



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

The following decisions were recently delivered by the AAT in the General, FOI, NDIS, Security, Taxation & Commercial and Veterans' Appeals Divisions. 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. If the decision is to be summarised, this will be noted. Click on the links for direct access to the full text of the decision.

## Child Support

[KSKS and Child Support Registrar](#) (Child support second review) [2017] AATA 1276 (15 August 2017); Mr DJ Morris, Member

Percentage of care decision – objection officer decided 50 percent care to each parent separated under one roof – evidence of shared care of child – regard to policy when parents living in same residence – 50/50 percent care determined – objection officer decision affirmed

## Citizenship

[Britos and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 1282 (16 August 2017); Deputy President JW Constance

Citizenship by conferral – whether applicant of good character – whether has enduring moral qualities – whether will respect and abide by Australian laws – whether truthful and does not practise deception – whether has evaded immigration control – unlawfully resided in Australia – resided in Australia without a visa – decision affirmed

## Compensation

[Bennett and Comcare](#) (Compensation) [2017] AATA 1269 (9 August 2017); Ms LM Gallagher, Member

Commonwealth employees – accepted injury – repetitive strain injury (right) arm – distinction between injury and diagnosis – distinction between injury and symptoms – distinction between diagnosis and symptoms – whether proposed physiotherapy treatment in relation to accepted injury – decision under review affirmed

[Blandthorn and Military Rehabilitation and Compensation Commission](#) [2017] AATA 1270 (15 August 2017); Miss EA Shanahan, Member

Hearing loss – service in the Navy – exposure to noise – abnormal audiograms in service – high frequency loss of hearing – liability denied – remitted for reconsideration given inadequacy of assessment data

[Goodricke and Comcare](#) (Compensation) [2017] AATA 1249 (31 July 2017); Mr G Humphries, Deputy President

Workers compensation – pre-2007 claim under relevant Act accepted – whether claimed condition presently has a ‘continuing contribution’ from employment – test is ‘material contribution’ not ‘significant contribution’ – aggravation of chronic pain syndrome (bilateral) – Asperger’s Disorder and/or underlying personality disorder – psychological condition overlaps with physical condition – present condition caused by factors unrelated to original claim – no ongoing material contribution – decision affirmed

Medical evidence – where new scientific methods or approach – Tribunal to assess decisions using current relevant scientific evidence

Practice and procedure – consent decision made by differently constituted Tribunal – Applicant sought to reopen or relitigate previously decided consent decision – whether Tribunal should exercise its discretion to relitigate in the context of these proceedings – claims of ‘economic duress’ considered – claims of jurisdictional error based on inherent unfairness considered – claims of misconduct by Applicant’s solicitors considered – no basis to permit relitigation of issue already decided – prejudice to Respondent would ensue were matter relitigated – Tribunal functus officio – request to reopen declined

[Gropel and Comcare](#) (Compensation) [2017] AATA 1290 (17 August 2017); Ms R Perton, Member

Employment by Department of Defence – chronic major depression with anxiety, generalised anxiety disorder, panic disorder and post-traumatic stress and anxiety syndrome – allegations of bullying and harassment – whether injury occurred as a result of reasonable administrative action taken in a reasonable manner – whether applicant entitled to compensation for incapacity – decision affirmed

[Kennedy and Comcare](#) (Compensation) [2017] AATA 1271 (11 August 2017); Senior Member D Cremean

Medibank employee – Claim for depression, anxiety and stress as a result of bullying and harassment – Whether accepted disease suffered as a result of reasonable administrative action taken in a reasonable manner in respect of employment – Aggravation of mental injury – Adjustment disorder with anxiety – Whether aggravation was a result of reasonable administrative action taken in respect of the applicant’s employment – Whether the administrative action contributed to the aggravation to a significant degree – decisions affirmed

[Tuckett and Commonwealth Bank of Australia](#) (Compensation) [2017] AATA 1274 (15 August 2017); Senior Member AF Cunningham and Dr R Walters, Member

Psychological condition – Respondent accepted employment contributed to condition – Whether result of reasonable administrative action taken in a reasonable manner – Meaning of administrative action – Meeting resulting in formal warning – Causative of injury – Decision under review affirmed

