



Administrative
Appeals Tribunal

AAT Bulletin

Issue No. 35/2017

28 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.

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Enquiries regarding this publication may be directed to 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.

Compensation

[Dalgleish and Comcare](#) (Compensation) [2017] AATA 1325 (15 August 2017); Senior Member E Fice

1986 workplace accident – injured leg – cushioned shoes – whether a compensable medical expense – application of the Compensation (Commonwealth Government Employees) Act 1971 – transition provision of the Safety, Rehabilitation and Compensation Act 1988

[Favas and Comcare](#) (Compensation) [2017] AATA 1317 (17 August 2017); Ms R Perton, Member

Employment by Department of Defence – major depressive disorder – alleged bullying by supervisor – whether injury occurred as a result of reasonable administrative action taken in a reasonable manner – whether applicant entitled to compensation for incapacity – decision affirmed

[O'Day and Comcare](#) (Compensation) [2017] AATA 1328 (31 July 2017); Senior Member A Nikolic AM CSC

Whether Comcare liable to pay compensation for osteopathic treatment – decisions under review affirmed

[Reeday and Military Rehabilitation and Compensation Commission](#) (Compensation) [2017] AATA 1320 (18 August 2017); Dr C Kendall, Deputy President

Military Compensation and Rehabilitation Act – defence service – whether applicant suffers or suffered from the claimed conditions of lumbar spondylosis and thoracic spondylosis – date of clinical onset – Statement of Principles No. 63 and No. 65 – whether one of the factors contained in the applicable Statement of Principles exists – whether applicant has established a sufficient connection between the injury and his defence service – decision under review affirmed

[Taylor and Comcare](#) (Compensation) [2017] AATA 1327 (22 August 2017); Senior Member JF Toohey

Bullying and harassment – adjustment reaction with anxious mood – depression – liability accepted – subsequently disputed – whether condition outside the boundaries of normal mental functioning and behaviour – whether employment contributed to a significant degree – whether effects of injury ceased – whether applicant made wilful and false representation – Tribunal satisfied that applicant's employment contributed to a significant degree to her condition – decision that effects had ceased affirmed – not an injury by reason of wilful and false representation

Education and Research

[Khan and Secretary, Department of Education and Training](#) [2017] AATA 1333 (22 August 2017); Miss EA Shanahan, Member

HIGHER EDUCATION – higher education contribution scheme – withdrawal from units of study after census date – application for remission of debt arising – special circumstances – decision affirmed

Migration

[Bui and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1330 (23 August 2017); Senior Member E Fice

Application for revocation of mandatory cancellation of visa – character grounds – substantial criminal record – applicant convicted of cultivating narcotic plant in a quantity not less than a commercial quantity – applicant convicted of possessing drug of dependence – total term of imprisonment of two years and nine months – applicant’s offending of a serious nature but on lower end of seriousness scale – low risk of harm to Australian community – revocation of mandatory cancellation in best interests of applicant’s grandchildren – Australian community would expect applicant be given a second chance – applicant has strong ties to Australia – decision under review set aside and substituted with decision revoking mandatory cancellation

[Diep and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1319 (21 August 2017); Dr L Bygrave, Member

Migration Act 1958 – mandatory visa cancellation – character test – serious criminal offence – protection of the Australian community – best interests of minor grandchildren – expectations of the Australian community – strength, nature and duration of ties to Australia – extent of impediments if removed – decision affirmed

[Kohli and Minister for Immigration and Border Protection](#) (Migration) [2017] 1326 AATA (22 August 2017); Senior Member A Poljak

Mandatory cancellation – skilled visa - 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 – expectations of Australian community – decision affirmed

[Ballard](#) (Migration) [2017] AATA 1336 (2 August 2017); T Flood, Member

Migration – Visitor (Class FA) visa – Subclass 600 (Visitor) (Class FA) – Sponsored Family stream – Genuine temporary entrant – Marriage to review applicant – Review applicant’s frequent travel to Thailand – Applicant’s business and family responsibilities – Incentives to return – Previous compliant visits – Decision under review remitted

[Rakuro](#) (Migration) [2017] AATA 1298 (3 August 2017); N McGowan, Member

Migration – Child (Residence) (Class BT) visa – Subclass 802 – Previous tribunal remittal – Dependent child under 25 – Sponsor not resided overseas for more than 12 months – Lawfully acquired full and permanent parental rights – Study requirements – Decision under review remitted

