



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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Enquiries regarding this publication may be directed to [aatweb@aat.gov.au](mailto: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

[Lazarides and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 321 (14 March 2017); Dr L Bygrave, Member

Application for Australian citizenship by conferral – whether the applicant satisfies the general residence requirement, special residence requirements or defence service requirement – decision affirmed

## Compensation

[Young and Comcare](#) (Compensation) [2017] AATA 325 (16 March 2017), Senior Member P Nolan

Commonwealth employee, claim for permanent impairment – whether injury for the purpose of the SRC Act – accepted condition – major depressive disorder – whether permanent impairment – decision under review affirmed

## Customs

[National Oilwell Pty Ltd and Comptroller-General of Customs](#) [2017] AATA 322 (16 March 2017); Senior Member DR Davies

Custom's regulations – tariff classifications – tariff concession orders – description of the goods – duty paid on imported goods – applications for refund of duty paid on goods

## Migration

[Ashraf and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 331 (14 March 2017); Senior Member A Nikolic AM CSC

Visa refusal on character grounds – risk of engaging in criminal conduct if allowed to remain in Australia – whether discretion to refuse visa enlivened – where applicant convicted of multiple offences – where applicant made misleading statements to immigration authorities – where dependant may suffer hardship if visa application refused – need to protect Australian community from criminal or immigration misconduct – expectations of Australian community not met – decision affirmed

[Lilly and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 330 (17 March 2017); Senior Member CR Walsh

Mandatory cancellation of applicant's visa – applicant has “substantial criminal record” and does not pass the “character test” – primary considerations and other relevant considerations considered – decision under review affirmed

[Han](#) (Migration) [2017] AATA 250 (15 February 2017); M Urquhart, Member

Migration – Child (Migrant) (Class AH) visa – Subclass 101 (Child) –Dependency test – Educational requirements – Full time study after high school – Length of break in study unreasonable – No corroborating evidence – Decision under review affirmed

[Telfer](#) (Migration) [2017] AATA 266 (15 February 2017); K Chapman, Member

Migration – Working Holiday (Temporary) (Class TZ) visa – Subclass 417 (Working Holiday) – cl.417.211 – Three months specified work in regional Australia – Harvesting and packing fruit – Collaborative arrangements between several farms – Financial records – Decision under review remitted

[Garzon Yepes](#) (Migration) [2017] AATA 215 (16 February 2017); W Shum, Member

Migration – Skilled (Provisional) (Class VC) visa – Graduate Work stream – Subclass 485 – Skills assessment – Hearing not required – Child-Care Centre Manager – TRA Provisional Skills Assessment provided – Decision under review remitted

[Zalesky](#) (Migration) [2017] AATA 208 (17 February 2017); M Cooper, Member

Migration – Temporary Work (Class GC) Training and Research visa – Subclass 402 – Jurisdiction issue – Application made while in migration zone – Applicant not identified in nomination application – Time of application – Later lodged nomination application cannot be considered – Tribunal does not have Jurisdiction

[JC Management Australia Pty Ltd](#) (Migration) [2017] AATA 232 (22 February 17); R.C. Titterton, Member

Migration – Employer Nomination Refusal – s 140GB – r 2.72 – Genuine nomination – Customer Service Manager – Position necessary for business operations – Analysis of tasks performed – Applicant's trading income – Decision under review set aside

[1617243](#) (Refugee) [2017] AATA 221 (3 February 17) C Wilson, Member

Refugee – Protection visa – Afghanistan – Religion – Christianity – Credibility issues – Delay in protection application – Inconsistency in claims – Identified as Muslim while in detention – Conduct engaged to strengthen claims – Decision under review affirmed

[1619674](#) (Refugee) [2017] AATA 222 (5 February 17); G Short, Senior Member

Refugee – Cancellation – Protection visa – Egypt – Religion – Evangelical Church – s 107 notice – Incorrect answers in protection visa application – Applicant returned to Egypt – Family members kidnapped – Detention – Religious practices curtailed during visit– Decision under review set aside

[1503815](#) (Refugee) [2017] AATA 224 (7 February 17); R Smidt, Member

Refugee – Protection visa – Pakistan – Business owner – Extortion – Muttahida Qaumi Movement – Protection money – Physical assault – Medical conditions – Third country protection – Decision under review affirmed

