



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](mailto: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.

## Bankruptcy

[Lavin and Inspector-General in Bankruptcy](#) [2017] AATA 890 (16 June 2017); Mrs JC Kelly, Senior Member

Refusal of Inspector – General of Bankruptcy to review the Trustee's decision – whether request for review of Trustee's decision should be reconsidered – whether there are sufficient reasons to justify a review – whether applicant has a relationship or connection with her employer – whether applicant's remuneration is reasonable remuneration – decision affirmed

## Citizenship

[Kleeman and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 875 (15 June 2017); Deputy President JW Constance and Senior Member L Kirk

Revocation of Australian citizenship – applicant convicted of serious offence – whether reinstating the Applicant's Australian citizenship is in the public interest of the Australian Community – public interest in a person who has been granted Australian citizenship being of good character – discretion to revoke citizenship – whether discretion to be exercised – decision affirmed

## Compensation

[JXTZ and Comcare](#) (Compensation) [2017] AATA 880 (16 June 2017); Mr S Webb, Member

Psychological injury claim – acceptance of liability overturned on reconsideration – claim excluded if 'wilful and false misrepresentation' about not having previously suffered the 'disease' under claim – issues of credit – pre-employment health assessment by medical practitioner – divergent accounts of what occurred – meaning of 'wilful and false misrepresentation' – evidence not sufficient to positively establish that a wilful and false misrepresentation was made – decision set aside

[Liddell and Comcare](#) (Compensation) [2017] AATA 878 (16 June 2017); Dr P McDermott RFD, Deputy President

Accepted injury and permanent impairment assessment – subsequent compensation claim for increase in permanent impairment – increase in permanent impairment not sufficient – decision affirmed

[Lisle and Commonwealth Bank of Australia](#) (Compensation) [2017] AATA 919 (22 June 2017); Deputy President JW Constance

Injury – severe depression – reasonable administrative action – disciplinary meetings – taken in a reasonable manner – injury as a result of the administrative action – decision affirmed

## Corporations

[Nguyen and Australian Securities and Investments Commission](#) [2017] AATA 920 (21 June 2017); The Hon. Justice Stevenson, Deputy President

Financial services – credit activities – banning order – where the applicant sought a review of the decision made by the respondent to permanently ban the applicant from engaging in credit activities – where the respondent sought that the applicant be prohibited from engaging in any credit activity for a period at the high end of the three to ten year range – decision set aside and substituted – orders made banning the applicant from engaging in any credit activity for four years

[TMeffect Pty Limited and Australian Prudential Regulation Authority](#) [2017] AATA 921 (22 June 2017); Deputy President SE Frost

Prudential regulation – change of applicant’s name to include restricted word in relation to a financial business – whether name including the word ‘bank’ will undermine objective of protecting the public from confusion – whether audience to applicant’s business is likely to mistake the applicant for a bank – decision set aside and substituted

## Freedom of Information

[HFNB; Secretary, Department of Immigration and Border Protection and](#) (Freedom of information) [2017] AATA 870 (9 June 2017); Dr G Hughes, Member

Establishing date of birth of irregular maritime arrival – absence of credible documentary or other evidence from Respondent – assessment of Departmental interviewers preferred – proposed date of birth must be ‘correct’ and not ‘closer to correct’ or ‘more likely to be correct’ – decision under review set aside and substituted

## Health

[Aurelius Vertoudakis as Executor of the Estate of the late Alexandra Vertoudakis and Secretary, Department of Health](#) [2017] AATA 881 (19 May 2017); The Hon. D Cowdroy OAM QC, Deputy President

AGED CARE ACT – whether the value of the applicant’s assets exceeds \$40,500 – whether applicant is eligible for Government assistance with regard to her residential aged care accommodation costs – whether the applicant met the conditions for a fully supported resident status – decision affirmed

## Migration

[Campbell and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 908 (20 June 2017); Senior Member T Tavoularis

Visa refusal – Applicant is a citizen of the United Kingdom – Applicant applied for a New Zealand Citizen Family Relationship (Temporary) visa – Does Applicant fail s 501 character test – Applicant has a history of Tax offences in New Zealand – Applicant fails character test for different reason – should discretion to refuse visa be exercised – whether primary considerations weigh against or in favour of exercising the discretion – discretion to refuse Applicant’s visa should be exercised – Applicant’s visa correctly refused – decision under is affirmed (for different reasons)

[Chung and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 895 (16 June 2017); Deputy President SA Forgie, Senior Member A Nikolić AM CSC, and K Parker, Member

Refusal to revoke decision to cancel applicant’s visa – decision affirmed

[Leau and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 918 (15 June 2017); Dr L Bygrave, Member

