



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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Contents

AAT Recent Decisions	3
Conflict of laws	3
Corporations	3
Customs and Excise	3
Freedom of information	4
Migration and Refugee	4
National Disability Insurance Scheme.....	5
Practice and Procedure.....	5
Professions and Trades	6
Social Security.....	6
Taxation.....	7
Veterans' Entitlements	8
 Appeals	 9
Appeals lodged.....	9
Appeals finalised	9

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.

Conflict of laws

[Andriotis and Building Practitioners Board](#) [2017] AATA 378 (27 March 2017); Senior Member E Fice

Building practitioners – registration of building practitioner in Victoria – mutual recognition scheme – refusal to recognise registration – applicant registered in New South Wales – applicant's initial application for registration deficient, defective and misleading – applicant unable to provide any particulars of experience – witness statements lodged in support of application of questionable authenticity and authorship – evidence given by applicant's witnesses directly contradicted applicant – where applicant refused to be recalled for re-examination – where applicant made misrepresentations about professional qualifications – where applicant demonstrates no respect for the law or for technical and professional codes – applicant found not to be of good character – decision affirmed

Statutory interpretation – Commonwealth mutual recognition scheme – application of mutual recognition principles – exception to principle that registration will be recognised by way of mutual recognition – recognition subject to laws regulating registration where uniformly applied and unrelated to qualifications or experience

Corporations

[Batros and Australian Securities and Investments Commission](#) (Taxation) [2017] AATA 399 (28 March 2017); Professor R Deutsch, Deputy President

Corporations – banning order – inside information – placing sell orders – crossed wall – execution only broker – whether mere cypher – severity banning order – decision affirmed

Customs and Excise

[Halifax Vogel Group Pty Ltd and Comptroller-General of Customs](#) [2017] AATA 405 (31 March 2017); the Hon D Cowdroy OAM QC, Deputy President

Taxation – customs and excise – Tariff Concession Order – revocation of Tariff Concession Order – whether the core criteria under s 269C of the Customs Act 1901 (Cth) has been satisfied – decision affirmed

Freedom of information

[Australian Fisheries Management Authority and Whish-Wilson](#) (Freedom of information) [2017] AATA 375 (24 March 2017); Dr J Popple, Senior Member

Access to documents – whether Tribunal has jurisdiction to review Information Commissioner’s decision – whether Tribunal has power to refuse access to a document to which access has been granted – variation of access refusal decision – whether original decision can be varied under Freedom of Information Act 1982, s 55G if revised decision does not give access to requested document in full

Migration and Refugee

Migration

[Heng](#) (Migration) [2017] AATA 356 (6 March 2017); S Georgiadis, Member

Migration – Cancellation – Partner (Temporary) (Class TU) visa – Subclass 820 Partner (Spouse) (Class UK) – s 137 – Husband’s permanent visa cancelled – Consequential cancellation – Degree of integration into the Australian community – Husband had departed from role of Buddhist Monk – Teaching language and culture to the Khmer community – Decision under review affirmed

[Kefelegn](#) (Migration) [2017] AATA 357 (8 March 2017); R Gagliardi, Member

Migration – Visitor (Class FA) visa – Subclass 600 (Visitor) – cl 600.211 – Genuine temporary entrant – Ownership of a building and coffee plantation – Family ties in Ethiopia – Possible employment in family’s Australian business – Limited evidence of family’s economic position in Ethiopia – Ongoing civil unrest – Decision under review affirmed

[Lestari](#) (Migration) [2017] AATA 354 (4 March 2017); M Moustafine, Member

Migration – Student (Temporary) (Class TU) visa – Subclass 572 Vocational Education and Training Sector – Genuine student – Unexplained year gap in enrolments – Change of studies from Higher Education Sector – No evidence supporting claimed accounting studies – Decision under review affirmed

[Matsveru](#) (Migration) [2017] AATA 355 (6 March 2017); R Smidt, Member

Migration – Visitor (Class FA) visa – Subclass 600 (Visitor) – cl 600.232 – No documentary evidence of the relationship – Sponsorship by a prescribed person – Late awareness of the biological father – Letters of support from half-siblings – No DNA Testing – Decision under review affirmed