[1504818](#) (Refugee) [2017] AATA 278 (8 February 17); M Moustafine, Member

Refugee – Protection visa – China – Religion – Catholic – Particular social group – Black child – Child of a single mother – One-child policy – Social compensation fee – Household registration – Forced sterilisation – Decision under review affirmed

[1508966](#) (Refugee) [2017] AATA 249 (8 February 17); L Mojsin, Member

Refugee – Protection visa – Mongolia – Domestic violence – Kidnapping – Credibility issues – Effective State protection available – Decision under review affirmed

## **Social Security**

[Assie and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 328 (16 March 2017); Senior Member JF Toohey

Disability Support Pension – cancellation – whether applicant qualified at date of cancellation – whether applicant permanently blind – whether applicant qualified when she made new application – decision under review affirmed

Overpayment – whether applicant had debt – date of effect of adverse decision – decision under review set aside

[Daniels and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 327 (30 January 2017); Senior Member NA Manetta

Overpayment of parenting benefit – recipient assisting in father's improper scheme to avoid income tax – father's earnings credited to recipient's account – presumption of advancement – resulting trust – role of Tribunal in adjudicating and recognising resulting trusts – held – not appropriate for Tribunal to recognise unconditional resulting trust – decision under review affirmed

[Elali and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 329 (15 March 2017); Senior Member JF Toohey

Disability Support Pension – cancellation – intellectual disability – whether applicant's impairment rated 20 or more points – no reliable assessment of impairment – decision under review affirmed

[O'Neill and Secretary, Department of Employment](#) (Social services second review) [2017] AATA 323 (14 March 2017); Senior Member T Tavoularis

Job Commitment Bonus – whether Applicant received Newstart Allowance for a continuous period of 12 months – whether Applicant was employed in gainful work for 12 months following receipt of Newstart allowance for 12 months – Applicant does not satisfy requirements for Job Commitment Bonus – Decision under review is affirmed

[Souied; Secretary, Department of Social Services and](#) (Social services second review) [2017] AATA 332 (16 March 2017); Mr DJ Morris, Member

Compensation Preclusion Period – lump sum compensation payment – application for DSP and Newstart Allowance – meaning of special circumstances – alleged theft of funds – other expenditure – health conditions – special circumstances not made out – SSCSD decision set aside and original decision affirmed

[Vella and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 333 (15 March 2017); Senior Member A Poljak

Disability support pension (DSP) — maximum portability period of 28 days exceeded — suspension of DSP — whether reason to extend maximum portability period — death of family member — family member's death did not occur during relevant period of absence — decision varied concerning dates of suspension period but otherwise affirmed

[Zuber and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 326 (15 March 2017); Mr DJ Morris, Member

Disability Support Pension (DSP) – Invalidity pension granted by foreign country with reciprocity agreement – whether applicant therefore overpaid in Australian DSP – should debt be waived or written off, in part or in full – do special circumstances other than financial hardship apply – decision under review affirmed

## **Taxation**

[Spence and Commissioner of Taxation](#) (Taxation) [2017] AATA 307 (10 March 2017); Professor R Deutsch, Deputy President

Income tax – failure to lodge income tax returns – entitlement to deductions – burden of proof – carrying on a share trading business – share trading losses – carry forward of losses – failure to object to penalties – whether penalties should have been considered in objection decision – decision affirmed

[Walker and Commissioner of Taxation](#) (Taxation) [2017] AATA 324 (14 March 2017); Deputy President IR Molloy

Income tax – allowable deductions – general deduction – whether outgoings incurred in the course of deriving assessable income – work-related expenses – travel between different work locations – whether itinerant worker – farm worker – objection 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

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CASE NAME	AAT REFERENCE
<b>Zappia v Comptroller General of Customs &amp; Ors</b>	<a href="#">2017 AATA 202</a>
<b>Comcare v Starkey</b>	<a href="#">[2017] AATA 200</a>

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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Rus v Comacre</b>	<a href="#">[2016] AATA 18</a>	<a href="#">[2017] FCA 239</a>
<b>Daley v Secretary, Department of Social Services</b>	<a href="#">[2015] AATA 412</a>	<a href="#">[2015] FCA 1155</a> <a href="#">[2017] FCA 230</a>

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## Use of DX discontinuing from 31 March 2017

The Administrative Appeals Tribunal will cease DX membership (Document Exchange Mail) on 31 March 2017.

If you use DX to provide documents to the AAT, please update your records. Details for alternative delivery and contact methods are available on the [“Contact us” page of our website](#) or please call the AAT on 1800 228 333 for assistance.



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