



Administrative
Appeals Tribunal

AAT Bulletin

Issue No. 33/2017

14 August 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.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

Enquiries regarding this publication may be directed to aatweb@aat.gov.au.

Contents

AAT Recent Decisions	3
Citizenship	3
Compensation	3
Refugee	3
Migration	4
Practice and Procedure	5
Social Security	6
Veterans' Affairs	8
Appeals	10
Appeals finalised	10

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

[Truong and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 1213 (8 August 2017); Deputy President BW Rayment

Citizenship by conferral – eligibility – whether applicant of good character – ‘good character’, meaning of – significant visa overstay – consideration of applicant’s character, circumstances and conduct – decision set aside and remitted with a direction that the applicant is of good character

Compensation

[Blasco and Australian Postal Corporation](#) (Compensation) [2017] AATA 1222 (7 August 2017); Senior Member JF Toohey and Senior Member A Poljak

Claim for injury to neck, shoulders, arms, elbows and wrists – carpal tunnel syndrome – plantar fasciitis – liability denied – whether applicant suffered claimed conditions – whether applicant suffered a psychological injury – whether outside the bounds of normal functioning and behaviour – whether employment caused or contributed to conditions – whether conditions aggravated – decision under review affirmed

[Drinkwater and Comcare](#) (Compensation) [2017] AATA 1228 (8 August 2017); Deputy President JW Constance

Injury – Adjustment Disorder with anxiety – reasonable administrative action – whether administrative action taken in respect of employee’s employment – mobility process – redeploying employee – employee found unsuitable for certain roles – employee not redeployed to preferred area – not administrative action – operational action – actions not directed specifically to individual employee – decision set aside and decision made in substitution

Refugee

[1504822](#) (Refugee) [2017] AATA 1195 (29 June 2017); M Cooper, Member

Refugee – Protection visa – Vietnam – Religion – Christianity – Serious harm from Vietnamese government – Relocation not possible – Government perpetrator of harm – Decision under review remitted

[1704773](#) (Refugee) [2017] AATA 1172 (29 June 2017); R Shanahan, Member

Refugee – Protection visa – Cancellation – Stateless – Fabricated information – Incorrect answers on protection visa application – Not stateless Bidoon – Iraqi citizen – Decision under review affirmed

[1604178](#) (Refugee) [2017] AATA 1173 (14 July 2017); D Dragovic, Senior Member

Refugee – Protection visa – Malaysia – Social group – Homosexual men – Not harmed in past – Laws infrequently applied – Sharia law not applied in Sabah state – Existence of LGBTI support groups – Decision under review affirmed

[1506958](#) (Refugee) [2017] AATA 1193 (18 July 2017); L Hardy, Member

Refugee – Protection visa – Vietnam – Social group – Lesbian – Previous family disapproval – No longer dependent on parents – Family and social conditions existed previously – Much improved social and legal developments in recent years – Credibility – Evidence confused and inconsistent – Effective state protection – Relocation an option – Decision under review affirmed

[1514524](#) (Refugee) [2017] AATA 1190 (25 July 2017); J Marquard, Member

Refugee – Protection visa – Cameroon – Social group – Homosexual men – Past social and workplace discrimination – Warrant for arrest – Homophobia prevalent – Criminal penalties – Relocation not possible – No state protection – Decision under review remitted

Migration

[Kainsrey](#) (Migration) [2017] AATA 1187 (7 July 2017); T Eteuati, Member

Migration – Cancellation – Subclass 573 Higher Education Sector visa – Enrolment in University cancelled – Not enrolled in specified course – Lack of progress in courses – May not have ability to successfully undertake and complete higher education degree course – Decision under review affirmed

[Xie](#) (Migration) [2017] AATA 1203 (11 July 2017); H Sanderson, Member

Migration – Contributory Aged Parent (Residence) (Class DG) visa – Subclass 864 – Payment of fee – Immigration clearance – Non-payment of second instalment visa charge – Departed Australia – Department's email notification not received – Evidence of applicants' financial capacity to pay fee – Decision under review remitted

[Tarantino](#) (Migration) [2017] AATA 1206 (13 July 2017); A Mercer, Member

Migration – Class GC Training and Research-Occupational Trainee visa – Subclass 402 – Legislative changes – Transition to subclass 407 program – Lodged application for subclass 407 visa – Not a reviewable decision – No jurisdiction

[Rani](#) (Migration) [2017] AATA 1207 (19 July 2017); M Kennedy, Member

Migration – Cancellation – Temporary Work (Skilled) visa – Subclass 457 – Café and Restaurant Manager – Duties correspond to nominated occupation – Decision under review set aside – No jurisdiction with secondary applicants