[Qiao](#) (Migration) [2017] AATA 374 (6 March 2017); M Cooke, Member

Migration – Child (Migrant) (Class AH) visa – Subclass 101 – Dependent child under 25 – Chinese Adoption Law – Taken in as baby – Fully reliant on sponsor – Difficulties with adoption process – Formal adoption granted – Decision under review remitted

Refugee

[1504048](#) (Refugee) [2017] AATA 369 (21 February 2017); J Silva, Member

Refugee – Protection visa – Russian Federation – Ethnicity – Chechen – Discrimination – Disappearance of friend - Murder attempts – Damage to property and apartment – Police violence – Credibility – Evidence vague and had gaps – No attempt to relocate – Decision under review affirmed

[1504491](#) (Refugee) [2017] AATA 306 (23 February 2017); G Towney, Member

Refugee – Protection visa – Nepal – Social group – Inter-caste marriage – Inter-class marriage – Domestic violence – Divorced woman – Threats to family – Credibility issues – Decision under review affirmed

[1509937](#) (Refugee) [2017] AATA 309 (27 February 2017), R Smidt, Member

Refugee – Protection visa – Pakistan – Social group – Successful businessman – Political opinion – MQM member – Taliban attacks – Credibility issues – Decision under review affirmed

[1615173](#) (Refugee) [2017] AATA 340 (27 February 2017); S Rice, Member

Refugee – Protection visa – India – Religion – Christian – Hindu extremists – State protection – Relocation reasonable – Decision under review affirmed

[1616481](#) (Refugee) [2017] AATA 380 (28 February 2017); M Wysocka, Member

Refugee – Protection visa – Cancellation – Incorrect answers in protection visa application – Iraqi citizenship – Essential and significant reasons – State protection unavailable – Incorrect answers provided to achieve favourable outcome – Owed non-refoulement obligations – Decision under review set aside

National Disability Insurance Scheme

[Young and National Disability Insurance Agency](#) [2017] AATA 407 (31 March 2017); Senior Member JF Toohey and Ms D Connolly, Member

National Disability Insurance Scheme – reasonable and necessary supports – vehicle modification – whether applicant’s plan should include funding for swivel seat – whether value for money – whether likely to be effective and beneficial – economic participation – what is reasonable to expect family to provide – Tribunal not satisfied of all criteria in s 34(1) – decision under review affirmed

Practice and Procedure

[Australian Corporate Jet Centres Pty Ltd and Civil Aviation Safety Authority](#) [2017] AATA 403 (31 March 2017); Senior Member E Fice

Practice and procedure – Jurisdiction – application for review of decision to amend Australian Civil Aircraft Register to show that applicant was Registered Operator of aircraft – applicant concedes that there is no jurisdiction to review decision as expressed in application for review – application for

review of earlier refusal to register applicant as Registered Operator raised at jurisdiction hearing – whether a ‘reviewable decision’ within the definition in the Civil Aviation Act – refusal to amend Register cannot be regarded as refusal to grant or issue certificate – refusal to process application and amend Register does not constitute a variation of an authorisation – matter dismissed for want of jurisdiction

Professions and Trades

[Constantin and Commissioner of Police \(NSW\)](#) [2017] AATA 404 (8 March 2017); the Hon. D Cowdroy OAM QC, Deputy President

Licencing – mutual recognition – refusal to grant security licence – disciplinary action – fit and proper person – decision affirmed

Social Security

[Ashworth and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 400 (30 March 2017); Senior Member A Poljak

Disability support pension – Impairment Tables – whether conditions fully diagnosed, treated and stabilised – Autism Spectrum Disorder – Attention Deficit Hyperactivity Disorder – mental health issues – functional impact – decision affirmed

[Daniel and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 402 (31 March 2017); Senior Member J Sosso

Disability support pension – whether Applicant’s conditions attract 20 points or more – whether conditions fully diagnosed, treated and stabilised – whether conditions permanent – impairment ratings – continuing inability to work – decision under review affirmed

[Dujmovic and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 401 (30 March 2017); Mr DJ Morris, Member

Disability Support Pension (DSP) – whether qualified – whether conditions have functional impact warranting 20 or more impairment points – not qualified for DSP – decision affirmed

[Leach and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 395 (30 March 2017); Senior Member AF Cunningham