Migration Act 1958 – mandatory visa cancellation – substantial criminal record – character test – risk of re-offending – protection of the Australian community – best interests of minor children – expectations of the Australian community – decision affirmed

[NDFN and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 892 (9 June 2017); Senior Member A Nikolic AM CSC

Visa refusal – application for protection visa – Australian and foreign convictions – provision of false or misleading information to immigration authorities – failure to pass character test – discretion to refuse visa application enlivened – decision under review set aside – decision in substitution that discretion to refuse visa application should not be exercised

[Tuala and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 877 (8 June 2017); Senior Member A Poljak

Mandatory cancellation – character test – armed robbery with offensive weapon – substantial criminal record – Direction 65 – protection of the Australian community – seriousness and nature of the relevant conduct – the risk conduct may be repeated – best interests of minor children in Australia – expectations of Australian community – decision affirmed

[WCJS and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 876 (11 May 2017); Professor MJ McGrowdie, Senior Member

IMMIGRATION – partner visa refusal – failure to pass the character test – whether to exercise section 501(1) discretion to refuse visa on character grounds – applicant convicted of common assault and domestic violence – 12 month good behaviour bond – whether there is a risk of reoffending – protection of the Australian community – expectations of the Australian community – impact on family members – decision set aside and substituted

## Practice and Procedure

[Coleman and Comcare](#) [2017] AATA 882 (13 June 2017); Dr L Bygrave, Member

Extension of time application – whether it is reasonable in all the circumstances to grant the extension – acceptable reason for delay – whether substantive matter has merit – extension of time application granted

[Ehrenfeld and Australian Securities and Investments Commission](#) [2017] AATA 883 (16 May 2017); Senior Member JF Toohey

Request for recusal on grounds of bias – summons to produce documents – interlocutory hearing to determine whether summonses should be set aside – summonses set aside – applicant’s request that Senior Member recuse herself from determining the substantive application for review on grounds of bias – actual bias – whether a fair-minded observer might reasonably apprehend a lack of impartiality – application for recusal refused

[Lever and Comcare](#) [2017] AATA 891 (19 May 2017); The Hon. D Cowdroy OAM QC, Deputy President

Application for recusal on grounds of apprehended bias – application refused

[Tangsilat and Migration Agents Registration Authority](#) [2017] AATA 894 (14 June 2017); Ms A Poljak, Senior Member

Stay application – Migration Agents Regulation Authority – suspension of registration as migration agent – Code of Conduct – merits of substantive matter – public interest – consequences if stay refused – stay application refused

## Social Security

[Bokhoree and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 871 (15 June 2017); Ms DK Grigg, Member

FAMILY ASSISTANCE – family tax benefit – schoolkids bonus – overpayment – where no administrative error – where no special circumstances – decision under review affirmed

[Brawn and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 873 (15 June 2017); Ms AF Cunningham, Senior Member

Social Security – age pension – member of a couple – applicant resides with wife in Vietnam – biannual trips to Australia for medical treatment – no “special reason” to justify exercise of discretion – decision under review affirmed

[Kuoronny and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 889 (9 May 2017); Senior Member T Tavoularis

AUSTUDY DEBT – where Applicant failed to report income of partner – whether Applicant received notice of obligations – whether debt appropriately raised – correct amount of debt to be raised – whether debt should be waived – whether special circumstances exist – whether financial hardship – decision under review set aside and amount of debt substituted / varied

[Kucukakyuz and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 917 (22 June 2017); Dr L Bygrave, Member

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

[Lancaster and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 874 (16 June 2017); Senior Member PE Nolan

Disability support pension – whether Applicant had conditions that were fully diagnosed, treated and stabilised during the relevant period – whether Applicant had 20 impairment points – Table 5 – mental health condition – bipolar – 10 points – decision under review is affirmed

[Paulis and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 909 (2 May 2017); Mr DJ Morris, Member

NSA – whether qualified – whether applicant unemployed and satisfied activity test – definition of ‘unemployed’ – applicant has several unprofitable businesses – not qualified for allowance – decision affirmed

[Pilfoot and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 905 (19 June 2017); Ms DK Grigg, Member

Age pension – whether member of a couple – consideration of special circumstances and whether they exist – decision under review affirmed

[Raymond and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 879 (29 May 2017); Senior Member DR Davies

Family Tax Benefit debts raised – basis to write off or waive recovery of debt – any special circumstances to waive or write off all or part of the debt – income tax years based on estimates of income – financial difficulty is not by itself a special circumstance – decision under review affirmed

[Safaoui and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 924 (22 June 2017); Dr I Alexander, Member