[BRIGHTEN SERVICES \(AUSTRALIA\) PTY LTD](#) (Migration) [2017] AATA 1199 (20 July 2017); D Buljan, Member

Migration – Nomination – Not a genuine position – Re-instatement of application not approved – Market Research Analyst – Nominated occupation removed from eligible list – Procedural fairness – Non-attendance at 2 collovers – Non-attendance at 2 hearings – Application dismissed

[Alam and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1233 (9 August 2017); Miss EA Shanahan, Member

Refusal to grant Skilled-nominated (subclass 190) visa – failed character test – sentenced to 24 month’s imprisonment – appeal to Court of Appeal, Supreme Court of Victoria – released after 4 months and 10 days – impersonating immigration official – financial gain – pecuniary penalty – released on Community Correction Order for 3 years – ten years’ residence in Australia – study and full-time work before and after offending – dependent wife and child – child has congenital abnormalities requiring complex surgical correction – decision set aside

[DMZZ and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1217 (1 August 2017); Dr C Kendall, Deputy President

Mandatory cancellation of applicant’s visa – applicant 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 – best interests of minor children – expectations of the Australian community – other considerations – strength, nature and duration of ties – extent of impediments if removed – decision under review affirmed

[Kocak and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1232 (9 August 2017); Deputy President G Humphries

Section 501 visa refusal – visa refused on character grounds – substantial criminal record – protection of the Australian community – expectations of the Australian community – decision under review affirmed

[KRJF and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1223 (4 August 2017); Senior Member JC Kelly

Mandatory cancellation – applicant has substantial criminal record and does not pass the character test – whether there is another reason why the decision should be revoked – primary considerations – protection of the Australian community from criminal or other serious conduct – best interest of minor children – expectations of the Australian community – other considerations – non-refoulement obligations – strength, nature and duration of ties – impact of victims – extent of impediments if removed – decision under review affirmed

[Wang and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1212 (2 August 2017); Deputy President JW Constance

Visa – cancellation – character test – substantial criminal record – dealing in proceeds of crime – credit card fraud – protection of the Australian community – expectations of the Australian community – strength nature and duration of ties to Australia – impact on family in Australia – decision affirmed

Practice and Procedure

[Bestt and Military Rehabilitation and Compensation Commission](#) [2017] AATA 1235 (1 August 2017); Deputy President JW Constance

Summons to third party to produce documents – amount of fees and allowances payable in relation to compliance with summons – reasonable expenses

[AIMT Pty Ltd and Australian Skills Quality Authority](#) [2017] AATA 1234 (31 July 2017); Deputy President JW Constance

Dismissal applications – section 42B – no reasonable prospect of success – power to dismiss to be used cautiously – dismissal applications dismissed

Social Security

[Al Kursan and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1225 (8 August 2017); Ms K Parker, Member

Cancellation of carer payment – whether eligible to receive carer payment – whether constant care was provided – care recipient working in home business

[Al-Khaled and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1227 (8 August 2017); Dr I Alexander, Member

Disability support pension – whether applicant qualified for disability support pension – hemiparesis condition – spine condition – mental health condition – whether applicant had a severe impairment – decision affirmed

[Beakey and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1221 (4 August 2017); Dr P McDermott RFD, Deputy President

Family Tax Benefit – FTB – whether there has been a change to child's care circumstances – whether the Applicant had care of child – whether child was an FTB child of the Applicant or Other Party – finding of fact in relation to plausible care of child – decision under review affirmed

[Cook and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1236 (2 August 2017); Ms DK Grigg, Member

FAMILY ASSISTANCE – family tax benefit – parenting payment – overpayment – where no administrative error – where no special circumstances – decision under review set aside

[CLMY and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1220 (18 July 2017); Dr P McDermott RFD, Deputy President

Appointment of payment nominee and correspondence nominee – revocation of appointment – relevance of percentage of care – decision under review affirmed

[Farrugia and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1231 (9 August 2017); Mr DJ Morris, Member

Disability Support Pension (DSP) – cancellation – 2011 Determination applies – whether qualified – whether impairments assigned 20 or more impairment points – zero points assigned – not qualified at time cancelled – decision affirmed

[Galvin; Secretary, Department of Social Services and](#) (Social services second review) [2017] AATA 1218 (1 August 2017); Mr DJ Morris, Member

Family Tax Benefit (FTB) – whether respondent entitled to FTB top ups and supplementary amounts – late lodgement of tax return – whether respondent prevented from lodging tax return in relevant income year – whether special circumstances applicable – two part test – decision of SSCD Division set aside and new decision made – not entitled to FTB – original decision affirmed

