



Administrative  
Appeals Tribunal

# AAT Bulletin

**Issue No. 31/2017**

**31 July 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](mailto:aatweb@aat.gov.au).

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# AAT Recent Decisions

The following decisions were recently delivered by the AAT in the General, FOI, NDIS, Security, Taxation & Commercial and Veterans' Appeals Divisions. 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. If the decision is to be summarised, this will be noted. Click on the links for direct access to the full text of the decision.

## Citizenship

[Kerris and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 1148 (19 July 2017); Senior Member J Sosso

Person must be of good character – respect and abide by the law – on probation – no conviction – decision affirmed

## Compensation

[Hamilton and Comcare](#) (Compensation) [2017] AATA 1139 (14 July 2017); Senior Member A Poljak

Workers compensation – section 14 the Safety, Rehabilitation and Compensation Act 1988 (Cth) – psychological condition – aggravation of an ailment – disease – home-based work – bullying and harassment – reasonable administrative action – code of conduct investigation – inadequate supervision – home visit – decision set aside and substituted

[Rooney and Comcare](#) (Compensation) [2017] AATA 1133 (21 July 2017); Dr J Popple, Senior Member

Applicant contracted viral illness after being deployed to participate in military exercise – whether applicant exhibited symptoms of viral illness during and after deployment before reporting symptoms to general practitioner – whether hospitalisation three weeks after deployment was in relation to viral illness contracted during deployment – whether applicant's condition contributed to, to a significant degree, by employment – decision under review affirmed

## Freedom of Information

[Theophanous and Australian Criminal Intelligence Commission](#) (Freedom of information) [2017] AATA 1146 (26 July 2017); Deputy President BW Rayment

Preliminary question of relevance – list of documents in respect of which there is a dispute about relevance – whether respondent has taken all reasonable steps to find documents within the scope of the applicant's freedom of information request – insufficient evidence before the Tribunal – matter inappropriate to be dealt with on the papers and instead to be dealt with on the hearing of the substantive matter

## Migration

[Deng Mabor and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1155 (26 July 2017); Senior Member A Nikolic AM CSC

Application for revocation of mandatory visa cancellation – cancellation of visa on character grounds under section 501 – substantial criminal record – consideration of principles under Ministerial Direction 65 – decision affirmed

[Nguyen and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1157 (26 July 2017); Senior Member Griffin

IMMIGRATION AND CITIZENSHIP – application for Australian Citizenship – application refused by delegate of the Minister on character grounds – whether applicant meets the “good character” requirement – applicant has a criminal record – applicant not of “good character” – decision under review affirmed

[Perese and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1135 (24 July 2017); Mrs JC Kelly, Senior Member

Mandatory cancellation – special category visa – term of imprisonment of 12 months or more – applicant does not pass the character test – whether there is another reason why the decision should be revoked – protection of the Australian community – best interests of minor children – expectations of the Australian community – other considerations – decision affirmed

[Henriksen](#) (Migration) [2017] AATA 1111 (3 July 2017); F Simmons, Member

Migration – Working Holiday (Temporary)(Class TZ) visa – Subclass 417 (Working Holiday) – Remuneration for work – Incorrect information on specified work questionnaire – Paid in accordance with award – Evidence of payslips, photographs and statutory declaration – Decision under review remitted

[Zerella Holdings Pty Ltd ATF Zerella Unit Trust](#) (Migration) [2017] AATA 1125 (4 July 2017); K Millar, Member

Migration – Approval of standard business sponsor – Failure to satisfy sponsorship obligation – Circumstances in which sponsor may be barred or sponsor's approval may be cancelled – Future compliance with sponsorship obligations – Decision under review set aside

[Fonfield Telecommunications Pty Ltd](#) (Migration) [2017] AATA 1124 (5 July 2017); W Shum, Member

Migration – Approval of nominated positions (employer nomination) – Subclass 457 (Temporary Work (Skilled)) visa applicant – Genuine position – Marketing Specialist – Tasks of position not at level of complexity expected for nominated occupation – Decision under review affirmed

[NOVARIT](#) (Migration) [2017] AATA 1112 (5 July 2017); P Hunter, Member

Migration – Student (Temporary) (Class TU) visa – Subclass 572 - No substantive visa held at time of application – Not currently studying – Decision under review affirmed

[Schmitz](#) (Migration) [2017] AATA 1113 (5 July 2017); D Connolly, Member

Migration – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 (Employer Nomination Scheme) – Direct entry scheme – Skills Assessment – Life Scientist (General) – Nominated by Australian scientific government agency – Exempt class of persons – Decision under review remitted

[Akhmedov](#) (Migration) [2017] AATA 1129 (7 July 2017); A Mercer, Member

Migration – Training and Research (Class GC) visa – Subclass 402 – Occupational Trainee stream – Subject of an approved nomination – Nominating organisation no longer an approved sponsor – Subclass closed to new applications – Insufficient information to justify ministerial referral – Decision under review affirmed

## Refugee

[1621961](#) (Refugee) [2017] AATA 1143 (21 June 2017); R Homan, Member

Refugee – Protection visa – Fiji – Victim of sexual abuse as child – Fear of harm from perpetrator – Dispute with relative – Fear of retaliation and harm from relative’s family members in Fiji – Fear of homelessness – Decision under review affirmed

[1706817](#) (Refugee) [2017] AATA 1115 (26 June 2017); R Homan, Member

Refugee – Cancellation – Protection visa – Iraq – Incorrect answers on Protection visa application – Return to Iraq – Seriously ill mother – Exceptional circumstances for return – Decision under review set aside

