



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.

Compensation

[Prior and Comcare](#) (Compensation) [2017] AATA 844 (9 June 2017); Ms R Perton, Member

Claim for compensation for work-related condition – unspecified cervical disc disorder – computer and keyboard duties – upper limb pain – whether condition was contributed to by employment – whether condition was aggravated by employment – decision affirmed

Freedom of Information

[Besser; Secretary, Department of Employment and](#) (Freedom of information) [2017] AATA 835 (9 June 2017); Senior Member Dr J Popple

Request for access to documents relating to investigations of providers funded under employment services program – documents contain material identifying employment services providers – whether disclosure would unreasonably affect employment services providers adversely in respect of their lawful business, commercial or financial affairs – whether access would, on balance, be contrary to the public interest – decision under review varied

Migration

[TCWY and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 845 (10 May 2017); Senior Member B Stefaniak AM RFD

Mandatory visa cancellation – 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 – international non-refoulement obligations – strength, nature and duration of ties – extent of impediments if removed – decision under review affirmed

[Jammu](#) (Migration) [2017] AATA 806 (5 May 2017); L Lo Piccolo, Member

Migration – Other Family (Migrant)(Class BO) visa – Subclass 114 (Aged Dependent Relative) – Not wholly or substantially reliant on sponsor – Reliance not greater than other means of support – Pension recipient – Reliance not greater for basic needs for food, clothing and shelter – Decision under review affirmed

[Salivio](#) (Migration) [2017] AATA 746 (9 May 2017); C Carney-Orsborn, Member

Migration – Skilled (Provisional) (Class VC) visa – Subclass 485 – Graduate Work stream – Australian study requirement – Nurse – Course not completed within 6 months preceding visa application date – Decision under review affirmed

[Wang](#) (Migration) [2017] AATA 745 (16 May 2017); A Dronjic, Member

Migration – Skilled (Residence) (Class VB) visa – Subclass 887 (Skilled-Regional) – Bogus documents/Misleading information – Misleading information regarding previous skill visa application – 3 year ban – Waiver provision – Compelling circumstances – Businesses provide employment for Australians – Decision under review remitted

[Toocaram](#) (Migration) [2017] AATA 747 (16 May 2017); A Mercer, Member

Migration – Skilled (Provisional) (Class VC) visa – Subclass 485 – Graduate Work stream – Relevant skills assessment – Motor Mechanic (General) – Skills assessment not provided for nominated occupation – Applicant mistakenly nominated incorrect occupation – Decision under review remitted

[Dinh](#) (Migration) [2017] AATA 808 (17 May 2017); H Claringbold, Member

Migration – Partner (Residence) (Class BS) visa – Subclass 801 (Spouse) – Genuine and continuing partner relationship – Greater substantial evidence available to the Tribunal – Shared mortgage – Household arrangements – Family and social recognition of the relationship – Plans to commence a family – Decision under review remitted

[Kang](#) (Migration) [2017] AATA 799 (18 May 2017); K Malyon, Member

Migration – Skilled (Residence) (Class VB) visa – Subclass 886 (Skilled-Sponsored) – Bogus document/Misleading information – Skills assessment – Graphic Pre-Press Tradesperson – Issues with duty statement – Misunderstanding with previous employer – Decision under review remitted

[Dao](#) (Migration) [2017] AATA 821 (24 May 2017); W Shum, Member

Migration – Skilled Independent (Permanent) visa (Class SI) – Subclass 189 – Points test – Computer Network and Systems Engineer – Pass mark 60 points – Qualifying score not achieved – Decision under review affirmed

[1616594](#) (Refugee) [2017] AATA 826 (1 May 2017); D Corrigan, Member

Refugee – Protection visa – Bahrain – Political opinion – Anti-government protests – Political activist – Religion – Shi'a – Arrests – Sectarian violence – Police assaults on protesters – Decision under review remitted

[1606217](#) (Refugee) [2017] AATA 809 (3 May 2017); C Packer, Member

Refugee – Protection visa – Malaysia – Ethnicity – Chinese – Political opinion – Supported Democratic Action Party – Attended Bersih 3.0 protest – Credibility issues – Decision under review affirmed

