



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

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.

Child Support

[Merl and Child Support Registrar](#) [2016] AATA 1099 (19 December 2016); Mr DJ Morris, Member

Departure prohibition order (DPO) – does child support liability exist – arrangements to satisfactorily discharge child support liability – whether discretion should be exercised to revoke DPO – decision affirmed – written reasons requested – written reasons may elaborate on oral reasons given

Compensation

[Davis and Comcare](#) [2017] AATA 93 (27 January 2017); Deputy President G Humphries

Workers compensation – claim for multiple injuries – whether aggravation of previous injury – whether sudden or identifiable physiological change – where competing medical hypotheses for injury – reviewable decision set aside and s 14 liability decided in place

JURISDICTION – where reviewable decision made outside decision maker's power – failure of decision maker to follow steps of relevant Act – where neither decision maker genuinely considered question of aggravation of injury – where issue within infected claim better dealt with in alternate claim

[Yeats and Comcare](#) [2017] AATA 80 (27 January 2017); Ms S Taglieri, Member

Entitlement to medical treatment expenses – phototherapy – physiotherapy – whether reasonable treatment – liability for injury accepted – compensable injuries to upper limbs, shoulders and neck – decision affirmed in respect of prolotherapy – decision set aside in respect of physiotherapy treatment

Corporations

[Masu Financial Management Pty Ltd and Australian Securities and Investments Commission](#) [2017] AATA 97 (31 January 2017); Deputy President BJ McCabe

Corporations law – financial services and markets – Australian Financial Services Licence – suspension – historical non-compliance with obligations under s 912A – where applicant continues to be in contravention of its obligations – where applicant is likely to breach its obligations in the future – decision affirmed

Immigration and Citizenship

[Bhardwaj and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 86 (31 January 2017); Senior Member T Tavoularis

Regional Employer Nomination (Permanent) (Class RN) visa – Applicant is a citizen of India – s 501 character test – Applicant has history of offending in Australia – visa was refused - whether primary considerations weigh against or in favour of Applicant – discretion should be exercised in favour of the Applicant – decision under review set aside and varied – Applicant’s visa should be granted

[GZWR and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 85 (30 January 2017); Dr P McDermott RFD, Deputy President

Application for visa refused on character grounds – applicant does not pass the character test – sentenced to a term imprisonment totalling more than 12 months – 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

[Te Whaiti and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 94 (31 January 2017); Mrs JC Kelly, Senior Member

Mandatory visa cancellation on character grounds – applicant requested revocation – decision not to revoke the visa cancellation – substantial criminal record – prison term of more than 12 months – whether the discretion should be exercised to revoke the cancellation – protection of Australian community – expectation of Australian community – best interests of minor children in Australia – strength, nature and duration of ties – decision affirmed

[Wu and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 120 (2 February 2017); Deputy President K Bean and Mr M Kennedy, Member

Application for revocation of mandatory visa cancellation – Cancellation of visa on character grounds under section 501 – Consideration of principles under Ministerial Direction 65 – Decision under review affirmed

Industrial Law

[Brown and Secretary, Department of Employment](#) [2017] AATA 96 (27 January 2017); Dr C Kendall, Deputy President

FAIR ENTITLEMENTS GUARANTEE — Claim for advance under Fair Entitlements Guarantee Act 2012 — whether applicant an employee or a contractor – insolvency event – termination of employment – meaning of effective claim — whether applicant filed form within relevant time period – whether applicant supplied documents in support of his claim within relevant time period — no discretion to extend time period — decision under review affirmed

Practice and Procedure

[Secretary, Department of Social Services and Akcagoz](#) [2017] AATA 84 (18 January 2017);
Dr L Bygrave, Member

Application for a partial stay of decision – departmental appeal – debt recovery – parenting payment, newstart allowance, family tax benefit and child care benefit – application has reasonable prospects of success – partial stay granted

[Kearney and Secretary, Department of Social Services](#) [2017] AATA 82 (18 January 2017);
Dr L Bygrave, Member

Application for a stay of decision – disability support pension – limited prospects of success – prejudice to the parties – public interest – stay application refused

[Mcfadden and Child Support Registrar](#) [2016] AATA 1067 (22 December 2016); Mr DJ Morris,
Member

Extension of time for lodgement of application for review – prescribed limit as a general rule – discretion of extend lodgement period – explanation for delay – prospects of success – prejudice to other parties – fairness to other parties – principle of procedural fairness generally – Applicant not initially told of decision and not advised of timeframe for appeal – decision under review set aside – extension of time granted

[TFS Manufacturing Pty Limited and Minister for Health](#) [2017] AATA 122 (1 February 2017);
Deputy President K Bean

