



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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Enquiries regarding this publication may be directed to aatweb@aat.gov.au.

Contents

AAT Recent Decisions	3
Bankruptcy	3
Citizenship	3
Compensation	3
Freedom of Information	4
Migration	4
Practice and Procedure	5
Professions and Trades	6
Social Security	6
Taxation	8
Veterans' Affairs	9
Appeals	10
Appeals lodged	10
Appeals finalised	10
Recent developments	11
Brisbane office relocation	11

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.

Bankruptcy

[Neffati and Inspector-General in Bankruptcy](#) [2017] AATA 1108 (19 July 2017); Senior Member JF Toohey

Notice of objection to discharge lodged by trustees – request by applicant for review of notice – special grounds – whether sufficient grounds to conduct review of trustees' decision to lodge notice of objection – decision under review affirmed

Citizenship

[Ahmadi and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 1086 (13 July 2017); Senior Member J Sosso

Whether of good character – uphold the values of the Australian community – no criminal convictions – employment history – claimed false statements - applicant's contribution to society

[Martin and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 1093 (14 July 2017); Senior Member A Poljak

Citizenship by conferral – eligibility – whether applicant of good character – traffic offences – question of disclosure of traffic offences in citizenship application – applicant found not to be of good character for the purposes of citizenship legislation – positive contribution – charity work – decision set aside and substituted

Compensation

[Harrison and Comcare](#) (Compensation) [2017] AATA 1120 (19 July 2017); Deputy President G Humphries

WORKERS COMPENSATION – psychological injury – employee on temporary performance allowance – temporary performance allowance not renewed – no renewal of temporary performance allowance constitutes a 'failure to retain a benefit' under the relevant Act – injury caused by administrative action taken in respect of employee's employment – administrative action deemed reasonable – administrative action taken in a reasonable manner in respect of employee's employment – exemption to liability made out – decision affirmed

[TRNC and Comcare](#) (Compensation) [2017] AATA 1105 (14 July 2017); Dr C Kendall, Deputy President and L M Gallagher, Member

Commonwealth employees – date of injury – nature of injury – appropriate diagnosis – whether ailment a disease – schizophrenia – brief psychotic episode – prodromal symptoms – whether pre-existing condition – whether Applicant was subject to bullying and harassment in the workplace – whether ailment was contributed to, to a significant degree, by employment – decision under review affirmed

Freedom of Information

[Whish-Wilson; Australian Fisheries Management Authority and](#) (Freedom of information) [2017] AATA 1098 (10 July 2017); Dr J Popple, Senior Member

Access to documents – requests for access to documents relating to fishing operations regulated by agency – documents contain commercially sensitive information – whether disclosure could reasonably be expected to adversely affect fishing operators' cooperation with agency's monitoring program – whether disclosure of documents could reasonably be expected to have substantial adverse effect on the proper and efficient conduct of agency's operations – whether access would, on balance, be contrary to the public interest – whether reasonably practicable for agency to prepare copies of documents modified by the deletion of exempt and irrelevant matter, having regard to the nature and extent of the modification – decisions under review set aside and substituted

Industrial Law

[DNBP and Secretary, Department of Employment](#) [2017] AATA 1097 (17 July 2017); Deputy President SA Forgie

FAIR ENTITLEMENTS GUARANTEE – amount advanced for redundancy payment – whether governing instrument relating to employment provided for redundancy payment – provided for in National Employment Standards from 1 January 2010 but whether entitlement prior to 1 January 2010 – whether covered by clerical award - principal purpose of employment – account manager of large enterprise including duties to manage clients and attract new clients – applicant's employment governed by agreement with employer – no provision for redundancy pay - decision affirmed

PRACTICE AND PROCEDURE – jurisdiction of Tribunal – whether entitled to advance and amount of entitlement – no powers as to recovery of amount

WORDS AND PHRASES – recipient – advance paid through intermediary – whether employee recipient of advance

Migration

[Bristowe and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1092 (14 July 2017); Senior Member JF Toohey

Mandatory cancellation of visa – request for revocation of cancellation – character test – substantial criminal record – primary and other considerations – prospects of rehabilitation – unacceptable risk of harm – decision under review affirmed

[Davis and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1106 (19 July 2017); Senior Member T Tavoularis

Non-revocation of mandatory cancellation of visa – Applicant did not pass s 501 character test and was serving term of imprisonment – visa mandatorily cancelled under s 501(3A) – whether discretion in s 501CA to revoke mandatory visa cancellation should be exercised – discretion should not be exercised to revoke visa cancellation – decision under review affirmed

[Gharib and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1102 (19 July 2017); Senior Member Griffin

