



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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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

[Wotherspoon and Civil Aviation Safety Authority](#) [2017] AATA 793 (30 May 2017); Senior Member E Fice

Civil Aviation Safety Authority – suspension of ATPL (Helicopter) and CPL (Helicopter) Licence – critically weight limited aircraft – operation of aircraft in excess of Maximum Take-off Weight and outside the centre of gravity – failure to accurately maintain fuel records – failure to weigh passengers before flights in accordance with manual – whether appointment of applicant as Head of Operations satisfies requirements specified in Civil Aviation Safety Regulations – whether applicant failed in duty as a Flight Instructor – decisions affirmed

Compensation

[Gibson and Military Rehabilitation and Compensation Commission](#) (Compensation) [2017] AATA 776 (23 May 2017); Senior Member Ms N Isenberg and Dr I Alexander, Member

Military compensation – whether applicant's mental illness caused by his service – depressive disorder – anxiety disorder – panic disorder – clinical onset – whether the applicant was diagnosed with mental illness – decision under review affirmed

[HSDR and Comcare](#) (Compensation) [2017] AATA 779 (29 May 2017); Senior Member Dr J Pople

Commonwealth employees – Comcare accepted liability for applicant's psychological condition, contributed to in a material degree by her employment – applicant's condition not improved after almost ten years – whether applicant's condition still contributed to in a material degree by her previous employment – whether applicant continues to suffer a "disease", regardless of whether that contribution continues – whether applicant entitled to compensation for cost of gym membership – whether applicant entitled to compensation for cost of household services – whether applicant entitled to compensation for cost of treatment for bruxism

[Rutter and Linfox Australia Pty Ltd](#) (Compensation) [2017] AATA 780 (30 May 2017); Senior Member A Poljak

Workers' Compensation – costs – s 67(8) of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – two matters heard together – applicant successful in one matter only – power of Tribunal to apportion costs – previous offers of settlement – realistic offers – contingent offers – previous legal representation

[Wiggins and Comcare](#) (Compensation) [2017] AATA 785 (31 May 2017); Ms R Perton, Member

Compensation – employment by Australian Federal Police – chronic adjustment disorder – meeting with team leader – whether injury occurred as a result of reasonable administrative action taken in a reasonable manner – whether applicant entitled to compensation for incapacity – decision set aside

[Wirth and Australian Postal Corporation](#) (Compensation) [2017] AATA 784 (31 May 2017); Ms R Perton, Member, and Ms A Burke, Member

Workers' Compensation – postal worker – aggravation of degenerative changes in cervical spine – whether ongoing incapacity or entitlement to medical expenses – conflicting medical evidence – decision affirmed

Customs

[ITW Australia Pty Ltd and Comptroller-General of Customs](#) [2017] AATA 787 (30 May 2017); Senior Member E Fice

Customs – classification of goods under Customs Tariff Act – polyethylene terephthalate resin – whether goods eligible for concessional rate of tariff under by-law – whether goods are used in the manufacture of fibres or yarn – decision affirmed

[Vestas - Australian Wind Technology Pty Limited and Comptroller-General of Customs](#) [2017] AATA 791 (31 May 2017); Deputy President SA Forgie and Mr C Ermert, Member

Customs – Tariff Concession Order – whether application meets core criteria – whether substitutable goods produced in Australia that are put, or capable of being put to a use that corresponds with a use to which the goods the subject of the TCO can be put – inquiry includes hypothetical – no substitutable goods – decision set aside

PRACTICE AND PROCEDURE – expert evidence – role of expert – expertise on which opinion based must be relevant to an issue to be determined

Migration

[Guo and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 778 (10 May 2017); President Justice D Kerr and Deputy President Prof R Deutsch

Review of re-notified decision originally made 17 September 1996 – application for Class 815 (PRC) (Permanent) entry visa – other visa history and unlawful detention not relevant to review – transition provisions – s 501 Migration Act 1958 as in force immediately before 1 June 1999 – Directions pursuant to s 499 Migration Act 1958 not relevant to review – special cross-examination arrangements to protect confidentiality of witness' evidence of informants and police methodologies – character – criminal conduct – criminal associations – standard of proof required – balance of probabilities – evaluation of circumstantial evidence – discretion – decision to refuse application affirmed

[HZCP and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 775 (29 May 2017); Deputy President Dr C 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 – protection of the Australian community from criminal or other serious conduct – expectations of the Australian community – other considerations – non-refoulement obligations – strength, nature and duration of ties – extent of impediments if removed – decision under review affirmed

[Konneh and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 773 (26 May 2017); Senior Member Mrs JC Kelly

Visa – cancellation – character test – substantial criminal record – reckless wounding offence – protection of the Australian community – expectations of the Australian community – non-refoulement obligations – strength nature and duration of ties to Australia – extent of impediments if removed from Australia – mental health conditions – decision affirmed

[Downs](#) (Migration) [2017] AATA 671 (8 May 2017); S Trotter, Member

Migration – Cancellation – Special Category (Temporary) (Class TY) visa – Subclass 444 (Special Category) – Not Part 5-reviewable decision – Visa cancelled while applicant in immigration clearance – Applicant departed Australia – Natural justice and procedural fairness – No jurisdiction

[SINGH](#) (Migration) [2017] AATA 708 (5 May 2017); M Cooper, Member

Migration – Skilled (Provisional) (Class VC) visa – Subclass 487 – Regional Sponsored stream – English language proficiency – IELTS test – Concessional competent English language requirement not met – Decision under review affirmed

[ALY](#) (Migration) [2017] AATA 704 (5 May 2017); T Flood, Member

Migration – Visitor (Class FA) visa – Subclass 600 – Genuine temporary stay – Immediate family in Egypt – No English language capacity – Secure local environment – Financial security – Decision under review remitted