## Migration

[Munyard and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1284 (15 August 2017); Senior Member T Tavoularis

Non-revocation of mandatory cancellation of visa – Applicant did not pass s 501 character test and had served 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

[Thompson and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1245 (10 August 2017); Deputy President SA Forgie

Mandatory visa cancellation due to substantial criminal record – refusal to revoke mandatory cancellation – decision affirmed

[Veliu and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1247 (11 August 2017); Senior Member A Nikolic AM CSC

Visa refusal – application for partner visa – past and present general conduct – use of fraudulent identity – provision of false and misleading information to immigration authorities – failure to pass character test – discretion to refuse visa application enlivened – decision affirmed

## Passports

[Silva and Minister For Foreign Affairs](#) [2017] AATA 1285 (17 August 2017); Senior Member E Fice

Application for Australian child passport – refusal of parental consent by one parent – child an Australian citizen living in Indonesia – child’s physical or psychological welfare adversely affected – custody considerations – foreign court orders – application of Minister’s Determination regarding special circumstances – consideration of Child Abduction Convention – consideration of Convention on the Rights of the Child – consideration of International Covenant on Civil and Political Rights – child’s physical and psychological welfare will be adversely affected if not permitted to travel internationally – decision under review set aside and substituted with decision to grant passport

## Practice and Procedure

[Georgi and District Registrar, Administrative Appeals Tribunal](#) [2017] AATA 1286 (8 August 2017); Senior Member A Poljak

FEES – reduced fee – request on basis of financial hardship – request for reduction refused

## Professions and Trades

[Bennett and Building Practitioners Board](#) [2017] AATA 1295 (17 August 2017); Senior Member E Fice

BUILDING PRACTITIONERS – registration of building practitioner in Victoria – class Builder–Medium Rise and Low Rise; Construction Manager–Medium Rise and Low Rise – mutual recognition scheme – refusal to grant registration by Building Practitioners’ Board – applicant registered in Tasmania – eligibility criteria – applicant found to be of good character under s. 170(1)(c) of the Building Act 1993 – decision set aside and substituted

## Social Security

[Booker and Secretary, Department of Employment](#) [2017] AATA 1296 (17 August 2017); Ms DK Grigg, Member

Newstart allowance – failure to attend employment provider appointments – overpayment – where no reasonable excuse – decision under review affirmed

[Bruinger and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1244 (10 August 2017); Senior Member J Sosso

Lump sum preclusion period – compensation charge - whether "special circumstances" exist – compensation lump sum – financial hardship – conduct of Applicant – ill health – 50% rule – special circumstances exist

[Cupac and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1248 (31 July 2017); Senior Member JC Kelly

Carer payment – start day – application for payment made more than 13 weeks after initial contact with Centrelink – whether claim can be deemed to have been made earlier than the date on which the claim was lodged – statutory criteria for deemed claim not satisfied – decision affirmed

[Dauti and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1241 (9 August 2017); Ms K Parker, Member

Newstart allowance – debt raised to recover overpayments – application of the assets test – whether property should be counted as an asset – whether constructive trust in favour of claimant's brother of a proprietary interest in the property – no common intention – words and conduct of family members - culture and tradition – detriment not sufficient to make it unconscionable for claimant's brother to be denied proprietary ownership – assets exceeded allowable assets value limit – discretion to write off or waive debt not enlivened – debt not solely attributable to administrative error by the Commonwealth – no special circumstances – ill health of claimant and his wife – unencumbered property held by claimant was realisable to pay debt

[Goonewardena and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1281 (14 August 2017); Miss EA Shanahan, Member

Pensions allowances benefits – disability support pension – partner's redundancy payment – income stream purchase – failure to advise – debt arising – statutory interpretation – decisions as to rate of disability support pension and debt raised affirmed

[Hammond and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1242 (10 August 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

[Katholos and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1293 (17 August 2017); Deputy President JW Constance

Overpayment debt – social services payments – age pension – carer’s allowance – transfer of residential properties to sons – consideration of natural love and affection – whether loans – whether assets – decisions set aside and remitted for reconsideration

