



Administrative
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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

[Mahmood and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 2033 (2 November 2017); Senior Member MJ McGrowdie

CITIZENSHIP – citizenship by conferral – refusal of citizenship application – good character requirement – whether applicant of good character – traffic offences – whether applicant's behaviour is consistent with Australian community values – decision affirmed

Compensation

[RSBQ and Comcare](#) (Compensation) [2017] AATA 1965 (30 October 2017); Deputy President AG Melick AO RFD SC

WORKERS' COMPENSATION – Safety, Rehabilitation and Compensation Act 1988 (Cth) – applicant claims flawed recruitment process caused psychological injury – applicant claims failure to implement return to work plan caused aggravation of that injury – whether injury caused by disappointment at failing to obtain promotion – whether recruitment process and return to work plan were reasonable administrative action undertaken in a reasonable manner – decisions under review affirmed

Migration

[Adekoya and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 2028 (31 October 2017); Ms K Parker, Member

MIGRATION – visa refusal – applicant is sponsor of her husband's application for Partner (Provisional) (Class UF) visa – whether applicant passes the character test under s 501(6) – whether reasonable suspicion that applicant's husband has been or is a member of and associated with an organisation or group that has been or is involved in criminal conduct – whether applicant's husband was involved in conduct constituting "a crime of genocide, a crime against humanity, a war crime, a crime involving torture or slavery or a crime that is otherwise of serious international concern" – whether the person is not of good character because of past or present general conduct – whether risk present under s 501(6)(d) – whether discretion to refuse visa should be exercised – whether considerations in Direction No. 65 weigh in favour of refusing visa – visa should be refused – decision under review affirmed

[Albert and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 2036 (2 November 2017); Senior Member T Tavoularis

MIGRATION – review of non-revocation of mandatory visa cancellation decision – Applicant is a citizen of Fiji – Applicant’s visa cancelled under s 501(3A) because Applicant did not pass character test and was serving full-time term of imprisonment – whether there is a reason discretion in s 501CA to revoke mandatory visa cancellation should be exercised – considerations in Direction No. 65 – expert opinion about risk of re-offending – minor children – ties to Australia – extent of impediments if removed – outweighed by nature of harm and community expectations – decision under review affirmed

[NWLH and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 2034 (2 November 2017); Senior Member A Poljak

MIGRATION – mandatory visa cancellation – character test – substantial criminal record – Direction 65 – protection of the Australian community – seriousness and nature of the relevant conduct – the risk conduct may be repeated – best interests of minor children – expectations of Australian community – decision affirmed

[PXYJ and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1961 (26 October 2017); Deputy President Dr C Kendall

IMMIGRATION – Partner (Migrant) (Class BC), Subclass 100 visa – whether discretion to refuse visa should be exercised 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 – best interests of applicant’s minor children – expectations of the Australian community – other relevant considerations – international non-refoulement obligations – impact on family members – decision under review affirmed

[PLQY and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 2025 (30 October 2017); Deputy President SA Forgie

MIGRATION – refusal of visa on character grounds – best interests of children – expectations of the Australian community - decision affirmed

[Singh and Minister for Immigration and Border Protection](#) [2017] AATA 2031 (1 November 2017); Deputy President SA Forgie

MIGRATION – visa refusal on character grounds – whether application for review lodged within time – nine day time limit – application not lodged within time- no jurisdiction

[YRYX and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1985 (27 October 2017); Ms LM Gallagher, Member

IMMIGRATION – Class TY Subclass 444 (temporary) visa – non-revocation of mandatory cancellation of visa – applicant did not pass character test and had served term of imprisonment – visa mandatorily cancelled under subsection 501(3A) Migration Act 1958 (Cth) – whether discretion in subsection 501CA(4) to revoke mandatory visa cancellation should be exercised – Direction No. 65 – primary and other relevant considerations – protection of the Australian community from criminal or other serious conduct – nature and seriousness of the conduct – risk to the Australian community

should further offences be committed – best interests of minor children - expectations of the Australian community - other relevant considerations – non-refoulement obligations - strength, nature and duration of ties to Australia – extent of impediments if removed from Australia - discretion should not be exercised to revoke visa cancellation - decision under review affirmed