[1509891](#) (Refugee) [2017] AATA 1117 (27 June 2017); J Strathearn, Member

Refugee – Protection visa – China – Political opinion – Father a Falun gong practitioner – Jailed – Attempted to have father released – Arrested and imprisoned for complaints – Credibility issues – Decision under review affirmed

[1605513](#) (Refugee) [2017] AATA 1144 (30 June 2017); S Muling, Member

Refugee – Protection visa – Pakistan – Particular social group – Inter-caste marriage – Physical assault – Threats – Honour killing – Credible witness – Relocation not possible – Decision under review remitted

## Social Security

[Collins and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1147 (26 July 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

[Grady and Secretary, Department of Social Services](#) (Social services second review) [2017]  
AATA 1153 (26 July 2017); Senior Member JF Toohey

Disability support pension – cancellation – whether applicant’s disability support pension should have been cancelled – multiple physical conditions – mental health condition – alcohol and drug dependency – whether applicant’s conditions fully diagnosed, treated and stabilised at date of cancellation – Tribunal not satisfied all conditions were fully diagnosed, treated or stabilised – whether lower back and limb conditions could be assigned an impairment rating – decision under review affirmed

[Howie; Secretary, Department of Social Services and](#) (Social services second review) [2017]  
AATA 1149 (25 July 2017); Deputy President SA Forgie

Aged pension – income stream – income earned from employment – whether “continuously receiving” aged pension – not “a continuous period” – deeming provision not relevant – decision under review set aside

[Lyddieth and Secretary, Department of Social Services](#) (Social services second review) [2017]  
AATA 1136 (24 July 2017); Dr I Alexander, Member

Disability support pension – physical, intellectual or psychiatric impairment – whether impairments amount to 20 points or more – whether impairments are fully diagnosed, treated and stabilised – continuing inability to work – chronic fatigue syndrome – depression – spinal disorder – decision affirmed

[Mackenzie and Secretary, Department of Social Services](#) (Social services second review) [2017]  
AATA 1134 (21 July 2017); Dr C Kendall, Deputy President and Mr S Rafferty, Member

Disability Support Pension – whether Applicant had condition that was fully diagnosed, treated and stabilised during the relevant period – whether Applicant had 20 impairment points under Impairment Tables – not qualified for Disability Support Pension – decision affirmed

[Matthews and Secretary, Department of Social Services](#) (Social services second review) [2017]  
AATA 1156 (20 July 2017); Mr DJ Morris, Member

Disability Support Pension (DSP) – whether qualified – whether impairments fully treated and fully stabilised – impairments do not total 20 or more points under Impairment Tables Determination – not qualified for DSP – decision is affirmed

[Norman; Secretary, Department of Social Services and](#) (Social services second review) [2017]  
AATA 1138 (25 July 2017); Mrs JC Kelly, Senior Member

Disability support pension – brain function – Attention Deficit Disorder – Asperger’s syndrome – whether respondent’s medical conditions rated at 20 points or more under Impairment Tables – whether respondent had a continuing inability to work – decision set aside and decision made in substitution

[Penn and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1159 (26 May 2017); Mr DJ Morris, Member

Disability Support Pension (DSP) – whether qualified – whether impairments fully diagnosed, fully treated and fully stabilised – spinal condition – lower limb condition – whether fully diagnosed, fully treated and fully stabilised at time of claim – no assessable functional impact of conditions – not qualified for DSP – decision affirmed – written reasons requested – written reasons may elaborate on oral reasons given

[Shaw and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1137 (24 July 2017); Senior Member L Kirk

Disability support pension – physical, intellectual or psychiatric impairment – impairment rating of 20 or more points – continuing inability to work – Job Capacity Assessment – fully diagnosed, treated and stabilised – neck disorder – hypercholesterolemia – decision affirmed

[Tam and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1154 (26 July 2017); Ms K Parker, Member

Disability support pension – whether the applicant has physical, intellectual or psychiatric impairments – whether the applicant’s condition is fully diagnosed, treated and stabilised – reasonable treatment – whether medical or other compelling reason not to undertake reasonable treatment – whether the impairments attract 20 points or more – decision affirmed

[Wright and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1132 (21 July 2017); Senior Member JF Toohey

Disability support pension – physical & psychological impairments – spinal conditions – lower and upper limb conditions – mental health condition – haemorrhoids – whether applicant’s impairments fully diagnosed during claim period – whether applicant’s impairments fully treated and stabilised during claim period – Tribunal not satisfied all impairments were fully diagnosed, treated or stabilised during claim period – whether spinal conditions could be assigned an impairment rating – whether applicant had continuing inability to work – decision under review affirmed

## **Veterans' Affairs**

[SKVR and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 1158 (27 July 2017); Senior Member A Nikolic AM CSC

VETERANS' ENTITLEMENTS — special rate pension – disabling condition PTSD – disabling condition major depressive disorder – disabling condition alcohol abuse – ceased work aged 39 – whether by reason of incapacity resulting from war-caused disabilities – whether veteran incapable of undertaking remunerative work for more than 8 hours per week – whether non-war caused preventative factors – “alone test” – decision under review 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

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CASE NAME	AAT REFERENCE
<b>TMeffect Pty Ltd v Australian Prudential Regulation Authority</b>	<a href="#">[2017] AATA 921</a>

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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Judd v Minister for Immigration and Border Protection &amp; Anor</b>	<a href="#">[2017] AATA 239</a>	<a href="#">[2017] FCA 827</a>
<b>Civil Aviation Safety Authority v Bellamy</b>	<a href="#">[2016] AATA 956</a>	<a href="#">[2017] FCA 829</a>

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