Visa refusal – partner visa – failure to pass the character test – whether to exercise s 501(1) discretion to refuse on character grounds – substantial criminal record – term of imprisonment – nature and seriousness of conduct – protection of the Australian community – risk to the Australian community – Applicant’s risk of reoffending – decision affirmed

[Holland and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1104 (17 July 2017); Mr DJ Morris, Member

Mandatory cancellation of visa – request for revocation of cancellation – character test – substantial criminal record – violence – Ministerial Direction No. 65 applied - applicant does not pass character test – whether discretion should have been exercised – the protection of the Australian community from criminal or other serious conduct – expectations of Australian community – best interests of minor children – other considerations – pattern of conduct and seriousness of offences – reviewable decision affirmed

[KFZT and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1121 (14 July 2017); Brigadier AG Warner, Member

Mandatory visa cancellation – discretion to revoke – character test not satisfied – discretion to revoke visa cancellation if another reason – Direction No. 65 primary and other considerations – considerations weigh against revocation of mandatory cancellation of Applicant’s visa – decision under review affirmed

[PBWW and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1123 (20 July 2017); Dr C Kendall, Deputy President

Mandatory cancellation of applicant’s visa – applicant 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 – best interests of minor children – expectations of the Australian community – other considerations – strength, nature and duration of ties – extent of impediments if removed – decision under review affirmed

Practice and Procedure

[Blackwell and Comcare](#) (Compensation) [2017] AATA 1118 (29 June 2017); Senior Member T Tavoularis

INTERLOCUTORY PROCEEDING – Application for Stay of Decision under review – whether desirable or appropriate to stay decision under review – refusal to stay the operation or implementation of the decision under review

[Sultmann and Commissioner of Taxation](#) (Taxation); [2017] AATA 1089 (14 July 2017); Deputy President BJ McCabe

TAXATION – PRACTICE AND PROCEDURE – extension of time application – relevant principles – previous extension of time granted by Tribunal – no application for review filed – further extension of time sought – significant delay – unsatisfactory reasons for delay – extension of time refused

[12 Years Juice Foods Australia Pty Ltd & Others and Commissioner of Taxation](#) (Taxation); [2017] AATA 1091 (14 July 2017); Deputy President BJ McCabe and Deputy President BW Rayment

Application for stay – application for review of decision to refuse access to certain documents sought under freedom of information – where some such documents also sought under subpoena in Federal Court proceedings – where decision to set aside subpoena is subject to application for leave to appeal – considerations relevant to determining application for stay – stay application refused

[Zdziarski and Telstra Corporation Limited](#) (Compensation) [2017] AATA 1099 (13 July 2017); Deputy President JW Constance

COSTS – whether costs order should include Senior Counsel's fees – order for costs

Professions and Trades

[Issa and Migration Agents Registration Authority](#) [2017] AATA 1110 (3 July 2017); Mr PW Taylor SC, Senior Member

MIGRATION AGENTS REGISTRATION – cancellation of applicant's registration as migration agent – breaches of the Code of Conduct for migration agents prescribed under Migration Agents Regulations 1998 – finding that Code of Conduct breached – applicant not a fit and proper person to give immigration assistance – MARA's fraud allegations not sustained – decision under review affirmed

Breaches of the Code of Conduct for migration agents prescribed under Migration Agents Regulations 1998 – finding that Code of Conduct breached – failure to deal with clients competently, diligently and fairly – failure to have due regard to client's dependence on agent's knowledge and experience – failure to meet standards of frankness and candour about prospects of success when assessing a client's request for assistance – failure to advise clients where, in agent's opinion, application was vexatious or grossly unfounded – failure to meet duty to provide sufficient relevant information to Department or review authority to allow a full assessment of all the facts

Social Security

[Crocker; Secretary, Department of Social Services and](#) (Social services second review) [2017] AATA 1085 (12 July 2017); Mr DJ Morris, Member

Disability Support Pension (DSP) – whether qualified – whether impairments correctly assigned 20 or more impairment points – whether Respondent has continued inability to work – transitional provisions applicable to Respondent – Respondent assigned 20 impairment points – Respondent has continued inability to work for 30 hours a week – Respondent continues to qualify for DSP

[Dearing and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 1119 (20 July 2017); Ms A Burke, Member

Disability support pension – whether qualified – bilateral foot pain (symptomatic flat feet) and bilateral shoulder severe osteoarthritis disorder fully diagnosed, treated and stabilised – bipolar affective disorder not fully diagnosed – whether impairment attracts rating of 20 points or more under Impairment Tables – whether program of support had been undertaken – decision set aside and substituted

[Death and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 1107 (18 July 2017); DK Grigg, Member

Disability support pension – DSP – whether 20 points or more under the impairment tables during the relevant period – decision under review set aside

[Fitzgerald and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 1094 (13 July 2017); Senior Member J Sosso

