



Administrative
Appeals Tribunal

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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.

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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

[Carr and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 1361 (25 August 2017); Dr G Hughes, Member

Application for Australian citizenship – whether applicant was permanent resident at time of citizenship application and citizenship decision – Australian Citizenship Act – applicant did not meet permanent residency requirements of sections 21(2)(b) – applicant did not meet general residency requirements of section 22 – Tribunal has no jurisdiction to review decision in respect of a non-permanent resident

[Eidson and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 1354 (23 August 2017); Senior Member T Tavoularis

Where Applicant committed long-term identity fraud – where Applicant found guilty of migration offences for false and misleading statements on visa and citizenship application – whether revocation of citizenship is in the public interest – consideration of the “public interest” – whether discretion to revoke citizenship should be exercised – decision under review affirmed

Compensation

[Blackwell and Comcare](#) (Compensation) [2017] AATA 1357 (28 August 2017); Senior Member T Tavoularis

Medical treatment – therapeutic treatments – previously accepted injury – where Applicant claimed additional physiotherapy, gym treatment, massage and Pilates – whether treatments were “therapeutic” – whether treatments were reasonable in the circumstances – treatments were not “therapeutic” – treatments not reasonable in the circumstances – decision under review affirmed

[Cremona and Comcare](#) (Compensation) [2017] AATA 1363 (25 August 2017); Senior Member T Tavoularis

Medical treatment – therapeutic treatments – previously accepted injury – where Applicant suffered from somatization disorder – where Applicant claimed physical treatments – whether treatments were “therapeutic” – whether treatments were reasonable in the circumstances – treatments were not “therapeutic” – treatments not reasonable in the circumstances – decision under review affirmed

PRACTICE AND PROCEDURE – where Applicant had a claim previously determined by the Tribunal – where current application pre-dated previous Tribunal decision – whether issues the same – whether there was a “good reason” to re-litigate the issues – re-litigation allowed

[Humphreys and Military Rehabilitation and Compensation Commission](#) (Compensation) [2017] AATA 1368 (25 August 2017); Senior Member J Sosso and Dr G Maynard, Member

Military Compensation – whether the Applicant has a 20% impairment – where bilaterally accepted knee condition – assessment under Table 9 of the “Guide to the Assessment of the Degree of Permanent Impairment” Edition 2.1, Part 2 – the Applicant has a 20% WPI impairment to his right and left knees under Table 9.5 – decision set aside

[Philson and Comcare](#) (Compensation) [2017] AATA 1358 (28 August 2017); Mr S Webb, Member

Accepted injuries – acute anxiety and exacerbation of hypertension – terms of originating claim and liability determination to be interpreted generously – allowance for progressive and evolving decision-making – variation of ‘injury’ description in the light of new evidence – episodic character of exacerbation – progress of underlying medical condition – assessment of causes and effects – causal link between anxiety and exacerbation of hypertension ongoing – decision set aside

JURISDICTION – injury – psychiatric disease and exacerbation of hypertension – sequence of events and progressive decision-making – weight gain a symptom of psychiatric disease – obesity – no jurisdiction to determine if obesity is an ‘injury’ for which Comcare is liable

[Shales and Commonwealth Bank of Australia](#) (Compensation) [2017] AATA 1369 (23 August 2017); LM Gallagher, Member

Commonwealth employees – anxiety and depressed mood – pre-existing psychological condition – whether liable under section 24 and section 27 – whether applicant continues to suffer from injury – section 14 determination remains in force – decision under review affirmed

Corporations

[Global Financial Markets Pty Ltd and Australian Securities and Investments Commission](#) [2017] AATA 1397 (31 August 2017); Deputy President K Bean and Senior Member P Britten-Jones

CORPORATIONS – Financial Services and Markets – Australian Financial Services Licence – Cancellation of and refusal to grant licence – Failure to comply with financial services laws – Failure to take reasonable steps to ensure representatives comply with financial services laws – Failure to ensure representatives are adequately trained – Misleading and deceptive conduct in relation to financial service – Whether there is no reason to believe that the applicant is likely to contravene obligations under s 912A – Whether there is reason to believe that the licensee is likely to contravene obligations under s 912A – Decisions under review affirmed

