



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.

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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.

Aviation

[Gold Coast Lifestyle Association Incorporated and Minister for Infrastructure and Regional Development](#) [2017] AATA 368 (21 March 2017); Deputy President BJ McCabe; and Senior Member T Tavoularis

Infrastructure and Development – Airports – Gold Coast Airport – Approval of Major Development Plan – Consideration of Environmental Impacts and other issues – consistency with Master Plan – power to impose conditions on approval.

Citizenship

[Baijens and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 350 (21 March 2017); Deputy President SA Forgie

Acquisition of Australian citizenship by application – citizenship by conferral – refusal of approval given to a person becoming an Australian citizen – whether person meets the general residence requirement under s 21(2)(c) of the Australian Citizenship Act 2007 (Cth) – decision affirmed.

General residence requirement – ameliorating provision – not in Australia for the period of 12 months immediately before made application for citizenship – whether ameliorating provisions of s 22(9) apply only to periods of absence in 12 month requirement of 22(4)(c) or to periods of absence in both the four year requirement of s 22(4)(a) and the 12 month requirement of s 24(1)(c) – apply only to s 24(1)(c)

General residence requirement – ameliorating provision – applicant's close and continuing association with Australia during period of absence in 12 month period – concerned only with association in periods of absence in 12 month period.

PRACTICE AND PROCEDURE – reference to extrinsic material – provision amended during course of debate on Bill – extrinsic material not clear – provision clear on its face – not an appropriate occasion on which to have regard to extrinsic material

[Yang and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 364 (23 March 2017); Senior Member AC Cotter

Application for Australian citizenship by conferral – spouse of Australian citizen – non-compliance with the general residence requirements – whether a close and continuing association with Australia – whether discretion in s 22(9) enlivened – decision under review affirmed

[Zaya and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 366 (24 March 2017); Deputy President Dr Christopher Kendall

Good character – whether Tribunal satisfied the Applicant is of good character – previous convictions – traffic offences – mental health diagnosis – use of alcohol and cannabis – incidents of reported violence – Applicant found not to be of good character as insufficient time has lapsed – decision under review affirmed

Compensation

[Ho and Australian Postal Corporation](#) (Compensation) [2017] AATA 349 (21 March 2017); Miss EA Shanahan, Member

Postal delivery officer – claim for compensation arising from or in the course of employment – no clear diagnosis of injury or disease – cervical spine or left shoulder injury or ailment or both – limited medical investigation – anatomical source of symptoms unclear – matter remitted to the Respondent for appropriate assessment

[Gharakhan and Comcare](#) (Compensation) [2017] AATA 351 (21 March 2017); Deputy President, the Hon. Dennis Cowdroy OAM QC

Entitlement to medical treatment expenses – surgery at L2/3 level of spine – whether the treatment was obtained in relation to a compensable injury – compensable injury of sciatica – decision set aside and decision made in substitution

Corporations

[Hill and Australian Securities and Investments Commission](#) (Corporations) [2017] AATA 352 (21 March 2017); Deputy President Professor R Deutsch

Corporations – banning order – applicant disqualified from managing corporations for one year – whether requirements of s 206F have been met – whether Applicant’s behaviour warrants a banning order – whether Applicant’s conduct is causally related to losses suffered by creditors – applicant was not involved in any breach of duty or intention to deceive – decision under review set aside

Freedom of Information

[Morris and Australian Information Commissioner](#) (Freedom of information) [2017] AATA 363 (22 March 2017); Senior Member CR Walsh

Applicant declared a “vexatious applicant” by respondent – applicant repeatedly engaged in access actions – applicant’s repeated engagement involves an abuse of the process for the actions by unreasonably interfering with the operations of an agency – access actions engaged in by the applicant otherwise an abuse of the process for the actions – terms and conditions of declaration considered – decision under review affirmed

Migration

[Saleh and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 367 (24 March 2017); Deputy President Dr Christopher Kendall

Mandatory cancellation of applicant's visa – applicant has substantial criminal record and does not pass the character test – whether discretion to revoke mandatory cancellation should be exercised – primary considerations considered – other relevant considerations considered – international non-refoulement obligations – strength, nature and duration of ties – extent of impediments if removed -- decision under review affirmed

Practice and Procedure

[McKenzie and Comcare](#) (Compensation) [2016] AATA 1100 (19 December 2016); Deputy President G Humphries

Interlocutory Application – extension of time – length of time to lodge application – where legal representatives failed to lodge application – delay on part of legal representatives affords applicant acceptable explanation – failure of legal representatives to lodge not determinative – application has weak prospects of success – weak prospects determinative factor – extension to lodge substantive application refused

Social Security

[Cassar and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 342 (20 March 2017); Senior Member A Nikolic AM CSC

Disability support pension – cancellation – whether qualified – whether impairments fully diagnosed, fully treated and fully stabilised – whether impairments attract 20 points or more on Impairment Tables – 10 impairment points assigned for spinal condition – various conditions diagnosed but not fully treated or stabilised in relevant period – decision under review affirmed

[De Bellis and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 365 (24 March 2017); Ms DK Grigg, Member

Disability support pension – DSP – whether 20 points or more under the impairment tables during the relevant period – whether continuing inability to work – decision under review affirmed

Taxation

[The Trustee for the Whitby Trust and Commissioner of Taxation](#) (Taxation) [2017] AATA 343 (20 March 2017); Senior Member CR Walsh

Goods and services tax – margin scheme – real property acquired following exercise of a call option – whether option fee forms part of the consideration for the acquisition of the real property for the purpose of applying the margin scheme – objection decision set aside in part and remitted to Commissioner for reconsideration in accordance with recommendation set out in the Tribunal's reasons for decision – objection decision otherwise affirmed

[The Norwestern Trust and Commissioner of Taxation](#) (Taxation) [2017] AATA 361 (22 March 2017); Professor R Deutsch, Deputy President

Goods and Services Tax – non-lodgement of BAS – notices of assessment issued – tax shortfall penalty assessment – administrative penalties – fraud and evasion – whether administrative penalties correctly imposed – whether Tribunal should exercise discretion to remit administrative penalty in whole or part – decision under review affirmed

[Mills and Commissioner of Taxation](#) (Taxation) [2017] AATA 362 (23 March 2017); Senior Member G Lazanas

Superannuation – excess contributions tax – whether non-concessional excess contributions can be disregarded or allocated to another financial year – whether special circumstances – 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
Australian Skills Quality Authority v Western Institute of Technology Pty Ltd	[2017] AATA 187

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Kumar v Secretary, Department of Social Services	[2014] AATA 442	[2016] FCCA 640 [2017] FCA 158

Recent developments

Use of DX discontinuing from 31 March 2017

The AAT will cease DX membership (Document Exchange Mail) on 31 March 2017.

If you use DX to provide documents to us, please update your records.

Check the [contact us](#) page on our website for alternative delivery and contact methods or call us on 1800 228 333 for assistance.

Practice Direction updated

A new version of the Practice Direction 'Giving documents or things to the AAT' will commence 1 April 2017.

The new version removes:

- references to the DX (Document Exchange Mail); and
- the online links: www.mrt-rrt.gov.au and <https://ssatonline.ssat.gov.au/>

The new version will be available on our website from 1 April 2017.

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