Disability support pension – whether Applicant has a debt – calculation of value of deprived asset for purposes of assessing DSP entitlement – application of single year and 5-year disposal free areas – decision set aside and remitted for recalculation of debt

Disability support pension – automatic cancellation of pension under s 94 Social Security (Administration) Act – whether proper notice given under s 68(2) – whether Applicant required to notify Centrelink of a change in circumstances – whether Applicant started working 30 hours or more per week – whether payment able to be cancelled under s 80(1) – decision set aside and substituted

Disability support pension – whether Applicant has a debt – whether pension should have been cancelled and debt raised – decision set aside and substituted

[TVWB; Secretary, Department of Social Services and](#) (Social services second review) [2017] AATA 903 (19 June 2017); Miss EA Shanahan, Member

Disability support pension – psychiatric disorder – previous diagnosis of schizophrenia – no psychiatric attendance or treatment since 2013 – reassessment by Secretary – disability support

pension cancelled – Stay Order in force – respondent works through employment services provider 14 hours per week – psychiatric disorder not fully treated and stabilised – Administrative Appeals Tribunal 1st Tier decision set aside

[Vasilas and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 904 (19 June 2017); Miss EA Shanahan, Member

Pensions and benefits – disability support pension claim – complex medical history – severe osteoarthritis of right knee – awaiting surgery – delay consequent upon high anaesthetic risk – recent deterioration in cardiovascular parameters – incomplete assessment – decision affirmed

## **Taxation**

[Gu and Commissioner of Taxation](#) (Taxation) [2017] AATA 906 (6 June 2017); Senior Member E Fice

Review of objection decision – income tax assessment – where audit disclosed applicant had undisclosed income – whether applicant can establish that assessment is excessive or otherwise incorrect – where applicant operated and was paid by business – where business traded substantially in cash – where applicant unable to provide satisfactory evidence to dispute assessed income – decision affirmed

Penalties – administrative penalties – whether applicant's taxation shortfall arose due to recklessness by applicant – where applicant was not assisted by a tax agent – penalties correctly imposed – no basis for remission of penalties for any other reason contended – decision affirmed

## **Transport**

[Grapsas and Minister for Infrastructure and Regional Development](#) [2017] AATA 886 (9 June 2017); Mr A Cameron, Member

TRANSPORT – motor vehicles – application to import vehicle – no identification plate – Regulations 11 and 13 – where applicant does not satisfy criteria under Regulation 13 – where exercise of discretion under Regulation 11 inappropriate – decision affirmed

## **Veterans' Affairs**

[Golubenko and Repatriation Commission](#) (Veterans' Entitlements) [2017] AATA 885 (8 June 2017); Ms R Perton, Member

Veterans' Appeals – pension at special rate – claim lodged after applicant's 65th birthday – whether 10 years of work in same field as employee when working for different companies – decision under review affirmed

[McKinley and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 872 (15 June 2017); Miss EA Shanahan, Member, and Ms A Burke, Member

REPATRIATION – remittal from the Full Court of the Federal Court – incorrect standard of proof applied in decision of September 2014 – claim for post-traumatic stress disorder, generalised anxiety disorder and alcohol abuse – accepted physical conditions – pension at 60 per cent of the general rate – claims dating from 2005 to the present – new Statements of Principle – s 70 claim – conflicting



evidence of the applicant – unreliability of evidence of applicant – decision affirmed – claim under s 70 of the Act – the Tribunal does not have jurisdiction

# 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

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CASE NAME	AAT REFERENCE
<b>Guo v Minister for Immigration and Border Protection &amp; Anor</b>	<a href="#">[2017] AATA 778</a>

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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Bai v Commissioner of Taxation</b>	<a href="#">[2013] AATA 612</a>	<a href="#">[2017] HCATrans 126</a> <a href="#">[2016] FCAFC 163</a> <a href="#">[2015] FCA 1083</a> <a href="#">[2015] FCA 973</a>
<b>Binetter v Commissioner of Taxation</b>	<a href="#">[2015] AATA 455</a>	<a href="#">[2017] HCATrans 126</a> <a href="#">[2016] FCAFC 163</a>
<b>Sunraysia Harvesting Contractors Pty Ltd (Trustee) v Commissioner of Taxation</b>	<a href="#">[2015] AATA 764</a>	<a href="#">[2017] FCA 694</a>

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# Recent developments

## AAT Perth office floor change

From **Monday 3 July 2017**, all AAT services in Perth will be provided from our office on **level 13, 111 St Georges Terrace, Perth**. The AAT's Perth office on level 5 will close at 5.00pm on Friday 30 June 2017.

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