[1508944](#) (Refugee) [2017] AATA 823 (9 May 2017); S Pinto, Member

Refugee – Protection visa – India – Political opinion – Khalistan separatist movement – Bomb blast in village – Family members killed – Credibility issues – Decision under review affirmed

Practice and Procedure

[Kuchar and Comcare](#) (Compensation) [2017] AATA 839 (7 June 2017); Senior Member Ms A Poljak

ADMINISTRATIVE – stay application – s 41(2) of the Administrative Appeals Tribunal Act 1975 (Cth) – merits of substantive matter – hardship to the applicant – cessation of massage therapy – chronic pain syndrome – passivity – stay application refused

[VMQD and Commissioner of Taxation](#) [2017] AATA 846 (19 May 2017); Deputy President, The Hon. D Cowdroy OAM QC

PRACTICE AND PROCEDURE – lodging of documents with the Tribunal – application for an order that the respondent lodge additional documents – claim that documents that may be relevant to the decision under review are in the possession of the respondent but have not been lodged – modification of s 37 of the Administrative Appeals Tribunal Act 1975 by s 14ZZF of the Taxation Administration Act 1953 – respondent only obliged to produce documents considered necessary to the review – application dismissed

Social Security

[Hamid and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 837 (14 June 2017); Senior Member Ms A Poljak

Disability support pension – whether a member of a couple – whether separated under the one roof – s4 Social Security Act 1991 (Cth) – financial aspects – nature of household – social aspects – nature of commitment – lack of family support – decision set aside

[Inukihaangana and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 838 (9 June 2017); Dr I Alexander, Member

Disability Support Pension – morbid obesity – asthma – bilateral knee arthritis – back pain – coronary artery disease – the applicant's impairments total twenty points – the applicant does not have a severe impairment – the applicant has not participated in a program of support – the decision under review is affirmed

[Lai and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 840 (9 May 2017); Senior Member T Tavoularis

RECOVERY OF DEBTS – Family Tax benefit – Childcare benefit – right to raise and recover debts – should debt be written off – whether there was administrative error by Department – whether there were special circumstances such that the debt be waived – debt was appropriately raised – no reason to write off or waive debt – decision under review is affirmed

[Messiha and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 841 (11 May 2017); Senior Member B Stefaniak AM RFD

Disability support pension – whether conditions fully diagnosed, treated and stabilised – impairment ratings – continuing inability to work – whether applicant suffered severe functional impact on activities – applicant not found to have a severe impairment within one impairment table – decision under review affirmed

[O'Neill and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 842 (14 June 2017); Senior Member T Tavoularis

DISABILITY SUPPORT PENSION – CANCELLATION of Applicant's pension – whether Applicant had condition(s) that were fully diagnosed, treated and stabilised at time of cancellation – whether Applicant's impairments could be rated 20 points or more under the Impairment Tables – Conditions included spinal disorder and chronic depression – Applicant did not meet criteria under s 94 – decision to Cancel DSP correct – decision under review affirmed

[Pratap and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 843 (9 June 2017); Dr L Bygrave, Member

Disability support pension – overpayment of pension – recovery of debt – assets test – whether assets disposed of or gifted – value of gifted assets – whether applicant has a debt – whether debt can be written off or waived – decision under review affirmed

[Winton and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 847 (15 May 2017); Professor R McCallum AO, Member

Carer payment – whether the applicant was earning income – whether the applicant was validly notified of the decision to grant carer payment – whether MyGov notification validly constitutes notice – decision affirmed

Veterans' Affairs

[Drake and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 836 (12 June 2017); Senior Member J Sosso

VETERANS' AFFAIRS – whether cervical spondylosis is defence-caused – whether bilateral rotator cuff insufficiency and painful arc syndrome are defence-caused – whether ischaemic heart disease is defence-caused – whether medical conditions are related to service – Statement of Principles – decision under review is 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
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None lodged

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
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Australian Securities & Investments Commission v McCormack	[2016] AATA 1021	[2017] FCA 672
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Frugtniet v Migration Agents Registration Authority	[2016] AATA 299	[2017] FCA 537
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Military Rehabilitation and Compensation Commission v Katterns	[2016] AATA 1075	[2017] FCA 641
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