[Kemp and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1291 (17 August 2017); Ms DK Grigg, Member

Carer Allowance – cancellation – whether satisfied qualification criteria – decision under review affirmed

[Liai and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1243 (10 August 2017); Ms K Parker, Member

Disability support pension – whether the applicant has physical, intellectual or psychiatric impairments – whether the applicant’s condition is fully diagnosed, fully treated and fully stabilised – whether the impairments attract 20 points or more – Table 2 Upper Limb Function – Table 5 Mental health – Table 10 Digestive and Reproductive Function – decision affirmed

[Logue and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1272 (11 August 2017); Senior Member N Isenberg

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 – Table 1 Functions requiring Physical Exertion and Stamina – Table 2 Upper Limb Function – Table 3 Lower Limb Function – Table 4 Spinal Function – Table 7 Brain Function – Table 14 Functions of the Skin – decision affirmed

[Nankivell and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1280 (15 August 2017); Senior Member AF Cunningham

Disability support pension – Cancellation – Qualification requirements – Impairment rating – Continuing inability to work – Decision under review affirmed

[Perera and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1246 (10 August 2017); Mr DJ Morris, Member

Disability Support Pension (DSP) – whether diagnosed condition fully treated and fully stabilised – less than 20 points allocated under multiple tables – spinal condition – amputation – hypertension – other conditions – claim did not satisfy section 93(1)(b) in relevant period – decision affirmed

[Robertson and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1279 (16 August 2017); Mr DJ Morris, Member

Disability Support Pension (DSP) – whether qualified – whether impairments fully treated and fully stabilised – information on primary condition not available to psychologist treating secondary depression – not qualified for DSP – decision affirmed

[Stojanovski and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1283 (17 August 2017); Senior Member Ms N Isenberg

Age pension – cancellation of age pension – combined assets of Applicants exceeded the limit for age pension to be payable – whether the value of the Applicant’s investment property is reduced for the purposes of the assets test – whether investment property was unencumbered at the time of cancellation – whether guarantee over the property is a charge of encumbrance – decision affirmed

[Talya and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1240 (10 August 2017); Professor R McCallum AO, Member

Disability support pension – depression and post-traumatic stress disorder – vertigo – headaches – head, neck and back pain – applicant has physical and psychiatric impairments – applicant’s impairments do not total 20 points or more under the Impairment Tables – decision under review affirmed

[Trajkov and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1292 (17 August 2017); Mr DJ Morris, Member

Claim for disability support pension – whether applicant satisfied eligibility criteria during relevant period – where applicant has multiple conditions causing impairment – whether applicant’s impairments can be allocated 20 points under impairment tables – where certain conditions are not permanent – where certain conditions are relatively well managed causing minimal impact – where maximum of 15 points can be allocated under impairment tables – decision affirmed

[Walker and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1275 (15 August 2017); Miss EA Shanahan, Member

Application for disability support pension – condition not fully diagnosed – no impairment rating attracted – difficulty in obtaining medical reports – decision affirmed.

## **Taxation**

[BFCB and Commissioner of Taxation](#) (Taxation) [2017] AATA 1294 (18 August 2017); Deputy President SA Forgie

Release of tax liability – whether taxpayer would suffer serious hardship – decision affirmed

[KTXP and Inspector-General in Bankruptcy](#) (Taxation) [2017] AATA 1278 (16 August 2017); Senior Member JF Toohey

BANKRUPTCY – realisations charge – whether charge should be remitted – whether applicant had standing to bring the application for review – applicant a creditor – whether failure to remit would cause the applicant undue hardship – whether appropriate to remit – decision under review set aside



# 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 finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Agius v Repatriation Commission</b>	<a href="#">[2017] AATA 41</a>	<a href="#">[2017] FCA 935</a>
<b>Commissioner of Patents v AbbVie Biotechnology Ltd</b>	<a href="#">[2016] AATA 682</a>	<a href="#">[2017] FCAFC 129</a>
<b>Jamal v Secretary, Department of Social Services</b>	<a href="#">[2016] AATA 43</a>	<a href="#">[2017] FCA 916</a>

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