[Mariana](#) (Migration) [2017] AATA 1345 (3 August 2017); W Shum, Member

Migration – Skilled (Residence) (Class VB) visa – Subclass 886 – Required English language proficiency – Applicant did not achieve minimum score in multiple attempts – Decision under review affirmed

[Matthews](#) (Migration) [2017] AATA 1300 (4 August 2017); C Kannis, Member

Migration – Subclass TY444 visa – Invalid application – No refusal decision for second review application – No jurisdiction

[Guragain](#) (Migration) [2017] AATA 1314 (17 August 2017); Senior Member K Raif

Migration – Cancellation – Student (Temporary) (Class TU) visa – Subclass 573 Higher Education Sector – Criminal offences – Guilty plea – Risk to safety or good order of Australian community – No international obligations breached – Decision under review affirmed

Refugee

[1612187](#) (Refugee) [2017] AATA 1310 (1 August 2017); P Windsor, Member

Refugee – Protection Visa – Malaysia – Social group – Homosexuals – Muslim lesbians – Pengkids – Forced marriage – Physical harassment – No State protection – Decision under review remitted

[1608491](#) (Refugee) [2017] AATA 1347 (1 August 2017); P Vlahos, Member

Refugee – Protection visa – China – Unlawful citizen – Tax evasion and money laundering – Credibility issues – Decision under review affirmed

[1713235](#) (Refugee) [2017] AATA 1194 (27 July 2017); P Vlahos, Member

Refugee – Protection visa – Malaysia – Non-reviewable decision – Repeat application – First application has already been reviewed – No jurisdiction

[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

[1509246](#) (Refugee) [2017] AATA 1267 (24 July 2017); Senior Member S Roushan

Refugee – Protection Visa – Egypt – Religion – Koranism – Quranism – Claimed detention and assault – Inconsistent evidence – Credibility – Decision under review affirmed

Practice and Procedure

[Horizons \(Asia\) Pty Ltd and Registrar of Trade Marks](#) [2017] 1332 AATA (21 August 2017); Senior Member A Poljak

Jurisdiction – whether tribunal has jurisdiction to review – opposition to registration of trade mark – request to be heard on extension of time application – extension of time already determined – no jurisdiction – application dismissed

[Hyde and Secretary, Department of Social Services](#) (Social services second review) [2017] 1329 AATA (23 August 2017); Senior Member T Tavoularis

INTERLOCUTORY DECISION – Extension of time application – Application for Extension of Time considered – where Application for Review filed out of time – where inadequate reason for delay – where unconvincing prospects of success - extension of time refused

Social Security

[Ejueytsi and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1321 (18 August 2017); Mr DJ Morris, Member

Austudy allowance – overpayment – where Applicant failed to report change of circumstances – whether debt should be waived – no special circumstances – no financial hardship – decision under review affirmed

[Marston and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1322 (18 August 2017); Dr I Alexander, Member

Disability support pension – whether impairments are physical, intellectual or psychiatric – whether impairments amount to 20 points or more – continuing inability to work – Table 2 Upper Limb Function – Table 4 Spinal Function – Table 5 Mental Health Function – Table 10 Digestive and Reproductive Function – Table 14 – Functions of the Skin – decision affirmed

[Robinson and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1323 (21 August 2017); Senior Member PE Nolan

Disability support pension – whether Applicant had conditions that were fully diagnosed, treated and stabilised during relevant period – whether Applicant had 20 impairment points – Fibromyalgia – Spondylosis – Cerebrovascular disease – decision under review is affirmed

[Ryan and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1324 (22 August 2017); Dr I Alexander, Member

Disability support pension – applicant has physical impairments – chronic lower back pain – Meniere's disease – heart condition - psoriasis – hiatus hernia – irritable bowel syndrome – diverticulitis – the applicant's impairments do not total 20 points or more under the Impairment Tables – decision under review affirmed

[Trimboli and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1331 (18 August 2017); Ms A Burke, Member

Whether applicant entitled to family tax benefit – late lodgement of tax return – is debt raised and recoverable – should debt be waived or written off, in part or full – whether severe financial hardship or special circumstances making desirable to waive debt applicable – reviewable decision set aside and substituted

Taxation

[Arnold and Commissioner of Taxation](#) (Taxation) [2017] AATA 1318 (18 August 2017); The Hon. Justice Perram, Deputy President

Appeal from objection decisions of Commissioner – deductions – charitable donations to deductible gift recipients – HIV/AIDS medicines supplied to charities located in Africa – consideration of market value of goods – consideration of amount paid for goods – construction of ‘paid’ in s 30-15 of Income Tax Assessment Act 1997 (Cth) – whether title to goods transferred to charities within relevant income years – whether supply agreements void for illegality – whether objection decisions upheld – whether administrative shortfall penalties upheld

