



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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Contents

AAT Recent Decisions	3
Aviation.....	3
Child Support.....	3
Citizenship.....	3
Compensation	3
Migration.....	4
National Disability Insurance Scheme.....	4
Passports	4
Practice and Procedure.....	5
Social Security.....	5
Taxation.....	8
Veterans' Affairs	8
Appeals	9
Appeals lodged.....	9
Appeals finalised	9



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.

Aviation

[Healy and Civil Aviation Safety Authority](#) [2017] AATA 741 (19 May 2017); Dr C Kendall, Deputy President

Class 1 and Class 2 medical standards – risk to the safety of air navigation – whether conditions can be issued that ameliorate any risk posed – Attention Deficit Hyperactivity Disorder – use of Dexamphetamine to control condition – decision under review affirmed

Child Support

[QCDK and Child Support Registrar](#) (Child support second review) [2017] AATA 721 (23 May 2017); Senior Member JF Toohey

Percentage of care – parents separated under same roof – actual care – nights in care – other relevant factors – conflicting evidence – Tribunal not satisfied it could determine percentage of care based on actual care – date of effect – decision under review set aside and decision substituted that care during the care period was shared equally

Citizenship

[Wang and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 730 (25 May 2017); Mr S Webb, Member

Application for conferral of Australian citizenship – general residence requirement – cancellation of temporary visa held by primary visa-holder – automatic cancellation of visas held by dependants and spouse in family unit – date and time visa cancellation has effect – meaning of 'at any time' and 'immediately after' – unlawful non-citizen present in Australia for less than one day – administrative errors – decision set aside

Compensation

[Curle and Asciano Services Pty Ltd](#) (Compensation) [2017] AATA 732 (19 May 2017); Deputy President JW Constance

Workers' compensation – whether decision was reasonable administrative action – whether action taken in a reasonable manner – disease – injury – Adjustment Disorder – decision affirmed

[Nicholson and Comcare](#) (Compensation) [2017] AATA 726 (24 May 2017); Senior Member A Poljak

Psychiatric condition – whether applicant suffers permanent impairment – whether percentage Whole Person Impairment creates entitlement to compensation for permanent impairment and non-economics loss – decision under review affirmed

[Petrevski and Linfox Australia Pty Ltd](#) (Compensation) [2017] AATA 725 (24 May 2017); Senior Member A Nikolic, AM CSC

Biceps tendon and right shoulder injuries – entitlement to surgery – entitlement to ongoing compensation for medical treatment and incapacity benefits – whether aggravation of pre-existing condition – decisions under review affirmed

Migration

[Al Mansori and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 713 (19 May 2017); Deputy President K Bean

Application for revocation of mandatory visa cancellation – Cancellation of visa on character grounds under s 501 – Consideration of principles under Ministerial Direction 65 – Decision under review affirmed

[Mulligan and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 728 (25 May 2017); Deputy President G Humphries

Mandatory visa cancellation – decision not to revoke mandatory cancellation – character test – whether Applicant of good character – nature of good character – Applicant convicted of offences involving violence – custodial sentence – consideration of sentencing judge's remarks – supporting witnesses unaware of circumstances of convictions – previous criminal record – links to Australian community not significant – no impediments to repatriation – decision affirmed

National Disability Insurance Scheme

[ZKTN and National Disability Insurance Agency](#) [2017] AATA 744 (6 March 2017); Dr P McDermott RFD, Deputy President

Characterisation of decision made by delegate of Chief Executive Officer – whether decision not to review plan or decision approving statement of participant supports – decision not to review plan and decision approving statement of participant supports

PRACTICE AND PROCEDURE – JURISDICTION – Tribunal's jurisdiction to review decisions under the National Disability Insurance Scheme Act 2013 limited to those made by a reviewer under s 100(6)

Passports

[FCMX and Minister for Foreign Affairs](#) [2017] AATA 740 (23 May 2017); Ms R Perton, Member

Application for passport – child under 16 years – parent refused consent for child to travel internationally – whether special circumstances exist – decision to refuse to issue passport affirmed

Practice and Procedure

[Cash World Gold Buyers Pty Ltd and Commissioner of Taxation](#) [2017] AATA 736 (17 May 2017); Senior Member Ms G Lazanas

Lodging of documents with the Tribunal – lodging of statement of further and better particulars – claims that documents that may be relevant to the review are in the possession of the Respondent based on schedules of documents produced by Respondent pursuant to request under the Freedom of Information Act 1982 – application for a notice to be given requiring the Respondent to lodge additional documents – application for an order requiring the Respondent to lodge additional statement containing further and better particulars – modification of s 37 of the Administrative Appeals Tribunal Act 1975 by s 14ZZF of the Taxation Administration Act 1953 – modification of s 38 of the Administrative Appeals Tribunal Act 1975 by s 14ZZG of the Taxation Administration Act 1953 – application refused

[Darwin Human Resource and Computer Academy Pty Ltd and Australian Skills Quality Authority](#) [2017] AATA 738 (24 May 2017); Senior Member A Poljak

ADMINISTRATIVE – stay application – s 41(2) of the Administrative Appeals Tribunal Act 1975 (Cth) - Australian Skills Quality Authority - merits of substantive matter – public interest factors – financial aspects – reputational damage - stay application refused

[DLMD and Commissioner of Taxation](#) [2017] AATA 739 (12 May 2017); The Hon Justice JA Logan RFD, Deputy President

ADMINISTRATIVE LAW – confidentiality order sought by Applicants under s 35 of the Administrative Appeals Tribunal Act 1975 (Cth)

