



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.

Compensation

[Starkey and Comcare](#) [2017] AATA 200 (17 February 2017); Justice A Robertson, Deputy President

Asbestosis resulting in employee's death – employee employed at different times by companies in New South Wales and by the Commonwealth and exposed to asbestos during those times – all periods of asbestos exposure contributed materially to the development of employee's asbestosis – common law damages recovered by employee against companies and against Commonwealth (Comcare) – compensation paid to employee under *Workers' Compensation (Dust Diseases) Act 1942* (NSW) (Dust Diseases Act) – after the employee's death, the deceased's wife was awarded a lump sum in accordance with s 8(2B)(b)(i) of the Dust Diseases Act and fortnightly compensation in accordance with s 8(2B)(b)(ii) – because the asbestosis was only 20% attributable to exposure "in New South Wales" the deceased's wife received only 20% of what would otherwise have been her entitlements under the Dust Diseases Act – whether s 118 or s 48 of the *Safety Rehabilitation and Compensation Act 1988* (Cth) precluded claim for compensation by the deceased's dependant wife under s 17(3)

Migration

[Chand and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 214 (21 February 2017); Professor R Deutsch, Deputy President

Immigration – partner visa refusal – failure to pass the character test – whether to exercise s 501(1) discretion to refuse on character grounds – protection of the Australian community – expectations of the Australian community – impact on family members - whether applicant would re-offend – applicant unlikely to repeat criminal behaviour – low tolerable risk to Australian community – adverse emotional and possible financial impacts on family if visa refusal – decision set aside and remitted

[Hay](#) (Migration) [2017] AATA 151 (31 January 2017); K Raif, Senior Member

Migration – Child (Migrant) (Class AH) visa – Subclass 117 (Orphan Relative) – Visa applicant over eighteen years – Previous applications made before eighteen years – No adoption – Dependence upon the review applicant – Compassionate grounds – Decision under review affirmed

[SEFNET PTY LTD](#) (Migration) [2017] AATA 152 (31 January 2017); RC Titterton, Member

Migration – Employer Nomination – Customer service manager – ANZSCO definitions – Scale of the business – Childcare centres – Reviewing and implementing customer service policies – Nominated occupation inconsistent with actual role – Decision under review affirmed

[Uzelakcil](#) (Migration) [2017] AATA 168 (31 January 2017); L Lo Piccolo, Member

Migration – Visitor (Class FA) visa – Subclass 600 (Visitor) – cl 600.211 – Genuine temporary entrant – Compliance with previous visa – Powerful incentive to return – Home ownership in Turkey – Inherited pension – Offer of bond – Security risk from militant groups – Decision under review remitted

[Lau](#) (Migration) [2017] AATA 162 (2 February 2017); R Skaros, Member

Migration – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – cl 485.224 – Suitable Skills assessment – Qualification obtained in Australia – Studying a registered course – Decision under review remitted

[Wada](#) (Migration) [2017] AATA 153 (2 February 2017); F Gelev, Member

Migration – Cancellation – Electronic Travel Authority (Class UD) visa – Subclass 601 (Electronic Travel Authority) – Jurisdiction issue – Applicant not immigration cleared – Applicant previously employed on the same visa – No work rights – Visa cancellation prior to immigration refusal – Applicant not in Australia at time of application – Migration agent's registration cancelled – No jurisdiction

[1605812](#) (Refugee) [2017] AATA 158 (16 January 2017); C Thwaites, Member

Refugee – Protection visa – Federal Court remittal - Pakistan – Political – Awami Party supporter – Peace committee member – Religion – Sunni – Fear of Taliban attacks – Mental health issues – Relocation not possible – Decision under review remitted

[1613923](#) (Refugee) [2017] AATA 172 (22 January 2017); A Mullin, Member

Refugee – Protection visa – Nepal – Particular social group – Lesbian – Family violence – Killing of partner – Physical assault – Threats of killing – Decision under review affirmed

[1611522](#) (Refugee) [2017] AATA 131 (23 January 2017); T Caravella, Member

Refugee – Protection visa – Cameroon – Particular social group – Homosexuals – Subjected to harm – Homosexuality illegal – Relocation not possible – Credibility issues – Fraudulent documents – Failed to seek protection in other countries – Decision under review affirmed

[1421008](#) (Refugee) [2017] AATA 155 (27 January 2017); L Nicholls, Senior Member

Refugee – Protection visa – Mongolia – Complimentary protection – Particular social group – Bisexual men – Heterosexual relationships – Fear of harm from family – Does not identify as homosexual – Improvements for LGBT community in Mongolia – Decision under review affirmed

[1503666](#) (Refugee) [2017] AATA 198 (2 February 2017); R Homan, Member

Refugee – Protection visa – Religion – Christianity – Rarely attends church – Credibility – Resiled from claims – Unwed mother – Social compensation fee – No significant harm – Breach of family planning laws – Marriage option considered – Decision under review affirmed

Practice and Procedure

[MacTiernan and Secretary, Department of Infrastructure and Regional Development](#) [2016] AATA 1094 (20 December 2016); Justice D Kerr, President

Constitution of Tribunal – remittal from the Federal Court of Australia – considerations for reconstituting the Tribunal – relevance of the terms upon which remittal is made – Tribunal reconstituted as previously constituted

[McIvor and Australian Securities and Investments Commission](#) [2017] AATA 201 (17 February 2017); Deputy President BJ McCabe

Third party access – request to access documents provided to the Tribunal where applicant had withdrawn application for review before the matter had proceeded to final hearing – where third party also sought access directly from respondent through a freedom of information request – third party access refused

Social Security

[Allahverdi and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 203 (21 February 2017); Mr DJ Morris, Member

Disability Support Pension (DSP) – whether qualified – whether impairments fully stabilised – whether conditions have functional impact - condition fully diagnosed, but treatment still continuing in claim period – other condition not diagnosed in claim period – ‘work’ does not mean work in previous occupation – not qualified for DSP – decision affirmed

Taxation

[Eastwin Trade Pty Ltd and Commissioner of Taxation](#) [2017] AATA 140 (10 February 2017); Senior Member PW Taylor SC

Taxation – Goods and Services Tax – creditable acquisition – precious metal or scrap gold – gold bullion or gold dore – conversion – disclosure of net profit on BAS – no claim for input tax credits – onus obligation – penalty – decisions affirmed

[Zaps Transport \(Aust\) Pty Ltd, Domenic Zappia & John Zappia and Comptroller General of Customs](#) [2017] AATA 202 (17 February 2017); Deputy President BJ McCabe

Customs – warehouse licence – licence to store goods subject to customs control excluding petroleum and like products – applicant's licence varied so as to remove the approval to receive, store or move under bond dutiable tobacco and tobacco products – permission to move dutiable tobacco and tobacco products from warehouse not yet granted – dutiable goods stolen – whether the company, director and/or general manager were entrusted with the possession, custody or control of dutiable goods – whether it is appropriate to pierce the corporate veil – decision 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
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Carioti & Ors v Commissioner of Taxation & AAT	[2017] AATA 62
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Hollis v Comcare	[2017] AATA 49
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Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
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None finalised

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