



Administrative
Appeals Tribunal

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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

[Huber and Comcare](#) (Compensation) [2017] AATA 701 (19 May 2017); Miss EA Shanahan, Member, Ms A Burke, Member, and Ms K Parker, Member

Workers' compensation – physical and psychological injuries – rehabilitation program – rehabilitation determination – consideration of whether to include tertiary studies into a rehabilitation program – decision affirmed

[Cakmakkaya and TNT Australia Pty Ltd](#) (Compensation) [2017] AATA 695 (18 May 2017); Senior Member JF Toohey

Lower back injury – liability accepted – multiple injuries – degenerative condition – whether effects of injury ceased – whether respondent presently liable to compensate applicant – decision under review affirmed

Migration

[GDZY and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 692 (17 May 2017); Brigadier AG Warner, Member

Mandatory visa cancellation – discretion to revoke – substantial criminal record – character test not satisfied – discretion to revoke visa cancellation if another reason – primary and other considerations – considerations weigh against revocation – decision under review affirmed

[Mataia and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 690 (17 May 2017); Senior Member Mrs JC Kelly

Visa – cancellation – character test – substantial criminal record – robbery in company – four years imprisonment – protection of the Australian community – best interests of minor children – expectations of the Australian community – strength nature and duration of ties to Australia – extent of impediments if removed from Australia – decision affirmed

[Ramil](#) (Migration) [2017] AATA 630 (26 April 2017); A Dronjic, Member

Migration – Cancellation – Temporary Business Entry (Class UC) visa – Subclass 457 Temporary Work (Skilled) – Condition 8107 – Applicant ceased sponsored employment over 90 days – Unfair dismissal and compensation claims – New employer without sponsorship nomination – Family hardship – Visa duration completed – Decision under review Affirmed

[Elbeden](#) (Migration) [2017] AATA 631 (27 April 2017); D Hubble, Member

Migration – Visitor (Class FA) visa – Subclass 600 (Visitor) – cl 600.211 – Genuine temporary entrant – Only 19 days approved leave – Offer of security bond – Family members departed Australia within time – Sponsorship requirement – Political, security and economic conditions in Lebanon – Easing of sectarian conflict – Family incentives to return – Decision under review remitted

[Shrestha](#) (Migration) [2017] AATA 647 (27 April 2017); P Hunter, Member

Migration – Student (Temporary) (Class TU) visa – Subclass 500 Student – cl 500.217 – Public Interest Criterion 4020 – Bogus document – Job offer letter – Questionable conduct by Departmental official overseas – Misunderstanding regarding applicant’s course details – Decision under review remitted

[Lin](#) (Migration) [2017] AATA 648 (28 April 2017); M Sripathy, Member

Migration – Working Holiday (Temporary) (Class TZ) visa – Subclass 417 (Working Holiday) – cl 417.211 – Remuneration for three months specified work in regional Australia – Absence of a piecework agreement – Piecework basis for grape picking work – Minimum pay rates – Underpayment of temporary visa holder workers – Decision under review affirmed

[Choi](#) (Migration) [2017] AATA 649 (1 May 2017); W Banfield, Member

Migration – Student (Temporary) (Class TU) visa – Subclass 570 Independent ELICOS Sector – cl 570.223 – Genuine temporary stay – Successful academic career – General English course – Voluntary work with migrant women – De facto partner in Korea – Organising a conference in Korea – Son in Australia – Decision under review affirmed

[1504584](#) (Refugee) [2017] AATA 650 (4 April 2017); J Silva, Member

Refugee – Protection visa – Stateless – Palestinian Territories (West Bank) – Social group – Association with Israelis – Political opinion – Forced recruitment by Palestinian militants – Suspected as Israeli collaborator – Credibility issues – Decision under review affirmed

[1511924](#) (Refugee) [2017] AATA 619 (7 April 2017); C Smolicz, Member

Refugee – Protection visa – Albania – Bogus document – Fraudulent passport – Forced marriage – Fleeing family violence – Credibility issues – Access to Schengen zone countries – Legal departure from Albania – Delay in applying for protection – Decision under review affirmed

[1508079](#) (Refugee) [2017] AATA 620 (13 April 2017); R Shanahan, Member

Refugee – Protection visa – Stateless – Rohingya – Harm from Burmese authorities – Credibility issues – Found to be [Country 2] national – Decision under review affirmed

[1513666](#) (Refugee) [2017] AATA 676 (19 April 2017); C Thwaites, Member

Refugee – Protection visa – Fiji – Complementary protection – Victim of domestic violence – History of violence with former husband – Previous domestic violence orders not effective – Relocation not possible – Decision under review remitted

