



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.

Child Support

[Tadela and Child Support Registrar](#) (Child support) [2017] AATA 957 (23 June 2017); Senior Member CR Walsh

CHILD SUPPORT – Applicant has a substantial child support liability – departure prohibition order (DPO) issued to Applicant – Applicant's application for departure authorisation certificate refused by Respondent – whether Applicant will depart from a return to Australia within an appropriate period – whether the Respondent will be required to revoke DPO – whether it is necessary for Applicant to give security for his return to Australia – whether Applicant able to give such security – decision under review affirmed

Compensation

[Lara and K & S Freighters Pty Ltd](#) (Compensation) [2017] AATA 955 (26 June 2017); Senior Member E Fice

WORKERS' COMPENSATION – permanent impairment – level of impairment – lack of clinical signs – pain calculating compensation – impairment assessment – assessment tables – non-economic loss – impact of loss – major criteria – minor criteria

Corporations

[Downey and Australian Securities and Investments Commission](#) [2017] AATA 958 (26 June 2017); Deputy President Dr C Kendall

CORPORATIONS LAW – six year banning order – whether conduct misleading or deceptive or likely to mislead or deceive – factors to be taken into account when imposing a banning order – duration of banning order – decision under review is set aside – applicant banned under s 920A of the Corporations Act 2001 for a period of four years

[Reed and Australian Securities and Investments Commission](#) [2017] AATA 930 (23 June 2017); Deputy President Professor R Deutsch

CORPORATIONS – Applicant disqualified from managing corporations – section 206F of Corporations Act 2001 – meaning of "was wound up" – whether winding up needs to be finalised – bound by Full Federal Court decision – decision affirmed

Migration

[Bhatia and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 927 (23 June 2017); Deputy President G Humphries

MIGRATION AND CITIZENSHIP – application for Australian citizenship denied on character grounds – domestic violence – criminal convictions – convictions of applicant deemed ‘serious’ under the Australian Citizenship Instructions – evidence of applicant before Tribunal inconsistent with finding of Court – inconsistency weighs against applicant – attempt to downplay seriousness of criminal offences in evidence to Tribunal weighs against applicant demonstrating enduring moral qualities – that denial of application for citizenship will create ‘significant hardship’ to applicant irrelevant in assessment of good character – decision affirmed

[Fiu and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 928 (23 June 2017); Senior Member E Fice

IMMIGRATION – application for revocation of mandatory cancellation of visa – character grounds – where applicant has substantial criminal record – where applicant has a significant convictions for offences of dishonesty and violence – where crimes motivated by methylamphetamine use and expenses – where applicant’s drug use and family matters said to contribute significantly to criminal conduct – where unacceptable risk of applicant engaging in criminal conduct – whether effect of decision on minor children engages certain primary considerations – where Australian community would expect non-revocation – where other considerations weigh slightly in favour of revocation – decision affirmed

[Fiu and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 954 (21 June 2017); Ms R Perton, Member

Non-revocation of mandatory visa cancellation – character test – protection of the Australia community – serious conduct – armed robbery – damage to property – possession of drugs – further offences in prison – expectations of Australian community – strength, nature and duration of ties to Australia – decision affirmed

[Ozer and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 956 (26 June 2017); Miss EA Shanahan, Member

MIGRATION – non-revocation of mandatory visa cancellation – criminal convictions with 12 months imprisonment – guilty plea entered – workplace injury preceding offences – loss of sight in left eye – exemplary work history – detained under Mental Health Act in psychiatric unit on the reporting of mother-in-law – married to an Australian citizen since 2007 – two children one of whom is a step-child – decision set aside and substituted with decision to revoke mandatory cancellation

[De Silva](#) (Migration) [2017] AATA 911 (18 May 2017); R Westaway, Member

Migration – Cancellation – Student (Temporary) (Class TU) visa – Subclass 572 Vocational Education and Training Sector – Enrolment – Applicant’s course registration ceased – Applicant completed course – Brief period overseas – College disputed notification of leave – Delay in fee payment – Confusion over enrolment extension to complete assignments – Decision under review set aside

[Macintosh](#) (Migration) [2017] AATA 899 (18 May 2017); M Grau, Member

Migration – Child (Residence) (Class BT) visa – Subclass 802 (Child) – Enrolment in full time study at time of application – Applicant was on a tourist visa – English studies commenced later – Commenced studies reasonable period after application – Financial difficulties – Not in full-time study at time of application – Decision under review affirmed

[Lenhardt](#) (Migration) [2017] AATA 900 (19 May 2017); Senior Member K Raif

Migration – Other Family (Residence) (Class BU) visa – Subclass 835 (Remaining Relative) – Remaining relative of an Australian relative – Near relative outside Australia – Adult child from former relationship – Decision under review affirmed