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
Davis v Minister for Immigration and Border Protection	[2017] AATA 1106

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Commissioner of Taxation v Primary Health Care Limited	[2017] AATA 393	[2017] FCAFC 131
Fitzgibbon v Turnbull	[2017] AATA 502	[2017] FCA 968
National Disability Insurance Agency v McGarrigle	[2016] AATA 498	[2017] FCAFC 132 [2017] FCA 308
Nigam v Minister for Immigration and Border Protection and Administrative Appeals Tribunal	[2016] AATA 613	[2017] FCAFC 127 [2017] FCA 106

Statements of Principles

This section of the *Bulletin* provides information on recent developments in relation to Statements of Principles made by the Repatriation Medical Authority for the purposes of the [Veterans' Entitlements Act 1986](#) and the [Military Rehabilitation and Compensation Act 2004](#).

New Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made the following new Statements of Principles. They commence on **18 September 2017**.

Alcohol use disorder (Reasonable Hypothesis) – No. 48 of 2017

<https://www.legislation.gov.au/Details/F2017L01045>

Alcohol use disorder (Balance of Probabilities) – No. 49 of 2017

<https://www.legislation.gov.au/Details/F2017L01046>

Benign paroxysmal positional vertigo (Reasonable Hypothesis) – No. 56 of 2017

<https://www.legislation.gov.au/Details/F2017L01050>

Benign paroxysmal positional vertigo (Balance of Probabilities) – No. 57 of 2017

<https://www.legislation.gov.au/Details/F2017L01051>

Influenza (Reasonable Hypothesis) – No. 44 of 2017

<https://www.legislation.gov.au/Details/F2017L01054>

Influenza (Balance of Probabilities) – No. 45 of 2017

<https://www.legislation.gov.au/Details/F2017L01056>

Malaria (Reasonable Hypothesis) – No. 46 of 2017

<https://www.legislation.gov.au/Details/F2017L01049>

Malaria (Balance of Probabilities) – No. 47 of 2017

<https://www.legislation.gov.au/Details/F2017L01061>

Popliteal entrapment syndrome (Reasonable Hypothesis) – No. 54 of 2017

<https://www.legislation.gov.au/Details/F2017L01053>

Popliteal entrapment syndrome (Balance of Probabilities) – No. 55 of 2017

<https://www.legislation.gov.au/Details/F2017L01058>

Rheumatoid arthritis (Reasonable Hypothesis) – No. 50 of 2017

<https://www.legislation.gov.au/Details/F2017L01055>

Rheumatoid arthritis (Balance of Probabilities) – No. 51 of 2017

<https://www.legislation.gov.au/Details/F2017L01057>

Tooth wear (Reasonable Hypothesis) – No. 52 of 2017

<https://www.legislation.gov.au/Details/F2017L01059>

Tooth wear (Balance of Probabilities) – No. 53 of 2017

<https://www.legislation.gov.au/Details/F2017L01062>

Statements of Principles to be revoked

The AAT has been advised that the following Statements of Principles determined by the Repatriation Medical Authority **will be revoked** on **18 September 2017**:

Alcohol use disorder – No. 1 of 2009

<https://www.legislation.gov.au/Details/F2014C00398>

Alcohol use disorder – No. 2 of 2009

<https://www.legislation.gov.au/Details/F2014C00404>

Influenza – No. 58 of 2009

<https://www.legislation.gov.au/Details/F2009L03220>

Influenza – No. 59 of 2009

<https://www.legislation.gov.au/Details/F2009L03221>

Malaria – No. 60 of 2009

<https://www.legislation.gov.au/Details/F2009L03222>

Malaria – No. 61 of 2009

<https://www.legislation.gov.au/Details/F2009L03224>

Rheumatoid arthritis – No. 68 of 2008

<https://www.legislation.gov.au/Details/F2008L04133>

Rheumatoid arthritis – No. 69 of 2008

<https://www.legislation.gov.au/Details/F2008L04134>

Amendments to Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made the following determination which amends 124 Statements of Principles covering 65 conditions. The amendments **take effect** from **18 September 2017**.

Veterans' Entitlements (Statements of Principles—Cumulative Equivalent Dose) Amendment Determination 2017 – No. 58 of 2017

<https://www.legislation.gov.au/Details/F2017L01067>

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