Disability Support Pension – qualification requirements – claimed conditions of shoulder arthritis, chronic depression, substance abuse, arthritis of cervical and lumbar spine and disc degeneration, codeine dependency, skin condition – total impairment rating of 10 points – decision under review affirmed

[MXGY and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 398 (30 March 2017); Ms A Burke, Member

Disability support pension – cancellation – whether qualified – epilepsy fully diagnosed, treated and stabilised – depression not fully diagnosed – whether impairment attracts rating of 20 points or more under impairment tables – 5 impairment points assigned for epilepsy – decision under review affirmed

[Tate and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 392 (29 March); Senior Member Mrs JC Kelly

Disability support pension – overpayment – whether overpayment is a legally recoverable debt – whether all or part of the debt should be waived or written off – portion of debt due to sole administrative error – set aside and remitted

[Vaalele and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 394 (28 March 2017); Senior Member A Poljak

Disability Support Pension – cancellation – whether applicant qualified at date of cancellation – lower limb condition – whether severe functional impairment – back condition – whether fully diagnosed, treated and stabilised – decision under review affirmed

[Watkins and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 379 (24 March 2017); Mr DJ Morris, Member

Disability Support Pension (DSP) – whether qualified – whether impairments fully stabilised – whether conditions have functional impact – reasonable treatment recommended but not undertaken – not qualified for DSP – decision affirmed

Taxation

[Davy and Commissioner of Taxation](#) (Taxation) [2017] AATA 376 (27 March 2017); Senior Member E Fice

Income tax and related legislation – work-related travel expense deductions – Income Tax Assessment Act 1997 – exemption from obligation to substantiate work-related travel expenses – liability to administrative penalties – remission of penalties under Taxation Administration Act 1953 – decisions under review affirmed

[Primary Health Care Limited and Commissioner of Taxation](#) (Taxation) [2017] AATA 393 (29 March 2017); Deputy President BJ McCabe, Senior Member G Lazanas

Taxation and revenue – application for extension of time to lodge objections to income tax assessments – Commissioner's discretion to treat objections as lodged within required time – extension of time refusal decision – matters to be considered when exercising discretion – decision set aside and substituted with decision that the objections are taken to have been lodged within the required period

[The Study and Prevention of Psychological Diseases Foundation Incorporated and Commissioner of Taxation](#) (Taxation) [2017] AATA 377 (27 March 2017); Deputy President IR Molloy

Remittal from Federal Court – revocation of endorsements – effective date of revocation – revocations should be retrospective

Veterans' Entitlements

[Browning and Repatriation Commission](#) (Veterans' Entitlements) [2017] AATA 396 (29 March 2017); Brigadier AG Warner, Member

Veterans' affairs – war widow's pension – operational service – whether death war-caused – Statement of Principles No. 75 of 2012 as amended by Amendment Instrument No. 37 of 2016, concerning acute lymphoblastic leukaemia – factor 6(b), being exposed to benzene as specified – whether reasonable hypothesis connecting death to service – material found not to raise reasonable hypothesis – veteran's death not war-caused – decision affirmed

[Gall and Repatriation Commission](#) (Veterans' Entitlements) [2017] AATA 397 (29 March 2017); Dr P McDermott RFD, Deputy President

Veterans' affairs – veteran claim for disability pension for disabilities that not accepted as service related – veteran's claimed defence-caused conditions of cervical spondylosis – no material that raises the necessary connection between the conditions and service – the current Statement of Principles does not support the connection – decision under review affirmed

[Ward and Repatriation Commission](#) (Veterans' Entitlements) [2017] AATA 406 (31 March 2017); Senior Member E Fice

Pensions – rates – qualification for Special Rate – veteran over 65 – whether applicant had ceased to undertake remunerative work when applying for Special Rate – applicant found to have ceased the remunerative work that he was last undertaking before turning 65 – 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
O'Sullivan v P&O Maritime Services Pty Ltd	[2016] AATA 865
Wu v Minister for immigration and Border Protection	[2017] AATA 120

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Comptroller-General of Customs v Sulo MGB Australia PTY Ltd	[2016] AATA 78	[2017] FCA 315
McGarrigle v National Disability Insurance Agency	[2016] AATA 498	[2017] FCA 308

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