Hearing vacated – applicant failed to provide evidence of ill health – applicant failed to appear at hearing and directions hearing – applicant unable to be contacted – application dismissed

[Frenz and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1083 (13 July 2017); Senior Member L Kirk

Disability support pension – Impairment Tables – whether conditions fully diagnosed, treated and stabilised – whether applicant has an impairment rating of 20 points or more under the Impairment Tables – depression and adjustment order – urinary incontinence – spinal condition – lower limb conditions – other conditions – decision affirmed

[Hales and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1101 (18 July 2017); Ms A Burke, Member

Debt repayment – partner allowance debt – age pension debt – carer payment debt – newstart allowance debt – partner's assets – whether the applicants received social security payments in excess of their entitlements – whether all or some of the debts raised should be waived – whether special circumstances justify waiving debt – no special circumstances found – debt varied based on recalculation of asset value

[Johnson and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 1095 (17 July 2017); Senior Member PE Nolan

DISABILITY SUPPORT PENSION – whether Applicant had conditions that were fully diagnosed, treated and stabilised during relevant period – whether Applicant had 20 impairment points – ischaemic heart disease – chronic obstructive pulmonary disease – spinal disorder – conditions not permanent for the purposes of the act - unable to assign an impairment rating - decision under review is affirmed

[Knight and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 1103 (19 July 2017); DK Grigg, Member

Disability support pension – portability – whether maximum portability period may be extended – decision under review is set aside

[Nahoum and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1090 (14 July 2017); Mr DJ Morris, Member

Disability Support Pension (DSP) – whether qualified at time of cancellation – whether impairments correctly assigned 20 or more impairment points – fluctuating condition – reasonable treatment not undertaken for a condition - whether Respondent has continued inability to work – reviewable decision affirmed

[Parkes and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1084 (12 July 2017); Mr DJ Morris, Member

Age pension – change from partnered to single rate – recipient of part superannuation pension of late spouse not taken into account – overpayment – Department advised of Commonwealth Superannuation Scheme pension – Applicant became aware of overpayment – whether debt should be written off, or right to collect debt waived – special circumstances whether write-off or waiver of right to collect debt preferable – partial waiver of right to collect debt - debt remitted for recalculation

[Papastergiadis and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1122 (17 July 2017); Ms A Burke, Member

Disability support pension – whether qualified – lumbar spine disorder fully diagnosed, treated and stabilised – depression not fully diagnosed – Parkinson’s disease not fully diagnosed – whether impairment attracts rating of 20 points or more under impairment tables – decision under review affirmed

[Timmins; Secretary, Department of Social Services and](#) (Social services second review) [2017] AATA 1088 (14 July 2017); Senior Member J Sosso

DEBT RECOVERY – age pension – overpayment – write off – waiver of debt arising from administrative error – receipt of payment in good faith – debts waived - decision under review affirmed

[Tseng; Secretary, Department of Social Services and](#) (Social services second review) [2017] AATA 1087 (13 July 2017); Dr G Hughes, Member

FAMILY TAX BENEFIT – entitlement to top up payments – claimant’s husband lodged his tax return out of time – whether special circumstances warrant an extension of time

Taxation

[GH1 Pty Ltd, in Liquidation and Commissioner of Taxation](#) (Taxation) [2017] AATA 1100 (14 July 2017); Deputy President Bernard J McCabe and Senior Member CR Walsh

GOODS AND SERVICES TAX – existence of tax invoices insufficient to prove taxable supplies were made – whether Applicant entitled to input tax credits claimed for creditable acquisitions – objection decision affirmed

Veterans' Affairs

[Read and Military Rehabilitation and Compensation Commission](#) (Veterans' entitlements) [2017]
AATA 1109 (19 July 2017); Senior Member J Sosso

Whether Applicant is entitled to compensation for claimed condition – where Applicant witnessed the immediate aftermath of an electrocution incident – adjustment disorder – PTSD – whether late onset PTSD can be a valid diagnosis – whether the Applicant's ailment developed as a result of electrocution incident – 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
Fitzgibbon v Prime Minister of Australia	[2017] AATA 502
Peter Sleiman Investments Pty Ltd ATF The Sleiman Family Trust	[2017] AATA 999
McKinley v Repatriation Commission	[2017] AATA 872

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Bis Industries Limited v Dale	[2016] AATA 862	[2017] FCA 789

Recent developments

Brisbane office relocation

All AAT services in Brisbane are now provided from our office at Level 6, 295 Ann Street, Brisbane.

Please check the [Contact us](#) page on our website, www.aat.gov.au, for up-to-date information and contact details.

Information about the co-location of our offices will be made available on our website and through AAT Alerts. [Subscribe to AAT Alerts](#) to receive future updates.

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