Application for confidentiality order with respect to documents contained in section 37 T-Documents – Order sought to prohibit disclosure of identities of internal evaluators – Relevance of identity of internal evaluators – Whether prejudice or disadvantage to applicant if order made – Confidentiality order made

[VDRZ and Innovation Australia](#) [2017] AATA 123 (27 January 2017); The Hon. Justice D Kerr,
President

CONCILIATION AGREEMENT – application of s 34D of the *Administrative Appeals Tribunal Act 1975* – conciliation – non-party invited to assist conciliation – agreement reached – consent orders proposed – decision in terms of agreement within the powers of the Tribunal – decision will resolve all matters in dispute – appropriate to make decision in terms proposed – value of non-adversarial dispute resolution procedures and practitioners highlighted

[Zinck and Secretary, Department of Social Services](#) [2017] AATA 83 (18 January 2017);
Dr L Bygrave, Member

Application for a stay of decision – disability support pension – limited prospects of success – not in the public interest to grant a stay – application refused

Professions and Trades

[Benyameen and Commissioner of Police NSW](#) [2017] AATA 121 (2 February 2017); Deputy President JW Constance

Licencing – mutual recognition – registration of security licence – whether materially false or misleading information provided – exercise of statutory discretion – decision set aside and remitted

Social Security

[Jakovich and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 88 (31 January 2017); Mr DJ Morris, Member

Disability Support Pension (DSP) – whether qualified – whether impairments fully diagnosed, fully treated and fully stabilised – 5 impairment points assigned – certain conditions diagnosed but not fully treated or stabilised in relevant period – not qualified for DSP – decision affirmed

[Kaynak and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 118 (31 January 2017); Ms R Perton, Member

Disability support pension – whether medical conditions diagnosed, fully treated and stabilised at time of claim or within 13 weeks of that date – points to be allocated - decision affirmed

[Mitchell and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 81 (27 January 2017); Senior Member T Tavoularis

Disability support pension – whether Applicant had conditions that were fully diagnosed, treated and stabilised during relevant period – whether Applicant had 20 impairment points – Applicant has 30 impairment points – where impairments not severe – continuing inability to work – program of support – whether s 7 of the Active Participation Guidelines applies – s 7(3) does not apply – s 7(4) does not apply – whether an applicant can self-provide a POS – whether subsequent success in a DSP claim is relevant to the decision at hand – decision under review affirmed

Taxation

[Vakiloroya and Commissioner of Taxation](#) [2017] AATA 95 (31 January 2017); Senior Member G Lazanas

Income tax – deductions – employee – work-related motor vehicle expenses – self-education expenses – other work-related expenses – objection decision relating to income tax set aside and matter remitted to Commissioner – administrative penalty – whether failure to take reasonable care – question of remission – objection decision relating to administrative penalty affirmed

[Wilson and Commissioner of Taxation](#) [2017] AATA 119; Senior Member T Tavoularis

Income Tax Assessment Objection was refused – whether income from Applicant's work overseas should be exempt from tax – interpretation of s 23AF Income Tax Assessment Act 1936 – no exemption given in writing – income not exempt – decision under review affirmed

Veterans' Affairs

[Horwood and Repatriation Commission](#) [2017] AATA 87 (31 January 2017); Mrs JC Kelly, Senior Member, and Dr L Bygrave, Member

War widow's pension – hypertension causing death – where hypertension caused by consumption of alcohol – whether there is a causal connection between consumption of alcohol and operational service – whether there is a reasonable hypothesis connecting death from hypertension with operational service – whether satisfied beyond reasonable doubt that the death was not war-caused – decision set aside and substituted

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
Nguyen v Commissioner of Taxation & Administrative Appeals Tribunal	[2016] AATA 1041
Bailey v Broadsword Marine Contractors Pty Ltd	[2016] AATA 1048
FTYC v Minister for Immigration and Border Protection & Administrative Appeals Tribunal	[2016] AATA 1039
Military Rehabilitation and Compensation Commission v Katterns	[2016] AATA 1075
Steve v Minister for Immigration and Border Protection	[2016] AATA 1054

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Australian Air Express Pty Ltd v Te Wake	[2016] AATA 771	NSD1893/2016
Nicholas v Australian Offshore Solutions Pty Ltd	[2016] AATA 331	[2017] FCA 43
Comcare v MMYB	[2016] AATA 405	WAD316/2016
Wittensleger v Australian Securities and Investments Commission	[2015] AATA 902	[2017] FCA 41
O'Sullivan v P&O Maritime Services Pty Ltd	[2016] AATA 865	[2017] FCA 47

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