Practice and Procedure

[AFIFI and Tax Practitioners Board](#) [2017] AATA 2037 (12 October 2017); Deputy President BW Rayment

PRACTICE AND PROCEDURE – application for stay of decision – termination of registration as tax agent – breach of code of professional conduct – interests of persons affected by the review – stay granted

[De Maria and Secretary, Department of Education and Training](#) [2017] AATA 1989 (27 October 2017); Senior Member T Tavoularis

JURISDICTION – whether original decision a reviewable decision – Lawlor principle – where relevant legislation defined a reviewable decision – where original decision purported to be a reviewable decision – the Tribunal has jurisdiction – application to dismiss the matter refused

[Williams and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1962 (26 October 2017); Dr L Bygrave, Member

PRACTICE AND PROCEDURE – extension of time application – whether it is reasonable in all the circumstances to grant the extension – explanation for delay – whether substantive matter has merit – newstart allowance – overpayment – whether debt should be waived – extension of time application refused

Social Security

[Atkinson and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1963 (26 October 2017); Senior Member J Sosso

SOCIAL SECURITY – Widow's Allowance – Overpayment and Debt Recovery – asset limits – whether attributable solely to administrative error – special circumstances (other than financial hardship alone)

[Arnell and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1987 (27 October 2017); Ms LM Gallagher, Member

SOCIAL SECURITY – disability support pension – whether applicant had conditions that were fully diagnosed, treated and stabilised – whether applicant had 20 impairment points – whether severe impairment – multiple sclerosis – type I diabetes – decision under review affirmed

[Hamdallah and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2032 (1 November 2017); Ms DK Grigg

SOCIAL SECURITY – disability support pension – application of Social Security (International Agreements) Act 1999 – whether severely disabled – decision under review affirmed

[Kearney and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1994 (4 October 2017); Senior Member A Poljak

SOCIAL SECURITY – disability support pension – cancellation – whether applicant qualified at date of cancellation – 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 – continuing inability to work – decision set aside

[Kovacic; Secretary, Department of Social Services and](#) (Social services second review) [2017] AATA 2035 (2 November 2017); Miss EA Shanahan, Member

SOCIAL SECURITY – Pensions, Allowances and Benefits – application for disability support pension – claimed conditions of cervical thoracic and lumbar osteoarthritis – hypertension well controlled – tinnitus of debatable severity – relevant investigations and conclusions determined in 2005 – no recent update of medical status – decision set aside and substituted – initial decision of authorised review officer affirmed

[Mannion and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2026 (31 October 2017); Ms DK Grigg, Member

SOCIAL SECURITY – disability support pension – 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

[Schipkie and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2027 (31 October 2017); Ms DK Grigg, Member

SOCIAL SECURITY – disability support pension — whether conditions permanent - whether 20 points or more under the impairment tables during the relevant period – decision under review affirmed

[Taylor and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1986 (27 October 2017); Senior Member AF Cunningham

SOCIAL SECURITY – disability support pension – permanent conditions of carpal tunnel syndrome and osteoarthritis – failure to satisfy impairment rating – decision under review affirmed.

Taxation

[Watts and Commissioner of Taxation](#) (Taxation) [2017] AATA 2030 (31 October 2017); Senior Member Dr T Nicoletti

TAXATION AND REVENUE – income tax – deductions – employee – work-related clothing expenses – work-related travel expenses – self-education expenses – other work-related expenses – gifts or donations – interest deductions – capital works – other rental deductions – administrative penalty – whether failure to take reasonable care – objection decision is affirmed

Veterans' Affairs

[Westley and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 1988 (29 September 2017); Senior Member NA Manetta and Mr R Ormston, Member

VETERANS' AFFAIRS – whether there is a connection between the injury of the veteran and his service – whether reasonable hypothesis has been raised – whether Applicant meets the Statement of Principles – 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
Ascic and Comcare	[2017] AATA 1436
Lewtas and Comcare	[2017] AATA 1804
PTWB and Secretary, Department of Social Services	[2017] AATA 1453
Towle and Secretary, Department of Social Services	[2017] AATA 565

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
TCWY v Minister for Immigration and Border Protection	[2017] AATA 845	[2017] FCA 1276

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