



Administrative
Appeals Tribunal

AAT Bulletin

Issue No. 3/2018

29 January 2018

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

[Seyyed Ahamed and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 71 (24 January 2018); Deputy President G Humphries

CITIZENSHIP – application for Australian citizenship by conferral – whether Applicant satisfies the general residence requirement or the special residence requirement – whether any discretion exists to grant citizenship in the circumstances – the law applied by the Tribunal is no different to the law applied by the original decision-maker – reviewable decision affirmed

Compensation

[Cross and Comcare](#) (Compensation) [2017] AATA 52 (22 January 2018); Deputy President S Boyle

COMPENSATION – commonwealth employee – bilateral carpal tunnel syndrome – applicant claimed compensation – bilateral carpal tunnel syndrome not significantly contributed to by employment – respondent not liable to pay compensation for bilateral carpal tunnel syndrome – decision under review affirmed

[D'Amico and Comcare](#) (Compensation) [2017] AATA 54 (19 January 2018); Deputy President J Sosso

COMPENSATION – interpretation of the phrase “in relation to” in s 16 of the Safety, Rehabilitation and Compensation Act 1988 – threshold question whether massage treatment received by Applicant obtained “in relation to” original compensable injury – if there is conflicting medical evidence, on the balance, which is preferable – more weight given to specialist physicians expert in their field than to opinions of general practitioners or other unqualified persons – treating doctor may be more of an advocate than a dispassionate professional – definition of “medical treatment” and “therapeutic treatment” – aggravation of Applicant's underlying condition brought about by original compensable injury now resolved – injury to back while moving furniture in 1984 – degenerative spinal disease and diabetes – reviewable decision affirmed.

Migration

[Uluikavoro Qoro and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 56 (19 January 2018); Senior Member DJ Morris

MIGRATION – Discretion to cancel a visa – character test – substantial criminal record – drink driving offences – breaches of court orders – 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 the Australian community – best interests of minor children – reviewable decision set aside

Social Security

[FNNC and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 53 (19 January 2018); Brigadier AG Warner, Member

SOCIAL SECURITY – disability support pension – relevant period – whether Applicant’s condition fully diagnosed, treated and stabilised – whether Applicant’s impairments attract 20 points or more under the Impairment Tables – continuing inability to work – decision under review affirmed

[Gosse and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 55 (23 January 2018); Senior Member T Tavoularis

SOCIAL SECURITY – overpayment – NewStart Allowance – where Applicant was in receipt of NewStart Allowance – where ATO receipts indicated there was an overpayment – where matter was remitted for reconsideration of amounts – whether Applicant has a debt to the commonwealth – whether the debt can be written off – whether the debt can be waived – whether garnishee order was legitimately issued – the debt was correctly calculated – the debt cannot be written off or waived – the garnishee order was legitimately issued – decision under review affirmed

[Wellington and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 70 (24 January 2018); 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

Taxation

[De Figueiredo and Commissioner of Taxation](#) (Taxation) [2017] AATA 62 (23 January 2018); Ms G Lazanas, Senior Member

TAXATION AND REVENUE – income tax – taxpayer participated in employee profit participation plan and granted entitlements when overseas – employer company involved in reorganisation and initial public offering – taxpayer granted new shares in exchange for entitlements in employee profit participation plan when resident of Australia – whether assessable income – whether income derived – objection decision affirmed

[Sharpcan Pty Ltd and Commissioner of Taxation](#) (Taxation) [2017] AATA 2948 (14 December 2017); Deputy President Pagone

TAXATION – deductibility of expenditure – claimed deductions pursuant to the Income Tax Assessment Act 1997 – gaming machine entitlements allocated pursuant to Gaming Regulation Act 2003 (Vic) – outgoings from gaming machine entitlements allowable as deductions under s 8-1 of the Income Tax Assessment Act 1997 – application to set aside decision of Commissioner allowed

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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HGBY and Minister for Immigration and Border Protection	[2017] AATA 2824
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Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
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None finalised

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