PRACTICE AND PROCEDURE – Non publication and confidentiality orders sought – No reasonable prospect of commercial harm – Confidentiality order not granted

Education and Research

[Sadek and Secretary, Department of Education](#) [2017] AATA 1399 (31 August 2017); Senior Member A Poljak

HIGHER EDUCATION SUPPORT – HECS-HELP – remission of debt – special circumstances – whether the applicant’s circumstances were beyond her control – whether the applicant’s

circumstances made their full impact on or after the census date – medical evidence – Tribunal does not find special circumstances – decision affirmed

Migration

[CFVG and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1395 (29 August 2017); Dr C Kendall, Deputy President

Mandatory cancellation of applicant's visa – applicant has substantial criminal record and 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

[Leota and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1365 (24 August 2017); Dr J Popple, Senior Member

Visa cancellation — character grounds — substantial criminal record — whether discretion to revoke mandatory cancellation of visa should be exercised — primary and other considerations under Ministerial Direction No. 65 — decision under review affirmed

[Sandhu and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1387 (29 August 2017); Dr P McDermott RFD, Deputy President

Application for visa refused on character grounds – applicant does not pass the character test – risk that the applicant would commit offences – the protection of the Australian community from criminal or other serious conduct relevant – expectations of Australian community not met – other considerations relevant – decision under review affirmed

[Yildirim and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1353 (24 August 2017); Deputy President JW Constance

Visa – partner visa – refusal to grant visa – character test – risk would engage in criminal conduct in Australia – crimes committed in Turkey – actual bodily harm – sexual abuse crime – unsealing legal seal – protection of the Australian community – expectations of the Australian community – impact on family in Australia – decision affirmed

Practice and Procedure

[Rana and Office of the Australian Information Commissioner](#) [2017] AATA 1398 (4 August 2017); Senior Member Britten-Jones

Jurisdiction – Application for extension of time to lodge an application for review of decisions of the Australian Information Commissioner – whether a decision was made under s 41 or 52 of the Privacy Act 1988 – relevant decision made under s 41(1)(a) of Privacy Act – Tribunal does not have jurisdiction – extension of time is refused.

[Rudd and Civil Aviation Safety Authority](#) [2017] AATA 1334 (24 July 2017); Senior Member T Tavoularis

INTERLOCUTORY DECISION – Jurisdiction question – whether Tribunal has jurisdiction to review decision – where Tribunal found it did not have jurisdiction to review decision – where application dismissed pursuant to s 42A(4) of the Administrative Appeals Tribunal Act 1975

Social Security

[Bartel and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1356 (28 August 2017); Ms DK Grigg, Member

Disability support pension – DSP – whether medical conditions 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 under review affirmed

[Bibani and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1386 (29 August 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 – active participation in a program of support – decision affirmed

[Blong and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1360 (25 August 2017); Ms DK Grigg, Member

FAMILY ASSISTANCE – family tax benefit – overpayment – where no administrative error – where no special circumstances – decision under review affirmed

[Bzovski and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1359 (28 August 2017); Mrs JC Kelly, Senior Member

Disability support pension – physical, intellectual or psychiatric impairment – qualification period – impairment rating of at least 20 points – whether conditions fully diagnosed, treated and stabilised – level of functional impact – decision affirmed

[Cameron and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1383 (28 August 2017); Ms DK Grigg, Member

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

[Cipolla and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1362 (23 August 2017); Ms N Isenberg, Senior Member

Disability support pension – whether Applicant has physical, intellectual or psychiatric impairments – whether the impairment(s) amount to 20 points or more – continuing inability to work – Table 2 Upper Limb Function – Table 5 Mental Health Function – decision affirmed

[Dimitrov and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1384 (28 August 2017); Senior Member MJ McGrowdie

Lump sum compensation – preclusion period – whether any of preclusion period should be waived – whether special circumstances arise – decision set aside and remitted

[Harris and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1364 (25 August 2017); Mr S Webb, Member