[1703908](#) (Refugee) [2017] AATA 682 (21 April 2017); B Mericourt, Member

Refugee – Protection visa – South Korea – No Convention reason – Victim of money lenders – State protection – Internal relocation – Undeclared criminal record – Delay in protection application – Decision under review affirmed

Social Security

[Bevington and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 684 (20 March 2017); Senior Member B Stefaniak AM RFD

Disability support pension – refused – whether qualified – whether impairments fully diagnosed, fully treated and fully stabilised – whether impairments attract 20 points or more on Impairment Tables – decision under review set aside

[Goodey and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 696 (17 May 2017); Ms A Burke, Member

Claim for Disability Support Pension – whether physical, intellectual or psychiatric impairments – whether conditions fully diagnosed, fully treated and fully stabilised – whether impairments attract 20 impairment points – decision under review

[Harte; Secretary, Department of Social Services and](#) [2017] AATA 693 (19 April 2017); Deputy President Dr P McDermott RFD

Disability support pension – physical and psychiatric impairments – whether respondent's conditions are permanent – whether respondent's impairment is of 20 points or more under the Impairment Tables – whether respondent has a continuing inability to work – decision under review substituted

[Mardiryan and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 686 (15 May 2017); Mr C Ermert, Member

Claim for Disability Support Pension – whether physical, intellectual or psychiatric impairments – whether conditions fully diagnosed, fully treated and fully stabilised – whether impairments attract 20 impairment points – impairments attract zero impairment points – decision affirmed

[McCourt and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 688 (15 May 2017); Senior Member PE Nolan

Age Pension – start date of payment – whether special circumstances – whether discretion to extend application time limit beyond 14 days – whether discretion to extend application time limit beyond 13 weeks – decision under review affirmed

[Smith; Secretary, Department of Social Services and](#) (Social services second review) [2017] AATA 699 (19 May 2017); Deputy President SA Forgie

Family Tax Benefit – reconciliation – one member of couple required to lodge income tax return before end of first income year after relevant income year unless special circumstances – whether special circumstances – Secretary's decision affirmed

[Spiteri and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 691 (16 May 2017); Dr I Alexander, Member

Disability support pension – whether condition fully diagnosed, treated and stabilised – impairment tables – mental health condition – decision affirmed

[Thompson and Secretary, Department of Employment; Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 689 (15 May 2017); Professor R McCallum AO, Member

Newstart Allowance – Newstart Allowance cancelled – failure to comply with the activity test and meet the requirements of a job seeker – Newstart Allowance payable from date the written claim was lodged – decision under review affirmed

[Thompson and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 700 (19 May 2017); Mr C Ermert, Member

Disability support pension – whether applicant qualified for disability support pension during relevant period – whether applicant has conditions causing impairment – whether conditions fully diagnosed, treated and stabilised – whether conditions attract an impairment rating of 20 points or more – assessment of intellectual impairment – where conditions do not attract required impairment rating – decision affirmed

[Westell and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 698 (18 May 2017); Mr I Thompson, Member

Disability support pension – whether applicant's medical conditions were fully diagnosed, fully treated and fully stabilised during the assessment period – whether the applicant has a severe impairment – decision under review is affirmed

Taxation

[David Lynton as trustee for the David Lynton Superannuation Fund and and Commissioner of Taxation](#) (Taxation) [2017] AATA 694 (17 May 2017); Senior Member E Fice

Tax offset disallowed following audit- dividend washing scheme – additional franking credits disallowed on the shares purchased cum-dividend which were sold ex-dividend – qualified person entitled to further imputation benefit-existence of a scheme – dominant purpose of gaining imputation benefit – application of anti-avoidance provisions

[Pitts and Commissioner of Taxation](#) (Taxation) [2017] AATA 685 (12 May 2017); Senior Member CR Walsh

SUPERANNUATION – excess non-concessional contributions tax – non-concessional contributions cap - “bring forward” rule - whether written determination should be made to disregard or allocate any part of the non-concessional contribution to another financial year – “special circumstances”; ill-health and poor financial advice – object of Division 292 – other relevant matters – roll-over of superannuation benefit - objection decision affirmed

Veterans' Affairs

[Hunt and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 697 (18 May 2017);
Brigadier (Retired) C Ermert, Member

Claim that conditions are war caused – aggravation of hereditary neuropathy with predisposition to pressure palsy – carpal tunnel syndrome – where applicant rendered operational service – where applicant was required to wear webbing – where applicant was required to ingest Dapsone – where applicant operated an adding machine – whether material points to hypothesis connecting conditions with service – whether hypotheses reasonable – whether material disproves hypotheses beyond reasonable doubt – 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
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None lodged

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
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Sandbach v Commissioner of Taxation of the Commonwealth of Australia	[2015] AATA 1024	[2017] FCA 526
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