[Saeed](#) (Migration) [2017] AATA 936 (20 May 2017); M Moustafine, Member

Migration – Student (Temporary) (Class TU) visa – Subclass 573 Higher Education Sector – Genuine temporary stay – Enrolment cancelled due to non-commencement of studies – Twelve month gap in studies – Disputed claims of course completion – Inaccurate employment records – Decision under review affirmed

[Chhim](#) (Migration) [2017] AATA 901 (22 May 2017); D Morgan, Member

Migration – Partner (Residence) (Class BS) visa – Subclass 801 (Partner) – Genuine and continuing relationship – Breakdown of relationship – Sponsor commenced another family – No child of the relationship – Applicant seeking divorce – Decision under review affirmed

Refugee

[1517722](#) (Refugee) [2017] AATA 902 (8 May 2017); A Murphy, Member

Refugee – Protection visa – Pakistan – Imputed political opinion – Peace committee members – Opposition to Taliban – Pakistan Army offensive in Swat Valley – Threats of killing – State protection – Internal relocation – Decision under review remitted

[1605592](#) (Refugee) [2017] AATA 914 (8 May 2017); Deputy President Jan Redfern; Tony Caravella, Member

REFUGEE – Vietnam – Claim to fear persecution on the basis of Catholicism – Member of a particular social group – Imputed political opinion – Failed asylum seeker and unlawful departure – Credibility – Whether applicant would be forcibly separated from his family – Psychological harm – Whether removal and separation engages complementary protection provisions – Necessary and foreseeable consequence

PRACTICE AND PROCEDURE – Role of Tribunal – Failure by applicant to make expert witness available for questioning – Weight to be given to expert opinion – Operation of s.424A – Whether information would be a reason for affirming the decision under review – Decision under review affirmed

[1609153](#) (Refugee) [2017] AATA 953 (10 May 2017); M Hawkins, Member

Refugee – Protection visa – Bangladesh – Protection (Class XA) visa – Legislative change – Temporary Protection (Class XD) visa – Invalid application – Decision under review set aside

[1508583](#) (Refugee) [2017] AATA 952 (11 May 2017); L Mojsin, Member

Refugee – Protection visa – Ukraine – Particular social group – Men of compulsory military draft age – Political opinion – Military conscription – Genuine conscientious objection – Decision under review affirmed

[1511795](#) (Refugee) [2017] AATA 916 (12 May 2017); C Cody, Member

Refugee – Protection visa – Indonesia – Political opinion – Demonstration against government corruption – Loss of employment – Revenge by one police officer – Decision under review affirmed

Social Security

[Neau and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 929 (22 June 2017); Senior Member L Kirk

Disability support pension – physical, intellectual or psychiatric impairment – whether applicant's impairments are fully diagnosed, treated and stabilised – continuing inability to work – Impairment tables – emphysema – spinal scoliosis – gastro-oesophageal reflux disorder – anal abscess – depression – knee osteoarthritis – bilateral rotator cuff disease – Table 4 Spinal Function – Table 5 Mental Health Function – decision affirmed

[Zepnick; Secretary, Department of Social Services and](#) (Social services second review) [2017] AATA 959 (27 June 2017); Miss EA Shanahan, Member

Benefits, allowances and pensions – claim for disability support pension – medical conditions of chronic fatigue syndrome, sleep apnoea and anxiety with a past history of depression – impairment rating assessment of 10 points – Social Security Appeals Tribunal impairment rating of 20 points for chronic fatigue syndrome – expert medical assessment impairment rating 10 points – decision set aside – respondent not qualified for disability support pension.

Veterans' Affairs

[Wallace and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 926 (23 June 2017); Senior Member J Sosso

Veterans' Entitlements – disability pension – claimed condition of Chronic Obstructive Pulmonary Disease – question of whether increased smoking levels and quantity relevantly related to eligible defence-service – Statement of Principles – where condition of Chronic Obstructive Pulmonary Disease not connected to eligible defence-service – decision under review affirmed

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
Frugtniet v Secretary, Department of Social Services	[2017] AATA 577

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Australian Securities and Investments Commission v Davidof	[2017] AATA 37	[2017] FCA 658
Novosel v Comcare	[2015] AATA 476	[2017] FCA 722

Recent developments

AAT Perth office floor change

All AAT services in Perth are now provided from our office on **level 13, 111 St Georges Terrace, Perth**.

Check the [Contact us](#) page on our website, www.aat.gov.au, for up-to-date information and contact details.

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