Newstart allowance – undeclared earnings in employment – employment income not to include travel allowance – overpayment – calculation of overpayment debts – amounts of debts varied – no grounds to write off debts – debts not due to administrative error alone – no special circumstances to waive recovery of debt amounts – decision varied

[Jennings and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1391 (30 August 2017); Ms A Burke, Member

Claim for Disability Support Pension – whether physical, intellectual or psychiatric impairments – ectodermal dysplasia – whether condition fully diagnosed, fully treated and fully stabilised – whether impairment attracts 20 impairment points – whether continuing inability to work – decision under review affirmed

[Jovceska and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1316 (21 July 2017); Senior Member W Stefaniak AM RFD

Disability Support Pension – neck and back condition – upper limb condition – mental health condition – applicant suffered from a physical and psychiatric impairment – medical conditions rated more than 20 points under the Impairment Tables – applicant has a continuing inability to work – decision under review set aside and substituted

[Kerr and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1392 (30 August 2017); Senior Member A Poljak

Disability support pension – whether the applicant has physical, intellectual or psychiatric impairments – whether the applicant's condition is fully diagnosed, treated and stabilised – whether the impairments attract 20 points or more – Impairment Tables – decision affirmed

[Massoud and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1366 (24 August 2017); Senior Member J Sosso

Compensation Preclusion Period – disability support pension (blind pension) – evidence does not support special circumstances – decision under review affirmed

[Odeshow and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1396 (31 August 2017); Senior Member A Poljak

Disability support pension – whether the applicant has physical, intellectual or psychiatric impairments – whether the applicant's condition is fully diagnosed, treated and stabilised – whether the impairments attract 20 points or more – Impairment Tables – decision affirmed

[Piper and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1394 (31 August 2017); Senior Member A Poljak

Disability support pension – whether the applicant has physical, intellectual or psychiatric impairments – whether the applicant's conditions were fully diagnosed, treated and stabilised – whether the impairments attract 20 points or more – Impairment Tables – decision affirmed

[Radford and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1390 (30 August 2017); Ms DK Grigg, Member

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

[Smolski and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1367 (24 August 2017); Miss EA Shanahan, Member

Cancellation of disability support pension – conditions of chronic fatigue syndrome, joint hypermobility, fibromyalgia and irritable bowel syndrome – review of medical status – impairment rating of 10 points – decision affirmed

Taxation

[Frugtniet and Tax Practitioners Board](#) (Taxation) [2017] AATA 1393 (30 August 2017); Dr G Hughes, Member

TAX AGENTS – Termination of registration as a tax agent – applicant prevented from applying for registration for a period of five years – tax practitioner registration requirements – whether a fit and proper person to be registered as a tax agent – decision affirmed

TAX AGENTS – Jurisdiction – whether Board conducted an investigation under Subdivision 60-E of the Tax Agent Services Act 2009 (Cth) – no investigation conducted – investigation unnecessary where Board concerned about whether practitioner was a fit and proper person – Tribunal has jurisdiction

PRACTICE AND PROCEDURE – Evidence – power of Tribunal to have regard to transcript of Tribunal proceedings that were the subject of a successful Federal Court appeal – having regard to transcript not inconsistent with any directions of the Court remitting the matter to the Tribunal to be re-heard

Veterans' Affairs

[Barnes and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 1385 (29 August 2017); Senior Member A Nikolic AM CSC

VETERANS' ENTITLEMENTS — application for Special Rate of pension – where Applicant was assessed as entitled to disability pension at 100% of the General Rate – where Applicant had a number of accepted and non-accepted conditions – whether Applicant satisfied the alone test – whether ameliorating provisions applied to Applicant – whether Applicant eligible for pension at the Intermediate Rate – decision under review affirmed

[Green and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 1355 (28 August 2017); Mrs JC Kelly, Senior Member

Pensions, benefits and entitlements – war widow's pension – the veteran engaged in operational service with the RAAF – preliminary question regarding the 'kind of death' the veteran suffered considered – the veteran died of sepsis – the infection originated from the endoluminal graft

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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None lodged

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
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None finalised

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