



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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Recent developments

Brisbane office relocation

From **Monday 24 July 2017**, all AAT services in Brisbane will be provided from our office at Level 6, 295 Ann Street, Brisbane. The AAT's Brisbane offices at Level 4, 119 North Quay and Level 26, 215 Adelaide Street will close at 5.00pm on Friday 21 July 2017.

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

Information about the co-location of our offices will be made available on our website and through AAT Alerts. We encourage you to [subscribe to AAT Alerts](#) if you have not done so already so that you can receive future updates.

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.

Citizenship

[Kumar and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 997 (29 June 2017); Mr S Webb, Member

CITIZENSHIP – application for conferral – character test – record of traffic offences – failure to fully disclose full record of offending – recent pattern of offending behaviour – disregard for law – failure to meet 'good character' test – decision affirmed

Compensation

[Almeida and Australian Postal Corporation](#) (Compensation) [2017] AATA 1001 (29 June 2017); Ms R Perton, Member

COMPENSATION – mail sorting duties – lower back, left knee and right elbow pain – whether condition was contributed to by employment – whether condition was aggravated by employment – decision affirmed

[Griffiths and Australian Postal Corporation](#) (Compensation) [2017] AATA 1025 (4 July 2017); Deputy President G Humphries

WORKERS COMPENSATION – psychiatric condition – whether pre-existing condition – borderline personality disorder – depression – whether workplace injuries occurred – held that workplace injury occurred – whether workplace incidents contributed to injury to a significant degree – significant contribution established – whether wilful and false representation made by Applicant to not have had or not previously suffered from similar condition – whether exemption to liability established – wilful and false representations found – exemption to compensation established – decision affirmed

EVIDENCE – expert evidence – opinion evidence - weight to be given to expert opinion not based on widely-accepted scientific criteria – importance of reasoning leading to opinion – expert assistance must not supplant role of decision-maker.

[Smith and Comcare](#) (Compensation) [2017] AATA 1006 (30 June 2017); Deputy President G Humphries, Senior Member L Kirk

WORKERS COMPENSATION – whether 'medical treatment' under relevant provision – whether medical treatment in relation to the accepted condition – whether ongoing medical treatment reasonable – car accident in course of employment – neck and spine conditions – physiotherapy as treatment for compensable conditions – ten years of continual treatment since compensable condition arose – long-term effect of physiotherapy treatment limited – treatment not cured or

significantly reduced symptoms – cost to benefit ratio of treatment not reasonable in circumstances - treatment obtained not in relation to injury - treatment not reasonable to continue to obtain

[Tomich and Comcare](#) (Compensation) [2017] AATA 992 (26 June 2017); Deputy President G Humphries and Dr P Wilkins, Member

Commonwealth employee – senior position – workplace interpersonal issues – adjustment reaction with mixed emotional features – whether “aggravation” of underlying condition – new condition established – whether condition contributed to by employment – causal link between conditions and administrative actions – whether reasonable administrative action – whether administrative action was reasonable and taken in a reasonable manner in respect of the employee's employment – test objective, not subjective – administrative action reasonable – reasonable administrative action taken in a reasonable manner – decision affirmed

[Wieczorek and Comcare](#) (Compensation) [2017] AATA 994 (27 June 2017); Deputy President G Humphries

WORKERS COMPENSATION – psychological injury – whether new injury – whether aggravation of previous injury – administrative action – whether administrative action taken in respect of employment – whether administrative action reasonable – whether administrative action carried out in a reasonable manner – causal link between administrative action and compensable condition must exist – broad departmental actions not administrative action in relation to employment for purposes of section 5A – reasonable administrative action need not be ‘perfect’ administrative action – failure by employer to adhere to departmental Managing Underperformance document constitutes administrative action not reasonably taken – unreasonable action on part of employee not relevant – decision set aside in part

Corporations

[Panganiban and Australian Securities and Investments Commission](#) [2017] AATA 1026 (4 July 2017); Senior Member PW Taylor SC

TAXATION & COMMERCIAL – corporations law – permanent banning order prohibiting applicant from providing any financial services – whether applicant failed to comply with financial services law – applicant failed to comply with financial services law - whether the applicant was of ‘good fame and character’ – applicant not of ‘good fame and character’ – permanent ban warranted - decision under review affirmed

Education

[ZBNL and Secretary, Department of Education and Training](#) [2017] AATA 1007 (30 June 2017); Senior Member RW Dunne

HIGHER EDUCATION – Higher Education Contribution Scheme – application for remission of HECS HELP debt – whether “special circumstances” existed – decision under review affirmed.

Migration

[Campbell and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 993 (27 June 2017); Senior Member E Fice

IMMIGRATION – application for revocation of mandatory cancellation of visa – where applicant fails character test – where applicant warned visa may be cancelled – serious criminal offending – where crimes motivated by methylamphetamine use – unacceptable risk of applicant reoffending – where Australian community would expect non-revocation – where strength, nature and duration of ties of Australia weigh slightly in favour of revocation – decision affirmed

[Fakauafusi and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1017 (4 July 2017); Deputy President SA Forgie

MIGRATION – refusal to revoke decision cancelling applicant’s visa – whether there is another reason why the original decision should be revoked – decision affirmed

PRACTICE AND PROCEDURE – EVIDENCE – treatment of charges withdrawn or struck out

[NHHV and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 995 (29 June 2017); Senior Member N Isenberg

