Mr C Ermert, Member

Disability Support Pension – qualifying period – date of claim – period of 13 weeks – whether physical, intellectual or psychiatric impairment – whether conditions fully diagnosed, fully treated and fully stabilised – whether impairment rating of 20 or more points can be allocated – decision affirmed

[Mohamud and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 642 (10 May 2017); Mr DJ Morris, Member

Disability Support Pension (DSP) – portability period – intentions of applicant – family illnesses – whether events occurred during permissible period which prevented return – application of discretion to extend period – decision affirmed

[Nash and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 635 (9 May 2017); Ms 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 – decision under review affirmed

[Papas and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 639 (8 May 2017); Senior Member A Poljak

Carer payment – overpayments – debt recovery – basis to write off or waive debt – special circumstances – decision affirmed

[U'Brien and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 638 (28 April 2017); Mr S Webb, Member

Claim for disability support pension – chronic pain and depression – assessment of impairments – minimum threshold of 20 points not made out – no severe impairment – active participation in a program of support requirement not met – decision affirmed

Taxation

[Rafferty and Taxation and Commercial Division](#) (Taxation) [2017] AATA 636 (10 May 2017); Dr G Hughes, Member

Claim for deduction of work related car expenses – whether applicant required to wear protective gear at work – whether necessary for applicant to transport gear by car between home and work – whether employer provided adequate and secure storage facilities – assessment not excessive or otherwise incorrect – decision affirmed

Administrative penalties – whether assessment of penalty excessive or otherwise incorrect – where applicant made statements with assistance of registered tax agent – where applicant did not rely on safe harbour provisions – applicant unable to establish that reasonable care was taken in preparing statement – whether general discretion to remit penalty should be exercised – decision affirmed

Trade and Commerce

[Rix's Creek Pty Limited; Bloomfield Collieries Pty Limited and Innovation Australia](#) [2017] AATA 645 (10 May 2017); Senior Member A Poljak

INDUSTRY RESEARCH AND DEVELOPMENT – claims for research and development activities - definition of research and development activity in s73B(1) of the Income Tax Assessment Act 1936 (Cth) – whether claimed activities fall within definition – whether activities are systematic, investigative and experimental – whether activities involve either innovation or high levels of technical risk – whether activities themselves involve high levels of technical risk – purpose of the activities – whether claimed activities carried out as claimed – sufficiency of evidence – whether element of appreciable novelty – decisions under review affirmed

Veterans' Entitlements

[Burton and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 606 (8 May 2017); Senior Member J Sosso and Dr G Maynard, Member

Veterans' Affairs – war widow pension – where Applicant was de facto partner of the veteran – Deledio test – Statement of Principles – balance of probabilities – where kind of death was cerebrovascular accident – where kind of death was related to the veteran's hypertension – salt consumption – hypothesis – whether veteran's hypertension was caused by his salt consumption – whether veteran's salt consumption was caused by his defence service – decision under review affirmed

[Harmer and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 655 (12 May 2017); Ms R Perton, Member

Widow's pension eligible war service – kind of death whether Statement of Principles met – alcohol consumption – causal or temporal connection with service – decision affirmed

[Visinko and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 607 (5 May 2017); Dr L Bygrave, Member

Veterans' Affairs – entitlements – generalised anxiety disorder – whether applicant suffers from a generalised anxiety disorder – whether there is a causal connection between applicant's generalised anxiety disorder and operational war service – decision set aside and remitted

[Wynn and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 608 (8 May 2017); Mrs JC Kelly, Senior Member

Veterans' Affairs – whether applicant's death caused by his service – cause of death – cause of death prostate cancer – whether smoking history in service caused prostate cancer – prostate cancer not linked to applicant's 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
Saleh v Minister for Immigration and Border Protection & Anor	[2017] AATA 367
Tuimaseve v Minister for Immigration and Border Protection & Anor	[2017] AATA 413

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
O'Sullivan v P & O Maritime Service Pty Ltd	[2016] AATA 865	[2017] FCA 508
		[2017] FCA 47

Statements of Principles

This section of the *Bulletin* provides information on recent developments in relation to Statements of Principles made by the Repatriation Medical Authority for the purposes of the [Veterans' Entitlements Act 1986](#) and the [Military Rehabilitation and Compensation Act 2004](#).

New Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made the following new Statements of Principles, which commenced on 22 May 2017:

Bronchiectasis (Reasonable Hypothesis) - No. 30 of 2017

<https://www.legislation.gov.au/Details/F2017L00467>

Bronchiectasis (Balance of Probabilities) - No. 31 of 2017

<https://www.legislation.gov.au/Details/F2017L00469>

Cardiac Myxoma (Reasonable Hypothesis) - No. 32 of 2017

<https://www.legislation.gov.au/Details/F2017L00463>

Cardiac Myxoma (Balance of Probabilities) - No. 33 of 2017

<https://www.legislation.gov.au/Details/F2017L00465>

Immersion Pulmonary Oedema (Reasonable Hypothesis) – No. 34 of 2017

<https://www.legislation.gov.au/Details/F2017L00466>

Immersion Pulmonary Oedema (Balance of Probabilities) – No. 35 of 2017

<https://www.legislation.gov.au/Details/F2017L00468>

Thromboangiitis Obliterans (Reasonable Hypothesis) - No. 28 of 2017

<https://www.legislation.gov.au/Details/F2017L00462>

Thromboangiitis Obliterans (Balance of Probabilities) - No. 29 of 2017

<https://www.legislation.gov.au/Details/F2017L00464>

Repealed Statements of Principles

The AAT has been advised that the following Statements of Principles determined by the Repatriation Medical Authority will cease on 22 May 2017:

Bronchiectasis - No. 17 of 2009

<https://www.legislation.gov.au/Details/F2009L01584>

Bronchiectasis - No. 18 of 2009

<https://www.legislation.gov.au/Details/F2009L01585>

Cardiac Myxoma - No. 11 of 2009

<https://www.legislation.gov.au/Details/F2009L00005>

Cardiac Myxoma - No. 12 of 2009

<https://www.legislation.gov.au/Details/F2009L00006>

Thromboangiitis Obliterans - No. 7 of 2009

<https://www.legislation.gov.au/Details/F2008L04752>

Thromboangiitis Obliterans - No. 8 of 2009

<https://www.legislation.gov.au/Details/F2008L04753>

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