[CHOTANAN](#) (Migration) [2017] AATA 665 (5 May 2017); C Thwaites, Member

Migration – Cancellation – Student (Temporary) (Class TU) visa – Subclass 572 Vocational Education and Training Sector – Incorrect information provided on application – Previous visa refusals undeclared – Errors by migration agent – Conscientious student – Applicant innocent of the mistake – Applicant's wife previously declared refusals – Decision under review set aside

[Pal](#) (Migration) [2017] AATA 711 (3 May 2017); K Synon, Member

Migration – Temporary Business Entry (Class UC) visa – Subclass 457 – Migration zone – Primary applicant not in the migration zone at time of application – Application for review can be made by sponsor only – No Jurisdiction with primary applicant – Decision under review affirmed with secondary applicant

[Austin](#) (Migration) [2017] AATA 656 (1 May 2017); K Synon, Member

Migration – Training and Research (Class GC) visa – Subclass 402 – Occupational Trainee stream – Nomination not lodged before 402 visa class closed – Applicant not the subject of a current nomination – Decision under review affirmed

[THE HMK FAMILY TRUST](#) (Migration) [2017] AATA 706 (4 May 2017); A Dronjic, Member

Migration – Approval of nominated positions (employer nomination) – Subclass 457 (Temporary Work (Skilled)) visa applicant – Terms and conditions of employment no less favourable – Cook – Labour market testing requirements met – Decision under review set aside

[Zhou](#) (Migration) [2017] AATA 672 (3 May 2017); P Hunter, Member

Student (Temporary) (Class TU) visa – Subclass 500 (Student) – Evidence of enrolment in a course of study – Doctor of Philosophy – Photovoltaic Engineering – Decision under review remitted

[1619684](#) (Refugee) [2017] AATA 681 (26 April 2017); D McCulloch, Member

Refugee – Protection visa – Federal Court remittal – China – Religion – Falun Gong – Social group – Black child – Changes in family planning policy – Credibility issues – Decision under review affirmed

[1611134](#) (Refugee) [2017] AATA 680 (24 April 2017); L Nicholls, Senior Member

Refugee – Protection visa – India – Federal Circuit Court remittal – Particular social group – Inter-caste marriage – Effective protection – Relocation – Decision under review affirmed

Practice and Procedure

[Odlum and Secretary, Department of Social Services](#) [2017] AATA 789 (10 May 2017); Dr L Bygrave, Member

Practice and Procedure – application for dismissal of substantive application – whether Tribunal satisfied that application has no reasonable prospect of success – whether Tribunal has jurisdiction to review original decision – application dismissed

[Rose and Comcare](#) [2017] AATA 790 (30 May 2017); Mr S Webb, Member

Practice and Procedure – compensation – reconsideration decision overturning original acceptance of liability for injury – request for stay – effect of decision – utility of staying implementation – relevant factors – prospects of success – interests of those affected – consequences for the parties – effect on the application for review – stay granted

Social Security

[Bodnar and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 774 (22 May 2017); Senior Member Ms A Poljak

Disability support pension – Impairment Tables – whether the applicant has physical, intellectual or psychiatric impairments – whether the applicant's condition is fully diagnosed, treated and stabilised – whether the impairments attract 20 points or more – Impairment Tables – Table 5 Mental Health Function – decision affirmed

[Booth and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 786 (30 May 2017); Mr DJ Morris, Member

Parenting Payment Partnered – Family Tax Benefit – whether applicant paid in excess of correct entitlement – is debt raised and recoverable – should debt be waived or written off, in part or full – whether severe financial hardship or special circumstances making desirable to waive debt applicable – reviewable decision affirmed

[Darcey and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 777 (29 May 2017); Ms DK Grigg, Member

Disability support pension – portability – whether maximum portability period may be extended – decision under review affirmed

[Madden and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 782 (25 May 2017); Dr L Bygrave, Member

Carer payment – carer allowance – whether person provides constant care to care receiver during the claim period – daily care requirements – care – attention and supervision – bipolar disorder – recurrent lower back strain – decision set aside and substituted

[Webster and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 792 (29 May 2017); Mr DJ Morris, Member

Carer Payment – claim for Carer Allowance – later claim for Carer Payment – obligation on Respondent in regard to inappropriate claims – correct start day – hearing on papers by consent – decision set aside and new decision substituted

Transport

[Marshall and Minister for Infrastructure and Regional Development](#) [2017] AATA 788 (26 May 2017); Mr W Evans, Member

Transport – importation of nonstandard motor vehicle – vehicle determined to be a road vehicle – no legislation specific to import of electric vehicles – nature and application of discretion to allow importation pursuant to Regulation 11 of the Motor Vehicle Standards Regulations 1989 (CTH) – discretion not exercised

Veterans' Affairs

[Lenz and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 783 (31 May 2017); Deputy President Dr P McDermott RFD

Claim for disability pension for condition not accepted as service related – member of peacekeeping force claimed defence-caused conditions of posttraumatic stress disorder and major depressive disorder – diagnosis of posttraumatic stress disorder - the relevant Statement of Principles does support the connection between the applicant's service and the condition – decision under review varied and remitted

[Tems and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 781 (31 May 2017);
Miss EA Shanahan, Member

Repatriation – disability pension – claim for special rate – conditions of lumbar spondylosis, a secondary depressive disorder and alcohol dependence – defence service – no operational service – alone test not satisfied – decision affirmed

Appeals

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Appeals lodged

CASE NAME	AAT REFERENCE
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None lodged

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
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Botha v Minister for Immigration and Border Protection & Anor

[\[2016\] AATA 614](#)

[\[2017\] FCA 362](#)

Hollis v Comcare

[\[2017\] AATA 49](#)

[\[2017\] FCA 558](#)

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