[Hollingsworth and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1216 (3 August 2017); Senior Member JC Kelly

Seniors Supplement – whether applicant was overpaid Seniors Supplement – applicant overpaid Seniors Supplement – whether debt can be written off – debt cannot be written off – whether debt can be waived – the debt not 'solely' the result of administrative error – whether special circumstances exist – special circumstances not found – decision under review affirmed

[Lokanc and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1230 (9 August 2017); Senior Member A Nikolic AM CSC

Disability support pension – application for disability support pension refused – whether applicant's medical conditions were fully diagnosed, treated and stabilised – whether impairments rated 20 points or more under the Impairment Tables – whether impairments rated 20 points or more under a single impairment table – decision under review affirmed

[Macri and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1214 (2 August 2017); Senior Member N Isenberg

Disability support pension – whether Applicant entered into a loan agreement – whether Applicant is required to declare loan agreement – whether value of loan should be counted as an asset for calculating disability support pension – whether debt is properly raised – whether all or part of the debt can be written off or waived – decision affirmed

[O'Meara and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1226 (7 August 2017); Senior Member PE Nolan

Disability support pension – inner ear conditions – whether conditions permanent – whether conditions fully diagnosed – whether sufficient supporting documentation for conditions to be diagnosed – where conditions were not fully diagnosed – where conditions were not permanent – decision under review affirmed

[Pezerovic and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1210 (1 August 2017); Dr I Alexander, Member

Disability support pension – whether applicant qualified for disability support pension – spine condition – mental health condition – whether applicant's medical conditions considered permanent – whether applicant's medical conditions rated at 20 points or more under Impairment Tables – whether applicant had a continuing inability to work – decision affirmed

[Piper and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1215 (2 August 2017); Senior Member JC Kelly

Disability support pension – whether impairments are physical, intellectual or psychiatric – whether impairments amount to 20 points or more – continuing inability to work – Table 4 Spinal Function – Table 5 Mental Health Function – Table 10 Digestive and Reproductive Function – Table 11 Hearing and other Functions – decision affirmed

[Ploenges and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1211 (1 August 2017); Mr I Thompson, Member

Disability support pension – whether the applicant's medical conditions were fully diagnosed, fully treated and fully stabilised as at the date of claim or within 13 weeks – Decision under review affirmed

[Samson and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1229 (9 August 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

[Wheeler and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1224 (7 August 2017); Senior Member PE Nolan

Disability support pension – psychiatric impairment – back and wrist conditions – whether conditions were fully diagnosed, treated and stabilised – relevant qualification period – where Applicant sought other treatment during and after the qualification period – conditions not fully diagnosed, treated and stabilised – decision under review affirmed

Veterans' Affairs

[Giger and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 1219 (4 August 2017); Mr T. Tavoularis, Senior Member

War widows' pension – whether the Applicant's husband's death was "war-caused" – where there was a previous Tribunal decision – application dismissed

Practice and procedure – re-litigation of issues – Matusko test – former resolution of issues by the Tribunal – effect of an earlier Tribunal decision

[Lidgerwood and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 1237 (1 August 2017); Miss EA Shanahan, Member

Claim for special rate – applicant in receipt of disability pension since 1974 – service in Vietnam for 12 months between 1968 and 1969 – meningo-encephalitis contracted in 1975 – certified as totally disabled 1976 – applicant received defined benefit pension – continuing service in the reserves until 1982 – subsequent training as a disability carer – employment as disability care worker on a casual basis – hours of employment varied up to a maximum of 26 hours per week – applicant suffered two physical assaults with bilateral shoulder injuries in course of disability care work – war-caused posttraumatic stress disorder diagnosed following assaults – alone test not satisfied – decision affirmed

Claim for acceptance of conditions as war-caused – sleep apnoea – gastro oesophageal reflux disease – no reasonable hypothesis connecting either condition to service – decision 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 finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Commissioner of Taxation v Jayasinghe	[2015] AATA 456	[2017] HCA 26 [2016] FCAFC 79
Juneja v Tax Practitioners Board	[2016] AATA 786	[2017] FCA 908
Saxton v Repatriation Commission	[2015] AATA 836	[2017] FCA 904

© Commonwealth of Australia 2016



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](https://creativecommons.org/licenses/by/3.0/au/). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <http://www.itsanhonour.gov.au/coat-arms/>.

Enquiries regarding the licence are welcome at aatweb@aat.gov.au.

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](https://www.austlii.edu.au/au/other/dfat/page/aaat.html).