ADMINISTRATIVE LAW – private hearing pursuant to s 14ZZE of the Taxation Administration Act 1953 (Cth) – private hearing requirement does not automatically prohibit publication of name of particular witnesses – confidentiality order sought by Applicants under s 35 of the Administrative Appeals Tribunal Act 1975 (Cth) – effect of orders

PRACTICE AND PROCEDURE – confidentiality order – publication of witness names – hearings in private – Tribunal has power to make the witness pseudonym orders sought in this case – orders sought not granted

PRACTICE AND PROCEDURE – mode of reception of evidence – application for reception of evidence by telephone – whether telephone evidence necessary as part of procedure to preserve witness anonymity – other confidentiality provision deemed sufficient – orders not made

Social Security

[Aeso and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 733 (26 May 2017); Dr I Alexander, Member

Disability Support Pension – spinal function – lower limb function – upper limb function – Applicant has a physical impairment – Applicant's condition does not total 20 points or more under the Impairment Tables – decision under review is affirmed

[Bata and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 719 (16 May 2017); Senior Member A Poljak

Disability support pension – Impairment tables – whether the Applicant's condition is fully diagnosed, treated and stabilised – whether the impairments attract 20 points or more – Table 5 Mental Health Function – Table 2 Upper Limb Function – Table 3 Lower Limb Function – decision affirmed

[Cavanagh-Hans and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 687 (15 May 2017); Senior Member T Tavoularis

Carer Payments – does the Applicant provide constant care to mother – has mother been assessed and rated – mother has been assessed and rated and additionally qualified for DSP – Applicant attended high school during period under consideration – not deemed to provide constant care to mother – decision under review affirmed

[Clausen and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 737 (19 May 2017); Mr DJ Morris, Member

Disability Support Pension (DSP) – request for unlimited portability – whether person has severe impairment – assessment of ability to work – decision set aside – applicant fulfils requirements for determination of unlimited portability

[Derrick and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 714 (22 May 2017); Dr L Bygrave, Member

Disability support pension – whether applicant has impairment rating of 20 point or more under the Impairment Tables – whether applicant had a continuing inability work – mental health function – condition rated less than 20 points under the Impairment Tables – decision affirmed

[Magjarraj and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 720 (23 May 2017); Senior Member JF Toohey

Debt – periodic compensation – whether applicant overpaid disability support pension – pension – whether special circumstances – decision under review affirmed

Debt – whether applicant failed to declare income – whether applicant overpaid disability support pension – whether gambling receipts income – whether special circumstances – decision under review affirmed

[Mahmood and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 742 (23 May 2017); Mr DJ Morris, Member

Disability Support Pension (DSP) – whether qualified – whether impairments fully stabilised – whether fully treated and fully stabilised – proximity of diagnosis of a condition – not qualified for DSP – decision affirmed

[McGhee and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 729 (18 May 2017); Mr S Webb, Member

Claim for disability support pension – impairments – assessment of impairments resulting from 'permanent' medical conditions – 20 point minimum threshold not satisfied – decision affirmed

[McGee and Secretary, Department of Social Services](#) (Social services second review)
[2017] AATA 722 (24 May 2017); 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 – whether continuing inability to work – decision affirmed

[Morgan and Secretary, Department of Social Services](#) (Social services second review)
[2017] AATA 723 (24 May 2017); 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

[Nguyen and Secretary, Department of Social Services](#) (Social services second review)
[2017] AATA 724 (24 May 2017); Ms N Isenberg, Senior Member

Disability support pension – whether applicant qualified for disability support pension – multiple impairments – 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

[Panter; Secretary, Department of Social Services and](#) (Social services second review)
[2017] AATA 743 (18 May 2017); 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 set aside

[Stemm and Secretary, Department of Social Services](#) (Social services second review)
[2017] AATA 727 (24 May 2017); Mr S Webb, Member

Newstart Allowance – termination payment – ordinary income – income maintenance period – request for reduction of period on financial hardship grounds – discretion to reduce period – discretion preconditioned by ‘severe financial hardship’ because of ‘unavoidable or reasonable expenditure’ incurred during the income maintenance period – determinants of ‘severe financial hardship’ – comparison of liquid assets to ‘maximum payment rate’ of Allowance - time at which comparison is to be made and financial hardship assessed on review – meaning of unavoidable or reasonable expenditure – crystallization of liability to pay amounts resulting from prior action – tax paid on termination payment unavoidable expenditure – fines resulting from offending conduct not unavoidable or reasonable expenses - assessment of reasonable costs of living during income maintenance period – compulsive and reckless over-spending attributable to mental illness accepted as unavoidable in the circumstances – severe financial hardship because of unavoidable or reasonable expenses – discretion enlivened – appropriate to shorten income maintenance period – decision set aside and remitted

[XYX and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 731 (25 May 2017); Ms R Perton, Member

Family tax benefits – shared care – percentages of care during specified periods – dispute on actual dates for some of the period – change of percentage of care.

Taxation

[Hamilton and Commissioner of Taxation](#) (Taxation) [2017] AATA 734 (26 May 2017);
Deputy President IR Molloy

Allowable deductions – work related expenses – whether entitled to deductions for financial year

Veterans' Affairs

[Heath and Military Rehabilitation and Compensation Commission](#) (Veterans' entitlements)
[2017] AATA 735 (26 May 2017); Mrs JC Kelly, Senior Member

Claim for compensation – obsessive compulsive disorder – applicant suffers from obsessive compulsive disorder – obsessive compulsive disorder not caused by military service – 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

**DFS Australia Pty Ltd v Comptroller-
General of Customs**

[\[2016\] AATA 277](#)

[\[2017\] FCA 547](#)

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