



Administrative
Appeals Tribunal

AAT Bulletin

Issue No. 24/2017

13 June 2017

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.

Compensation

[O'Brien and Australian Offshore Solutions Pty Ltd](#) (Compensation) [2017] AATA 812 (6 June 2017); Senior Member CR Walsh

Seafarers rehabilitation and compensation – whether applicant's ailment or aggravation of that ailment (being a Bipolar Affective Disorder) was "contributed to in a material degree" by his employment with the respondent as an Integrated Rating on the vessel, "Sea Surfer" – meaning of "ailment" considered – meaning of "aggravation" considered – meaning of "contributed to" considered – meaning of "in a material degree" considered – whether the applicant was "bullied" by the Captain of the vessel – decision under review set aside and substituted

Corporations

[Draper and Registrar of Personal Property Securities](#) [2017] AATA 817 (31 May 2017); Deputy President K Bean

Personal Property Securities – Amendment demand given seeking removal of registration from Personal Property Securities Register – Delegate of Registrar refused to register a financing change statement amending registration – Whether reasonable grounds to suspect amendment sought not authorised – Collateral continues to secure debt owed by the applicant – Amendment sought not authorised – Decision under review affirmed

[JSKN and Australian Securities and Investments Commission](#) [2017] AATA 818 (1 June 2017); Senior Member T Tavoularis

Corporations – Applicant was mortgage broker – engaging in credit activity – fraudulent and dishonest conduct – permanent banning order imposed – whether contravention of credit act – whether likely to contravene credit act in future – decision under review affirmed

Corporations – Applicant was mortgage broker – providing financial services – fraudulent and dishonest conduct – permanent banning order imposed – whether power to ban in corporations act enlivened – whether of good fame and character – decision under review affirmed

Industrial Law

[Porciello and Secretary, Department of Employment](#) [2017] AATA 819 (5 June 2017); Ms K Millar, Member

EMPLOYMENT – Fair Entitlement Guarantee – claim for advance under Fair Entitlements Guarantee Act – requirements for an effective claim – claim not an effective claim – decision under review affirmed

Migration

[Kumar and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 802 (2 May 2017); Senior Member T Tavoularis

Visa refusal – Applicant is a citizen of India – Applicant applied for a bridging visa – s 501 character test – where applicant was convicted of grooming children under the age of 16 – whether discretion to refuse visa should be exercised – discretion to refuse Applicant’s visa should be exercised – decision under review affirmed

[NKWF and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 813 (7 June 2017); Ms LM Gallagher, Member and Mr S Rafferty, Member

Request for Safe Haven Enterprise Visa (Class XE) – visa refusal pursuant to section 501(1) of the Migration Act 1958 – character test – offences involving vulnerable members of the community – Direction No. 65 – primary and other relevant considerations – protection of the Australian community from criminal or other serious conduct – expectations of the Australian community – nature and seriousness of the conduct – risk to the Australian community should further offences be committed – other relevant considerations – international non-refoulement obligations – decision under review affirmed

[QKJY and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 820 (8 June 2017); Senior Member T Tavoularis

Review of decision not to revoke mandatory visa cancellation – where Applicant had a long-standing class XB subclass 202 Global Special Humanitarian Visa – s 501 character test – where Applicant had committed a number of offences – whether offences were “serious offences” – where applicant does not pass character test – whether a discretion to revoke the mandatory visa cancellation should be used – Direction No. 65 – primary and other considerations – decision under review affirmed

[Silao Robert Termorthy Sau and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 803 (2 June 2017); Senior Member E Fice

Mandatory visa cancellation – character grounds – substantial criminal record – applicant convicted of various criminal offences, including offences involving violence – significant misconduct while in prison and immigration detention – where serious risk to Australian community if applicant re-offended – where Australian community would expect application to be refused – decision affirmed

Practice and Procedure

[Windram and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 804 (5 June 2017); Ms K Parker, Member

EXTENSION OF TIME APPLICATION – whether reasonable in all the circumstances to grant the extension of time – explanation for the delay – merits of the substantive application – eligibility for Newstart Allowance – whether total asset limit exceeded – assets held in family trust – controlled private trust - appropriate asset attribution percentage

Social Security

[Akcaoz and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 815 (8 June 2017); Senior Member Mrs JC Kelly

FAMILY ASSISTANCE AND SOCIAL SECURITY – Parenting Payment – Newstart Allowance – Family Tax Benefit – Child Care Benefit - applicant receiving Parenting Payment, Newstart Allowance, Family Tax Benefit and Child Care Benefit at the single rate – was the applicant a member of a couple during this period – applicant was a member of a couple – debt recoverable in full – decision under review set aside and substituted

[Laming and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 810 (6 June 2017); Ms DK Grigg, Member

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

[Petrickovic and Secretary, Department of Health](#) (Social services second review) [2017] AATA 814 (7 June 2017); Brigadier AG Warner, Member

AGED CARE – whether Applicant is a member of a couple – whether assessment of property as an assessable asset for aged care purposes was correct – Applicant legally married – Applicant member of couple – wife continues to live in family home – property exempt from asset assessment for Aged Care purposes – decision set aside

Taxation

[Morgan and Commissioner of Taxation](#) (Taxation) [2017] AATA 811 (6 June 2017); Senior Member E Fice

Review of objection decision – income tax – whether applicant reported correct amount of GST payable in quarterly tax periods - GST shortfall – whether applicant entitled to input tax credits claimed in BAS statements – administrative penalty for failure to take reasonable care – onus of proof – burden of proof not discharged by applicant – decision affirmed

Veterans' Affairs

[Davis and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 816 (05 June 2017); Senior Member J Sosso

War widow pension – Second World War veteran – Deledio test – Statement of Principles – where Veteran died in a pedestrian-vehicle traffic accident – kind of death – whether kind of death related to the Veteran's osteoarthritis – whether osteoarthritis was war-related – hypothesis – whether Veteran's death was causally related to his osteoarthritis – decision set aside

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

None lodged

Appeals finalised

CASE NAME

AAT REFERENCE

COURT REFERENCE

None finalised

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