IMMIGRATION – mandatory cancellation of visa – request for revocation of cancellation – character test – substantial criminal record – drug and alcohol abuse – Ministerial Direction No. 65 applied – whether original decision should be revoked – protection of the Australian community – nature and seriousness of conduct – risk to the Australian community – best interests of minor children – international non-refoulement obligations – other considerations – decision affirmed

[YJMD and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1022 (30 June 2017); Senior Member A Poljak

IMMIGRATION – mandatory cancellation – character test – 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

Practice and Procedure

[Buttigieg and Comcare](#) [2017] AATA 1002 (27 June 2017); Deputy President SA Forgie

PRACTICE AND PROCEDURE – whether application for confidentiality order to be disclosed to other party – s 38AA decision-maker has an ongoing requirement to lodge documents relevant to the review – document includes surveillance – legal professional privilege and public interest immunity still apply – the application itself is to be disclosed to other party or parties but not the document over which the confidentiality is sought – matter adjourned

[De Simone and Commissioner of Taxation](#) [2017] AATA 1005 (29 June 2017); Senior Member FD O’Loughlin

Tribunal procedural powers – whether failure to observe a self-executing direction dismissed an application for review - whether self-executing direction can be made - powers of reinstatement.

[Gurkhas Institute of Technology Pty Ltd trading as Royal Gurkhas Institute of Technology and Australian Skills Quality Authority](#) [2017] AATA 1018 (3 July 2017); Senior Member E Fice

PRACTICE AND PROCEDURE – Stay application – decisions to cancel applicant’s registration under NVR Act and ESOS Act and to reject applications for change of scope under NVR Act and

ESOS Act – applicant’s prospects of success in application for review – consequences for application if stay refused – public interest – consequences for respondent if stay granted – whether refusal to grant stay would render substantive proceedings nugatory – stay granted

[Zirilli and Secretary, Department of Social Services](#) [2017] AATA 1027 (23 June 2017); Senior Member Britten-Jones

PRACTICE AND PROCEDURE – extension of time – application out of time - disability support pension - report of psychiatrist says treatment options available - conditions not fully treated and stabilised - no prospects of success in the substantive matter – extension of time refused.

Social Security

[Carey and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1004 (28 June 2017); Mr DJ Morris, Member

SOCIAL SERVICES – Disability Support Pension (DSP) – whether diagnosed condition fully treated and fully stabilised – lack of evidence of regular treatment – not therefore able to be assigned impairment points for diagnosed condition – decision affirmed.

[Coutts and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1023 (31 May 2017); Senior Member T Tavoularis

SOCIAL SECURITY – Disability Support Pension – whether Applicant had conditions that were fully diagnosed, treated and stabilised during relevant period – whether Applicant had 20 impairment points – diabetes, obesity, lower back pain, peripheral neuropathy, osteochondritis dissecans (both ankles), and other conditions – Applicant found to have 15 impairment points - decision under review is affirmed

[Crabtree and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1024 (5 July 2017); Mr A Cameron, Member

SOCIAL SECURITY – family tax benefit – entitlement to FTB top-up payment for 2013/2014 financial year – applicant failed to lodge income tax return for 2013/2014 year by due date – no “special circumstances” preventing lodgement of tax return – decision under review affirmed

[Ispanya and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1019 (5 July 2017); Professor R McCallum AO, Member

SOCIAL SECURITY – disability support pension – multiple conditions – whether depression and PTSD are fully treated and stabilised – whether impairments attract a rating of 20 points or more under the impairment tables – impairments rated at 10 points under the impairment tables – applicant does not qualify for disability support pension – decision affirmed

[Ledster and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 996 (29 June 2017); Professor R McCallum AO, Member

SOCIAL SECURITY – Family Tax Benefit Part A – reasonable maintenance action – late application to extend Child Support Assessment – decision affirmed

[Moammar and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1020 (4 July 2017); Senior Member L Kirk

SOCIAL SECURITY – disability support pension – Impairment Tables – whether conditions fully diagnosed, treated and stabilised – whether applicant has an impairment rating of 20 points or more under the Impairment Tables – mental health condition – major depression and post-traumatic stress disorder – decision affirmed

[Wos and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1021 (24 May 2017); Senior Member P Britten-Jones

SOCIAL SECURITY – 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 – Applicant did not meet criteria under s 94 – decision to Cancel DSP correct - decision under review affirmed

Taxation

[Moore and Commissioner of Taxation](#) (Taxation) [2017] AATA 998 (29 June 2017); Deputy President FJ Alpins

TAXATION – superannuation – excess contributions tax – excess concessional contributions – modifications for defined benefit interests - excess non-concessional contributions – Commissioner's discretion to disregard contributions or to allocate to another financial year – whether Commissioner may make determination – whether there are special circumstances

[Peter Sleiman Investments Pty Limited as Trustee for The Sleiman Family Trust and Commissioner of Taxation](#) (Taxation) [2017] AATA 999 (29 June 2017); Professor R Deutsch, Deputy President

TAXATION - default assessments issued against taxpayer – onus on applicant to establish the assessment is excessive or incorrect – failure to discharge onus – objection decision affirmed – applicant is liable for an administrative penalty - no grounds for remittal

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
Australian Offshore Solutions Pty Ltd v O'Brien	[2017] AATA 812
Comcare v Wiggins	[2017] AATA 785
Grapsas v Minister for Infrastructure and Regional Development	[2017] AATA 886
O'Sullivan v Australian Securities and Investments Commission	[2017] AATA 644

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